Treasury Board of Canada Secretariat
Secrétariat du Conseil du Trésor du Canada

Submission of the Treasury Board to the Public Interest Commission in Respect of the Border Services (FB) Group

Chairperson: **William Kaplan**

Members: **Joe Herbert**

Jean-Stéphen Piché

Ottawa: **April 10 and 22, 2024**

Canada

In the matter of the *Federal Public Sector Labour Relations Act* and a dispute affecting the Public Service Alliance of Canada and His Majesty in Right of Canada as represented by the Treasury Board in respect of all of the employees in the Border Services bargaining group as determined in the certificate issued by the Federal Public Sector Labour Relations and Employment Board on February 21, 2007.

Foreword

This brief is being presented without prejudice to the Employer's right to present any additional facts or arguments it considers appropriate and relevant during the proceedings of the Commission.

Introduction

The Public Service Alliance of Canada (PSAC) and Treasury Board were engaged in negotiations between June 16, 2022 and September 27, 2023 to renew the collective agreement for the Border Services (FB) group, which expired on June 20, 2022 (Exhibit 1).

The FB group is defined in the Canada Gazette as:

> The Border Services Group comprises positions in the Canada Border Services Agency that are primarily involved in the planning, development, delivery, or management of the inspection and control of people and goods entering Canada.

The Border Services bargaining unit (FB group) is composed of approximately eight thousand seven hundred (8,700) represented members and one thousand and ninety (1,090) employees who are excluded from the bargaining unit but whose terms and conditions of employment are still defined by the same collective agreement. Members of the group are employed by the Canada Border Services Agency (CBSA). CBSA have employees permanently assigned to one hundred and seventeen (117) land border crossings, thirteen (13) international airports, three (3) mail processing centers, three (3) Immigration Holding Centers, carries out marine operations in Halifax, Montreal and Vancouver and in seven (7) regional offices. The Agency also provide services to some one thousand two hundred (1,200) points across Canada and at thirty-nine (39) international locations. Members of the bargaining unit are at the core of the Canada Border Services Agency's mandate and contribute to Canada's security and prosperity by overseeing the access of people and goods to and from Canada.

In accordance with section 105 (1) of the *Federal Public Sector Labour Relations Act* (FPSLRA), the PSAC served notice to bargain with the Employer on February 21, 2022. The parties met for a total of twenty-four (24) days in nine (9) sessions between June 2022 and September 2023.

The PSAC declared impasse and filed for the establishment of a Public Interest Commission (PIC) on September 29, 2023. The Chairperson of the Federal Public Sector Labour Relations and Employment Board (FPSLREB) advised the parties on October 30, 2023, that she was recommending the establishment of a PIC.

This document presents the Employer's position on the outstanding issues between the parties, including rates of pay. Currently the Bargaining Agent has proposals on approximately fifty (50) existing and new articles and appendices, several of which contain multiple changes within the same article or appendix for a total of more than one hundred and eighty (180) outstanding proposals. The Employer has proposals on

twenty-nine (29) existing articles and appendices, some of which with multiple changes within them for a total of approximately forty (40) outstanding proposals. The document also provides relevant contextual information pertaining to the current round of bargaining and the FB group.

The Employer brief is organized as follows:

- **Executive Summary**

- **Part I** will provide a status update on the current round of negotiations for the core public administration (CPA) as a whole, and for the FB group.

- **Part II** will present information on the government's economic and fiscal circumstances, recruitment and retention, external comparability, and internal relativity. It also provides total compensation figures for the FB group.

- **Part III** will present the Employer's submission for rates of pay and duration, and the associated rationale, as well as a response to the PSAC's proposals.

- **Part IV** will detail the Employer's position on other outstanding proposals.

- **Part V** will provide information on the FB group, including the group definition and qualifications standards.

EXECUTIVE SUMMARY

The Government of Canada is committed to good faith negotiations and has a history of negotiations that are productive and respectful of its dedicated workforce. Its approach to collective bargaining is to negotiate agreements that are fair for public service employees and reasonable for Canadians.

The Border Services bargaining unit (FB group) is composed of approximately eight thousand seven hundred (8,700) represented members and one thousand and ninety (1,090) employees who are excluded but whose terms and conditions of employment are still defined by the same collective agreement. Members of the group are employed by the Canada Border Services Agency (CBSA). CBSA have employees permanently assigned to one hundred and seventeen (117) land border crossings, thirteen (13) international airports, three (3) mail processing centers, three (3) Immigration Holding Centers, carries out marine operations in Halifax, Montreal and Vancouver and in seven (7) regional offices. The Agency also provide services to some one thousand two hundred (1,200) points across Canada and at thirty-nine (39) international locations.

The FB group is defined in the Canada Gazette as:

> The Border Services Group comprises positions in the Canada Border Services Agency that are primarily involved in the planning, development, delivery, or management of the inspection and control of people and goods entering Canada.

The collective agreement for the FB group expired on June 20, 2022. The Bargaining Agent, the Public Service Alliance of Canada (PSAC), declared impasse and filed for the establishment of a Public Interest Commission (PIC) on September 29, 2023, after bargaining between June 2022 and September 2023.

Providing the FB group with early pension entitlements and achieving parity with the Royal Canadian Mounted Police (RCMP) Constables were identified as key priorities by the Bargaining Agent. However, pension is excluded from the scope of collective bargaining as per section 113 of the *Federal Public Sector Labour Relations Act* and the work performed by the FB group and the RCMP Constables is not comparable.

Negotiations in the Federal Public Service

At this point in the 2021 round of collective bargaining, seventeen (17) of the twenty-eight (28) bargaining units have a tentative or signed agreement. This accounts for 80% of the represented employee population in the Core Public Administration (CPA). All these agreements share common features, including base economic increases of 3.5%, 3.0%, 2.0%, plus targeted wage measures of approximately 1.5% over the four (4)-year

duration of the agreements. Collective agreements signed thus far fall into two (2) groups with the same four (4)-year duration but over different years:

- Groups with agreements expiring in fiscal year 2025–26 (22% of the CPA population) include a 2% economic increase in that year.
- Groups with agreements that expire in fiscal year 2024–25 (59% of the CPA population) include a 1.5% economic increase in fiscal year 2021–22 to align with the rest of the CPA, as their agreements were one (1) year shorter in the previous round. The terms of these agreements are outlined in the table below.

Year	2021	2022	2023	2024	2025
Groups with 3-year agreement in 2018 Round (Economic Increases)	1.50%	3.50%	3.00%	2.00%	
Group with 4-year agreement in 2018 Round (Economic Increases)		3.50%	3.00%	2.00%	2.00%
Pattern Wage Adjustments (for all agreements)		1.25%	**(See note 1)**	0.25%	

Note 1: While the table above represents the established pattern for the 2021 round of collective bargaining, a 0.5% pay line adjustment in 2023 has been provided to some groups and/or subgroups.

Other key negotiated amendments include:

- The addition of the National Day for Truth and Reconciliation to the list of designated paid holidays and adjustments to the pay for part-time employees to account for this new holiday.
- A modified memorandum of understanding regarding the timelines for the implementation of collective agreements, and
- A memorandum of understanding on pay simplification to recognize the parties' commitment to ongoing collaboration with regards to the identification of human resources (HR) and pay administration solutions to support the pay system.

Additionally, as of March 2024, ten (10) of the fifteen (15) separate agencies have tentative or signed agreements with fourteen (14) bargaining units, including the three (3) largest (Canada Revenue Agency, Parks Canada and the Canadian Food Inspection Agency), as well as the Communications Security Establishment, Canada Energy Regulator, Canadian Nuclear Safety Commission, National Film Board, Office of the Auditor General, Office of the Superintendent of Financial Institutions and four (4) bargaining units at the National Research Council of Canada. In total, approximately 89% of the entire separate agency represented and associated excluded population have signed or tentative agreements in place based on the current CPA pattern.

There is no evidence to indicate that the FB group should receive a more favourable arrangement than the pattern set in the 2021 round of collective bargaining.

Recruitment and Retention

Based on current indicators, it is evident that compensation levels for the FB group are adequate. This is substantiated by the Employer's capacity to successfully attract and retain a substantial FB workforce. The findings of the recruitment and retention analysis in this brief do not reveal any signs of recruitment or retention challenges within the group. In fact, the analysis demonstrates stable hiring and renewal levels within the group as well as a retention rate that outstrips the CPA average, which is, in itself a high retention rate when compared to other employers.

Recruitment and Retention Summary

Population growth is the net result of separations (outflow) and hirings (inflow). The stable employee count in the FB group is driven by low separation rate, that diminishes the need for additional recruitment. The table below provides insights into their evolution over the reference year. Although there was a slight dip in population growth in 2020 – 2021, this was specific to COVID-19 related disruptions in training new officers, which impacted the normally steady growth rate in the group.

Population and Retention Rates

Population	**2018-19**	**2019-20**	**2020-21**	**2021-22**	**2022-23**
12-months average population	10,275	10,319	10,278	10,317	10,433
Year-to-year (y/y) increase (FB)	-	0.4%	-0.4%	0.4%	1.1%
Year-to-year (y/y) increase (CPA)	-	5.2%	4.2%	4.8%	5.4%
Retention rate (FB)	**96.1%**	**94.9%**	**95.8%**	**95.5%**	**95.4%**
Retention rate (CPA average)	**91.2%**	**91.0%**	**92.3%**	**90.9%**	**90.9%**

Notes:
1. Figures include employees working in departments and organizations of the core public administration (FAA Schedule I and IV).
2. Figures include all active employees and employees on leave without pay (by substantive classification) who were full- or part-time indeterminate and full- or part-time seasonal and who were part of the FB occupational group.
3. Since the population figures are 12-month averages, the variation of the population from one year to the next will not match the net increase/decrease calculated by subtracting the total separations from total hires in the tables below.

Along with the stable population and strong retention rates in the FB group, the group also has one of the lowest voluntary, non-retirement separation rates in the CPA as demonstrated in the table below:

Voluntary non-retirement separations as a proportion of total separations

Voluntary non-retirement separations	2018-19	2019-20	2020-21	2021-22	2022-23
FB	0.55%	0.51%	0.43%	0.51%	0.58%
CPA average	0.81%	0.92%	0.81%	0.91%	0.95%

Source: Mobility file as of August 2023
Note:

1.Figures include employees working in departments and organizations of the core public administration (FAA Schedule I and IV).
2. Figures include all active employees and employees on leave without pay (by substantive classification) who were full- or part-time indeterminate and full- or part-time seasonal and who were part of the FB occupational group.
3. Voluntary non-retirement separations include resignation from the CPA for: outside employment, return to school, personal reasons, abandonment of position; it also includes separation to a Separate Agency.
4. Voluntary non-retirement separations rates are calculated by dividing the number of voluntary non-retirement separations in a given fiscal year by the average number of employees.

Comparability with the RCMP, Internal Relativity and Wage Growth

The Bargaining Agent asserts that its salary demands and the inclusion of several of its proposals in the renewed collective agreement are required to continue to close the wage gap with RCMP Police Constables. The Employer is of the view that RCMP Constables, or Canadian police forces, are not a proper comparator for the FB group.

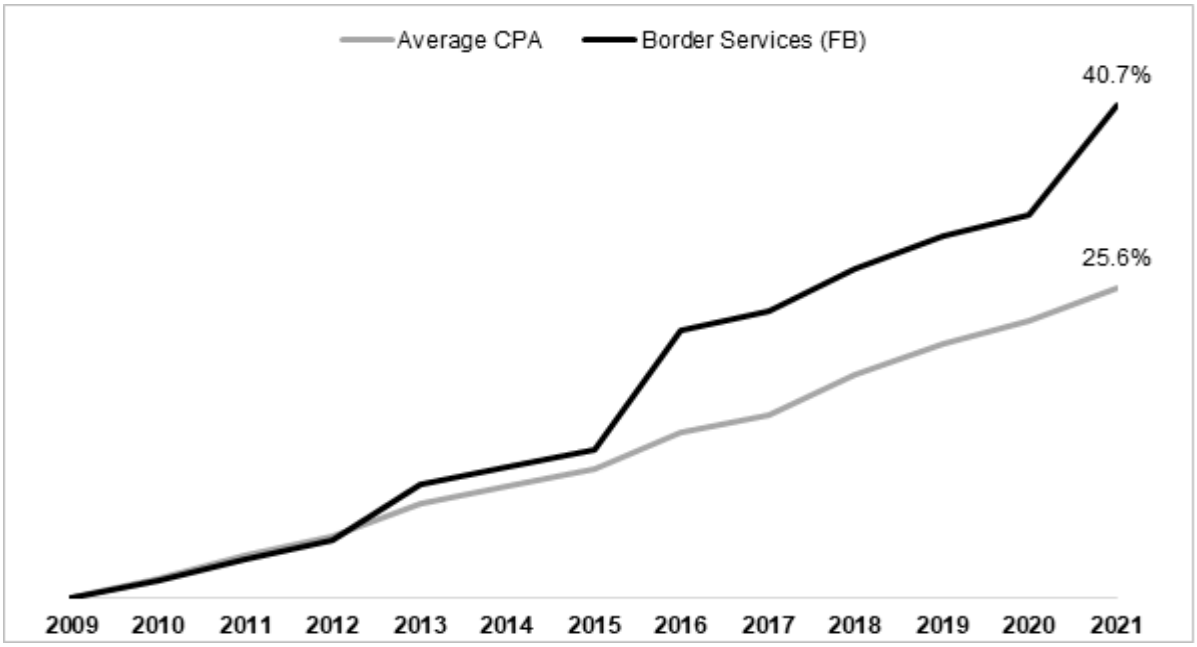
Although a proportion of the FB group have the peace officer designation under section 2 of the *Criminal Code*, their authority under the Code is limited to the enforcement of the CBSA's enabling legislations (i.e., the *Customs Act,* the *Excise Act* or the *Immigration and Refugee Protection Act*). On the other hand, police officers have a broader mandate and authorities that include enforcing the *Criminal Code* as a whole and other applicable legislation. Employees in the FB group can also only exercise this designation while on duty in most instances in a customs office and, therefore, in a controlled environment. This contrasts with police officers that have a duty to intervene whether they are on or off duty and that perform their duties in uncontrolled and undefined environments. Accordingly, the level of skill, effort, responsibility and working conditions required to perform these two types of occupations differ and comparability should not be concluded on the sole basis that a proportion of the FB group has the peace officer designation. The Employer is of the view that the broader authorities invested in police officers warrant a distinct approach to compensation for these two groups.

As for the need to close the gap with the broader law enforcement community, the Employer submits that this was achieved in previous rounds of bargaining.

The FB bargaining group has received wage increases higher than the CPA average over the last three rounds. The table below shows that, from 2010 to 2021, the FB group's salary increased by 40.7%, outpacing the average CPA group's wage increase

of 25.6%. This discrepancy raises concerns about the maintenance of the appropriate relationships between groups and levels, posing challenges to the overall balance within the CPA.

FB cumulative wage increases and weighted CPA average increases, 2010–2021



State of the Canadian economy and the Government of Canada’s fiscal circumstances

Due to enormous fiscal and monetary policy support, Canada has managed to recover quickly from the economic damage caused by the pandemic. However, persistent economic and social challenges, including the global ramifications of the war in Ukraine, continue to exert pressure on Canada’s economy.

The inflation was already elevated from pandemic related supply disruptions. The Russia’s invasion of Ukraine exacerbated already pre-existing supply chain disruptions, which were intensified by resurgent consumer demand from the loosening of pandemic restrictions. This combination of factors caused the inflation rate to accelerate in 2022. Since then, inflationary pressures have eased, and inflation is forecast to soon return back to the 2.0% target rate.

Despite strong employment growth in 2021 and 2022, average hourly earnings has consistently lagged inflation. Fixed-weight average hourly earnings growth was 2.8% in 2021 and 4.0% in 2022.

Labour market indicators expected to weaken

Indicator	2020	2021	2022	2023©	2024(F)	2025(F)
Average hourly earnings (y/y) (fixed weights)	3.6%	2.8%	4.0%	3.6%	3.4%	3.4%
Unemployment rate (%)	9.7%	7.5%	5.3%	5.4%	6.3%	6.2%

Sources: Fixed-weight average hourly earnings is from Consensus Economics, January 2024. Unemployment rate is from Statistics Canada, forecast is from Consensus Economics. © is the consensus estimate based on latest survey. (F) denotes forecast.

The weakening economic outlook has also led to an increase in the forecast unemployment rate, which, as of January 2024, is expected to increase to an average of 6.3% in 2024, before slightly dipping to 6.2% in 2025.

The Bank of Canada's 2024 Q4 Business Outlook survey reported that businesses have observed a softening labour market, and that:

"Businesses reported that they do not need to hire or that they generally are filling only existing roles and not creating new positions. In addition, an increasing share of firms are planning to make modest reductions in staffing. With less competition for labour, businesses that are hiring are finding it easier to recruit qualified candidates."

Similar conditions were reported from the consumer side, from the Bank of Canada's Canadian Survey of Consumer Expectations:

"*With the economy weakening, consumers' perceptions of the labour market have softened. Compared with last quarter, workers reported: lower likelihood of switching jobs voluntarily, lower chance of finding a new job, and a higher probability of losing their job*."

As a result of slowing economic growth, the labour market is cooling rapidly with forecasts for lower wage growth and a higher unemployment rate over the near term. As the labour market cools future collective bargaining wage increases will follow this downward trend.

The federal deficit and debt increased exponentially in 2020-21 because of the emergency spending on the COVID-19 economic response plan and the sharply lower revenues due to lockdowns. The deficit for 2020-21 increased more than thirteen-fold from the pre-pandemic forecast to $327.7 billion.

Higher deficits and rising interest rates have combined to increase the Government's public debt charges which are projected to almost triple, from $20.4 billion in 2020-21 to $60.7 billion in 2028-29.

The efficient use of Canadians' tax dollars is essential to delivering on the priorities that matter most to Canadians. Public service employees' total compensation is typically subject to scrutiny from Canadian taxpayers. In this fiscal context and given that compensation accounts for a sizeable share of the government's expenses, caution is required from the Employer when considering improvements to collective agreements.

Bargaining Agent Proposals

During this round of bargaining, the Bargaining Agent has submitted proposals on approximately fifty (50) existing and new articles and appendices, several of which contain multiple changes within the same article or appendix. As noted in the table below, the PSAC monetary proposals represent a total ongoing cost of approximately $441.7 million or 41.75% of the 2022 FB group wage base over three (3) years, or 12.33% annually.

BARGAINING AGENT WAGE & MONETARY PROPOSALS	ONGOING COSTS	% OF WAGE BASE
2021 Round of Collective Bargaining		
Economic increases from 2022–23 to 2024–25: 3.5%, 3.0%, 2.0%	$92.4M	8.74%
Extra pay line adjustments: • 7.801% increase to match RCMP Constables • 6.7% increase to maintain hourly rate after conversion from 37.5 hours to 40.0 hours per week • 1.25% and 0.5% market adjustments • 0.5% pay line adjustment	$199.0M	18.81%
Other monetary and productivity costs	$150.3M	14.20%
Total Ongoing Cost	**$441.7M**	**41.75%**
One-time payment of $2,500 (pensionable) for the performance of duties and responsibilities	**$34.7M**	**3.28%**

Employer Proposals

The Employer proposes to negotiate improvements for the FB group that include fair economic increases, modernized language, increases to certain leave provisions, and other improvements. These proposals are aligned with what has been agreed to with seventeen (17) other tentative or signed agreements in the CPA, representing 80% of the represented employee population, including four (4) other PSAC groups.

Although the Bargaining Agent declared impasse before the Employer could table a comprehensive offer, the Employer confirms that it is seeking to conclude a four (4)-year agreement with economic increases totaling 13.14%. It includes a combination of general economic increases, market and pay line adjustments.

A four (4)-year agreement will allow for greater labour relations stability and predictability. In the last two (2) rounds, the parties have negotiated four (4)-year agreements that were either expired at the time of signing or that expired approximately six (6) months after. A three (3)-year agreement would lead to a similar outcome whereas the agreement would be valid for less than a year before it expires and notice to bargain could be filed.

A one (1)-year period or less between rounds of collective bargaining is insufficient time to allow the parties to fully experience amendments made to collective agreements. A four (4)-year agreement will provide the parties with the opportunity to implement negotiated changes more fully and to determine whether changes are required to address issues based on a substantiated need.

The CPA collective agreements signed-off this round were for at least four (4) years. Moreover, the Employer's economic offer over four (4) years is competitive with what has transpired in the broader unionized labour market and consistent with relevant economic indicators.

The Employer's detailed position on each outstanding item can be found in parts III and IV of the Employer's brief.

The Employer's monetary proposals, with the associated costs, are included in Table 5 below (and in the body of the brief).

There is no evidence to indicate that the FB group should receive a more favourable arrangement than the pattern set out within the CPA for the current round of bargaining.

Employer Monetary Proposals

EMPLOYER WAGE PROPOSAL	ONGOING COST	% OF WAGE BASE
2021 Round of Collective Bargaining		
Economic increases of 1.5%, 3.5%, 3%, 2% and 2% over four years	$115.4M	10.91%
1.25% market adjustment in year one, 0.5% pay line adjustment in year two, and 0.25% market adjustment in year three	$23.6M	2.23%
Other monetary and productivity costs	$0.6M	0.06%
Total Ongoing Cost	**$139.6M**	**13.20%**
One-time payment of $2,500 (pensionable) for the performance of duties and responsibilities	**$34.7M**	**3.28%**

The Employer requested that the Bargaining Agent clearly identify its priorities for this round in order to reduce its number of proposals and to consider the current collective bargaining landscape and recent negotiation outcomes with other federal public service

bargaining agents. The number of outstanding proposals cannot be justified for a mature collective agreement.

The Employer is prepared to consider group-specific measures if they are justified, and they allow operating within the fixed monetary envelop it disposes and that constitutes the pattern in the CPA and within separate agencies.

A more limited number of proposals, as recommended by this Commission, is expected to meaningfully improve the likelihood of a settlement.

Table of contents

Part I: Status of Negotiations

1.1 Negotiations in the Federal Public Service

The Government of Canada is committed to bargaining in good faith with all federal public sector bargaining agents and has a history of negotiations that are productive and respectful of its dedicated workforce. Its approach to collective bargaining is to negotiate agreements that are fair for public service employees and reasonable for Canadians.

1.1.1 2021 Round of Collective Bargaining

The Employer's approach for the 2021 round of collective bargaining in the CPA and Separate Agencies (SA) is articulated around two main themes to support an agile workforce and continuous improvement of service to Canadians:

Economic Context and Fiscal Responsibility

The Employer's approach and objective is to negotiate, in good faith, collective agreements that are fair for employees and reasonable for Canadians.

The events over the past several years have brought significant economic, social, and political stress. Canada and the rest of the world are slowly emerging from the pandemic, but the economic impact of COVID-19 continues to evolve as new waves strain our health care systems and supply chains worldwide. Additionally, the effects of climate change and worsening natural disasters such as forest fires, hurricanes and drought have become increasingly common, which in tandem with political instability have had a significant impact on economies both globally and within Canada.

In terms of the impact of the COVID-19 pandemic on the CPA workforce, federal public servants have enjoyed robust job security and continuity despite significant disruptions. Unlike many other jurisdictions and employers, the CPA has avoided enterprise-wide workforce adjustment (e.g., job loss) and has introduced benefit flexibilities (e.g., extending emergency travel benefits and accepting claims for social workers and psychotherapists as mental health professionals) to support its workforce in a responsive and responsible way. With support mechanisms in place, such as "699 paid leave", federal public servants were well protected against adverse economic impacts stemming from the pandemic.

Further information on the Employer's considerations around the economic context and fiscal responsibility is detailed in Part II of this brief.

Pay Simplification (including implementation of the collective agreement)

To support the continued stabilization of the existing HR-to-pay systems and pay administration and the success of the NextGen HR and pay solution (which is slated to replace the current HR and pay systems), and in light of the lessons learned during collective agreement implementation over the past two rounds of negotiations, the Employer is seeking to secure changes with limited impact on the current and future pay system (e.g., prospective implementation of salary increases as was the case in the last round of collective bargaining).

In this vein, the Employer and the PSAC have established a joint sub-committee of the PSAC Common Issues table to discuss and identify issues/possible options for pay simplification with consideration to cost and operational requirements in order to streamline and standardize collective agreement provisions across the CPA with the goal of simplifying HR and pay administration in the current systems and reducing the level of complex customization of the future HR to pay solution.

The issue of retroactive payments and timelines for implementation remains a priority for the Employer in the 2021 round. As such, the Employer is seeking to establish a new norm that recognizes the complexity of implementation of collective agreements, continues to distinguish between manual and automated transactions and provides clarity around the process to employees and bargaining agents. This approach has been developed with consideration to lessons learned from the 2018 round and builds on the success of the retroactive payment methodology employed in the last round.

1.2 Status of Negotiations in the CPA

Since June 2021, the Treasury Board of Canada Secretariat (TBS) has been actively engaged in negotiations on behalf of the Treasury Board, the Employer for the CPA. Two major milestones during this round of negotiations are as follows:

1. The signing of the first agreement of the round with the Association of Canadian Financial Officers (ACFO) for the newly formed Comptrollership (CT) group in December 2022; and
2. The signing of four (4) agreements with the Public Service Alliance of Canada (PSAC) in June-July 2023, representing 51% of the CPA and nearly 40% of the CPA and Separate Agency population (128,000 employees).

Numerous other agreements have been signed off since. As of March 2024, approximately 80% (187,837 employees) of the CPA and seventeen (17) of twenty-eight (28) bargaining units now have a tentative or signed agreement (Table 1).

All these agreements share common features, including base economic increases of 3.5%, 3.0%, 2.0%, plus targeted wage measures of approximately 1.5% over the four-year duration of the agreements. Collective agreements signed thus far fall into two groups with the same four (4)-year duration but over different years:

- Groups with agreements expiring in fiscal year 2025–26 (22% of the CPA population) include a 2% economic increase in that year.
- Groups with agreements that expire in fiscal year 2024–25 (59% of the CPA population) include a 1.5% economic increase in fiscal year 2021–22 to align with the rest of the CPA, as their agreements were one (1) year shorter in the previous round. The terms of these agreements are outlined in the table below.

The pattern established, as noted below, is inclusive of a one-time allowance valued at $2,500 for the performance of regular duties and responsibilities.

Year	2021	2022	2023	2024	2025
Groups with 3-year agreement in the 2018 Round (Economic Increases)	1.50%	3.50%	3.00%	2.00%	
Groups with 4-year agreement in the 2018 Round (Economic Increases)		3.50%	3.00%	2.00%	2.00%
Pattern Wage Adjustments **(for all agreements)**		1.25%	**(See note 1)**	0.25%	

Note 1: While the table above represents the established pattern for the 2021 round of collective bargaining, a 0.5% pay line adjustment in 2023 has been provided to some groups and/or subgroups.

The Employer views those agreements as reasonable and fair in the current economic environment.

Other key negotiated amendments include:

- the addition of the National Day for Truth and Reconciliation to the list of designated paid holidays and adjustments to the pay for part-time employees to account for this new holiday,
- a modified memorandum of understanding regarding the timelines for the implementation of collective agreements, and
- a memorandum of understanding on pay simplification to recognize the parties' commitment to ongoing collaboration with regards to the identification of human resources (HR) and pay administration solutions to support the pay system.

Table 1 below lists the bargaining units in the CPA, their union affiliation and population as of March 2021.

Table 1: Bargaining Units – Core Public Administration[1]

Bargaining Agent	Bargaining Unit	Represented and excluded population as of March 2021
PSAC Public Service Alliance of Canada	**PA – Program and Administrative Services**	**96,698**
	TC – Technical Services	**10,892**
	SV – Operational Services	**10,464**
	EB – Educational and Library Science	**1,128**
	FB – Border Services	9,805
	Subtotal:	**128,987**
PIPSC Professional Institute of the Public Service of Canada	**RE – Research**	**2,711**
	AV – Audit, Commerce, and Purchasing	6,754
	NR – Architecture, Engineering, and Land	**4,193**
	SP – Applied Science and Patent Examination	**9,226**
	IT – Information Technology	**17,242**
	HS – Health Services	3,781
	Subtotal:	**43,907**
CAPE Canadian Association of Professional Employees	**EC – Economics and Social Science Services**	**20,048**
	TR – Translation	**860**
	Subtotal:	**20,908**
UNIFOR	**RO – Radio Operations**	**281**
	AI – Air Traffic Control	10
	Subtotal:	**291**
CUPE Canadian Union of Public Employees	**LES-PO – Law Enforcement Support and Police Operations Support Group**	**962**
AJC Association of Justice Counsel	**LP – Law Practitioner**	**3,190**
PAFSO Professional Association of Foreign Service Officers	**FS – Foreign Service**	**1,890**
ACFO Association of Canadian Financial Officers	**Comptrollership (CT – Formerly FI)**	**5,675**
CMSG Canadian Merchant Service Guild	**SO – Ships' Officers**	**1,281**
FGDTLC© Federal Government Dockyard Trades and Labour Council (East)	SR(E) – Ship Repair East Coast	587
FGDTLC(W) Federal Government Dockyard Trades and Labour Council (West)	SR(W) – Ship Repair West Coast	660
FGDCA	SR(C) – Ship Repair Chargehands	58

1 Bolded bargaining units have reached an agreement.

Federal Government Dockyard Chargehands Association		
CMCFA Canadian Military Colleges Faculty Association	UT – University Teaching	202
IBEW International Brotherhood of Electrical Workers	**EL – Electronics**	**1,096**
CFPA Canadian Federal Pilots Association	AO – Aircraft Operations	399
UCCO-SACC-CSN Union of Canadian Correctional Officers	CX – Correctional Officers	6,325
NPF National Police Federation	RCMP Members Appointed to a Rank and Reservists	18,460
	Total Population	**234,878**

1.3 Status of Negotiations in the Separate Agencies

There are twenty-six (26) separate agencies listed in Schedule V of the *Financial Administration Act*. Fifteen (15) are represented by at least one bargaining agent and they conduct their own negotiations for unionized employees and set their own terms and conditions of employment and compensation for non-unionized employees. Separate agencies are distinct from the CPA; they have different job duties and specific wage levels according to their business purpose. The largest separate agencies include the Canada Revenue Agency (CRA), Parks Canada (Parks), and the Canadian Food Inspection Agency (CFIA). The CPA and separate agencies share many of the same bargaining agents, including the PSAC and PIPSC.

As part of the federal public administration, separate agencies follow the same broad government objectives; they are committed to negotiating agreements in good faith that are fair and reasonable for employees, bargaining agents and Canadian taxpayers.

All thirty (30) bargaining units in publicly funded separate agencies have received their notice to bargain for the 2021-2022 round of collective bargaining. To date, thirteen (13) separate agencies have started or are in the process of starting negotiations with their respective groups. As of March 2024, ten (10) of the fifteen (15) separate agencies have tentative or signed agreements with fourteen (14) bargaining units, including the three largest (CRA, Parks, and the CFIA)) as well as the Communications Security Establishment (CSE), Canada Energy Regulator (CER), Canadian Nuclear Safety Commission ((CNSC), National Film Board (NFB), Office of the Auditor General (OAG), Office of the Superintendent of Financial Institutions (OSFI) and four (4) bargaining units at the National Research Council of Canada (NRC).

Table 2 below lists the separate agencies, and bargaining units, their union affiliation and population. In total, approximately 89% of the entire separate agency represented

and associated excluded population have signed or tentative agreements based on the current pattern.

Table 2: Bargaining Units – Separate Agencies[2]

Separate Agencies	Bargaining Agents	Bargaining Units	Population
Canada Energy Regulator (CER)	PIPSC	**All Unionized Employees (CER)**	**422**
Canada Revenue Agency (CRA)	PIPSC	**Audit, Financial and Scientific (AFS)**	**12,597**
	PSAC	**Program Delivery and Administrative Services (PDAS)**	**32,533**
Canadian Food Inspection Agency (CFIA)	PSAC	**PSAC**	**4,038**
	PIPSC	Informatics (IN)	264
		Scientific and Analytical (S&A)	1,193
		Veterinary Medicine (VM)	584
Canadian Nuclear Safety Commission (CNSC)	PIPSC	**Nuclear Regulatory (NUREG)**	**702**
Canadian Security Intelligence Service (CSIS)	PSAC	Intelligence Support	89
Communications Security Establishment Canada (CSE)	PSAC	**All Unionized Employees (CSE)**	**2,822**
National Capital Commission (NCC)	PSAC	All Unionized Employees (NCC)	444
National Film Board (NFB)	PIPSC	**Administrative and Foreign Services (AFS)** **Scientific and Professional (S&P)**	**175**
	SGCT	Administrative Support (AS), Operation (OP) and Technical (TC)	184
National Research Council Canada (NRC)	RCEA	Administrative Services (AS)	309
		Administrative Support (AD)	500
		Computer Systems Administration (CS)	238
		Operational (OP)	62
		Purchasing and Supply (PG)	31
		Technical (TO)	995
	PIPSC	**Information Services (IS)**	**64**
		Library Science (LS)	**43**
		Research Officer / Research Council Office (RO/RCO)	**1,792**
		Translator (TR)	**7**
Office of the Auditor General of Canada (OAG)	PSAC	**Audit Services Group (ASG)**	**174**
Office of the Superintendent of Financial Institutions Canada (OSFI)	PSAC	Administrative Support (AS)	17
	PIPSC	**Professional Employees Group (PEG)**	**689**
Parks Canada Agency (PCA)	PSAC	**All Unionized Employees (Parks)**	**4,327**
Social Sciences and Humanities Research Council of Canada (SSHRC)	PSAC	Administrative and Foreign Services (AFS)	241
		Administrative Support (AS)	40

2 Bolded bargaining units have reached an agreement.

Statistical Survey Operations (SSO)	PSAC	All Unionized Employees (SSO)	2,208
Staff of the Non-Public Funds, Canadian Forces (SNPF-CF)	*Note: The SNPF-CF is not a publicly funded separate agency. The population data for this employer is unavailable.*		
		Total Population	**67,784**

1.4 Negotiations with the Border Services (FB) Group

In this round of bargaining, the PSAC and TBS officials were engaged in nine (9) negotiation sessions between June 2022 and September 2023. The parties developed good momentum, especially in the last two negotiations sessions, and the Employer clearly indicated its interest in continuing discussions.

However, the Border Services (FB) group declared impasse on September 27, 2023. The PSAC's justified its declaration of impasse by the perceived lack of progress on providing the FB group with early pension entitlements and the Employer's lack of interest in achieving parity with Regular Members (RM) of the Royal Canadian Mounted Police (RCMP).

The PSAC wrote to the Federal Public Sector Labour Relations and Employment Board (FPSLREB) on September 29, 2023, to request conciliation to assist the parties in reaching an agreement. However, the PSAC indicated that a Public Interest Commission (PIC) was unlikely to assist the parties in reaching an agreement and invited the FPSLREB to forego this step, which would have put the FB group directly on the strike route. The Employer was supportive of the establishment of a PIC.

As noted in table 3 below, the parties agreed to and "signed-off" on fourteen (14) items during negotiations prior to the declaration of impasse. These items should form part of a final negotiated settlement. Details are outlined in Table 3 below.

Table 3: Proposals Agreed to by the Parties

ARTICLE	TITLE	REFERENCES	
		DESCRIPTION	STATUS
2	Interpretation and definition	Update common-law partner	Agreed to and signed November 15, 2022
12.02	Use of Employer Facilities	Removal of reference to 'vessels'	Agreed to and signed September 28, 2022
33 and 34	Leave, general + Vacation leave with pay	Delete references to furlough leave: 33.06, 34.05, 34.06, 34.09, 34.10, 34.13, 34.16, 34.17	Agreed to and signed November 15, 2022
38.02	Maternity Leave without Pay	Addition of "pendant qu'elle reçoit une indemnité de maternité" to French version	Agreed to and signed November 15, 2022

ARTICLE	TITLE	REFERENCES	
		DESCRIPTION	STATUS
40.02	Parental Leave without pay	Addition of "pendant qu'il ou elle reçoit des prestations parentales" to French version	Agreed to and signed November 15, 2022
54	New Article – Leave for Traditional Indigenous Practices	New leave that provides employees who self-declares as an Indigenous person (i.e., First Nations, Métis or Inuit) with 15 hours of leave with pay and 22.5 hours of leave without pay per fiscal year to engage in traditional Indigenous practices.	Agreed to and signed September 27, 2023
Appendix E	Memorandum of Understanding with Respect to a Joint Learning Program	Replace amount allocated to fund a pilot project	Agreed to and signed June 14, 2023
Appendix F	Memorandum of Understanding with Respect to Child Care	Delete Memorandum of Understanding with Respect to Child Care	Agreed to and signed June 14, 2023
Appendix H	Memorandum of Understanding Salary Protection Red Circling	Replace "Red Circling" with "Salary Protection" and replace "Regulations Respecting Pay on Reclassification or Conversion" with "Directive on Terms and Conditions of Employment"	Agreed to and signed September 27, 2023
Appendix K	Memorandum of Understanding with Respect to Mental Health in the Workplace	Remove expiration date	Agreed to and signed June 14, 2023
Appendix M	Memorandum of Understanding with Respect to a One-Time Lump-Sum payment for Non-Uniformed Employees	Delete Memorandum of Understanding with Respect to a One-Time Lump Sum Payment for Non-Uniformed Employees	Agreed to and signed September 27, 2022
New Appendix	New Memorandum of Understanding with Respect to Gender Inclusive Language	New Memorandum of Understanding for the establishment of a Joint Committee to review the collective agreement and render the language more gender-inclusive in both official languages.	Agreed to and signed September 26, 2023
New Appendix	New Memorandum of Understanding with Respect to Maternity and Parental Leave without Pay	New Memorandum of Understanding for the establishment of a Joint Committee to review the maternity leave without pay and the parental leave without pay in the collective agreement.	Agreed to and signed September 26, 2023
New Appendix		New Memorandum of Understanding with Respect to Pay Simplification Solutions	Agreed to and signed September 26, 2023

1.5 Bargaining Agent Proposals

During this round of bargaining, the Bargaining Agent has submitted proposals on approximately fifty (50) existing and new articles and appendices, several of which

contain multiple changes within the same article or appendix, for a total of more than one hundred and eighty (180) outstanding proposals. As noted in the table below, the PSAC monetary proposals represent a total ongoing cost of approximately $441.7 million or 41.75% of the 2022 FB group wage base over three (3) years, or 12.33% annually.

Table 4: Bargaining Agent Proposals

BARGAINING AGENT WAGE & MONETARY PROPOSALS	ONGOING COSTS	% OF WAGE BASE
2021 Round of Collective Bargaining		
Economic increases from 2022–23 to 2024–25: 3.5%, 3.0%, 2.0%	$92.4M	8.74%
Extra pay line adjustments: • 7.801% increase to match RCMP Constables • 6.7% increase to maintain hourly rate after conversion from 37.5 hours to 40.0 hours per week • 1.25% and 0.5% market adjustments • 0.5% pay line adjustment	$199.0M	18.81%
Other monetary and productivity costs	$150.3M	14.20%
Total Ongoing Cost	**$441.7M**	**41.75%**
One-time payment of $2,500 (pensionable) for the performance of duties and responsibilities	**$34.7M**	**3.28%**

In addition to the above-noted proposals, the Bargaining Agent has additional proposals which could not be costed due to the unavailability of accurate data or insufficient details on the proposals but would nevertheless increase the total costing of the Bargaining Agent's proposals, which is already significantly higher than the Employer's proposals and the government fiscal capacity to increase benefits to the collective agreement.

The Employer will demonstrate throughout this brief that the Bargaining Agent's proposals lack the necessary justification for the expenditure of public funds of this magnitude. It will also demonstrate that the combination of past increases and existing terms and conditions of employment provide good jobs with strong wages. Recruitment and retention data will reinforce this point by demonstrating that Canadian workers respond in high numbers when employment opportunities at the Canada Border Services Agency (CBSA) are advertised.

1.6 Employer Proposals

The Employer proposes to negotiate improvements for the FB group that include fair economic increases, modernized language, as well as other improvements. The Employer's detailed position on each outstanding items can be found in parts III and IV of the Employer's brief.

The Employer's monetary proposals, with the associated costs, are included in Table 5 below.

There is no evidence to indicate that the FB group should receive a more favourable arrangement than the pattern set out within the CPA for the current round of bargaining.

Table 5: Employer Monetary Proposals

EMPLOYER WAGE PROPOSAL	ONGOING COST	% OF WAGE BASE
2021 Round of Collective Bargaining		
Economic increases of 3.5%, 3%, 2% and 2% over four years	$115.4M	10.91%
1.25% market adjustment in year one, 0.5% pay line adjustment in year two, and 0.25% market adjustment in year three	$23.6M	2.23%
Other monetary and productivity costs	$0.6M	0.06%
Total Ongoing Cost	**$139.6M**	**13.20%**
One-time payment of $2,500 (pensionable) for the performance of duties and responsibilities	**$34.7M**	**3.28%**

Consistent with the established CPA pattern, the Employer's proposals also include proposed language with regards to collective agreement duration and implementation that provides for reasonable implementation timelines and considers capacity and complexity to implement collective agreements from a pay system perspective. The Employer's proposed language accounts for the complexity of implementation and continues to distinguish between manual and automated transactions. The proposed approach has been included in the vast majority of the collective agreements signed-off thus far this round of bargaining, inclusive of the other PSAC groups.

Part II: Considerations

The Employer’s monetary proposal for the FB group, outlined in **Part III** of this briefing, is aligned with Section 175 of the *Federal Public Sector Labour Relations Act* (Exhibit 2). This section outlines the key trends and data supporting the Employer's position.

Section 175 of the FPSLRA outlines four principles for consideration by public interest commissions:

- Recruitment and retention

  (a) *the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians;*

- External comparability

  (b) *the necessity of offering compensation and other terms and conditions of employment in the public service that are comparable to those of employees in similar occupations in the private and public sectors, including any geographic, industrial or other variations that the public* interest commission considers relevant;

- Internal relativity

  (c) *the need to maintain appropriate relationships with respect to compensation and other terms and conditions of employment as between different classification levels within an occupation and as between occupations in the public service;*

  (d) *the need to establish compensation and other terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed, and the nature of the services rendered; and*

- The state of the economy and the government’s fiscal situation

  (e) *the state of the Canadian economy and the Government of Canada’s fiscal circumstance*

2.1 Recruitment and Retention

The Treasury Board negotiates rates of pay that enable the Employer to recruit qualified employees and retain them in the public service. TBS reviews the compensation levels and monitors the compensation data on a regular basis to identify signs of recruitment and retention challenges. Those signs include consistent decreases in total population,

growing numbers of employees leaving their positions for other employment opportunities, persistently low application rates to job advertisements, or a lack of qualified candidates responding to advertisements.

The following section investigates if any of the above-mentioned concerns are present in the FB bargaining unit. The section includes analysis on four (4) indicators: first, total population changes; second, total separations by reason; third, total number of hirings over time; and fourth, total applications per job advertisement. The average of the CPA groups is provided for comparison purpose, with the reference period ranging from 2018-2019 to 2022-2023.

2.1.1 Total Population

The total population of FB employees has remained stable, from 10,275 in 2018-19 to 10,433 in 2022-23. Over the same period, the annual retention rate averaged 95.5% (Table 1), which is consistently higher than the CPA average of 91.2%. This suggests that the FB group is not facing any retention challenges.

Population growth is the net result of separations (outflow) and hirings (inflow). The stable employee count in the FB group is driven by low separation rate, that diminishes the need for additional recruitment. Subsequent sections will examine the trends of hirings and separations, offering nuanced insights into their evolution over the reference year.

Table 1: Population

Population	2018-19	2019-20	2020-21	2021-22	2022-23
12-months average population	10,275	10,319	10,278	10,317	10,433
Year-to-year (y/y) increase (FB)	-	0.4%	-0.4%	0.4%	1.1%
Year-to-year (y/y) increase (CPA)	-	5.2%	4.2%	4.8%	5.4%
Retention rate (FB)	**96.1%**	**94.9%**	**95.8%**	**95.5%**	**95.4%**
Retention rate (CPA average)	**91.2%**	**91.0%**	**92.3%**	**90.9%**	**90.9%**

Notes:
1. Figures include employees working in departments and organizations of the core public administration (FAA Schedule I and IV).
2. Figures include all active employees and employees on leave without pay (by substantive classification) who were full- or part-time indeterminate and full- or part-time seasonal and who were part of the FB occupational group.
3. Since the population figures are 12-month averages, the variation of the population from one year to the next will not match the net increase/decrease calculated by subtracting the total separations from total hires in the tables below.

2.1.2 Separations and Separation Rates

Turning to separations, the FB group has sustained a low annual separation rate (also known as the turnover rate) of approximately 4.5% over the past five (5) years (Table

2), a figure substantially below the average turnover rate within the CPA groups. This, combined with high retention rates, indicates a stable and positive workforce environment with satisfied employees within the FB bargaining unit.

Table 2: Hiring-to-separation ratio and external separations by reasons

Separations	2018-19	2019-20	2020-21	2021-22	2022-23
External Separations	253	338	298	356	359
Voluntary - Non-Retirements	*57*	*53*	*44*	*53*	*61*
Voluntary – Retirements	*173*	*231*	*218*	*281*	*270*
Involuntary	*9*	*21*	*16*	*16*	*20*
Unspecified	*14*	*33*	*20*	*6*	*8*
Internal Separations	152	188	136	105	125
Total Separations (internal and external)	405	526	434	461	484
Total Separation Rate (FB)	**3.9%**	**5.1%**	**4.2%**	**4.5%**	**4.6%**
Total Separation Rate (CPA average)	**8.8%**	**9.0%**	**7.7%**	**9.1%**	**9.1%**

Source: Mobility file as of August 2023; PSC Appointments file
Notes:
1. Figures include employees working in departments and organizations of the core public administration (FAA Schedule I and IV).
2. Figures include all active employees and employees on leave without pay (by substantive classification) who were full- or part-time indeterminate and full- or part-time seasonal and who were part of the FB occupational group.
3. External separations are separations to outside the CPA. Voluntary non-retirement separations include resignation from the CPA for: outside employment, return to school, personal reasons, abandonment of position. It also includes separation to a Separate Agency. Voluntary retirement separations include all retirements due to illness, age, or elective. Involuntary separations include resignation under Workforce Adjustment, discharge for misconduct, release for incompetence or incapacity, cessation of employment - failure to appoint, dismissed by Governor-in-Council, layoff, rejected during probation, and death.
4. Internal separations are separations from the group to other groups within the CPA.
5. Total Separations rates are calculated by dividing the number of external and internal separations in a given fiscal year by the average number of employees.

A more in-depth examination of external separations reveals that retirement is the primary reason for FB employees leaving their jobs, consistent with the CPA average. Retirement, which is frequently caused by factors such as illness, aging, or personal decisions, is less indicative of retention challenges. Moreover, given the large pool of qualified candidates available for the FB group (Table 5, section 2.1.3), retirement can represent a positive transformation, bringing in fresh talent and diverse perspectives. This inflow of new ideas and skills has the potential to stimulate creativity and build a more healthy and dynamic work environment in the bargaining unit.

Other common reasons for external separation are voluntary non-retirement separations or resignations to go to school, for personal reasons, or the abandonment of position. Notably, the FB bargaining unit's voluntary (non-retirement) separation rate is below the CPA average, which is already very low (Table 3).

Table 3: Voluntary non-retirement separations as a proportion of total separations

Voluntary non-retirement separations	2018-19	2019-20	2020-21	2021-22	2022-23
FB	0.55%	0.51%	0.43%	0.51%	0.58%
CPA average	0.81%	0.92%	0.81%	0.91%	0.95%

Source: Mobility file as of August 2023
Note:

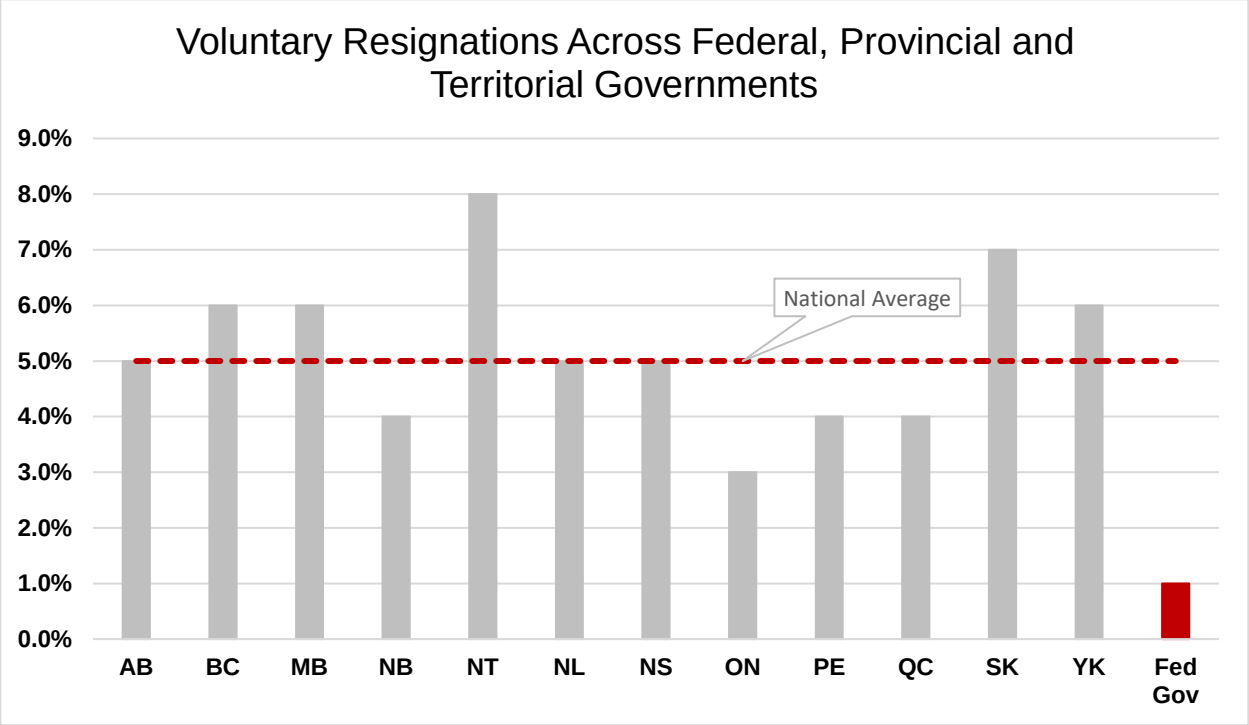
1.Figures include employees working in departments and organizations of the core public administration (FAA Schedule I and IV).
2. Figures include all active employees and employees on leave without pay (by substantive classification) who were full- or part-time indeterminate and full- or part-time seasonal and who were part of the FB occupational group.
3. Voluntary non-retirement separations include resignation from the CPA for: outside employment, return to school, personal reasons, abandonment of position; it also includes separation to a Separate Agency.
4. Voluntary non-retirement separations rates are calculated by dividing the number of voluntary non-retirement separations in a given fiscal year by the average number of employees.

Examining internal separation complements the above analysis on external separations, offering a complete picture of the FB bargaining unit's health. Within the FB group, internal separation have trended downward. Averaging one hundred and forty-one (141) internal separation annually over the five (5) years presented, the group's internal movement has decreased from a high-point of 188 in 2019–20 to 125 by 2022–23. The most prevalent occupations to which FBs will move within the CPA are in the Administrative Services (21%), the Economics and Social Science Services (35%) and the Program Administration (20%) occupational groups.

Moreover, Table 3 above highlights that employees of the FB classification are far less likely to separate than the average CPA employee and Chart 1 below demonstrates that voluntary separation (non-retirement) rates in the CPA and FB group specifically are significantly lower than similar metrics self-reported by provincial and territorial governments[3].

3 Data from the annual 2023 Joint Report of the Federal, Provincial, and Territorial Interjurisdictional Working Groups/Communities of Practice

Chart 1: Voluntary non-retirement separation/resignation rates



The average Federal government voluntary (non-retirement) separation rate across all occupational groups is rounded up to 1% in Chart 1, which is approximately 4% lower than the average rate of its provincial comparators. As demonstrated in Table 3, the FB voluntary separation rate sits at 0.5% and clearly demonstrates that the FB group has had greater success in retaining its employees as compared to other groups within the CPA and in the external market.

2.1.3 Hirings

Shifting focus to hiring, despite the labor shortage facing the Canadian labor market in the aftermath of the COVID-19 pandemic, the FB bargaining unit has demonstrated robust hiring capabilities. Specifically, following a decline in new hires in 2020-2021, the FB group rebounded strongly with robust increases (Table 4). For example, the number of new hires increased by 35% to six hundred and ninety-nine (699) in 2022-23 alone – the largest number of hires in the last five (5) years.

Table 4: Hirings

Hiring – FB group	2018-19	2019-20	2020-21	2021-22	2022-23
External Hiring	386	435	275	365	532
Internal Hiring	68	130	130	153	167

Total Hiring (external and internal)	454	565	405	518	699
Total Hiring Rate (FB)	4.4%	5.5%	3.9%	5.0%	6.7%
Total Hiring Rate (CPA average)	14.1%	13.9%	11.5%	14.2%	15.1%

Source: PSC Appointments file
Notes:
1. Figures include employees working in departments and organizations of the core public administration (FAA Schedule I and IV).
2. Figures include all active employees and employees on leave without pay (by substantive classification) who were full- or part-time indeterminate and full- or part-time seasonal and who were part of the FB occupational group.
3. External hiring includes hires from outside the CPA. It also includes employees whose employment tenure changed from casual, term or student to indeterminate or seasonal.
4. Internal hiring includes hires to the group from other groups within the CPA.
5. Total hiring rates are calculated by dividing the number of external and internal hires in a given fiscal year by the average number of employees.

2.1.4 Job Advertisements

FB group's robust hiring capacity is supported by its large pool of qualified applicants. Data in Table 5 show that FB positions are very attractive to job seekers (e.g., in 2022-23, nineteen thousand two hundred and fifty-seven (19,257) people applied for three (3) job advertisements, resulting in a ratio of six thousand four hundred and nineteen (6,419) applications for each job posting). Of those applicants, about 93% have successfully advanced to the final candidate pool after the screening process.

In contrast, the CPA median reported a more modest eighty (80) applications per job posting in the same period, with 84% progressed to the final candidate pool. This discrepancy emphasizes the high demand for FB positions externally with a large pool of qualified candidates having the necessary qualifications to perform the job.

Table 5: Job Advertisements

Total External Advertisements	**2018-19**	**2019-20**	**2020-21**	**2021-22**	**2022-23**
FB	9	2	0	3	3
CPA median	11	12	11	10	12
Total Applications	**2018-19**	**2019-20**	**2020-21**	**2021-22**	**2022-23**
FB	38,815	1,079	0	3,560	19,257
CPA median	1,128	1,144	1,316	787	920
Total Applications per Advertisement	**2018-19**	**2019-20**	**2020-21**	**2021-22**	**2022-23**
FB	4,313	540	-	1,187	6,419
CPA median	107	95	125	83	80
Total Applications Screened-In	**2018-19**	**2019-20**	**2020-21**	**2021-22**	**2022-23**
FB	36,084	470	0	3,387	17,995

CPA median	857	814	1,044	545	769
Total Applications Screened-In Per Job Advertisement	**2018-19**	**2019-20**	**2020-21**	**2021-22**	**2022-23**
FB	4,009	235	-	1,129	5,998
CPA median	82	68	99	57	67
Percentage of Applications Screened-In	**2018-19**	**2019-20**	**2020-21**	**2021-22**	**2022-23**
FB	93.0%	43.6%	-	95.1%	93.4%
CPA	81.7%	80.2%	84.1%	83.4%	84.4%

Source: Public Service Commission PSRS Extracts Job Advertisements
Notes:
1. Figures include applications to external job advertisements from departments and organizations of the core public administration (FAA Schedule I and IV).
2.Data are for closed advertisement. Cancelled advertisements are excluded. 3.Screened-In applications are those that meet the essential criteria of the advertisement

Conclusion

The analysis on recruitment and retention metrics demonstrates a healthy group. Stable population, low separation rates, and a substantial pool of qualified applicants reflect the effectiveness of existing terms and conditions of employment, including compensation rates, in attracting and retaining qualified individuals. No evidence of recruitment and retention challenges is observed in the FB group.

2.2 External Comparability

The Government of Canada's stated objective is to provide compensation that is competitive with, but not leading compensation provided for similar work in relevant external labor markets. Through extensive labor market trend reviews and wage comparisons, the following sections demonstrate that FB wages are highly competitive with the external labor market.

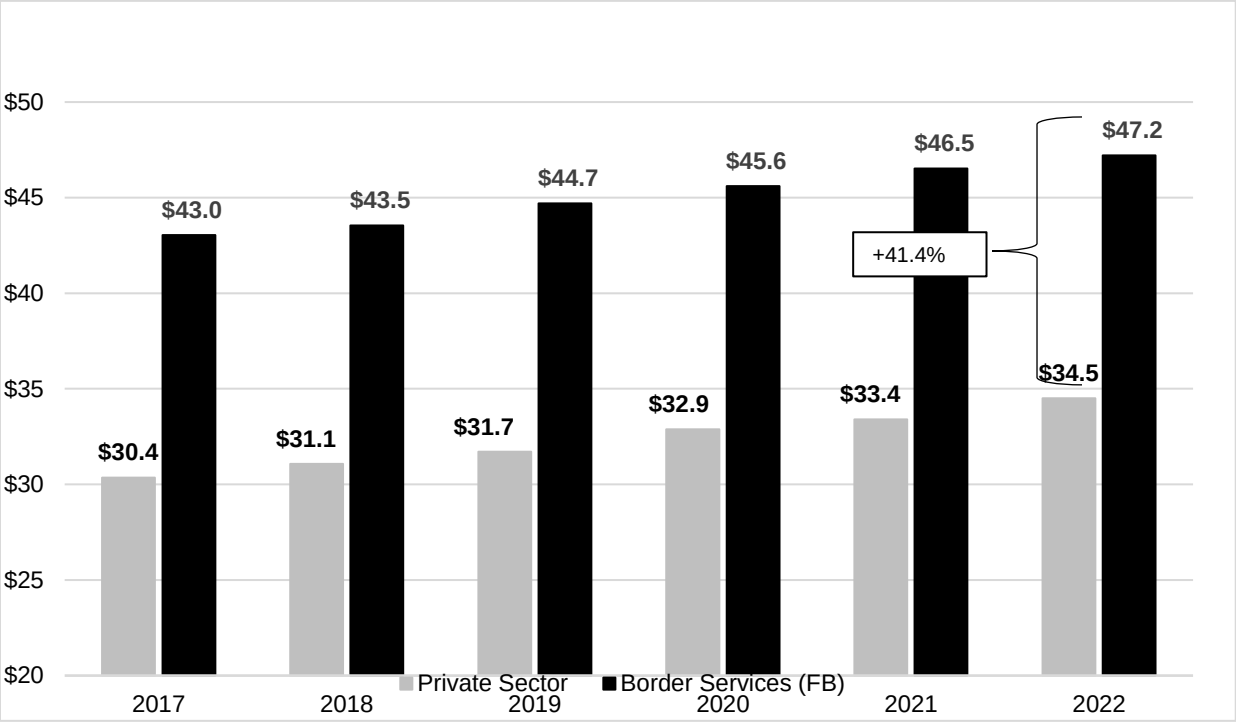
2.2.1 Hourly wages for the FB group relative to the Private Sector

The initial comparison involves unionized private sector employees, and the results signal whether adjustments are aligned with labor market trends. The comparative analysis is necessary because the government, when determining wage increases for its employees, must consider federal public service wages relative to the prevailing wages of Canadians.

Chart 2 compares the average hourly wage of members of the FB occupational group with average hourly earnings in the private sector as reported in Statistics Canada's *Labour Force Survey*. As of 2022, the members were earning 41.4% more than most

Canadians. The differential would be greater if the comparison included the five thousand dollar ($5,000) wage indexed meal premium paid to uniformed members of the occupational group.

Chart 2: Hourly Wage - Private Sector vs. Border Services (FB)



Source: Labor Force Survey (Table 14-10-0134-0) statistics represents the gross taxable income of employees and includes additional payments besides base pay. FB wages include base wage only and do not include allowances, overtime, and other premiums.

2.2.2 Comparison of External Wage Growth

This section presents data on cumulative wage growth of the FB employees, as well as those in the public and private sectors, as measured by Employment and Social Development Canada (ESDC),[4] over the last three negotiating rounds (from 2010 to 2021). Cumulative wage growth is the sum of incremental wage increases, and it captures the aggregated impact of the single-year changes reviewed in the prior section.

4. Wage settlements as reported by ESDC for employers that have more than 500 unionized employees. These data are weighted averages of the annual percentage "adjustments" in "base rates" during the period covered by the settlements. The "base rate" is the wage rate of the lowest paid classification containing a significant number of qualified workers in the bargaining unit. The "adjustments" include such payments as restructures and estimated cost-of-living allowance.

The results are presented in Table 6, which demonstrate that the FB group experienced a significant cumulative wage gain of 40.7%, surpassing the cumulative wage increases in both public and private sectors (19.2% and 25.5%, respectively). It is also worth noting that the FB group's wage increases outpaced the inflation of 23.7%. These observations highlight that the FB employees are not only outpacing their public and private counterparts but are also experiencing real, growth in their purchasing power over the reference period.

Table 6: FB wage growth versus other sectors, 2010–2021

	ESDC Public Sector	ESDC Private Sector	CPI	FB Group
Cumulative Increase	19.2%	25.5%	23.7%	40.7%

Notes: FB rates calculated by TBS from settlement rates (weighted average).

2.2.3 National Occupational Classification Comparisons and Comparability with Police Officers

The bargaining agent has long asserted that the members it represents are equivalent to correctional officers and police constables across Canada. This round, it has narrowed its comparison by asserting, without evidence, that its members should be solely equated with constables of the Royal Canadian Mounted Police. The Employer does not have evidence to support the equivalency, which is required to justify the large monetary increases sought. However, there are valid reasons beyond the bargaining agent's lack of evidence to conclude that this is a false equivalency. This section will review some of the important differences between police constables and a subset of the FB occupational group, namely those holding positions at the FB-03 level.

ESDC maintains the National Occupational Classification (NOC) reference guide. It is the primary reference guide used to analyze differences between occupations within the Canadian labour market. At the highest level of classification, police officers and many of the job within the FB occupational group are included in the *Occupations in education, law and social, community, and government services* NOC. This is one of the nine general top-level groupings. The two occupations are separated at the next level down between *Front-line public protection services and paraprofessional occupations in legal, social, community, education services* and *Assisting occupations in education and in legal and public protection*. Exhibit 3 presents the full entries for the NOC codes that include RCMP officers (*42100 – Police officers (except commissioned)*) and occupations like those within the FB bargaining group (*43203 – Border services, customs, and immigration officers*). The differences are apparent. Exhibit 3 outlines example titles for positions within these occupations, their main duties, and their

employment requirements. Simply put, they exist within the law enforcement field, but they are not the same occupations.

Merely existing within the law enforcement sector does not necessarily mean all positions within that sector are equivalent. Previous Public Interest Commissions have not endorsed the equivalency, and the Employer maintains that the bargaining agent must provide a rational argument to support the assertion. The factors that underpin the Employers offer—solid recruitment and retention metrics, high wage growth relative to all others, and the state of the Canadian economy—are reasonable and based in legislation.

When evaluating the comparability of groups, the Employer typically considers the skill, effort and responsibility required in the performance of the work, and the working conditions under which the work is performed (SERWC).

Without demonstrating the FB group comparability to RCMP Constables, the Bargaining Agent claims equivalency in SERWC because a proportion of their membership can act as peace officers under clearly defined parameters.

The Employer submits that the SERWC required to perform these two distinct occupations should not be deemed equivalent by the mere fact that a proportion of the FB occupational group can act as peace officers under section 2 (d) of the *Criminal Code*. When also considering the broader authorities invested in police officers, the Employer is of the view that the distinct approach to compensation for these two groups is warranted.

Police officers, like RCMP Constables, and CBSA officers can both be peace officers as defined in section 2 of the *Criminal Code*. Although a police officer is a peace officer, a peace officer is not a police officer. Police officers under the *Criminal Code* means «any officer, constable or other person employed for the preservation and maintenance of the public peace». A peace officer is a much broader term that includes various groups, including some that work in corrections, border services, customs, immigration and fisheries.

For those FBs that are deemed peace officers, the designation only applies when they are administering or enforcing the *Customs Act*, the *Excise Act* or the *Immigration and Refugee Protection Act*. On the other hand, police officers have a broader mandate and authorities that include enforcing the *Criminal Code* as a whole and other applicable legislation.

The FBs can also only exercise the peace officer designation while on duty. Typically, this is during their shift at a customs office and, therefore, in a controlled environment.

When doing anything outside of the enabling legislation or when off-duty, they are considered civilians. This contrasts with police officers that have a duty to intervene whether they are on or off duty, and they perform their duties in uncontrolled and undefined environments. Accordingly, the level of SERWC required to perform these two types of occupations differ and comparability should not be concluded on the sole basis that a proportion of the FB group has the peace officer designation.

The Employer also wishes to note that not all members of the FB group carry firearms, contrary to police officers. Although the FBs that benefit from the peace officer designation can detain travellers who do not act within the confines of enabling legislations, they cannot lay criminal charges. This would require the intervention of a police officer.

As per the RCMP criteria to be considered an experienced police officer, employees in the FB groups do not meet this criterion. Accordingly, an employee in the FB group that would apply for a RCMP Constable position would be required to go through the full Cadet Training Program at the RCMP Depot to be considered for appointment. The CBSA Rigaud College is not considered a recognized Canadian police institution.

As noted in paragraph 19 of the R. v. Nolan (1 SCR 1212)[5], the Supreme Court of Canada concluded that:

> *19. On the level of principle, it is important to remember that the definition of "peace officer" in s. 2 of the Criminal Code is not designed to create a police force. It simply provides that certain persons who derive their authority from other sources will be treated as "peace officers" as well, enabling them to enforce the Criminal Code within the scope of their pre-existing authority, and to benefit from certain protections granted only to "peace officers".*

In paragraphs 8 and 9 of its report the PIC established during the 2018 round[6] of bargaining also concluded:

> *8. "The bargaining agent has brought to the Commission a large number of proposals, many of them stemming from its view that, as employees of an armed law enforcement agency, the members of this bargaining unit are properly compared with organizations such as the Royal Canadian*

5 R. *v.* Nolan, [1987] 1 S.C.R. 1212. Source: https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/229/index.do?r=AAAAAQAKUiB2LiBOb2xhbgAAAAAB

6 Public Alliance of Canada v. Treasury Board (590-02-42347) - Federal Public Sector Labour Relations and Employment Board. Source: https://decisions.fpslreb-crtespf.gc.ca/fpslreb-crtespf/d/en/item/500803/index.do

Mounted Police, as well as some provincial and municipal police forces. The bargaining agent also asserts that the CX group, containing federal correctional officers, is an appropriate comparator. The employer disagrees.

9. *Previous Public Interest Commissions with respect to the FB group, in 2014 and 2017, have found that there is no perfect comparator. We agree. While there are similarities with other law enforcement organizations, there are also important differences. Our preference in this report is to recommend changes to the collective agreement where a problem has been identified or a need demonstrated, with the aim of assisting the parties to move towards a settlement."*

In light of these important distinctions, the Employer submits that two groups are not equivalent, and it would be inappropriate to grant economic increases and other benefits to the FB group on the basis of the Bargaining Agent's comparison with police officers.

2.3 Internal Relativity

Internal relativity is a measure of the relative value of each occupational group within the CPA. The Policy Framework for the Management of Compensation (Exhibit 5) states that compensation should reflect the relative value to the employer of the work performed, so ranking of occupational groups relative to one another is a useful indicator of whether their relative value and relative compensation align. Further, the *Federal Public Sector Labour Relations Act* says that there is a need to maintain appropriate relationships with respect to compensation between classifications and levels.

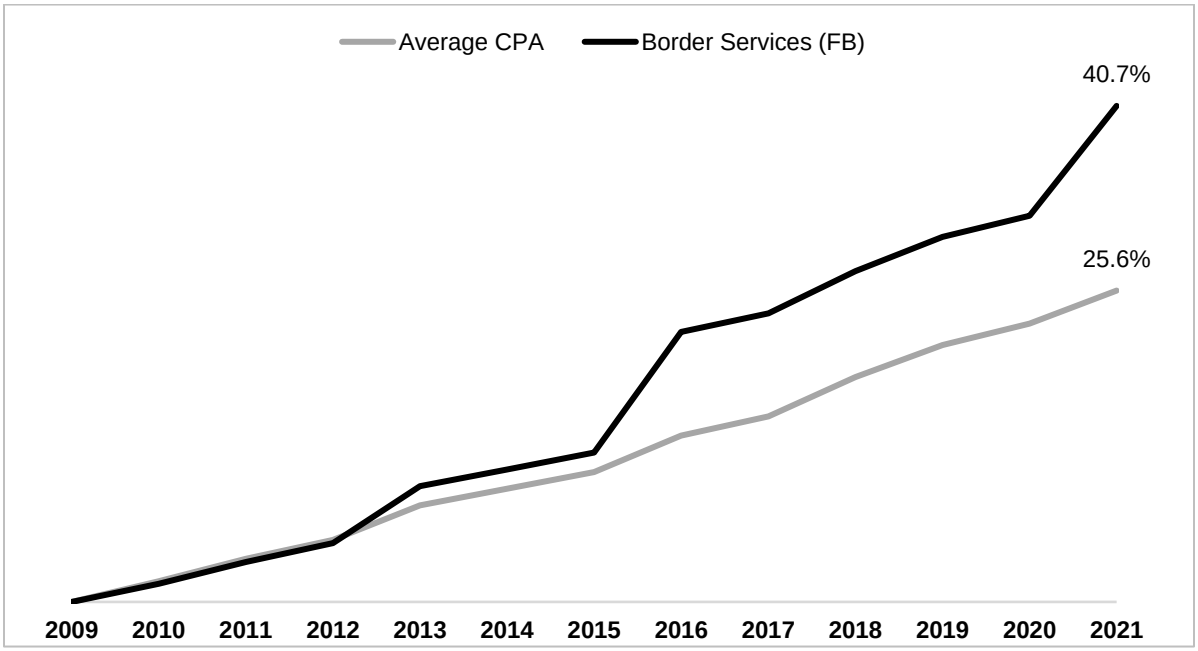
Comparison of Internal Wage Growth, 2010 to 2021

The FB bargaining group has received wage increases higher than the CPA average. Chart 2 presents the annual value of these increases. Specifically, from 2010 to 2021, FB group's salary surged by 40.7%, outpacing the average CPA group's wage increase of 25.6% (Chart 3). The increases are partially the result of creating the occupational group, thereby establishing new pay lines, harmonizing rates of pay between the FB-03 and CX-02 in the Correctional Services occupational group of the CPA, and other monetary improvements. This discrepancy raises concerns about the maintenance of

the appropriate relationships between groups and levels,[7] posing challenges to the overall balance within the CPA.

During the last round of bargaining, the FB group were granted wage increases consistent with the CPA pattern. However, the five thousand dollar ($5,000) paid meal premium allowance for uniformed FB employees was introduced to address an outstanding matter that was included in previous PIC reports.

Chart 3: FB cumulative wage increases and weighted CPA average increases, 2010–2021



2.4 Economic and Fiscal Circumstances

Canada experienced a period of intense economic disruption due to the COVID-19 pandemic which has dramatically altered the economic and fiscal landscape.

As Bank of Montreal chief economist Douglas Porter first noted at the onset of the COVID-19 pandemic in March 2020, that the initial pandemic crisis was like all the previous crises rolled into one when he stated that "(t)he sudden onset of this crisis is a

7 The CPA average is weighted by the population of each bargaining group forming five employment categories: scientific and professional, administrative, and foreign service, technical, administrative support, and operational. Percentages include economic increases, restructures, and terminable allowances.

key feature; it's almost as if every crisis the market has faced in the past twenty-five (25) years have been collapsed into one single event in quadruple time."[8]

Canada has since managed an economic recovery with the aid of substantial fiscal and monetary stimulus to quickly reversing pandemic job losses despite multiple waves of COVID-19.

After an unanticipated, intense, and prolonged period of economic disruption, workers and businesses re-emerged and re-engaged in an altered economic landscape. This economic re-opening unfolded amidst pent-up demand, further fueled by pandemic savings, which clashed with persistent supply constraints, which resulted in a pronounced surge in CPI inflation which peaked in the June 2022.

As the global economy recovered from the pandemic, inflation emerged as a major global economic challenge. Higher inflation reflected a range of external factors, including economic disruptions, surging global commodity prices following Russia's invasion of Ukraine. Higher commodity prices and persistent supply disruptions exacerbated existing inflationary pressures around the world.

Central banks, throughout the world have responded to higher inflation by hiking interest rates from historical lows to reduce demand and lower inflation. The Bank of Canada has responded to higher inflation with cumulative interest rate increases of four hundred and seventy-five (475) basis points, from 0.5% to 5.0%, as of January 2024.

According to the Bank of Canada, consumers' concern about the economy is widespread and they reported negative feelings from the impacts of high inflation and high interest rates and are cutting their spending in response. Consumers are expected to further cut spending, with many more mortgages coming up for renewal in the near term.[9]

It is important that the Government remain focused on keeping federal government compensation affordable and that pay increases mirror those that many Canadian workers experienced.

The following sections outline the state of the Canadian economy, labor market conditions for the public service relative to the private sector, and the Government's fiscal circumstances. This includes an overview of gross domestic product (GDP)

---

8 BMO, Talking Points, A Bridge Over Troubled Markets, Douglas Porter, March 20, 2020. Source: https://economics.bmo.com/en/publications/detail/760a5107-0c2e-4e7e-b670-2d178fab639c/?keyword=a%20bridge%20over%20troubled%20waters?keyword=a%20bridge

9 Bank of Canada, Canadian Survey of Consumer Expectations, 2023 Q4, January 15, 2024. Source: https://www.bankofcanada.ca/2024/01/canadian-survey-of-consumer-expectations-fourth-quarter-of-2023/

growth, consumer price inflation, and how the public service compares against the typical Canadian worker, who is the ultimate payer of public services.

Real GDP Growth

Real GDP growth, which is the standard measure of economic growth in Canada, provides an indication of the overall demand for goods, services, and labor. Lower real GDP growth reduces demand for employment, which increases unemployment and curbs wage increases. A decline in GDP, such as during recessions, leads to lower economic output and lower levels of employment and little, if any, pressure for wage growth.

Statistics Canada reported that the decline in real GDP for 2020 was -5.4% (later revised by Statistics Canada to -5.0%), "the steepest annual decline since quarterly data were first recorded in 1961."[10]

The shutdowns of non-essential businesses and the physical distancing measures established brought economic activity in many industries to an unprecedented standstill. Canada's economy contracted almost twice as much as the U.S. economy during the COVID-19 pandemic.

According to TD Economics,

> "*The COVID-19 pandemic caused the Canadian economy to suffer its steepest contraction since the Great Depression. The historical GDP decline in the second quarter (2020Q2), was not completely made up in subsequent quarters, as the pace of the recovery slowed through the second half of the year. The level of output in the fourth quarter was 3.2% below where it was at the end of 2019."*[11]

Lower real GDP means that there is less demand for labor, increased unemployment, and little pressure to raise wages.

Prior to 2020's record-breaking real GDP decline, economic growth had already slowed from 2.7% in 2018 to 1.9% in 2019 (Table 7).

---

10 Statistics Canada, Gross Domestic Product, source: The Daily — Gross domestic product, income and expenditure, fourth quarter 2020 (statcan.gc.ca)
11 TD economics, Canadian Real GDP (Q4 2020), March 2, 2021.

Table 7: Real gross domestic production, year-over-year growth

year	2018	2019	2020	2021	2022	2023	2024(F)	2025(F)	2026(F)
Real GDP Growth	2.7%	1.9%	-5.0%	5.3%	3.8%	1.1%	0.4%	1.9%	2.0%

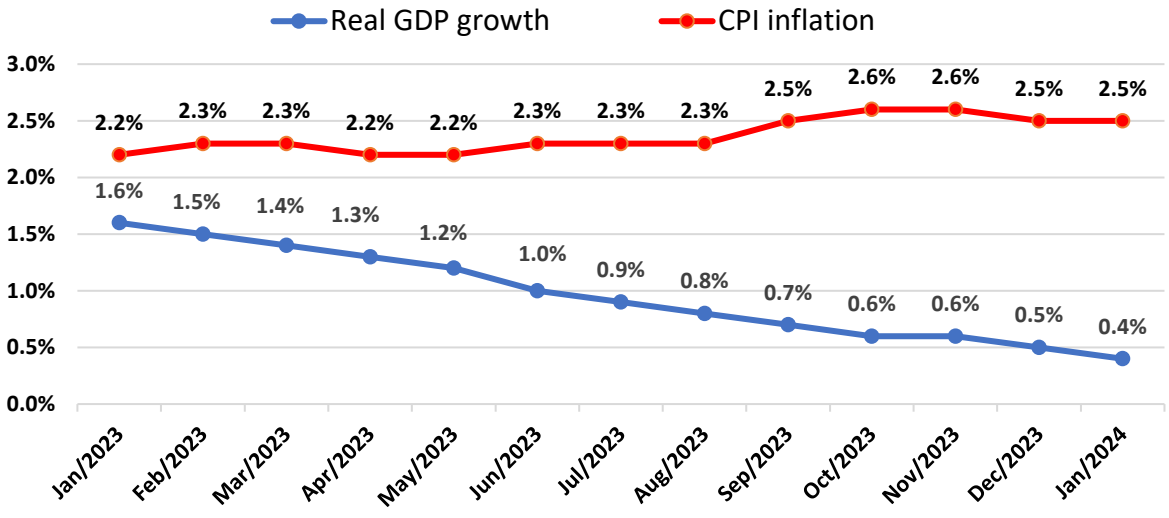
Source: Statistics Canada table 6, 36-10-0104-01, Consensus Forecasts, January 2024.

GDP returned to growth in 2021, rebounding 5.3%, but it is important to consider that this growth was supported by massive continued fiscal and monetary stimulus as well as pandemic savings.

Real GDP growth slowed to 3.8% in 2022 and dropped sharply to 1.1%[12] in 2023 with continued weakness forecast for 2024 with slight growth of 0.4%. Economic growth is then anticipated to recover in 2025 and 2026 at 1.9% and 2.0%, respectively.[13]

However, the forecast for economic growth for 2024 has been repeatedly downgraded, as can be seen in Chart 4 for 2024. In January 2023, the consensus forecast called for real economic growth of 1.6%. By January 2024, a year later after months of downgrades, the forecast had fallen by 75% to 0.4%.

Chart 4: Evolution of the 2024 Real GDP and CPI inflation forecast



Source: Consensus Economics, January 2024.

12 Statistics Canada, Gross domestic product, income and expenditure, fourth quarter 2023, Source: https://www150.statcan.gc.ca/n1/daily-quotidien/240229/dq240229a-eng.htm
13 Consensus Forecasts, Consensus Economics, January 2024.

According to the Bank of Canada' January 2024 Monetary Policy Report (MPR), ''*In Canada, the economy has stalled since the middle of 2023 and growth will likely remain close to zero through the first quarter of 2024. Consumers have pulled back their spending in response to higher prices and interest rates, and business investment has contracted.'*[14]

Risks to the Economic Outlook

In their January Monetary Policy report, the Bank of Canada presented risks it identified as most important for the projected inflation path.

Downside risks for inflation (↓): Faster-than-expected slowdown in the Canadian economy:

The BoC noted that the primary downside risk to their forecast is that *'First, monetary policy could have a greater impact than in the base case. Many Canadians are facing upcoming mortgage renewals and record-high levels of household debt. They could become more cautious and cut back consumption spending more than projected. This could also lead to a larger than-expected slowdown in business investment and hiring.'*[15]

Downside risks for inflation (↓): Global activity could be weaker:

The BoC also identified a secondary downside risk to their forecast, *'Second, global activity could be weaker than in the base case. This risk could materialize if central banks in the United States or the euro area need to keep monetary policy tighter than expected to bring inflation back to target. In China, high debt levels of local governments and challenges in the property sector could further limit growth. This could lead to weaker global demand, which may reduce prices for commodities and tradable goods. Canadian economic growth and inflation would both be pulled down if these risks were to materialize.'*[16]

According to the BoC, these shocks would be transmitted to the Canadian economy through tighter credit conditions, weaker foreign demand for exports, lower terms of trade, and declining consumer and business confidence.

---

14 Bank of Canada, January Monetary Policy Report, Source: https://www.bankofcanada.ca/wp-content/uploads/2024/01/mpr-2024-01-24.pdf
15 Bank of Canada, Monetary Policy Report, January 2024. Source: https://www.bankofcanada.ca/wp-content/uploads/2024/01/mpr-2024-01-24.pdf
16 Bank of Canada, Monetary Policy Report, January 2024. Source: https://www.bankofcanada.ca/wp-content/uploads/2024/01/mpr-2024-01-24.pdf

Housing vulnerabilities were noted in the Office of the Superintendent of Financial Institutions of Canada in their Annual Risk Outlook identified housing market downturn risk as the number one risk facing Canada's financial system for 2023-24.[17]

More evidence of recent economic stress for businesses and consumers are demonstrated by the 41% increase in business insolvencies, and a 23.6% increase in both business and consumer insolvencies in 2023.[18]

There is mounting evidence that the lagged impact of earlier interest rate hikes is working, with continued slowing GDP growth and resulting weaker labor markets.

The Consumer Price Index

The Consumer Price Index (CPI) tracks the price of a typical basket of consumer goods. Measuring price increases against wage growth demonstrates relative purchasing power over time.

Throughout 2021 and into 2022, the COVID-19 pandemic remained an important factor impacting prices. Inflationary pressures largely stemmed from a combination of continued global supply chain constraints and pent-up consumer demand as the economy reopened.

Unfortunately, pandemic related supply issues did not ease but were instead exacerbated by the War in Ukraine. Recovering consumer demand combined with supply constraints led to overall excess demand in the Canadian economy in early and mid-2022. This strong consumer demand has made it much easier or more likely for businesses to pass cost increases on to consumers, resulting in higher inflation.

Starting from a low of 0.7% growth year over year in December 2020, inflation began a continuous upward climb, and briefly plateaued from October through to December 2021, reaching 4.8%. Then, the War in Ukraine which broke out in late February 2022 came as an unexpected shock and inflation began to rise again, breaching 5.0% in January 2022, through 6.0% in March, and over 7.0% in May.

This culminated in June 2022, when CPI inflation peaked at a forty (40)-year high of 8.1%. Statistics Canada noted that, *'The increase was the largest yearly change since January 1983. The acceleration in June was mainly due to higher prices for gasoline,*

---

17 OSFI, April 18, 2023, OSFI's Annual Risk Outlook – Fiscal Year 2023-2024. Source: https://www.osfi-bsif.gc.ca/Documents/WET5/ARO/eng/2023/aro.html

18 CBC News, Business insolvencies shot up by more than 41% last year, as pandemic debts mount: Total number of insolvencies up by 23% in 2023. (Posted February 2, 2024). Source: https://www.cbc.ca/news/business/canada-insolvencies-businesses-consumers-bankruptcies-2023-1.7101856

however, price increases remained broad-based with seven of eight major components rising by 3% or more.'[19]

For all of 2022, annual inflation increased to 6.8%, with higher energy prices again contributing the most to the increase in inflation.

After peaking in June 2022, inflation began to subside, falling 1.8 percentage points to 6.3% at year-end in December 2022.[20] In 2023, annual inflation slowed to 3.9% on an annual average basis.

Slowing inflation is forecast to continue into 2024 and had declined to 2.9%[21] in December 2023 with further declines in the forecast until the 2.0% Bank of Canada inflation target is achieved.

Table 8: Consumer Price Index, year-over-year growth

year	2018	2019	2020	2021	2022	2023	2024(F)	2025(F)	2026(F)
CPI growth	2.3%	1.9%	0.7%	3.4%	6.8%	3.9%	2.5%	2.1%	2.0%

Source: Statistics Canada CPI annual review, 2023, Consensus Forecasts January 2024.

The Bank's stated goal is to get inflation back to its two percent target. To accomplish that, the Bank has repeatedly raised interest rates for a total of four hundred and seventy-five (475) basis points from a pandemic low of 0.25% to 5.0% through January 2024 to prevent inflation from becoming entrenched above the 2.0% target level.

In a speech to the Conference Board of Canada, the governor of the Bank of Canada gave the following advice to businesses[22]:

'And my one bit of advice is, the high inflation we see today is not here to stay. So, when you're entering into longer-term contracts, don't expect that inflation is going to stay where it is now. You should expect that it's going to come down.

So, where those are price contracts or wage prices, you should be expecting that inflation is going to come down. It is going to take some time for higher interest rates to

19 Statistics Canada, June 2022 Consumer Price Index. Source: https://www150.statcan.gc.ca/n1/daily-quotidien/220720/dq220720a-eng.htm
20 Statistics Canada, December 2022 Consumer Price Index. Source: https://www150.statcan.gc.ca/n1/daily-quotidien/230117/dq230117a-eng.htm
21 Statistics Canada, Consumer Price Index, January 2024. Source: https://www150.statcan.gc.ca/n1/daily-quotidien/240220/dq240220a-eng.htm
22 Transcript of panel discussion with Tiff Macklem, Governor at (Canadian Federation of Independent Business (CFIB)) Thursday, 14 July 2022, Source: https://20336445.fs1.hubspotusercontent-na1.net/hubfs/20336445/cfib-webinars/Transcript-20220714-CFIB-Webinar.pdf

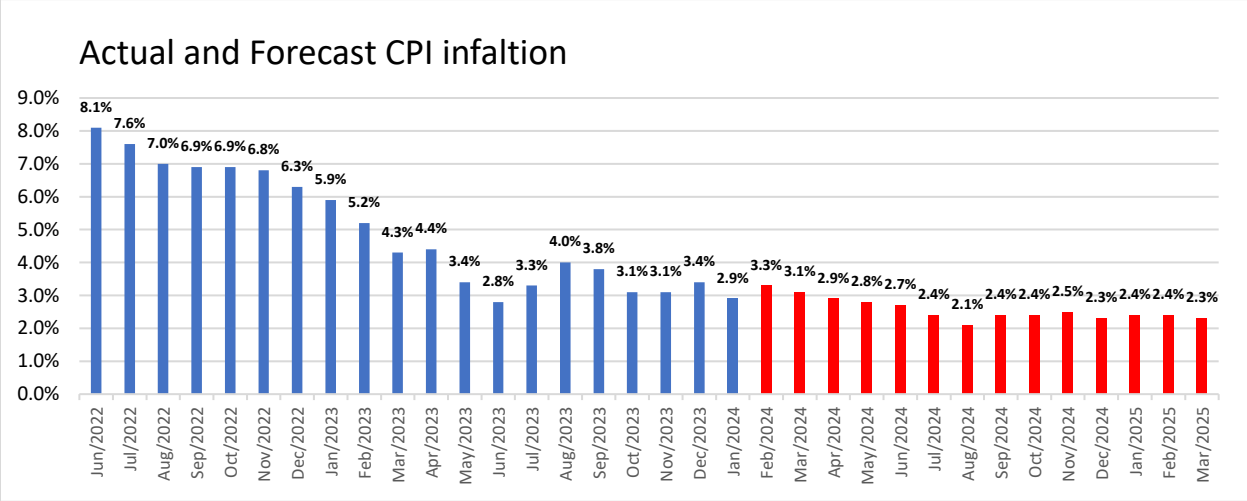
work through the economy, but over the next two years we are confident inflation is going to come down back to our two percent target.'

Inflation is projected to ease as the economy responds to much higher interest rates and as the impact of previously elevated commodity prices and supply chain disruptions ease.

According to the January 2024 Bank of Canada Monetary Policy Report, *'CPI inflation declined from 8.1% in June 2022 to 3.4% in December 2023. The initial decreases were largely due to falling energy prices and improvements in global supply chains. Evidence continues to mount that the slowing economy is leading to lower price pressures across a broad range of goods and services.''*[23]

Consensus Economics also projects slowing inflation (Chart 5). As seen in the chart, inflation is forecast to continue to slow towards the 2.0% target rate.

Chart 5: Inflation expected to slow, year-over-year growth.



Sources: Statistics Canada for actual, Consensus Economics, Consensus Forecasts, January 2024 for forecast.

Forward expectations of inflation have also eased toward the 2% target, and as inflation expectations decline, businesses' pricing behaviour are expected to normalize further and wage growth to moderate.

With the outlook for inflation showing consistent declines and an inflation forecast consistent with when the collective bargaining pattern was established, arguments for higher wage increases due to inflation should be given little consideration.

---

23 Bank of Canada, January 2024 Monetary Policy Report. Source: https://www.bankofcanada.ca/wp-content/uploads/2024/01/mpr-2024-01-24.pdf

Canadian Labour Market

Canada experienced historic declines in labor market activity due to pandemic closures.

In March 2020, a sequence of unprecedented government interventions related to COVID-19 were put in place. These interventions resulted in a dramatic decline in economic activity and a sudden shock to the Canadian labor market, as evidenced by a historical tumble of the Canadian workforce in that month.

After this sudden shock, Canada's labor market emerged strongly from repeated pandemic waves and as noted in Budget 2022, Canada has seen the fastest jobs recovery in the G7.[24]

Despite strong employment growth in 2021 and 2022, fixed-weight average hourly earnings, a measure of wage growth that controls for changes in employment in industries to better match underlying wage trends from Statistics Canada, has consistently lagged inflation. Fixed-weight average hourly earnings growth in 2021 was 2.8% and 4.0% in 2022.

Table 9: Labour market indicators expected to slow, year-over-year growth.

Indicator	2020	2021	2022	2023(e)	2024(F)	2025(F)
Average hourly earnings (y/y) (fixed weights)	3.6%	2.8%	4.0%	3.6%	3.4%	3.4%
Unemployment rate (%)	9.7%	7.5%	5.3%	5.4%	6.3%	6.2%

Sources: Fixed-weight average hourly earnings is from Consensus Economics, January 2024. Unemployment rate is from Statistics Canada, forecast is from Consensus Economics.

The weakening economic outlook has also led to an increase in the forecast unemployment rate, which, as of January 2024, is forecast to increase to an average of 6.3% in 2024, before dipping to 6.2% in 2025.

The Bank of Canada's 2024 Q4 Business Outlook survey reported that businesses have observed a softening labour market, and that, *'Businesses reported that they do not need to hire or that they generally are filling only existing roles and not creating new positions. In addition, an increasing share of firms are planning to make modest reductions in staffing. With less*

24 Department of Finance, Budget 2022, A Strong Recovery Path, Overview: Economic Context. Source: https://budget.gc.ca/2022/report-rapport/overview-apercu-en.html.

competition for labour, businesses that are hiring are finding it easier to recruit qualified candidates."[25]

Similar conditions were reported from the consumer side, from the BoC's Canadian Survey of Consumer Expectations, '*With the economy weakening, consumers' perceptions of the labour market have softened. Compared with last quarter, workers reported: lower likelihood of switching jobs voluntarily, lower chance of finding a new job, and a higher probability of losing their job."*[26]

As a result of slowing economic growth, the labour market is cooling rapidly with forecast lower wage growth and a higher unemployment rate over the near term. As the labour market cools future collective bargaining increases will follow this downward trend.

Working Conditions in the Public Sector Versus the Private and Other Sectors

The reference to the "state of the Canadian economy" in section 175 (e) of the FPSLRA (Exhibit 2) also encompasses the economic prospects of Canadians relative to those of federal government employees. It is important to acknowledge and to take into consideration that public sector workers enjoy advantages over the average private sector worker, namely with regards to pension and benefit plan coverage and plan quality, job security, paid time-off and average age at retirement.

Pre-pandemic, public servants provided invaluable services to Canadians, with the Canadian public service ranked as the number one country in civil service effectiveness by the Institute for Government.[27] Another more recent study from 2019, found that Canada's civil service ranked first internationally in Human Resources management and Inclusiveness.[28]

During COVID, they worked even harder, often under challenging uncertain conditions, and this service is greatly appreciated by Canadians. According to the 29th annual report on the public service:

---

25 Bank of Canada, Business Outlook Survey-Fourth Quarter of 2023 (January 15, 2024). Source: https://www.bankofcanada.ca/2024/01/business-outlook-survey-fourth-quarter-of-2023/
26 Bank of Canada, Canadian Survey of Consumer Expectations-Fourth Quarter of 2023. Source: https://www.bankofcanada.ca/2024/01/canadian-survey-of-consumer-expectations-fourth-quarter-of-2023/
27 Institute for Government, 2017.
Source:https://www.instituteforgovernment.org.uk/sites/default/files/publications/International-civil-service-effectiveness-index-July-17.pdf
28 InCise, The International Civil Service Effectiveness (InCiSE) Index, Results Report, 2019. Source: https://www.bsg.ox.ac.uk/sites/default/files/2019-04/InCiSE%202019%20Results%20Report.pdf

'More than ever, Canadians relied on their Federal Public Service. In the face of uncertainty, the Public Service remained a steady and dependable force, while demonstrating creativity and flexibility to respond to the evolving needs of Canadians during the pandemic.'[29]

The public service also enjoys good pay relative to the comparable private sector. Using 2015 wage data from the 2016 Census, the most comprehensive data set available, full-time, full-year wages and salaries for federal government workers were 17% higher than those in the private sector ($77,543 versus $66,065).[30]

An April 2023 study found that Canada's government-sector workers (from federal, provincial, and local governments) enjoyed an 8.5% wage premium in 2021, on average, over their private-sector counterparts after controlling for important characteristics like gender, age, marital status, education, tenure, size of firm, job permanence, immigrant status, industry, occupation, province, and city.[31]

Public sector workers are nearly four times more likely to be covered by a registered pension plan than their private sector counterparts (87.8% versus 22.8%).[32] Moreover, the majority of pension plans in the public sector are of the defined benefit (DB) type, where pension benefits are guaranteed by the employer. Indeed, public sector workers are more than eight times more likely to be covered (80.1% versus 9.3%) by a DB pension plan than their counterparts in the private sector where DB pensions are quickly disappearing. In fact, many of these surviving private sector DB plans are already closed to new employees, indicating that DB pension plan coverage in the private sector will continue to decline into the future.

In contrast to public sector workers, a Deloitte Canada report found that the majority of Canadians have not prepared enough for retirement and that only 14% of the three-million households nearing retirement can do so with confidence. Furthermore, the report found that 44% of working Canadians were using their existing retirement savings

29 Clerk of Privy Council and Secretary to the Cabinet, 29th Annual Report to the Prime Minister on the Public Service of Canada. Source: https://www.canada.ca/content/dam/pco-bcp/documents/clk/29-eng.pdf
30 Statistics Canada, custom tabulation of 2015 wages and salaries from the 2016 Census.
31 Comparing Government and Private Sector Compensation in Canada, 2023 Edition, Calculations by the Fraser Institute using Statistics Canada Labour Force Survey data on Job losses by Reasons and Class of workers. Source: https://www.fraserinstitute.org/sites/default/files/comparing-government-and-private-sector-compensation-in-canada-2023.pdf
32 Pension plans in Canada, as of January 1, 2022, Statistics Canada, Source: https://www150.statcan.gc.ca/n1/daily-quotidien/230623/dq230623b-eng.htm

to pay for non-retirement-related expenses, moving further away from a secure retirement.[33]

Furthermore, the federal public service pension plan offers full protection against inflation; a guarantee that is not available in all pension plans, and not even in all public service plans. For example, it was announced that New Brunswick's largest government employee pension fund cannot afford to pay retired employees a full cost-of-living increase on retirement benefits for 2023.[34]

The benefit of a more secure retirement is further compounded by an earlier average age of retirement in the public sector. Public sector workers' average retirement age is two decimal four (2.4) years younger than that of private sector workers.[35]

Prior to the COVID-19 pandemic, public sector workers had greater job security than their private sector counterparts. When examining job losses as a percentage of total employment – a proxy for job security – public sector workers were nearly five (5) times less likely to experience job loss than those in the private sector (1.0% versus 4.8%)[36]. This analysis excludes job losses as result of an end of temporary, casual, and seasonal jobs, which, if included, would widen the gulf between the sectors.

The pandemic has brought into starker relief the greater degree of job security enjoyed by public servants, whose income and future pension benefits remained unaffected. Conversely, many Canadians experienced job and income losses and as a result have become increasingly financially vulnerable.

The advantages for federal public service employees in pension and benefit coverage availability is further extended to a quality advantage.

A comprehensive study prepared for the Treasury Board of Canada Secretariat (TBS) by Mercer[37], which directly compared employer costs of pensions and benefits,

---

33 Deloitte Canada, Running out of time, An urgent call to fortify Canda's private retirement pillars. Source: https://www2.deloitte.com/content/dam/Deloitte/ca/Documents/financial-services/ca-retirement-challenge-en-AODA.pdf

34 CBC news, N.B. government employee pensions unable to fund full cost of living amounts in 2023- Shared-risk plans struggle to keep up with record inflation. Source: https://www.cbc.ca/news/canada/new-brunswick/nb-government-employee-pension-cost-living-1.6575404.

35 Comparing Government and Private Sector Compensation in Canada, 2023, Fraser Institute. Calculations by the Fraser Institute using Statistics Canada from custom tabulation Labour Force Survey data on average and median retirements. https: https://www.fraserinstitute.org/sites/default/files/comparing-government-and-private-sector-compensation-in-canada-2023.pdf

36 Ibid.

37 Results Report: Pension and Benefit Benchmarking by Industry Sector. Mercer (2019).

determined that the public service's plans were 24% more expensive than those in the general Canadian marketplace.

Applied to a base salary of seventy-three thousand dollars ($73,000), close to the public service average, a 24% pension and benefit premium represents two thousand eight hundred ($2,800) or 3.9% of base pay higher than those outside the public service. The study noted that the source of this federal public service premium: *"….is reflective of high value provisions that are not typically available to employers of all sizes, such as Defined Benefit pensions, retiree benefits, cost-of- living adjustments on long-term disability, and a higher-than-average portion of the cost being paid by the employer for the Public Service active employee benefits."*

It is the Employer's position that these protections and benefits, inclusive of the greater job security enjoyed by public servants, are competitive and merit consideration when assessing the value of its offer and the baseline value of being employed by the federal public service.

Recommending wage increases above the established pattern would only further expand and entrench the inequity between the federal public service and other Canadians. Raises serious equity concerns between the benefits and job security enjoyed by federal public servants and the Canadians whose tax dollars fund them and who do not have access to the same entitlements.

Fiscal Developments

The Government of Canada takes seriously its responsibility to ensure that Canadians' resources are being used efficiently and invested in the priorities that matter most to Canadians. The federal government has adopted the position that reasonable deficit spending that targets Canada's middle-class can boost economic growth, provided that appropriate trade-offs are made to avoid accumulating excessive debt loads. Higher debt levels lead to higher borrowing costs, and as a result, fewer resources for spending priorities.

Prior to the COVID-19 pandemic crisis, the deficit was $14 billion for fiscal year 2018-19, followed by a pre-pandemic December 2019 forecast deficit of $26.6 billion for 2019-20[38], and an average forecast deficit of around $20 billion per year over the fiscal years 2020-21 to 2024-25.

38 Department of Finance, Economic and Fiscal Update 2019, table A1.2. December 2019. Source: https://www.budget.gc.ca/efu-meb/2019/docs/statement-enonce/anx01-en.html#s9

However, with the unprecedented economic shock of COVID-19, the Government committed to help Canadian households and businesses weather the storm.

This pandemic effort came at a high fiscal cost, which was acknowledged in the foreword to Budget 2022,

> *'The money that rescued Canadians and the Canadian economy—deployed chiefly and rightly by the federal government to the tune of eight of every ten dollars invested—has depleted our treasury.*
>
> *Our COVID response came at a significant cost, and our ability to spend is not infinite. We will review and reduce government spending, because that is the responsible thing to do.*
>
> *And on this next point, let me be very clear: We are absolutely determined that our debt-to-GDP ratio must continue to decline. Our pandemic deficits are and must continue to be reduced. The extraordinary debts we incurred to keep Canadians safe and solvent must be paid down.*
>
> *This is our fiscal anchor—a line we shall not cross, and that will ensure that our finances remain sustainable so long as it remains unbreached.'*[39]

Consequently, the federal deficit and debt increased exponentially in 2020-21 because of the additional spending on the COVID-19 economic response plan and the sharply lower revenues due to lockdowns. The deficit for 2020-21 increased from a projected $25.1 billion pre-COVID-19 to $327.7 billion [40]— a more than thirteen-fold increase.

Higher deficits continued in 2021-22, with a deficit of $90.2 billion, and nearly an additional $221 billion in projected deficits from 2022-23 to 2028-29 in the baseline scenario (Table 10).

39 Department of Finance, Budget, 2022, Foreword. Source: https://www.budget.canada.ca/2022/report-rapport/intro-en.html#wb-cont

40 Department of Finance, Fiscal Reference Tables, December 2021, https://www.canada.ca/en/department-finance/services/publications/fiscal-reference-tables/2021.html

Table 10: Fiscal outlook

Revenues and Expenses (baseline scenario)	Projection						
($ billions)	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
Budgetary revenues	447.8	456.2	483.4	502.4	527.4	551.0	573.8
Program expenses, excluding net actuarial losses	438.6	442.2	466.8	484.8	499.4	515.5	534.1
Public debt charges	35.0	46.5	52.4	53.3	55.1	58.4	60.7
Total expenses, excluding net actuarial losses	473.5	488.7	519.2	538.1	554.5	573.9	594.8
Net actuarial gains (losses)	-9.6	-7.6	-2.6	-2.6	0.0	-0.9	2.5
Budgetary balance	**-35.3**	**-40.0**	**-38.4**	**-38.3**	**-27.1**	**-23.8**	**-18.4**
Federal debt	**1,173.0**	**1,216.2**	**1,254.6**	**1,292.9**	**1,320.0**	**1,343.8**	**1,362.2**

Source: Department of Finance, 2023 Fall Economic Statement.

In the Department of Finance's 2023 Fall Economic Statement's 'Downside Scenario', the deficit (table 10) increases by approximately $8.5 billion annually per year, and the federal debt-to-GDP ratio increases 1.7 percentage points by 2028-29.

'*The downside scenario sees a shallow recession in Canada. More persistent underlying inflation—driven by a combination of resilient domestic and global demand, elevated inflation expectations in Canada, and businesses maintaining larger and more frequent price increases—leads to higher interest rates.*'[41]

As the outlook for real economic growth declines, and warning signs of a possible near-term recession, deficits could be higher along with greater scrutiny of government spending.

Higher deficits and rising interest rates have combined to increase the Government's public debt charges, i.e., the interest costs on the federal debt. Public debt charges are projected to almost triple, from $20.4 billion in 2020-21 to $60.7 billion in 2028-29.[42] Projected debt service costs in 2028-29 are only $2.2 billion lower than the $62.9 billion for the Canada Health Transfer and more than double the $29.4 billion in projected Equalization Costs.[43]

Comparing current projected debt service costs to the pre-pandemic projection illustrates this growing debt service cost that competes with other government spending.

41 Department of Finance, 2023 Fall Economic Statement. Source: https://www.budget.canada.ca/fes-eea/2023/report-rapport/overview-apercu-en.html#a8

42 Department of Finance, 2023 Fall Economic Statement, Table A1.4: Summary Statement of Transactions.

43 Department of Finance, 2023 Fall Economic Statement, Table A1.6: Outlook for Expenses.

In the pre-pandemic Economic and Fiscal Update 2019, debt service costs were per projected to be $31.5 billion[44] in 2024-25, when compared to the Fall Economic Statement 2023 projection of $52.4 billion, debt service costs are an additional $20.9 billion for the year, an additional cost that is only $4.4 billion less than the projected cost of the entire Equalization program of $25.3 billion.

The ability to borrow and spend these significant amounts at relatively affordable but more burdensome interest rates is reflective of earlier fiscal discipline and confidence in the Government's ability to prudently manage post-pandemic spending and deficits.

The federal government also announced the following fiscal objectives in preparing for Budget 2024:

- Maintaining the 2023-24 deficit at or below the Budget 2023 projection of $40.1 billion.
- Lowering the debt-to-GDP ratio in 2024-25, relative to this Fall Economic Statement, and keeping it on a declining track thereafter.
- Maintaining a declining deficit-to-GDP ratio in 2024-25 and keeping deficits below 1 per cent of GDP in 2026-27 and future years.

Because personnel costs constitute a major component of government spending, careful attention and management of these costs is an important consideration, including to negotiate wage increases on behalf of taxpayers.

Personnel costs typically account for a sizeable share of direct program expenses. In 2019-20, they represented 36.3% of direct program expenses. While their share fell to 19.8%[45] in 2020-21, it is because of the unusual contribution of emergency pandemic spending. Nevertheless, personnel costs, excluding net actuarial losses, stood at $59.6 billion dollars in 2020-21.

Personnel expenses increased $3.7 billion to $63.3 billion[46] in 2021-22 and an additional $4.1 billion to $67.4 billion in 2022-23.[47]

---

44 Department of Finance, Economic and Fiscal Update 2019, Table a1.4 Summary Statement of Transactions. Source: https://www.budget.canada.ca/efu-meb/2019/docs/statement-enonce/anx01-en.html#s9
45 Public Accounts of Canada 2021, Table 3.9 Expenses by Object. Source: https://www.tpsgc-pwgsc.gc.ca/recgen/cpc-pac/2021/vol1/s3/charges-expenses-eng.html#sh6 and Fiscal Reference tables, Table 7: Expenses
46 Public Accounts of Canada 2022, Table 3.9 Expenses by Object. Source: https://www.tpsgc-pwgsc.gc.ca/recgen/cpc-pac/2022/vol1/s3/charges-expenses-eng.html#sh6
47 Public Accounts of Canada 2023, Table 3.9 Expenses by Object. Source: https://www.tpsgc-pwgsc.gc.ca/recgen/cpc-pac/2023/vol1/s3/charges-expenses-eng.html#sh6

A portion of the increase in personnel costs was attributable to higher 'legacy' costs for the Government's generous pensions and benefits promises due to low and falling interest rate environment prior to 2022.

These pension and benefit legacy costs became so large that they are now represented as a separate line-item in the fiscal forecast. Titled 'Net Actuarial Losses', these costs were forecast in the 2023 Fall Economic Statement to cost an additional $23.3 billion dollars from 2022-23 to 2027-28.

The Government manages total compensation costs prudently on behalf of Canadians. Large increases in the costs of pensions and benefits would necessitate that wage growth slow to help mitigate the overall total compensation increase. While pensions and benefits are not bargained directly, it should be recognized that existing pensions and benefits are getting much more expensive, to the tune of tens of billions of dollars more expensive. In the private sector this would likely result in benefit cuts and higher co-pays for employees or lower wage increases to maintain manageable total compensation cost growth.

Budget 2023 also introduced proposed new measures to ensure that government spending is sustainable, efficient, and focused on priorities that matter most to Canadians.

'The efficient use of Canadians' tax dollars is essential to delivering on the priorities that matter most to Canadians. Budget 2023 delivers a refocusing of government spending to continue to serve Canadians most effectively'.[48]

These measures include reduced spending on consulting, professional services, and travel by about 15% of planned 2023-24 discretionary spending. The phase-in of a roughly 3% reduction of eligible spending by departments and agencies by 2026-27 which would reduce government spending by $7.0 billion over four (4) years, starting in 2024-25.

Furthermore, the government will also work with federal Crown corporations to ensure they achieve comparable spending reductions, which would account for an estimated $1.3 billion over four (4) years starting in 2024-25.

In Budget 2023, these proposed measures represent savings of $15.4 billion over the next five (5) years. The 2023 FES announced an extended and expanded Budget 2023 effort to refocus government spending, with departments and agencies generating

48 Department of Finance, Budget 2023, section 6.1, Effective government. https://www.budget.canada.ca/2023/report-rapport/toc-tdm-en.html

additional savings of $345.6 million in 2025-26, and $691 million ongoing. Combined Budget 2023 and 2023 FES savings will amount to $4.8 billion per year in 2026-27 and ongoing and return the public service closer to its pre-pandemic growth track.

The government's assessment of its debt sustainability presented in the FES 2023, which showed a declining debt-to-GDP ratio over the next thirty (30) years was challenged in a recent C.D. Howe Intelligence Memo, which presented an alternative scenario where overall program spending is maintained as a share of GDP and includes simulations of economic downturns, which resulted in a flat or higher debt-to-GDP ratio. The C.D. Howe's assessment was that for Canada to meet the International Monetary Fund's debt sustainability condition, *'the federal government would have to take measures to permanently increase the operating balance by $13 billion in 2028/29. This could be achieved by raising the GST by almost 1 percentage point or reducing program spending by more than 2 percent.'*[49]

In this context and given that compensation accounts for such a sizeable share of the government's expenses, responsible fiscal management strongly implies that wage increases should reflect the much higher costs of providing future benefits, and the large sums that the government has invested in helping Canadians through the pandemic, higher debt service costs, and a refocusing of government spending to continue to serve Canadians most effectively.

2.5 Total Compensation

This section demonstrates that, in addition to competitive wages, employees in the FB group enjoy a substantial pensions and benefit package. All terms and conditions of employment, including supplementary benefits, need to be taken into account in evaluating external comparability, even if they are not subject to negotiation. Indeed, arbitrators have long held that the total compensation cost increase of a given settlement or award is of paramount consideration. It is the aggregate cost increase of all of the proposed improvements that must be considered, rather than monetary items in isolation from one another. Arbitrator Martin Teplinsky, for example, recognized the importance of the total compensation criteria in his interest arbitration award in Windsor Police Boars and Windsor Police Association, June 15, 1981, at pp 1-2.

> *Although I am proceeding on an issue-by-issue basis, I have kept in mind the principle that it is the cost of the total compensation package which is relevant. An Arbitrator must recognize the monetary implications of all*

49 C.D. Howe Institute, Lester, Laurin, The Federal Debt is Not Sustainable, January 5, 2024. Source: https://www.cdhowe.org/intelligence-memos/lester-laurin-federal-debt-not-sustainable

> *proposals. As well, I agree with Mr. Houck that an arbitrator should be alert to prevent a party from selective utilization of comparables. In other words, it is not reasonable to "shop" a group of comparables to ascertain the best features of the total compensation package of each. A party's relevant position qua others cannot be determined by reference to any particular item in the compensation package, even salary. Rather, it depends on how the total compensation packages compares.*

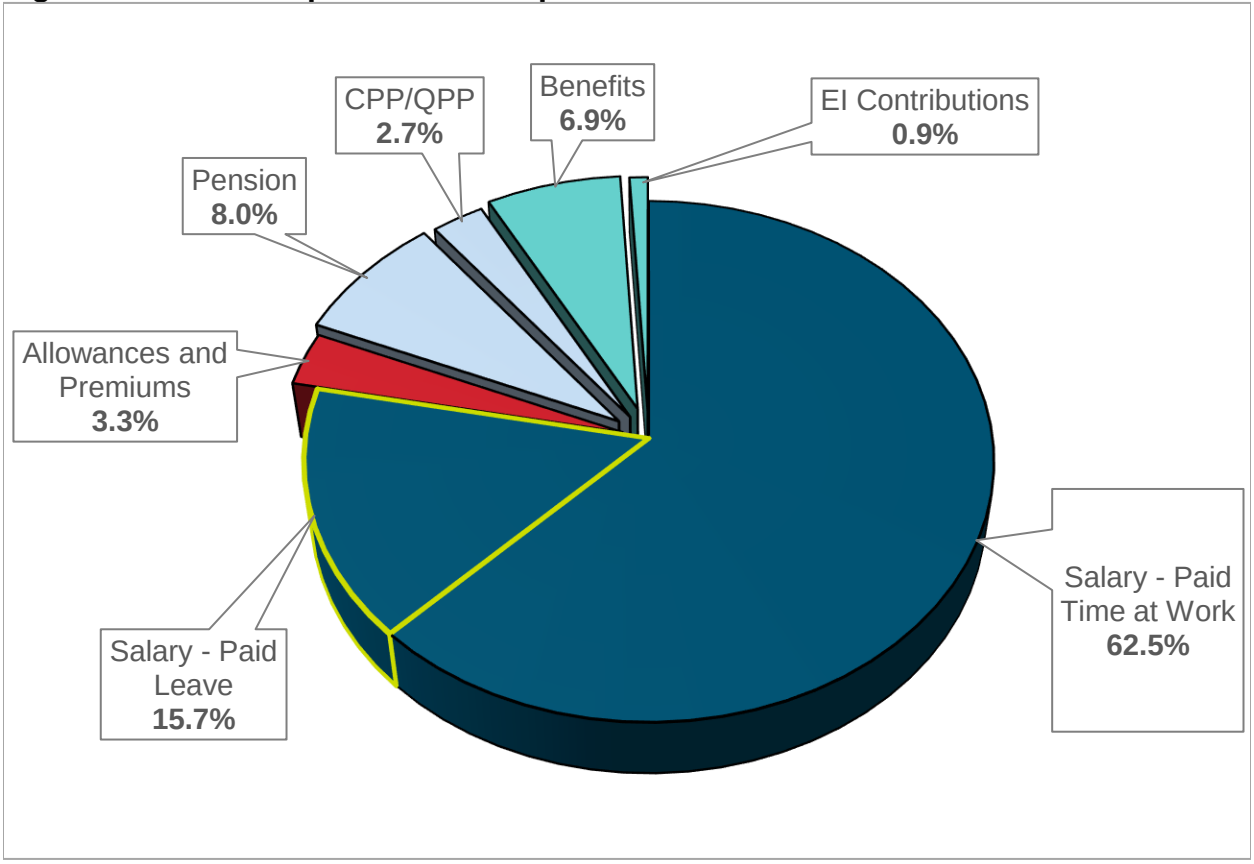
In addition to wages, total compensation is composed of paid and unpaid non-wage benefits, such as employer contributions to pensions, other employee benefit programs (i.e., health and dental) and additional allowances.

As seen in Figure 1 below, a detailed breakdown of total compensation of a typical employee shows that:

- Base pay for time at work represented 62.5% of total compensation for employees of the FB bargaining unit;
- Pension and benefits, including life and disability insurance, health, and dental plans, represented 17.7% of total compensation; and
- Allowances and premiums accounted for 3.3% of total compensation.

Overall, the figure shows that base wage is only one component of the group’s total compensation package. FB employees also benefit from substantial paid leave and an advantageous pension and benefit package.

Figure X: Total Compensation Components



Excluded from this chart are overtime payments. Typical employees across the CPA may not expect to receive overtime payments. However, overtime is a significant component of total compensation for the FB bargaining group. In fact, about 20% of all overtime expenditures in the CPA is paid to members of the FB bargaining group.

Like most occupations, there are instances when members of the FB occupational group must work overtime. Whether the work is necessary to sustain service standards, or if there are unexpected events that occur during a shift, there are periods when overtime is required in lieu of other actions, such as cancelling vacations. However, some of the overtime is due to systemic issues with the structure of shift schedules. The Employer has a number of proposals aiming to address these issues. They can be found in Part IV of this brief under on Article 25: Hours of work (clause 25.18), Appendix B: Memorandum of Understanding Between the Treasury Board and the Public Service Alliance of Canada with Respect to the Variable Shift Scheduling Arrangements, Article 41: Leave without pay for the care of family and Appendix P: Memorandum of Understanding Between the Treasury Board and the Public Service Alliance of Canada with Respect to Article 41 Leave Without Pay for the Care of Family and Vacation Scheduling.

Notes on total compensation elements

Salary: Salaries reflect the maximum rate of pay available in 2021-22 to employees weighted by the number of employees in each level.

Allowances and premiums: Average amount received in 2021-22 by all employees at that level (or group). Amounts include Bilingualism Bonus, Performance Pay, Additional duties/responsibilities allowances, and Recruitment and Retention allowances. In addition, the figure includes the average amount received per employee in March 2023 for the Uniformed Member Meal Period Allowance. Members of the FB bargaining unit where eligible for this allowance after the signing of the collective agreement in December 2021, but payments of the allowance where not implemented before the end of the fiscal year.

Pension: Based on 2021-22 employer contributions. For each level and group, contribution rates are determined by applying the Group 1 and Group 2 rates proportionally to the size of the eligible population under each Group (1 or 2). 2021-22 estimated RCA contribution rate is applied when relevant.

Benefits: Estimated 2021-22 value based on the average cost per employee (health and dental benefits) or as a share of payroll for the CPA (long-term disability, death benefits, maternity/paternity supplemental benefits) applied to the respective maximum rate of pay. The amount for Post-Employment Health and Dental benefits represents the present value of the anticipated costs and usages of health and dental benefits of current employees in future years.

Paid leave: Based on the average usage pattern of paid leave within a group (sick leave, family leave, one-time vacation leave) in 2021-22 or on the entitlement by group (statutory holidays, personal and volunteer leave) or by group-level (annual vacation leave) as of March 2022.

CPP/QPP and EI: Based on 2021-22 contributions rates. EI includes the EI Premium Reduction Rate.

Part III: Employer's Submission for Rates of Pay and Response to PSAC's Proposals

3.1 Bargaining Agent Proposals

The following tables summarizes the bargaining agent's proposals that would incur monetary and productivity costs for the Employer. Given the specificity of some proposals, the Employer may not have accurate data on the frequency that some of the proposals would occur. The Bargaining Agent has not provided the Employer with data to support its positions and to prompt the Employer's consideration. The Employer has flagged proposals for which it cannot prepare cost estimates.

In Table 1, the bargaining agent's three (3)-year proposal is summarized to demonstrate the incremental cost of their across-the-board wage increases and their group specific measures. The across-the-board wage increases include general economic increases, a pay line adjustment to achieve parity with the Royal Canadian Mounted Police' Constables, preservation of the bargaining group's hourly rate when converting from a thirty-seven decimal five (37.5) hour work week to a forty (40) hour work week, and other market adjustments that were included in negotiated settlements across the CPA that overlap with the proposal's duration. The group-specific measures are summarized for ease of reference, and Table 1 provides the line items for approximately forty (40) monetary proposals that compose this cost. The costs are their ongoing costs at the end of the contract, expressed in millions of dollars and as a percentage of the bargaining group's current wage base.

Table 1: Summary of bargaining agent's overall monetary and productivity proposals

Scenario costs	Ongoing cost ($)	Ongoing cost (%)
Appendix A: Pay Rate Increases		
3 years of general economic increases (3.5%, 3.0%, 2.0%)	$92.4M	8.74%
Market adjustments (1.2%, 0.25%)	$17.3M	1.63%
Payline adjustment (0.5%)	$5.8M	0.55%
40-hr work week pay increase (6.67%, net of Appendix L elimination)[50]	$31.4M	2.97%
RCMP General Constable Parity (7.801%)	$144.5M	13.66%
Sub-Total	**$291.4M**	**27.55%**
Other monetary and productivity costs	**$150.3M**	**14.20%**

50 To prevent a decrease in overtime earnings, which are a function of members hourly rate of pay for regular hours worked, the bargaining agent seeks a 6.67% wage increase. Appendix L, the $5,000 meal allowance, would be eliminated after converting to a 40-hour work week, inclusive of a 30-minute paid meal period. This would only partially fund the wage increase because the allowance is not paid to all members of the bargaining group, whereas all members would receive a 6.67% wage increase.

Grand Total	**$441.7M**	**41.75%**

Beyond permanent wage increases, the bargaining agent is also seeking a two thousand five hundred dollar ($2,500) one-time payment for its members' performance of regular duties and responsibilities, and this payment would be pensionable. The estimated cost of this payment is $34.7M, which represents 3.3% of the bargaining group's wage base. This is in addition to the costs presented in the above table. The Employer is willing to include this measure in the context of an overall negotiated settlement.

Table 2: Breakdown of bargaining agents' other monetary and productivity costs

Group-Specific Measures	Ongoing cost ($)	Ongoing cost (%)
Article 14.15: Branch Presidents leave with pay	$4.5M	0.43%
Article 21.12(b): Late-Hour Premium	Unable to cost	0.00%
Article 27.01: Shift Premium of 14.3%	$26.2M	2.48%
Article 27.01: Weekend premium of 14.3%	$11.8M	1.12%
Article 28.04(a): 2x overtime compensation on a workday	$3.8M	0.36%
Article 28.04(b): Short-notice overtime	$3.9M	0.37%
Article 28.05: 2x overtime compensation on day of rest	$3.3M	0.32%
Article 28.07(a): Overtime meals at NJC rate	$0.3M	0.02%
Article 30.01(e): National Indigenous Peoples Day	$5.6M	0.53%
Article 30.01(m): Two additional designated paid holidays per year	$5.6M	0.53%
Article 30.07: 2x overtime compensation on designated paid holidays	$10.0M	0.95%
Article 32.08(a): Lower travel-status leave threshold	$0.1M	0.01%
Article 32.08(b): Travel-status leave entitlement increase	Included in Article 32.08(a)	0.00%
Article 34.02: Accelerate vacation leave accrual	$11.3M	1.07%
Article 36.01: Medical appointment for pregnant employees	Unable to cost	0.00%
Article 39.07: Maternity-related reassignment or leave	$0.5M	0.05%
Article 42.04: 93% top-up for EI Caregiver waiting period	$7.1M	0.67%
Article 42.05: 93% top-up for EI Caregiver benefit	Included in Article 42.04	0.00%
Article 43.01: Leave with pay for family-related responsibilities increased to 10 days	$11.8M	1.12%
Article 43.02(a): Family-related responsibilities expanded to include appointments of a professional nature	$0.6M	0.06%
Article 43.02(h): Family-related responsibilities expanded to include visiting a terminally ill family member	Immaterial	0.00%
Article 46.02: Bereavement leave with pay up for five days of travel	$0.4M	0.03%

Article 46.04: Bereavement leave with pay for miscarriage	$0.2M	0.02%
Article 46.05: Bereavement leave with pay for 14 consecutive calendar days or 10 working days	$0.0M	0.00%
Article 52.02: Additional personal day	$5.5M	0.52%
Article 58.01: Membership fees	Unable to cost	0.00%
Article 59.01(a): Tool-up/Tool-down 15 minutes	$51.3M	4.85%
Article 60.01: Dog handlers' allowance $2	$0.1M	0.01%
Article 60.03: $1,250 clothing allowance	$0.3M	0.03%
Article 60.05: $350 dry cleaning allowance	$0.1M	0.01%
Article 60.06: $7 Escorted Removals Premium	$0.4M	0.04%
Article 60.07: $50 monthly allowance for gym or fitness memberships	$5.9M	0.56%
Article 60.0X: 3.5% field coaching allowance	TBD	0.00%
New Article: $100 monthly allowance for teleworking	$3.4M	0.32%
New Article: $3,000 annual pensionable allowance for hearings officers	$0.3M	0.03%
New Article: Compassionate leave to visit a critically ill family member	$0.6M	0.06%
New Article: Firearm practice time - 2 days	$11.0M	1.04%
New Article: Firearm practice time - fee reimbursement	$0.8M	0.08%
New Article: New recruits start at FB 03	$4.9M	0.46%
New Article: Wellness day	$5.5M	0.52%

3.2 Employer Proposals

In contrast, although impasse was declared before the Employer could table a comprehensive offer, the Employer takes the opportunity of this brief to confirm that the Employer’s proposed economic increases for the FB group is 13.14% over a four (4)-year period. It includes the following combination of general economic increases, market adjustments and pay line adjustments:

- Effective June 21, 2022: 3.5% + 1.25% (market adjustment)
- Effective June 21, 2023: 3% + 0.5% (pay line adjustment)
- Effective June 21, 2024: 2% + 0.25% (market adjustment)
- Effective June 21, 2025: 2%

Table 3: Summary of Employer's overall monetary and productivity proposals

Scenario costs	Ongoing cost ($)	Ongoing cost (%)
4 years of general economic increases (3.5%, 3.0%, 2.0%, 2.0%)	$115.4M	10.91%
Market Adjustments – 1.25%, 0.5%, 0.25%	$23.6M	2.23%
Sub-total of across-the-board wage increases	*$141.5M*	*13.14%*
Group-specific measures	$0.6M	0.06%
Total scenario cost	**$139.6M**	**13.20%**

Table 4: Breakdown of Employer's other monetary and productivity costs

Scenario costs	Ongoing cost ($)	Ongoing cost (%)
Article 46: Bereavement leave with pay expanded to include aunts and uncles	$0.1M	0.01%
Article 54: Provide two days leave with pay for Indigenous Practices	$0.3M	0.03%
Article 54: Provide three days leave without pay for Indigenous Practices	$0.1M	0.01%

In addition to the on-going measures in the table above, the Employer would provide a one-time two thousand five hundred dollars ($2,500) payment to members of the bargaining agent for the performance of their regular duties and responsibilities. The payment would cost the Employer $34.7 million, which is 3.28% of the FB occupational group wage base.

The Employer submits that the Bargaining Agent's proposals are not supported by any rigorous analysis or well documented evidence.

As demonstrated by the comprehensive analysis provided in Part II of this presentation, the Employer's offer is reasonable, and aligned with economic and fiscal realities. The Employer's wage proposal before this PIC is in keeping with the analysis included in this document.

Also highlighted in section 1.2 above, several settlements (17) have been concluded for the current round of bargaining and a pattern established. The general economic increases, market adjustments and pay line adjustment the Employer is offering the FB group reflect this pattern that was established through freely negotiated agreements that are reasonable for employees and fair to Canadians.

Entering into an agreement that is not consistent with the established pattern would not be justified in the absence of proper substantiation.

As for the Employer proposal for a four (4)-year agreement that would expire on June 20, 2026, the Employer’s rationale is included as part of its submissions on Article 65: Duration found under Part IV of this brief.

The Employer requested that the Bargaining Agent clearly identify its priorities for this round in order to reduce the number of outstanding proposals and to consider the current collective bargaining landscape and recent negotiation outcomes with other federal public service bargaining agents. The number of outstanding proposals cannot be justified for a mature collective agreement.

The Employer is prepared to consider group-specific measures if they are justified, and they allow operating within the fixed monetary envelop it disposes and that constitutes the pattern in the CPA and within separate agencies.

A more limited number of proposals, as recommended by this Commission, is expected to meaningfully improve the likelihood of a settlement.

Part IV: Employer's Submission on Other Outstanding Issues

This section includes the Employer's remarks and recommendations for all other outstanding proposals.

Proposed changes to the articles and clauses as found in the FB group collective agreement which expired on June 20, 2022 (Exhibit 1), are highlighted in **bold** font. Where deletions are proposed, the words have a strikethrough **"—"**.

****

Update

On March 27, 2024, the Bargaining Agent informed the Employer that its proposal for a new Appendix N: Memorandum of Agreement Between the Treasury Board of Canada and the Public Service Alliance of Canada with Respect to Bill C-20 was withdrawn.

The parties also agreed that the Employer could make the following amendments to its proposals under "Various Articles: Extra Duty Work Performed from a Remote Location" by adding the expression "without prior notice" at paragraph 28.04 c., add a new paragraph 28.04 d. and make a housekeeping change at paragraph 28.04 e.

****

Outstanding proposals

Provision or Appendix	Employer proposal	Bargaining Agent proposal
Article 2: Interpretation and Definitions	X	X
Article 10: Information	X	
Article 13: Employee Representatives		X
Article 14: Leave with or without Pay for Alliance Business	X	X
Article 17: Discipline	X	X
Article 18: Grievance Procedure	X	X
Article 24: Technological Changes	X	X
Article 25: Hours of Work (Unpaid Meal Break)	X	
Article 25: Hours of Work	X	X
Various Articles: Standard Shift Schedule and Variable Shift Scheduling Arrangements	X	X
Article 27: Shift and Weekend Premiums	X	X
Article 30: Designated Paid Holidays	X	X
Various Articles: Paid Meal Premium	X	X
Various Articles: Extra Duty Work Performed from a Remote Location	X	

Provision or Appendix	Employer proposal	Bargaining Agent proposal
Various Articles: Kilometric Allowance	X	
Article 28: Overtime	X	X
Article 32: Travelling Time		X
Article 33: Leave, General	X	X
Article 34: Vacation Leave with Pay	X	X
Article 36: Medical Appointment for Pregnant Employees		X
Article 37: Injury-on-Duty Leave		X
Article 39: Maternity-Related Reassignment or Leave		X
Article 41: Leave without Pay for the Care of Family	X	
Article 42: Caregiving Leave		X
Article 43: Leave with Pay for Family-Related Responsibilities		X
Article 46: Bereavement Leave with Pay		X
Article 52: Leave with or without Pay for Other Reasons		X
Article 55: Statement of Duties	X	
Article 58: Membership Fees		X
Article 59: Tools-up/Tools-down (Current title: Wash-up time)		X
Article 60: Allowances		X
Article 61: Part-time Employees		X
Article 63: Pay Administration		X
Article 65: Duration	X	X
Various Articles: Day is a Day		X
Appendix C: Workforce Adjustment	X	X
Appendix D: Memorandum of Understanding between the Treasury Board of Canada and the Public Service alliance of Canada with respect to the Implementation of the Collective Agreement	X	X
Appendix G: Memorandum of Agreement with Respect to Administration Suspensions		X
Appendix J: Memorandum of Understanding Between the Treasury Board of Canada and the Public Service Alliance of Canada in Respect to Leave for Union Business: Cost-Recovery	X	
Appendix O: Letter of Understanding between the Treasury Board and the Public Service Alliance of Canada with Respect to Workplace Culture	X	X
Appendix P: Memorandum of Understanding between the Treasury Board of Canada and the Public Service Alliance of Canada with Respect to Article 41 Leave without Pay for the Care of Family and Vacation Scheduling	X	X
New Article: Early Retirement for FB Workers		X
New Article: New Recruits		X

Provision or Appendix	Employer proposal	Bargaining Agent proposal
New Article: Wellness Day		X
New Article: Compassionate Leave		X
New Article: Work of the Bargaining Unit		X
New Article: Firearm Practice Time		X
New Article: Student Employment		X
New Article: Medical or Dental Appointments		X
New Article: Firing Range Fees Reimbursement		X
New Appendix: Memorandum of Understanding between the Treasury Board of Canada and the Public Service Alliance of Canada with Respect to the Firearm Training Participant Selection Process		X
New Appendix: Name Tags		X
New Appendix/New Article: Alternate Work Arrangement		X
New Appendix: Memorandum of Understanding between the Treasury Board of Canada and the Public Service Alliance of Cananda with Respect of Employees in the Border Services (FB) Groups Working as Hearings Officers		X

Agreement in Principle

Provision or Appendix	Employer proposal	Bargaining Agent proposal
Article 7: National Joint Council Agreements	X	X
Article 19: No Discrimination	X	X
Article 20: Sexual Harassment	X	X
New Appendix: Memorandum of Understanding between the Treasury Board of Canada and the Public Service Alliance of Canada with Respect to a Joint Review on Employment Equity, Diversity and Inclusion Training and Information Conflict Management Systems	X	X

Article 2: Interpretation and Definitions

Bargaining Agent proposal
2.01 For the purpose of this agreement: **"family" (famille)** except where otherwise specified in this agreement, means father, mother (or alternatively stepfather, stepmother, or foster parent), brother, sister, step-brother, stepsister, spouse (including common-law partner resident with the employee), child (including child of common-law partner), **stillborn or miscarried child or fetus (including stillborn or miscarried child or fetus of the common-law partner),** stepchild, foster child or ward of the employee, grandchild, father-in-law, mother-in-law, daughter-in-law, son-in-law, **sister-in-law, brother-in-law, aunt, uncle, niece, nephew,** the employee's grandparents and relative permanently residing in the employee's household or with whom the employee permanently resides**, any relative for whom the employee has a duty of care, irrespective of whether they reside with the employee, and a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee.**
Employer proposal
2.01 For the purpose of this agreement: "**continuous employment**" (emploi continu) has the same meaning as specified in the existing *Directive on Terms and Conditions of Employment* ~~of the Employer on the date of signing of this agreement~~.

Remarks

Expansion to the definition of "family"

The Bargaining Agent is proposing to significantly expand the current definition of family to include stillborn or miscarried child or fetus (including stillborn or miscarried child or fetus of the common-law partner), sister-in-law, brother-in-law, aunt, uncle, niece and nephew.

The Bargaining Agent is also proposing to add "*any relative for whom the employee has a duty of care, irrespective of whether they reside with the employee, and a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee"* to the definition of family.

This definition is used under various articles of the collective agreement to determine an employee's eligibility to different leave entitlements. It is namely the case for Article 41: leave without pay for the care of family and Article 46: bereavement leave with pay. This change would have the effect of broadening eligibility to leaves, inclusive of leave with pay for family-related responsibilities (Article 43) as per the Bargaining Agent's proposal to remove the definition of family that is specific to this type of leave under clause 43.01.

The current definition is already broad enough to provide good coverage for employees. The Bargaining Agent's proposal amounts to a significant change that is far beyond what is found in all other collective agreements in the CPA. Furthermore, it is the Employer's position that the Bargaining Agent has failed to provide rationale for their argument and demonstrate a need for these costly amendments.

The Employer contends that if the definition of family was to be extended to include a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee, it would render the definition without parameters.

Other CPA collective agreements include a definition of family that is similar to the language found in the FB group agreement (Exhibit 1). This expansion would create a precedent.

The Employer wishes to the inform the Commission that its movement on article 46: bereavement leave, as found at pages 189 and 192, allows to partially address the Bargaining Agent's interest in a way that is consistent with the replication and incremental change principles.

The Employer submits that the Bargaining Agent's demand is too broad; agreeing to the Bargaining Agent's proposal would leave the Employer without any real discretion for granting different leaves.

Amendment to the definition of "continuous employment"

The Employer is proposing to amend the definition of "continuous employment" at clause 2.01.

The current language refers to the meaning or definition in the *Directive on Terms and Conditions of Employment* (Exhibit 6) as it would exist on the date of signing of the collective agreement.

The Employer is proposing to strike out "on the date of signing of this Agreement" to ensure that the definition of "continuous employment" is aligned with the current definition in the *Directive on Terms and Conditions of Employment* (Exhibit 6) at all

times during the life cycle of the collective agreement rather than to a possibly outdated definition. This change would also contribute to avoiding questions or possible interpretation issues.

The Employer’s proposed change in language is consistent with the definition of “continuous employment” in many other collective agreements within the CPA, including those of the Education and Library Science (EB) and Operational Services (SV) groups, also represented by the Public Service Alliance of Canada (PSAC).

The Employer respectfully requests that the Commission only includes the Employer proposal on Article 2 – Interpretation and definitions, in its report.

Article 10: Information

Employer proposal
10.02 ~~The Employer agrees to supply each employee with a copy of this Agreement and will endeavour to do so within one (1) month after receipt from the printer~~. **Employees of the bargaining unit will be given electronic access to the collective agreement. Where electronic access to the agreement is unavailable or impractical, an employee will be supplied with a printed copy of the agreement upon request. once during the life of the current collective agreement.**

Remarks

To modernize the current costly and laborious requirement to produce printed copies of the collective agreement for each employee, and as is consistent with the Government of Canada's policies and commitments to the environment and towards greening its economy (Exhibit 7), the Employer's proposal seeks to modify this practice.

The Employer is committed to ensuring that all employees have quick and real time access to their collective agreement in both official languages via the Treasury Board of Canada Secretariat website. Collective agreements are accessible in a format that accommodates disabilities and also allows employees to benefit from the advantages of an electronic document, such as, but not limited to, an always up-to-date document, search functions, and the ability to copy and paste into e-mail messages or other documents.

The Employer's proposal is a reasonable compromise. To address any exceptional circumstances, it ensures that when the electronic access is unavailable or impractical, that upon request, employees are provided with a printed copy of the collective agreement.

Previous Public Interest Commissions (PIC) with respect to the FB group, in 2018 and 2021, have recommended that the Employer's proposal for electronic access of the collective agreement be incorporated in the collective agreement. At paragraph 16 of its March 12, 2018, report, the PIC opined:

> *"We see little justification in imposing on the Employer the substantial cost of producing printed copies when all employees can be assumed to have access to devices that would enable them to consult the agreement electronically at no real*

> *cost to themselves. We note that the Employer's proposal has recently been included in at least a dozen of its collective agreements.* [51]

Moreover, at paragraph 18 of its July 28, 2021, report, the PIC established during the last round of bargaining further reaffirmed the reasonableness of the Employer's proposal by the inclusion of the following paragraph in its report:

> *"Currently, Article 10.02 requires the employer to supply each employee with a copy of the collective agreement. The employer seeks to change this obligation to provide only for electronic access, unless that is "unavailable or impractical," in which case the employee could request a hard copy. The Commission recommends language similar to the employer proposal, under which the employer would provide electronic access, but that any employee would be provided a hard copy, on request of that employee.*[52]

Finally, as in previous rounds, the Employer reiterates that this is an important priority. Twenty-four (24) of the twenty-eight (28) CPA collective agreements contain the same or similar language on electronic access to the collective agreement, inclusive of all other PSAC groups (Education and Library Science (EB), Program and Administrative Services (PA), Operational Services (SV), Technical Services (TC). There is no need and purpose to maintain the existing practice of providing a printed copy of the agreement. The Employer requests that the Commission includes the Employer's proposal in its report.

51 Public Service Alliance of Canada v. Treasury Board, March 12, 2018, Federal Public Sector Labour Relations and Employment Board File 590-02-21.
52 Public Service Alliance of Canada v. Treasury Board, July 28, 2021, Federal Public Sector Labour Relations and Employment Board File 590-02-42347.

Article 13: Employee Representatives

Bargaining Agent proposal

13.01 The Employer acknowledges the right of the Alliance to appoint or otherwise select employees as representatives.

~~**13.02** The Alliance and the Employer shall endeavour in consultation to determine the jurisdiction of each representative, having regard to the plan of organization, the number and distribution of employees at the workplace and the administrative structure implied by the grievance procedure. Where the parties are unable to agree in consultation, any dispute shall be resolved by the grievance/adjudication procedure.~~

13.0~~3~~2 The Alliance shall notify the Employer in writing of the names and jurisdictions of its representatives ~~identified pursuant to clause 13.02.~~

13.0~~4~~3

(a) A representative shall ~~obtain the~~ **be granted** permission of his or her immediate supervisor before leaving his or her work to investigate employee complaints ~~of an urgent nature~~, to meet with local management for the purpose of dealing with grievances and to attend meetings called by management. ~~Such permission shall not be unreasonably withheld~~. Where practicable, the representative shall report back to his or her supervisor before resuming his or her normal duties.

(b) Where practicable, when management requests the presence of an Alliance representative at a meeting, such request will be communicated to the employee's supervisor.

(c) An employee shall not suffer any loss of pay when permitted to leave his or her work under paragraph (a).

13.0~~5~~4 The Alliance shall have the opportunity to have an employee representative introduced to new employees as part of the Employer's formal orientation programs~~, where they exist~~.

13.xx The Employer shall grant leave with pay to an employee acting on behalf of the Alliance for the purposes of preparation for:

i. Grievances
and
ii. any meeting or undertaking in which an employee may be provided Alliance representation under this Article, Article 17 or Article 18.

Remarks

The purpose of Article 13 is to recognize that employees may undertake the role of representatives of the union and the right of the Bargaining Agent to appoint or select employees as representatives.

The Employer acknowledges the right of employees to elect for Union representation on matters outlined in the collective agreement.

Deletion of the existing clause 13.02 and consequential change to the Bargaining Agents proposal at 13.03~~2~~

The Bargaining Agent's proposal seeks for the bargaining agent to be the sole decision maker on how many employee representatives are appointed and which jurisdiction they are assigned to represent.

The current practices allow for consultation amongst the parties to determine the jurisdiction of each representative, having regard to the plan of organization, the number and distribution of employees at the workplace and the administrative structure implied by the grievance procedure. As defined, this proposal would result in the elimination of all Employer's involvement, possibly leading to increased workload pressures and an imbalance amongst jurisdictions. The Employer submits that this consultation process is reasonable and necessary to ensure a proper distribution of representatives across jurisdictions considering that clause 13.04 provides the bargaining agent representatives with the possibility to obtain permission to leave work under certain circumstances.

The current language allows opportunity for both the Bargaining Agent and Employer to provide meaningful input throughout the consultation process. These joint discussions and interactions positively contribute to labour/management relations.

The Employer sees value in keeping the language under clause 13.02 as it stands as a means to also ensure that its employees benefit from reasonable access to their employee representatives. This language may also be helpful in limiting absences of employee representatives due to travel needs stemming from their representation responsibilities which contributes to instill a balance between the representation rights and the Employer's operational requirements.

The current language reflects standard practice and is a replication in the majority of collective agreements across the CPA.

Finally, the current language under clause 13.02 provides for flexibility as well as a mechanism to address disagreement amongst the parties, should this arise.

Bargaining Agent's proposal at 13.04 3

The Bargaining Agent's proposal would give union representatives the prerogative to investigate complaints at any time during working hours, instead of the current stipulation of "urgent nature" of the complaint.

These proposals could result in potential disruption to the Employer's operations and negates management's right to manage its workforce. It would also lead to unrestricted and unlimited liability towards the Employer in providing paid union leave, without the ability to account for operational requirements.

The language at the existing clause 13.04 already provides employee representatives with the necessary flexibility to attend to their responsibilities as "such permission shall not be unreasonably withheld" by management. Accordingly, it allows to maintain a balance between union business, the Employer's operational requirements and service to Canadians.

The Employer also wishes to note that Article 13 of the collective agreement is complemented by Article 14 which provides employee representatives with eligibility to various leaves to fulfill their responsibilities.

The Employer maintains that the language as currently written is sufficient and does not require any amendments.

Bargaining Agent's proposal on employee orientation programs at clause 13.05 4

The Bargaining Agent is seeking to remove the expression "where they exist" in reference to employee representative being introduced to new employees as part of the Employer's formal orientation programs.

The removal of this expression could lead to differing interpretations. Formal orientation programs are not available at each work locations and one could interpret its removal as a commitment that formal programs should consistently be available. The language as in the existing clause 13.05 is also consistent in most of the CPA collective agreements.

As part of their mandatory training at the Canada Border Services College recruits are provided with the opportunity to attend a session with union representatives prior to being appointed at their permanent work location. Although there is not a standard orientation program across CBSA, individual work locations have varying orientation/onboarding programs. For instance, in the Prairie region, the districts offer one (1) week orientation/onboarding for new recruits that includes dedicated time for employee representatives to speak to the new employees. In other work locations, employees can be introduced to their employee representatives using a variety of

approaches that account for the reality of each location whether it is through their own initiatives, facilitated by management or by employee representatives approaching them directly.

The CBSA manages one hundred and seventeen (117) land border crossings, thirteen (13) international airports, three (3) mail processing centers, three (3) Immigration Holding Centers, and carries out marine operations in Halifax, Montreal and Vancouver, as well as seven (7) regional offices. Given the operational differences between CBSA work locations, the Employer is opposed to enshrining a mandatory CBSA-wide approach to union orientation in the collective agreement. The inclusion of such language would also create a precedent for other CPA collective agreements.

The Employer submits that there is no demonstrated need to contemplate changes to the existing language.

Addition of a new clause 13.XX

The Bargaining Agent's new proposal seeks to provide leave with pay for employees acting on behalf of the Union for the purpose of preparation for grievances and any meeting or undertaking in which an employee may be provided Union representation.

It is the Employer's position that meetings for the grievance process, leave for union business and disciplinary matters are currently addressed in their respective articles, therefore the inclusion of this language would be redundant and not necessary.

Expanding the clause to provide leave with pay to employees acting on behalf of the Bargaining Agent and to other situations (i.e., preparation for any meeting or undertaking in which an employee may be provided Alliance representation) in a manner that is unrestricted and unlimited, would be unreasonable.

For these reasons, the Employer therefore requests that the Commission does not include the Bargaining Agent's proposals on Article 13 in its report.

Article 14: Leave with or without Pay for Alliance Business

Bargaining Agent proposal

Meetings During the Grievance Process

14.07 Where an employee representative wishes to discuss a grievance with an employee who has asked or is obliged to be represented by the Alliance in relation to the presentation of his or her grievance, the Employer will, where operational requirements permit, give them reasonable leave with pay for this purpose ~~when the discussion takes place in their headquarters area and reasonable leave without pay when it takes place outside their headquarters area.~~

14.08 Subject to operational requirements,

a. when the Employer originates a meeting with a grievor ~~in his headquarters area~~, he or she will be granted leave with pay and "on duty" status ~~when the meeting is held outside the grievor's headquarters area~~;
b. when a grievor seeks to meet with the Employer, he or she will be granted leave with pay ~~when the meeting is held in his or her headquarters area and leave without pay when the meeting is held outside his or her headquarters area~~;
c. when an employee representative attends a meeting referred to in this clause, he or she will be granted leave with pay ~~when the meeting is held in his or her headquarters area and leave without pay when the meeting is held outside his or her headquarters area~~.

14.14 Leave **without pay** granted to an employee under **this** Article, **with the exception of article 14.15,** ~~14.02, 14.09, 14.10, 14.12 and 14.13~~ will be with pay **and** the Alliance will reimburse the Employer for the salary and benefit costs of the employee during the period of approved leave with pay according to the terms established by the joint agreement in Appendix J.

14.15 Branch Presidents

The Employer will grant leave with pay to employees who exercise the authority of Branch President, or National CIU Representative other than the National President, on behalf of the Alliance so that such employees may undertake the duties associated with their office.

14.16 When an Employee is hired into an Alliance staff position and provides a minimum of two (2) weeks' notice, the Employer shall grant a leave of

	absence without pay and without loss of service for the duration of such leave for up to one (1) year. During this time period, the employee may, upon two (2) weeks' written notice, be returned to the position held immediately prior to the commencement of the leave.
14.17	**When operational requirements permit, the Employer will grant leave without pay to employees for any other union business validated by the Alliance with an event letter.**
	Employer proposal
14.14	Leave granted to an employee under clauses 14.02, 14.09, 14.10, 14.12 and 14.13 will be with pay **for a total cumulative maximum period of 3 months per fiscal year** and the Alliance will reimburse the Employer for the salary and benefit costs of the employee during the period of approved leave with pay according to the terms established by joint agreement in Appendix J. **Clause 14.14 expires on the expiry of the collective agreement, or upon implementation of the Next Generation Human Resources and Pay system, whichever comes first.**

Remarks

Deletion of references to leave without pay when meetings during the grievance process are taking place outside of the headquarters area at clauses 14.07 and 14.08

The Bargaining agent is seeking to delete the distinction between "headquarters area" and "outside of headquarters area", thereby ensuring that all leave, granted for the grievor or for the employee representative during the grievance process, be provided with pay.

Under Article 7: National Joint Council of the FB group collective agreement (Exhibit 1), it is noted that the *National Joint Council (NJC) Travel Directive* forms part of the agreement. In the Definitions section of the *Travel Directive,* the expression "Headquarters area" is defined as follows: "spans an area of sixteen (16) kms from the assigned workplace using the most direct, safe and practical road." It also distinguishes between two types of travel authority: one for travel within headquarters area and one for travel outside headquarters area. The *Directive* has been co-developed between the Employer and the Bargaining Agents that opted in the *Directive*, which includes PSAC.

This definition serves as an objective threshold under clauses 14.07 and 14.08 for determining meetings that will be with or without pay during the grievance process. More specifically, meetings inside the "headquarters area" are with pay and those "outside headquarters area" are without pay.

In the case of 14.08 a), the grievor is "on-duty status" when the meeting is outside their headquarters area. The on-duty status is provided to an employee when they travel outside their headquarters area at the request of the Employer, which also signals that the employee is authorised to travel. Therefore, that distinction under 14.08 a) should be maintained.

As for the leave with or without pay, either under 14.07 or 14.08, the Employer is not prepared to remove that distinction since currently twenty-one (21) other groups in the CPA have language that is identical or similar to what the FB group currently has. This proposal could be costly and would likely lead to paid travel requests.

Leave with pay to Branch President, or National CIU Representative in new clause 14.15

The Bargaining Agent is looking to add a new clause 14.15 to grant leave with pay to employees who exercise the authority of Branch President, or National CIU Representative other than the National President.

Three rounds of bargaining ago, the CBSA ended its long-time practice of granting full-time leave with pay for these particular positions as a result of a commitment made to save money in their 2013 Parliamentary Budget, and in response to the Deficit Reduction Action Plan (DRAP) – essentially they were legislated to make the change.

The Bargaining Agent lodged an unfair labour practice complaint to the FPSLREB 2013 PSLRB 46 (Exhibit 9), alleging that the practice was protected by s. 107 of the *Federal Public Sector Labour Relations Act* (Exhibit 2) because the parties were engaged in collective bargaining. The FPSLREB upheld the complaint confirming that the practice was protected for the duration of the freeze period:

> *203 I acknowledge the importance and significance of the impact on the Agency of the cost-cutting exercises mandated by the strategic round of review; however, under the freeze provisions of the Act, the implementation of this initiative must wait until the expiration of the freeze period or in the interim, with the consent of the bargaining agent.*

In other words, once negotiations were completed, and a new agreement was signed, if no new wording to this effect was negotiated then it was within the CBSA's prerogative to end the practice. The CBSA did end the practice when the agreement was signed on March 17, 2014. The Employer has no interest in reinstating this practice which has significant financial implications and submits there ought to be restraint on any additional cost increases. It far exceeds the parameters of what the CBSA budget will allow and would severely limit their economic capabilities.

The Employer further submits that there is a need to maintain independence between the Employer and the Bargaining Agent, which has been highlighted by the Supreme Court of Canada in the decision *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1. Providing leave with pay to full-time union officials would not maintain an appropriate separation with the affairs of the Bargaining Agent and could lead members to question the independence of their leadership.

Leave without pay to take up Alliance Staff Positions in new clause 14.16

The Bargaining Agent is proposing that the Employer authorize leave without pay for employees who are hired into staff positions with the Alliance.

Notwithstanding that no other collective agreement in the CPA provides for leave without pay specifically for the purpose of employment with a Bargaining Agent, employees can avail themselves of other existing leave provisions in collective agreements to work outside of the federal public service, including employment with the Bargaining Agent.

The Bargaining Agent has not provided the Employer with any compelling evidence or justification that would support this proposal.

Leave without pay for any union business in new clause 14.17

The Bargaining Agent is proposing that the Employer authorize leave without pay under Article 14 for any other union business validated by the PSAC with an event letter. Currently, leave with or without pay for PSAC business is limited to specific and well-defined reasons that have been negotiated by the parties.

The Employer submits that the Bargaining Agent's demand is too broad; agreeing to the Bargaining Agent's proposal would leave the Employer without any real discretion for granting this leave. This would impede on the Employer's need to balance leave requests with its operational requirements.

The Employer is of the view that the current language under Article 14 provides employees and employee-representatives with sufficient and necessary flexibility to attend and address labour-management matters.

Amount of leave subject to cost recovery in current clause 14.14

Both parties have proposals on clause 14.14. The Bargaining Agent is seeking to expand the application of this clause to additional types of leave while the Employer

seeks to clarify the maximum amount of leave with pay for Bargaining Agent business that would be subject to the cost-recovery mechanism to reflect current practice and to align with its negotiated intent.

The cost-recovery mechanism was introduced as a cost-neutral measure to alleviate pressures on the pay system without penalizing union representatives who participate in various Alliance business. It is supplemented by Appendix J of the FB group collective agreement (Exhibit 1), which includes more details concerning the implementation of Bargaining Agent leave with cost recovery. An extract of the appendix is reproduced below:

Memorandum of Understanding

Agreement with Respect to Leave for Alliance Business: Cost Recovery

This memorandum is to give effect to an agreement reached between the Treasury Board (the Employer) and the Public Service Alliance of Canada (the Alliance) to implement a system of cost recovery for leave for union business.

The elements of the new system are as follows:

- Recoverable paid leave for union business for periods of up to three (3) months of continuous leave per year;
- Cost recovery will be based on actual salary costs during the leave period, to which a percentage of salary, agreed to by the parties, will be added;
- The Employer will pay for all administration costs associated with the operation of this system**.**

The first bullet can lead to differing interpretation. The Employer's proposal at clause 14.14 would address this ambiguity by clarifying that the leave without pay mechanism with cost recovery is for up to a **total of three (3) months cumulative per fiscal year**. This proposal reflects the original intent of the provisions.

The Employer maintains that the intent of the cost-recovery mechanism is for a total *cumulative maximum period of three (3)* months per year. This intent is further reflected in the negotiated recovery rate charged by the Employer for the employee benefits.

The parties agreed to a recovery rate of 6%, recognizing that the full value of employee benefits is, on average for the FB group, about 37.5% excluding overtime. The breakdown of benefits is presented in Part II, section 2.5 on total compensation. The rate of 6% is associated with a total maximum of three (3) months per year. Any period

above a total maximum period of three (3) months per year would no longer render this measure cost-neutral to the Employer.

The Employer is also seeking to introduce an expiration date on this clause to reflect the temporary nature of the measures.

As for the Bargaining Agent’s proposals under the current clause 14.14, they are consequential changes to its proposals for the existing clauses 14.07 and 14.08 and for the inclusion of new clauses 14.15, 14.16 and 14.17. The Employer is opposed to these changes consistent with its reasons indicated above.

In conclusion, the Bargaining Agent has not provided the Employer with any compelling evidence or justification that would support its proposals under this article. The amendments as proposed by the Bargaining Agent would also be unprecedented in CPA collective agreements. The Employer therefore requests that the Commission only include the Employer’s proposal in its report.

Article 17: Discipline

Bargaining Agent proposal
NEW **17.01 No disciplinary measure in the form of a notice of discipline, suspension or discharge or any other form shall be imposed on any employee without:** **a) just, reasonable and sufficient cause;** **and** **b) without his/her receiving beforehand or at the same time a written notice showing the grounds on which a disciplinary measure is imposed.**
17.0~~1~~ 2 ~~When an employee is required to attend a meeting, the purpose of which is to conduct a disciplinary, administrative or investigative hearing concerning him or her or to render a disciplinary decision concerning him or her, the employee is entitled to have, at his or her request, a representative of the Alliance attend the meeting. Where practicable, the employee shall receive a minimum of two (2) days' notice of such a meeting.~~ **In any arbitration relating to a disciplinary measure, the burden of proof shall be confined to the grounds mentioned in the notice referred to in 17.01 above.**
17.0~~2~~3 When an employee is required to attend a meeting, the purpose of which is to conduct a disciplinary, administrative or investigative hearing concerning him or her or to render a disciplinary decision concerning him or her, the employee is entitled to have, at his or her request, a representative of the Alliance attend the meeting **so that said representative may participate in good faith to the discussion and contribute to the clarification of the situation.** ~~Where practicable, t~~**T**he employee **and his/her Alliance representative** shall receive a minimum of two (2) days' notice of such a meeting.
17.0~~3~~4 The Employer shall notify the local representative of the Alliance as soon as possible that such suspension**,** ~~or~~ termination **or investigative or administrative meeting** has occurred.

17.045	The Employer agrees not to introduce as evidence in a hearing relating to disciplinary action any document from the file of an employee the content of which the employee was not aware of at the time of filing or within a reasonable period thereafter.
17.0~~5~~6	Any document or written statement related to disciplinary action which may have been placed on the personnel file of an employee shall be destroyed after ~~two (2)~~ **one (1)** year~~s~~ ~~have~~ **has** elapsed since the **date on which the incident which gave rise to the** disciplinary action ~~was taken~~ **took place**, provided that no further disciplinary action has been recorded during this period.
NEW **17.07**	**In the case of suspension and termination, the burden of proof of just cause shall rest with the Employer. Evidence shall be limited to the grounds stated in the written notice consistent with 17.01.**
NEW **17.xx**	**a) The Employer agrees that every effort shall be made to ensure that any disciplinary investigation, administrative investigation or any other form of investigation subject to this article shall be carried out in as timely a fashion as possible.** **b) In no case shall any investigation, conclusion of investigation, delivery of findings and administration of discipline or removal of tools and/or security clearance subject to this Article exceed thirty (30) calendar days.** **c) No discipline, removal of tools or removal of security clearance shall be administered to an employee should the Employer fail to adhere to b) above.**
17.xx	**Electronic surveillance** **At no time may electronic surveillance systems be used to evaluate employee performance or to gather evidence in support of disciplinary measures, unless such disciplinary measures result from a criminal act.**
Employer movement	
17.05	Any document or written statement related to disciplinary action which may have been placed on the personnel file of an employee shall be destroyed after

two (2) years have elapsed since the disciplinary action was taken, ~~**exclusive of any periods of leave without pay,**~~ provided that no further disciplinary action has been recorded during this period. **This period will automatically be extended by the length of any period of leave without pay in excess of three (3) months.**

Remarks

Language regarding the conditions under which discipline shall be imposed at new clause 17.01

The Bargaining Agent is proposing new language at clause 17.01 that is redundant since the current clause 17.01 and applicable legislation already addresses the same notions/concepts:

- The disciplinary measures contemplated would not be taken without just, reasonable and sufficient cause; and
- The notice provided to an employee contains the reasons, or grounds for taking any disciplinary measures.

More specifically, the current language as found at clause 17.01 of the FB group collective agreement (Exhibit 1) reads as follow:

> **17.01** When an employee is suspended from duty or terminated in accordance with paragraph 12(1)(c) of the *Financial Administration Act*, the Employer shall notify the employee in writing of the reason for such suspension or termination. The Employer shall endeavour to give such notification at the time of suspension or termination.

The Employer also submits that including the proposed language in the collective agreement would not be appropriate as it is further substantiated by subsection 12 (3) of the *Financial Administration Act* (Exhibit 4) under which the Employer is legally bound to ensure that all disciplinary measures are for cause:

> **For cause**
>
> **(3)** Disciplinary action against, or the termination of employment or the demotion of, any person under paragraph (1)(c), (d) or (e) or (2)(c) or (d) may only be for cause.

Addition of language at clauses 17.01~~1~~2 and 17.07 of the Bargaining Agent proposals to confine the burden of proof to the grounds mentioned in clause 17.01 and to confine the

burden of proof of just cause with the Employer under clause 17.07 of the Bargaining Agent proposal

The Bargaining Agent is proposing new language that would confine the burden of proof to the reasons/grounds mentioned in the written notice, and that in the case of suspension and termination, the burden of proof of just cause rest with the Employer and be limited to the grounds stated in the written notice.

The Federal Public Sector Labour Relations and Employment Board (FPSLREB), as the independent quasi-judicial statutory tribunal that is responsible for administering the collective bargaining and grievance adjudication systems in the Federal Public Service, outlines the burden of proof, under its Labour Relations Procedural Guide:

> *In both grievance adjudications and complaint proceedings, the party who bears the burden of proof must establish its case on a balance of probabilities. That is, the facts must prove that it is more probable than not that the situation grieved or complained of occurred. However, the party that bears the burden of proving its case on a balance of probabilities depends on the type of grievance or complaint.*

Therefore, this proposal could limit the Employer's ability to fully present its case before an adjudicator, contrary to principles of procedural fairness. Questions related to the burden of proof and evidence to be tendered at an adjudication should not form part of the collective agreement. Such matters are already established in case law and should properly be decided by the decision-maker in the context of the hearing.

Addition of language at clauses 17.0~~2~~3 and 17.0~~3~~4 of the Bargaining Agent proposals

The Bargaining Agent is proposing to add language at their clause 17.03 to indicate that the Alliance representative "may participate in good faith to the discussion and contribute to the clarification of the situation." and that the Employer shall provide the employee and his/her Alliance representative two (2) days' notice of the requirement to attend a meeting.

The meetings falling under the confines of this clause aim to allow the Employer to gather firsthand information directly from the employee on the events that led to the requirement for the meeting. Gathering information directly from the employee is a cornerstone of the process and paramount for allowing management to determine whether disciplinary or administrative measures are required to address the situation or correct the behaviour. Allowing the employee representative to play a more active role could interfere with the investigation process and gathering of information from the employee and witnesses. The employee representative plays a support role in these meetings. It would, therefore, not be appropriate for the employee representative to

answer questions pertaining to an incident of which the representative was not a firsthand witness. This would frustrate the process and render it unmanageable.

Thus, the Employer maintains that the existing language of the collective agreement properly reflects the intent of the clause and is consistent with procedural fairness principles.

As for the requirement for the Employer to provide the Alliance representative with a minimum of two (2) days' advance notice of such a meeting, the Employer submits that the decision as to whether an employee wishes to be represented at a meeting rests with the employee. The Employer already informs their employees of their right to representation and the ability to seek representation should rest with them. The inclusion of this language would run the risk of breaching an employee's privacy, especially in instances where they would not wish to seek representation.

The same argument applies to the Bargaining Agent proposal to add language at its proposed clause 17.04 to expand the Employer's obligation to notify the local representative of the Alliance in cases of suspensions and terminations to include "investigative or administrative meeting". This language would overburden the process in such cases. There is no justification to expand the obligation to such meetings.

Requirement to destroy documents related to a disciplinary action after one (1) year rather than two (2) at clause 17.0~~5~~6 of the Bargaining Agent proposal

The Bargaining Agent is proposing to decrease the period to purge disciplinary records from two (2) years to one (1) year from the date on which the incident which gave rise to the disciplinary action took place. As per the existing language, the two (2) years timeline starts from the time the disciplinary action is taken. Reducing the period to one (1) year would not allow the Employer a reasonable opportunity to observe or monitor the employee's behaviour or actions as part of the corrective measures (e.g., when an employee takes six (6) months leave of absence without pay or twelve (12) months maternity or parental leave). Two (2) years is also a reasonable period to expect and ensure no other disciplinary issues arise.

Furthermore, the Employer has a proposal to extend the retention of the notice of disciplinary action and is amending its original proposal as indicated on pages 90-92 and 98. As per this proposal, the retention of the notice of discipline would be extended by the length of any period of leave without pay in excess of three (3) months.

Addition of new language at clause 17.xx to limit the timeline to complete investigations to thirty (30) days and on the removal of defensive equipment (or tools) or security clearance

The Bargaining Agent is proposing new language at clause 17.xx to stipulate that any disciplinary investigation, administrative investigation or any other form of investigation subject under this article be carried out in a timely fashion. Specifically, calling for investigations to not exceed thirty (30) days and for no discipline or removal of tools and/or security clearance be administered should these timelines not be adhered to.

The Employer is opposed to the inclusion of such language in the collective agreement for a number of reasons.

The principles to follow when conducting investigations are well established in case law. Investigations are also subject to the Employer's Guidelines for Discipline (Exhibit 10) to ensure investigations are properly conducted.

Despite its best effort to conduct investigations in an as expedited fashion as reasonably possible, it is to be expected that some investigations could require more than thirty (30) days to complete. This can be due to a number of reasons related to complexity, multi-faceted case, witness availability or the contracting process for appointing a qualified investigator to conduct the investigation for example.

Imparting a firm timeline of thirty (30) days would unduly limit the Employer's ability to ensure investigations are conducted with the required level of attention and thoroughness they deserve to ensure fairness in the process and its outcome, and with the Employer's commitment to exercise its due diligence. This could prejudice employees by preventing a complete investigation of the issues and could also impede on the Employer's requirement to ensure that the rights to natural justice and procedural fairness are adhered to.

The Employer is confident that the principles as established by the case law and the Employer's guidelines are effective and maintains that it would be contrary to the parties' interests, inclusive of employees, to embed such language in the collective agreement.

As for the proposal to submit the removal of tools or security clearance to this same timeline, the Bargaining Agent is characterizing the removal of tools and of a security clearance as a disciplinary measure. However, these are administrative and not disciplinary in nature. The intent of this clause is to govern disciplinary matters, whereas the Bargaining Agent's proposal seeks to include administrative measures, already contained in the Standard on Security Screening (Exhibit 11).

The *Standard* encompasses a range of security practices that are to be implemented throughout an individual's employment with the Government of Canada, from initial screening to active employment. Roles and responsibilities of departments pertaining to

human resources management as well as legal and privacy imperatives are outlined in the *Standard*. This includes instances where an employee's security clearance may be suspended pending investigation, when their presence at work poses a security risk or could undermine or impede an investigation.

Section 6, Adverse Information, of Appendix D - Evaluation, Decision Making and Review for Cause of the Standard on Security Screening (Exhibit 11), states:

> *"Adverse information can, but may not be, sufficient grounds to deny or revoke a security status or clearance. When uncovered, such information is to be used as the basis for further investigation, including a security interview."*

Furthermore, Section 15, Review for Cause, of Appendix D – Evaluation, Decision Making and Review for Cause of the Standard on Security Screening (Exhibit 11) confirms that:

> *"The review for cause of a security status or clearance and any subsequent decision does not constitute a form for disciplinary action. Rather it is an administrative action that could result in the termination of an individual's employment, contract or assignment because a security status or clearance is a condition of employment, assignment or contract.*
>
> *A review for cause may be conducted in parallel to a disciplinary action. In such situations, consultation with departmental or agency human resources management unit is paramount."*

Any employee can, therefore, be subject to ongoing review when new adverse information concerning them comes to the Employer's attention. This process is by nature administrative and not disciplinary.

The Bargaining Agent raised similar concerns in Hillis v. Treasury Board (Department of Human Resources Development) 2004 PSSRB 151 (Exhibit 12), however the arbitrator reaffirmed that the security review process taking place was an appropriate administrative measure. The Employer had an obligation to use this process in good faith, with true intent and administrative and procedural fairness, which in itself provided protection to the employee.

Therefore, this provides the Employer with the ability to apply the Policy on Government Security (Exhibit 13), in appropriate cases, where the objective is to effectively manage government security controls in support of the trusted delivery of Government of Canada programs and services and in support of the protection of information, individuals and assets.

The *Directives* on these matters are effective and sufficient, therefore, the Employer maintains that the Bargaining Agent's proposal should not be embedded in the collective agreement.

The Commission should also be aware that CBSA has a comprehensive *Directive on Agency Firearms and Defensive Equipment* (Exhibit 14) which applies to employees as well as recruits undergoing training. The *Directive* has the following objective:

> *The Canada Border Services Agency (CBSA) will ensure that, in the course of or for the purposes of their employment related duties, its employees and recruits are provided with and trained to safely store, handle, wear and use defensive and protective equipment, in accordance with all applicable laws, policies, directives and standard operating procedures.*

The *Directive* addresses the removal of Agency firearms and defensive equipment for administrative reasons (i.e.: officer ceases to be an employee; officer fails to maintain his or her proficiency in the use of force/control and defensive tactics or in the use of duty firearms; etc.) and for non-administrative reasons (i.e.: threats or actual violent behaviour towards others or themselves; alcohol or substance abuse; medical condition; etc.).

The *Directive* also details the process for the review and return of Agency firearms and defensive equipment. This process includes the requirement to create and implement an action plan for the potential return of the firearm and/or defensive equipment. Finally, the process already stipulates that the employee has the right to consult with union representatives for the purposes of preparing his or her written response to the Director's written recommendation on the matter.

Addition of new language at 17.xx on electronic surveillance

The Bargaining Agent is proposing new language at clause 17.xx to restrict the Employer's use of electronic monitoring systems. As per the proposal, an electronic monitoring system could not be used as a means to evaluate the performance of employees, or to gather evidence in support of disciplinary measures, unless such disciplinary measures result from the commission of a criminal act.

Evidence obtained from surveillance equipment in disciplinary matters has been acceptable in numerous adjudications. The admissibility of any evidence related to surveillance equipment should rest with the administrative decision-maker when applying the established test found in case law.

The broad terms of the Bargaining Agent's proposal would unduly limit the Employer's ability to present evidence that could otherwise be admissible, this could impede on natural justice and procedural fairness. Electronic surveillance is used to validate situations that could lead to disciplinary measures or to exonerate employees of alleged actions.

From the Employer's perspective, the Bargaining Agent has not submitted any compelling evidence or justification to support the need of introducing such language in collective agreements. The Employer reminds the Commission that individual recourse exists should an employee disagree with disciplinary action taken and any evidence used in support of disciplinary action.

The clause would also be unmanageable with respect to the determination of the commission of a criminal act.

Employer Proposal: Clause 17.05 - Retention period

As per its original proposal, the Employer proposed to extend the retention period of any document or written statement related to disciplinary action by a period equivalent to any periods of leave without pay. The Employer is amending its proposal to extend the retention period by the length of any single period of leave without pay in excess of three (3) months.

The corrective nature of disciplinary measures should provide management with the opportunity to evaluate employees' behaviour in the workplace and take corrective actions if and when required. However, this cannot be achieved when an employee is on an extended period of leave without pay.

To account for periods of leave without pay, extensions to the retention periods are included in collective agreements of the following groups: Air Traffic Control (AI), Aircraft Operations (AO), Audit, Commerce and Purchasing (AV), Comptrollership (CT), Economics and Social Science Services (EC), Electronics (EL), Foreign Service (FS), Law Enforcement Support and Police Operations Support (LES-PO), Law Practitioner (LP), Architecture, Engineering & Land Survey (NR), Program and Administrative Services (PA), Research (RE), Radio Operations (RO), Health Services (SH), Applied Science & Patent Examination (SP), Translation (TR), University Teaching (UT).

In conclusion, the Employer requests that the Commission not include the Bargaining Agent's demands related to article 17 in its report but, instead, include the Employer's proposal at clause 17.05.

Article 18: Grievance Procedure

Bargaining Agent proposal
18.11 There shall be no more than a maximum of ~~four (4)~~ **three (3)** levels in the grievance procedure. These levels shall be as follows: (a) Level 1: first level of management; (b) Levels 2 and 3 in departments or agencies where such levels are established (intermediate level(s)); (c) Final level: chief executive or deputy head or an authorized representative. ~~Whenever there are four (4) levels in the grievance procedure, the grievor may elect to waive either Level 2 or 3.~~ No employer representative may hear the same grievance at more than one level in the grievance procedure. **18.23** Where it appears **to the grievor and, where applicable, the Alliance,** that the nature of the grievance is such that a decision cannot be given below a particular level of authority, any or all the levels except the final level may be eliminated by ~~agreement of the Employer and~~ the grievor, and, where applicable, the Alliance.
Employer proposal
18.11 There shall be no more than a maximum of ~~four (4)~~ **three (3)** levels in the grievance procedure. These levels shall be as follows: a. Level 1: first level of management; b. Levels 2 ~~and 3~~ in departments or agencies where such levels are established (intermediate level~~(s)~~); c. Final level: chief executive or deputy head or an authorized representative. ~~Whenever there are four (4) levels in the grievance procedure, the grievor may elect to waive either Level 2 or 3.~~ No employer representative may hear the same grievance at more than one level in the grievance procedure.

Remarks

Both parties have the same proposals on clause 18.11 and agree in principle.

The Bargaining Agent is proposing at clause 18.23 to allow the grievor and, where applicable, the Alliance to unilaterally decide to eliminate any or all levels of the grievance procedure except the final level.

The grievance process is a forum used to resolve issues that occur in the workplace. Employees are usually required to first discuss most complaints with their supervisor. If it cannot be resolved, the dispute proceeds to higher levels of the grievance process in the search of a resolution. The Employer is of the opinion that there is great value in trying to resolve issues at the lowest level of authority possible. Therefore, eliminating a level of authority must be made with the concurrence of the Employer.

The importance of discussions between management, the employee, and where applicable the Bargaining Agent, is important to a good working relationship. The grievance process is to allow decision maker to review their decision if an error as been made. This is clearly outlined under clause 18.07 of the FB collective agreement (Exhibit 1):

> ***18.07*** *The parties recognize the value of informal discussion between employees and their supervisors and between the Alliance and the Employer to the end that problems might be resolved without recourse to a formal grievance. […]*

Providing the grievor and the Bargaining Agent to unilaterally chose the level of the grievance procedure they want to eliminate could be used as a pressure on the employer, slow down the flow of grievances responses and ultimately by detrimental to the employees.

The Employer requests that the Board not include the Bargaining Agent's proposal on clause 18.23 in its report.

Article 24: Technological Change

Bargaining Agent proposal
24.01 ~~The parties have agreed that, in cases where, as a result of technological change, the services of an employee are no longer required beyond a specified date because of lack of work or the discontinuance of a function, Appendix C, Workforce Adjustment, will apply. In all other cases, the following clauses will apply~~. **The parties agree that no employee shall suffer job loss as a result of technological change, nor shall any bargaining unit positions be eliminated as a result of technological change.**
24.02 In this Article, "technological change" means: (a) the introduction by the Employer of equipment ~~or~~ material, **systems or software** of a different nature than that previously utilized; and (b) a change in the Employer's operation directly related to the introduction of that equipment, ~~or~~ material, **systems or software.**
24.03 Where technological change is to be implemented, the Employer will seek ways and means of minimizing adverse effects on employees which might result from such changes.
24.04 The Employer agrees to provide as much advance notice as is practicable but, except in cases of emergency, not less than ~~one hundred and eighty (180)~~ **three hundred and sixty (360)** days' written notice to the Alliance of the introduction or implementation of technological change when it will result in significant changes in the employment status or working conditions of the employees.
24.05 The written notice provided for in clause 24.04 will provide the following information: (a) the nature and degree of the technological change; (b) the date or dates on which the Employer proposes to effect the technological change; (c) the location or locations involved; (d) the approximate number and type of employees likely to be affected by the technological change; (e) the effect that the technological change is likely to have on the terms and conditions of employment of the employees affected.

	(f) the business case and all other documentation that demonstrates the need for the technological change and the complete formal and documented risk assessment that was undertaken as the change pertains to the employees directly impacted, all employees who may be impacted and to the citizens of Canada if applicable, and any mitigation options that have been considered.
24.06	As soon as reasonably practicable after notice is given under clause 24.04, the Employer shall consult meaningfully with the Alliance, **at a mutually agreed upon time,** concerning the rationale for the change and the topics referred to in clause 24.05 on each group of employees, including training.
24.07	**The parties agree that technological change shall not be implemented where such implementation may potentially put national security at risk.**
24.08	When, as a result of technological change, ~~the Employer determines that~~ an employee requires new skills or knowledge in order to perform the duties of the employee's substantive position, the Employer will ~~make every reasonable effort~~ ~~to~~ provide the necessary training during the employee's working hours without loss of pay and at no cost to the employee.
Employer movement / proposal	
24.04	The Employer agrees to provide as much advance notice as is practicable but, except in cases of emergency, not less than ~~one hundred and eighty (180)~~ ~~**thirty (30)**~~ **ninety (90)** days' written notice to the Alliance of the introduction or implementation of technological change when it will result in significant changes in the employment status or working conditions of the employees.

Remarks

Deletion of existing language and addition of new language at clause 24.01

The Bargaining Agent is proposing to delete the current language at clause 24.01. However, this clause contains a direct reference to "a lack of work or a discontinuance of a function", which is intended to identify certain distinctions that would trigger workforce adjustment, as opposed to the balance of the language in the article that would apply to all other situations where technological change takes place by definition.

This is common to all CPA collective agreements and workforce adjustment situations are defined within the related appendix. It should also be noted that as per the Appendix on Workforce Adjustment, it has precedence over the article on job security. Appendix C

of the FB group collective agreement (Exhibit 1) include the agreement reached by the parties on workforce adjustment.

The Bargaining Agent is also proposing to replace the current language with an agreement between the parties that technological change shall not lead to job loss or elimination of bargaining unit positions. The Employer submits that the Bargaining Agent's proposal deals with a term or condition of employment established under section 64 (1) of the *Public Service Employment Act* (PSEA) that relates to procedures or processes governing the termination of employment. The collective agreement cannot prevent the Employer from laying off employees as this is provided for in legislation.

> **Laying off of employees**
>
> 64 (1) Where the services of an employee are no longer required by reason of lack of work, the discontinuance of a function or the transfer of work or a function outside those portions of the federal public administration named in Schedule I, IV or V to the *Financial Administration Act* the deputy head may, in accordance with the regulations of the Commission, lay off the employee, in which case the deputy head shall so advise the employee.

As such, this proposal cannot be subject to collective bargaining as established by s. 113 of the *Federal Public Sector Labour Relations Act* (Exhibit 2).

> **Collective agreement not to require legislative implementation**
>
> **113** A collective agreement that applies to a bargaining unit — other than a bargaining unit determined under section 238.14 — must not, directly or indirectly, alter or eliminate any existing term or condition of employment or establish any new term or condition of employment if
>
> **(a)** doing so would require the enactment or amendment of any legislation by Parliament, except for the purpose of appropriating money required for the implementation of the term or condition; or
>
> ***(b)*** the term or condition is one that has been or may be established under the *Public Service Employment Act*, the *Public Service Superannuation Act* or the *Government Employees Compensation Act.*

Further, the bargaining agent's proposal relates to "the alteration, elimination or establishment" of a term or condition that "has been or may be established under the *Public Service Employment Act*". Sections 177 (1) (a) and (b) of the FPSLRA (Exhibit 2) prohibit such a proposal from being included in the report.

Report not to require legislative implementation

177 (1) The report may not, directly or indirectly, recommend the alteration or elimination of any existing term or condition of employment, or the establishment of any new term or condition of employment, if

(a) the alteration, elimination or establishment would require the enactment or amendment of any legislation by Parliament, except for the purpose of appropriating money required for implementation;

(b) the term or condition is one that has been or may be established under the *Public Service Employment Act*, the *Public Service Superannuation Act* or the *Government Employees Compensation Act;*

It would also preclude the Employer from exercising its authority to "determine the human resources requirements of the public service and provide for the allocation and effective utilization of human resources in the public service as per paragraph 11.1 (1) (a) of the *Financial Administration Act* (Exhibit 4).

Powers of the Treasury Board

- **11.1 (1)** In the exercise of its human resources management responsibilities under paragraph 7(1)(e), the Treasury Board may

  (a) determine the human resources requirements of the public service and provide for the allocation and effective utilization of human resources in the public service;

It also relates to the assignment of duties and the organization of the federal public administration. The Employer's rights in this regard are specifically protected and preserved under s. 7 of the FPSLRA (Exhibit 2):

Right of employer preserved

7 Nothing in this Act is to be construed as affecting the right or authority of the Treasury Board or a separate agency to determine the organization of those portions of the federal public administration for which it represents Her Majesty in right of Canada as employer or to assign duties to and to classify positions and persons employed in those portions of the federal public administration.

Finally, the Employer respectfully submits that the Commission does not have the jurisdiction to make recommendation on this matter as per s. 177 (1) of the FPSLRA (Exhibit 2) and, in particular, s. 177 (1) (c), which prohibits from being included in the

report a term and condition which, directly or indirectly, relates to standards, procedures or processes governing the appointment, appraisal, promotion, deployment, rejection on probation or lay-off of employees.

> **Report not to require legislative implementation**
>
> **177 (1)** The report may not, directly or indirectly, recommend the alteration or elimination of any existing term or condition of employment, or the establishment of any new term or condition of employment, if
>
> […]
>
> > **(c)** the term or condition relates to standards, procedures or processes governing the appointment, appraisal, promotion, deployment, rejection on probation or lay-off of employees; or

Addition of "systems or software at clause 24.02

The addition of the language proposed by the Bargaining Agent for clause 24.02 would significantly and unduly broaden the scope of Article 24. This addition could be argued as encompassing any systems and/or software changes, updates or upgrades, which are common and do not amount to technological changes as contemplated by the article.

The current provision is already broad enough (i.e. the reference to material or equipment) to capture a large variety of technological changes when the equipment or material is of a different nature than that previously utilized, which may include systems or software where warranted. There does not appear to be merit in singling out "systems or software" in the clause, as proposed by the Bargaining Agent.

Increase of notification period at clause 24.04

The proposal to increase the notification period from one hundred eighty (180) to three hundred sixty (360) days in clause 24.04 is unreasonable and places too much constraint on the Employer. It would be impractical, if not impossible at times, to provide such lengthy notice of impending changes without unduly delaying the introduction of required changes.

This is further demonstrated by the Employer's own proposal to decrease the notification period to ninety (90) days.

Expansion of the information in the written notice at clause 24.05

The Employer submits that the Bargaining Agent's proposal for additional language at clause 24.05 introduces an obligation that would represent a significant burden on the Employer as technological changes vary in scope and the proposed language is extremely broad. The determination of a need for technological change is the prerogative of the Employer and there is no justification for the proposed requirement to provide business cases.

The Employer is of the view that the existing provisions at clauses 24.05 and 24.06, providing for notification and consultation, are adequate and sufficient. The changes proposed by the Bargaining Agent are not found in other CPA collective agreements.

The FPSLRA and the collective agreement (Article 21) also include broad provisions dealing with joint consultation.

Timing of consultation at clause 24.06

The existing provisions indicate that the Employer must consult meaningfully with the Bargaining Agent "as soon as reasonably practicable" after notice is given under clause 24.04.

The addition of new language at clause 24.06 has the potential to cause undue delays in the consultation process.

New clause 24.07

The Bargaining Agent is proposing a new clause 24.07 that would specify that the implementation of technological change shall be limited by its potential impacts on national security.

National security is the Government's right and responsibility and it is inherent to federal institutions' responsibilities and mandate to ensure that their policies and programs preserve the national security. The Employer feels very strongly that this Government's prerogative should not be altered in any way.

The importance of this requirement is namely recognized by the inclusion of Article 4 in the FB group collective agreement (Exhibit 1) which establishes that:

> **Article 4: state security**
>
> **4.01** Nothing in this agreement shall be construed to require the Employer to do or refrain from doing anything contrary to any instruction, direction or regulations

> given or made by or on behalf of the Government of Canada in the interest of the safety or security of Canada or any state allied or associated with Canada.

Similar language is also included in other CPA collective agreements.

It is also worth noting for the Commission that the sensitivity and importance of the issue of national security to the Government as well as the enabling role of the Treasury Board of Canada Secretariat (TBS) on the issue is apparent in the Employer's comprehensive Policy on Government Security (Exhibit 13) which "Provides direction to manage government security in support of the trusted delivery of GC programs and services, the protection of information, individuals and assets, and provides assurance to Canadians, partners, oversight bodies and other stakeholders regarding security management in the GC."

Furthermore, national security is referred to in various legislation such as the *National Security Act*, and the *Canadian Security Intelligence Service Act*, to ensure the independence of the Government in protecting its national security (special rights are given).

The FPSLRA also prohibits the presentation of grievances relating to any action taken under any instruction, direction or regulation given or made by or on behalf of the Government of Canada in the interest of the safety or security of Canada or any state allied or associated with Canada (ss. 208 (6), 215 (7) and 220 (4)). Section 250 (1) of the FPSLRA (Exhibit 2) and also includes a general protection of the employer's rights regarding matters related to the safety or security of Canada or of any state allied or associated with Canada.

The inclusion of a new clause 24.07 would constitute a precedent in CPA collective agreements. The consultative process as established by Article 24 already provides the Bargaining Agent with a mechanism to mitigate any potential risk on that regard.

Additionally, the Bargaining Agent has not presented compelling evidence of the value of the inclusion of this language or of its requirement based on past practices.

Deletion of the reasonableness standard for providing training at clause 24.08

The deletion of language in clause 24.08 as it relates to providing training places a much higher burden on the Employer and would open the door to employees claiming that more training is always needed.

In conclusion, the Bargaining Agent has not made a compelling argument to support its proposals for modifying Article 24 or demonstrated that the current provisions are inadequate.

Accordingly, the Employer requests that the Commission only include the Employer’s proposal in its report.

Article 25: Hours of Work (Unpaid Meal Break)

Article 25 – Hours of work (clauses 25.04, 25.06, 25.13, 25.19, 25.27)

Employer proposals
25.04 It is recognized that certain operations require some employees to stay on the job for a full scheduled work period, inclusive of their **unpaid meal break** ~~meal period~~. In these operations, such employees will be compensated for their **unpaid meal break** ~~meal period~~ in accordance with the applicable overtime provisions. […] **Day work** **25.06** Except as provided for in clauses 25.09, 25.10 and 25.11: a. the normal workweek shall be thirty-seven decimal five (37.5) hours from Monday to Friday inclusive; and b. the normal workday shall be seven decimal five (7.5) consecutive hours, exclusive of an ~~lunch period~~ **unpaid meal break**, between the hours of 7 am and 6 pm. […] **25.13** When, because of operational requirements, hours of work are scheduled for employees on a rotating or irregular basis, or on a non-rotating basis where the employer requires employees to work hours later than 6 pm and/or earlier than 7 am, they shall be scheduled so that employees, over a period of not more than fifty-six (56) calendar days: a. on a weekly basis, work an average of thirty-seven decimal five (37.5) hours and an average of five (5) days; b. work seven decimal five (7.5) consecutive hours per day, exclusive of a one half (1/2) hour **unpaid meal break** ~~meal period~~; c. obtain an average of two (2) days of rest per week; d. obtain at least two (2) consecutive days of rest at any one time except when days of rest are separated by a designated paid holiday which is not worked; the consecutive days of rest may be in separate calendar weeks. […] **25.19** A specified **unpaid meal break** ~~meal period~~ shall be scheduled as close to the midpoint of the shift as possible. It is also recognized that the **unpaid meal break** ~~meal period~~ may be staggered for employees on continuous operations. However, the

Employer will make every effort to arrange **unpaid meal breaks** ~~meal period~~ at times convenient to the employees.

[…]

Terms and conditions governing the administration of variable hours of work

25.27

a. The scheduled hours of work of any day as set forth in a variable schedule specified in clause 25.25 may exceed or be less than seven decimal five (7.5) hours; starting and finishing times, **unpaid** meal breaks and rest periods shall be determined according to operational requirements as determined by the Employer; and the daily hours of work shall be consecutive.

Remarks

The current collective agreement interchangeably refers to "lunch period", "meal period" and "meal breaks". To ensure a common understanding and consistency in the application of the unpaid meal break, the Employer seeks to replace all references to a "lunch period", "meal period" and "meal break" to "an unpaid meal break".

This proposed housekeeping change will not result in any change in application. This is merely a point of clarity as meal breaks are unpaid except where specifically indicated. For example, employees that are required to work during their meal break will continue to be paid at the applicable overtime rate consistent with clause 25.04. Employees entitled to a paid meal premium will also continue to receive it consistent with Appendix L of the collective agreement for uniformed FBs.

The Employer also wish to note that this was also an Employer proposal for the other 4 groups represented by PSAC (i.e., Education and Library Science (EB), Program and Administrative Services (PA), Operational Services (SV) and Technical Services (TC)) for this round of bargaining. The language of these groups' collective agreements has been amended consistent with this proposal. The same change should be made in the FB group collective agreement.

The Employer requests that the Commission includes the Employer's proposal in its report.

Article 25: Hours of work

Bargaining Agent proposals
Day work **25.06** Except as provided for in clauses 25.**30**~~09~~, 25.10 and 25.11: a. the normal workweek shall be thirty-seven decimal five (37.5) hours from Monday to Friday inclusive; and b. the normal workday shall be seven decimal five (7.5) consecutive hours, exclusive of a lunch period, between the hours of 7 am and 6 pm.
25.~~09~~30 Variable hours a. Notwithstanding the provisions of clause 25.06 **in the case of day work and both 25.13 and 25.18 in the case of shift work**, upon request of an employee and with the concurrence of the Employer, where operational requirements permit an employee may complete the weekly hours of employment in a period of other than five (5) full days, provided that, over a period of fourteen (14), twenty-one (21) or twenty-eight (28) calendar days, the employee works an average of thirty-seven decimal five (37.5) hours per week, and such request shall not be unreasonably denied. b. In every fourteen (14), twenty-one (21) or twenty-eight (28) day period, the employee shall be granted days of rest on such days as are not scheduled as a normal workday for the employee. c. Employees covered by this clause shall be subject to the variable hours of work provisions established in clauses 25.25 to 25.28.
25.12 (a) An employee on day work whose hours of work are changed ~~to extend before or beyond the stipulated hours of 7 a.m. and 6 p.m., as provided in paragraph 25.06(b),~~ and who has not received at least seven (7) days' notice in advance of the starting time of such change shall be paid for the first (1st) day or shift worked subsequent to such change at the rate of time and one-half (1 1/2) for the first seven decimal five (7.5) hours and double (2) time thereafter. Subsequent days or shifts worked on the revised hours shall be paid for at straight-time rate, subject to Article 28, Overtime.

(b) **Late-Hour Premium**

An employee who is not a shift worker and who completes his workday in accordance with the provisions of paragraph 25.11(b) shall receive a late-hour premium of seven dollars ($7) per hour for each hour worked before 7 a.m. and after 6 p.m. ~~The late-hour premium shall not apply to overtime hours.~~

Shift Work

25.13 When, because of operational requirements, hours of work are scheduled for employees on a rotating or irregular basis, or on a non-rotating basis where the employer requires employees to work hours later than 6 p.m. and/or earlier than 7 a.m., they shall be scheduled so that employees, over a period of not more than fifty-six (56) calendar days:

(a) on a weekly basis, work an average of thirty-seven decimal five (37.5) hours and an average of five (5) days;
(b) work seven decimal five (7.5) consecutive hours per day, exclusive of a one-half (1/2) hour meal period;
(c) obtain an average of two (2) days of rest per week;
(d) obtain at least two (2) consecutive days of rest at any one time except when days of rest are separated by a designated paid holiday which is not worked; ~~the consecutive days of rest may be in separate calendar weeks.~~

25.17 Shift Schedule - Reopener

(a) If the Employer reopens a shift schedule due to operational requirements, or a line becomes vacant, the Employer will determine the qualifications required prior to canvassing all employees covered by this specific schedule. Should more than one employee meeting the qualifications required select the same line on the schedule, years of service ~~as defined in subparagraph 34.03(a)(i)~~ will be used as the determining factor to allocate the line.
(b) In populating a newly established schedule, as developed by the Employer, the Employer will canvass all employees covered by the specific schedule for volunteers to populate the schedule.
Should more than one employee meet the qualifications required select the same line on the schedule, years of service ~~as defined in subparagraph 34.03(a)(i)~~ will be used as the determining factor to allocate the line.

(c) Subject to paragraph (a) above, by mutual consent the parties may agree to conduct a re-population of schedules at any point over the life of the schedule.

For greater clarity, when a vacant line is selected, that line will continue to follow the pre-established pattern, according to the existing schedule.

25.18 Shift Schedule – Vacant Lines

(a) In the event a line on a schedule becomes vacant, the line shall then be offered to employees working in the same worksite. Should more than one employee meeting the qualifications required select the same line on the schedule, years of service will be used as the determining factor to allocate the line.

(b) Should no employee meeting the criteria in (a) above select the vacant line, the line shall then be offered to employees working in the same district as the vacant line. Should more than one employee meeting the qualifications required select the same line on the schedule, years of service will be used as the determining factor to allocate the line.

(c) Should no employee meeting the criteria in (a) and (b) above select the vacant line, the line shall then be offered to all other employees working in the same region as the vacant line. Should more than one employee meeting the qualifications required select the same line on the schedule, years of service will be used as the determining factor to allocate the line.

(d) Should no employee meeting the criteria in (a), (b) and (c) above select the vacant line, the line shall then be offered to all other employees in the bargaining unit. Should more than one employee meeting the qualifications required select the same line on the schedule, years of service will be used as the determining factor to allocate the line.

(e) The Employer shall post all vacant lines subject to (b), (c) and (d) above nationally on its internal electronic system (Atlas) in a location accessible and visible to all employees.

25.19 Except as provided for in clauses 25.23 and 25.24, the standard shift schedule is:

(a) 12 midnight to 8 a.m., 8 a.m. to 4 p.m., and 4 p.m. to 12 midnight
or, alternatively,
(b) 11 p.m. to 7 a.m., 7 a.m. to 3 p.m., and 3 p.m. to 11 p.m.

25.20 A specified meal period shall be scheduled as close to the midpoint of the shift as possible. It is also recognized that the meal period may be staggered for employees on continuous operations. However, the Employer will make every effort to arrange meal periods at times convenient to the employees.

25.21

(a) Where an employee's scheduled shift does not commence and end on the same day, such shift shall be considered for all purposes to have been entirely worked:

- on the day it commenced, where half (1/2) or more of the hours worked fall on that day;
  or
- on the day it terminates, where more than half (1/2) of the hours worked fall on that day.

(b) Accordingly, the first (1st) day of rest will be considered to start immediately after midnight of the calendar day on which the employee worked or is deemed to have worked his or her last scheduled shift, and the second (2nd) day of rest will start immediately after midnight of the employee's first (1st) day of rest, or immediately after midnight of an intervening designated paid holiday if days of rest are separated thereby.

25.22

(a) An employee who is required to change his or her scheduled shift without receiving at least seven (7) days' notice in advance of the starting time of such change in his or her scheduled shift shall be paid for the first (1st) shift worked on the revised schedule at the rate of time and one-half (1 1/2) for the first (1st) seven decimal five (7.5) hours and double (2) time thereafter. Subsequent shifts worked on the revised schedule shall be paid for at straight-time rate, subject to Article 28, Overtime.

(b) Every reasonable effort will be made by the Employer to ensure that the employee returns to his or her original shift schedule and returns to his or her originally scheduled days of rest for the duration of the master shift schedule without penalty to the Employer.

25.23 Provided sufficient advance notice is given, the Employer **shall** ~~may~~:

(a) authorize employees to exchange shifts if there is no increase in cost to the Employer;
and

(b) notwithstanding the provisions of paragraph 25.13(d), authorize employees to exchange shifts for days of rest if there is no increase in cost to the Employer.

~~**25.23**~~

~~(a) Where shifts other than those provided in clause 25.18 are in existence when this Agreement is signed, the Employer, on request, will consult with the Alliance on such hours of work and, in such consultation, will establish that such shifts are required to meet the needs of the public and/or the efficient operation of the service.~~

~~(b) Where shifts are to be changed so that they are different from those specified in clause 25.18, the Employer, except in cases of emergency, will consult in advance with the Alliance on such hours of work and, in such consultation, will establish that such hours are required to meet the needs of the public and/or the efficient operation of the service.~~

~~(c) Within five (5) days of notification of consultation served by either party, the parties shall notify one another in writing of the representative authorized to act on their behalf for consultation purposes. Consultation will be held at the local level for fact-finding and implementation purposes.~~

25.28 Specific Application of this Agreement

For greater certainty, the following provisions of this agreement shall be administered as provided herein:

a. **Interpretation and definitions (clause 2.01)**
"Daily rate of pay" shall not apply.

b. **Minimum number of hours between shifts**
Paragraph 25.14(a), relating to the minimum period between the termination and commencement of the employee's next shift, shall not apply.

c. **Exchange of shifts (clause 25.22)**
On exchange of shifts between employees, the Employer shall pay as if no exchange had occurred.

d. **Overtime (clauses 28.04 and 28.05)**
Overtime shall be compensated for all work performed in excess of an employee's scheduled hours of work on regular working days or on days of rest at **double (2)** time ~~and three-quarters (1 3/4).~~

e. **Designated paid holidays (clause 30.07)**

i. ~~A designated paid holiday shall account for seven decimal five (7.5) hours~~.

ii. When an employee works on a designated paid holiday, the employee shall be compensated, in addition to the pay for the hours specified in subparagraph (i), at ~~time and one-half (1 1/2) up to his or her regular scheduled hours worked and~~ at double (2) time for all hours worked in excess of his or her regular scheduled hours.

f. **Travel**
Overtime compensation referred to in clause 32.06 shall only be applicable on a workday for hours in excess of the employee's daily scheduled hours of work.

g. **Acting pay**
The qualifying period for acting pay as specified in paragraph 62.07(a) shall be converted to hours.

h. **Leave**

i. ~~Earned leave credits or other leave entitlements shall be equal to seven decimal five (7.5) hours per day~~.

ii. When leave is granted, it will be granted on an hourly basis and the number of hours debited for each day of leave shall be equal to the number of hours of work scheduled for the employee for the day in question.

25.29

An employee required by the Employer to work overtime consistent with Article 28 shall receive a minimum of twelve (12) hours rest prior to returning to duty. Any pre-scheduled hours that fall within said twelve (12) hour rest period shall be considered hours worked.

Employer proposals

25.12

a. An employee on day work whose hours of work are changed to extend before or beyond the stipulated hours of 7 am and 6 pm as provided in paragraph 25.06(b), and who has not received at least **forty-eight (48) hours'** ~~seven (7) days'~~ notice in advance of the starting time of such change shall be paid for the first (1st) day or shift worked subsequent to such change at the rate of time and one-half (1 1/2) for the first seven decimal five (7.5) hours and double (2) time thereafter. Subsequent days or shifts worked on the revised hours shall be paid for at straight-time rate, subject to Article 28: overtime.

25.21

a. An employee who is required to change his or her scheduled shift without receiving at least **forty-eight hours'** ~~seven (7) days'~~ notice in advance of the starting time of such change in his or her scheduled shift shall be paid for the first (1st) shift worked on the revised schedule at the rate of time and one-half (1 1/2) for the first (1st) seven decimal five (7.5) hours and double (2) time thereafter. Subsequent shifts worked on the revised schedule shall be paid for at straight-time rate, subject to Article 28: overtime.
b. Every reasonable effort will be made by the Employer to ensure that the employee returns to his or her original shift schedule and returns to his or her originally scheduled days of rest for the duration of the master shift schedule without penalty to the Employer.
c. Paragraphs (a) and (b) on shift change do not apply when employees are required to attend mandatory training for this group.

Remarks

Variable hours for shift workers at paragraph 25.09 (a)

The Bargaining Agent is proposing to extend the application of existing clause 25.09 (renumbered to 25.30 as per the Bargaining Agent proposal) to shift workers, which would result in shift workers being allowed to have variable hours and complete their weekly hours in a period other than five (5) full days. Shift workers could essentially extend their shift by a set number of minutes and accumulate this time to have a day off every fourteen (14), twenty-one (21) or twenty-eight (28) days. This change goes against the nature of shift work, which requires that hours of work be scheduled on an irregular or rotating basis and that they be averaged on a weekly basis. Accordingly, employees working on shifts frequently complete their weekly hours in a period other than five (5) full days. This language would be unprecedented in the CPA collective agreements and would create a significant administrative burden and be unmanageable. This extension could also lead to an increase in overtime as of a result of pressures to meet operational requirements.

Notice of change in hours of work for day workers at paragraph 25.12 (a)

The Bargaining Agent is proposing to broaden the application of paragraph 25.12 (a) by making it applicable to all changes in hours of work; not only those that extend before or beyond the core hours of work. This change would go against the intent of clause 25.06 which specifies that day workers work seven decimal five (7.5) hours per day from

Monday to Friday between the hours of 7 am and 6 pm, and the intent of clause 25.07 which stipulates that day workers must be informed in writing of their scheduled hours of work and of any changes to their scheduled hours of work. Clauses 25.06 and 25.07 provide flexibility to the Employer to ensure it can meet its operational requirements. The Employer is not interested in further restricting its ability to manage its operations efficiently.

Furthermore, the Employer is proposing to amend the notification period for a shift change at paragraph 25.12(a) from seven (7) days to forty-eight (48) hours. The current seven (7) days advance notice is operationally too long, and it denies management the flexibility it requires in managing its staff to meet operational demands.

The proposed shorter notice period has an added benefit to employees, as it will provide greater flexibility to accommodate short notice requests, such as leave requests.

Late hour premium at paragraph 25.12 (b)

The Bargaining Agent's proposal at 25.12 (b) seeks to expand the payment of the late hour premium to overtime hours. Currently, employees who are day workers and who are required to work overtime receive pay at the applicable overtime rate. This compensation already considers the hours worked outside of employees' regular schedule of work. Providing the late hour premium in addition to overtime compensation would result in a dual remuneration for the same period worked.

Shift Work – consecutive days of rest language at paragraph 25.13(d)

The Bargaining Agent's proposal to delete the language at paragraph 25.13(d) does not make sense in a shift work operation and where rotating/sliding schedules are designed to address an Employer's operational needs. For example, a typical shift work schedule starts on a Saturday and ends on a Sunday. If the Employer were to accept the Bargaining Agent's proposed deletion, the Employer could refrain from granting an employee Saturday and Sunday off as two (2) consecutive days falling in separate calendar weeks.

Shift Schedule – Reopener – proposal for seniority at clause 25.17

The Bargaining Agent is proposing to delete the reference to subparagraph 34.03(a)(i) in subparagraphs 25.17(a) and (b). Service is defined in 34.03 (a)(i) as "*all service within the public service, whether continuous or discontinuous, shall count toward vacation leave*". Accordingly, this definition primarily applies for the purpose of clause

34.02 (Accumulation of vacation leave credits) and to determine the vacation leave accrual entitlement of an employee.

The language at subparagraph 34.03(a)(i) is also currently used to break a tie, in a fair and equitable way, when employees are bidding for the same or similar lines in a shift schedule under clause 25.17 and under Appendix B sections 3.3 and 3.5; volunteering to work a holiday under clause 30.09; or, submitting vacation leave requests under clause 34.05. It is clearly specified throughout the collective agreement when subparagraph 34.03(a)(i) is to be applied in such a way.

Therefore, the Employer submits that it is necessary to maintain the reference to this subparagraph to provide clarity in the application of years of service to allocate lines in a shift schedule.

New Clause 25.18 – Shift Schedule – Vacant lines

The proposal for a new clause 25.18 is unnecessary as the language under 25.17 already provides an administrative process to fill vacant lines when reopening a shift schedule due to operational requirements or populating a newly established schedule. This is a fair administrative process which allows employees to move within a schedule to better meet their needs and those of the Employer. Should no employees be identified through this process, the Employer would then look at its staffing options to fill a vacant position which would take on the vacant line.

Additionally, the proposed new paragraphs at 25.18 seriously impact the Employer's ability to assign duties to employees and persons it deems most suitable to perform them so as to meet its operational requirements, a right that is protected under s. 7 of the FPSLRA (Exhibit 2). It further undermines the Employer's right to determine and control personnel management within the federal public service, in accordance with ss. 7 and 11.1 of the *Financial Administration Act* (Exhibit 4).

The paragraphs proposed at 25.18 further instill a strict seniority regime which circumscribes the Employer's ability to manage its operations adequately. Such an approach to seniority means that job opportunity and security will increase in proportion to length of service. This is not supportive of the Employer's position on equity and fairness in the establishment of its staffing practices and does not recognize the need to identify essential qualifications during periods of workforce adjustment consistent with the *Public Service Employment Act*.

Furthermore, this language would recommend the establishment of a new processes governing appointments and/or layoffs under the *Public Service Employment Act*, and thus contrary to section 177 of the *Federal Public Sector Labour Relations Act* (Exhibit 2), prohibiting the PIC report to include matters related to legislative implementation. The Employer also has a proposal on clause 25.18 to allow different starting and finishing times for standard shift schedules than those specified in the clause. The remarks relevant to this proposal appear under the "Various Articles: Standard Shift Schedule and Variable Shift Scheduling Arrangements" section, starting on page 124.

Notice of scheduled shift change at clause 25.21

The Employer proposes to amend the notification period for a shift change at clause 25.21, as the current seven (7) days' advance notice is operationally too long and it denies management the flexibility required to manage its staff to meet operational demands.

The proposed shorter notice period has an added benefit to employees, as it will provide greater flexibility to accommodate short-notice requests, such as leave requests.

The Employer also seeks to add language indicating that the notice of shift change does not apply when employees are required to attend mandatory trainings. Some of the mandatory trainings have limited spots which sometimes become available on very short notice. The proposed language would provide the Employer the flexibility it needs to schedule employees for mandatory training that an employee requires to meet the conditions of employment (i.e., recertification for the control and defense tactics and to carry a firearm) in such instances.

Exchanging shifts – removing Employer discretion at clause 25.23

The Bargaining Agent's proposal at their clause 25.23 seeks to remove the Employer's ability to deny an employee's request to exchange shifts, as long as the employee has provided advance notice. However, the Employer is not interested in limiting its flexibility in managing its operations adequately.

Moreover, the Employer must have some level of control over who is on shift, if for no other reason than the ability for officers to respond to specific issues and situations that arise in the workplace:

- Requirement for female officers vs male officers for personal body searches;
- Requirement for specific qualifications (i.e. trained as Minister's Delegates)

- The need for bilingual officers; and
- The need for armed officers.

Delete collective agreement language at clause 25.23 that permits the Employer to develop, in consultation with the Alliance, flexible shift schedules

The Bargaining Agent is proposing to delete the language in clause 25.23. The Employer is opposed to the deletion of this language which allows for schedules to be developed beyond the traditional standard shift work schedules outlined in clause 25.18.

CBSA provides its services to some one thousand two hundred (1,200) points across Canada and at thirty-nine (39) international airports. Retaining its ability to have flexible scheduling capabilities is key to efficiently responding to its service requirements. For example, in order to meet service requirements, some points of entry operate on the following hours, which are not shift work schedules as defined by 25.18:

- 9 am to 10 pm
- 8 am to 10 pm
- 8 am to 12 am
- 8 am to 12 am (summer) and 8 am to 6 pm (winter)

The last example would be an indicator for the need to keep the language at 25.23(b).

Variable Hours of Work provisions – Overtime Compensation proposal at clause 25.28

As per clause 25.25 of the collective agreement, terms and conditions governing the administration of variable hours of work implemented pursuant to clauses 25.09 (variable hours), 25.10 (summer and winter hours) and 25.24 (variable shift schedule arrangements) are specified in clauses 25.25 to 25.28 inclusive. The agreement is modified by these provisions to the extent specified.

With its proposal under paragraph 25.28 (d), the Bargaining Agent is seeking to increase the premium paid for overtime worked on regular working days or on days of rest from time and three-quarters (1 ¾) to double time. The cost of this proposal amounts to over $ 7.1 million per annum, or 0.68 % of the FB wage base.

Under paragraph 25.28(e), the Bargaining Agent is proposing to remove the reference to a designated paid holiday accounting for seven decimal five (7.5) hours. This is a recurring theme throughout the Bargaining Agent's proposals. For ease of reference, the Employer provides a consolidated response to these proposals under the "Various Articles: Day is a Day" section of this brief which may be found at pages 215-219.

The Bargaining Agent is also proposing to increase the quantum for the premium paid for work on a designated paid holiday from time and one-half (1 ½) to double time. The current entitlement is consistent with other CPA collective agreements. This proposal is cost-prohibitive as it represents an increase of over $10 million dollars per annum, or 0.95 % of the FB wage base.

Under paragraph 25.28 (h), the Bargaining Agent is also proposing to remove the reference to leave entitlements being equal to seven decimal five (7.5) hours per day, in line with their proposal on a "day is a day"; this element is addressed under the "day is a day" proposal at pages 215-219.

The FB bargaining group's overtime compensation has averaged nearly 20% of all overtime paid in the CPA over the past four (4) fiscal years. For example, for its most populace level, FB-03, it has provided an average increase in salary of 16.0%. Keeping these costs in mind contextualizes the value of the Bargaining Agent's request that all overtime compensation be increased to double-time.

The Employer is opposed to these proposals and submits there ought to be restraint on any additional cost increases. It far exceeds the parameters of what the CBSA budget will allow and would severely limit their economic capabilities. It would also create a precedent for other CPA collective agreements.

New clause on minimum rest period between shifts when an employee has worked mandatory overtime

The Bargaining Agent is proposing that after an employee has worked mandatory overtime, they will be entitled to a minimum twelve (12)-hour rest period prior to returning to work and will not suffer any loss in compensation as a result.

Currently, CBSA makes every reasonable effort to ensure that where mandatory overtime has been worked, the employee receives a reasonable rest period in between shifts by delaying the start time or providing for a shift change.

Where it is not operationally feasible to do so and the employee may miss part or all, of their next shift, the Employer endeavours to provide the employee with an opportunity to make up the missed time or with appropriate leave. However, it must be pointed out that the employees are paid a premium for the overtime.

In conclusion, the Employer requests that the Commission not include the Bargaining Agent’s demands related to article 25 in its report and requests that the Commission include the Employer’s proposals on clauses 25.12 and 25.21 in its report.

Various Articles: Standard Shift Schedule and Variable Shift Scheduling Arrangements

Article 25 (clauses 25.18 and 25.24)

Appendix B: Memorandum of Understanding with Respect to the Variable Shift Scheduling Arrangements

New Memorandum of Agreement for the Creation of a National VSSA Committee

Employer proposal
25.18 Except as provided for in clauses 25.23 and 25.24, the standard shift schedule is: a. midnight to 8 am, 8 am to 4 pm, and 4 pm to midnight ~~or, alternatively,~~ b. 11 pm to 7 am, 7 am to 3 pm, and 3 pm to 11 pm. **Notwithstanding the above-noted standard shift schedule, starting and finishing times shall be determined according to operational requirements as determined by the Employer.**
25.24 Variable shift schedule arrangements a. Notwithstanding the provisions of clauses 25.06 and 25.13 to 25.23 inclusive, consultation may be held at the local level with a view to establishing shift schedules which may be different from those established in clauses 25.13 and 25.18. Such consultation will include all aspects of arrangements of shift schedules. b. Once a mutually acceptable agreement is reached at the local level, the proposed variable shift schedule will be submitted at the respective Employer and Alliance headquarters levels before implementation. ~~c. Both parties will endeavour to meet the preferences of the employees in regard to such arrangements.~~ d. It is understood that the flexible application of such arrangements must not be incompatible with the intent and spirit of provisions otherwise governing such arrangements. Such flexible application of this clause must respect the average hours of work over the duration of the master schedule and must be consistent with operational requirements as determined by the Employer.

e. Employees covered by this clause shall be subject to the provisions respecting variable hours of work established in clauses 25.25 to 25.28 inclusive.

Employer proposal

Appendix B

Memorandum of Understanding Between the Treasury Board of Canada and the Public Service Alliance of Canada with Respect to the Variable Shift Scheduling Arrangements

This memorandum is to give effect to the understanding reached between the Employer and the Public Service Alliance of Canada in respect of employees in the Border Services (FB) bargaining unit.

1. Consultation process

1.1 The intent of this Appendix is to provide the parties with a process to facilitate reaching agreement at the local level, within prescribed time frames, **consistent with clauses 25.24 and 1.02 of the collective agreement.**

1.2 The following principles shall be considered for the purposes of establishing effective scheduling:

a) Shift schedules are developed in a cost-effective manner.
b) Shift schedules reflect operational requirements and the service needs of Canadians.
c) Shift schedules comply with relevant clauses of the collective agreement.

2. VSSA discussions

2.1 Local consultation pursuant to paragraph 25.24(a) of the agreement will take place within ~~five (5)~~ **forty (40)** days of notice served by either party to reopen an existing variable shift schedule agreement or negotiate a new variable shift schedule arrangement. Prior to this meeting, the Employer will provide to the Union ~~the following~~ information in respect of its operational requirements, **including the rationale for scheduling.**

- ~~the number of scheduled employees required for each hour, and~~
- ~~the rationale for scheduling.~~

2.2 The **operational requirements** ~~number of employees~~ identified in paragraph 2.1 does not represent the minimum presence required on any shift.

2.3 The parties shall endeavour to conclude d~~D~~iscussions at the local level ~~shall be concluded~~ within five (5) weeks from the time of the first meeting identified in paragraph 2.1 above.

~~**2.4** Should the parties come to an agreement on a proposed VSSA schedule at the local level, the Union shall submit the schedule for ratification by the employees.~~

~~**2.5** Should the discussions at the local level not result in an agreement on a proposed VSSA schedule, the parties will immediately refer the outstanding issues to representatives from the Union and regional representatives from the Employer for further consultation.~~

~~**2.6** Representatives identified under 2.5 above shall conclude their consultation within a maximum of three (3) weeks from the date the outstanding issues have been referred to their attention by the local committee.~~

~~**2.7** Joint recommendations of the representatives identified under 2.5 above on the outstanding issues, or a proposed VSSA schedule shall be sent back to the local level for consideration for a maximum of one (1) week period.~~

(Subsequent renumbering)

2.~~8~~4 Should the parties come to an agreement on a proposed VSSA schedule at the local level, the Union shall submit the schedule for ratification by the employees. Otherwise, the Union will submit the last Employer VSSA proposal to a vote.

2.~~9~~5 Unless otherwise mutually agreed upon, the ratification vote identified in paragraphs 2.4 ~~or 2.8~~ and provision of the results to the Employer shall be completed within two (2) weeks.

2.~~10~~6 Where proposed VSSA is rejected, by mutual agreement, the current VSSA may be extended. Should either party not elect to extend the current VSSA, shift schedule consistent with clause 25.13 will take effect. For employees not already covered by an existing VSSA, the current scheduling arrangement will remain in force.

2.~~11~~7 In the event that the proposed VSSA is accepted by a ratification vote, the new schedule will be posted in accordance with clause 25.16 of the agreement.

2.~~12~~8 Except as provided in paragraph 2.~~10~~**6** above, both parties may terminate a VSSA by sending the other a thirty (30) day notice of termination of the existing VSSA unless discussions are ongoing pursuant to this appendix.

2.~~13~~9 Upon mutual agreement by the parties, time frames included in the provisions of this Appendix may be extended.

3. VSSA line selection

3.1 The Employer will establish the requirements for populating this schedule.

3.2 The Employer will canvass all employees covered by this specific VSSA for volunteers to populate the schedule.

3.3 Should more than one employee meeting the qualifications required select the same line on the schedule, years of service as defined in subparagraph 34.03(a)(i) will be used as the determining factor to allocate the line.

3.4 Subject to 3.3, by mutual consent the parties may agree to conduct a repopulation of schedules at any point over the life of the schedule.

3.5 In the event lines become vacant, the Employer will reassess its scheduling requirement. Should the line still be required, the Employer will review the qualifications required prior to canvassing all employees covered by this specific VSSA. Should more than one employee meeting the qualifications required select the same line on the schedule, years of service as defined in subparagraph 34.03(a)(i) will be used as the determining factor to allocate the line.

For greater clarity, when a vacant line is selected, that line will continue to follow the pre-established pattern, according to the existing schedule.

Bargaining Agent counter proposal

New Appendix: Memorandum of Understanding Between the Treasury Board of Canada and the Public Service Alliance of Canada with Respect to a National VSSA Committee

This memorandum is to give effect to the understanding reached between the Employer and the Public Service Alliance of Canada in respect of employees in the Border Services (FB) bargaining unit.

1 The parties agree to create and maintain a National Joint VSSA consultation committee. The purpose of the committee shall be to discuss VSSA's negotiated consistent with Appendix B and Article 25 of this Agreement.

2 The National Joint VSSA Committee may also provide guidance to local and regional negotiations consistent with Appendix B of this Agreement.

3 The parties also agree that the National VSSA Committee shall maintain a database of all VSSA's currently in effect available as a resource for guidance consistent with 2 above.

Remarks

Clause 25.13 of the collective agreement establishes that shift work schedules shall be scheduled so that employees over a period of not more than fifty-six (56) calendar days:

- Work an average of thirty-seven decimal five (37.5) hours and an average of five (5) days on a weekly basis.
- Work seven decimal five (7.5) consecutive hours per day, exclusive of a half hour unpaid meal period.
- Obtain an average of two (2) days of rest per week.

Two types of shift schedules exist within CBSA:

- Standard shifts which consist of rotating shifts of seven decimal five (7.5) hours in length (commonly referred to as contract hours). Clause 25.18 establishes that the standard shift schedule is:

    a. midnight to 8 am, 8 am to 4 pm, and 4 pm to midnight
    or, alternatively,
    b. 11 pm to 7 am, 7 am to 3 pm, and 3 pm to 11 pm.

- Variable shift schedule arrangements (VSSA) that typically consist of shifts longer than seven decimal five (7.5) hours in length which allow employees to have more than two (2) days of rest per week on average. Such schedules are established consistent with clause 25.24 and Appendix B of the collective agreement.

The Employer's proposals seek to modernize language with respect to both standard shifts and VSSAs. The current language is not aligned with today's market reality and creates rigidity that prevents CBSA to properly respond to the needs of business partners and Canadians.

The increase in e-commerce and carriers' expectation for a faster service that meets client demands as well as the evolving needs of travelers create a need for CBSA to adapt and structure its operations to offer services in a predictable, effective and efficient fashion in all of its business streams (i.e., commercial, postal, air, land and marine). The Employer proposals aim to ensure the language in the collective agreement is supportive of today's operational requirements and of its employees.

Amendment to clause 25.18 (standard shift schedule)

Some CBSA operations require that employees work following a standard shift schedule. For example, it is an operational requirement in postal facilities where the CBSA and Canada Post's shift schedules need to match to ensure CBSA employees' presence to process mail for compliance with the *Customs Act* during Canada Post's business hours. It is also an operational requirement in Container Examination Facilities that CBSA shift schedules align with the operators' business hours.

The current language under clause 25.18 imposes two (2) standard shift schedules and, therefore, does not provide the level of flexibility required to ensure that the number of employees scheduled to work match the actual operational needs. Moreover, the expression "or, alternatively" does not allow for both shifts to co-exist. Lastly, it does not allow for overlapping or staggered start and finish times where it is not necessary that all officers scheduled to work the morning shift have a strict start time of 7 a.m. or 8 a.m. for example.

In order to reflect these needs, the Employer is proposing to amend the existing language to give management the option to establish shift schedules with start and end times that are in line with actual operational requirements. This would still maintain the level of predictability for employees, consistent with clause 25.13 and be consistent with other CPA collective agreements (only the FB and the Program and Administrative Services (PA) groups collective agreements, also represented by PSAC, include language as in clause 25.18).

Amendments to clause 25.24 and Appendix B

Clause 25.24 establishes that consultation may be held at the local level with the view of establishing shift schedules which may be different from those established in clauses 25.13 and 25.18 (paragraph 25.24 a), commonly referred to as VSSA. The flexible application of such VSSA must not be incompatible with the intent and spirit of provisions otherwise governing such arrangements, must respect the average hours of work over the duration of the master schedule and be consistent with operational requirements as determined by the Employer (paragraph 25.24 (d)).

Appendix B of the collective agreement establishes the process to facilitate reaching an agreement at the local level, within the prescribed timeframes. To do so, local management and employee representatives, typically local stewards, engage in a negotiation with the view of establishing a new or open an existing VSSA.

If the parties reach an agreement, the VSSA schedule is submitted for ratification by the employees. If no agreement is reached, the parties refer the outstanding issues to representatives from the Union and regional management representatives for further consultation. Joint recommendations on the outstanding issues or a proposed VSSA schedule shall then be provided to the local level for their consideration.

If this allows to conclude an agreement at the local level, a ratification process by the employees ensues. Otherwise, the Union submits the last Employer VSSA proposal to a vote.

Should the VSSA be rejected, the current VSSA may be extended or a shift schedule consistent with 25.13 will take effect.

CBSA currently has more than two hundred (200) VSSAs in place across the country. The majority of VSSAs have been negotiated years, if not decades ago and, therefore, do not allow to meet operational requirements.

They are location-specific, and often business-stream specific. This can lead to multiple VSSAs applying concurrently to a single worksite thus impeding on CBSA's ability to reassign its workforce to address punctual needs such as an unexpected increase in the traffic pattern and employee absences. It is also common that there is a misalignment between the number of employees scheduled to work at any given time and the actual operational requirements. Experience has also shown that it is not unusual for employees' preference to take precedence over operational requirements.

This rigidity contributes to the significant overtime costs incurred by CBSA on a yearly basis. A situation that is not supportive of employees' well-being and is inconsistent with ensuring a sound financial management.

The proposal at paragraph 25.24 c) aims to modernize the language of the collective agreement as it is unnecessary. Meeting the preference of the employees is the outcome of the parties' work in developing the VSSA, the ratification vote and the line bidding process.

As for the proposed amendments to Appendix B, the amendments at part "1. Consultation" aim to establish a framework that will guide the parties in the negotiation process. It essentially replicates language as found under paragraph 25.24 and clause 1.02 and complemented by Appendix B. The intent of this replication is to ensure that Appendix B is the one-stop shop that will guide the parties' work towards the negotiations of a viable VSSA. This will simplify the reading of the collective agreement and allow employees to consult Appendix B for a full picture of how a VSSA is developed and reviewed.

The current language in Appendix B, under 2.1 outlines that the parties must meet within five (5) days to initiate the negotiations. The Employer is proposing to increase the time frame to forty (40) days. Experience has shown that the parties are typically not able to meet within five (5) days and do have to seek the other party's consent to extend the timeline. The Employer proposal would establish a timeline that is better aligned with the time period required to gather all the necessary information to have meaningful discussions, inclusive of the consultations required with business partners and stakeholders to determine their needs in terms of service for example.

Lastly, the deletion of the existing paragraphs 2.4 to 2.7 will also allow to streamline the process. Paragraph 2.5 establishes that:

> Should the discussions at the local level not result in an agreement on a proposed VSSA schedule, the parties will refer the outstanding issues to representatives from the Union and regional representatives from the Employer for further consultation.

Paragraphs 2.5 to 2.7 provide parameters to follow in the conduct of the regional consultations. Experience has shown that the referral of outstanding issues to the regional level is of limited value in supporting the parties at the local level to reach an agreement. This deletion would streamline the process, allowing for agreement to result in ratification much more efficiently.

The review of existing or the development of new VSSA require a direct knowledge of the worksite, of its challenges and operational requirements, and the parties at the local level are best placed to develop a VSSA that will meet the needs of local employees and managers.

Bargaining Agent counter proposal for the inclusion of a new appendix for the creation of a joint National VSSA Committee

The Bargaining Agent is proposing to introduce a new appendix for the creation of a national joint variable shift scheduling arrangements (VSSA) consultation committee.

The Employer submits that there are no need and purpose for the inclusion of this language in the collective agreement. Currently, Appendix B of the collective agreement establishes a process for negotiating a VSSA at the local level, within prescribed time frames.

The Employer is proposing to delete paragraphs 2.4 through 2.7 for the reasons indicated above. The same way regional consultations have been of very limited value in supporting the parties at reaching an agreement at the local level, the same will likely occur should a national VSSA committee be established. This would create an unnecessary layer and provide no added value.

The Employer is opened to review the process to foster its effectiveness and efficiency and submits that its proposals for amendments to clause 25.24 and Appendix B aim to establish a way forward in achieving this objective.

They also aim to address the changing needs and realities of the workplace, ensuring a balanced approach between employee preference and service to Canadians. The

Employer therefore requests that the Commission recommend the changes as proposed by the Employer in its report and not include the Bargaining Agent’s proposal.

Article 27: Shift and Weekend Premiums

Bargaining Agent proposals

Amend as follows:

~~**Excluded provisions**~~

~~*This Article does not apply to employees on day work, covered by clauses 25.06 to 25.12 inclusive.*~~

27.01 Shift Premium (*This Article does not apply to employees on day work, covered by clauses 25.06 to 25.12 inclusive.)*

An employee working shifts, will receive a shift premium of ~~two dollars ($2.00) per hours~~ **14.3% of the employee's basic hourly rate of pay** for all hours worked, including overtime hours, between 4:00 p.m. and 8:00 a.m. The shift premium will not be paid for hours worked between 8:00 a.m. and 4:00 p.m.

27.02 Weekend Premium

(a) An employee working shifts during a weekend will receive an additional premium of ~~two dollars ($2.00) per hour~~ **14.3% of the employee's basic hourly rate of pay** for all hours worked, including overtime hours, on Saturday and/or Sunday.
(b) Where Saturday and Sunday are not recognized as the weekend at a mission abroad, the Employer may substitute two (2) other contiguous days to conform to local practice.

Employer proposal

27.02 Weekend Premium

(a) An employee working shifts during a weekend will receive an additional premium of two dollars ($2.00) per hour for all **regularly scheduled** hours worked, ~~including overtime hours~~, on Saturday and/or Sunday.
(b) Where Saturday and Sunday are not recognized as the weekend at a mission abroad, the Employer may substitute two (2) other contiguous days to conform to local practice.

Remarks

The Bargaining Agent is proposing to replace the two dollars ($2.00) per hour shift and weekend premiums with a premium of 14.3% of the employee's basic hourly rate of pay.

The cost of increasing the shift premium would be over $26.2 million per annum, or 2.48% of the wage base, and the cost of increasing the weekend premium would be over $11.8 million per annum, or 1.12% of the wage base.

The Bargaining Agent has not provided sufficient justification or compelling reasons for an increase of this importance.

The inclusion of the Bargaining Agent's proposal would incur a significant cost for the Employer and there ought to be restraint on any additional cost increases. It far exceeds the parameters of what the CBSA budget will allow and would severely limit their economic capabilities.

With very few exceptions, the shift and/or weekend premiums included in the CPA collective agreements are set between two dollars ($2.00) and two dollars and twenty-five cents ($2.25) per hour.

The Employer submits that the FB group is not behind the market in terms of this benefit. The current quantum provides reasonable compensation for the disruption created by shift work as well as for being regularly scheduled to work on a weekend.

In the context of a comprehensive settlement the Employer is, however, prepared to pursue the discussion on a potential increase to the shifts and/or weekend premiums.

Weekend premium to apply to regularly scheduled hours only

The Employer's proposal at 27.02 a) seeks to limit the payment of the weekend premium to regularly scheduled hours only, hereby ceasing a situation of dual remuneration and remedying a long-standing pay inequity between day workers and shift workers.

Employees working on shifts are paid a weekend premium to compensate for the disruption of being regularly scheduled to work on a weekend. This principle is supported by jurisprudence, namely in Turner v. Treasury Board (Department of National Defence) 2005 PSLRB 162 (Exhibit 15):

> *[6] "The shift and weekend premiums are intended to compensate employees who are regularly required to work hours during which many, if not most, other workers are enjoying leisure time.*

Employees who are day workers, not shift workers, and who are required to work during a weekend receive pay at the applicable overtime rate.

Currently, employees working on shifts are being paid both the weekend premium and the applicable overtime compensation when they are required to work overtime on a weekend.

When a shift worker is required to work overtime on a weekend, the work performed is considered “extra duty” and is not considered to be part of a shift schedule. As such, similarly to when day workers are required to work overtime during a weekend, only overtime compensation should apply, not the weekend premium.

In addition to inconsistency, this is also costly for the Employer as the weekend premium is paid in addition to the overtime compensation, which already considers compensation for hours worked outside of employees’ regular schedule of work, resulting in a dual remuneration for the same period worked.

Given the above, the Employer requests that the Commission only include the Employer’s proposal in its report.

Article 28: Overtime

Bargaining Agent proposal

Excluded provisions

28.01 Compensation under this article shall not be paid for overtime worked by an employee at courses, training sessions, conferences and seminars unless the employee is required to attend by the Employer.

28.02 General

a. An employee is entitled to overtime compensation under clauses 28.04 and 28.05 for each completed period of fifteen (15) minutes of overtime worked by him or her when:

   i. the overtime work is authorized in advance by the Employer or is in accordance with standard operating instructions;
   and
   ii. the employee does not control the duration of the overtime work.

b. Employees shall record starting and finishing times of overtime work in a form determined by the Employer.
c. For the purpose of avoiding the pyramiding of overtime, there shall be no duplication of overtime payments for the same hours worked.
d. Payments provided under the overtime, designated paid holidays and standby provisions of this agreement shall not be pyramided, that is, an employee shall not be compensated more than once for the same service.
e. It is understood that overtime shall be worked by employees on a voluntary basis only.

28.04 Overtime Compensation on a workday

Subject to paragraph 28.02(a):

a. an employee who ~~is required to~~ work**s** overtime on his or her scheduled workday is entitled to compensation at ~~time and onehalf (1 1/2) for the first seven decimal five (7.5) consecutive hours of overtime worked and~~ double (2) time for all overtime hours worked ~~in excess of seven decimal five (7.5) consecutive hours of overtime in any contiguous period.~~
b. if an employee is given ~~instructions~~ **notice** during the employee's work day to work overtime on that day and reports for work at a time which is not contiguous to the employee's scheduled hours of work, the employee shall be

paid ~~a~~ minimum of ~~two (2) hours' pay at straighttime~~ **three (3) hours' pay at the applicable overtime rate of pay,** or for actual overtime worked, whichever is the greater;

c. an employee who is called back to work after the employee has completed his or her work for the day and has left his or her place of work, and returns to work shall be paid the greater of:

   i. compensation equivalent to three (3) hours' pay at the applicable overtime rate of pay for each call-back to a maximum of eight (8) hours' **overtime** compensation in an eight (8) hour period; such maximum shall include any reporting pay pursuant to paragraph (b) or its alternate provision;
   ii. compensation at the applicable overtime rate for actual overtime worked, provided that the period worked by the employee is not contiguous to the employee's normal hours of work;

d. the minimum payment referred to in subparagraph (c)(i), does not apply to parttime employees. Parttime employees will receive a minimum payment in accordance with clauses 6**1**~~0~~.05 or 6**1**~~0~~.06.

28.05 Overtime Compensation on a day of rest

Subject to paragraph 28.02(a):

(a) an employee who ~~is required to~~ work**s** on ~~a first (1st)~~ day of rest is entitled to compensation ~~at time and one-half (1 1/2) for the first (1st) seven decimal five (7.5) hours~~ and double (2) time **for all hours worked** ~~thereafter~~;

(~~b~~) ~~an employee who is required to work on a second (2nd) or subsequent day of rest is entitled to compensation at double (2) time (second or subsequent day of rest means the second or subsequent day in an unbroken series of consecutive and contiguous calendar days of rest);~~

(b~~e~~) when an employee **who** ~~is required to report for~~ work**s** ~~and reports~~ on a day of rest, the employee shall be paid the greater of:

   i. compensation equivalent to three (3) hours' pay at the applicable overtime rate for each reporting to a maximum of eight (8) hours' **overtime** compensation in an eight (8) hour period,
   or
   ii. compensation at the applicable overtime rate;

(**c**~~d~~) the minimum payment referred to in subparagraph (c)(i), does not apply to part-time employees. Part-time employees will receive a minimum payment in accordance with clause 6**1**~~0~~.05;

28.06 Compensation payment or leave with pay

a. Overtime shall be compensated with a payment, except that, upon request of an employee ~~and with the approval of the Employer,~~ overtime may be compensated in equivalent leave with pay.
b. The Employer shall ~~endeavour to~~ pay overtime compensation by the sixth (6th) week after which the employee submits the request for payment.
c. The Employer shall grant compensatory leave at times convenient to both the employee and the Employer.
d. Compensatory leave with pay earned in a fiscal year and outstanding on September 30 of the following fiscal year, will be paid at the employee's rate of pay, as calculated from the classification prescribed in the certificate of appointment on March 31 of the previous fiscal year.

28.07 Meals

a. An employee who works three (3) or more hours of overtime immediately before or immediately following the employee's scheduled hours of work shall be reimbursed his or her expenses for one meal in the amount **equivalent to the lunch rate outlined in Appendix C of the National Joint Council's Travel Directive** ~~of twelve dollars ($12) except where free meals are provided~~.
b. When an employee works overtime continuously extending four (4) hours or more beyond the period provided in paragraph (a), the employee shall be reimbursed for one additional meal in the amount **equivalent to the lunch rate outlined in Appendix C of the National Joint Council's Travel Directive** ~~of twelve dollars ($12)~~ for each additional four (4) hour period of overtime worked thereafter ~~except where free meals are provided~~.
c. Reasonable time with pay, to be determined by the Employer, shall be allowed the employee in order that the employee may take a meal break either at or adjacent to the employee's place of work.
d. Meal allowances under this clause shall not apply to an employee who is in travel status, which entitles the employee to claim expenses for lodging and/or meals.

Employer proposal

28.05 Overtime compensation on a day of rest

Subject to paragraph 28.02(a):

a. An employee who is required to work on a ~~first (1st)~~ day of rest is entitled to compensation at time and one half (1 1/2) for the first (1st) seven decimal five (7.5) hours and double (2) time thereafter.
b. An employee who is required to work on a second (2nd) or subsequent day of rest is entitled to compensation at double (2) time**, provided that the employee also worked on the first (1st) day of rest** (second (2nd) or subsequent day of rest means the second or subsequent day in an unbroken series of consecutive and contiguous calendar days of rest).

Remarks

Overtime shall be worked by employees on a voluntary basis only (clause 23.02).

The Bargaining Agent is proposing that overtime be worked on a voluntary basis only.

The Employer submits that this language is not required. Clause 28.03 of the collective FB agreement (Exhibit 1) already provides parameters to respect in overtime situations:

28.03 Assignment of overtime work

a. Subject to operational requirements, the Employer shall make every reasonable effort to avoid excessive overtime and to offer overtime work on an equitable basis among readily available qualified employees.
b. Except in cases of emergency, call-back or mutual agreement with the employee, the Employer shall, wherever possible, give at least four (4) hours' notice of any requirement for overtime work.

The Employer does its best efforts to attribute overtime on a voluntary basis. It would, however, be unreasonable to expect that it can be the case all the time. It can occasionally occur that it is inevitable as in any field of work.

Insisting that all overtime be done on a voluntary basis could also have a significant impact on operational requirements in unplanned circumstances such as a seizure for example.

The Bargaining Agent has also not established there was a demonstrated need for the inclusion of this language in the collective agreement.

Overtime should be compensated at double time (clauses 28.04 and 28.05)

The Bargaining Agent is proposing that all overtime compensation on a workday (clause 28.04) and on a day of rest (clause 28.05) shall be compensated at double time.

The Employer submits that agreeing to such a change would have a significant financial impact and would be unreasonable. More specifically, the cost of this proposal would be respectively of over $3.8M (0.36% of the wage base) and of over 3.3M (0.32% of the wage base). This would also exceed the provisions contained in other CPA collective agreements and create a precedent, without justification, which could lead to a spill over effect across the CPA and Separate Agencies.

Increase from two (2) to three (3) hours pay when overtime is not contiguous to the scheduled hours of work (paragraph 28.04 (b))

As per this proposal, an employee that is given notice during the employee's workday to work overtime which is not contiguous to their scheduled hours of work would be paid a minimum of three (3) hours' pay at the applicable overtime rate of pay, or for actual overtime worked, whichever is the greater. The existing language provides employees with compensation for a minimum of two (2) hours' pay at straight-time rate or for actual overtime worked at the applicable overtime rate, whichever is greater.

In addition to the proposed increase to double time overtime, once again, the Employer submits that agreeing to such a change would have a significant financial impact and is cost-prohibitive - over $3.9M (0.37% of the wage base) for the FB group.

Increase to the minimum overtime compensation when employees are called-back on a workday and reporting to work on a day of rest (subparagraph 28.04 (c)(i) and new paragraph 28.05 (b))

The Bargaining Agent is also proposing to increase the compensation by increasing the maximum from eight (8) hours' compensation at the straight-time rate to eight (8) hours' compensation at the applicable overtime rate each time an employee is called back or reports to work.

Currently the language at subparagraphs 28.04 (c)(i) and 28.05 (c)(i) provide that the employee will be paid the greater of compensation equivalent to three (3) hours' pay at the applicable overtime rate of pay for each call-back/reporting to work, to a maximum of eight (8) hours' compensation in an eight (8) hour period or compensation at the applicable overtime rate for actual overtime worked.

The current wording "to a maximum of eight (8) hours' compensation in an eight (8) hour period" implies a straight-time rate. Should the intent have been to compensate employees at the overtime rate, it would have been specified as in the first part of the subparagraph. The Employer has a proposal to clarify the language whereas employees would receive compensation equivalent to three (3) hours' pay at the applicable overtime rate of pay which shall apply only the first time an employee performs work during an eight (8) hour period. The Employer's submissions on this proposal are included as part of its submissions impacting various articles pertaining to extra duty performed from a remote location (pages 147-152).

The provision already includes that employees will receive "the greater of" either this method of calculation or compensation at the applicable overtime rate for actual overtime worked. The current provision is fair and reasonable and there is no justification for such an increase.

Compensation payment or leave with pay at 28.06 a. and deletion of the work "endeavour" at 28.06 b.

The Bargaining Agent is proposing that the employee should be able to decide unilaterally whether accumulated overtime should be compensated in cash or in leave with pay.

The Employer submits that the current provision, by which an employee makes a request to be compensated in cash or leave and submits it for the Employer's approval is reasonable, and consistent with other collective agreements. This allows the Employer to consider operational and organizational requirements before approving the request. In the Employer's view, there is no justification to make the proposed change.

As for the proposed deletion at 28.06 b., this language is consistent with other CPA agreements. The parties agreed to this language understanding that although the Employer is striving to pay overtime compensation as quickly as possible, that there are instances where delay could be longer due to an increased workload for a number of legitimate reasons such as when collective agreements are implemented for example. The Bargaining Agent has not demonstrated the need to amend this language.

Increase to the meal allowance at clause 28.07

The Bargaining Agent is proposing to increase the meal allowance from twelve dollars ($12.00) to the equivalent of the lunch rate currently outlined in Appendix C of the *National Joint Council (NJC) Travel Directive* (Exhibit 8) (i.e., $24.65). This increase represents an increase of approximately more than 100% of the current meal allowance and more should the rates increase considering that they are revised bi-annually. As the

proposal stands, the cost of increasing the meal allowance from twelve dollars ($12.00) to twenty-four decimal six five dollars ($24.65) would be about $0.3 million annually, or 0.02% of the wage base.

The *National Joint Council (NJC) Travel Directive* meal allowances are meant to serve a different purpose as opposed to the overtime meal allowance. The NJC Travel Directive meal allowances apply when an employee does not have access to their usual meal options while away on travel status. For example, if the employee is staying overnight, they may be eating at a restaurant in their hotel or near the venue of where they are travelling to. These restaurants could be more expensive and are chosen out of convenience rather than the cost.

The overtime meal allowance in the collective agreement serves to provide a quick meal, where an employee has access to usual meal options, typically in familiar places nearby the workplace. Employees working overtime usually know the restaurants near their workplace and can choose one that is more moderately priced. Providing the equivalent of the *National Joint Council (NJC) Travel Directive* lunch rate for every four (4) hours of overtime is not reasonable, in addition to being provided compensation for time worked at the overtime rate. The likelihood of employees eating a full meal every four (4) hours is unlikely.

With respect to the Bargaining Agent's proposal to remove "except where free meals are provided" the Employer should assert that it's not reasonable to expect the Employer to pay for a meal allowance if the employee is already provided with free meals.

The Bargaining Agent's proposal is not reflective of the established negotiated settlement pattern in the federal public service. The Bargaining Agent's proposal would be precedent setting as all other collective agreements in the CPA contain an allowance of twelve dollars ($12.00) or less for this meal allowance. The meal allowance for the FB group was increased from ten dollars ($10.00) to twelve dollars ($12.00) effective two (2) rounds of bargaining ago. Accordingly, this should be maintained.

Employer Proposal at 28.05 – Overtime compensation on a day of rest

The Employer proposes that overtime worked on the second day of rest be payable at double time only if employees have also worked on the first day of rest.

Compensation at double time would be payable to compensate for the disruption of working on two (2) consecutive days of rest. This is a concept already included in other

collective agreements, for example, the Education and Library Science (EB) group also represented by PSAC.

In conclusion, the Employer requests that the Commission only include the Employer’s proposal in its report.

Various Articles: Paid Meal Premium

Article 28: Overtime (clause 28.02)

Appendix L: Memorandum of Agreement Between the Treasury Board of Canada and the Public Service Alliance of Canada with Respect to Paid Meal Premium

Bargaining Agent proposal
The Union proposes that the meal allowance (Appendix L) be replaced with a 40-hour work week (e.g., forty (40) hour work week with a thirty (30) minute paid meal break for every eight (8) hours) for all employees.
Employer proposal
28.02 General […] **c)** For the purpose of avoiding the pyramiding of overtime, there shall be no duplication of overtime payments for the same hours worked. **Uniformed employees in receipt of the annual paid meal allowance provided under Appendix L will not receive overtime compensation when required to perform work during unpaid meal breaks in the course of their regularly scheduled hours of work.** **d)** Payments provided under the overtime, designated paid holidays, **paid meal allowance (as per the relevant appendix),**and standby provisions of this agreement shall not be pyramided, that is, an employee shall not be compensated more than once for the same service. **APPENDIX L** **MEMORANDUM OF AGREEMENT BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA WITH RESPECT TO PAID MEAL PREMIUM** **Notwithstanding the provisions of article 25: hours of work and article 28: overtime, uniformed employees in receipt of the annual paid meal premium under this Appendix are excluded from overtime compensation when required to perform work during unpaid meal breaks in the course of their regularly scheduled hours of work.**

Remarks

During the last round of bargaining, the parties entered into a MOU providing uniformed Border Services Officers (Appendix L) with an annual paid meal premium in the amount of five thousand dollars ($5,000). Uniformed FBs represent approximately 75% of the total population of the bargaining unit.

Meal periods are typically without pay in the CPA. However, as uniformed Border Services Officers wear their uniform during their meal periods and, therefore, continue to be identified as a CBSA employee, the premium was introduced to compensate for the periodic interruptions they could have during their meal period. This can occur when a traveler is seeking directions for example.

Introduction of a forty (40) hour work week with a thirty (30) minute paid meal break

The Bargaining Agent is proposing to replace the paid meal period provided to uniformed employees with a forty (40) hour work week, inclusive of a thirty (30) minute paid meal break for every eight (8) hours for all employees in the bargaining unit. This would entail all employees continuing to work a thirty-seven decimal five (37.5)-hour work week but be paid for forty (40) hours a week.

During the last round of bargaining, the Bargaining Agent had the same proposal. To address the concerns as raised by the Bargaining Agent, the parties agreed to introduce the five thousand dollar ($5,000) paid meal premium for uniformed employees.

This round, the Bargaining Agent is essentially proposing to expand this to all employees without any serious or documented evidence. The Employer maintains that it is not justified or required. The Employer is opposed to this proposal. Its inclusion in the collective agreement is not required by the nature of the CBSA operations.

Employees are generally free to leave their workplace during their meal break. Non-uniformed employees are not required to perform any work during their meal period unless they are specifically requested to do so by the Employer. In those instances, they are compensated at the applicable overtime rate.

Under the current collective agreement, clause 25.04 provides for a paid meal period when an employee cannot be relieved from duty due to the nature of the work:

> ***25.04*** *It is recognized that certain operations require some employees to stay on the job for a full scheduled work period, inclusive of their meal period. In these operations, such employees will be compensated for their meal period in accordance with the applicable overtime provisions.*

The current paid meal premium was applied to uniformed FBs to account for a specific set of circumstances and it should not be expanded to apply to all employees at all times in the form of a forty (40)-hour work week.

The inclusion of this proposal in the collective agreement would far exceed the parameters of what CBSA budget allows and would severely limit their economic capabilities. Specifically, this proposal would add $70.5M to the FB wage base in 2022–23, equivalent to a 6.67% increase. The Employer, therefore, submits that there ought to be restraint on any additional cost increases.

Amendments to clause 28.02 and Appendix L to prevent pyramiding of payments

The Employer is seeking to amend the language of the collective agreement under Article 28.02 c) and d) to ensure that the no pyramiding clause is updated to reflect the addition of Appendix L, with respect to the paid meal premium agreed to during the last round of negotiations.

This would respect the intent of articles 28.02 c) and d) by ensuring uniformed Border Services Officers do not receive dual compensation for the same circumstance.

Accordingly, the Employer requests that the Commission only include the Employer’s proposals in its report.

Various Articles: Extra Duty Work Performed from a Remote Location

Article 28: Overtime (clauses 28.04, 28.05, 28.07)

Article 29: Standby (clause 29.02)

Article 30: Designated Paid Holidays (clause 30.08)

Employer proposal
Article 28: Overtime […] **28.04 Overtime compensation on a workday** Subject to paragraph 28.02(a): a. An employee who is required to work overtime on his or her scheduled workday is entitled to compensation at time and one half (1 ½) for the first seven decimal five (7.5) consecutive hours of overtime worked and at double (2) time for all overtime hours worked in excess of seven decimal five (7.5) consecutive hours of overtime in any contiguous period. b. If an employee is given instructions during the employee's workday to work overtime on that day and reports for work at a time which is not contiguous to the employee's scheduled hours of work, the employee shall be paid**:** **i.** a minimum of two (2) hours' pay at straight-time rate or for actual overtime worked at the applicable overtime rate, whichever is the greater **when the employee has to physically report to the workplace;** **or** **ii. For actual overtime worked at the applicable overtime rate when, at the discretion of the Employer, the employee works at their residence or at another place to which the Employer agrees.** **c.** An employee who is called back to work after the employee has completed his or her work for the day and has **physically** left his or her place of work, and who **physically** returns to **the** work**place** shall be paid the greater of: i. compensation equivalent to three (3) hours' pay at the applicable overtime rate of pay ~~for each call-back, to a maximum of eight (8) hours' compensation in an eight (8) hour period;~~ **which shall apply only the first time an employee performs work during an eight (8) hour period.** ~~s~~**S**uch maximum shall include any reporting pay pursuant to paragraph (b) or its alternate provision, or

ii. compensation at the applicable overtime rate for actual overtime worked,

provided that the period worked by the employee is not contiguous to the employee's normal hours of work.

d. An employee who is called back to work, without prior notice, after the employee has completed his or her work for the day and has physically left his or her place of work may, at the discretion of the Employer, work at the employee's residence or at another place to which the Employer agrees. In such instances, the employee shall be paid the greater of:

i. compensation at the applicable overtime rate for any time worked, or

ii. compensation equivalent to one (1) hour's pay at the straight-time rate, which shall apply only the first time an employee performs work during an eight (8) hour period, starting when the employee first commences the work.

~~d.~~ **e.**The minimum payment referred to in subparagraph I(i) does not apply to part-time employees. Part-time employees will receive a minimum payment in accordance with clause 6~~0~~**1**.06 or 6~~0~~**1**.07.

28.05 Overtime compensation on a day of rest

Subject to paragraph 28.02(a):

[…]

c. When an employee is required to **physically** report ~~for~~ **to the** work**place** and reports **to the workplace** on a day of rest, the employee shall be paid the greater of:

i. compensation equivalent to three (3) hours' pay at the applicable overtime rate ~~for each reporting, to a maximum of eight (8) hours' compensation in an eight (8) hour period~~ **which shall apply only the first time an employee performs work during an eight (8) hour period**;
or

ii. compensation at the applicable overtime rate.

d. **An employee who is required to work on a day of rest may, at the discretion of the Employer, work at the employee's residence or at another place to which the Employer agrees. In such instances, the**

employee shall be paid for the time actually worked at the applicable overtime rate;

e. The minimum payment referred to in subparagraph I(i) does not apply to part-time employees. Part-time employees will receive a minimum payment in accordance with clause 6~~0~~**1**.06.

28.07 Meals

[…]

c. Reasonable time with pay, to be determined by the Employer, shall be allowed the employee in order that the employee may take a meal break either at or adjacent to the employee's place of work.

d. Meal allowances under this clause shall not apply**:**

i. to an employee who is in travel status, which entitles the employee to claim expenses for lodging and/or meals~~.~~**;**

or

ii. to an employee who has obtained authorization to work at the employee's residence or at another place to which the Employer agrees.

Article 29: Standby

29.02

[…]

d. An employee on standby who is required to **physically** report ~~for~~ **to the** work**place** and reports **to the workplace** shall be compensated in accordance with paragraph **28.04 (b)(i),** 28.04(c) or 28.05(c), and is also eligible for reimbursement of transportation expenses in accordance with clause 28.08.

e. **An employee on standby who is required to work may, at the discretion of the Employer, work at the employee's residence or at another place to which the Employer agrees. In such instances, the employee shall be compensated at the applicable overtime rate for any time worked.**

Article 30: Designated Paid Holidays

30.08 Reporting for work on a designated holiday

a. When an employee is required to **physically** report ~~for~~ **to the** work**place** and reports **to the workplace** on a designated holiday, the employee shall be paid the greater of:

i. compensation equivalent to three (3) hours' pay at the applicable overtime rate of pay ~~for each reporting, to a maximum of eight (8) hours' compensation in an eight (8) hour period~~, **which shall apply only the first time an employee performs work during an eight (8) hour period,** such maximum shall include any reporting pay pursuant to paragraph 28.04(c);
or

ii. compensation in accordance with the provisions of clause 30.07.

b. **An employee required to work on a designated holiday may, at the discretion of the Employer, work at the employee's residence or at another place to which the Employer agrees. In such instances, the employee shall be paid for the time actually worked at the applicable overtime rate.**

c. ~~b.~~ The minimum payment referred to in subparagraph (a)(i) does not apply to part-time employees. Part-time employees will receive a minimum payment in accordance with clause 6~~0~~**1**.10 of this agreement.

d. ~~c.~~ When an employee is required to **physically** report ~~for~~ **to the** work**place** and reports **to the workplace** under the conditions described in paragraph (a) and is required to use transportation services other than normal public transportation services, the employee shall be reimbursed for reasonable expenses incurred as follows:

[…]

Remarks

The Employer has tabled a proposal to amend the following provisions:

a. Clause 28.04 - Overtime compensation on a workday
b. Clause 28.05 - Overtime compensation on a day of rest
c. Clause 28.07 - Meals
d. Article 29 - Standby
e. Clause 30.08 - Reporting for work on a designated holiday

The Employer is proposing modifications to these related provisions to distinguish and clarify between when an employee <u>physically</u> reports to the workplace versus when the employee works remotely from the employee's residence or at another place to which the Employer agrees.

Consistent with recent FPSLREB decisions, the Employer submits that employees working remotely do not experience the same disruption as employees that require time to prepare and displace themselves to physically report to the workplace.

In Borgedahl v. Treasury Board (Correctional Service of Canada), 2020 FPSLREB 34 (Exhibit 16), the adjudicator found that different types and degrees of disruption to an employee's life are correlated to different levels of remuneration.

Consistent with the Borgedahl decision, the Employer's proposals serve to distinguish and clarify how any and all overtime work shall be compensated when employees are authorized to work at the employee's residence or at another place to which the Employer agrees:

- Paragraph 28.04 b. ii.: employees are given instructions during the day to work non-contiguous overtime. Compensation shall be for actual overtime work at the applicable overtime rate *(no disruption, employees are advised ahead of time of the requirement to work overtime)*
- Paragraph 28.05 d) (new): employees are required to work overtime on a day of rest. Compensation shall be for actual overtime work at the applicable overtime rate *(no disruption, employees are advised ahead of time of the requirement to work overtime).*
- Clause 29.02: employees on standby are called-back to work. Compensation shall be in accordance with clause 28.04 d) or 28.05 d) (minimum of one (1) hour) *(disruption, employees are not advised ahead of time of the requirement to work overtime, i.e. they know they might be required to work overtime, but they don't know when and for how long)*
- Clause 30.08: employees are required to work overtime on a designated paid holiday. Compensation shall be for actual overtime work at the applicable overtime rate *(no disruption, employees are advised ahead of time of the requirement to work overtime)*

The Employer submits that its proposal is reasonable and is consistent with the Borgedahl decision, it considers the varying degrees of disruption for the compensation of overtime worked.

Minimum compensation to apply only once in an eight (8) hour period (subparagraphs 28.04 c) i), 28.04 d), 28.05 c) i) and 30.08 a) i))

The Employer proposes to limit eligibility to the minimum compensation equivalent to three (3) hours' pay at the applicable overtime rate to the first time an employee performs work during an eight (8) hour period.

Similar proposals have been made in paragraphs 28.04 c), 28.04 d), and 28.05 c) as well as for clause 30.08. The Employer's proposal also aligns with paragraph 28.02 c), where it is specified that "For the purpose of avoiding the pyramiding of overtime, there shall be no duplication of overtime payments for the same hours worked".

Put simply, the absence of a limit could potentially contravene paragraph 28.02 c) if there were multiple call-backs in the same eight (8) hour period (e.g., an employee who is called back at 10:00am on a day of rest works for one (1) hour and gets a minimum compensation of three (3) hours. If that same employee was called back again at 12:00pm and work for another hour, they could be paid twice the overtime for the period from 12:00pm to 1:00 pm, i.e., the remainder of the minimum three (3) hours for the first call-back (ending at 1:00pm) and another three (3) hours for the new call-back (starting at 12:00pm)).

Meal allowance (clause 28.07)

The Employer has a proposal to clarify that it is not required to reimburse for a meal when an employee is working remotely.

The purpose of the meal allowance is to ensure that employees are not out-of-pocket for the extra expense of purchasing a meal in recognition that, in the workplace, an employee does not have easy access to food as they would if they were working from home. Accordingly, employees working from home should not be entitled to a meal allowance.

Given all the arguments provided above, the Employer respectfully requests that the Commission include all of the above-noted Employer proposals in its report.

Various Articles: Kilometric Allowance

Article 28: Overtime (clause 28.08)

Article 30: Designated Paid Holidays (clause 30.08)

Employer proposal
28.08 Transportation expenses a. When an employee is required to report for work and reports under the conditions described in paragraphs 28.04(b), (c) and 28.05(c) and is required to use transportation services other than normal public transportation services, the employee shall be reimbursed for reasonable expenses incurred as follows: i. kilometric allowance**, up to seventy-five (75) kilometers,** at the rate normally paid to an employee when authorized by the Employer to use his or her automobile, when the employee travels by means of his or her own automobile; or ii. out-of-pocket expenses for other means of commercial transportation. b. Other than when required by the Employer to use a vehicle of the Employer for transportation to a work location other than the employee's normal place of work, time spent by the employee reporting to work or returning to the employee's residence shall not constitute time worked. **30.08 Reporting for work on a designated holiday** […] c. When an employee is required to report for work and reports under the conditions described in paragraph (a) and is required to use transportation services other than normal public transportation services, the employee shall be reimbursed for reasonable expenses incurred as follows: i. kilometric allowance, **up to seventy-five (75) kilometers,** at the rate normally paid to an employee when authorized by the Employer to use his or her automobile when the employee travels by means of his or her own automobile; or ii. out-of-pocket expenses for other means of commercial transportation.

Remarks

The Employer is proposing to add a cap to the kilometric allowance paid to employees when they report to work in situations of overtime (Article 28) or on a designated paid holiday (Article 30).

The absence of a provision limiting transportation expenses in these instances defers the reimbursement of travel to the *National Joint Council (NJC) Travel Directive* (Exhibit 8). The NJC Travel Directive creates an entitlement to unlimited transportation expenses reimbursement. Additionally, the particular location of certain worksites, combined with frequent overtime, results in significant costs to CBSA.

Therefore, the Employer’s proposal seeks to clarify what it considers a reasonable transportation expense, which will also ensure a more consistent application of the provisions.

Consequently, the Employer requests that the Commission includes the Employer’s proposal in its report.

Article 30: Designated Paid Holidays

Bargaining Agent proposals
30.01 Subject to clause 30.02, the following days shall be designated paid holidays for employees: (a) New Year's Day; (b) Good Friday; (c) Easter Monday; (d) the day fixed by proclamation of the Governor in Council for celebration of the Sovereign's birthday; **(e) National Indigenous Peoples Day** **(f)** ~~(e)~~ Canada Day; **(g)** ~~(f)~~ Labour Day; **(h)** ~~(g)~~ National Day for Truth and Reconciliation **(i)** ~~(h)~~ the day fixed by proclamation of the Governor in Council as a general day of thanksgiving; **(j)** ~~(i)~~ Remembrance Day; **(k)** ~~(j)~~ Christmas Day; **(l)** ~~(k)~~ Boxing Day; **(m)** ~~(l)~~ **two (2)** ~~one~~ additional day**s** in each year that, ~~in the opinion of the Employer~~, ~~is~~ **are** recognized to be a provincial or civic holiday in the area in which the employee is employed or, in any area where, ~~in the opinion of the Employer~~, no such additional ~~day is~~ **days are** recognized as a provincial or civic holiday, the **third Monday in February and the** first (1st) Monday in August; **(n)** ~~(m)~~ one additional day when proclaimed by an Act of Parliament as a national holiday. **30.07** a. When an employee works on a holiday, he or she shall be paid ~~time and one half (1 1/2)~~ **double (2) time** for all hours worked ~~up to seven decimal five (7.5) hours and double (2) time thereafter~~, in addition to the pay that the employee would have been granted had he or she not worked on the holiday; or b. upon request ~~and with the approval of the Employer~~, the employee may be granted:

i. ~~a day of leave with pay (straight-time rate of pay) at a later date in lieu of the holiday;~~
and

ii. pay at **double (2) time** ~~one and one half (1 1/2) times~~ the straight-time rate of pay for all hours worked ~~up to seven decimal five (7.5) hours~~ **or the equivalent in leave**;

~~iii.~~ **Should an employee elect to take the hours in leave consistent with (ii) above, the Employer shall grant such leave at times convenient to both the employee and the Employer. The employee may elect to cash out said leave at any time.**
~~and~~

~~iv. pay at two (2) times the straight-time rate of pay for all hours worked by him or her on the holiday in excess of seven decimal five (7.5) hours.~~

[…]

30.09 Scheduling of shift-working employees on a designated holiday

a. Should there be more employees scheduled to work a designated paid holiday than is needed, the Employer shall canvass employees scheduled to work the holiday to determine if there are volunteers who wish to have the day off. In the event that there are excessive volunteers, years of service ~~as defined in subparagraph 34.03(a)(i)~~ will be used as the determining factor to select which employees shall be granted the day off.
b. Should there be insufficient or no volunteers after the Employer has canvassed consistent with a) above, the employees with the least amount of service ~~as defined in subparagraph 34.03(a)(i)~~ shall be given the day off.
c. Notwithstanding paragraphs (a) and (b) the Employer shall ensure that there is a sufficient number of qualified employees scheduled to work the designated holiday.
d. Should the Employer require employees to work the holiday after it has given employees the day off, the Employer shall first offer the ~~shift(s)~~ **hours** to be worked to qualified employees that were initially scheduled to work the holiday and were subsequently given the day off consistent with b) and c) above, before offering the hours consistent with Article 28: overtime.

Employer proposal

30.02 For greater certainty, employees who do not work on a Designated Paid Holiday are entitled to seven decimal five (7.5) hours pay at the straight-time rate.

(New clause – Renumber subsequent clauses consequentially)

30.09 Scheduling of shift-working employees on a designated holiday

a. Should there be more employees scheduled to work a designated paid holiday than is needed, the Employer shall canvass employees scheduled to work **on each applicable shift** ~~the holiday~~ to determine if there are volunteers who wish to have the **shift** ~~day~~ off. In the event that there are excessive volunteers, years of service as defined in subparagraph 34.03(a)(i) will be used as the determining factor to select which employees shall be granted the **shift** ~~day~~ off.
b. Should there be insufficient or no volunteers after the Employer has canvassed consistent with a) above, the employees with the least amount of service**, on each shift,** as defined in subparagraph 34.03(a)(i) shall be given the **shift** ~~day~~ off.
c. Notwithstanding paragraphs (a) and (b) the Employer shall ensure that there is a sufficient number of qualified employees scheduled to work the designated holiday.
d. Should the Employer require employees to work the holiday after it has given employees the **shift** ~~day~~ off, the Employer shall first offer the shift(s) to be worked to qualified employees that were initially scheduled to work the holiday and were subsequently given the day off consistent with b) and c) above, before offering the hours consistent with Article 28: overtime.

Remarks

Addition of three (3) new Designated Paid Holidays (DPH)

The Bargaining Agent is seeking to expand the quantum of leave provided under this article by two (2) days to include a National Indigenous Peoples Day and a day in February, typically referred to as "Family Day" in certain provinces.

The Employer already provides twelve (12) statutory holidays to its employees. This provision in the FB collective agreement (Exhibit 1) is similar to all other provisions on the matter in other CPA collective agreements, including those that were recently concluded. The total of twelve (12) days is competitive with provinces, territories, municipal governments, and private industry agreements. The Employer also wishes to note that the National Day for Truth and Reconciliation was included in the collective agreement as part of the last round of bargaining.

The Employer is of the view that the proposal to increase the number of statutory holidays is not warranted and would be costly in terms of lost productivity and

replacement costs – close to $11.2 million ongoing in productivity and replacement costs, representing 1.06% of the FB group wage base. The estimate is adjusted to account for the bargaining agent's wage demands.

All time on designated paid holidays paid at double time (clause 30.07)

The Bargaining Agent is proposing that all time worked on a designated paid holiday shall be compensated for at double time (2x), including overtime, effectively making it a triple time (3x) day paid when worked (value of the day, plus 2x compensation for time worked).

To note, the Bargaining Agent has a similar proposal at clause 28.05 (overtime compensation on a workday).

The Employer submits that agreeing to such a change (for all overtime to be paid at 2x) would have a significant financial impact – approximately $10.0 million ongoing, adjusted for wage growth, which is equivalent to 0.95% of the FB group's wage base and would exceed the provisions contained in other CPA collective agreements, without justification. As such, it would set a precedent and create important horizontal pressure across the CPA and separate agencies.

Furthermore, such a change would have an impact on human resources and pay administration (including forms, HR and pay systems) as the programming for the current overtime regime would have to be modified. This also represents an additional burden on the Employer in terms of cost and administration.

Furthermore, the Bargaining Agent has failed to provide any rationale or evidence to justify their demand.

Leave with pay on the basis of employee's preference

The Bargaining Agent is proposing that the employee should be able to decide, unilaterally, whether a designated paid holiday should be compensated in cash or in leave with pay.

The Employer submits that the current provision, by which an employee makes a request to be compensated in cash or leave and submits it for the Employer's approval is reasonable, and consistent with other collective agreements. This allows the Employer to consider operational and organizational requirements before approving the request. In the Employer's view, there is no justification to make the proposed change.

Scheduling of shift-working employees on designated paid holidays under clause 30.09

The Bargaining Agent is proposing to delete the reference to subparagraph 34.03(a)(i) in subparagraphs 30.09(a) and (b). Service is defined in 34.03 (a)(i) as "*all service within the public service, whether continuous or discontinuous, shall count toward vacation leave*". Accordingly, this definition primarily applies for the purpose of clause 34.02 (Accumulation of vacation leave credits) and to determine the vacation leave accrual entitlement of an employee.

The language at subparagraph 34.03(a)(i) is also currently used to break a tie, in a fair and equitable way, when employees are bidding for the same or similar lines in a shift schedule under clause 25.17 and under Appendix B sections 3.3 and 3.5; volunteering to work a holiday under clause 30.09; or, submitting vacation leave requests under clause 34.05. It is clearly specified throughout the collective agreement when subparagraph 34.03(a)(i) is to be applied in such a way.

Therefore, the Employer submits that it is necessary to maintain the reference in this subparagraph to provide clarity in the application of years of service to determine which employees shall be granted the day off in accordance with subparagraphs 30.09 (a) and (b).

Replacing "day" with "shift" under clause 30.09

The Employer also has a proposal under clause 30.09 to clarify that the clause applies to shifts and not to the entire day of the DPH.

It is common that some designated paid holidays will result in less border crossings or volume in airports for example. Accordingly, it is typical that less resources than those regularly scheduled to work a shift on the day on which the DPH falls are required to fulfill the operational requirements on that DPH. In those instances, clause 30.09 allows management to canvass employees scheduled to work to determine if there are volunteers who wish to be off. If there are more volunteers or insufficient volunteers than the operational requirements will allow, years of service will be used as the determining factor to select the employees that will be off, consistent with subparagraph 34.03 (a)(i) of the collective agreement. More specifically, employees with the most years of service are to be granted the paid time off.

As the needs in personnel are informed by past and anticipated traffic patterns throughout the day, the number of resources required on each shift will vary proportionally. However, the current language requires management to determine its operational requirements for the "holiday", resulting in the Employer's inability to

account for the anticipated needs for a given shift when determining how many employees should be granted paid time off. As the years of service are used to determine employees that should be off, this can lead to more employees being off than needed on a specific shift and less on others. This results in a domino effect requiring shift changes and disruptions to employee schedules.

The amendments as proposed by the Employer would ensure that there are enough employees working at all times to meet operational requirements with minimal disruption. In addition to making for a more effective and efficient process, this language would also reflect the departmental practice that existed before this process was codified in the collective agreement two rounds ago.

Clarifying the value of a DPH at a new clause 30.02

The Employer is proposing language to clarify that the value of a designated paid holiday is seven decimal five (7.5) hours whether that day is worked or not.

The Employer’s proposal is intended to be consistent with the value of a day in Article 30 (designated paid holidays), Article 32 (travelling time), Article 33 (leave, general), Article 43 (leave with pay for family-related responsibilities), and clause 52.02 (personal leave). It would also be consistent with clause 25.28 (e) (i) that applies to employees performing variable hours of work which includes variable shift schedule arrangements (VSSA).

This would avoid any confusion of compensation entitlement on a DPH as it would clarify how many hours the DPH is worth when the employee normally works more than seven decimal five (7.5) hours per day. This would also clarify compensation entitlement when the employee is scheduled to work on a DPH and takes leave on that DPH. The Employer’s proposal is merely a clarification and has no impact on the entitlements.

The Employer requests that the Commission not include the Bargaining Agent’s proposals related to article 30 in its report and requests that the Commission include the Employer’s proposals for a new clause 30.02 and for amendments at clause 30.09 in its report.

Article 32: Travelling Time

Bargaining Agent proposal
32.08 Travel-Status Leave ~~(a)~~ An employee who is required to travel outside his or her headquarters area on government business, as these expressions are defined by the Employer, and is away from his permanent residence for ~~forty (40)~~ **twenty (20)** nights during a fiscal year shall be granted ~~seven decimal five (7.5) hours of time~~ one **day** off with pay. The employee shall be credited ~~seven decimal five (7.5) hours~~ of additional ~~time~~ **day** off with pay for each additional twenty (20) nights that the employee is away from his or her permanent residence, to a maximum of ~~eighty (80)~~ **one hundred (100)** additional nights. ~~(b)~~ The maximum number of days off earned under this clause shall not exceed ~~five (5)~~ **six (6)** days in a fiscal year and shall accumulate as compensatory leave with pay. ~~(c)~~ This leave with pay is deemed to be compensatory leave and is subject to paragraphs 28.06(c) and (d). ~~(d)~~ The provisions of this clause do not apply when the employee travels in connection with courses, training sessions, professional conferences and seminars, unless the employee is required to attend by the Employer. **32.xx When an employee is unable to:** **i. leave their workplace due to circumstances beyond their control or** **ii. return to their place of residence while on work-related travel,** **such employee shall be paid for all time spent at the workplace in the case of i) and all time spent on captive time and travelling to his or her place of residence in the case of ii).**

Remarks

The Bargaining Agent's proposal to delete language related to the value of a workday (seven decimal five (7.5) hours) under clause 32.08 is a recurring theme throughout its proposals.

For ease of reference, the Employer provides a consolidated response to these proposals under the "Various Articles: Day is a Day" section of this brief which may be found at pages 215-219.

The Bargaining Agent is proposing significant expansion to the provisions under Travel-Status Leave (clause 32.08). Its proposal is not aligned with the intent of this provision, which is to recognize and compensate employees that were away from their residence for what is considered to be an excessive number of nights.

The travel-status leave provision was never intended as an incentive to award short-term or infrequent travel. The spill-over effect of such a proposal on other groups in the CPA would be significant given the overall amount of travel in the CPA by employees in all groups.

The data for this group clearly indicates that they are not reaching the maximum of the current language, therefore, there is no demonstrated need or rationale to increase the current quantum of travel-status leave.

The Employer's approach for all seventeen (17) Bargaining Agents, representing twenty-eight (28) Bargaining Units covering over two hundred thirty-four thousand (234,000) employees, is to apply, to the best of its ability, a common approach and level of entitlement with regard to travel-status leave.

The Board should note that the level of benefit currently available to employees in this bargaining unit is the same as the majority of collective agreements for which the Employer is a party. The Technical Services (TC), Applied Science & Patent Examination (SP), Architecture, Engineering & Land Survey (NR) and Electronics (EL) groups currently provide for a higher quantum. Those groups have a clearly demonstrated need for this increase; they conduct extensive and long-term travel in the performance of their duties and responsibilities. The same comparisons cannot be made for the FB group. They are comparable to other groups, such as the Program and Administrative Services (PA), Operational Services (SV), Radio Operations (RO) and Aircraft Operations (AO), which are all entitled to seven decimal five (7.5) hours when away for forty (40) nights.

The Bargaining Agent's proposal at 32.xx for new language related to compensation for all time spent at the Employer's workplace due to circumstances beyond his/her control is unprecedented. Additionally, provisions are already in place that could address such situations, such as overtime and leave provisions.

The Employer requests that the Commission not include the Bargaining Agent's proposal at clause 32.08 and new clause 32.xx in its report.

Article 33: Leave – General

Bargaining Agent proposal
33.01 ~~(a) When an employee becomes subject to this Agreement, his or her earned daily leave credits shall be converted into hours. When an employee ceases to be subject to this Agreement, his or her earned hourly leave credits shall be reconverted into days, with one day being equal to seven decimal five (7.5) hours.~~ ~~(b) Earned leave credits or other leave entitlements shall be equal to seven decimal five (7.5) hours per day.~~ **(a~~c~~)** When leave is granted, it will be granted on an hourly basis and the number of hours debited for each day of leave shall be equal to the number of hours of work scheduled for the employee for the day in question. **(b~~d~~)** Notwithstanding the above, in Article 46, Bereavement Leave with Pay, a "day" will mean a calendar day.
33.02 Except as otherwise specified in this Agreement: (a) where leave without pay for a period in excess of three (3) months is granted to an employee for reasons other than illness, **military leave or leave for care of the family,** the total period of leave granted shall be deducted from "continuous employment" for the purpose of calculating severance pay and from "service" for the purpose of calculating vacation leave; (b) time spent on such leave which is for a period of more than three (3) months shall not be counted for pay increment purposes.
33.xx An employee may, at their discretion in the amount and at the time of their choosing, transfer any portion of their sick leave, or annual leave or compensatory time to another employee.
Employer proposal
~~**33.03** An employee is entitled, once in each fiscal year, to be informed, upon request, of the balance of his or her vacation and sick leave credits.~~ **33.09** An employee shall not earn **or be granted** leave credits under this agreement in any month **nor in any fiscal year** for which leave has already been credited **or granted** to him or her under the terms of any other collective agreement ~~to which the Employer is a party~~ or under other rules or regulations ~~of the Employer~~ **applicable to organizations within the federal public administration, as specified in Schedule I, Schedule IV or Schedule V of the** *Financial Administration Act***.**

Bargaining Agent counter proposal
33.03 All employees shall be provided continuous access to the balance of their leave credits.

Remarks

Deletion of language at clause 33.01

The Bargaining Agent is proposing to delete language related to the value of a workday (seven decimal five (7.5) hours) under clause 33.01. This is a repeated theme, under various clauses throughout their proposals. For ease of reference, the Employer provides a consolidated response to these proposals under the "Various Articles: Day is a Day" section of this brief which may be found at pages 215-219.

Addition of military leave or leave for care of the family at clause 33.02

The Bargaining Agent's proposal at 33.02 is unnecessary. Elements pertaining to military leave are already covered by legislation and it is the Employer's policy to recognize active military duty for the purposes of continuous employment and service. Effective April 1, 2012, and on a go forward basis, any service in the Canadian Forces for a continuous period of six (6) months or more, either as a member of the Regular Force or of the Reserve Force while on Class B or C service, shall be included in the calculation of vacation leave credits. This was included in the FB group collective agreement (Exhibit 1), under subparagraph 34.03 a) ii) three rounds of bargaining ago.

The current provisions in clause 33.02 are limited to periods of leave without pay in excess of three (3) months for reasons of illness to ensure employees off work for reasons outside of their control are not penalized. The decision to take leave without pay for the care of family is typically a personal choice, therefore, the application of 33.02 (a) should not be extended to this type of leave. The inclusion of military leave and leave for care of family for the purposes of this clause would constitute a precedent in CPA collective agreements. The Employer is opposed to this proposal and submits there ought to be restraint on any additional cost increases.

Clause 33.03

With the consideration that access to technology and leave system is widely available, the Employer's proposal aims to remove the clause whereas there is a requirement to inform employees of the balance of their vacation and sick leave banks once each fiscal year.

Similar to the employee's responsibilities for verifying, entering and requesting leave in the self-service Human Resources Management System, having real-time, updated access to their leave balances in the system, removes the need for this requirement.

Via their counterproposal, the Bargaining Agent is proposing to replace this clause to provide continuous access to the balance of employees' leave credits despite acknowledging that since employees have access under the current system, providing a copy once per year was not necessary. This language would be unprecedented in CPA collective agreements, would broaden the scope of the clause and is ambiguous which could lead to differing interpretations.

New clause 33.xx

The Bargaining agent seeks to incorporate a new clause, which would allow employees the discretion to transfer portions of their sick leave, annual leave or compensatory time to fellow colleagues. While the intent behind this proposal is to foster a system of mutual support within the workplace, the establishment of this type of system would be detrimental to the Employer and would outweigh any perceived benefits. The Employer cannot support its consideration for a number of reasons namely the additional administrative burden this would add to the Employer to track leaves, ensure fairness of treatment, legitimacy, etc.

The inclusion of this clause would result in challenges for the Employer in workforce planning, potentially impacting productivity and operational continuity. It could also potentially increase costs for the employer in several ways. For instance, if multiple employees choose to transfer leaves, the increase of time off for some employees could jeopardize the Employers' ability to meet its operational and could lead to additional costs for the Employer to replace employees on leave and cover workload gaps.

Additionally, the transfer of leave would have a direct impact on leave cash-out provisions in collective agreements, which are intended to limit the liability excess leave poses to the Employer. This provision could be used to circumvent the cash-out provisions and reintroduce an uncontrollable liability to the Employer. Managers would lose their ability to budget accordingly and forecast these types of payouts resulting in unmanageable deficits.

Finally, the Employer submits that agreeing to such a change would exceed the provisions contained in other CPA agreements, without sufficient justification. It would set a precedent and create horizonal pressure across the CPA and separate agencies.

Clause 33.09

The Employer's proposal seeks to clarify language in collective agreements to ensure that employees who change bargaining units during a fiscal year do not receive a second allotment of fiscal entitlements such as personal leave, leave for family-related responsibilities and vacation leave.

The Employer submits that its proposal reflects a long-standing practice and the intent of the provisions negotiated by the parties.

Recent decisions, such as Canada (Attorney General) v. Fehr 2018 FCA 159 (Exhibit 17) and *Delios v. Canada Revenue Agency*, 2013 PSLRB 133 (Exhibit 18), have interpreted similar language to the one found in the collective agreements in a manner that, in the Employer's view, is inconsistent with current practice and that results in an unreasonable, unfair, unequitable application. Therefore, the Employer is seeking to amend the language to avoid future interpretations that could contradict current practice.

Additionally, in the context of a highly mobile workforce within the core public administration and separate agencies and to enhance fairness and equity between federal public servants, the Employer is also looking to expand the application of this clause to all organizations within the federal public administration, as specified in Schedule I, Schedule IV or Schedule V of the *Financial Administration Act*.

Similar language has been included in all other PSAC collective agreements (i.e., including Technical Services (TC), Program and Administrative Services (PA), Operational Services (SV), Education and Library Science (EB)) and into collective agreements concluded with other Bargaining Agents during this round of bargaining. The Bargaining Agent has indicated that they do not see the Employer's proposal causing a barrier in reaching an agreement. Accordingly, the Employer requests that the Commission only include the Employer's proposals in its report.

Article 34: Vacation Leave with Pay

Bargaining Agent proposals
Amend as follows: **34.02** For each calendar month in which an employee has earned at least seventy-five (75) hours' pay, the employee shall earn vacation leave credits at the rate of: (a) ~~nine decimal three seven five (9.375) hours~~ **1 (1/4)** days until the month in which the anniversary of the employee's eighth (8th) **fifth (5th)** year of service occurs; (b) ~~twelve decimal five (12.5) hours~~ 1 (2/3) days commencing with the month in which the employee's eighth (8th) fifth (5th) anniversary of service occurs; ~~(c) thirteen decimal seven five (13.75) hours commencing with the month in which the employee's sixteenth (16th) anniversary of service occurs;~~ ~~(d) fourteen decimal four (14.4) hours commencing with the month in which the employee's seventeenth (17th) anniversary of service occurs;~~ **(c)** ~~(e) fifteen decimal six two five (15.625) hours~~ **2 (1/12)** days commencing with the month in which the employee's eighteenth (18th) **tenth (10th)** anniversary of service occurs; ~~(f) sixteen decimal eight seven five (16.875) hours commencing with the month in which the employee's twenty-seventh (27th) anniversary of service occurs;~~ **(d)** ~~(g) eighteen decimal seven five (18.75) hours~~ **2 (1/2)** days commencing with the month in which the employee's ~~twenty-eighth (28th)~~ **twenty-third (23rd)** anniversary of service occurs. **(e) 2 (2/3) days commencing with the month in which the employee's thirtieth (30th) anniversary of service occurs;** **(f) 2 (11/12) days commencing with the month in which the employee's thirty-fifth (35th) anniversary of service occurs.**
Employer proposal
34.03 a. i. For the purpose of clause 34.02 **and 34.18** only, all service within the public service, whether continuous or discontinuous, shall count toward vacation leave. ii. For the purpose of clause 34.03(a)(i) only, effective April 1, 2012, on a go-forward basis, any former service in the Canadian Forces for a continuous period of six (6) months or more, either as a member of the

Regular Force or of the Reserve Force while on class B or C service, shall also be included in the calculation of vacation leave credits.

34.18

a. An employee shall be credited a one-time entitlement of thirty-seven decimal five (37.5) hours of vacation leave with pay on the first (1st) day of the month following the employee's second (2nd) anniversary of service, as defined in clause 34.03. **For clarity, employees shall be credited the leave described in 34.18(a) only once in their total period of employment in the public service.**

Remarks

Accumulation of vacation leave credits

The Bargaining Agent is proposing to change the reference to "hours" to a "day". This is a recurring theme throughout the Bargaining Agent's proposals. For ease of reference, the Employer provides a consolidated response to these proposals under the "Various Articles: "Day is a Day" section of this brief which may be found at pages 215-219.

The Bargaining Agent is proposing to amend the rate of accumulation of vacation leave credits in the collective agreements, effectively increasing vacation leave entitlements beyond what has been granted to most other groups in the CPA.

The Employer's approach for leave entitlements for all eighteen (18) Bargaining Agents, representing all employees and twenty-eight (28) Bargaining Units covering over one hundred eighty-seven thousand (187,000) represented and excluded employees, is to apply, to the best of its ability, a common approach and level of entitlement with regard to vacation leave.

A handful of professional groups deviate from this standard. These groups are Medical Doctors (MD) under the Health Services (SH) group , Law Practitioner (LP), University Teaching (UT), Air Traffic Control (AI), Comptrollership (CT), and Scientific Research (SE) under the Research (RE) group. They have a higher benefit level of vacation leave on entering the job market based on relativity of similar benefits of direct comparators in the private sector.

The Bargaining Agent's proposal is cost-prohibitive as it represents over $11.3 million per annum, or 1.07% of the FB wage base. It could also generate the need for additional staffing and overtime. These are additional cost that CBSA is in no position to absorb.

It should also be noted by the Commission that the Bargaining Agent has not demonstrated a need to increase vacation leave entitlements, which are currently comparable to those found in the vast majority of collective agreements in the CPA.

The Employer does not support this proposal. As part of a total compensation package, the FB vacation leave entitlements are clearly comparable with what is found on average in the CPA.

One-time vacation entitlement

The Employer's proposal at 34.03 aims to clarify that all service within the public service, shall count towards vacation leave, also taking into consideration the allotment of the one-time vacation leave entitlement following the employee's second (2nd) anniversary of service.

In turn, the proposal at 34.18 seeks to clarify language to ensure that employees who change bargaining units do not receive a second allotment of the one-time entitlement for vacation leave with pay. The one-time entitlement is intended to be a single event in an employee's public service career rather than a benefit defined by collective agreement.

This proposed language aims to address the *Haddad v. Canada Revenue Agency* decision 2021 FPSLREB 25 (Exhibit 19), which found that the employee was entitled to the one-time entitlement of vacation leave with pay under their collective agreement upon accepting a position in another bargaining unit, despite having already been granted (and taken) the same leave under their previous collective agreement.

The current language overlooks the fluidity of the workplace in which an employee may move between positions and correspondingly change bargaining agents and the governing collective agreement. This clarification ensures that all service within the public service is taken into account when determining the second anniversary of service, and therefore the granting of the one-time vacation leave entitlement.

Finally, the Employer is seeking to amend the language to avoid future interpretations that could contradict current practice and ensure the consistent application across the CPA and federal public service. This clarification removes ambiguity by confirming that the allotment of the one-time vacation entitlement is public-service-wide as has been a long-standing practice and the intent of the provision negotiated by the parties.

The CPA collective agreements signed during this round of collective agreements include the amendments as proposed by the Employer.

For these reasons, the Employer requests that the Commission only include the Employer’s proposal in its report.

Article 36: Medical Appointment for Pregnant Employees

Bargaining Agent proposal
Amend as follows: **Change title to "Medical Appointments for pregnancy or persons with chronic medical conditions"** **36.01** Up to ~~three decimal seven five (3.75) hours~~ **a half a day** of **required** ~~reasonable~~ time off with pay will be granted to ~~pregnant~~ employees, for the purpose of attending ~~routine~~ medical appointments **related to ~~the~~ pregnancy or their chronic medical conditions, or to accompany a partner for such appointments.** ~~**36.02** Where a series of continuing appointments is necessary for the treatment of a particular condition relating to the pregnancy, absences shall be charged to sick leave.~~

Remarks

This proposal would lead to an expansion of the application of clause 36.01 which provides pregnant employees with:

> **36.01** Up to three decimal seven five (3.75) hours of reasonable time off with pay will be granted to pregnant employees for the purpose of attending routine medical appointments.

As per the Bargaining Agent's proposal, the leave would be expanded to any persons with chronic medical conditions and to anyone wishing to accompany a partner for appointments irrespective of pregnancy. The FB group collective agreement (Exhibit 1), like the other CPA agreements, already includes generous sick leave with pay provisions which indicate that "an employee shall be granted sick leave with pay when he or she is unable to perform his or her duties because of illness or injury (…)".

The current provisions under Article 36 provide for additional time off with pay for pregnant employees attending routine medical appointments.

The language on the duration of the leave at 36.01 and on the treatment of those instances where a series of continuing appointments is necessary for the treatment of a particular condition ensure symmetry between the treatment of pregnant employees and the treatment offered to all of the CPA employees as per section 2.2.3 in Appendix A: Leave with Pay or Time off Work with Pay of the Employer's *Directive on Leave and Special Working Arrangements* (Exhibit 20) which specifies that:

2.2.3 Time off for personal medical and dental appointments

> In the core public administration, it is the practice for the employer to grant paid time off, for up to half a day, for persons to attend their own personal medical and dental appointments without charge to their leave credits in cases of routine, periodic check-ups. When a series of continuing medical or dental appointments are necessary for treatment of a particular condition, persons with the delegated authority ensure that absences are to be charged to the person's sick leave credits.

The expression “for up to half a day” is interpreted in accordance with the normal workday in the collective agreement. The normal workday is consisting of seven decimal five (7.5) consecutive hours as per clause 25.06 b. of the collective agreement. Accordingly, employees are granted up to three decimal seven five (3.75) hours of paid time off for appointments as defined under section 2.2.3 of the *Directive* or to attend routine medical appointments related to pregnancy as per article 36 of the collective agreement. The deletion of the expression “three decimal seven five (3.75) hours” at clause 36.01 is consistent with the Bargaining Agent’s proposals on “day is a day” for which the Employer provides a consolidated response under the “Various Articles: Day is a Day” section of this brief which may be found at pages 215-219.

The Employer requests that the Commission not include the Bargaining Agent’s proposals under Article 36 in its report.

Article 37: Injury-on-Duty Leave

Bargaining Agent proposal
37.01 An employee shall be granted injury-on-duty leave with pay for such period as ~~may be reasonably determined by the Employer~~ **certified by a Workers' Compensation authority** when a claim has been made pursuant to the *Government Employees Compensation Act* and a Workers' Compensation authority has notified the Employer that it has certified that the employee is unable to work because of: (a) personal injury accidentally received in the performance of his or her duties and not caused by the employee's willful misconduct, or (b) an industrial illness or a disease arising out of and in the course of the employee's employment, if the employee agrees to remit to the Receiver General for Canada any amount received by him or her in compensation for loss of pay resulting from or in respect of such injury, illness or disease, provided, however, that such amount does not stem from a personal disability policy for which the employee or the employee's agent has paid the premium.

Remarks

The Bargaining Agent is proposing to remove the Employer's discretion in determining the period for which injury-on-duty leave with pay shall be granted.

The Employer has an internal structure through the *Government Employees Compensation Act* (GECA – labour programs) which ensures that all employees of the CPA have access to coverage, through provincial Workers Compensation Boards (WCB), when they are injured in the course of their employment or disabled by reasons of an industrial disease due to the nature of their employment.

Under the Bargaining Agent's proposal, the employee would remain on leave with pay, paid by the Employer, until such time as it is determined by a WCB that the employee can return to work. This period could extend past one hundred thirty (130) days, which is the standard the Employer follows according to its own Injury-on-Duty Leave Guidelines (Exhibit 21). Also, the employee's other benefits would continue to accumulate during this time, such as vacation and sick leave.

The Employer's guidelines for the administration of injury-on-duty leave, were developed in consultation with several departments to complement the framework established by the *Government Employees Compensation Act (GECA)*, including Labour Canada, which administers the *GECA*.

The Guidelines clearly indicate that:

> Should the total period of injury-on-duty leave granted to an employee with respect to an injury or illness reach one hundred thirty (130) working days, a special departmental review of the case should be carried out and a decision made as to whether or not the continued provision of such leave beyond this period is warranted.
>
> Where a decision is made to discontinue the provision of injury-on-duty leave to a disabled employee, the appropriate regional office of Labour Canada should be immediately notified of the date that injury-on-duty leave will terminate. Upon receipt of such notification, Labour Canada will make the required arrangements for the disabled employee to receive Provincial Workers' Compensation payments from the date injury-on-duty leave ceases until the claim is settled. (Provincial wage compensation benefits for totally disabled employees are generally 75% of earnings, based on a maximum annual earnings ceiling. Specific information concerning provincial compensation benefits may be obtained from the appropriate regional office of Labour Canada.)

If it was the Employer's intention to modify the administration of injury-on-duty leave, it would do so through a consultative process where the guidelines could be amended and be applicable to all employees of the CPA.

In addition, by requiring that the leave continue for as long as the WCB certifies that the employee is unable to work, this proposal would unduly affect the Employer's authority to terminate the employment of an employee for reasons other than misconduct, pursuant to subparagraph 12(1)(e) of the *Financial Administration Act* (Exhibit 4), when there is no prospect of return to work in the foreseeable future.

Accordingly, it is the Employer's position that the current practice and the existing framework are sufficient. Employees are provided a benefit beyond what is offered by other public and private sector employers, such as the Ontario Provincial Government and those subject to the *Canada Labour Code*.

The current language is identical to what is included in all collective agreements in the CPA and it is consistent with the Employer's guidelines.

The Employer also respectfully submits that the Commission does not have the jurisdiction to decide on the Bargaining Agent's proposal pursuant to subparagraphs 177(1)(a) and (b) of the *Federal Public Sector Labour Relations Act* (Exhibit 2):

> **Report not to require legislative implementation**
>
> **177 (1)** The report may not, directly or indirectly, recommend the alteration or elimination of any existing term or condition of employment, or the establishment of any new term or condition of employment, if
>
> **(a)** the alteration, elimination or establishment would require the enactment or amendment of any legislation by Parliament, except for the purpose of appropriating money required for implementation;
> **(b)** the term or condition is one that has been or may be established under the *Public Service Employment Act*, the *Public Service Superannuation Act* or the *Government Employees Compensation Act*;

Therefore, the Employer recommends that the Commission not include this demand in its report.

Article 39: Maternity-Related Reassignment or Leave

Bargaining Agent proposal
39.01 An employee who is pregnant or nursing may, during the period from the beginning of pregnancy to the end of the twenty-fourth (24th) week following the birth, request that the Employer modify her job functions or reassign her to another job if, by reason of the pregnancy or nursing, continuing any of her current functions may pose a risk to her health or the health of the fetus or child. On being informed of the cessation, the Employer, with the written consent of the employee, shall notify the appropriate workplace committee or the health and safety representative. **39.02** An employee's request under clause 39.01 **shall be granted immediately and** must be accompanied or followed as soon as possible by a medical certificate indicating the expected duration of the potential risk and the activities or conditions to be avoided in order to eliminate the risk. ~~Depending on the particular circumstances of the request, the Employer may obtain an independent medical opinion.~~ **39.03** An employee who has made a request under clause 39.01 is entitled to continue in her current job while the Employer examines her request but, if the risk posed by continuing any of her job functions so requires, she is entitled to be immediately assigned alternative duties until such time as the Employer: a. modifies her job functions or reassigns her; or b. informs her in writing that it is not reasonably practicable to modify her job functions or reassign her. **39.04** Where reasonably practicable, the Employer shall modify the employee's job functions or reassign her. **39.05** Where the Employer concludes that a modification of job functions or a reassignment that would avoid the activities or conditions indicated in the medical certificate is not reasonably practicable, the Employer shall so inform the employee in writing and shall grant leave of absence with~~out~~ pay to the employee for the duration of the risk as indicated in the medical certificate. However, such leave shall end no later than twenty-four (24) weeks after the birth.

39.07 Upon request of a nursing or pumping employee, they shall be granted reasonable leave with pay to nurse, pump or express during work hours. Moreover, the Employer shall provide a reasonable private space to do so. For greater clarity, this space shall not be a public or private washroom.

Remarks

With its proposal at clause 39.02, the Bargaining Agent is proposing to remove the Employer's discretion and to expand its obligation by making it mandatory to immediately grant a modification of job functions or a reassignment when requested. The Employer submits that the proposed change is redundant since clause 39.03 already provides for immediate reassignment to alternative duties if the risk posed by continuing any of the job functions so requires while the Employer examines the request.

Clause 39.03 reads:

> **39.03** An employee who has made a request under clause 39.01 is entitled to continue in her current job while the Employer examines her request but, if the risk posed by continuing any of her job functions so requires, she is entitled to be immediately assigned alternative duties until such time as the Employer:
>
> a. modifies her job functions or reassigns her; or
> b. informs her in writing that it is not reasonably practicable to modify her job functions or reassign her.

The Bargaining Agent's proposal also seeks to remove the Employer's right to obtain an independent medical opinion. The Employer does not make the decision to request independent medical opinions lightly. These requests are made to ensure the Employer has the required information to modify the duties or reassign the employee in instances where the information provided by the employee is not sufficient to ensure appropriate accommodation.

As for the proposal to clause 39.05, in instances where the medical certificate imposes restrictions, the Employer is obligated to attempt to reassign the employee or modify the duties. If the Employer cannot reassign or modify the duties of the employee, the Employer grants leave without pay.

During this time, the employee may have access to other types of leave under the collective agreement or EI top–up, and/or other benefits to offset the leave without pay

which is reasonable and consistent with the treatment of other types of leaves and the principles governing the application of the collective agreement.

The Employer recommends that the Commission not include these Bargaining Agent demands in its report.

New clause – leave with pay for nursing

The addition of a new clause 39.07 would unduly broaden the scope of the provision and provide entitlements beyond those provided for in all other collective agreements in the core public administration. When included in CPA collective agreements, the breaks are unpaid and subject to operational requirements which is consistent with the entitlement available to employees whose terms and conditions of employment are defined by the *Canada Labour Code*.

The Employer is of the view that no sufficient justification supporting this proposal was provided by the Bargaining Agent.

The Employer recommends that the Commission not include these Bargaining Agent demands in its report.

Article 41: Leave Without Pay for the Care of Family

Employer movement
41.01 a. Both parties recognize the importance of access to leave for the purpose of the care of family. ** b. For the purpose of this article, "family" is defined as per Article 2 and in addition: a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee. **41.02** **Subject to operational requirements, a**n employee ~~shall~~ **may** be granted leave without pay for the care of family in accordance with the following conditions: a. an employee shall notify the Employer in writing as far in advance as possible but not less than four (4) weeks in advance of the commencement date of such leave unless, because of urgent or unforeseeable circumstances, such notice cannot be given; b. leave granted under this article shall be for a minimum period of **six (6)** ~~**twelve (12)** three (3)~~ weeks; c. the total leave granted under this article shall not exceed five (5) years during an employee's total period of employment in the public service; ~~**d.** leave granted for a period of one (1) year or less shall be scheduled in a manner which ensures continued service delivery;~~ **d. an employee who intends to take leave granted for a period of one (1) year or less during the summer leave period will submit their leave request on or before April 15, and on or before September 15 for the winter leave period.**

Remarks

The Employer's proposal at clause 41.02 seeks to amend language in the provisions dealing with leave without pay for the care of family to make the leave subject to operational requirements. Amending the language of this article is a priority for the Employer.

Similar proposals were tabled during the previous two rounds of bargaining and no progress was made. The need for predictability is becoming increasingly important in light of CBSA's operational requirements.

The Employer is committed to supporting employees in achieving work-life balance through the various types of leaves available under the collective agreement and other means. CBSA is, however, a highly operational organization and the absence of a reference to operational requirements under the existing language makes it difficult for the Employer to maintain adequate service levels, especially during peak leave periods.

Requests for this type of leave generally coincide with peak traveller times (e.g., May to September and December/January), and with multiple requests from employees for other types of leaves (i.e., vacation, leave with income averaging, etc.). Balancing employees' interests with work schedules and operational needs in general represents an increasingly significant challenge, especially that the demand for leave for the care of family during peak traveller times continues to increase from year to year.
Managers must be able to consider and address their operational needs when granting an employee leave for an extended period of time. The Employer's proposal will contribute to meet this organizational need. This would also allow to balance employee's well-being and ensuring that the people of Canada will be well and efficiently served.

The proposed amendment to the minimum duration of the leave under paragraph 41.02 (b) is also supportive of this objective. Through this brief, the Employer is amending its initial proposal from a period of leave for a minimum of twelve (12) weeks to a leave of a minimum of six (6) weeks under paragraph 41.02 (b.)

The predictability in the management of leaves and of the workforce would also be positively impacted through the inclusion of a new paragraph 41.02 (d).

This new paragraph, replicates language found under paragraph 34.05 (b) of Article 34: vacation leave with pay. As per this paragraph, employees are required to "submit annual leave requests for the summer leave period on or before April 15, and on or before September 15 for the winter leave period".

The Employer takes the opportunity of this brief to note that the collective agreement of the Law Enforcement Support and Police Operations Support (LES-PO), which includes Telecommunication Operators from the 911 Operational Communications Centers and Intercept Monitors from the Royal Canadian Mounted Police, also a highly operational group, includes similar language.

More specifically, Article 38: leave without pay for the care of family of the LES-PO group collective agreement reads:

Article 38: leave without pay for the care of family

38.01 Both parties recognize the importance of access to leave for the purpose of the care of family.

38.02 For the purpose of this article, "family" is defined per Article 2: interpretation and definitions, and in addition:

a. a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee.

38.03 Subject to operational requirements, an employee shall be granted leave without pay for the care of family in accordance with the following conditions:

a. an employee shall notify the Employer in writing as far in advance as possible but not less than four (4) weeks in advance of the commencement date of such leave, unless, because of urgent or unforeseeable circumstances, such notice cannot be given;
b. leave granted under this article shall be for a minimum period of six (6) weeks;
c. the total leave granted under this article shall not exceed five (5) years during an employee's total period of employment in the public service;
d. an employee who intends to take leave granted for a period of one (1) year or less during the summer leave period will submit their leave request on or before April 15, and on or before September 15 for the winter leave period.

38.04 An employee who has proceeded on leave without pay may change their return-to-work date if such change does not result in additional costs to the Employer.

The Employer requests that the Commission includes the Employer's proposals in its report.

Article 42: Caregiving Leave

Bargaining Agent proposal
42.01 An employee who provides the Employer with proof that he or she is in receipt of or awaiting Employment Insurance (EI) ~~benefits for~~ compassionate care benefits, family caregiver benefits for children and/or family caregiver benefits for adults shall be granted leave without pay while in receipt of or awaiting these benefits. 42.02 The leave without pay described in 42.01 shall not exceed twenty-six (26) weeks for compassionate care benefits, thirty-five (35) weeks for family caregiver benefits for children and fifteen (15) weeks for family caregiver benefits for adults, in addition to any applicable waiting period. 42.03 When notified, an employee who was awaiting benefits must provide the Employer with proof that the request for Employment Insurance (EI) compassionate care benefits, family caregiver benefits for children and/or family caregiver benefits for adults has been accepted. ~~42.04 When an employee is notified that their request for Employment Insurance (EI) compassionate care benefits, family caregiver benefits for children and/or family caregiver benefits for adults has been denied, clause 42.01 above ceases to apply.~~ **42.04 Where an employee is subject to a waiting period before receiving Employment Insurance (EI) compassionate care benefits, family caregiver benefits for children and/or family caregiver benefits for adults, they shall receive an allowance of ninety-three per cent (93%) of her weekly rate of pay.** **42.05 For each week the employee receives Employment Insurance (EI) compassionate care benefits, family caregiver benefits for children and/or family caregiver benefits for adults, they shall receive the difference between ninety-three per cent (93%) of their weekly rate and the applicable Employment Insurance (EI) benefit.** 42.0~~5~~**6** Leave granted under this clause shall count for the calculation of "continuous employment" for the purpose of calculating severance pay and "service" for the purpose of calculating vacation leave. Time spent on such leave shall count for pay increment purposes.

Remarks

The Bargaining Agent is seeking to introduce a supplemental and a top-up allowance for the caregiving leave, essentially making it a leave with pay.

The Employer submits that these provisions were improved during the last round of collective bargaining and that none of the agreements signed in this round, including the other four Alliance groups (Program and Administrative Services (PA), Education and Library Science (EB), Operational Services (SV) and Technical Services (TC)) contains such language.

The Employer seeks to apply a common approach for all bargaining units and to provide the same level of entitlements. The Employer is of the view that the Bargaining Agent has not provided sufficient justification for this demand.

The total cost of this proposal is estimated at $7.1M, which is about 0.67% of the FB group's wage base. As such, the additional cost of this supplementary plan far exceeds the parameters of the CBSA's budget and will severely limit its economic capabilities to respond to other demands of the Bargaining Agent.

The Employer also respectfully submits that the limited economic capabilities of the Employer should be recognized when deciding to recommend items that will increase the total compensation package of its employees.

The Employer recommends that the Commission not include the Bargaining Agent proposals in its report.

Article 43: Leave With Pay for Family-Related Responsibilities

Bargaining Agent proposal

For the purpose of this clause, "family" is defined per Article 2

~~**43.01** For the purpose of this article, family is defined as spouse (or common-law partner resident with the employee), children (including foster children, step-children or children of the spouse or common-law partner, ward of the employee), grandchild, parents (including step-parents or foster parents), father-in-law, mother-in-law, son-in-law, daughter-in-law, brother, sister, step-brother, step-sister, grandparents of the employee, any relative permanently residing in the employee's household or with whom the employee permanently resides or any relative for whom the employee has a duty of care, irrespective of whether they reside with the employee, and a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee.~~

43.02 The total leave with pay which may be granted under this article shall not exceed ~~thirty-seven decimal five (37.5) hours~~ **ten (10) days** in a fiscal year. **Such leave may be taken as single days or as a fraction of a day.**

43.03 Subject to clause 43.02, the Employer shall grant the employee leave with pay under the following circumstances:

(a) to take a family member for ~~medical or dental~~ appointments **of a professional nature, including but not limited to medical, dental, legal and financial appointments or appointments with school authorities or adoption agencies**, ~~or for appointments with school authorities or adoption agencies~~, if the supervisor was notified of the appointment as far in advance as possible;

(b) to provide for the immediate and temporary care of a sick member of the employee's family and to provide the employee with time to make alternative care arrangements where the illness is of a longer duration;

(c) to provide for the immediate and temporary care of a~~n elderly~~ member of the employee's family;

(d) for needs directly related to the birth or the adoption of the employee's child;

(e) to attend school functions, if the supervisor was notified of the functions as far in advance as possible;

(f) to provide for the employee's child in the case of ~~an unforeseeable~~ closure of the school or daycare facility;

(g) ~~seven decimal five (7.5) hours out of the thirty-seven decimal five (37.5) hours stipulated in clause 43.02 above may be used~~ to attend an

appointment with a legal or paralegal representative for non-employment related matters, or with a financial or other professional representative, if the supervisor was notified of the appointment as far in advance as possible.

(h) to visit a terminally ill member

43.04 Where, in respect of any period of compensatory leave, an employee is granted leave with pay for illness in the family under paragraph 43.03(b) above, on production of a medical certificate, the period of compensatory leave so displaced shall either be added to the compensatory leave period, if requested by the employee and approved by the Employer, or reinstated for use at a later date. **Employees shall not be required to provide a medical certificate for an employee's family member.**

Remarks

The Bargaining Agent is proposing to amend Article 43 as follows:

Moving the definition of family

The Bargaining Agent is proposing to remove the definition of family from article 43 and to replace it with a reference to the definition found in article 2 – Interpretation and definitions. The Bargaining Agent also seeks to expand the definition of family under article 2. These proposals, once combined, would provide a much broader eligibility for leave with pay for family-related responsibilities than what is currently provided in all other collective agreements in the CPA.

Replacement of the word "hours" by "day"

The Bargaining Agent is proposing to change the reference to "hours" to a "day", This is a recurring theme throughout the Bargaining Agent's proposals. For ease of reference, the Employer provides a consolidated response to these proposals under the "Various Articles: Day is a Day" section of this brief which may be found at pages 215-219.

Increasing the quantum of leave

The Bargaining Agent is requesting an increase to the quantum of leave with pay for family-related responsibilities from thirty-seven decimal five (37.5) hours to ten (10) days, which represents an extra five (5) days (or thirty-seven decimal five (37.5) hours).

The Employer submits that the Bargaining Agent's proposal to increase the quantum is costly, over $11.8 million per year ongoing for the FB group only, or 1.12% of the FB wage base. The Employer is opposed to such an increase.

Employees in the CPA already benefit from a variety of leaves which allow them to adapt to their individual circumstances. Increasing the quantum would create a precedent for the other collective agreements in the CPA and could lead to a spill over effect that would be costly for the Employer, both from a financial and operational perspective.

Expanding the quantum of leave under paragraph 43.03 (g)

The Bargaining Agent is also proposing to eliminate the seven decimal five (7.5)-hour cap on the leave to attend appointments with a legal, paralegal or with a financial or other professional representative as per paragraph 43.03 (g). It is the Employer's position that cap should remain at seven decimal five (7.5)-hours since the leave under Article 43 is for family-related reasons and not to attend appointment related to personal matters. The original intent of the clause is to assist an employee with balancing work and family life-related responsibilities. The Employer submits that there is no justification for the expansion of this paragraph. This language is also not found in any other CPA collective agreement and the Bargaining Agent has failed to substantiate the driving need for this change. The Employer maintains that this cap should remain.

Expanding the circumstances for which leave can be granted

Professional appointments (43.03 a))

The Bargaining Agent is proposing at 43.03 a) to significantly expand the nature of the appointments that would allow employees to request family-related responsibilities leave. They are proposing to replace "taking a family member for medical or dental appointments, or for appointments with school authorities or adoption agencies" with "taking a family member to appointments of a professional nature, including but not limited to medical, dental, legal and financial appointments or appointments with school authorities or adoption agencies".

The Employer submits that this proposal significantly departs from the original intent of the provision. Appointments of a "professional nature" is extremely broad and would be challenging to clearly define. "Professional" may have different meanings, one of which being "relating to or belonging to a profession". Considering this, it is likely that the proposed terminology would attract many grievances on its meaning and application,

whereas the current provision is clear and understood by the parties and serves a specific purpose.

The Bargaining Agent has failed to demonstrate the need and has not provided any examples to support the expansion of this paragraph to apply to other types of appointments of a professional nature. Accordingly, the Bargaining Agent's demand has not been substantiated and would only create confusion with existing provisions and conflicts between managers and employees who would no doubt struggle to define "*appointments of a professional nature*".

Removal of "elderly" (43.03 c))

The Bargaining Agent is proposing at 43.03 c) that the leave should be granted to provide immediate and temporary care of any member of the employee's family as opposed to just limited to "elderly" members. The Employer submits that such a change would unreasonably broaden the scope of the article and negate the purpose and meaning of this paragraph.

Removal of "an unforeseeable" (43.03 f))

The Bargaining Agent is proposing at 43.03 f) that the leave should be granted for school or daycare facility closures, irrespective of whether the closure was foreseeable.

The Employer submits that while an employee is currently entitled to request leave with pay for family-related responsibilities in the event that something sudden/unexpected occurs to impact the availability of the day care or school (i.e., closure due to bad weather), it is reasonable to expect that an employee will make efforts to meet their childcare obligations through alternative solutions when the closure is predictable and/or scheduled.

Removing the qualifier "unforeseeable" would substantially change the original intent and scope of the circumstances covered under these provisions whereby any type of closure including ones that are scheduled would meet the criteria of this clause.

The Bargaining Agent has failed to provide any evidence to justify their demand to expand the provisions for this paragraph, which would result in a significant departure from the original intent of the language.

Visit a terminally ill family member (new 43.03 h))

The Bargaining Agent is proposing to add "*to visit a terminally ill family member*" to the list of circumstances for which the leave shall be granted. The Bargaining Agent's proposal at 43.03 h) is already adequately addressed under paragraphs 43.03 b)

and c). The Employer submits that there is no justification why the provisions for this article should be expanded. The leave entitlements currently provided for in the collective agreement could find application for this specific circumstance.

In closing, the Bargaining Agent has failed to share any rationale or analysis that would support their proposals on this Article, all of which represent significant costs and impacts on operations, as well as service to Canadians.

Considering all of the above, the Employer requests that the Commission not include any of the Bargaining Agent’s proposals to expand the circumstances for which leave can be granted under this Article in its report and requests that the article be renewed without changes.

Article 46: Bereavement Leave with Pay

Bargaining Agent proposal
46.01 For the purpose of this article, "family" is defined as per Article 2 ~~and in addition~~: ~~a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee. An employee shall be entitled to bereavement leave with pay under 46.02(a) only once during the employee's total period of employment in the public service.~~ **46.02** (a) When a member of the employee's family dies, an employee shall be entitled to a bereavement period of seven (7) consecutive calendar days. Such bereavement period, as determined by the employee, must include the day of the memorial commemorating the deceased, or must begin within two (2) days following the death. During such period, the employee shall be paid for those days which are not regularly scheduled days of rest for the employee. In addition, the employee may be granted up to **five (5)** ~~three (3)~~ days' leave with pay for the purpose of travel related to the death. (b) At the request of the employee, such bereavement leave with pay may be taken in a single period or may be taken in two (2) periods. (c) When requested to be taken in two (2) periods: i. The first period must include the day of the memorial commemorating the deceased or must begin within two (2) days following the death, and ii. The second period must be taken no later than twelve (12) months from the date of death for the purpose of attending a ceremony. iii. The employee may be granted no more than **five (5)** ~~three (3)~~ days' leave with pay, in total, for the purposes of travel for these two (2) periods. **46.03** An employee is entitled to one (1) day's bereavement leave with pay for a purpose related to the death of ~~brother-in-law or sister-in-law~~ and grandparent of spouse. **NEW** **46.04 An employee shall be entitled to bereavement leave under 46.02 when they, the person with whom they intend to have a child, or their surrogate suffer**

from a miscarriage. For the purpose of this article, "miscarriage" means a termination of pregnancy before the 20th week.

NEW

46.05 An employee is entitled to bereavement leave with pay in the event of the death of a person in respect of whom the employee is, at the time of the death, on leave under 42.01. Such bereavement leave, as determined by the employee, may be taken during the period that begins on the day on which the death occurs and ends six weeks after the day on which the memorial commemorating the deceased person occurs. At the request of the employee, such bereavement leave with pay may be taken in a single period of fourteen (14) consecutive calendar days or may be taken in two (2) periods to a maximum of ten (10) working days.

46.04~~6~~6 If, during a period of paid leave, an employee is bereaved in circumstances under which he or she would have been eligible for bereavement leave with pay under clauses 46.02 and 46.03, the employee shall be granted bereavement leave with pay and his or her paid leave credits shall be restored to the extent of any concurrent bereavement leave with pay granted.

46.05~~7~~7 It is recognized by the parties that circumstances which call for leave in respect of bereavement are based on individual circumstances. On request, the deputy head of a department may, after considering the particular circumstances involved, grant leave with pay for a period greater than and/or in a manner different than that provided for in clauses 46.02 and 46.03.

Employer movement

46.01 For the purpose of this article, "family" is defined as per Article 2 and in addition:

a. a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee. An employee shall be entitled to bereavement leave with pay under 46.0~~2~~**1**(a) only once during the employee's total period of employment in the public service.

46.03 An employee is entitled to one (1) day's bereavement leave with pay for a purpose related to the death of **his or her aunt or uncle**, brother-in-law or sister-in-law and grandparent of spouse. (Employer movement)

Remarks

Expansion to the definition of family at clause 46.01

Consistent with its proposal for an amended definition of "family" under Article 2: Interpretation and definition, the Bargaining Agent proposal for an amended clause 46.01 would lead to the expansion of scope of Article 46. This change would broaden its scope far beyond what is found in all other collective agreements in the core public administration.

In addition, the Bargaining Agent is proposing to delete the notion that employees are entitled to bereavement leave only once in an employee's career in the public service as it relates to a person who stands in the place of a relative. This element is part of the new provision that was introduced in the collective agreement in the last round of negotiation.

Again, the Employer is of the view that no sufficient justification supporting these proposed expansions to the definition of family was provided by the Bargaining Agent.

Travel

The Bargaining Agent is also seeking to increase the amount of paid leave to be granted to employees for the purpose of travel related to the death from three (3) to five (5) days. This expansion would broaden the scope far beyond what is found in all other collective agreements in the core public administration.

Again, the Employer is of the view that no sufficient justification supporting this proposal was provided by the Bargaining Agent. This would also be precedent setting for CPA collective agreements.

Employees on caregiving leave – new clause 46.05

The parties successfully negotiated caregiving leave in a recent round of collective bargaining. No sufficient justification supporting this proposal was provided by the Bargaining Agent.

Expansion of bereavement leave

The Bargaining Agent proposes to expand the provisions of Article 46 to provide bereavement leave with pay for employees who have experienced miscarriage, or the person with whom they intend to have a child, or their surrogate suffer from miscarriage.

In conclusion, the Employer is opposed to the Bargaining Agent's proposals under clause 46 as they would be precedent setting for CPA collective agreements.

Employer proposal to amend clause 46.01 and 46.03

The Employer is proposing an editorial change to clause 46.01. The proposed change seeks to clarify that it is the bereavement leave as it relates to a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity that can only be taken once in an employee's career in the public service. This restriction does not apply to the bereavement leave for a family member as provided for in clause 46.02.

The Employer is also moving from its initial position and proposes to amend clause 46.03 to include an employee's aunt or uncle. This language replicates amendments made in this round in collective agreements of CPA groups represented by the PSAC and other bargaining agents.

For all the reasons explained above, the Employer requests that the Commission only include its proposals in the report.

Article 52: Leave With or Without Pay for Other Reasons

Bargaining Agent proposal
52.02 Personal leave Subject to operational requirements as determined by the Employer and with an advance notice of at least five (5) working days, the employee shall be granted, in each fiscal year, ~~fifteen (15) hours of~~ **two (2) days of** leave with pay for reasons of a personal nature. This leave can be taken in ~~periods of seven decimal five (7.5) hours or three decimal seven five (3.75) hours~~ **single days or as half days**. **In the case of half days, the total leave shall not exceed the equivalent of two days.** The leave will be scheduled at times convenient to both the employee and the Employer. Nevertheless, the Employer shall make every reasonable effort to grant the leaves at such times as the employee may request.
52.xx Leave with Income Averaging **a. The Employer's Leave with Income Averaging Directive, as constituted on November 30st, 2018, shall form part of this Agreement.** **b. The Employer shall not unreasonably deny requests for Leave with Income Averaging.** **c. When excessive requests have been made for Leave with Income Averaging, years of service shall be the determining factor for the granting of such leave.**
52.xx Leave with Pay for First Responder Duties **Upon request of the employee, the Employer shall grant leave with pay for the performance of volunteer first responder duties.**

Remarks

Proposal to change the value of a workday at clause 52.02

The Bargaining Agent's proposal to delete language related to the value of a workday (seven decimal five (7.5) hours) under clause 52.02 is a recurring theme throughout its proposals. For ease of reference, the Employer provides a consolidated response to these proposals under the "Various Articles: Day is a Day" section of this brief which may be found at pages 215-219.

The Bargaining Agent is seeking to make the leave available to employees by the day or by a fraction of a day. The current language is consistent across most CPA collective agreements. It simplifies the management of operations by making it easier for the Employer to schedule employees.

Proposal for a new clause 52.xx on Leave with Income Averaging

With this proposal, the Bargaining Agent is essentially seeking to have Appendix D - Leave with Income Averaging: A Special Working Arrangement of the Employer's *Directive on Leave and Special Working Arrangements* (Exhibit 20) embedded within the collective agreement.

The Commission should be aware that the Employer has a comprehensive *Directive on Leave and Special Working Arrangements*, which provides a framework for flexible work arrangements when operationally feasible, in a number of circumstances, such as:

- Leave with pay or time off work with pay,
- Leave without pay,
- Pre-retirement transition leave: A special working arrangement, and
- Leave with income averaging: A special working arrangement.

The objective of this *Directive* is to have "departments within the CPA manage paid and unpaid absences from work and special working arrangements in a sound, consistent and effective manner." The expected results of this *Directive* are that:

- persons appointed to the CPA are accorded leave benefits in accordance with their relevant collective agreement or terms and conditions of employment; and
- absences from work and special working arrangements are administered and managed in an accurate, equitable, transparent and timely manner.

It is the Employer's position regarding its policy instruments that there is no need to incorporate them into a collective agreement. The existing *Directive on Leave and Special Working Arrangements* is clear and provides that its provisions must be respected in consideration of all employee requests for the various types of leave and special working arrangements that it addresses. It is the Employer's contention that the Directive, or parts thereof, should not be included in the collective agreement.

The Employer sees value in having a single Directive that is applicable to all employees in the CPA as leave with income averaging is a government-wide issue impacting all its

employees. Including this proposal in a collective agreement would create an unfortunate precedent and could subject the leave with income averaging to twenty-eight (28) different negotiations within the CPA which would potentially lead to different treatment amongst employees. The Employer needs to maintain the managerial rights in the management of these types of leave and it is best served through an enterprise-wide directive.

Proposal for a new clause 52.xx on Leave with pay for First Responder Duties

The Bargaining Agent is seeking to introduce a provision for leave with pay for the performance of volunteer first responder duties. The proposed language is very broad and would significantly expand the leave provisions. It could also lead to different interpretations.

The collective agreement already provides for various types of leave which allow to adapt to an employee's personal circumstances. Therefore, the Employer submits that employees can avail themselves to other existing leave provisions in the collective agreement for their volunteer engagements.

Furthermore, the Bargaining Agent has not provided the Employer with any compelling evidence or justification that would support this proposal.

Accordingly, the Employer requests that the Commission not include these proposals in its report.

Article 55: Statement of Duties

Employer proposal
55.01 Upon written request, an employee shall be provided with a**n official** ~~complete and current~~ statement of the duties and responsibilities of his or her position, including the classification level and, where applicable, the point rating allotted by factor to his or her position, and an organization chart depicting the position's place in the organization.

Remarks

The Employer is proposing to replace the expression "complete and current" with "official" to facilitate the drafting of concise and standardized job descriptions which would in turn contribute to greater consistency across the CPA.

The Treasury Board *Directive on Classification,* Appendix B: Standard on Classification (Exhibit 22) states that:

> 2.2.1 Job descriptions must be written concisely in bias-free plain language, contain all significant aspects of the work assigned to the job and include:
>
> - The organizational context, mandate and supervisor–subordinate relationships;
> - A title that reflects the functions and nature of the work described; and
> - The manager's signature and the date the job description was signed.

Moreover, managers are required as per the *Directive*, to determine "the effective date of a job description and justify the date chosen based on evidence" (see s. 4.2.6) and to maintain "accurate organizational structures and current job descriptions for their areas of responsibility" (see s. 4.2.5).

In addition, managers are required as per the *Directive*, to sign and date a job description prior to submission for any job evaluation, confirming that it reflects the work assigned and to be performed.

Finally, this change supports the Employer's goal in ensuring that employees have access to their job descriptions deemed official by Classification, which accurately reflects what the employee's job is.

This clarification in language would result in a reduction in the number of grievances by narrowing the gap in job related content in an employee's job description.

The Employer’s proposed language provides a more accurate reflection of this. Consequently, the Employer requests that the Commission include the Employer’s proposal in its report.

Article 58: Membership Fees

Bargaining Agent proposal
58.01 The Employer shall reimburse ~~an employee~~ **a Member of the bargaining unit** for the payment of membership or registration fees to an organization or governing body when the payment of such fees is ~~a requirement for~~ **related to** the continuation of the performance of the duties of the ~~employee's~~ **Member's** position**.**

Remarks

The Bargaining Agent seeks to expand the application of this provision by replacing the word "requirement" with "related to". The current language clearly indicates that the Employer will reimburse the payment of membership or registration fees only when such membership or registration is required for the continuation of the performance of the duties of the employees. The Bargaining Agent's proposed changes would significantly expand the scope of the provision and could encompass a variety of memberships and registration fees which are only remotely related to the performance of duties but not required for the performance of the duties. This language would create uncertainty about what is covered by this clause, and it would create unlimited and unrestricted liability for the Employer. Employees could choose any type of membership, and in this instance specifically, this could include any membership or registration fees for firing ranges.

The Employer is of the view that this proposal is closely related to the Bargaining Agent's proposed new appendix for the reimbursement of fees associated with access to firing ranges and storage of firearms. The Bargaining Agent seeks to provide more firearm practice opportunities for its members, based on the premise that it is a requirement for their job.

The Employer submits that this additional access to firearm practice is not required for the performance of the duties of the employees. Paragraph 12(1) (a) of the *Financial Administration Act* (Exhibit 4), establishes that Deputy Heads in the CPA have the authority to "determine the learning, training and development requirements of persons employed in the public service and fix the terms on which the learning, training and development may be carried out".

Consistent with this authority and as part of the Arming Program, the Employer reiterates that CBSA does not require that Border Services Officers (BSO) visit firing ranges to maintain their firearm carrying skills in between yearly qualifying periods.

Additionally, the proposed changes could include any professional organization that is related to the performance of the employee’s duties. This language could have far-reaching ramifications and would also be unprecedented in the CPA collective agreements.

The Employer requests that the Commission not include the Bargaining Agent’s proposal in its report.

Article 59: Tools-up/Tools-down (Current title: Wash-up time)

Bargaining Agent proposal
Replace current language with: **59.01** **a) All tooled officers shall be provided a minimum of fifteen (15) minutes at the beginning and fifteen (15) minutes at the end of each shift for tooling up and tooling down. Time spent tooling up and tooling down shall form part of an employee's shift. Such time shall also include maintenance of tools.** **b) In addition to a) above, where there is a need due to the nature of the work, wash-up time up will be permitted before the end of the working day.**

Remarks

For ease of reference, below is the language as it currently exists in the FB group collective agreement which expired on June 20, 2022 (Exhibit 1).

> **59.01** Where the Employer determines that, due to the nature of work, there is a clear-cut need, wash-up time up to a maximum of ten (10) minutes will be permitted before the end of the working day.

The Bargaining Agent is proposing new language to add a fifteen (15)-minute period at the beginning and at the end of the shift for the purpose of tooling up and tooling down. As per this proposal, the reference to a ten (10)-minute wash-up time and the expression "Where the Employer determines that, (…), there is a clear-cut need" as they currently appear in the expired collective agreement would be deleted. These deletions would essentially leave the allotted wash-up time ambiguous or discretionary which is unreasonable from the Employer's standpoint.

It is the Employer's expectation that officers report to work properly equipped and ready to begin their working day or shift. It is commonly understood and accepted that employees have to do certain things to be able to perform their duties, such as eating, sleeping and dressing up in appropriate clothes or uniform. The mere fact that these actions are necessary to the subsequent performance of work duties does not make them "work". This principle is supported by jurisprudence, namely in *Trudeau and Milligan v. Treasury Board* (Canada Boarder Services Agency) 2012 PSLRB 72 (Exhibit 23). The Employer submits that "tooling up" falls within this type of actions and is not

considered to be part of the employees’ duties and responsibilities, and the action of donning or doffing their equipment is not part of their start or end time.

Accordingly, there is no requirement to include the language, as proposed by the Bargaining Agent, in the collective agreement. Additionally, this proposal is cost-prohibitive as it represents over $51.3 million per annum in productivity costs or 4.85% of the FB wage base. This change would also put workload pressure on the CBSA, which may generate replacement costs for salaries and overtime that are not included in this cost.

The Employer requests that the Commission not include this demand in its report.

Article 60: Allowances

Bargaining Agent proposals
60.02 Dog handlers' allowance When an employee is required to handle a trained detector dog during a shift, and in recognition of the duties associated with control, care and maintenance of the detector dog at all times, the employee shall be paid an allowance of ~~one~~ **two** ($**2**~~1~~) dollar per on-duty hour.
Plain Clothes **60.03 Employees required to provide and wear ordinary clothing as part of their duties, shall be reimbursed by the Employer for expenses incurred in the purchase of such clothing, to a maximum of one-thousand, two hundred and fifty dollars ($1,250.00) per annum, upon presentation of the necessary receipts. If an employee performs such duties for less than a calendar year, but for a period or periods totaling one calendar month (30 days) or more in that year, the employee shall be entitled to reimbursement of a proportionate part of the expenses in the same ratio that the employee's time so spent bears to that calendar year.** **60.04 Each employee entitled to the expenses under Section 60.03 shall submit a claim once annually in January for the preceding year to be reimbursed not later than the month of February, next following.**
Dry Cleaning allowance **60.05 The Employer shall reimburse up to a maximum of three hundred and fifty dollars ($350.00) per calendar year for expenses associated with the cleaning of clothing required for the performance of their duties, upon presentation of the necessary receipts.**
60.06 Escorted Removals Premium **When an employee is assigned to escort a person from Canada, the employee shall be paid a seven-dollar ($7.00) premium for each hour worked on the assignment, provided that the assignment requires that the employee work more than 7.5 contiguous hours. For the purposes of this clause, 'on assignment' includes time spent escorting a person from Canada and return time to the employee's headquarters area.**

Fitness/Wellness Allowance

60.07 The Employer shall provide all employees with a monthly allowance of $50 for the maintaining of a membership at a gym or fitness facility, except where the Employer provides an adequate fitness facility free of charge on site.

Field Coaching Allowance

60.0X Employees who provide field coaching to employees are eligible to receive an allowance of three decimal five per cent (3.5%) of their current rate of pay for the period of time during which they are assigned such duties.

60.0X Field Coaching Allowance is not included in base salary for the purpose of calculating annual increases.

60.0X The Field Coaching Allowance is not used for the purposes of establishing a rate of pay on promotion, demotion, or transfer.

60.0X The Field Coaching Allowance is not used for computing the payout of annual leave credits, overtime, maternity or parental benefits, or other allowances.

60.0X Entitlement is limited to one (1) Field Coaching Allowance for any given period.

Remarks

Proposal to increase the dog handler's allowance

The Bargaining Agent is seeking an increase to the dog handlers' allowance from one dollar ($1.00) to two dollars ($2.00) per on-duty hour. This allowance is fairly recent as it was introduced into the collective agreement two rounds ago.

During this round of bargaining, the Bargaining Agent did not provide any substantiation or demonstrated need that would be supportive of an increase at this time.

That being said, the Employer is prepared to continue the discussion on this proposal, in the context of a comprehensive settlement.

Proposal for a new plain clothes allowance

The Bargaining Agent is proposing new language to add an annual allowance for the

purchase of plain clothes for non-uniformed officers. During the course of negotiations, the Bargaining Agent clarified that this allowance would apply to the Hearing Officers and Intelligence Officers populations of the FB group.

The Bargaining Agent indicated that Hearing Officers are required to wear a suit and a tie at hearings. As for the Intelligence Officers, the Bargaining Agent asserts that they must buy plain clothes to accommodate their tools, as well as clothing that serves as a disguise when conducting surveillance.

The Employer respectfully submits that the CBSA's expectations with regard to non-uniformed staff's clothing, is that its employees dress appropriately for the work they are performing. This is the normal and usual expectation for a non-uniformed employee in any workplace.

The CBSA's Code of Conduct (Exhibit 24) provides specific information on this requirement under its Appearance and Hygiene section (page 14 of Exhibit 24). More specifically, the Code establishes that:

> *For non-uniformed staff, our professional dress and appearance depend upon the duties we perform and are especially important when we are serving the public. We rely upon our common sense and good judgment and recognize that, at minimum, we always present ourselves in a neat, clean, and well-groomed manner that does not interfere with the work performance of others.*

Employees can also dress in a "business casual" manner which is further defined in the Code as follows:

> *At CBSA "business casual" may be defined as: A collared shirt (e.g. dress shirt or golf shirt) or top/blouse that should be conservative. Skirts and dresses must be no shorter than 3" above the knee. Pants/slacks should be of a dress pant material, typically not solely Lycra or Spandex (i.e. not athletic wear).*

Hearing Officers and Intelligence Officers are required to comply with the Code as is the case for any other CBSA employees, and to dress appropriately for the work to be performed.

Hearing Officers are required to wear appropriate business attire but are not required to wear a suit and a tie when they represent the interests of CBSA in front of Immigration Boards. As for the Intelligence Officers, they do not perform undercover work. They conduct surveillance from a distance and are required to blend in with the general

population. The Officers are not required to wear specific types of clothes. Some employees p wear loose fitting clothes which is acceptable to CBSA. Employees are still wearing normal casual clothes. The Employer does not prescribe or require specific clothing. In any event, these duties are not performed on a full-time basis. Their duration is case-specific and is normally limited in scope.

The Employer is opposed to this demand and submits there ought to be restraint on any additional cost increases. The cost of the plain clothes allowance would be over $0.3 million per year ongoing, or 0.03 % of the wage base.

Proposal for a new dry-cleaning allowance

This Bargaining Agent's proposal would introduce a new dry-cleaning allowance for uniformed officers in the FB group.

As part of its uniform program, CBSA chooses good quality fabric for all of its uniforms' components. All the components, inclusive of the shell of the bullet proof vest, can be maintained using residential washers and dryers. Employees do not incur any additional cost to maintain their uniform other than the cost inherent to the maintenance of any standard work clothes.

The introduction of such an allowance would also be in contradiction with the *National Joint Council (NJC) Uniforms Directive* (Exhibit 25) which precludes dry cleaning allowances and specifies that employees are expected to maintain their uniform. The NJC Uniforms Directive, states:

> **2.1.7** When, as a condition of employment, an employee receives any item of clothing as an individual issue, that employee will be expected to wear and maintain it in a clean, pressed and repaired condition, in accordance with departmental directives and in accordance with care labels permanently attached to each garment.
>
> **3.6 Clothing allowance**
>
> 3.6.1 The Treasury Board prefers the direct issue of clothing to the payment of clothing allowances. However, Treasury Board does not wish to preclude payment of such allowances in cases where the practice is established or the economy of introducing a new allowance can be clearly demonstrated.
>
> 3.6.2 No new allowances or changes in existing allowances shall be introduced without the prior authorization of the Treasury Board.

3.6.3 No allowances shall be paid for:

a. repair, cleaning, pressing and laundering; or
b. personal clothing.

It is the Employer's position that this issue rests with the NJC and should be negotiated as part of that Directive.

With respect to the cyclical review of terms and conditions of employment found within *Directives* of the National Joint Council or new subjects brought forward, the General Secretary of the NJC requests its members to indicate whether they wish to participate in consultations or whether to deal with the subject at the bargaining table. Should the Bargaining Agent opt out of consultations, the National Joint Council (NJC) By-Laws (Exhibit 26) require that the Bargaining Agent refrain from introducing such proposals during the collective bargaining process, which, in instance, is not the case for the PSAC:

> *9.1.14 Bargaining Agents opting in favour of NJC consultation undertake to refrain from making a collective bargaining proposal concerning items contained in the current directive or policy under Council review. The period of opting shall be for the period referred to in the cyclical review schedule (subsection 7.3.1).*

This proposal amounts to over $0.1 million per year ongoing, or 0.01% of the FB wage base.

Finally, no other group within the CPA receives such an allowance. The Bargaining Agent did not provide any evidence that would substantiate the requirement for the inclusion of this allowance in the collective agreement.

Proposal to create an additional premium related to escort removals

The Bargaining Agent is proposing to create a new allowance to compensate officers assigned to escort a person from Canada.

Currently clauses 27.01 and 27.02 of the FB collective agreement (Exhibit 1) provide an additional two dollars ($2.00) per hour for both Shift and Weekend premiums, and Article 28 – Overtime, provides for compensation at a premium rate for overtime at one decimal five (1.5) times and two (2.0) times the regular rate of pay. These provisions are at par with most of the public service groups.

Employees are also entitled to premiums for travelling time and can accumulate overtime for travel done in combination with work. They can also accumulate travel-status leave up to thirty-seven decimal five (37.5) hours.

Officers conducting escort removals typically receive these premiums for work (custody of the escort) and travel time. They are also subject to the reimbursements allowed in the *National Joint Council (NJC) Travel Directive* (Exhibit 8).

When officers return home from an overseas escort, they are paid continuously (alternating between regular time and overtime) starting from the departure from their residence or their office prior to the scheduled flight to one (1) hour after arrival home. If there is an overnight layover, they remain on travel status, the journey is considered broken and the payment restarts three (3) hours prior to the next leg of the journey.

The Employer sees no reason or requirement to create an additional premium related to escort removals. Nor has the Bargaining Agent provided any valid reason to increase the compensation of the FB group for escorted removals.

The escort function is very costly in consideration of the aforementioned premiums and with hotel, airfare and typically business-class travel. These costs compounded by the way officers are paid on the return leg. Adding another premium would be very difficult for the Employer to justify.

The cost of this additional allowance would be over $0.4M or 0.04% of the wage base.

The Employer is opposed to this demand. It far exceeds the parameters of what CBSA's budget will allow and would severely limit their economic capabilities.

Proposal for a new fitness/wellness allowance

The Bargaining Agent is proposing to add a monthly fitness/wellness allowance in the amount of fifty dollars ($50.00). The Employer submits that this proposal is unnecessary and that the Bargaining Agent has not provided sufficient justification for this demand.

The Employer is of the opinion that maintaining a certain physical standard to a level proportional to the job requirements is an inherent part of their functions.

This proposal is cost prohibitive for the Employer as it amounts to over $5.9 million per year ongoing, or 0.56% of the FB wage base. In addition, any such allowance would be deemed a taxable benefit by the Canada Revenue Agency. It would have to be

identified on the employee's annual T4 for income tax purposes. The Employer also notes that none of the CPA collective agreements include similar provisions. Its inclusion in the collective agreement would create a precedent for the other CPA groups.

The Employer's *Policy on People Management* (Exhibit 27) provides departments and agencies with the ability to safeguard the health and safety of their workforce and workplace, including wellness measures that could promote its employees' mental and physical health (section 4.1.33 of the Policy included in Exhibit 27).

As per the Policy, departments and agencies may elect to sponsor fitness programs that are typically available to all their employees. Many government organizations, including the CBSA, have agreements with fitness facility providers for discounted rates based on employee interest. The Employer suggests that this is an issue for CBSA Labour Management Committee discussion.

As per these agreements, employees can benefit from discounted rates which can be even lower than the allowance being proposed by the Bargaining Agent. In addition, this does not constitute a taxable benefit for those employees that avail themselves of this opportunity.

Proposal for a new field coaching allowance

The Bargaining Agent is proposing a new field coaching allowance equivalent to three decimal five percent (3.5%) of an employee's current rate of pay for the period of time during which they are assigned these duties.

Field coaching is an integral part of training in many fields where employees apply their acquired knowledge and skills in an operational setting, under the close supervision of a certified field coach. Field coaches must successfully complete a required training program before assuming the roles and responsibilities in this role. It is not the case for the CBSA's training and development program.

CBSA's College, with its main campus in Rigaud, Quebec, is the Agency's primary training centre and deliver's the Agency's Officer Induction Training Program (OITP). It is designed to develop high-calibre officers.

The Officer Induction Training Program (OITP) is divided into four developmental blocks starting with recruitment, followed by forty (40) to fifty (50) hours of online learning over a four (4)-week period, providing recruits with a solid understanding of the CBSA and the role of the frontline officer. The third block consists of a fourteen (14)-week program designed on developing skills and knowledge specifically related to the job duties of an

Officer Trainee, and where recruits learn how to understand and apply the policies, procedures and legislation the CBSA administers, as well as perform primary and secondary inspections. They also learn control and defensive tactics and firearms skills, as well as how to identify the grounds for action to conduct a personal search, seizure, detention or arrest.

After successful completion of the third block of the OITP, trainees begin the Officer Induction Development Program (OIDP), a twelve (12) to eighteen (18) month on-the-job development phase, as a CBSA Officer Trainee (FB-02). This phase of the program is related to the Bargaining Agent's proposal seeking a field coaching allowance for Border Services Officers (FB-03), working alongside Officer Trainees.

During this phase, Officer Trainees are posted to one of the CBSA's ports of entry (POE) across Canada. Reporting directly to the Superintendent, this phase provides a developmental path which involves performing on-the-job functions, competency development, learning and constructive feedback. The Superintendent monitors and evaluates Officer Trainee performance and compliance, provides direct operational guidance and reviews and coaches Officer Trainees on program technical competencies. The Superintendent also provides Officer Trainees with work responsibilities and development opportunities and implements learning strategies. Officer Trainees are assessed every three (3) months using the Trainee Performance Questionnaires (TPQ) which is designed to assist the Superintendent to determine if the Officer Training has demonstrated the expected skills for the Border Services Officer position.

After a minimum of twelve (12) months in the OIDP, an Officer Trainee is eligible for appointment to a BSO (FB-03) subject to the Readiness Report completed by their responsible Superintendent confirming they are able to perform the normal duties of a BSO; in combination with other requirements.

The Operations Branch (Border Operations Directorate) is also considered a key stakeholder, as they are responsible for the performance management of Officer Trainees during the OIDP. The Regional Director General (RDG) of each host region is the delegated authority to appoint successful CBSA Officer Trainees in their Region to an FB-03 Border Services Officer position.

Border Services Officers (FB-03), for whom, the Bargaining Agent is seeking an additional allowance for, work alongside Officer Trainees throughout the developmental period and assist with general guidance, training and onboarding. They are not responsible for monitoring, supervising and/or evaluating Officer Trainees. As these basic training functions are outlined in the FB-03 work description (Exhibit 28), FB-03's are already compensated for them. An additional allowance is not substantiated.

The Employer’s does not see a demonstrated need to expand the OIDP by introducing a new element, field coaches, to the program.

Therefore, the Employer recommends that the Commission not include the Bargaining Agent’s demands in its report.

Article 61: Part-time Employees

Bargaining Agent proposal
Consequential changes as needed.

Remarks

The Employer cannot comment nor take position in the absence of a specific proposal from the Bargaining Agent.

Therefore, the Employer requests that the Commission not include the Bargaining Agent’s proposal in its report.

Article 63: Pay Administration

Bargaining Agent proposals
63.07 a. When an employee is required by the Employer to substantially perform the duties of a higher classification level in an acting capacity and performs those duties for at least ~~three (3)~~ **one (1)** ~~consecutive working~~ day~~s~~ or shift~~s~~, the employee shall be paid acting pay calculated from the date on which **they** commenced to act as if **they** had been appointed to that higher classification level for the period in which **they** act~~s~~. b. When a day designated as a paid holiday occurs during the qualifying period, the holiday shall be considered as a day worked for purposes of the qualifying period. **63.XX** **a) An employee who is required to act at a higher level shall receive an increment at the higher level after having reached fifty-two (52) weeks of cumulative service at the same level.** **b) For the purpose of defining when employee will be entitled to go to the next salary increment of the acting position, "cumulative" means all periods of acting at the same level.**

Remarks

The Bargaining Agent is seeking various changes to the current administration of acting pay. Clause 63.07 a) deals with the elimination of the three (3) consecutive day qualifying period for acting pay, and new clause 63.xx a) and c) proposes cumulative broken acting periods to determine the next increment for acting pay.

The Employer submits that the current provisions are consistent with the majority of other collective agreements in the CPA and are designed to ensure compliance with the government of Canada's compensation systems and processes. Changes as proposed at clause 63.07 would introduce a significant strain on the administration of pay and would complicate the payroll system at a time when the Employer is seeking opportunities to simplify the administration of pay. It would also create horizontal pressure for other CPA groups.

Introducing the bargaining agents proposed changes would lead to a significant increase in compensation transactions and introduce a labour-intensive tracking

requirement. Experience with similar provisions for another collective agreement have shown that this would complicate the payroll system in a manner that would compromise the Employer's ability to input compensation actions and ensure service delivery for members of the bargaining unit. This is one of the driving factors why the Employer is seeking opportunities to simplify the administration of pay as part of an ongoing commitment and collaboration with Bargaining Agents. As per the *Directive on Terms and Conditions of Employment*, that applies to the CPA, every time there is a pay increment or revision in the substantive position of the person, a recalculation of the acting salary is done to ensure that salary adjustments in the acting position are done in accordance with this *Directive*.

The Directive ensures sound, consistent and effective practices with respect to the administration of terms and conditions of employment across the CPA.

There have been significant challenges related to the Phoenix pay system.

Proposals that would further complicate the payroll system processes, such as tracking cumulative periods of individual acting, are not desirable or warranted given the employers ongoing commitment to pay simplification and streamlined system processes. In addition, the current provisions are consistent with most other collective agreements and support an Enterprise-wide approach to acting pay administration.

For these reasons, the Employer requests that the Commission not include the Bargaining Agent's proposals in its report as the employer could not, in good faith, ensure compliance with these elements.

Article 65: Duration

Bargaining Agent proposal
65.01 This agreement shall expire on June 20, 202~~2~~**5.**
Employer proposal
65.01 This agreement shall expire on June 20, 202~~2~~**6.**

Remarks

Duration

As illustrated under Part III of this brief, the parties have different proposals for the duration of the revised agreement. The Employer is proposing a four (4)-year agreement while the Bargaining Agent is seeking a three (3)-year agreement.

In the Employer's view, a four (4)-year agreement is essential to allow for labour relations stability and predictability. In the last two (2) rounds, the parties have negotiated four (4)-year agreements that were either expired at the time of signing or that expired approximately six (6) months after. Specifically, the parties signed-off the 2014-2018 collective agreement in July 2018 with an expiry date of June 20, 2018. As for the 2018-2022 collective agreement, it was signed off in December 2021 and it expired approximately six (6) months later, on June 20, 2022. A three (3)-year agreement would potentially lead to a similar, perhaps slightly longer, period before it expires after it is finalized.

A one (1)-year period or less between rounds of collective bargaining is insufficient time to allow the parties to fully experience amendments made to collective agreements. A four (4)-year agreement would provide the parties with the opportunity to implement negotiated changes more fully and to determine whether changes are required to address issues based on a substantiated need.

The CPA collective agreements signed-off this round were for at least four (4) years. Moreover, and as per Part II of this brief, the Employer is of the view that its economic offer over four (4) years is competitive with the labour market and is in keeping with the economic indicators. The proposed economic offer and term of the collective agreement are appropriate based on circumstances and known factors.

The Employer therefore requests that the Commission include the Employer's proposal for a four (4)-year collective agreement in its report.

Various Articles: Day is a Day

Bargaining Agent proposals
Article 25: Hours of Work **25.28 Specific Application of this Agreement** For greater certainty, the following provisions of this agreement shall be administered as provided herein: [….] e. **Designated paid holidays (clause 30.07)** i. ~~A designated paid holiday shall account for seven decimal five (7.5) hours~~. ii. When an employee works on a designated paid holiday, the employee shall be compensated, in addition to the pay for the hours specified in subparagraph (i), at ~~time and one-half (1 1/2) up to his or her regular scheduled hours worked and~~ at double (2) time for all hours worked in excess of his or her regular scheduled hours. [….] **h. Leave** ~~i. Earned leave credits or other leave entitlements shall be equal to seven decimal five (7.5) hours per day~~. i. When leave is granted, it will be granted on an hourly basis and the number of hours debited for each day of leave shall be equal to the number of hours of work scheduled for the employee for the day in question.
Article 32: Travelling Time **32.08 Travel Status Leave** a) An employee who is required to travel outside his or her headquarters area on government business, as these expressions are defined by the Employer, and is away from his permanent residence for ~~forty (40)~~ **twenty (20)** nights during a fiscal year shall be granted ~~seven decimal five (7.5) hours~~ **one day** off with pay. The employee shall be credited with one additional ~~seven decimal five (7.5) hours of time~~ **day off with pay** for each additional

twenty (20) nights that the employee is away from his or her permanent residence to a maximum of ~~eighty (80)~~ **one hundred (100)** additional nights.

b) The maximum number of days off earned under this clause shall not exceed ~~five (5)~~ **six (6)** days in a fiscal year and shall accumulate as compensatory leave with pay.

[….]

Article 33: Leave General

33.01

~~(a) When an employee becomes subject to this Agreement, his or her earned daily leave credits shall be converted into hours. When an employee ceases to be subject to this Agreement, his or her earned hourly leave credits shall be reconverted into days, with one day being equal to seven decimal five (7.5) hours.~~

~~(b) Earned leave credits or other leave entitlements shall be equal to seven decimal five (7.5) hours per day.~~

a ~~c.~~ When leave is granted, it will be granted on an hourly basis and the number of hours debited for each day of leave shall be equal to the number of hours of work scheduled for the employee for the day in question.

b ~~d~~**.** Notwithstanding the above, in Article 46, Bereavement Leave with Pay, a "day" will mean a calendar day.

Article 34: Vacation Leave with Pay

34.02 For each calendar month in which an employee has earned at least seventy-five (75) hours' pay, the employee shall earn vacation leave credits at the rate of:

a) ~~nine decimal three seven five (9.375) hours~~ **1 (¼) days** until the month in which the anniversary of the employee's ~~eighth (8th)~~ **fifth (5th)** year of service occurs;

b) ~~twelve decimal five (12.5) hours~~ **1 (2/3)** days commencing with the month in which the employee's ~~eighth (8th)~~ **fifth (5th)** anniversary of service occurs;

~~c) thirteen decimal seven five (13.75) hours commencing with the month in which the employee's sixteenth (16th) anniversary of service occurs;~~

~~d) fourteen decimal four (14.4) hours commencing with the month in which the employee's seventeenth (17th) anniversary of service occurs;~~

(c) ~~(e) fifteen decimal six two five (15.625) hours~~ **2 (1/12) days** commencing with the month in which the employee's ~~eighteenth (18th)~~ **tenth (10th)** anniversary of service occurs;

~~(f) sixteen decimal eight seven five (16.875) hours commencing with the month in which the employee's twenty-seventh (27th) anniversary of service occurs;~~

(d) ~~(g) eighteen decimal seven five (18.75) hours~~ **2 (1/2) days** commencing with the month in which the employee's ~~twenty-eighth (28th)~~ **twenty-third (23rd)** anniversary of service occurs.

e) 2 (2/3) days commencing with the month in which the employee's thirtieth (30th) anniversary of service occurs;

f) 2 (11/12) days commencing with the month in which the employee's thirty-fifth (35th) anniversary of service occurs.

Article 36: Medical Appointment for Pregnant Employees

36.01 Up to ~~three decimal seven five (3.75) hours~~ **a half a day** of **required** ~~reasonable~~ time off with pay will be granted to ~~pregnant~~ employees, for the purpose of attending ~~routine~~ medical appointments **related to ~~the~~ pregnancy or their chronic medical conditions, or to accompany a partner for such appointments.**

Article 43: Leave with Pay for Family-Related Responsibilities

43.02 The total leave with pay which may be granted under this Article shall not exceed ~~thirty-seven decimal five (37.5) hours~~ **ten (10) days** in a fiscal year.

Article 52: Leave with or without Pay for Other Reasons

52.02 Personal leave

Subject to operational requirements as determined by the Employer and with an advance notice of at least five (5) working days, the employee shall be granted, in each fiscal year, ~~fifteen (15) hours of~~ **two (2) days of** leave with pay for reasons of a personal nature. This leave can be taken in ~~periods of seven decimal five (7.5) hours or three decimal seven five (3.75) hours~~ **single days or as half days**. **In the case of half days, the total leave shall not exceed the equivalent of two days.**

[….]

Remarks

The Bargaining Agent is proposing to change the reference to seven decimal five (7.5) hours to a "day".

This is a recurring theme throughout the Bargaining Agent's proposals.

Currently, the purpose of the reference to seven decimal five (7.5) hours in the CPA collective agreements (as opposed to a day) is simple and fundamental. All leave credits and entitlements, with the exception of bereavement leave, are to be expressed in hours, with one (1) day equal to seven decimal five (7.5) hours. Amending the term "hours" for "days" would ultimately lead to granting employees with different entitlements, depending on an employee's daily hours of work, which could lead to anomalous circumstances and unequitable treatment for employees.

The parties have already previously agreed, for consistency, to express leave in hours and not days, such as under Article 25: Hours of Work, Article 32: Travelling Time, Article 33: Leave General, Article 34: Vacation Leave with Pay, Article 36: Medical Appointment for Pregnant Employees, Article 43 - Leave with Pay for Family-Related Responsibilities and Article 52: Leave With or Without Pay for Other Reasons.

The Employer submits that the Bargaining Agent's proposal to deviate from this long-standing language would lead to inequitable allocation and use of leave. For example, an employee working on a shift schedule of ten (10) hours daily could benefit from fifty (50) hours of family-related leave, compared to an employee working a seven decimal five (7.5) hour day with an entitlement of only thirty-seven decimal five (37.5) hours over the year. It is the Employer's position that an earned day of leave, with the noted exception of bereavement leave, should have the same value for all employees.

For the information of the Commission, the leave provisions have been converted into hours in most other CPA collective agreements, which include the other groups represented by the PSAC and groups where shift work is common. In addition, the leave articles in most other collective agreements have been amended to emphasize that leave entitlements are worth seven decimal five (7.5) hours, with the exception of bereavement leave.

Furthermore, there are a number of agreements that contain a provision under Variable Hours of Work that state that a day shall be converted to seven decimal five (7.5) hours. For the FB group, this clarification can be found at clause 25.28 (h)(i) of the collective agreement (Exhibit 1). To revert back to a "day" would be a step backward in what the Employer has successfully bargained over the years.

The Employer submits that no other agreement contains such language. The current language provides greater clarity and less risk of debate or dispute in the workplace.

The Employer requests that the Commission not include the Bargaining Agent’s proposal in its report.

Appendix C: Workforce Adjustment

Bargaining Agent proposal
General **Application** This appendix applies to all employees. Unless explicitly specified, the provisions contained in Parts I to VI do not apply to alternative delivery initiatives. **Collective agreement** With the exception of those provisions for which the Public Service Commission (PSC) is responsible, this appendix is part of this agreement. Notwithstanding the job security article, in the event of conflict between the present workforce adjustment appendix and that article, the present workforce adjustment appendix will take precedence. **Objectives** It is the policy of the Employer to maximize employment opportunities for indeterminate employees affected by workforce adjustment situations, primarily through ensuring that, wherever possible, alternative employment opportunities are provided to them. This should not be construed as the continuation of a specific position or job but rather as continued employment. To this end, every indeterminate employee whose services will no longer be required because of a workforce adjustment situation and for whom the deputy head knows or can predict that employment will be available will receive a guarantee of a reasonable job offer within the core public administration. Those employees for whom the deputy head cannot provide the guarantee will have access to transitional employment arrangements (as per Parts VI and VII), with a view to enabling their retirement or alternate employment opportunities outside of the public service. **Definitions** **Affected employee (employé-e touché)** Is an indeterminate employee who has been informed in writing that his or her services may no longer be required because of a workforce adjustment situation **or an employee affected by a relocation.**

Guarantee of a reasonable job offer (garantie d'une offre d'emploi raisonnable)

Is a guarantee of an offer of indeterminate employment within the core public administration provided by the deputy head to an indeterminate employee who is affected by workforce adjustment. Deputy heads will be expected to provide a guarantee of a reasonable job offer to those affected employees for whom they know or can predict that employment will be available in the core public administration. Surplus employees in receipt of this guarantee will not have access to the options available in Part VI of this appendix, **except in cases where remote working is not available, and relocation would place undue hardship on the employee and the employee's family as a result of a relocation to a location that the employee is unable to relocate to.**

Reasonable job offer (offre d'emploi raisonnable)

Is an offer of indeterminate employment within the core public administration, normally at an equivalent level, but which could include lower levels. Surplus employees must be both trainable, **willing to work remotely** and mobile. Where practicable, a reasonable job offer shall be within the employee's headquarters as defined in the *Travel Directive*. In alternative delivery situations, a reasonable offer is one that meets the criteria set out under type 1 and type 2 in Part VII of this appendix.

A reasonable job offer is also an offer from a FAA Schedule V Employer, providing that:

a. The appointment is at a rate of pay and an attainable salary maximum not less than the employee's current salary and attainable maximum that would be in effect on the date of offer.
b. It is a seamless transfer of all employee benefits including a recognition of years of service for the definition of continuous employment and accrual of benefits, including the transfer of sick leave credits, severance pay and accumulated vacation leave credits.

Relocation (réinstallation)

Is the authorized geographic move of a surplus employee or laid-off person from one place of duty to another place of duty located beyond ~~what, according to local custom, is a normal commuting distance.~~ **40km from the employee's current place of duty.**

Relocation of work unit (réinstallation d'une unité de travail)

Is the authorized move of a work unit of any size to a place of duty located beyond ~~what, according to local custom, is normal commuting distance~~ **beyond 40 km** from the former work location and from the employee's current residence.

Remote Working Arrangement

Is an arrangement where the employee works remotely and which must be instituted in situations where the employee agrees to work remotely and where remote work can lead to a guaranteed reasonable job offer or provide alternate work without requiring relocation.

Workforce adjustment (réaménagement des effectifs)

Is a situation that occurs when a deputy head decides that the services of one or more indeterminate employees will no longer be required beyond a specified date because of a lack of work, the discontinuance of a function or a relocation in which the employee does not wish to participate or an alternative delivery initiative.

Monitoring

Departments or organizations shall retain central information on all cases occurring under this appendix, including the reasons for the action; the number, occupational groups and levels of employees concerned; the dates of notice given; the number of employees who the department finds employment with other departments, **the number of employees whose jobs are retained as a result of remote working opportunities, the number of employees who are relocated,** the number of employees placed without retraining; the number of employees retrained (including number of salary months used in such training); the levels of positions to which employees are appointed and the cost of any salary protection; and the number, types and amounts of lump-sums paid to employees.

This information will be used by the Treasury Board Secretariat to carry out annual audits. **The results of those audits will be shared with the PSAC no later than two months after they have been completed.**

Enquiries

Enquiries about this appendix should be referred to the Alliance or to the responsible officers in departmental or organizational headquarters.

Responsible officers in departmental or organizational headquarters may, in turn, direct questions regarding the application of this appendix to the Senior Director, Excluded Groups and Administrative Policies, Labour Relations and Compensation Operations, Treasury Board Secretariat.

Enquiries by employees pertaining to entitlements to a priority in appointment or to their status in relation to the priority appointment process should be directed to their departmental or organizational human resource advisors or to the ~~Priority Advisor of the PSC~~ responsible for their case.

Part I: roles and responsibilities

1.1 Departments or organizations

1.1.1 Since indeterminate employees who are affected by workforce adjustment situations are not themselves responsible for such situations, it is the responsibility of departments or organizations to ensure that they are treated equitably and, whenever possible, given every reasonable opportunity to continue their careers as public service employees.

1.1.2 Departments or organizations shall carry out effective human resource planning to minimize the impact of workforce adjustment situations on indeterminate employees, on the department or organization, and on the public service. **Departments or Organizations shall share the results of that planning with the Union once notification of a workforce adjustment situation has been given.**

1.1.3 Departments or organizations shall establish joint workforce adjustment committees~~, where appropriate~~, to advise and consult on the workforce adjustment situations within the department or organization. Terms of reference of such committees shall include a process for addressing alternation requests from other departments and organizations.

1.1.4 Departments or organizations shall, as the home department or organization, cooperate with the PSC and appointing departments or organizations in joint efforts to redeploy departmental or organizational surplus employees and laid-off persons. **Departments or organizations will share the details and results of their cooperative efforts with other departments and organizations in writing with each affected employee.**

1.1.5 Departments or organizations shall establish systems to facilitate redeployment or retraining of their affected employees, surplus employees, and laid-off persons.

The details of such systems shall be shared with the Union once notification of a workforce adjustment has been given.

1.1.10 Departments or organizations shall send written notice to the PSC of an employee's surplus status, and shall send to the PSC such details, forms, resumés, and other material as the PSC may from time to time prescribe as necessary for it to discharge its function. **Departments and organizations shall notify the employee when this written notice has been sent.**

1.1.12 The home department or organization shall provide the PSC with a **written** statement that it would be prepared to appoint the surplus employee to a suitable position in the department or organization commensurate with his or her qualifications if such a position were available. **The home department will provide a copy of that written statement to the bargaining agent that represents the employee.**

1.1.14 Deputy heads shall apply this appendix so as to keep actual involuntary lay-offs to a minimum, and a lay-off shall normally occur only when an individual has refused a reasonable job offer, is not mobile, **is not able to work remotely** or cannot be retrained within two (2) years, or is laid-off at his or her own request.

1.1.18 Home departments or organizations shall relocate surplus employees and laid-off individuals, if necessary, **and when other alternate work arrangements are not possible**.

1.1.19 Relocation of surplus employees or laid-off persons shall be undertaken when the individuals indicate that they are willing to relocate and relocation will enable their redeployment or reappointment, provided that:

a. there are no available priority persons, or priority persons with a higher priority, qualified and interested in the position being filled;
   or
b. there are no available local surplus employees or laid-off persons who are interested and who could qualify with retraining.

NEW XX (renumber current 1.1.19 ongoing)

a) In the event that remote working opportunities are not possible, the employer shall make every reasonable effort to provide an employee with a reasonable job offer within a forty (40) kilometre radius of his or her work location.

b) In the event that reasonable job offers can be made within a forty (40) kilometre radius to some but not all surplus employees in a given work location, such reasonable job offers shall be made in order of seniority.

c) In the event that a reasonable job offer cannot be made within forty (40) kilometres, every reasonable effort shall be made to provide the employee with a reasonable job offer in the province or territory of his or her work location, prior to making an effort to provide the employee with a reasonable job offer in the public service.

d) In the event that reasonable job offers can be provided to some but not all surplus employees in a given province or territory, such reasonable job offers shall be made in order of seniority.

e) An employee who chooses not to accept a reasonable job offer which requires relocation to a work location which is more than forty (40) kilometres from his or her work location shall have access to the options contained in section 6.4 of this Appendix.

1.1.26 Departments or organizations shall inform the PSC, **and the PSAC** in a timely fashion, and in a method directed by the PSC **and the PSAC**, of the results of all referrals made to them under this appendix.

1.1.30 Departments or organizations acting as appointing departments or organizations shall cooperate with the PSC and other departments or organizations in accepting, to the extent possible, affected, surplus and laid-off persons from other departments or organizations for appointment or retraining. **Departments or organizations acting as appointing departments or organizations shall notify the PSC, the home department or organization and the PSAC of instances where appointments are possible, where appointments are made and where they are not made and the reasons why those employees were not appointed.**

1.1.34 Departments or organizations shall inform and counsel affected and surplus employees as early and as completely as possible and, in addition, shall assign a counsellor to each **affected,** opting and surplus employee and laid-off person, to work with him or her throughout the process. Such counselling is to include explanations and assistance concerning:

a. the workforce adjustment situation and its effect on that individual;
b. the workforce adjustment Appendix;
c. the PSC's Priority Information Management System and how it works from the employee's perspective;
d. preparation of a curriculum vitae or resumé;
e. the employee's rights and obligations;

f. the employee's current situation (for example, pay, benefits such as severance pay and superannuation, classification, language rights, years of service);
g. alternatives that might be available to the employee (the alternation process, **remote work,** appointment, relocation, retraining, lower-level employment, term employment, retirement including the possibility of waiver of penalty if entitled to an annual allowance, transition support measure, education allowance, pay in lieu of unfulfilled surplus period, resignation, accelerated lay-off);
h. the likelihood that the employee will be successfully appointed;
i. the meaning of a guarantee of a reasonable job offer a twelve (12) month surplus priority period in which to secure a reasonable job offer, a transition support measure and an education allowance;
j. advise employees to seek out proposed alternations and submit requests for approval as soon as possible after being informed they will not be receiving a guarantee of a reasonable job offer;
k. advise employees of opportunities to access remote work either in combination with an alternation or otherwise and to seek out these opportunities and submit requests for approval as soon as possible after being informed they will not be receiving a guarantee of a reasonable job offer;
l. the Human Resources Centres and their services (including a recommendation that the employee register with the nearest office as soon as possible);
m. preparation for interviews with prospective employers;
n. feedback when an employee is not offered a position for which he or she was referred;
o. repeat counselling as long as the individual is entitled to a staffing priority and has not been appointed;
p. advising the employee that refusal of a reasonable job offer will jeopardize both chances for retraining and overall employment continuity; and
q. advising employees of the right to be represented by the Alliance in the application of this appendix.

1.2 Treasury Board Secretariat

1.2.1 It is the responsibility of the Treasury Board Secretariat to:

a. investigate and seek to resolve situations referred by the PSC, **the PSAC** or other parties, **and communicate the results of the investigation and resolution strategy to them;**
b. consider departmental or organizational requests for retraining resources; and

c. ensure that departments or organizations are provided to the extent possible with information on occupations for which there are skill shortages.

1.4 Employees

1.4.1 Employees have the right to be represented by the Alliance in the application of this appendix.

1.4.2 Employees who are directly affected by workforce adjustment situations and who receive a guarantee of a reasonable job offer or opt, or are deemed to have opted, for Option (a) of Part VI of this appendix are responsible for:

a. actively seeking alternative employment in cooperation with their departments or organizations and the PSC, unless they have advised the department or organization and the PSC, in writing, that they are not available for appointment;
b. seeking information about their entitlements and obligations;
c. providing timely information (including curricula vitae or resumés) to the home department or organization and to the PSC to assist them in their appointment activities;
d. ensuring that they can be easily contacted by the PSC and appointing departments or organizations, and attending appointments related to referrals;
e. seriously considering job opportunities presented to them (referrals within the home department or organization, referrals from the PSC, and job offers made by departments or organizations), including retraining**, remote working** and relocation possibilities, specified period appointments and lower-level appointments.

1.4.3 Opting employees are responsible for:

a. considering the options in Part VI of this appendix;
b. communicating their choice of options, in writing, to their manager no later than one hundred and twenty (120) days after being declared opting.

Part III: relocation of a work unit

3.1 General

3.1.1 In cases where a work unit is to be relocated, departments or organizations shall provide all employees whose positions are to be relocated with the opportunity to choose whether they wish to move with the position, **enter into a remote work arrangement if possible,** or be treated as if they were subject to a workforce adjustment situation.

3.1.2 Following written notification, employees must indicate, within a period of six (6) months, their intention to move. If the employee's intention is not to move with the relocated position, the deputy head can provide the employee with either a guarantee of a reasonable job offer **in a remote work arrangement doing the same work, a guarantee of a reasonable job offer elsewhere in the department or the public service** or access to the options set out in section 6.4 of this appendix.

3.1.3 Employees relocating with their work units shall be treated in accordance with the provisions of 1.1.18 to 1.1.22.

3.1.4 After due consideration of remote work arrangements, where relocation is required, although departments or organizations will endeavour to respect employee location preferences, nothing precludes the department or organization from offering a relocated position to an employee in receipt of a guarantee of a reasonable job offer from his or her deputy head, after having spent as much time as operations permit looking for a reasonable job offer in the employee's location preference area.

Part IV: retraining

4.1 General

4.1.2 It is the responsibility of the employee, home department or organization and appointing department or organization to identify retraining opportunities, **including language training opportunities**, pursuant to subsection 4.1.1.

4.1.3 When a retraining opportunity has been identified, the deputy head of the home department or organization shall approve up to two (2) years of retraining. **Opportunities for retraining, including language training, shall not be unreasonably denied.**

4.2 Surplus employees

4.2.1 A surplus employee is eligible for retraining, provided that:

a. retraining is needed to facilitate the appointment of the individual to a specific vacant position or will enable the individual to qualify for anticipated vacancies in occupations or locations where there is a shortage of qualified candidates; and
b. there are no other available priority persons who qualify for the position.

4.X.X Retraining will not be unreasonably denied. When an employee's request for retraining is denied, the employer must provide the reasons why the

retraining was denied to the employee in writing, and why the retraining would not facilitate re-employment.

4.2.2 The home department or organization is responsible for ensuring that an appropriate retraining plan is prepared and is agreed to in writing by the employee and the delegated officers of the home and appointing departments or organization. The home department or organization is responsible for informing the employee in a timely fashion if a retraining proposal submitted by the employee is not approved. ~~Upon request of the employee, feedback regarding the decision will be provided in writing.~~ **The employee will be advised in writing why the retraining plan was not approved.**

4.2.3 Once a retraining plan has been initiated, its continuation and completion are subject to satisfactory performance by the employee. **Status reports will be provided to the employee in writing on a regular basis.**

4.2.7 In addition to all other rights and benefits granted pursuant to this section, an employee who is guaranteed a reasonable job offer is also guaranteed~~, subject to the employee's willingness to relocate,~~ training to prepare the surplus employee for appointment to a position pursuant to 4.1.1, such training to continue for one (1) year or until the date of appointment to another position, whichever comes first. Appointment to this position is subject to successful completion of the training.

4.3 Laid-off persons

4.3.1 A laid-off person shall be eligible for retraining, provided that:

a. retraining is needed to facilitate the appointment of the individual to a specific vacant position;
b. the individual meets the minimum requirements set out in the relevant selection standard for appointment to the group concerned;
c. there are no other available persons with priority who qualify for the position; and
d. the appointing department or organization cannot justify **in writing** a decision not to retrain the individual.

Part VI: options for employees

6.1 General

6.1.1 Deputy heads will be expected to provide a guarantee of a reasonable job offer for those affected employees for whom they know or can predict that employment will be available. A deputy head who cannot provide such a guarantee shall provide his or her reasons in writing~~, if so requested by the employee~~ **to the employee and to the**

PSAC, and why remote working opportunities have not been considered or have been discarded. Employees in receipt of this guarantee will not have access to the choice of options below, **unless the GRO becomes dependent on a reasonable job offer to a location to which the employee is unable to relocate.**

6.3 Alternation

6.3.9 Alternation opportunities include instances where the alternate is able to perform the work remotely.

Part VII: special provisions regarding alternative delivery initiatives

7.2.1 The provisions of this part apply only in the case of alternative delivery initiatives and are in exception to other provisions of this appendix. Employees who are affected by alternative delivery initiatives and who receive job offers from the new employer shall be treated in accordance with the provisions of this part, and only where specifically indicated will other provisions of this appendix apply to them. **Employees who are affected by alternative delivery initiatives and who do not receive job offers from the new employer shall be treated in accordance with the provisions of Parts I-VI of this Appendix.**

Employer movement

Legend

Writing in **bold and black** = original proposed language

Writing in ~~black and strikethrough~~ = current language being proposed for deletion

Writing in blue = old language that has been reverted back to.

Writing in ~~**bold, blue and strikethrough**~~ = language that the employer had proposed, but which is now removed to match what has been accepted at PSAC tables.

Writing in **bold and green** = new language added to match what was accepted at PSAC tables.

Writing in ~~green and strikethrough~~ = language newly removed to match what has been accepted at PSAC tables.

APPENDIX C

WORKFORCE ADJUSTMENT

General

Application

This appendix applies to all **indeterminate** employees. Unless explicitly specified, the provisions contained in Parts I to VI do not apply to alternative delivery initiatives.

Collective agreement

With the exception of those provisions for which the Public Service Commission ~~**of Canada** (PSC)~~ is responsible, this appendix is part of this agreement.

Notwithstanding the job security article, in the event of conflict between the present Workforce Adjustment Appendix and that article, the present Workforce Adjustment Appendix will take precedence.

Objectives

It is the policy of the Employer to maximize employment opportunities for indeterminate employees affected by workforce adjustment situations, primarily through ensuring that, wherever possible, alternative employment opportunities are provided to them. This should not be construed as the continuation of a specific position or job but rather as continued employment.

To this end, every indeterminate employee whose services will no longer be required because of a workforce adjustment situation and for whom the deputy head knows or can predict that employment will be available will receive a guarantee of a reasonable job offer within the core public administration. Those employees for whom the deputy head cannot provide the guarantee will have access to transitional employment arrangements (as per Parts VI and VII).

Definitions

Accelerated lay-off (mise en disponibilité accélérée)

occurs when a surplus employee makes a request to the deputy head, in writing, to be laid-off at an earlier date than that originally scheduled, and the deputy head concurs. Lay-off entitlements begin on the actual date of lay-off.

Affected employee (employé-e touché)

is an indeterminate employee who has been informed in writing that his or her ~~their~~ services may no longer be required because of a workforce adjustment situation.

Alternation (échange de postes)

occurs when an opting employee or a surplus employee who is surplus as a result of having chosen option 6.4.1(a) who wishes to remain in the core public administration exchanges positions with a non-affected employee (the alternate) willing to leave the core public administration with a Transition Support Measure or with an education allowance.

Alternative delivery initiative (diversification des modes de prestation des services)

is the transfer of any work, undertaking or business of the core public administration to anybody or corporation that is a separate agency or that is outside the core public administration.

Appointing department or organization (ministère ou organisation d'accueil)

is a department or organization that has agreed to appoint or consider for appointment (either immediately or after retraining) a surplus or a laid-off person.

Core public administration (Administration publique centrale)

means that part of the public service in or under any department or organization, or other portion of the federal public administration specified in Schedules I and IV to the *Financial Administration Act* ~~(FAA)~~ for which the ~~PSC~~ **Public Service Commission ~~of Canada~~** has the sole authority to appoint.

Deputy head (administrateur général)

has the same meaning as in the definition of "deputy head" set out in section 2 of the *Public Service Employment Act*, and also means his or her ~~their~~ official designate.

Education allowance (indemnité d'études)

is one of the options provided to an indeterminate employee affected by ~~normal~~ workforce adjustment for whom the deputy head cannot guarantee a reasonable job offer. The education allowance is a payment equivalent to the Transition Support Measure (see Annex B), plus a reimbursement of tuition from a recognized learning

institution~~,~~ and ~~of~~ book~~s~~ and mandatory equipment costs, up to a maximum of seventeen thousand dollars ($17,000).

Guarantee of a reasonable job offer (garantie d'une offre d'emploi raisonnable)

is a guarantee of an offer of indeterminate employment within the core public administration provided by the deputy head to an indeterminate employee who is affected by workforce adjustment. Deputy heads will be expected to provide a guarantee of a reasonable job offer to those affected employees for whom they know or can predict that employment will be available in the core public administration. Surplus employees in receipt of this guarantee will not have access to the options available in Part VI of this ~~A~~**a**ppendix.

Home department or organization (ministère ou organisation d'attache)

is a department or organization declaring an individual employee surplus.

Laid-off person (personne mise en disponibilité)

is a person who has been laid-off pursuant to subsection 64(1) of the ~~PSEA~~ ***Public Service Employment Act*** and who still retains an appointment priority under subsection 41(4) and section 64 of the ~~PSEA~~ ***Public Service Employment Act***.

Lay-off notice (avis de mise en disponibilité)

is a written notice of lay-off to be given to a surplus employee at least one (1) month before the scheduled lay-off date. This period is included in the surplus period.

Lay-off priority (priorité de mise en disponibilité)

a person who has been laid-off is entitled to a priority, in accordance with subsection 41(~~5~~**4**) of the ~~PSEA~~ ***Public Service Employment Act*** with respect to any position to which the ~~PSC~~ **Public Service Commission** is satisfied that the person meets the essential qualifications; the period of entitlement to this priority is one (1) year as set out in section 11 of the ***Public Service Employment Regulations*** **(**~~PSER~~**)**.

Opting employee (employé-e optant)

is an indeterminate employee whose services will no longer be required because of a workforce adjustment situation, who has not received a guarantee of a reasonable job

offer from the deputy head and who has one hundred and twenty ~~**ninety**~~ (120~~**90**~~) days to consider the options in section ~~6.3~~**6.4** of this appendix.

Organization (organisation)

A~~a~~ny board, agency, commission, or other body, specified in Schedules I and IV of the *Financial Administration Act* ~~(FAA)~~, that is not a department.

Pay (rémunération)

has the same meaning as "rate of pay" in this agreement.

Priority Information Management System (système de gestion de l'information sur les priorités)

is a system designed by the ~~PSC~~ **Public Service Commission** to facilitate appointments of individuals entitled to statutory and regulatory priorities.

Reasonable job offer (offre d'emploi raisonnable)

is an offer of indeterminate employment ~~**to an opting employee, a surplus employee or laid off person**~~ within the core public administration, normally at ~~**the same group and level (or equivalent)**~~ an equivalent level, but which could include ~~**one (1) group and level lower (or equivalent).**~~ lower levels. Surplus employees must be both trainable and mobile. Where practicable, a reasonable job offer shall be within the employee's headquarters as defined in the *Travel Directive*. In alternative delivery situations, a reasonable offer is one that meets the criteria set out under Type 1 and Type 2 in Part VII of this ~~A~~**a**ppendix. A reasonable job offer is also an offer from a FAA Schedule V ~~**E**~~**e**mployer, providing that:

a. The appointment is at a rate of pay and an attainable salary maximum not less than the employee's current salary and attainable maximum that would be in effect on the date of offer.
b. It is a seamless transfer of all employee benefits including a recognition of years of service for the definition of continuous employment and accrual of benefits, including the transfer of sick leave credits, severance pay and accumulated vacation leave credits.

Reinstatement priority (priorité de réintégration)

is an entitlement ~~**under the *Public Service Employment Regulations***~~ provided to surplus employees and laid-off persons who are appointed or deployed to a position

in the ~~federal~~ **core** public administration at a lower level. As per section 10 of the ~~PSER~~ **Public Service Employment Regulations**, the entitlement lasts for one (1) year.

Relocation (réinstallation)

is the authorized geographic move of a surplus employee or laid-off person from one place of duty to another place of duty located beyond what, according to local custom, is a normal commuting distance.

~~**A relocation of a surplus employee or a laid-off person, which is equal to, or reduces the usual kilometric commute (or former commute in the case of a laid-off person), using the most direct route by car from the employee's principal residence to the new place of duty, will not entitle the employee or laid-off person to relocation benefits under the National Joint Council Relocation Directive.**~~

Relocation of a work unit (réinstallation d'une unité de travail)

Is the authorized move of a work unit of any size, to a place of duty located beyond what, according to local custom, is normal commuting distance from the former work location and from the employee's current residence ~~**the new work location. Relocation benefits under the National Joint Council Relocation Directive will then be determined for each employee in the work unit based on the distance from their principal residence and the new work location.**~~

~~**For greater clarity, the employee's principal residence is not their place of duty.**~~

~~**A relocation of a work unit which is equal to, or reduces, the usual kilometric commute using the most direct route by car from the employee's principal residence to the new place of duty will not entitle the employee to relocation benefits under the National Joint Council Relocation Directive.**~~

~~**Employees who work in the same work unit at different locations are eligible for the provisions under a relocation of a work unit if they meet the criteria above based on their place of duty.**~~

Retraining (recyclage)

is on-the-job training or other training intended to enable affected employees, surplus employees and laid-off persons to qualify for known or anticipated vacancies within the core public administration.

Surplus employee (employé-e excédentaire)

is an indeterminate employee who has been formally declared surplus, in writing, by his or her ~~their~~ deputy head.

Surplus priority (priorité d'employé-e excédentaire)

is an entitlement for a priority in appointment accorded in accordance with section 5 of the ***Public Service Employment Regulations*** ~~PSER~~ and pursuant to section 40 of the ~~PSEA~~ ***Public Service Employment Act***; this entitlement is provided to surplus employees to be appointed in priority to another position in the ~~federal~~ **core** public administration for which they meet the essential ~~**qualifications**~~ requirements.

Surplus status (statut d'employé-e excédentaire)

A~~a~~n indeterminate employee has surplus status from the date he or she is ~~**they are**~~ declared surplus until the date of lay-off, until he or she is ~~**they are**~~ indeterminately appointed to another position, until his or her ~~**their**~~ surplus status is rescinded, or until the person resigns.

Transition support measure (mesure de soutien à la transition)

is one of the options provided to an opting employee for whom the deputy head cannot guarantee a reasonable job offer. The Transition Support Measure is a payment based on the employee's years of service as per Annex B.

Twelve (12) month surplus priority period in which to secure a reasonable job offer (priorité d'employé-e excédentaire d'une durée de douze (12) mois pour trouver une offre d'emploi raisonnable)

is one of the options provided to an opting employee for whom the deputy head cannot guarantee a reasonable job offer.

~~**Work unit (unité de travail)**~~

~~**Is an identifiable group of employees that offers a particular service or program as defined by operational requirements determined by the organization. A deputy head may determine that a work unit may consist of an individual employee.**~~

Workforce adjustment (réaménagement des effectifs)

is a situation that occurs when a deputy head decides that the services of one or more indeterminate employees will no longer be required beyond a specified date because of a lack of work, the discontinuance of a function, a relocation ~~of a work unit~~ in which the employee does not wish to participate, or an alternative delivery initiative.

Authorities

The ~~PSC~~ **Public Service Commission** ~~of Canada~~ has endorsed those portions of this ~~A~~**a**ppendix for which it has responsibility.

Monitoring

Departments or organizations shall retain central information on all cases occurring under this Appendix, including the reasons for the action; the number, occupational groups and levels of employees concerned; the dates of notice given; the number of employees placed without retraining; the number of employees retrained (including number of salary months used in such training); the levels of positions to which employees are appointed and the cost of any salary protection; and the number, types and amounts of lump sums paid to employees.

This information will be used by the Treasury Board ~~of Canada~~ Secretariat to carry out its periodic audits.

References

The primary references for the subject of workforce adjustment are as follows:

- ~~*Canada Labour Code*, Part I~~
- *Financial Administration Act*
- ~~Pay Rate Selection (Treasury Board Homepage, Organization, Human Resource Management, Compensation and Pay Administration).~~
- *Values and Ethics Code for the Public Sector* ~~*Service*, Chapter 3: Post-Employment Measures.~~
- ~~Employer regulation on promotion~~
- ~~*Policy on Termination of Employment in Alternative Delivery Situations* (Treasury Board Manual, Human Resources volume, Chapter 1-13)~~
- *Public Service Employment Act*
- *Public Service Employment Regulations*

- *Federal Public Sector Labour Relations Act*
- *Public Service Superannuation Act*
- ~~***Directive on Terms and Conditions of Employment***~~
- *NJC* ~~***National Joint Council***~~ *Relocation Directive*
- *Travel Directive*

Enquiries

Enquiries about this ~~A~~**a**ppendix should be referred to the Alliance or to the responsible officers in departmental or organizational headquarters.

Responsible officers in departmental or organizational headquarters may, in turn, direct questions regarding the application of this Appendix to the Senior Director, **Union Engagement and National Joint Council Support, Employee Relations and Total Compensation Sector**, ~~Excluded Groups and Administrative Policies, Labour Relations and Compensation Operations,~~ Treasury Board ~~**of Canada**~~ Secretariat.

Enquiries by employees pertaining to entitlements to a priority in appointment or to their status in relation to the priority appointment process should be directed to their departmental or organizational human resource advisors or to the ~~P~~**p**riority ~~A~~**a**dvisor of the ~~PSC~~ **Public Service Commission** ~~**of Canada**~~ responsible for their case.

Part I: roles and responsibilities

1.1 Departments or organizations

1.1.1 Since indeterminate employees who are affected by workforce adjustment situations are not themselves responsible for such situations, it is the responsibility of departments or organizations to ensure that they are treated equitably and, whenever possible, given every reasonable opportunity to continue their careers as public service employees.

1.1.2 Departments or organizations shall carry out effective human resource planning to minimize the impact of workforce adjustment situations on indeterminate employees, on the department or organization, and on the public service.

1.1.3 Departments or organizations shall establish joint workforce adjustment committees, where appropriate, to advise and consult on the workforce adjustment situations within the department or organization. Terms of reference of such

committees shall include a process for addressing alternation requests from other departments and organizations.

1.1.4 Departments or organizations shall, as the home department or organization, cooperate with the ~~PSC~~ **Public Service Commission** ~~of Canada~~ and appointing departments or organizations in joint efforts to redeploy departmental or organizational surplus employees and laid-off persons.

1.1.5 Departments or organizations shall establish systems to facilitate redeployment or retraining of their affected employees, surplus employees, and laid-off persons.

1.1.6 When a deputy head determines that the services of an employee are no longer required beyond a specified date due to lack of work or discontinuance of a function, the deputy head shall advise the employee, in writing, that his or her ~~their~~ services will no longer be required.

Such a communication shall also indicate if the employee:

a. is being provided with a guarantee from the deputy head that a reasonable job offer will be forthcoming~~,~~ and that the employee will have surplus status from that date on;
   or
b. is an opting employee and has access to the options set out in section 6.~~3~~4 of this ~~A~~appendix because the employee is not in receipt of a guarantee of a reasonable job offer from the deputy head.

Where applicable, the communication should also provide the information relative to the employee's possible lay-off date.

1.1.7 Deputy heads will be expected to provide a guarantee of a reasonable job offer for those employees subject to workforce adjustment for whom they know or can predict that employment will be available in the core public administration.

1.1.8 Where a deputy head cannot provide a guarantee of a reasonable job offer, the deputy head will provide one hundred and twenty ~~ninety~~ (120~~90~~) days to consider the three (3) options outlined in Part VI of this ~~A~~appendix to all opting employees before a decision is required of them. If the employee fails to select an option, the employee will be deemed to have selected ~~O~~option **6.4.1** (a), twelve (12) month surplus priority period in which to secure a reasonable job offer.

~~**NEW 1.1.9 The deputy head shall review the case of every surplus employee with a guarantee of a reasonable job offer on an annual basis. Should the**~~

~~deputy head determine that a reasonable job offer is no longer a possibility, they may rescind the guarantee of a reasonable job offer and offer options 6.4.1 (b) or 6.4.1 (c) (i) instead.~~

1.1.~~9~~10 The deputy head shall make a determination to provide either a guarantee of a reasonable job offer or access to the options set out in section 6.3~~4~~ of this ~~A~~**a**ppendix upon request by any indeterminate affected employee who can demonstrate that his or her ~~**their**~~ duties have already ceased to exist.

1.1.~~10~~11 Departments or organizations shall send written notice to the ~~PSC~~ **Public Service Commission** ~~**of Canada**~~ of an employee's surplus status, and shall send to the ~~PSC~~ **Public Service Commission** ~~**of Canada**~~ such details, forms, resumés, and other material as the ~~PSC~~ **Public Service Commission** ~~**of Canada**~~ may from time to time prescribe as necessary for it to discharge its function. **Departments or organizations shall notify the employee when this written notice has been sent.**

1.1.~~11~~12 Departments or organizations shall advise and consult with the Alliance representatives as completely as possible regarding any workforce adjustment situation as soon as possible after the decision has been made and throughout the process and will make available to the Alliance the name and work location of affected employees.

1.1.~~12~~13 The home department or organization shall provide the ~~PSC~~ **Public Service Commission** ~~**of Canada**~~ with a statement that it would be prepared to appoint the surplus employee to a suitable position in the department or organization commensurate with his or her ~~**their**~~ qualifications if such a position were available.

1.1.~~13~~14 Departments or organizations shall provide the employee with the official notification that he or she has become subject to a workforce adjustment and shall remind the employee that Appendix C, Workforce Adjustment, of this agreement applies.

1.1.~~14~~15 Deputy heads shall apply this ~~A~~**a**ppendix so as to keep actual involuntary lay-offs to a minimum, and a lay-off shall normally occur only when an individual has refused a reasonable job offer, is not mobile, cannot be retrained within two (2) years, or is laid-off at his or her ~~**their**~~ own request.

1.1.~~15~~16 Departments or organizations are responsible for counselling and advising their affected employees on their opportunities for finding continuing employment in the public service.

1.1.16~~17~~ Appointment of surplus employees to alternative positions with or without retraining shall normally be at a level equivalent to that previously held by the employee, but this does not preclude appointment to a lower level. Departments or organizations shall avoid appointments to a lower level except where all other avenues have been exhausted.

1.1.17~~18~~ Home departments or organizations shall appoint as many of their own surplus employees or laid-off persons as possible or identify alternative positions (both actual and anticipated) for which individuals can be retrained.

1.1.18~~19~~ Home departments or organizations shall relocate surplus employees and laid-off ~~individuals~~ **persons**, if necessary.

1.1.19~~20~~ Relocation of surplus employees or laid-off persons shall be undertaken when the individuals indicate that they are willing to relocate and relocation will enable their redeployment or reappointment, provided that:

a. there are no available priority persons, or priority persons with a higher priority, qualified and interested in the position being filled;
   or
b. there are no available local surplus employees or laid-off persons who are interested and who could qualify with retraining.

1.1.20~~21~~ The cost of travelling to interviews for possible appointments and of relocation to the new location shall be borne by the employee's home department or organization. Such cost shall be consistent with the *Travel Directive* and ~~*NJC*~~ ***National Joint Council*** *Relocation Directive*.

1.1.21~~22~~ For the purposes of the ~~*NJC*~~ ***National Joint Council*** *Relocation Directive*, surplus employees and laid-off persons who relocate under this ~~A~~**a**ppendix shall be deemed to be employees on employer-requested relocations. The general rule on minimum distances for relocation applies.

1.1.22~~23~~ For the purposes of the ***National Joint Council*** *Travel Directive*, a laid-off person travelling to interviews for possible reappointment to the core public administration is deemed to be a "traveller" as defined in the ***National Joint Council*** *Travel Directive*.

1.1.23~~24~~ For the surplus and/or lay-off priority periods, home departments or organizations shall pay the salary, salary protection and/or termination costs as well as other authorized costs such as tuition, travel, relocation and retraining for surplus employees and laid-off persons, as provided for in this agreement and the various

directives unless the appointing department or organization is willing to absorb these costs in whole or in part.

1.1.2425 ~~25~~ Where a surplus employee is appointed by another department or organization to a term position, the home department or organization is responsible for the costs above for one (1) year from the date of such appointment, unless the home department or organization agree to a longer period, after which the appointing department or organization becomes the new home department or organization consistent with ~~PSC~~ **Public Service Commission** ~~of Canada~~ authorities.

1.1.2526 ~~26~~ Departments or organizations shall protect the indeterminate status and surplus priority of a surplus indeterminate employee appointed to a term position under this ~~A~~**a**ppendix.

1.1.2627 ~~27~~ Departments or organizations shall inform the ~~PSC~~ **Public Service Commission** ~~of Canada~~ in a timely fashion, and in a method directed by the ~~PSC~~ **Public Service Commission** ~~of Canada~~, of the results of all referrals made to them under this ~~A~~**a**ppendix.

1.1.2728 ~~28~~ Departments or organizations shall review the use of private temporary agency personnel, consultants, contractors, and their use of contracted out services, employees appointed for a specified period (terms) and all other non-indeterminate employees. Where practicable, departments or organizations shall refrain from engaging or re-engaging such temporary agency personnel, consultants or contractors, and their use of contracted out services, or renewing the employment of such employees referred to above where this will facilitate the appointment of surplus employees or laid-off persons.

1.1.2829 ~~29~~ Nothing in the foregoing shall restrict the employer's right to engage or appoint persons to meet short-term, non-recurring requirements. Surplus **employees** and laid-off persons shall be given priority even for these short-term work opportunities.

1.1.2930 ~~30~~ Departments or organizations may lay-off an employee at a date earlier than originally scheduled when the surplus employee so requests in writing.

1.1.3031 ~~31~~ Departments or organizations acting as appointing departments or organizations shall cooperate with the ~~PSC~~ **Public Service Commission** ~~of Canada~~ and other departments or organizations in accepting, to the extent possible, affected **employees**, surplus **employees** and laid-off persons from other departments or organizations for appointment or retraining.

1.1.3132 Departments or organizations shall provide surplus employees with a lay-off notice at least one (1) month before the proposed lay-off date if appointment efforts have been unsuccessful. A copy of this notice shall be provided to the National President of the Alliance.

1.1.3233 When a surplus employee refuses a reasonable job offer, he or she **they** shall be subject to lay-off one (1) month after the refusal, but not before six (6) months have elapsed since the surplus declaration date. The provisions of Annex C of this A**a**ppendix shall continue to apply.

1.1.3334 Departments or organizations are to presume that each employee wishes to be redeployed unless the employee indicates the contrary in writing.

1.1.3435 Departments or organizations shall inform and counsel affected and surplus employees as early and as completely as possible and, in addition, shall assign a counsellor to each opting and surplus employee and laid-off person, to work with him or her **them** throughout the process. Such counselling is to include explanations and assistance concerning:

a. the workforce adjustment situation and its effect on that individual;
b. the Workforce Adjustment A**a**ppendix;
c. the ~~PSC~~ **Public Service Commission** **of Canada's** Priority Information Management System and how it works from the **individual's** employee's perspective;
d. preparation of a curriculum vitae or resumé;
e. the **individual's** employee's rights and obligations;
f. the **individual's** employee's current situation (for example, pay, benefits such as severance pay and superannuation, classification, language rights, years of service);
g. alternatives that might be available to the **individual** employee (the alternation process, appointment, relocation, retraining, lower-level employment, term employment, retirement including the possibility of waiver of penalty if entitled to an annual allowance, Transition Support Measure, education allowance, pay in lieu of unfulfilled surplus period, resignation, accelerated lay-off);
h. the likelihood that the **individual** employee will be successfully appointed;
i. the meaning of a guarantee of a reasonable job offer, a twelve (12) month surplus priority period in which to secure a reasonable job offer, a Transition Support Measure and an education allowance;
j. advise **individuals** employees to seek out proposed alternations and submit requests for approval as soon as possible after being informed they will not be receiving a guarantee of a reasonable job offer;

k. the Human Resources **services available** ~~to the individual~~ ~~employee~~ **;** ~~Centres and their services (including a recommendation that the employee register with the nearest office as soon as possible);~~
l. preparation for interviews with prospective employers;
m. feedback when an ~~individual~~ employee is not offered a position for which he or she was ~~they were~~ referred;
n. repeat counselling as long as the individual is entitled to a staffing priority and has not been appointed; ~~and~~
o. advising the ~~individual~~ employee that refusal of a reasonable job offer will jeopardize both chances for retraining and overall employment continuity;
p. advising ~~individuals~~ employees of the right to be represented by the Alliance in the application of this ~~A~~**a**ppendix~~.~~**;**
and
q. the Employee Assistance Program (EAP).

1.1.~~35~~**36** The home departments or organizations shall ensure that, when it is required to facilitate appointment, a retraining plan is prepared and agreed to in writing by it, the employee and the appointing department or organization.

1.1.~~36~~**37** Severance pay and other benefits flowing from other clauses in this agreement are separate from and in addition to those in this ~~A~~**a**ppendix.

1.1.~~37~~**38** Any surplus employee who resigns under this ~~A~~appendix shall be deemed, for purposes of severance pay and retroactive remuneration, to be involuntarily laid off as of the day on which the deputy head accepts in writing the employee's resignation.

1.1.~~38~~**39** The department or organization will review the status of each affected employee annually, or earlier, from the date of initial notification of affected status and determine whether the employee will remain on affected status or not.

1.1.~~39~~**40** The department or organization will notify the affected employee in writing, within five (5) working days of the decision pursuant to subsection 1.1.3~~8~~**9**.

1.2 Treasury Board ~~of Canada~~ Secretariat ~~of Canada~~

1.2.1 It is the responsibility of the Treasury Board ~~of Canada~~ Secretariat to:

a. investigate and seek to resolve situations referred by the ~~PSC~~ **Public Service Commission ~~of Canada~~** or other parties;
b. consider departmental or organizational requests for retraining resources; and

c. ensure that departments or organizations are provided to the extent possible with information on occupations for which there are skill shortages.

1.3 Public Service Commission of Canada

1.3.1 Within the context of workforce adjustment, and the Public Service Commission ~~of Canada~~'s (~~PSC~~) governing legislation, it is the responsibility of the ~~PSC~~ **Public Service Commission** ~~of Canada~~ to:

a. ensure that priority entitlements are respected;
b. ensure that a means exists for priority persons to be assessed against vacant positions and appointed if found qualified against the essential qualifications of the position;
and
c. ensure that priority persons are provided with information on their priority entitlements.

1.3.2 The ~~PSC~~ **Public Service Commission** ~~of Canada~~ will, in accordance with the *Privacy Act*:

a. provide the Treasury Board ~~of Canada~~ Secretariat with information related to the administration of priority entitlements which may reflect on departments' or organizations' level of compliance with this **appendix** ~~directive~~,
and;
b. provide information to the ~~bargaining agents~~ **Alliance** on the numbers and status of their members in the Priority Information Management System, as well as information on the overall system.

1.3.3 The ~~PSC~~ **Public Service Commission** ~~of Canada~~**'s** roles and responsibilities flow from its governing legislation, not the collective agreement. As such, any changes made to these roles/responsibilities must be agreed upon by the **Public Service** Commission ~~of Canada~~. For greater detail on the ~~PSC~~ **Public Service Commission** ~~of Canada~~**'s** role in administering surplus and lay-off priority entitlements, Annex C of this ~~A~~**a**ppendix.

1.4 Employees

1.4.1 Employees have the right to be represented by the Alliance in the application of this ~~A~~**a**ppendix.

1.4.2 Employees who are directly affected by workforce adjustment situations and who receive a guarantee of a reasonable job offer or opt, or are deemed to have opted, for ~~O~~**o**option **6.4.1** (a) of Part VI of this ~~A~~**a**ppendix are responsible for:

a. actively seeking alternative employment in cooperation with their departments or organizations and the ~~PSC~~ **Public Service Commission** ~~of Canada~~, unless they have advised the department or organization and the ~~PSC~~ **Public Service Commission** ~~of Canada~~, in writing, that they are not available for appointment;
b. seeking information about their entitlements and obligations;
c. providing timely information (including curricula vitae or resumés) to the home department or organization and to the ~~PSC~~ **Public Service Commission** ~~of Canada~~ to assist them in their appointment activities;
d. ensuring that they can be easily contacted by the ~~PSC~~ **Public Service Commission** ~~of Canada~~ and appointing departments or organizations, and attending appointments related to referrals;
e. seriously considering job opportunities presented to them (referrals within the home department or organization, referrals from the ~~PSC~~ **Public Service Commission** ~~of Canada~~, and job offers made by departments or organizations), including retraining and relocation possibilities, specified period appointments and lower-level appointments.

1.4.3 Opting employees are responsible for:

a. considering the options in Part VI of this ~~A~~**a**ppendix;
b. communicating their choice of options, in writing, to their manager no later than one hundred and twenty ~~**ninety**~~ (120~~**90**~~) days after being declared opting.
~~**c. if requesting an alternation with an unaffected employee, submitting an alternation request to management before the close of the ninety (90) day period.**~~

Part II: official notification

2.1 Department or organization

2.1.1 As already mentioned in 1.1.11~~**2**~~, departments or organizations shall advise and consult with the ~~bargaining agent~~ **Alliance** representatives as completely as possible regarding any workforce adjustment situation as soon as possible after the decision has been made and throughout the process, and will make available to the ~~bargaining agent~~ **Alliance** the name and work location of affected employees.

2.1.2 In any workforce adjustment situation which is likely to involve ten (10) or more indeterminate employees covered by this ~~A~~**a**ppendix, the department or organizations concerned shall notify the Treasury Board ~~**of Canada**~~ Secretariat of Canada, **in writing and** in confidence, at the earliest possible date and under no circumstances less than four (4) working days before the situation is announced.

2.1.3 Prior to notifying any potentially affected employee, departments or organizations shall also notify the National President of the Alliance. Such notification is to be in writing, in confidence and at the earliest possible date and under no circumstances less than two (2) working days before any employee is notified of the workforce adjustment situation.

2.1.4 Such notification will include the identity and location of the work unit(s) involved, the expected date of the announcement, the anticipated timing of the workforce adjustment situation and the number, group and level of the employees who are likely to be affected by the decision.

Part III: relocation of a work unit

3.1 General

3.1.1 In cases where a work unit to be relocated, departments or organizations shall provide all employees whose positions are to be relocated with the opportunity to choose whether they wish to move with the position or be treated as if they were subject to a workforce adjustment situation.

3.1.2 Following written notification, employees must indicate, within a period of six (6) months, their intention to move. If the employee's intention is not to move with the relocated position, the deputy head can provide the employee with either a guarantee of a reasonable job offer or access to the options set out in section 6.4 of this ~~A~~**a**ppendix.

3.1.3 Employees relocating with their work units shall be treated in accordance with the provisions of 1.1.18~~9~~ to 1.1.22~~3~~.

3.1.4 Although departments or organizations will endeavour to respect employee location preferences, **in exceptional circumstances and in** ~~**after**~~ **consultation** ~~**and review of each situation**~~ **with the Treasury Board of Canada Secretariat**, **the deputy head may consider** ~~nothing precludes the department or organization from~~ offering a relocated position to an employee in receipt of a guarantee of a reasonable job offer ~~from his or her~~ **their** ~~deputy head~~, after having spent as much time as

operations permit looking for a reasonable job offer in the employee's location preference area.

3.1.5 Employees who are not in receipt of a guarantee of a reasonable job offer shall become opting employees and have access to the options in Part VI of this ~~A~~appendix.

Part IV: retraining

4.1 General

4.1.1 To facilitate the redeployment of affected employees, surplus employees and laid-off persons, departments or organizations shall make every reasonable effort to retrain such persons for:

a. existing vacancies;
   or
b. anticipated vacancies identified by management.

4.1.2 It is the responsibility of the employee, home department or organization and appointing department or organization to identify retraining opportunities pursuant to subsection 4.1.1.

4.1.3 When a retraining opportunity has been identified ~~**for a position which would be deemed as a reasonable job offer at the same group and level (or equivalent) or one (1) group and level lower (or equivalent)**~~, the deputy head of the home department or organization shall approve up to two (2) years of retraining.

4.2 Surplus employees

4.2.1 A surplus employee is eligible for retraining, provided that:

a. retraining is needed to facilitate the appointment of the individual to a specific vacant position or will enable the individual to qualify for anticipated vacancies in occupations or locations where there is a shortage of qualified candidates; and
b. there are no other available priority persons who qualify for the position.

4.2.2 The home department or organization is responsible for ensuring that an appropriate retraining plan is prepared and is agreed to in writing by the employee and the delegated officers of the home and appointing departments or organization. The home department or organization is responsible for informing the employee in a timely fashion if a retraining proposal submitted by the employee is not approved.

Upon request of the employee, feedback regarding the decision**, including the reason for not approving the retraining**, will be provided in writing.

4.2.3 Once a retraining plan has been initiated, its continuation and completion are subject to satisfactory performance by the employee. **Departments ~~and~~ or organizations ~~should~~ will provide the employee with ~~regular~~ feedback in writing on the progress of the retraining plan on a regular basis.**

4.2.4 While on retraining, a surplus employee continues to be employed by the home department or organization and is entitled to be paid in accordance with his or her ~~their~~ current appointment unless the appointing department or organization is willing to appoint the employee indeterminately, on condition of successful completion of retraining, in which case the retraining plan shall be included in the letter of offer.

4.2.5 When a retraining plan has been approved and the surplus employee continues to be employed by the home department or organization, the proposed lay-off date shall be extended to the end of the retraining period, subject to 4.2.3.

4.2.6 An employee unsuccessful in retraining may be laid-off at the end of the surplus period if the Employer has been unsuccessful in making the employee a reasonable job offer.

4.2.7 In addition to all other rights and benefits granted pursuant to this section, an ~~surplus~~ employee who is guaranteed a reasonable job offer is also guaranteed, subject to the ~~surplus~~ employee's willingness to relocate, training to prepare the surplus employee for appointment to a position pursuant to 4.1.1, such training to continue for one (1) year or until the date of appointment to another position, whichever comes first. Appointment to this position is subject to successful completion of the training.

4.3 Laid-off persons

4.3.1 A laid-off person shall be eligible for retraining, provided that:

a. retraining is needed to facilitate the appointment of the individual to a specific vacant position;
b. the individual meets the minimum requirements set out in the relevant selection standard for appointment to the group concerned;
c. there are no other available persons with priority who qualify for the position; and

d. the appointing department or organization cannot justify**, in writing,** a decision not to retrain the individual.

4.3.2 When an individual is offered an appointment conditional on successful completion of retraining, a retraining plan shall be included in the letter of offer. If the individual accepts the conditional offer, he or she will be appointed on an indeterminate basis to the full level of the position after having successfully completed training and being assessed as qualified for the position. When an individual accepts an appointment to a position with a lower maximum rate of pay than the position from which he or she was laid-off, the employee will be salary-protected in accordance with Part V.

Part V: salary protection

5.1 Lower-level position

5.1.1 Surplus employees and laid-off persons appointed to a lower-level position under this ~~A~~**a**ppendix shall have their salary and pay equity equalization payments, if any, protected in accordance with the salary protection provisions of this agreement or, in the absence of such provisions, the appropriate provisions of the ~~*Regulations Respecting Pay on Reclassification or Conversion*~~ **Directive on Terms and Conditions of Employment** ~~**governing reclassification or classification conversion**~~.

5.1.2 Employees whose salary is protected pursuant to 5.1.1 will continue to benefit from salary protection until such time as they are appointed or deployed into a position with a maximum rate of pay that is equal to or higher than the maximum rate of pay of the position from which they were declared surplus or laid-off.

Part VI: options for employees

6.1 General

6.1.1 Deputy heads will be expected to provide a guarantee of a reasonable job offer for those affected employees for whom they know or can predict that employment will be available. A deputy head who cannot provide such a guarantee shall provide his or her ~~**their**~~ reasons in writing, if so requested by the employee. Employees in receipt of this guarantee will not have access to the choice of options below.

6.1.2 Employees who are not in receipt of a guarantee of a reasonable job offer from their deputy head have one hundred and twenty ~~**ninety**~~ (120~~**90**~~) days to consider the three options below before a decision is required of them.

6.1.3 The opting employee must choose, in writing, one (1) of the three (3) options of section 6.4 of this ~~A~~**a**ppendix within the one hundred and twenty ~~**ninety**~~ (120~~**90**~~) day window. The employee cannot change options once he or she has made a written choice.

6.1.4 If the employee fails to select an option, the employee will be deemed to have selected O~~o~~ption (a), twelve (12) month surplus priority period in which to secure a reasonable job offer, at the end of the one hundred and twenty ~~**ninety**~~ (120~~**90**~~) day window.

6.1.5 If a reasonable job offer which does not require relocation is made at any time during the one hundred and twenty ~~**ninety**~~ (120~~**90**~~) day opting period and prior to the written acceptance of the Transition Support Measure ~~(TSM)~~ or education allowance option, the employee is ineligible for the ~~TSM~~ **Transition Support Measure**, the pay in lieu of unfulfilled surplus period or the education allowance.

6.1.6 A copy of any letter issued by the ~~Employer~~ **departments or organizations** under this part or notice of lay-off pursuant to the *Public Service Employment Act* shall be sent forthwith to the National President of the Alliance.

6.2 Voluntary <u>departure</u> programs

Departments and organizations shall establish voluntary departure programs for all workforce adjustments situations involving five or more affected employees working at the same group and level and in the same work unit. Such programs shall:

a. Be the subject of meaningful consultation through joint Union-management WFA committees;
b. Volunteer programs shall not be used to exceed reduction targets. Where reasonably possible, departments and organizations will identify the number of positions for reduction in advance of the voluntary programs commencing;
c. Take place after affected letters have been delivered to employees;
d. Take place before the department or organization engages in the SERLO process;
e. Provide for a minimum of 30 calendar days for employees to decide whether they wish to participate;
f. Allow employees to select Options B, C(i) or C(ii);
g. Provide that when the number of volunteers is larger than the required number of positions to be eliminated, volunteers will be selected based on seniority (total years of service in the public service, whether continuous or discontinuous).

~~6.2.1 Departments and organizations may establish voluntary departure programs where:~~

~~a. Workforce reductions are required because of workforce adjustments situations involving less than five (5) affected employees working at the same group and level and in the same work unit; and~~
~~b. The deputy head cannot provide a guarantee of a reasonable job offer to the less than five (5) affected employees working at the same group and level in the same work unit.~~

~~6.2.2 Departments and organizations shall establish voluntary departure programs where:~~

~~a. Workforce reductions are required because of workforce adjustments situations involving five or more affected employees working at the same group and level and in the same work unit; and~~

~~b. the deputy head cannot provide a guarantee of a reasonable job offer to all five or more affected employees working at the same group and level in the same work unit.~~

~~6.2.3 If a voluntary program is established as per 6.2.1 or 6.2.2, such program shall:~~

~~a. Be the subject of meaningful consultation through joint Union-management Workforce Adjustment committees;~~
~~b. Volunteer programs shall not be used to exceed reduction targets. Where reasonably possible, departments and organizations will identify the number of positions for reduction in advance of the voluntary programs commencing;~~
~~c. Take place after affected letters have been delivered to employees;~~
~~d. Take place before the department or organization engages in the Selection of employees for retention or lay off process;~~
~~e. Provide for a minimum of 30 calendar days for employees to decide whether they wish to participate;~~
~~f. Allow employees to select options 6.4.1(b) or 6.4.1(c) (i);~~
~~g. Provide that when the number of volunteers is larger than the required number of positions to be eliminated, volunteers will be selected based on seniority (total years of service in the public service, whether continuous or discontinuous).~~

6.3 Alternation

6.3.1 All departments or organizations must participate in the alternation process.

6.3.2 An alternation occurs when an opting employee **or a surplus employee having chosen option 6.4.1 (a)** who wishes to remain in the core public administration exchanges positions with a non-affected employee (the alternate) willing to leave the core public administration under the terms of Part VI of this ~~A~~**a**ppendix.

6.3.3

a. Only opting and surplus employees who are surplus as a result of having chosen ~~Option A~~ **option 6.4.1(a)** may alternate into an indeterminate position that remains in the core public administration.
b. If an alternation is proposed for a surplus employee, as opposed to an opting employee, the Transition Support Measure that is available to the alternate under 6.4.1(b) or 6.4.1 (c)(i) shall be reduced by one week for each completed week between the beginning of the employee's surplus priority period and the date the alternation is proposed.

6.3.4 An indeterminate employee wishing to leave the core public administration may express an interest in alternating with an opting employee **or a surplus employee having chosen option 6.4.1 (a)**. Management will decide, however, whether a proposed alternation is likely to result in retention of the skills required to meet the ongoing needs of the position and the core public administration.

6.3.5 An alternation must permanently eliminate a function or a position.

6.3.6 The opting employee **or a surplus employee having chosen option 6.4.1 (a)** moving into the unaffected position must meet the requirements of the position, including language requirements. The alternate moving into the opting position must meet the requirements of the position except if the alternate will not be performing the duties of the position and the alternate will be struck off strength within five (5) days of the alternation.

6.3.7 An alternation should normally occur between employees at the same group and level. When the two (2) positions are not in the same group and at the same level, alternation can still occur when the positions can be considered equivalent. They are considered equivalent when the maximum rate of pay for the higher-paid position is no more than six-per-cent (6%) higher than the maximum rate of pay for the lower-paid position.

6.3.8 An alternation must occur on a given date, that is, the two (2) employees must directly exchange positions on the same day. There is no provision in alternation for a "domino" effect or for "future considerations."

For clarity, the alternation will not be denied solely as a result of untimely administrative processes.

6.4 Options

6.4.1 Only opting employees who are not in receipt of the guarantee of a reasonable job offer from the deputy head will have access to the choice of options below:

a. Twelve (12) month surplus priority period in which to secure a reasonable job offer. It is time limited. Should a reasonable job offer not be made within a period of twelve (12) months, the employee will be laid-off in accordance with the *Public Service Employment Act*. Employees who choose or are deemed to have chosen this option are surplus employees.

   i. At the request of the employee, this twelve (12) month surplus priority period shall be extended by the unused portion of the one hundred and twenty ~~**ninety**~~ (120~~**90**~~) day opting period referred to in 6.1.2 which remains once the employee has selected in writing O~~o~~ption **6.4.1**(a).
   ii. When a surplus employee who has chosen or is deemed to have chosen O~~o~~ption **6.4.1**(a) offers to resign before the end of the twelve (12) month surplus priority period, the deputy head may authorize a lump-sum payment equal to the surplus employee's regular pay for the balance of the surplus period, up to a maximum of six (6) months. The amount of the lump-sum payment for the pay in lieu cannot exceed the maximum of what he or she would have received had he or she chosen O~~o~~ption **6.4.1**(b), the Transition Support Measure.
   iii. Departments or organizations will make every reasonable effort to market a surplus employee within the employee's surplus period within his or her ~~**their**~~ preferred area of mobility.

   or

b. Transition ~~S~~**s**upport ~~M~~**m**easure (~~TSM~~) is a lump-sum payment, based on the employee's years of service in the public service (see Annex B), made to an opting employee. Employees choosing this option must resign but will be considered to be laid-off for purposes of severance pay. The ~~TSM~~ ~~**T**~~**transition** ~~**S**~~**support** ~~**M**~~**measure** shall be paid in one (1) or two (2) lump-sum amounts over a maximum two (2)-year period.

   or

c. Education allowance is a ~~T~~transition ~~S~~support ~~M~~measure (see O~~o~~ption **6.4.1**(b) above) plus an amount of not more than seventeen thousand dollars ($17,000) for reimbursement of receipted expenses of an opting employee for tuition from a learning institution and costs of books and relevant equipment. Employees choosing O~~o~~ption **6.4.1**(c) could either:

i. resign from the core public administration but be considered to be laid-off for severance pay purposes on the date of their departure;
or

ii. delay their departure date and go on leave without pay for a maximum period of two (2) years while attending the learning institution. The ~~TSM~~ **~~T~~transition ~~S~~support ~~M~~measure** shall be paid in one (1) or two (2) lump-sum amounts over a maximum two (2)-year period. During this period, employees could continue to be public service benefit plan members and contribute both employer and employee shares to the benefits plans and the Public Service Superannuation Plan. At the end of the two (2)-year leave without pay period, unless the employee has found alternative employment in the core public administration, the employee will be laid-off in accordance with the *Public Service Employment Act*.

6.4.2 Management will establish the departure date of opting employees who choose O~~o~~ption **6.4.1**(b) or O~~o~~ption **6.4.1**(c) above.

6.4.3 The ~~TSM~~ **~~T~~transition ~~S~~support ~~M~~measure**, pay in lieu of unfulfilled surplus period, and the education allowance cannot be combined with any other payment under the Workforce Adjustment A~~a~~ppendix.

6.4.4 In cases of pay in lieu of unfulfilled surplus period, O~~o~~ption **6.4.1**(b) and O~~o~~ption **6.4.1**(c)(i), the employee relinquishes any priority rights for reappointment upon the Employer's acceptance of his or her **~~their~~** resignation.

6.4.5 Employees choosing O~~o~~ption **6.4.1**(c)(ii) who have not provided their department or organization with a proof of registration from a learning institution twelve (12) months after starting their leave without pay period will be deemed to have resigned from the core public administration and be considered to be laid-off for purposes of severance pay.

6.4.6 All opting employees will be entitled to up to one thousand **two hundred** dollars ($1,~~0~~200) towards counselling services in respect of their potential re-employment or

retirement. Such counselling services may include financial and job placement counselling services.

6.4.7 A~~n opting employee~~ **person** who has received a ~~TSM~~ **~~T~~transition ~~S~~support ~~M~~measure**, pay in lieu of unfulfilled surplus period, or an education allowance, and is reappointed to the public service shall reimburse the Receiver General for Canada an amount corresponding to the period from the effective date of such reappointment or hiring to the end of the original period for which the ~~TSM~~ **~~T~~transition ~~S~~support ~~M~~measure** or education allowance was paid.

6.4.8 Notwithstanding 6.4.7, an opting employee who has received an education allowance will not be required to reimburse tuition expenses and costs of books and mandatory equipment for which he or she cannot get a refund.

6.4.9 The deputy head shall ensure that pay in lieu of unfulfilled surplus period is only authorized where the employee's work can be discontinued on the resignation date and no additional costs will be incurred in having the work done in any other way during that period.

6.4.10 If a surplus employee who has chosen or is deemed to have chosen O~~o~~ption **6.4.1**(a) refuses a reasonable job offer at any time during the twelve (12) month surplus priority period, the employee is ineligible for pay in lieu of unfulfilled surplus period.

6.4.11 Approval of pay in lieu of unfulfilled surplus period is at the discretion of management, but shall not be unreasonably denied.

6.5 Retention payment

6.5.1 There are three (3) situations in which an employee may be eligible to receive a retention payment. These are total facility closures, relocation of work units and alternative delivery initiatives.

6.5.2 All employees accepting retention payments must agree to leave the core public administration without priority rights.

6.5.3 An individual who has received a retention payment and, as applicable, either is reappointed to that portion of the core public administration specified from time to time in Schedules I and IV of the *Financial Administration Act* or is hired by the new employer within the six (6) months immediately following his or her ~~**their**~~ resignation shall reimburse the Receiver General for Canada an amount corresponding to the

period from the effective date of such reappointment or hiring to the end of the original period for which the lump-sum was paid.

6.5.4 The provisions of 6.5.5 shall apply in total facility closures where public service jobs are to cease and:

a. such jobs are in remote areas of the country;
   or
b. retraining and relocation costs are prohibitive;
   or
c. prospects of reasonable alternative local employment (whether within or outside the core public administration) are poor.

6.5.5 Subject to 6.5.4, the deputy head shall pay to each employee who is asked to remain until closure of the work unit and offers a resignation from the core public administration to take effect on that closure date, a sum equivalent to six (6) months' pay payable on the day on which the departmental or organizational operation ceases, provided the employee has not separated prematurely.

6.5.6 The provisions of 6.5.7 shall apply in relocation of work units where core public administration work units:

a. are being relocated;
   and
b. the deputy head of the home department or organization decides that, in comparison to other options, it is preferable that certain employees be encouraged to stay in their jobs until the day of workplace relocation;
   and
c. the employee has opted not to relocate with the function.

6.5.7 Subject to 6.5.6, the deputy head shall pay to each employee who is asked to remain until the relocation of the work unit and who offers a resignation from the core public administration to take effect on the relocation date, a sum equivalent to six (6) months' pay payable on the day on which the departmental or organizational operation relocates, provided the employee has not separated prematurely.

6.5.8 The provisions of 6.5.9 shall apply in alternative delivery initiatives:

a. where the core public administration work units are affected by alternative delivery initiatives;

b. when the deputy head of the home department or organization decides that, compared to other options, it is preferable that certain employees be encouraged to stay in their jobs until the day of the transfer to the new employer;
and
c. where the employee has not received a job offer from the new employer or has received an offer and did not accept it.

6.5.9 Subject to 6.5.8, the deputy head shall pay to each employee who is asked to remain until the transfer date and who offers a resignation from the core public administration to take effect on the transfer date, a sum equivalent to six (6) months' pay payable upon the transfer date, provided the employee has not separated prematurely.

Part VII: special provisions regarding alternative delivery initiatives

Preamble

The administration of the provisions of this part will be guided by the following principles:

a. fair and reasonable treatment of employees;
b. value for money and affordability;
and
c. maximization of employment opportunities for employees.

7.1 Definitions

For the purposes of this part, an **alternative delivery initiative** (diversification des modes de prestation des services) is the transfer of any work, undertaking or business of the core public administration to any body or corporation that is a separate agency or that is outside the core public administration.

For the purposes of this part, a **reasonable job offer** (offre d'emploi raisonnable) is an offer of employment received from a new employer in the case of a Type 1 or Type 2 transitional employment arrangement, as determined in accordance with 7.2.2.

For the purposes of this part, a **termination of employment** (licenciement de l'employé-e) is the termination of employment referred to in paragraph 12(1)(f.1) of the *Financial Administration Act.*

7.2 General

Departments or organizations will, as soon as possible after the decision is made to proceed with an alternative delivery initiative (ADI), and if possible, not less than one hundred and eighty (180) days prior to the date of transfer, provide notice to the Alliance component(s) of its intention.

The notice to the Alliance component(s) will include:

a. the program being considered for ADI ~~alternative delivery initiative~~;
b. the reason for the ADI ~~alternative delivery initiative~~; and
c. the type of approach anticipated for the initiative.

A joint Workforce Adjustment-Alternative Delivery Initiative (WFA-ADI) committee will be created for ADI ~~alternative delivery initiative~~ and will have equal representation from the department or organization and the component(s). By mutual agreement, the committee may include other participants. The joint WFA-ADI committee will define the rules of conduct of the committee.

In cases of ADI ~~alternative delivery initiative~~, the parties will establish a joint WFA-ADI committee to conduct meaningful consultation on the human resources issues related to the ADI ~~alternative delivery initiative~~ in order to provide information to the employee which will assist him or her in deciding on whether or not to accept the job offer.

1. Commercialization

In cases of commercialization where tendering will be part of the process, the members of the joint WFA-ADI committee shall make every reasonable effort to come to an agreement on the criteria related to human resources issues (for example, terms and conditions of employment, pension and health care benefits, the take-up number of employees) to be included in the request for proposal process. The committee will respect the contracting rules of the federal government.

2. Creation of a new agency

In cases of the creation of new agencies, the members of the joint WFA-ADI committee shall make every reasonable effort to agree on common recommendations related to human resources issues (for example, terms and

conditions of employment, pension, and health care benefits) that should be available at the date of transfer.

3. Transfer to existing employers

In all other ADI ~~**alternative delivery initiative**~~ where an employer-employee relationship already exists, the parties will hold meaningful consultations to clarify the terms and conditions that will apply upon transfer.

In cases of commercialization and the creation of new agencies, consultation opportunities will be given to the component(s); however, in the event that agreements are not possible, the department may still proceed with the transfer.

7.2.1 The provisions of this part apply only in the case of alternative delivery initiatives and are in exception to other provisions of this appendix. Employees who are affected by alternative delivery initiatives and who receive job offers from the new employer shall be treated in accordance with the provisions of this part, and only where specifically indicated will other provisions of this appendix apply to them.

7.2.2 There are three (3) types of transitional employment arrangements resulting from alternative delivery initiatives:

a. Type 1, full continuity
   Type 1 arrangements meet all of the following criteria:

   i. legislated successor rights apply; specific conditions for successor rights applications will be determined by the labour legislation governing the new employer;
   ii. the ~~*Public Service*~~ ***Directive on*** *Terms and Conditions of Employment* ~~*Regulations*~~, the terms of the collective agreement referred to therein and/or the applicable compensation plan will continue to apply to unrepresented and excluded employees until modified by the new employer or by the **Federal Public Sector Labour Relations and Employment Board (**FPSLREB**)** pursuant to a successor rights application;
   iii. recognition of continuous employment, as defined in the ~~*Public Service*~~ ***Directive on*** *Terms and Conditions of Employment* ~~*Regulations*~~, for purposes of determining the employee's entitlements under the collective agreement continued due to the application of successor rights;

iv. pension arrangements according to the Statement of Pension Principles set out in Annex A or, in cases where the test of reasonableness set out in that Statement is not met, payment of a lump-sum to employees pursuant to 7.7.3;
v. transitional employment guarantee: a two (2)-year minimum employment guarantee with the new employer;
vi. coverage in each of the following core benefits: health benefits, long-term disability insurance (LTDI) and dental plan;
vii. short-term disability bridging: recognition of the employee's earned but unused sick leave credits up to the maximum of the new employer's ~~long-term disability insurance (~~LTDI~~)~~ waiting period.

b. Type 2, substantial continuity
Type 2 arrangements meet all of the following criteria:

i. the average new hourly salary offered by the new employer (= rate of pay + equal pay adjustments + supervisory differential) for the group moving is eighty-five per cent (85%) or greater of the group's current federal hourly remuneration (= pay + equal pay adjustments + supervisory differential) when the hours of work are the same;
ii. the average annual salary of the new employer (= rate of pay + equal pay adjustments + supervisory differential) for the group moving is eighty-five per cent (85%) or greater of federal annual remuneration (= per cent or greater of federal annual remuneration (= pay + equal pay adjustments + supervisory differential) when the hours of work are different;
iii. pension arrangements according to the Statement of Pension Principles as set out in Annex A or, in cases where the test of reasonableness set out in that Statement is not met, payment of a lump-sum to employees pursuant to 7.7.3;
iv. transitional employment guarantee: employment tenure equivalent to that of the permanent workforce in receiving organizations or a two (2)-year minimum employment guarantee;
v. coverage in each area of the following core benefits: health benefits, long-term disability insurance (LTDI) and dental plan;
vi. short-term disability arrangement.

d. Type 3, lesser continuity
A Type 3 arrangement is any alternative delivery initiative that does not meet the criteria applying in Type 1 and Type 2 transitional employment arrangements.

7.2.3 For type 1 and type 2 transitional employment arrangements, the offer of employment from the new employer will be deemed to constitute a reasonable job offer for purposes of this part.

7.2.4 For type 3 transitional employment arrangements, an offer of employment from the new employer will not be deemed to constitute a reasonable job offer for purposes of this part.

7.3 Responsibilities

7.3.1 Deputy heads will be responsible for deciding, after considering the criteria set out above, which of the types applies in the case of particular alternative delivery initiatives.

7.3.2 Employees directly affected by alternative delivery initiatives are responsible for seriously considering job offers made by new employers and advising the home department or organization of their decision within the allowed period.

7.4 Notice of alternative delivery initiatives

7.4.1 Where alternative delivery initiatives are being undertaken, departments or organizations shall provide written notice to all employees offered employment by the new employer, giving them the opportunity to choose whether or not they wish to accept the offer.

7.4.2 Following written notification, employees must indicate within a period of sixty (60) days their intention to accept the employment offer, except in the case of type 3 arrangements, where home departments or organizations may specify a period shorter than sixty (60) days, but not less than thirty (30) days.

7.5 Job offers from new employers

7.5.1 Employees subject to this appendix (see ~~a~~**A**pplication) and who do not accept the reasonable job offer from the new employer in the case of type 1 or type 2 transitional employment arrangements will be given four (4) months' notice of termination of employment and their employment will be terminated at the end of that period or on a mutually agreed-upon date before the end of the four (4)-month notice period, except where the employee was unaware of the offer or incapable of indicating an acceptance of the offer.

7.5.2 The deputy head may extend the notice-of-termination period for operational reasons, but no such extended period may end later than the date of the transfer to the new employer.

7.5.3 Employees who do not accept a job offer from the new employer in the case of type 3 transitional employment arrangements may be declared opting or surplus by the deputy head in accordance with the provisions of the other parts of this appendix.

7.5.4 Employees who accept a job offer from the new employer in the case of any alternative delivery initiative will have their employment terminated on the date on which the transfer becomes effective, or on another date that may be designated by the home department or organization for operational reasons, provided that this does not create a break in continuous service between the core public administration and the new employer.

7.6 Application of other provisions of the ~~A~~appendix

7.6.1 For greater certainty, the provisions of Part II, Official Notification, and section 6.5, Retention Payment, will apply in the case of an employee who refuses an offer of employment in the case of a type 1 or type 2 transitional employment arrangement. A payment under section 6.5 may not be combined with a payment under the other section.

7.7 Lump-sum payments and salary top-up allowances

7.7.1 Employees who are subject to this appendix (see application) and who accept the offer of employment from the new employer in the case of type 2 transitional employment arrangements will receive a sum equivalent to three (3) months' pay, payable on the day on which the departmental or organizational work or function is transferred to the new employer. The home department or organization will also pay these employees an eighteen (18) month salary top-up allowance equivalent to the difference between the remuneration applicable to their core public administration position and the salary applicable to their position with the new employer. This allowance will be paid as a lump-sum, payable on the day on which the departmental or organizational work or function is transferred to the new employer.

7.7.2 In the case of individuals who accept an offer of employment from the new employer in the case of a Type-2 arrangement and whose new hourly or annual salary falls below eighty per cent (80%) of their former federal hourly or annual remuneration, departments or organizations will pay an additional six (6) months of salary top-up allowance for a total of twenty-four (24) months under this section and

7.7.1. The salary top-up allowance equivalent to the difference between the remuneration applicable to their core public administration position and the salary applicable to their position with the new employer will be paid as a lump-sum, payable on the day on which the departmental or organizational work or function is transferred to the new employer.

7.7.3 Employees who accept the reasonable job offer from the successor employer in the case of Type-1 or Type-2 transitional employment arrangements where the test of reasonableness referred to in the Statement of Pension Principles set out in Annex A is not met, that is, where the actuarial value (cost) of the new employer's pension arrangements is less than six decimal five per cent (6.5%) of pensionable payroll (excluding the employer's costs related to the administration of the plan), will receive a sum equivalent to three (3) months' pay, payable on the day on which the departmental or organizational work or function is transferred to the new employer.

7.7.4 Employees who accept an offer of employment from the new employer in the case of Type-3 transitional employment arrangements will receive a sum equivalent to six (6) months' pay, payable on the day on which the departmental or organizational work or function is transferred to the new employer. The home department or organization will also pay these employees a twelve (12) month salary top-up allowance equivalent to the difference between the remuneration applicable to their core public administration position and the salary applicable to their position with the new employer. The allowance will be paid as a lump sum, payable on the day on which the departmental or organizational work or function is transferred to the new employer. The total of the lump-sum payment and the salary top-up allowance provided under this section will not exceed an amount equivalent to one (1) year's pay.

7.7.5 For the purposes of 7.7.1, 7.7.2 and 7.7.4, the term "remuneration" includes and is limited to salary plus equal pay adjustments, if any, and supervisory differential, if any.

7.8 Reimbursement

7.8.1 An individual who receives a lump-sum payment and salary top-up allowance pursuant to 7.7.1, 7.7.2, 7.7.3 or 7.7.4 and who is reappointed to that portion of the core public administration specified from time to time in Schedules I and IV of the *Financial Administration Act* at any point during the period covered by the total of the lump-sum payment and salary top-up allowance, if any, shall reimburse the Receiver General for Canada an amount corresponding to the period from the effective date of

reappointment to the end of the original period covered by the total of the lump-sum payment and salary top-up allowance, if any.

7.8.2 An individual who receives a lump-sum payment pursuant to 7.6.1 and, as applicable, is either reappointed to that portion of the core public administration specified from time to time in Schedules I and IV of the *Financial Administration Act* or hired by the new employer at any point covered by the lump-sum payment, shall reimburse the Receiver General for Canada an amount corresponding to the period from the effective date of the reappointment or hiring to the end of the original period covered by the lump-sum payment.

7.9 Vacation leave credits and severance pay

7.9.1 Notwithstanding the provisions of this agreement concerning vacation leave, an employee who accepts a job offer pursuant to this Part may choose not to be paid for earned but unused vacation leave credits, provided that the new employer will accept these credits.

7.9.2 Notwithstanding the provisions of this agreement concerning severance pay, an employee who accepts a reasonable job offer pursuant to this Part will not be paid severance pay where successor rights apply and/or, in the case of a Type-2 transitional employment arrangement, when the new employer recognizes the employee's years of continuous employment in the public service for severance pay purposes and provides severance pay entitlements similar to the employee's severance pay entitlements at the time of the transfer. However, an employee who has a severance termination benefit entitlement under the terms of Article 63.05(b) or (c) of A~~a~~ppendix L shall be paid this entitlement at the time of transfer.

7.9.3 Where:

a. the conditions set out in 7.9.2 are not met,
b. the severance provisions of this agreement are extracted from this agreement prior to the date of transfer to another non-federal public sector employer,
c. the employment of an employee is terminated pursuant to the terms of 7.5.1, or
d. the employment of an employee who accepts a job offer from the new employer in a Type-3 transitional employment arrangement is terminated on the transfer of the function to the new employer,

the employee shall be deemed, for purposes of severance pay, to be involuntarily laid-off on the day on which employment in the core public administration terminates.

Annex A: ~~S~~s~~S~~tatement of pension principles

1) The new employer will have in place, or **His** ~~Her~~ Majesty in right of Canada will require the new employer to put in place, reasonable pension arrangements for transferring employees. The test of reasonableness will be that the actuarial value (cost) of the new employer pension arrangements will be at least six decimal five per cent (6.5%) of pensionable payroll, which in the case of defined-benefit pension plans will be as determined by the Assessment Methodology developed by Towers Perrin for the Treasury Board, dated October 7, 1997. This Assessment Methodology will apply for the duration of this collective agreement. Where there is no reasonable pension arrangement in place on the transfer date or no written undertaking by the new employer to put such reasonable pension arrangement in place effective on the transfer date, subject to the approval of Parliament and a written undertaking by the new employer to pay the Employer costs, *Public Service Superannuation Act* ~~(PSSA)~~ coverage could be provided during a transitional period of up to a year.
2) Benefits in respect of service accrued to the point of transfer are to be fully protected.
3) **His** ~~Her~~ Majesty in right of Canada will seek portability arrangements between the Public Service Superannuation Plan and the pension plan of the new employer where a portability arrangement does not yet exist. Furthermore, Her Majesty in right of Canada will seek authority to permit employees the option of counting their service with the new employer for vesting and benefit thresholds under the ~~PSSA~~ **Public Service Superannuation Act**.
~~4) **Potential pension benefit reductions that would have otherwise applied to individuals who do not meet the age and service requirements for an unreduced pension under the public service pension plan, will be mitigated for eligible employees, in accordance with the *Portions of the Public service General Divestiture Regulations* (the Regulations). The Regulations provide that the duration of employment with the new employer, and an individual's age when they end their employment with the new employer, will be used to determine eligibility for an unreduced pension under the public service pension plan. The Regulations also mitigate adverse effects on pension benefits by allowing survivor benefits in situations where transferred individuals marry or enter into a common-law relationship or acquire a child while employed by the new employer.~~**

Annex B: Transition Support Measure (TSM)

Years of service in the public service	Transition Support Measure (TSM) (Payment in weeks' pay)
0	10
1	22
2	24
3	26
4	28
5	30
6	32
7	34
8	36
9	38
10	40
11	42
12	44
13	46
14	48
15	50
16	52
17	52
18	52
19	52
20	52
21	52
22	52
23	52
24	52
25	52
26	52
27	52
28	52
29	52
30	49
31	46
32	43
33	40
34	37
35	34

36	31
37	28
38	25
39	22
40	19
41	16
42	13
43	10
44	07
45	04

For indeterminate seasonal and part-time employees, the ~~TSM~~ **~~T~~transition ~~S~~support ~~M~~measure** will be pro-rated in the same manner as severance pay under the terms of this agreement. Severance pay provisions of this agreement are in addition to the ~~TSM~~ **~~T~~transition ~~S~~support ~~M~~measure**.

Annex C: **r~~R~~ole of ~~PSC~~ Public Service Commission ~~of Canada~~ in administering surplus and lay-off priority entitlements.**

1. The ~~PSC~~ **Public Service Commission ~~of Canada~~** will refer surplus employees and laid-off persons to positions, in all departments, organizations and agencies governed by the PSEA, for which they are potentially qualified for the essential qualifications, unless the individuals have advised the ~~PSC~~ **Public Service Commission ~~of Canada~~** and their home departments or organizations in writing that they are not available for appointment. The ~~PSC~~ **Public Service Commission ~~of Canada~~** will further ensure that entitlements are respected and that priority persons are fairly and properly assessed.
2. The ~~PSC~~ **Public Service Commission ~~of Canada~~**, acting in accordance with the *Privacy Act*, will provide the Treasury Board ~~of Canada~~ Secretariat with information related to the administration of priority entitlements which may reflect on departments' or organizations' and agencies' level of compliance with this **appendix** ~~directive.~~
3. The ~~PSC~~ **Public Service Commission ~~of Canada~~** will provide surplus and laid-off ~~individuals~~ **persons** with information on their priority entitlements.
4. The ~~PSC~~ **Public Service Commission ~~of Canada~~** will, in accordance with the *Privacy Act*, provide information to **the Alliance** ~~bargaining agents~~ on the numbers and status of their members who are in the Priority **Information Management** ~~Administration~~ System and, on a service-wide basis.

5. The ~~PSC~~ **Public Service Commission** ~~**of Canada**~~ will ensure that a reinstatement priority is given to all employees who are appointed to a position at a lower level.
6. The ~~PSC~~ **Public Service Commission** ~~**of Canada**~~ will, in accordance with the *Privacy Act*, provide information to the Employer, departments or organizations and/or **the Alliance** ~~bargaining agents~~ on referrals of surplus employees and laid-off persons in order to ensure that the priority entitlements are respected.

Public Service Commission ~~**of Canada**~~ "Guide to the Priority Information Management System''.

Remarks

Both parties have tabled proposed amendments to the Workforce Adjustment Appendix (WFAA).

Bargaining Agent Proposals:

The Employer submits that many of the Bargaining Agent's proposals revolve around three main themes: the geographic component of a reasonable job offer, recognition of service and seniority and remote work.

1) Geographic component of reasonable job offer

The bargaining agent is seeking to expand the current provision to include that the Employer shall make every reasonable effort to provide an employee with a reasonable job offer, adding a forty (40) kilometre radius of his or her work location. The Employer is not in agreement to add different metropolitan for consideration as part of this process, the Employer is of the view that the current practice is sufficient. The Bargaining Agent has not demonstrated the contrary.

2) Recognition of service and seniority

The Bargaining Agent is proposing that where a reasonable job offers can be provided to some but not all surplus employees in a given province or territory, such reasonable job offers shall be made in order of seniority.

The Employer reminds the Commission that, as per sections 113 and 177 of the FPSLRA (Exhibit 2), it does not have jurisdiction to include these proposals in its report nor can they be introduced in collective agreements.

3) Remote working arrangement as viable option

The Employer is opposed to adding the language proposed by the Bargaining Agent with regards to remote work. The remarks made by the Employer under the Bargaining Agent's proposal to introduce an article on alternate work arrangements in collective agreements are applicable to the Bargaining Agent's proposal in this Appendix (pages 311-314).

As previously indicated, the Employer's updated the *Directive on Telework* (Exhibit 29) offers a comprehensive framework for addressing telework situations. The Employer is not in agreement with the proposed language given that the spirit and intent of the WFA agreement is to provide for continued employment in the federal public service. Offering options to those in receipt of a guarantee of a reasonable job offer (GRJO) does not fall within the spirit and intent of the appendix of maximizing continued employment. The *Directive on Telework* (Exhibit 29) is in place for employees wishing to work away from their designated workplace. The Bargaining Agent has not demonstrated a need to include this concept in the WFAA nor did it present any justification that would warrant a different position from the one previously presented under the remarks on remote work.

Employer Proposals:

Through this brief, the Employer is amending its original proposal to replicate the agreement as concluded with the other PSAC groups. The Employer is prepared to extend what has been agreed to at the other PSAC tables which includes various technical and administrative amendments to the WFA agreement.

Via this replication, the Employer seeks to achieve an enterprise-wide approach when managing workforce adjustments to ensure consistency of treatments for all employees in any workforce adjustments (WFA) instances and therefore maintains that only one agreement shall continue to apply to all employees or five (5) groups represented by PSAC.

This key principle guides the Employer's approach in considering amendments to the WFA agreements included in collective agreements. When changes in programs and services result in a WFA situation, the Employer seeks to have a consistent approach in order to assist managers and human resources advisors in dealing with these situations, Accordingly, PSAC has one agreement for all of its groups. Two (2) other Bargaining Agents, the Professional Institute of the Public Service of Canada (PIPSC) and the Union of Canadian Correctional Officers – Syndicat des agents correctionnels du Canada (CSN), have WFA agreements included in their respective agreements. PIPSC is representing six (6) groups and the CSN, one (1). Similarly to the PSAC WFA

agreement, all the groups represented by PIPSC have the same workforce adjustment agreement as part of their respective collective agreements.

The other Bargaining Agents have opted in the *Work Force Adjustment Directive* of the National Joint Council (NJC) that was co-developed by the Employer and Bargaining Agents. The *NJC WFA Directive* is deemed to form part of the collective agreements as part of their equivalent of Article 7: National Joint Council agreements in the FB group collective agreement (Exhibit 1).

The protection offered and relevant benefits provided to employees under the WFA agreements and under the *NJC WFA Directive* are very similar in support of ensuring an enterprise-wide approach.

The Employer will continue to offer this agreement to the FB group. This proposal will allow for greater consistency for employees in the CPA as the proposed language would align the WFAA with the National Joint Council's *Work Force Adjustment Directive*.

Accordingly, the Employer requests that the Commission only include the Employer's proposals in its report.

Below is an explanation of what the Employer's changes aim to achieve.

In addition to the Employer's key priorities outlined below, the Employer's proposal seeks to make administrative changes to clarify language in the Workforce Adjustment Appendix (WFAA) to allow for consistency in application across departments relative to the *Work Force Adjustment Directive* of the National Joint Council (NJC). The Employer also proposes to spell out in full, all acronyms, for ease of reading, as was agreed to at other PSAC tables. Finally, the Employer seeks to correct technical errors in addition to achieve gender neutral language.

As presented during the negotiation session in November 2022, the Employer's four key priorities related to the WFAA, include:

<u>1) Opting Period:</u>

The Employer has proposed to reduce the opting period under 6.4.1 from one hundred twenty (120) days to ninety (90) days, to assist undecided employees in gaining access to the Public Service Commission's (PSC) Priority Information Management System (PIMS) sooner.

The PIMS allows organizations to search and fill vacant positions using an inventory of individuals with priority entitlements as per the *Public Service Employment Act* (PSEA)

and *Public Service Employment Regulations* (PSER), therefore allowing individuals to access job opportunities in the federal public service.

This will allow employees to have their personal information submitted to the PSC for priority referrals sooner and as such employees will be referred for reasonable job offers quicker. For employees who are uncertain as to which option is best for them and wish to take the entire period before making a decision this proposal puts them in the priority system sooner.

2) Definition of work unit, relocation and relocation of a work unit

As it is not currently defined, the Employer is seeking to introduce a new definition of *work unit.* This definition helps reflect hybrid work units and to redefine the relocation of a work unit to specify the distance that is required to be considered a relocation of work unit.

The Employer's amended definitions of relocation and relocation of work unit not only reflect current practice, but also provide greater clarity for employees, departments and organizations who must interpret these definitions.

The amendments proposed by the Employer do not remove entitlements from employees but rather clarify when the applicable benefits are available to employees. Additionally, it clarifies that should the relocation of the work unit equal or reduce the kilometric commute to an employee's new place of duty, the employee will not be entitled to relocation benefits.

3) Annual review of surplus employees in receipt of a guarantee of reasonable job offer

Under the new 1.1.9, the Employees proposes to add a provision for the annual review of every surplus employee with a guarantee of a reasonable job offer by deputy heads. This will ensure that employees affected by WFA are followed closely, and should the employment availability situation change, it would allow employees to have access to a transition support measure (TSM).

The proposal would remove the uncertainty for employees and allow them access to option b) (a lump-sum payment in exchange for resignation) or c) i (a lump sum payment in exchange for resignation with an education allowance).

4) Retraining

The Employer's proposal seeks to clarify past practice. While the current Workforce Adjustment Appendix (WFAA) does not provide parameters as to how many levels lower a position may be considered as a reasonable job offer, past practice has

interpreted salary protection and retraining to consider one level lower than the employee’s substantive position.

Appendix D: Memorandum of Understanding between the Treasury Board of Canada and the Public Service Alliance of Canada with Respect to Implementation of the Collective Agreement

Bargaining Agent proposal
Notwithstanding the provisions of clause 63.03 on the calculation of retroactive payments and clause 65.02 on the collective agreement implementation period, this memorandum is to give effect to the understanding reached between the Employer and the Public Service Alliance of Canada regarding a modified approach to the calculation and administration of retroactive payments for the current round of negotiations. 1. The effective dates for economic increases will be specified in the collective agreement. Other provisions of the collective agreement will be effective as follows: a. All components of the agreement unrelated to pay administration will come into force on signature of this agreement unless otherwise expressly stipulated. b. Changes to existing and new compensation elements such as premiums, allowances, insurance premiums and coverage and changes to overtime rates will become effective within one hundred and eighty (180) days after signature of agreement, on the date at which prospective elements of compensation increases will be implemented under 2.a). c. Payment of premiums, allowances, insurance premiums and coverage and overtime rates in the collective agreement will continue to be paid as per the previous provisions until changes come into force as stipulated in 1.b). 2. The collective agreement will be implemented over the following time frames: a. The prospective elements of compensation increases (such as prospective salary rate changes and other compensation elements such as premiums, allowances, changes to overtime rates) will be implemented within one hundred and eighty (180) days after signature of this agreement where there is no need for manual intervention. b. Retroactive amounts payable to employees will be implemented within one hundred and eighty (180) days after signature of this agreement where there is no need for manual intervention. c. Prospective compensation increases and retroactive amounts that require manual processing will be implemented within four hundred and sixty (460) days after signature of this agreement.

3. Employee recourse

a) a) Employees in the bargaining unit for whom this collective agreement is not fully implemented within one hundred and eighty (180) days after signature of this collective agreement will be entitled to a lump sum of two hundred dollars ($200) non-pensionable amount when the outstanding amount owed after one hundred and eighty-one (181) days is greater than five hundred dollars ($500). This amount will be included in their final retroactive payment.

b) Employees will be provided a detailed breakdown of the retroactive payments received and may request that the compensation services of their department or the Public Service Pay Centre verify the calculation of their retroactive payments, where they believe these amounts are incorrect. The Employer will consult with the Alliance regarding the format of the detailed breakdown.

c) In such a circumstance, for employees in organizations serviced by the Public Service Pay Centre, they must first complete a Phoenix feedback form indicating what period they believe is missing from their pay. For employees in organizations not serviced by the Public Service Pay Centre, employees shall contact the compensation services of their department.

Employer proposal

Notwithstanding the provisions of clause 63.03 on the calculation of retroactive payments and clause 65.02 on the collective agreement implementation period, this memorandum is to give effect to the understanding reached between the Employer and the Public Service Alliance of Canada regarding a modified approach to the calculation and administration of retroactive payments for the current round of negotiations.

1. The effective dates for economic increases will be specified in the collective agreement. Other provisions of the collective agreement will be effective as follows:

a. All components of the agreement unrelated to pay administration will come into force on signature of this agreement unless otherwise expressly stipulated.
b. Changes to existing and new compensation elements such as premiums, allowances, insurance premiums and coverage and changes to overtime rates will become effective within one hundred and eighty (180) days after signature of agreement, on the date at which prospective elements of compensation increases will be implemented under 2.a).
c. Payment of premiums, allowances, insurance premiums and coverage and overtime rates in the collective agreement will continue to be paid as per the previous provisions until changes come into force as stipulated in 1.b).

2. The collective agreement will be implemented over the following time frames:

a. The prospective elements of compensation increases (such as prospective salary rate changes and other compensation elements such as premiums, allowances, changes to overtime rates) will be implemented within one hundred and eighty (180) days after signature of this agreement where there is no need for manual intervention.
b. Retroactive amounts payable to employees will be implemented within one hundred and eighty (180) days after signature of this agreement where there is no need for manual intervention.
c. Prospective compensation increases and retroactive amounts that require manual processing will be implemented within four hundred and sixty (460) days after signature of this agreement.

Remarks

The parties agree on parts 1 and 2 of the MOU. Only the section “3. Employee Recourse” of the Bargaining Agent is still in dispute.

The content of this MOU reflects what been agreed to with other bargaining agents, including PSAC, and therefore, constitutes the CPA pattern.

The Employer is prepared to consider including section 3 of the MOU as part of a negotiated settlement.

Appendix G: Memorandum of Agreement with Respect to Administrative Suspensions

Bargaining Agent proposal
All investigatory and administrative suspensions shall be with pay. No employee shall suffer suspension of pay unless the employee is subject to disciplinary measures which are being imposed consistent with Article 17. ~~Stoppage of pay and allowances will only be invoked in extreme circumstances when it would be inappropriate to pay an employee.~~ ~~Each case will be dealt with on its own merits and will be considered when the employee is:~~ ~~a. in jail awaiting trial,~~ ~~or~~ ~~b. clearly involved in the commission of an offence that contravenes a federal act or the Code of Conduct, and significantly affects the proper performance of his/her duties. If the employee's involvement is not clear during the investigation, the decision shall be deferred pending completion of the preliminary hearing or trial in order to assess the testimony under oath.~~ ~~**~~ ~~However, an employee subject to 1. or 2. above will be placed on administrative leave with pay until the employer appoints an investigator and the investigation has begun in the above-referenced matters.~~ ~~Thereafter, the employee will be administratively suspended without pay, subject to regular reassessment by the Employer.~~ ~~The Employer agrees to use its best effort to prioritize the above-referenced investigations by case severity.~~ ~~The timeliness of administrative suspensions will be a standing item on the National Labour Management Committee with the aim of ensuring continuous improvement.~~ ~~The parties recognize the importance of the timely undertaking of processes outlined in this Appendix.~~

Remarks

For ease of reference for the members of the PIC, the Employer wishes to note that as part of its proposals, the Bargaining Agent has amended the title of the existing appendix to include "and Removal of Security Clearance Pending Investigations".

Furthermore, the Bargaining Agent has not provided any language beyond the title, preventing the Employer from taking position on this proposal. Accordingly, the Employer cannot comment on this particular aspect and is submitting its remarks on the actual language as tabled by the Bargaining Agent.

The Bargaining Agent is proposing to replace existing language to make all investigatory and administrative suspensions with pay unless the employee is also subject to disciplinary measures.

The Employer submits that the Bargaining Agent's proposal is too broad and would offer a protection that would be inconsistent with the principles of sound labour relations practice. As currently worded, Appendix G already offers a broader protection to the members of the FB group compared to other CPA collective agreements. In the CPA, administrative suspension without pay pending the outcome of an investigation is the standard.

For the FB group, an employee benefits from a suspension with pay except:

1. if they are in jail awaiting for trial, or
2. were involved in the commission of an offence that contravenes a federal act or the Code of Conduct, and significantly affects the performance of their duties.

In those instances, each case will be dealt with on its own merits and the administrative suspension is without pay.

A very small number of CBSA employees have been administratively suspended over the past few years and the majority ended in a disciplinary termination. CBSA has a rigorous process in place for each case, which includes a thorough assessment based on the Larson criteria. In most cases, when an employee is administratively suspended, it is related to serious acts of misconduct.

The parties previously agreed to the parameters for an administrative suspension without pay at Appendix G. The parties recognized in the first paragraphs of it that it would sometimes "be inappropriate to pay an employee". The authority to do so must be protected. The bargaining agent has given no reason why this would no longer be the case to justify the proposed amendment.

The language of the appendix has also been amended during the last round of collective bargaining to address the Bargaining Agent’s concerns related to the duration of suspensions without pay that could be increased due to the time required to appoint an investigator. As per the amended language, employees remain on suspension with pay until the appointment of an investigator. Regular reassessments of the situation are also performed by the Employer and the timeliness of administrative suspensions is a standing item on the National Labour Management Committee with the aim of ensuring continuous improvement. The language can be found under the asterisks (i.e. “**”) of the appendix and reads as follows:

> However, an employee subject to 1. or 2. above will be placed on administrative leave with pay until the employer appoints an investigator and the investigation has begun in the above-referenced matters.
>
> Thereafter, the employee will be administratively suspended without pay, subject to regular reassessment by the Employer.
>
> The Employer agrees to use its best effort to prioritize the above-referenced investigations by case severity.
>
> The timeliness of administrative suspensions will be a standing item on the National Labour Management Committee with the aim of ensuring continuous improvement.
>
> The parties recognize the importance of the timely undertaking of processes outlined in this Appendix.

The Employer maintains that the current language in the collective agreement is appropriate and adequately serves to protect the interest of the parties to the agreement and Canadian taxpayers. Case law has long recognized that administrative suspensions without pay can be justified in appropriate situations.

Additionally, the Employer is concerned that that the proposed amendments to the language of the collective agreement will significantly risk affecting the Employer’s reputation towards the public.

Therefore, the Employer requests that the Commission recommend maintaining the existing language of this Appendix.

Appendix J: Leave for Union Business: Cost-Recovery

Employer proposal

MEMORANDUM OF UNDERSTANDING BETWEEN THE TREASURY BOARD OF CANADA AND THE PUBLIC SERVICE ALLIANCE OF CANADA IN RESPECT TO LEAVE FOR UNION BUSINESS: COST RECOVERY

The Employer proposes that this appendix be amended to reflect the following changes submitted by the Employer:

This Memorandum of Understanding (MOU) is to give effect to an agreement reached between the Treasury Board (the Employer) and the Public Service Alliance of Canada (the Union) to implement a system of cost recovery for leave for union business.

The parties agree to this MOU as a direct result of current Phoenix pay system implementation concerns related to the administration of leave without pay for union business.

~~The elements of the new system are as follows:~~

a. ~~Recoverable paid leave for Union business for periods of up to 3 months of continuous leave per year;~~
b. ~~Cost recovery will be based on actual salary costs during the leave period, to which a percentage of salary, agreed to by the parties, will be added;~~
c. ~~The Employer will pay for all administration costs associated with the operation of this system.~~

~~The surcharge will be based on average expected costs incurred by the Employer for payroll taxes, pensions and supplementary benefits during the operation of the program as described above, calculated according to generally accepted practices. Notwithstanding anything else in this agreement, and as an overarching principle, it will not include costs for benefits that would otherwise be paid by the Employer during an equivalent period of leave without pay. The consequences of the implementation of clause 14.14 will be cost neutral for the Employer in terms of compensation costs, and will confer neither a substantial financial benefit, nor a substantially increased cost, on the Employer.~~

As per clause 14.14 of this collective agreement, effective on date of signing:

- Leave granted to an employee under clauses 14.02, 14.09, 14.10, 14.12 and 14.13 of the collective agreement will be with pay **for a total cumulative maximum period of three (3) months per fiscal year**;
- ~~The Alliance will reimburse the Employer for the salary and benefit costs of the employee during the period of approved leave with pay according to the terms established by this agreement.~~

This MOU confirms the terms established by joint agreement between the Employer and the Alliance are as follows:

- It is agreed that leave with pay granted under the above-noted clauses for Alliance business will be paid for by the Employer effective on the date of signing of this collective agreement, pursuant to this MOU. The Alliance shall then compensate the Employer by remitting an amount equivalent to the actual gross salary paid for each person-day, in addition to which shall also be paid the Employer by the Alliance an amount equal to six per cent (6%) of the actual gross salary paid for each person-day, which sum represents the Employer's contribution for the benefits the employee acquired at work ~~as per the terms established in the appendices noted above~~.
- On a bimonthly basis and within one hundred and twenty (120) days of the end of the relevant period of leave, the hiring department/agency will invoice the Alliance or Component for the amount owed to them by virtue of this understanding. The amount of the gross salaries and the number of days of leave taken for each employee will be included in the statement.
- The Alliance or Component agrees to reimburse the department/agency for the invoice within sixty (60) days of the date of the invoice.

This Memorandum of Understanding expires on the expiry of the collective agreement, or upon implementation of the Next Generation Human Resources and Pay system, whichever comes first.

Remarks

As previously stated under Article 14: Leave with or without Pay for Alliance Business, this appendix is meant to supplement the text under clause 14.14. The Employer is seeking to amend this appendix to reflect current practice and to align with its negotiated intent.

As such, in its proposal, the Employer is seeking to clarify that the leave will be with pay for a total cumulative maximum period of three (3) months per fiscal year. This MOU

shall have no effect on leave entitlements and obligations in excess of a total cumulative maximum period of three (3) months per fiscal year.

The proposed language also reflects the fact that the need for this MOU, and the cost-recovery process, is linked to existing Phoenix pay system concerns and thus, it includes new language regarding the expiry of the MOU.

The Employer therefore requests that the Employer’s proposal be included in the Commission’s report.

Appendix O: Letter of Understanding Between the Treasury Board of Canada and the Public Service Alliance of Canada with Respect to Workplace Culture

Bargaining Agent proposal
This letter of understanding is to give effect to the agreement reached between the Treasury Board of Canada (the Employer) and the Public Service Alliance of Canada (the Alliance) regarding the creation of a joint working committee to examine and strengthen Workplace Culture within the CBSA. Both parties share the objective of creating and maintaining healthy work environments for all employees and agree to establish a joint committee, co-chaired by a representative from each party, to discuss and identify potential opportunities and considerations to improve the workplace culture within the CBSA. The joint committee will meet within 30 days of the ratification of the tentative agreement to commence its work. This timeline may be extended on mutual agreement between the parties. ~~This letter of understanding expires on June 20, 2022.~~
Employer movement
This letter of understanding is to give effect to the agreement reached between the Treasury Board of Canada (the Employer) and the Public Service Alliance of Canada (the Alliance) regarding the creation of a joint working committee to examine and strengthen Workplace Culture within the CBSA. Both parties share the objective of creating and maintaining healthy work environments for all employees and agree to establish a joint committee, co-chaired by a representative from each party, to discuss and identify potential opportunities and considerations to improve the workplace culture within the CBSA. The joint committee will meet within 30 days of the ratification of the tentative agreement to commence its work. This timeline may be extended on mutual agreement between the parties. This letter of understanding expires on June 20, 202~~2~~**6**.

Remarks

The Bargaining Agent is proposing to remove the expiry date for this Letter of Understanding (LOU), which would result in the joint working committee being permanent.

This LOU was agreed to during the last round of bargaining in response to proposals from the Bargaining Agent. The objective was to establish a joint working committee to provide a forum for the parties to discuss workplace culture.

The Employer’s initial book of proposals included a placeholder indicating that it wished to engage in discussions on this appendix. The Employer recognizes the relevancy of the LOU and is amending its proposal to update its expiry date to June 20, 2026. The Employer is of the opinion that it is necessary to keep an expiry date to provide the parties an opportunity to assess the progress made and determine if this committee is still necessary at the next round of bargaining.

Therefore, the Employer requests that the Commission only include the Employer’s proposal in its report.

Appendix P: Memorandum of Understanding Between the Treasury Board of Canada and the Public Service Alliance of Canada with Respect to Article 41 Leave without Pay for the Care of Family and Vacation Scheduling

Bargaining Agent proposal
Remove.
Employer movement
This memorandum is to give effect to the understanding reached between the Employer and the Public Service Alliance of Canada in respect of employees in the Border Services (FB) bargaining unit. The parties agree to establish a joint consultation committee to discuss issues raised by the Employer concerning operational challenges associated with the scheduling of Article 41 leave in conjunction with vacation scheduling. The committee shall meet within sixty (60) days of ratification. The mandate of the committee shall be to discuss matters subject to this appendix and, where possible, provide recommendations to the parties to resolve identified problems. This memorandum expires on June 20, 202~~2~~**6**.

Remarks

The Bargaining Agent is proposing to delete the Memorandum of Understanding with respect to Article 41 Leave without Pay for the Care of Family and Vacation Scheduling.

This Memorandum of Understanding was agreed to during the last round of bargaining to allow the parties to engage in discussions aiming to facilitate the management of requests for this and other types of leaves, especially during peak periods. This was meant to be a forum for the parties to discuss operational challenges arising from the scheduling of Article 41 leave in conjunction with vacation scheduling, in the absence of progress made on the Employer's proposed amendments to Article 41. Amendments to Article 41 have been a priority for the Employer for several rounds of bargaining.

The Employer would welcome PIC recommendations on this article consistent with its submissions starting on page 179.

The Employer's initial book of proposals included a placeholder indicating that it wished to engage in discussions on this appendix. Should no progress be made on

amendments to Article 41, the LOU should be amended to update its expiry date to June 20, 2026.

Therefore, the Employer requests that the Commission includes the Employer proposal in its report.

New Article: Early Retirement for FB Workers

Bargaining Agent proposal
Amend the pension plan to allow for employees in the FB bargaining unit to retire with 25 years of service without penalty.

Remarks

The Bargaining Agent is seeking to amend the public service pension plan, as provided under the *Public Service Superannuation Act (PSSA),* to allow for employees in the FB bargaining unit to retire with twenty-five (25) years of continuous employment without penalty.

As per section 113 of the FPSLRA (Exhibit 2), the Employer does not have the legal authority to bargain terms and conditions of employment related to pensions as these are already established under the *Public Service Superannuation Act*:

> **Collective agreement not to require legislative implementation**
>
> **113** A collective agreement that applies to a bargaining unit — other than a bargaining unit determined under section 238.14 — must not, directly or indirectly, alter or eliminate any existing term or condition of employment or establish any new term or condition of employment if
>
> > **(a)** doing so would require the enactment or amendment of any legislation by Parliament, except for the purpose of appropriating money required for the implementation of the term or condition; or
> > ***(b)*** the term or condition is one that has been or may be established under the *Public Service Employment Act*, the *Public Service Superannuation Act* or the *Government Employees Compensation Act*.

As such, this issue cannot form part of the PIC report under section 177 (1) (a) and (b) of the FPSLRA (Exhibit 2).

> **Report not to require legislative implementation**
>
> **177 (1)** The report may not, directly or indirectly, recommend the alteration or elimination of any existing term or condition of employment, or the establishment of any new term or condition of employment, if

(a) the alteration, elimination or establishment would require the enactment or amendment of any legislation by Parliament, except for the purpose of appropriating money required for implementation;
(b) the term or condition is one that has been or may be established under the *Public Service Employment Act*, the *Public Service Superannuation Act* or the *Government Employees Compensation Act*

Of note, the Bargaining Agent brought the same issue before the Public Interest Commissions established in 2021 and 2012 for the FB group. In its June 5, 2013 report, the Commission stated at paragraph [14]; "The Bargaining Agent made submissions on pension entitlements. Pensions cannot be the subject of collective bargaining under the FPSLRA (Exhibit 2) (section 113). The PIC has therefore not made any recommendations on changes to the pension entitlements."

In light of the above, the Employer respectfully submits that this Public Interest Commission does not have the jurisdiction to decide the matter, and consequently, this issue cannot form part of its report pursuant to the FPSLRA (Exhibit 2).

The Bargaining Agent was informed throughout negotiations that the Employer will not consider a proposal on pension matters that is submitted through the bargaining process. However, it was noted that, while the terms of the federal public service pension plan are not subject to negotiation, issues related to the pension plan are actively discussed with key stakeholders, including employee, employer and pensioner representatives through the Public Service Pension Advisory Committee (PSPAC). The PSPAC constitutes the forum where employee requests would be considered, and recommendations would be made to the President at the discretion of the Committee.

This matter was brought forward to the PSPAC. With secretariat support from the Employer, the PSPAC has completed a comprehensive review of this issue and, in alignment with its established procedures, has submitted recommendations to the President of the Treasury Board for consideration of potential legislative changes.

In view of the above, the Employer respectfully submits that this Public Interest Commission does not have the jurisdiction to decide this matter, which should, consequently, not be included in its report.

New Article: Recruits

Bargaining Agent proposal
Upon completion of new recruit training at Rigaud College, employees will be placed at the appropriate step on the FB 03 scale once assigned to a CBSA port or office. **Any employee who participates in the Officer Induction Trainee Program shall be provided leave with pay for the duration of the employee's participation in the program. Such leave shall include travel to and from the location where the training is undertaken.**

Remarks

The Employer submits that the first paragraph of the Bargaining Agent's proposal for new recruits deals with a term or condition of employment established under the *Public Service Employment Act* (PSEA) that relates to procedures or processes governing the appointment of employees. As such, this proposal cannot be subject to collective bargaining as established by s.113 of the FPSLRA (Exhibit 2).

> **Collective agreement not to require legislative implementation**
>
> **113** A collective agreement that applies to a bargaining unit — other than a bargaining unit determined under section 238.14 — must not, directly or indirectly, alter or eliminate any existing term or condition of employment or establish any new term or condition of employment if
>
> > **(a)** doing so would require the enactment or amendment of any legislation by Parliament, except for the purpose of appropriating money required for the implementation of the term or condition; or
> > ***(b)*** the term or condition is one that has been or may be established under the *Public Service Employment Act*, the *Public Service Superannuation Act* or the *Government Employees Compensation Act*.

Further, or in the alternative, the proposal relates "to standards, procedures or processes governing the appointment, appraisal, promotion, deployment, rejection on probation or lay-off of employees." Section 177 (1) (c) of the FPSLRA (Exhibit 2) prohibits such a proposal from being included in the report.

> **Report not to require legislative implementation**

> **177 (1)** The report may not, directly or indirectly, recommend the alteration or elimination of any existing term or condition of employment, or the establishment of any new term or condition of employment, if
>
> > **(c)** the term or condition relates to standards, procedures or processes governing the appointment, appraisal, promotion, deployment, rejection on probation or lay-off of employees;

Moreover, the proposed language clearly restricts the Employer's right to establish qualification standards and professional development programs. The Employer is of the opinion that this violates its right under s. 7 of the FPSLRA (Exhibit 2) to determine the organization of its business and to assign duties to and to classify positions and persons employed in those portions of the federal public service.

> **Right of employer preserved**
>
> **7** Nothing in this Act is to be construed as affecting the right or authority of the Treasury Board or a separate agency to determine the organization of those portions of the federal public administration for which it represents Her Majesty in right of Canada as employer or to assign duties to and to classify positions and persons employed in those portions of the federal public administration.

It further undermines the Employer's right to determine and control personnel management within the federal public service, in accordance with ss. 7 and 11.1 of the *Financial Administration Act* (Exhibit 4).

Accordingly, the Employer respectfully submits that this Public Interest Commission does not have the jurisdiction to decide the matter, and its report cannot include recommendations related to this issue pursuant to the FPSLRA.

Officer Induction Trainee Program

The Bargaining Agent is also proposing to provide leave with pay for employees who participate in the Officer Induction Trainee Program (OITP). All recruits have to go through the first phase of the OITP to complete a eighteen (18)-week mandatory training. Four (4) weeks of the training are done virtually and fourteen (14) weeks at the Canada Border Service College. If they successfully complete the program, then they are being offered a position in the FB group and will complete phases 2 and 3 of the program.

The jurisdiction of the Bargaining Agent is limited to the members of the FB group bargaining unit. Recruits are not employees within the meaning of section 2(1) of the

Federal Public Sector Labour Relations Act (Exhibit 2). As a result, the Bargaining Agent does not represent these individuals and it would not be appropriate to include terms in the collective agreement related to them.

Moreover, this proposal also relates "to standards, procedures or processes governing the appointment, appraisal, promotion, deployment, rejection on probation or lay-off of employees." As indicated above, section 177 (1) (c) of the FPSLRA (Exhibit 2) prohibits such a proposal from being included in the report.

Consequently, the Employer respectfully submits that this Public Interest Commission does not have the jurisdiction to decide the matter, and recommendations on this issue should not form part of its report pursuant to section 177 (1) (c) of the FPSLRA (Exhibit 2)

New Article: Wellness Day

Bargaining Agent proposal	
XX.01	**An employee shall be provided a day of paid leave per fiscal year for reasons of a personal nature.**
XX.02	**Approval will be subject to operational requirements, as determined by the Employer, and with advance notice of at least five (5) working days.**
XX. 03	**The leave will be scheduled at a time that is convenient to both the Member and the Employer. However, the Employer will make every reasonable effort to grant the leave requested.**

Remarks

The Bargaining Agent seeks to introduce a new provision for leave with pay for a wellness day. This proposal amounts to $5.5M per year ongoing, or 0.52% of the wage base.

This proposal is essentially a duplication of the personal leave provided for at clause 52.02, which already allows paid leave for up to fifteen (15) hours for reasons of a personal nature. The FB entitlement is the standard in CPA collective agreements.

Only the Royal Canadian Mounted Police (RCMP) RCMP Regular Members (below the rank of inspector) and Reservists (RM) have a wellness day included in their collective agreement. However, this leave serves the same purpose as the Personal Leave, included under clause 52.02 of the FB group collective agreement (Exhibit 1).

More specifically, clause 41.01 of the RCMP Regular Members (below the rank of inspector) and Reservists collective agreement states that "A Member is entitled to eight (8) hours of paid leave per fiscal year for reasons of a personal nature". This is the equivalent of one (1) day of leave as the standard workday under this collective agreement shall consist of a minimum of eight (8) consecutive hours (clause 21.05 (b)). However, they are not entitled to two (2) days (fifteen (15) hours) of personal leave per year as are provided to the FB group and other CPA groups.

The Employer submits that this proposal is unnecessary and that the Bargaining Agent has not provided compelling justification for this demand.

For these reasons, the Employer requests that the Commission not include this Bargaining Agent proposal in its report.

New Article: Compassionate Leave

Bargaining Agent proposal
Leave to visit a critically ill family member **XX.01 For the purpose of this article, "family" is defined as per Article 2.** **XX.02 The Employer shall grant up to ten (10) days of leave with pay (inclusive of travel time) to visit a person in the Member's family who is certified as being critically ill by a medical practitioner.** **XX. 03 This type of leave will be granted on only one (1) occasion for each occurrence.** **Leave to travel for treatment** **XX.04 The Employer shall grant up to five (5) days of leave with pay per fiscal year when an employee at a location that lacks medical/dental specialist services is required to travel to some distant point for treatment for the employee or the employee's family.** **XX.05 This type of leave will be granted to allow travelling time to and from the distant point and a reasonable period to arrange for the services.**

Remarks

The Bargaining Agent is proposing to introduce a new article for compassionate leave, which would include leave with pay to *"visit a critically ill family member*" and to "*travel for treatment*".

Given the Bargaining Agent's proposal to expand the definition of family, and given the language of this proposal, the Employer submits that this demand is too broad. Additionally, agreeing to the Bargaining Agent's proposal would leave the Employer without any real discretion for granting this leave.

The Employer is of the view that other leave entitlements currently provided for in the collective agreement could find application for these specific circumstances.

The Bargaining Agent's proposal at xx.04 and xx.05 is also a matter that is already addressed under the *National Joint Council Isolated Posts and Government Housing Directive (IPGHD)* that forms part of the collective agreement as per Article 7: National Joint Council agreement of the FB group collective agreement (Exhibit 1). Employees assigned to remote locations, which require above-average travel time, are provided

with additional leave under the IPGHD. As such, any further entitlement for leave with pay for related travel from remote headquarters would be a duplication of benefits.

The purpose of the IPGHD, as co-developed by Bargaining Agents and Employer NJC representatives, is to recognize the challenges and higher costs of living and working in headquarters which are situated in particularly remote locations.

More specifically, this matter is included under Part III – Expenses and Leave (Exhibit 30):

Section 3.1 Non-Elective Medical or Dental Treatment

This benefit provides travel assistance to employees delivering services in isolated locations, deemed sufficiently remote, as identified under Appendix A - Classification of Isolated Posts (Exhibit 30) and to their dependents so they may obtain non-elective medical treatment at the nearest location where the treatment is available.

Section 3.10 and 3.11 - Travel Time

When employees are reimbursed transportation or travel expenses under 3.1 of the *Directive*, they shall be granted leave with pay for the actual time required to travel, up to a maximum of two (2) days or, in cases where an overnight stopover is required, up to three (3) days.

The incorporation of the proposed language under xx.04 and xx.05 would duplicate entitlements already provided for under this *Directive*. It would also contravene section 9.1.14 of the NJC By-Laws (Exhibit 26), whereas Bargaining Agents are refrained from discussing matters covered under *National Joint Council Directives* in negotiations.

The existing leave entitlements in the FB group collective agreement are comparable to those found in other CPA collective agreements and the expansion of this language would be precedent setting for all other groups in the CPA In addition, the proposed language lacks precision, thus also opening the possibility for differing interpretations and applications.

Furthermore, the Bargaining Agent has not provided sufficient substantiation to support this demand.

The Employer therefore requests that the Commission not include the Bargaining Agent's proposals in its report.

New Article: Work of the Bargaining Unit

Bargaining Agent proposal	
XX.01	**Only members of the bargaining unit shall perform work of the bargaining unit, except by explicit mutual agreement in writing between the Union and the Employer.**
XX.02	**The Employer shall bring all currently sub-contracted bargaining unit work back into the bargaining unit. The parties shall meet within ninety (90) days of ratification to ensure full compliance with this Article.**

Remarks

Jurisdictional concerns

The Bargaining Agent's proposal on work of the bargaining unit seeks to limit the Employer's ability to contract out.

The Employer submits that this proposal deals with a term or condition established under the *Public Service Employment Act* (PSEA) that relates to procedures or processes governing the appointment of employees. As such, this proposal should not be subject to collective bargaining as established by s.113 of the FPSLRA (Exhibit 2).

> **Collective agreement not to require legislative implementation**
>
> 113 A collective agreement that applies to a bargaining unit — other than a bargaining unit determined under section 238.14 — must not, directly or indirectly, alter or eliminate any existing term or condition of employment or establish any new term or condition of employment if:
>
> (b) the term or condition is one that has been or may be established under the *Public Service Employment Act*, the *Public Service Superannuation Act* or the *Government Employees Compensation Act*;

The Employer further submits that a proposal preventing or limiting the contracting out of services could prevent the contracting out of functions presently performed by certain employees during regular hours of work. As a result, this proposal could directly operate to prevent layoffs, which is contrary to paragraph 177 (1) (b) and (c) of the *Federal Public Sector Labour Relations Act* (Exhibit 2) which establishes the powers and functions of the Commission.

Report not to require legislative implementation

177 (1) The report may not, directly or indirectly, recommend the alteration or elimination of any existing term or condition of employment, or the establishment of any new term or condition of employment, if

(b) the term or condition is one that has been or may be established under the *Public Service Employment Act*, the *Public Service Superannuation Act* or the *Government Employees Compensation Act*;

(c) the term or condition relates to standards, procedures or processes governing the appointment, appraisal, promotion, deployment, rejection on probation or lay-off of employees; or

Remarks on the substance of new article on protections against Contracting Out:

Alternatively, should the Commission retain jurisdiction on this Bargaining Agent demand, sections 7 and 11.1 of the *Financial Administration Act* (Exhibit 4), grant the Employer a broad unlimited power to set general administrative policy for the federal public service, organize the federal public service, and determine and control personnel management within the federal public service. Management rights are further reiterated in sections 6 and 7 of the *Federal Public Sector Labour Relations Act* (Exhibit 2).

Right *of Treasury Board preserved*

6 Nothing in this Act is to be construed as affecting the right or authority of the Treasury Board under paragraph 7(1)(b) of the *Financial Administration Act.*

Right of employer preserved

7 Nothing in this Act is to be construed as affecting the right or authority of the Treasury Board or a separate agency to determine the organization of those portions of the federal public administration for which it represents Her Majesty in right of Canada as employer or to assign duties to and to classify positions and persons employed in those portions of the federal public administration.

The protection of management rights was namely addressed in the decision of *Federal Government Dockyard Trades and Labour Council East v. Treasury Board*, 2005 PSLRB 42 (Exhibit 31). In paragraphs 18-20 it is stated that:

[18] I recognize that, unlike clause 47.01 in *National Capital Commission* (*supra*), the proposed new clause 38.01 does not specifically tie the employer's contracting out ability to the absence of lay-offs. However, the fact remains that

> its object is to establish limitations on the employer's ability to contract out work normally performed by employees in the bargaining unit (our underline).
>
> [19] The employer correctly pointed out that its right to determine the organization of the Public Service and to assign duties to positions therein is protected by legislation. Such protection is found in section 7 of the former Act. The Federal Court of Appeal, in Public Service Alliance of Canada v. Canada (Treasury Board), [1987] 2 F.C. 471, was asked to determine the effect of that provision on a proposal that would otherwise be arbitrable. The Court found that such a proposal could be referred to arbitration only if ". . . its effect would leave intact the untouchable prerogatives of Government defined in section 7 [of the former Act]."
>
> [20] In National Association of Broadcast Employees and Technicians v. House of Commons, PSSRB File No. 485-H-1 (1988) (QL), the Public Service Staff Relations Board found that a proposal preventing contracting out ". . . clearly interferes with the employer's right to determine its organization. . ." and could not be considered within the scope of a request for arbitration.

In light of the above, the Employer submits that this Commission does not have the jurisdiction to address this proposal in its report and it should not be included in its report.

New Article: Firearm Practice Time

Bargaining Agent proposal	
XX.01	**An employee that is required to carry a firearm shall be scheduled at least two (2) shifts per year for duty firearm practice. Such shifts shall be scheduled consistent with the employee's regular hours of work.**
XX.02	**Any fees associated with firearm practice time consistent with XX.01 above shall be the responsibility of the Employer.**
XX.03	**Any travel associated with a) above shall be subject to the National Joint Council Travel Directive.**

Remarks

With this proposal, CBSA would be required to schedule two (2) mandatory shifts per year for firearm practice. Any travel required for firearm practice would be subject to the *National Joint Council (NJC) Travel Directive* (Exhibit 8).

The Employer submits that as per the *Financial Administration Act* (Exhibit 4) (s. 12 (1) (a)), the deputy heads have and exercise the authority to "determine the learning, training and development requirements of persons employed in the public service and fix the terms on which the learning, training and development may be carried out".

More specifically, when Border Services Officers (BSOs) started to carry a firearm in 2006, CBSA determined that two (2) mandatory practices were required for BSOs to meet the requirements of the Arming Program. As the program evolved, CBSA found that mandatory practices were not having a significant impact on success rates. The requirement was therefore reduced to one annual practice time and was eventually eliminated as officers continued to demonstrate high levels of skill and were successful at their yearly requalifying certification exam.

CBSA continues to monitor the success rate of its officers' ability to requalify and should the success rate start to change it will revisit its position:

- Success rates on Annual Re-Certification since 2013 is 92% and rises to 99% once Skills Enhancement is factored in;
- 3-Year Recertification raw success rate sits at 93% on the Duty Firearm (DF) portion, which rises to 99% once Skills Enhancement is added.

Given this high success rate, the Employer does not consider it necessary to revisit the current approach or to reinstate two (2) mandatory practice times per year.

The Employer suggests that this is a topic of discussion for the CBSA Labour Management Executive (LMEX) Committee which is established to address issues specific to the FB group.

Therefore, the Employer requests that the Commission not include the Bargaining Agent’s proposal in its report.

New Article: Student Employment

Bargaining Agent proposal	
XX.01	**Both the Alliance and the Employer recognize the importance and value in providing students with opportunities to gain work experience and skills through programs provided by the federal government.**
XX.02	**"Students" for the purposes of this Article means students hired under legitimate student programs. Those not hired under legitimate student programs shall be bargaining unit members.**
XX. 03	**"Legitimate" student programs consists of either the Federal Student Work Experience Program, the Research Affiliate Program or the Post-Secondary Co-operative Education and Internment program.**
XX.04	**Students shall not be used to either displace bargaining unit employees or to avoid filling bargaining unit positions.**
XX.05	**Overtime work shall be offered on an equitable basis to employees (bargaining unit members) consistent with Article 28 Overtime.**
XX.06	**The Employer shall ensure that students receive adequate training and supervision, and shall ensure that students are not exposed to dangerous or unsafe working conditions and are covered under the Canada Labour Code part II.**
XX.07	**The parties shall meet within ninety (90) days of ratification to discuss and agree upon the terms and conditions under which those students assigned bargaining unit work might carry out their assigned duties. Such terms and conditions shall include wage rates.**

Remarks

Students are not included in the definition of an "employee" in the *Federal Public Sector Labour Relations Act* (Exhibit 2). The FPSLRA states clearly at Section 2 (bolded/underlined for emphasis added):

> **Interpretation**
>
> **Definitions**
>
> **2 (1)** The following definitions apply in this Act.

- **employee**, except in Part 2, **means a person employed in the public service, other than**

  (a) a person appointed by the Governor in Council under an Act of Parliament to a statutory position described in that Act;

  (b) a person locally engaged outside Canada;

  (c) a person not ordinarily required to work more than one third of the normal period for persons doing similar work;

  (d) a person who is an officer as defined in subsection 2(1) of the *Royal Canadian Mounted Police Act;*

  (e) a person employed in the Canadian Security Intelligence Service who does not perform duties of a clerical or secretarial nature;

  (f) a person employed on a casual basis;

  (g) a person employed on a term basis, unless the term of employment is for a period of three months or more or the person has been so employed for a period of three months or more;

  (h) an employee of the Administrative Tribunals Support Service of Canada who provides any of the following services exclusively to the Board:

  - **(i)** mediation and dispute resolution services,
  - **(ii)** legal services,
  - **(iii)** advisory services relating to the Board's exercise of its powers and performance of its duties and functions;

  (i) a person who occupies a managerial or confidential position; or
  (j) a person who is employed under a program designated by the Employer as a student employment program.

A student is not a member of the bargaining unit and cannot be represented by a Bargaining Agent under the FPSLRA for the purpose of collective bargaining.

Simply put, the FPSLRA does not apply to students and the collective agreement should not include provisions dealing with students.

Including provisions dealing with students to the collective agreement would essentially require the alteration of the FPSLRA.This would be contrary to section 113(a) of the FPSLRA (Exhibit 2) and therefore cannot form part of a collective agreement.

Collective agreement not to require legislative implementation

113 A collective agreement that applies to a bargaining unit — other than a bargaining unit determined under section 238.14 — must not, directly or indirectly, alter or eliminate any existing term or condition of employment or establish any new term or condition of employment if

(a) doing so would require the enactment or amendment of any legislation by Parliament, except for the purpose of appropriating money required for the implementation of the term or condition; or

It is also contrary to section 177 (1) (a) of the FPSLRA (Exhibit 2) on the same basis and therefore cannot form part of the report.

Report not to require legislative implementation

177 (1) The report may not, directly or indirectly, recommend the alteration or elimination of any existing term or condition of employment, or the establishment of any new term or condition of employment, if

(a) the alteration, elimination or establishment would require the enactment or amendment of any legislation by Parliament, except for the purpose of appropriating money required for implementation;

Furthermore, part of the proposal, such as XX.04, relates to standards, procedures or processes governing the appointment, appraisal, promotion, deployment, rejection on probation or lay-off of employees (since it dictates that "students shall not be used to either displace bargaining unit employees or to avoid filling bargaining unit positions"). Other parts, such as XX.02, also seek to deal with the appointment of potential new employees. These cannot form part of the report under section 177 (1) (c) of the FPSLRA (Exhibit 2).

Report not to require legislative implementation
177 (1) The report may not, directly or indirectly, recommend the alteration or elimination of any existing term or condition of employment, or the establishment of any new term or condition of employment, if

(c) the term or condition relates to standards, procedures or processes governing the appointment, appraisal, promotion, deployment, rejection on probation or lay-off of employees; or

In addition, the inclusion of such a proposal in a collective agreement would undermine the Employer's right to determine and control personnel management within the federal

public service, in accordance with ss. 7 and 11.1 of the *Financial Administration Act* (Exhibit 4).

The Employer's right to determine the organization of its business and to assign duties to persons employed in the federal public administration is further reiterated in s. 7 of the FPSLRA (Exhibit 2):

> **Right of employer preserved**
>
> **7** Nothing in this Act is to be construed as affecting the right or authority of the Treasury Board or a separate agency to determine the organization of those portions of the federal public administration for which it represents Her Majesty in right of Canada as employer or to assign duties to and to classify positions and persons employed in those portions of the federal public administration.

Accordingly, the Employer respectfully submits that this Public Interest Commission does not have the jurisdiction to decide the matter, and this issue cannot form part of the report of the Commission pursuant to the FPSLRA.

New Article: Medical or Dental Appointments

Bargaining Agent proposal
Medical or Dental Appointments **XX.01 Employees shall be granted leave with pay to attend medical or dental appointments.** **Medical Certificate** **XX.02 In all cases, a medical certificate provided by a legally qualified medical practitioner shall be considered as meeting the requirements of paragraph 35.02(a).** **XX.03 When an employee is asked to provide a medical certificate by the Employer, the employee shall be reimbursed by the Employer for all costs associated with obtaining the certificate. Employees required to provide a medical certificate shall also be granted leave with pay for all time associated with the obtaining of said certificate.**

Remarks

Medical or Dental Appointments at XX.01

The Bargaining Agent is proposing that employees shall be granted leave with pay to attend medical or dental appointments. As currently worded, it is unclear to whom this leave would apply – the employee, their family of beyond the immediate family.

The Employer affirms that there are currently sufficient leave entitlements providing employees with paid time-off to attend medical and dental appointments. In the core public administration, the *Directive on Leave and Special Working Arrangements* (Exhibit 20), provides employees with paid time off, for up to half a day, for persons to attend their own personal medical and dental appointments without charge to their leave credits in cases of routine, periodic check-ups. When a series of continuing medical or dental appointments are necessary for treatment of a particular condition, persons with the delegated authority ensure that absences are to be charged to the person's sick leave credits (Section 2.2.3).

This entitlement is complemented by Article 35: sick leave with pay of the collective agreement. Other paid time off can also be granted for instances where the

appointments are not for the employee as found under Article 43: leave with pay for family-related responsibilities for example.

The Employer submits that the Bargaining Agent's proposal under XX.01 is not necessary as it is sufficiently covered under this *Directive* and the collective agreement.

Medical certificates provided by a qualified medical practitioner (new clause XX.02

The Bargaining Agent is proposing to add new language, which would deem a medical certificate provided by a legally qualified medical practitioner sufficient to satisfy the Employer that an employee is unable to perform their duties because of their injury or illness as per paragraph 35.02 (a) of the FB collective agreement (Exhibit 1).

First, the Employer submits that while a medical certificate might usually be sufficient to support a request for sick leave with pay, it does not and should not guarantee an automatic right to the leave.

In certain circumstances the Employer may determine that a medical certificate is insufficient to demonstrate that the employee is entitled to sick leave with pay or does not contain the information required to make an informed decision. In such cases, the Employer may want to seek additional clarification before approving the request for sick leave with pay.

The Employer has the right, as per clause 35.02 of the agreement, to ascertain the reasons provided by the employee to support a request for leave. The onus is on the employee to provide a valid reason for an absence related to illness. The demonstration required may vary depending on the circumstances and does not necessarily include the provision of a medical certificate from a physician. As per clause 35.03 of the collective agreement, a statement signed by the employee stating that they were unable to perform their duties is generally sufficient. However, there are instances where more information is required.

The Employer is of the opinion that the proposed language at XX.02 would overly infringe on the Employer's discretion under 35.02 (a) to be satisfied that the employee was ill or injured and should be granted sick leave with pay. It would also essentially negate the Employer's right to ask for an independent evaluation in certain situations of return to work and disability management cases where the Employer requires more information to ensure it is appropriately accommodating the employee.

Furthermore, the term "legally qualified medical practitioner" in the Bargaining Agent's proposal is vague and ambiguous. This would render the process unmanageable for the Employer.

Reimbursement of cost of medical certificate (new clause XX.03)

The Bargaining Agent proposes that the Employer reimburse employees for all costs associated with obtaining a medical certificate when such certificate is requested by the Employer. As per this proposal, employees should also be granted leave with pay for all time associated to obtaining the certificate.

In response to this demand, the Employer submits that it should not be held responsible for the cost of medical certificates and related expenses. The collective agreement is very clear: per paragraphs 35.02 a. and 35.02 b. the onus is on the employee to satisfy the Employer that they are unable to perform their duties because of illness or injury and that leave with pay will be granted as long as the employee has the necessary leave credits:

> ***35.02*** *An employee shall be granted sick leave with pay when he or she is unable to perform his or her duties because of illness or injury provided that:*
>
> *a. he or she satisfies the Employer of this condition in such manner and at such time as may be determined by the Employer;*
> *b.* he or she has the necessary sick leave credits.

The Bargaining Agent has not demonstrated that its proposed changes are warranted.

The Employer is, however, prepared to pursue the discussion on this proposal in the context of a comprehensive settlement with the view of amending article 35: sick leave with pay to provide for the reimbursement of a maximum of thirty-five dollars ($35.00) for periods of absence of three (3) consecutive days or less. The time associated with the obtaining of said certificate, should however, continue to be borne by the language as found at clause 35.02 a. and b. For the reasons outlined above, the Employer respectfully requests that the Commission not include the Bargaining Agent's proposals in its report.

New Article: Firing Range Fees Reimbursement

Bargaining Agent proposal
Upon receipt, the Employer shall reimburse employees for all fees associated with access to firing ranges and storage of firearms.

Remarks

The Bargaining Agent is proposing the Employer reimburse employees for all fees associated with access to firing ranges and storage of firearms.

Paragraph 12(1) (a) of the *Financial Administration Act* (Exhibit 4), establishes that Deputy Heads in the CPA have the authority to "determine the learning, training and development requirements of persons employed in the public service and fix the terms on which the learning, training and development may be carried out".

Consistent with this authority and as part of the Arming Program, CBSA does not require that Border Services Officers (BSO) visit firing ranges to maintain their firearm carrying skills in between yearly qualifying periods.

For those officers that wish to do so outside of their working hours, CBSA does, however provide the ammunitions as a courtesy. Consistent with the Employer's response to the Bargaining Agent's proposal on firearm practice time (pages 298-299), the Employer also suggests that this is a topic of discussion for the CBSA Labour Management Executive (LMEX) Committee which is established to address issues specific to the FB group.

The Employer requests that the Commission not include the Bargaining Agent's proposal in its report.

New Appendix: Memorandum of Understanding Between the Treasury Board of Canada and the Public Service Alliance of Canada with Respect to the Firearm Training Participant Selection

Bargaining Agent proposal
Renew Appendix with expiration date to align with new collective agreement.

Remarks

The Bargaining Agent is proposing to reintroduce the *Memorandum of Understanding Between the Treasury Board of Canada and the Public Service Alliance of Canada with Respect to the Firearm Training Participant Selection* which was under Appendix G in the collective agreement that expired on June 20, 2018, and which was deleted in the last round of bargaining.

For ease of reference, below is the language as it existed in Appendix G of the former collective agreement:

> If the employee fails to meet the criteria for firearm training and certification, the Employer will make every reasonable effort to find them a placement opportunity within the public service for employees hired prior to August 31, 2007, if the employee is trainable and mobile.
>
> The parties agree to establish a joint consultation committee to discuss the strategy for the placement of employees hired prior to August 31, 2007, who are unsuccessful on the firearm training.
>
> This memorandum expires on June 20, 2018.

The Employer submits that the work of the committee is completed. Plans were put in place for those employees who were unsuccessful on the firearm training while the memorandum was in force, and there are currently no employees in this situation.

Furthermore, this proposal would create duplication since the Employer has a duty to accommodate under the *Canadian Human Rights Act*. Therefore, the Employer is of the view that it is unnecessary to reintroduce this appendix in the collective agreement.

The Employer requests that the Commission not include the Bargaining Agent's proposal in its report.

New Appendix: Name Tags

Bargaining Agent proposal
The parties agree that no employee shall be required to wear a name tag with the employee's name, and that within ninety (90) days of ratification employees shall be issued number tags to replace name tags.

Remarks

The Bargaining Agent is seeking a new MOU which would require the Employer to replace name tags with number tags to address safety concerns of the members of the bargaining unit. The Bargaining Agent is concerned that officers displaying their names makes it easier for disgruntled travelers to find them.

The *National Joint Council (NJC) Uniforms Directive,* which is deemed to be a part of the collective agreement, specifies the requirement to provide identification at the local, national or international level where it will aid in the effective performance of duties and in meeting program objectives.

As per section 2.1.1 of the *Uniforms Directive* (Exhibit 25), there are four distinguishing conditions under which identification of the employee may be required:

(a) when identification of the employee is required by management to provide a sign of vested authority in directing, inspecting or enforcing specific laws and regulations;
(b) when identification of the employee is required by management to provide an appropriate identification of the employee's function;
(c) when identification of the employee is required by management, either permanently or in an emergency, to control emergency equipment and direct persons during an emergency. Such employees must be readily identifiable by the local public; and
(d) when identification of an employee's authority is required by management to access and work in a secure area.

Subjects listed under Appendix C of the National Joint Council (NJC) By-Laws (Exhibit 26), including the *Uniforms Directive,* are agreements resulting from consultation, deemed to be part of collective agreements. Bargaining Agents who have opted in are presented with the opportunity to provide input and participate in consultations on matters covered in the *Directives*.

The Employer points out that Bargaining Agents who have opted into *National Joint Council Directives* are refrained from making bargaining proposals concerning items contained in the *Directive*, as per sections 9.1.14 of the National Joint Council (NJC) By-Laws (Exhibit 26). This avoids situations where the same matters are discussed at separate tables with potentially different outcomes.

The name tag is also part of the CBSA uniform as per section 2.12 of the CBSA Uniform Policy and Standards of Appearances (Exhibit 32) which has been in force since November 2012. The policy is in place because it is very important for CBSA employees to be professional and accountable to the public. Name tags serve the broader goals of accountability, transparency and gaining and retaining the trust of the public. CBSA employees are often the first representatives of the Government of Canada for travellers and visitors. The name tags make CBSA employees accountable by allowing the public to identify the CBSA employee with whom they are interacting should they wish to offer positive or negative feedback.

The requirement to wear identification is not an uncommon practice in the law enforcement community for similar reasons.

This topic has been discussed numerous times at the Policy Health and Safety Committee (PHSC) which is the appropriate forum wherein to discuss this matter. Collective agreements aim to address systemic issues and the Bargaining Agent has failed to provide compelling evidence that would justify the inclusion of the proposal in the collective agreement. Even if it had, the Employer's position would still be that this issue should be addressed using CBSA internal mechanisms, such as the Union Management Consultative Committee and the Occupational Health and Safety Committee.

Although this matter was addressed, the Employer has expressed a willingness to continue discussions, noting that changes to name tags may not serve to address the objective sought.

The Employer requests that the Commission not include this Bargaining Agent's proposal in its report.

New Appendix/New Article: Alternate Work Arrangement

Bargaining Agent proposal
For the purpose of this article a telework agreement is defined as per the Directive on Telework effective April 1, 2020. **XX.01 Employees shall be informed that participation in telework is voluntary and that they are not required to telework.** **XX.02 An employee may request to enter into a new telework agreement or request a review that could result in an adjustment of an existing telework agreement. A request for a new telework agreement or the review of an existing telework agreement will be considered on a case-by-case basis and a decision shall be provided within twenty-eight (28) calendar days of the request. Approval shall not be unreasonably denied.** **XX.03 If the Employer denies a request for a new telework agreement or for a review of an existing telework agreement, then the Employer shall provide the reasons in writing.** **XX.04 Employees with a telework agreement may elect to terminate the agreement with reasonable notice to the Employer. The Employer will concede to such termination no later than twenty-eight (28) calendar days following receipt of such notice.** **XX.05 Telework agreements will only be terminated at the request of the employee, or for just cause by the Employer. All terminations for just cause shall include the written reasons and be immediately communicated to the union.** **XX.06 An employee has the right to grieve a denied request for a telework agreement or for a review of an existing telework agreement and when the Employer has terminated a telework agreement.** **XX.07 Notwithstanding the above, nothing restricts an employee's right to request to work remotely on a temporary or as-needed basis without establishing a formal telework agreement. Such requests shall not be unreasonably denied.** **XX.08 Provision of Equipment and Supplies**

a. Departments and Agencies shall provide all employees in a telework agreement with all equipment and software required for the telework location to comply with the Canada labour Code, Part II. This would include, but is not limited to:

i. computer(s), monitor(s), and any other peripheral equipment that is required to carry out the employee's work;

ii. any software required to do their work or to communicate with other workers;

iii. ergonomic workstation furniture and equipment required to ensure an ergonomic and safe workspace. An assessment, by a qualified ergonomic specialist, shall be conducted upon request by an employee. Any recommendations from the assessment, approved by the Employer, shall be implemented without delay.

b. An employee shall be paid an allowance of one hundred dollars ($100.00) for each calendar month, during which an employee teleworks for at least seventy-five (75) hours.

XX.09 Unless otherwise specified in this Article, all terms and conditions of a telework agreement shall be consistent with the provisions of the Collective Agreement.

XX.10 Notice to the Union

a. On a quarterly basis, the Employer shall provide to the Union, a list of all employees with telework agreements. The list shall include the employees name, position, classification, Employer work unit and location, actual remote work location, including the physical address, and contact information for each employee as well as whether or not each entry is a continuing, new, or revised telework agreement.

Remarks

The Bargaining Agent is proposing to introduce provisions in the collective agreement that deal with remote work.

The Employer submits that the Bargaining Agent's proposal would infringe on the Employer's management rights. The language proposed by the Bargaining Agent would limit the Employer's ability to review or deny telework agreements and therefore significantly impact and interfere with its right to determine where employees perform

their work. This right has long been recognized by labour arbitrators as a fundamental management right in relation to the assignment of duties and the organization of work, as per section 7 of the *Federal Public Sector Labour Relations Act* (Exhibit 2).

The proposal seeks to provide employees with full authority and decision making capabilities to work from their residences or somewhere other than at the Employer's designated worksite. This would allow employees to decide not to work at the worksite designated by the Employer. Consequently, the Employer would be precluded from assigning tasks and duties to persons or to positions that must be performed at a designated worksite and could include duties that cannot be performed (or cannot be performed as well) remotely, contravening this statutorily protected right.

In addition to CBSA's Telework Policy (Exhibit 33), the Employer has a *Directive on Telework* (Exhibit 29), which provides a comprehensive framework to address telework arrangements and includes the process for requesting, reviewing and concluding/terminating such voluntary arrangements.

The *Directive* was recently reviewed in consultation with Bargaining Agents and the updated version has been in effect since April 1, 2020. CBSA also conducted a similar process for its Policy.

CBSA have monthly meetings with the Bargaining Agent on the hybrid work model. The Employer is of the view that is the appropriate and effective forum where concerns and/or issues with respect to this matter should be discussed and referred for follow-up, as needed.

The Employer submits that the existing CBSA Telework Policy and the Employer's *Directive on Telework* (Exhibit 29) is sufficient to meet the needs of managers and employees in establishing telework arrangements.

Furthermore, the Employer does not wish to enshrine existing legislative framework related to this topic in collective agreements nor to create separate frameworks in collective agreements that depart from the current *Directive*. Telework is applicable across the public service, impacting all federal public service employees. Therefore, the Employer maintains that a consistent public service-wide approach is required.

New Provision of an allowance for equipment and supplies

There are approximately 6,900 CBSA employees working in an administrative capacity with the majority having eligibility to telework.

The Bargaining Agents proposal seeking allowance of one hundred dollars ($100.00) for each calendar month, would be unprecedented in the CPA. For the FB group

population, it is estimated that approximately two thousand eight hundred (2,800) employees could telework. The cost of the inclusion of this proposal in the collective agreement is estimated at $3.4 million, which is approximately 0.32% of the FB wage base.

Therefore, the Employer requests that the Bargaining Agent’s proposal not be included in the Commission’s report.

New Appendix: Memorandum of Understanding Between the Treasury Board of Canada and the Public Service Alliance of Canada with Respect of Employees in the Border Services (FB) Group Working as Hearings Officers

Bargaining Agent proposal
Union proposes a new $3,000 annual pensionable allowance for Hearings Officers.

Remarks

The Bargaining Agent is proposing a new annual allowance of three thousand dollars ($3,000) for employees working as Hearings Officers. The cost of this proposal is estimated at $0.3M ongoing, which is approximately 0.03% of the FB wage base.

Hearings Officers are classified at the FB-05 group and level and represent the Minister, before the Immigration and Refugee Board (IRB) at detention reviews, hearings, appeals and dispute resolution sessions. They determine client and claimant compliance with the provisions of the *Immigration and Refugee Protection Act* (IRPA) *and Immigration and Refugee Protection Regulations*, preventing the entry to Canada or effective removal of people who violate the *Immigration and Refugee Protection Act.* A copy of their job description is included in Exhibit 34.

The Bargaining Agent is of the view that Hearing Officers were neglected in previous rounds compared to their uniformed colleagues, that they face recruitment and retention issues and are expected to meet a higher education standard, such as holding a law degree, to meet the requirements of the position. The Bargaining Agent asserts that an allowance would also be justified due to the exposure Hearing Officers can have to confrontational individuals.

The Employer submits that the Bargaining Agent has not demonstrated a need and a purpose to provide this entitlement, nor has it provided any substantiated evidence to extend an allowance to this population.

As per the Employer's Qualification standards for the core public administration by occupational group or classification, the minimum standard to access a Hearing Officer position is a secondary school diploma or an employer-approved alternative. The requirement is the same for all employees in the FB group. A copy of the qualification standard can be found at page 333 of this brief. Hearing Officers are typically employees that have gradually progressed within the FB levels and are trained internally. They are provided with all the training and tools required to properly fulfill the

requirements of the position by the Employer. This includes participating in the national training plan, internal training program and peer shadowing activities.

The Hearing Officers’ job description includes the following as working conditions “The work is usually performed in an open office environment and at hearing sites that may be located in federal prisons, provincial correctional centres and mental health institutions.” It also includes: “Often, hearings can be highly charged and contentious, requiring contact with hostile people who may become violent.”

Through the classification of their position, these working conditions as well the required level of skill, effort and responsibility to work in this capacity are taken into consideration and compensation established in consequence. It is also important to note that not all hearings are emotionally charged. In fact, CBSA performs a risk assessment before hearings and specific measures are taken to mitigate the risk prior to and during the hearing.

As the majority of hearings are conducted virtually and security personnel are present for all in-person hearings, the risk levels are deemed to be very low. For this reason, Hearings Officers are not required to wear defensive tools, maintain their firearm certification nor undergo defense tactics training.

The Employer maintains that there are no recruitment and retention issues with respect to Hearings Officers. CBSA has recruited and produced a sufficient number of qualified candidates in various pools following the completion of successful selection processes, This includes candidates at the FB-05 level (superintendents and supervisors), as well as FB-03 and FB-04 level positions.

This population does not experience retention issues and very few officers leave their positions to undertake other opportunities. In fact, the position of Hearings Officer is a sought out role with some benefits including a Monday to Friday schedule, opportunity to telework and no requirement to wear a uniform.

For these reasons, the Employer respectfully requests that the Commission not include this proposal in its report.

Agreement in Principle

Article 7: National Joint Council Agreements

Bargaining Agent proposal
RESERVE (Bilingual Bonus) **7.XX** **With the exception of those employees who are subject to the Bilingual Bonus, no employee shall be required by the Employer to provide language interpretation or translation services for the Employer**.
Employer proposal
7.03 a. The following directives, as amended from time to time by National Joint Council recommendation, which have been approved by the Treasury Board of Canada, form part of this agreement: *Bilingualism Bonus Directive* *Commuting Assistance Directive* First Aid to the General Public: Allowance for Employees Foreign Service Directives *Isolated Posts and Government Housing Directive* ~~*Motor Vehicle Operations Directive*~~ ~~Memorandum of Understanding on Definition of Spouse~~ *Public Service Health Care Plan Directive* *NJC Relocation Directive* *Travel Directive* *Uniforms Directive* ~~*Occupational safety and health*~~ *Occupational Safety and Health Directive* ~~*Committees and Representatives Directive*~~ ~~*Motor Vehicle Operations Directive*~~ ~~*Pesticides Directive*~~ ~~*Refusal to Work Directive*~~ b. During the term of this agreement, other directives may be added to the above-noted list.

Remarks

The parties agreed in principle to the Employer proposal to update the list of *National Joint Council (NJC) Directives* that form part of other collective agreements under clause 7.03.

The parties have also agreed to include the following statements in the preamble to the parties' tentative agreement. For greater clarity, these statements would not be included in the collective agreement:

- The Employer commits to not propose the elimination or the reduction of the existing bilingualism bonus set forth in the current *National Joint Council (NJC) Bilingualism Bonus Directive* (Exhibit 35) during the life of this collective agreement.
- The Employer further commits to recommending the inclusion of the *Bilingualism Bonus Directive* in the 2023-2024 cyclical review.

However, the Bargaining Agent’s proposal for a new clause 7.xx is outstanding.

The *Official Languages Act* provides that English and French are the languages of work in federal institutions. This is complemented by the *Bilingualism Bonus Directive* (Exhibit 35) which establishes that employees who occupy positions identified as bilingual and have established that they meet the language requirements of the position via a Second Language Evaluation (SLE) are entitled to a bilingual bonus.

While it is acknowledged that employees at CBSA have diverse linguistic backgrounds and may volunteer to assist travelers in their respective languages, there is no expectation for employees to provide service in a language other than English and/or French. In instances where a traveler cannot communicate in English or French, a contract is in place with the Department of Immigration, Refugees and Citizenship Canada to provide for the language assistance that is required to properly serve them. The service is available twenty-four (24) hours a day, seven (7) days a week. To access the service, employees must consult Immigration Refugees and Citizenship Canada (IRCC)’s list of authorized interpreters and contact the interpreter directly. A qualified interpreter will facilitate the communications between the employee and the traveler.

The Employer requests that the Commission only includes the Employer’s proposal on Article 7 – National Joint Council Agreements, in its report.

Article 19: No Discrimination

Bargaining Agent proposal
The Union's understanding is that the parties have an agreement in principle on Article 19.
Employer counter proposal
19.01 There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or **practiced** ~~practised~~ with respect to an employee by reason of age, race, creed, colour, national or ethnic origin, religious affiliation, sex, sexual orientation, gender identity and expression, family status, marital status, **genetic characteristics,** ~~mental or physical~~ disability, membership or activity in the Alliance or a conviction for which a pardon has been granted.
19.09 *(Former 19.04)* ~~Upon request by the complainant(s) and/or respondent(s)~~, **The Employer shall provide the complainant(s) and/or respondent(s) with** an official copy of the investigation report ~~shall be provided to them by the Employer~~, subject to the Access to Information Act and Privacy Act.

Remarks

The Employer's counter proposal for Article 19 is complemented by a new appendix - *Memorandum of Understanding between the Treasury Board of Canada and the Public Service Alliance of Canada with Respect to a Joint Review on Employment Equity, Diversity and Inclusion Training and Informal Conflict Management Systems.* (This new appendix can be found at pages 328-330). These counter proposals form part of a pattern established with other groups represented by the Bargaining Agent during this round of bargaining along with the Employer's counter proposals at Article 20: Sexual harassment.

The Employer's proposal for subparagraph 19.01 seeks to modernize the language by adding "generic characteristics" to the list of prohibited grounds of discrimination. The Employer is also proposing to add language at subparagraph 19.04 stating that the Employer must provide the complainant and/or respondent with an official copy of the investigation report, subject to the *Access to Information Act* and the *Privacy Act*.

These proposed changes are part of the Employer's approach to work on prevention of discrimination in the workplace and to shift the focus from recourses to restoration of work environments.

As indicated, the Bargaining Agent agrees with the Employer’s proposal at Article 19. Consequently, the Employer requests that the Commission includes the Employer’s counter proposal in its report along with its counter proposals on Article 20: Sexual harassment and the new Memorandum of Understanding on the between the Treasury Board of Canada and the Public Alliance of Canada with Respect to a Joint Review on Employment Equity, Diversity and Inclusion Training and Informal Conflict Management Systems.

Article 20: Sexual Harassment

Bargaining Agent proposal
Change title to: HARASSMENT AND ABUSE OF AUTHORITY **20.01** The Alliance and the Employer recognize the right of employees to work in an environment free from ~~sexual~~ **violence,** harassment, **abuse of authority and bullying** and agree that ~~sexual~~ **violence,** harassment, **abuse of authority and bullying** will not be tolerated in the workplace.
NEW **20.02** **Definitions:** **a. Harassment, violence or bullying includes any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause distress, harm, offence, humiliation, or other physical or psychological injury, or illness to an employee, their dignity or their reputation, including any vexatious action, conduct, comment or display, in any form. Harassment can be expressed on the basis of many factors including but not limited to race, creed, religion, colour, sex, sexual orientation, gender-determined characteristics, political belief, political association or political and/or union activity, marital status, family status, source of income, physical and/or psychological disability, physical size or weight, age, nationality, ancestry or place of origin;** **b. Abuse of authority occurs when an individual or group of individuals uses the power and authority inherent in their position or occupation, and/or influence to threaten, endanger an employee's job, potentially undermine the employee ability to perform that job, threaten the economic livelihood of that employee or in any way interfere with or influence the career reputation or dignity of the employee. It may include intimidation, removal of resources, unfair or abusive control of resources and/or information, removal of meaningful valued work and/or making an individual redundant, threats, loss of dignity, blackmail or coercion.**
NEW **20.03 Employees who experience harassment or violence may submit a grievance to seek remedy and/or exercise their rights to report an**

occurrence as per Part II of the *Canada Labour Code* (CLC) process, and/or file a complaint with the Canadian Human Rights Commission.
~~20.02~~ 20.04 With respect to a grievance filed in relation to this Article; a. Any level in the grievance procedure shall be waived if a person hearing the grievance is the subject of the complaint. b. If, by reason of paragraph (a), a level in the grievance procedure is waived, no other level shall be waived except by mutual agreement.
~~20.03~~ 20.05 By mutual agreement, the parties may use a mediator in an attempt to settle a grievance dealing with **violence, harassment or** sexual harassment. The selection of the mediator will be by mutual agreement.
NEW Regulatory Process **20.06 In addition to an employee's right to file a grievance and/or a Human Rights complaint, employees may submit a Notice of Occurrence, as per the section 15 (1) of the Work Place Harassment and Violence Prevention Regulations.**
NEW **20.07 Once a designated representative receives a Notice of an Occurrence as per Part II of the *Canada Labour Code* (CLC), then they shall immediately confer with the principal party and their union representative to determine whether or not the incident(s) and/or pattern of behaviour meets the definition of an occurrence as required by subsection 23(2) of the Regulations. If it is determined that the incident(s) and/or pattern of behaviour meets the definition, then the designated recipient shall immediately undertake the negotiated resolution process.**
NEW **20.08 If the matter is not resolved during the negotiated resolution process, both the principal party and the responding party may agree to participate in the conciliation process.**
NEW **20.09 Whether or not another resolution process is underway, or whether or not all parties have made a reasonable effort to resolve the occurrence,**

a principal party that believes the incident meets the definition of an occurrence or does not consider the occurrence resolved, may request an investigation be undertaken forthwith. Once such a request is received the designated representative shall immediately complete and submit the notice of investigation.
NEW <u>Investigations, General provisions</u> **20.10 Selection of Investigator** **The factors considered for the selection of an investigator shall include the candidates' impartiality, that they possess the necessary training and experience, and from the viewpoint of the principal party, their fit with the candidates' lived experience, background, and possible membership in an equity-seeking group.**
NEW **20.11 The statement of work for the investigator shall include a commitment to meet all willing witnesses provided by the parties and an expected completion date.**
NEW **20.12 An Investigation will be discontinued if the parties reach resolution via another method.**
20.13 (*former 20.04*) ~~Upon request by the complainant(s) and/or respondent(s),~~ **The Employer shall provide a grievor, a principal party** and/or **responding party**, **with** an official copy of the investigation report ~~shall be provided to them by the Employer~~, subject to the *Access to Information Act* and *Privacy Act*. **Any recommendations to eliminate or minimize the risk of similar occurrences contained in a report shall be considered by the appropriate Joint Health and Safety Committee after which the committee will advise the Employer of those that they recommend for implementation. The Employer shall provide written rationale to the committee for any recommended recommendations that they do not accept for implementation.**
NEW Training **20.14** **a. The Employer shall provide mandatory qualified instructor led, facilitated and interactive training to all employees regarding harassment,**

	sexual harassment, and violence in the workplace which includes an intersectional approach. Such training shall include information about relevant policies, processes, the applicable legislation, regulations and available complaint mechanisms. Time spent in training shall be considered as time worked.
Employer counter proposal	
20.04	~~Upon request by the complainant(s) and/or respondent(s)~~, **The Employer shall provide the complainant(s) and/or respondent(s) with** an official copy of the investigation report ~~shall be provided to them by the Employer~~, subject to the Access to Information Act and Privacy Act.

Remarks

The Bargaining Agent is proposing to transform the article on sexual harassment into a broader provision entitled "Harassment and Abuse of Authority" which would encompass harassment, violence, bullying, sexual harassment, and abuse of authority. The proposal would also touch on recourses, regulatory process, investigations and training.

A robust framework, applicable to all federal public servants, exists to address and manage harassment and violence in the workplace. This framework includes instruments such as:

a. *Canada Labour Code*;
b. *Work Place Harassment and Violence Prevention Regulations;*
c. *Canadian Human Rights Act*;
d. Policy on People Management;
e. *Directive on the Prevention and Resolution of Workplace Harassment and Violence* (Exhibit 37)
f. Departmental Workplace Harassment and Violence Prevention Policies (Exhibit 38)

On January 1, 2021, *Bill C-65*: *an Act to amend the Canada Labour Code* (Part II) *(harassment and violence)* came into force, introducing significant amendments to Part II of the *Canada Labour Code* and related regulations. To ensure compliancy with the new legislative amendments, the Employer undertook the review of its policies and directives applicable to workplace harassment and violence. Bargaining Agents were consulted during such process.

It should also be noted that existing legislation provides a mechanism through which Bargaining Agents can engage on this topic. For example, section 8 of the FPSLRA (Exhibit 2) provides for the following:

Consultation committee

8 *Each deputy head must, in consultation with the bargaining agents representing employees in the portion of the federal public administration for which he or she is deputy head, establish a consultation committee consisting of representatives of the deputy head and the bargaining agents for the purpose of exchanging information and obtaining views and advice on issues relating to the workplace that affect those employees, which issues may include, among other things,*

(a) *harassment in the workplace;*
and
(b) *the disclosure of information concerning wrongdoing in the public service and the protection from reprisal of employees who disclose such information.*

Notwithstanding that legislation supersedes most of the Bargaining Agent's proposals on this article, the Employer has no desire to enshrine an existing framework in collective agreements, nor to create a separate framework in collective agreements that departs from the existing one. Moreover, including these provisions in collective agreements would only lead to confusion and contradiction which would be amplified by the lengthy, broad and catch-all definitions that include a variety of concepts that are not always related to the *Canada Labour Code* or the *Canadian Human Rights Act*.

New Clause - Available Recourses

The Employer submits that there is no added value to the proposed language by the Bargaining Agent.

The FPSLRA and its regulations provide recourse rights for employees in the federal public sector. Therefore, it would not be appropriate to include language on available recourses in the collective agreement.

Furthermore, it is beyond the scope of collective bargaining to define applicable procedure that is provided for and governed by the *Canadian Human Rights Act and the Canada Labour Code.*

New Clauses - Regulatory process

The Bargaining Agent seeks to introduce a regulatory process in collective agreements, which would include provisions on notices of occurrences and investigations. Most of the proposed provisions are already enshrined in the *Work Place Harassment and Violence Prevention Regulations* (Exhibit 36) pursuant to Acts of Parliament addressing instances of harassment and violence in the workplace. The Employer submits that

adding language in the collective agreement on matters already provided for in the regulations creates a risk of conflict and contradiction between both instruments.

The new definitions proposed by the Bargaining Agent under Article 20 are much larger than those existing in legislation, such as the *Canada Labour Code* and the *Canadian Human Rights Act*. The Employer submits that the parties cannot negotiate through collective bargaining provision that would expand a regulatory process provided for in legislation.

Both parties have proposals on current clause 20.04. The Bargaining Agent seeks to expand the Employer's obligations relating to the investigation report and its implementation. The Employer has no desire to enshrine a new framework in the collective agreement. However, the Employer is proposing to add language at subparagraph 20.04 stating that the Employer must provide the complainant and/or respondent with an official copy of the investigation report, subject to the *Access to Information Act* and the *Privacy Act*.

New Clause 20.14 – Training

The Bargaining Agent is seeking to include mandatory facilitated and interactive training on topics related to harassment.

Training related to the prevention of harassment and violence in the work place is a prescribed duty of the Employer under its general duty to ensure the health and safety of its employee as defined under Part II of the *Canada Labour Code* and are specifically required by Regulation 12 of the *Work Place Harassment and Violence Prevention Regulations* (Exhibit 36) which require joint development or identification of the training to be provided to employees, the employer and the designated recipient.

The legislated obligations demonstrate the importance of training and the value of a coherent approach with all federal public servants. However, the Employer also submits that it must be mindful of individual and organizational training needs and that the oversight and authority for mandatory training rests with the deputy head through existing policy such as the *Directive on Mandatory Training*. Therefore, the Employer is opposed to enshrining mandatory training in collective agreements and creating a separate framework in collective agreements, that departs from the one that already exists, both in legislations and Employer policy.

The Commission should also note the Employer's strong commitment towards the prevention and resolution of harassment and related matters is evident as expressed through the myriad of training, learning and development opportunities offered, namely

by the Employer and the Canada School of Public Service, the Joint-Learning Program on topics such as discrimination, harassment and violence in the workplace.

As previously indicated under the proposals for Article 19 – discrimination, the Employer's proposal for article 20 forms part of a package tabled by the Employer regarding article 19, article 20 and a new appendix - *Memorandum of Understanding between the Treasury Board of Canada and the Public Service Alliance of Canada with Respect to a Joint Review on Employment Equity, Diversity and Inclusion Training and Informal Conflict Management Systems.* (These proposals can be found at pages 319-330). These proposals form part of a pattern established with other groups represented by the Bargaining Agent during this round.

The Bargaining Agent did not establish that there was a demonstrated need to depart from this pattern for the FB group.

Consequently, the Employer requests that the Commission only include the Employer's counter proposals in its report along with its counter proposals on Article 19: No discrimination and the new Memorandum of Understanding on the between the Treasury Board of Canada and the Public Alliance of Canada with Respect to a Joint Review on Employment Equity, Diversity and Inclusion Training and Informal Conflict Management Systems.

New Appendix: Memorandum of Understanding Between the Treasury Board of Canada and the Public Service Alliance of Canada with Respect to a Joint Review on Employment Equity, Diversity and Inclusion Training and Informal Conflict Management Systems

Bargaining Agent proposal
The Union's understanding is that the parties have an agreement in principle on the Employer's counter proposal (Joint Review of Employment Equity, Diversity and Inclusion training and Informal Conflict Management Systems) to the Union's proposed New Appendix.
Employer counter proposal
This memorandum of understanding is to give effect to the agreement reached between the Treasury Board of Canada (the Employer) and the Public Service Alliance of Canada (the Alliance). The parties recognize the importance of a public service culture that fosters employment equity, diversity and inclusion (EEDI); one where all public service employees have a sense of belonging, and where difference is embraced as a source of strength. The parties also recognize the importance of an inclusive informal conflict resolution experience where employees feel supported, heard and respected. To that end, the parties commit to establish a Joint Committee, **in collaboration with the EB, PA, SV and TC groups**, to be co-chaired by the Employer and the Alliance who will guide the work of the Committee. The Committee will be comprised of an equal number of representatives of the Employer and the Alliance. Both parties will endeavour to ensure that the membership of the Committee reflects the diversity of the workforce. The Committee shall meet within thirty (30) days of the ratification of the tentative agreement to establish the terms of reference and establish the frequency of meetings. Subject to the Co-Chairs' preapproval, subject-matter experts (SME) may be resourced by the Employer and invited to contribute to the discussions, as required. They may also consider inviting representatives from the Joint Employment Equity Committee (JEEC) of the NJC to contribute to its work.

1. The Committee will review existing training courses related to EEDI which are currently available to employees in the Core Public Administration (CPA) in order to:

    a. Create an inventory of existing training courses;
    b. Identify potential training gaps in the inventory of existing training courses and possible options to address them;

2. To ensure employees are fully aware of training opportunities available to them during their normal hours of work, the Committee will make recommendations on options to promote available EEDI training courses to employees.
3. Recognizing that the informal conflict management approach is a pillar of workplace harassment and violence prevention, the Committee will review existing informal conflict management systems (ICMS) currently available to employees of the CPA to:

    a. identify the specific needs for ICMS in departments or organizations;
    b. draw from existing research and best practices with regards to ICMS that take into consideration EEDI to make recommendations on measures to improve upon ICMS in the CPA.

The parties will endeavor to finalize the review and present the work of the Committee to their principals within one (1) year. This timeline may be extended by mutual agreement.

This memorandum of understanding expires on the expiry date of this collective agreement.

Remarks

This Employer's counter proposal was tabled on September 27, 2023 as part of a package which included its counter proposals on:

- Article 19: Sexual harassment (identified as agreed in principle by the Bargaining Agent as per its submissions to request conciliation); and

- Article 20: No discrimination on September 27, 2023

This serves two purposes:

- It addresses the Bargaining Agent's proposal for a new memorandum of understanding with respect to diversity and inclusion in the workplace.

- It is consistent with the Employer’s objective to focus on prevention and to step away from creating additional recourses.

The Employer’s counter proposal is identified as agreed in principle by the Bargaining Agent as per its submissions to request conciliation.

As per the Employer counter proposal a joint committee would be created to proceed with a review of employment equity, diversity, inclusion (EEDI) and informal conflict management systems. The joint committee’s mandate would be to review existing training courses related to EEDI, ensure that employees are fully aware of training opportunities available to them, and review existing informal conflict management systems.

Paragraph 3 of the MOU is specific to a review of informal conflict management systems by the joint committee and is in recognition that improvements could be made to ensure the program is better aligned to prevent harassment and violence or to address actual occurrences. Experience has shown that informal conflict management is a pillar of workplace harassment and violence prevention and that focusing on recourses, as proposed by the Bargaining Agent by expanding the scope of Article 20: Sexual harassment, is not conducive to prevent harassment or at restoring work environments. The parties are rarely satisfied with the outcome of complaints and this is not a situation that is specific to the Canada Border Services Agency. It is something we commonly see in other departments and organizations.

The mitigation of occurrences will be better served by focussing our efforts on the prevention, namely through the establishment of this joint committee, rather than creating additional recourses.

As already indicated, this new Memorandum of Understanding was proposed by the Employer as part of a package which included proposals for Article 19: Discrimination and Article 20: Sexual harassment. These proposals form part of a pattern established with other groups represented by the Bargaining Agent during this round of bargaining.

The Bargaining Agent agrees with the Employer’s counter proposal. Consequently, the Employer requests that the Commission includes the Employer’s counter proposals in its report along with its counter proposals on Article 19: No discrimination and Article 20: Sexual Harassment.

Part V: Border Services (FB) Group Definition

Border Services (FB) Group Definition

Definition

Pursuant to paragraph 11.1(1)(b) of the *Financial Administration Act* (Exhibit 4), the Treasury Board of Canada hereby provides notice that the following occupational group definition will apply to the Border Services Group, effective November 14, 2005.

The Border Services Group comprises positions in the Canada Border Services Agency that are primarily involved in the planning, development, delivery, or management of the inspection and control of people and goods entering Canada.

Inclusions

Notwithstanding the generality of the foregoing, for greater certainty, it includes positions that have, as their primary purpose, responsibility for one or more of the following activities:

a. determining the admissibility of people or goods entering Canada;
b. post-entry verification of people or goods that have entered Canada;
c. arresting, detaining or removing those people who may be in violation of Canada's laws;
d. investigating the illegal entry of people or goods;
e. conducting intelligence activities related to the monitoring, inspection or control of people or goods entering Canada;
f. developing Canada Border Services Agency operational directives to be followed in carrying out the above activities; and
g. the leadership of any of the above activities.

Exclusions

Positions excluded from the Border Services Group are those whose primary purpose is included in the definition of any other group or those in which one or more of the following activities is of primary importance:

1. the collecting, recording, arranging, transmitting and processing of information, the filing and distribution of information holdings, and the direct application of rules and regulations; or

2. the planning, development, delivery or management of government policies, programs, services, or other activities directed to the public other than those involving the inspection and control of people and goods entering Canada.

Border Services (FB) Qualification Standard

Education

The minimum standard is:

1. A secondary school diploma or employer-approved alternatives (See Note 1).

Note:

- The employer-approved alternatives to a secondary school diploma are:
    - A satisfactory score on the Public Service Commission test approved as an alternative to a secondary school diploma; or
    - An acceptable combination of education, training and/or experience.

  Candidates who already meet the following criteria must be accepted as meeting the secondary school diploma requirement for the FB Group only:

    - Those who were converted on an indeterminate basis to a Border Services (FB) position; or
    - Those who were appointed or deployed on an indeterminate basis to a Border Services (FB) position and have already obtained a satisfactory score on the Public Service Commission test approved as an alternative to a secondary school diploma; or
    - Those who were appointed or deployed on an indeterminate basis to a Border Services (FB) position using an acceptable combination of education, training and/or experience.