

Board file: 590-02-44772

IN THE MATTER OF *The Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22 (“the Act”);

IN THE MATTER OF a Public Interest Commission under the Act established on November 8, 2022;

AND

IN THE MATTER OF A Collective Bargaining Dispute

BETWEEN:

The Public Service Alliance of Canada (“the Bargaining Agent”)

AND

The Treasury Board of Canada (“the Employer”)

RE: The Program and Administrative Services Group (“PA”) and Common Issues also being bargained for the Operational Services (“SV”), the Technical Services (“TC”), and the Education and Library Sciences (“EB”) Groups

Public Interest Commission Report
on
The PA Group and Common Issues with Other Bargaining Units

Commission Chair: Bruce P. Archibald, K.C.

Commission Members:
Susan Jones, Bargaining Agent Nominee; and
Scott Streiner, Employer Nominee

Party Representatives:
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Allison Shatford, Chief Negotiator, & Isabelle Rodier, Negotiator, et al
for the Employer

Place of Hearings: Gatineau, Quebec

Dates of Hearing: November 28, 29 & 30 and December 1, 2022

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A. Introduction

1. This is the Report of a Public Interest Commission (“the Commission”), established on November 8, 2022 under sections 161 to 171 of the *Federal Public Sector Labour Relations Act* (“the Act”), the purpose of which is to assist the parties in dispute to revise their collective agreement(s). The parties in dispute are the Public Service Alliance of Canada (“the Bargaining Agent”) and His Majesty in Right of Canada as represented by the Treasury Board (“the Employer”). The primary Collective Agreement requiring revision is that between the Bargaining Agent and the Employer for the Program and Administrative Services (“PA”) bargaining unit which was signed in Ottawa on October 23, 2020 and expired on June 20, 2021. However, the Bargaining Agent and the Employer have also signed Collective Agreements governing the terms and conditions of employment for employees in three other bargaining units that have provisions which are common to all four bargaining units. Those other bargaining units are the Operational Services (“SV”) Group, the Technical Services (“TC”) Group and the Education and Library Sciences (“EB”) Group. The Collective Agreements for those groups also expired in the summer of 2021. The parties have agreed that this Commission assist them in resolving their differences in relation to both the PA Group specific matters and those which are common to all four groups. Other public interest commissions have been established to assist the parties in relation to disputed issues specific to the SV, TC and EB Groups respectively. The public interest commissions in question have operated independently.

2. This Public Interest Commission, which was sometimes referred to as “The PA and Common Issues PIC”, met in person with the parties’ representatives in Gatineau, Quebec on November 28, 29 and 30 and December 1, 2022. The Commission had also reserved December 19, 20, 21 and 22, 2022 for a continuation of the hearing in a virtual format should that have been necessary. Although the parties had engaged in mediation of their dispute(s) in September and October, 2022 under the auspices of the Board, the Commission at the outset of the proceeding on December 19 offered to continue to proceed by way of mediation. The Commission did indeed meet with the party representatives in caucuses for this purpose on a number of occasions. However, it became apparent that the parties wished to proceed primarily by formally presenting their respective cases through the voluminous documentation that each side had prepared, as supplemented by oral testimony and oral argument. The parties are to be congratulated on having done this in a precise and concentrated fashion. There were in excess of 60 outstanding issues of varying degrees of complexity which were dealt with in the four days of hearing in Gatineau. At the end of the formal presentations on December 1, the Commission members met with the key representatives of the parties to consider if and how the “virtual days” might be used to advance the process of dispute resolution, and all agreed that by December 15 the parties would inform the Commission as to whether they wanted to proceed in some manner. The parties were not in agreement on the value of further mediation and so, the Commission proceeded directly to the preparation of its Report and released the supplementary dates. Given the number of outstanding issues and the then time of year, the parties agreed to the extension of the date for the submission of our Report until February 1, 2023.

B. Governing Principles and Our Approach

3. While the establishment of a public interest commission under the Act is under the heading “Division 10 Conciliation”, the statutory factors found enunciated preclude a commission from simply “splitting the difference” between proposals or helping the parties to “get to yes” according to their own preferences as in a private dispute. Section 175 of the Act reads as follows:

175 In the conduct of its proceedings and in making a report to the Chairperson, the public interest commission must take into account the following factors, in addition to any other factors that it considers relevant:

- (a) the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians;
- (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;
- (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
- (e) the state of the Canadian economy and the Government of Canada’s fiscal circumstances.

4. Thus, the Commission must guide its recommendations with regard to these factors which may be thought of as articulating the public interest in public sector collective bargaining. It is to be noted that the Commission’s consideration of these factors is mandatory, but not exclusive, in that the Commission can take into account “any other factors that it considers relevant”. However, it is also to be noted that the Commission’s Report according to section 177(1) of the Act may *not* make recommendations which require legislative implementation or which relate specifically to individual employee circumstances. Nor can the Commission deal with issues which were not the subject of negotiation by the parties prior to their request for conciliation (see section 177(2)).

5. The Commission has taken pains to ensure that its recommendations balance the above statutory factors as it has moved through the plethora of issues submitted to it. That having been said, the parties will be aware as they read our Report that this Commission, like some of those who have gone before, has not made recommendations in relation to every single issue upon which we received submissions. We have principally made recommendations oriented to assisting the parties to achieve a settlement on central issues or ones where there seemed to be a reasonable and

fair solution which the parties should be able to agree upon. Some issues we have left aside on the basis of a principle of restraint, where proposals go beyond what can be achieved in this round of bargaining, or proposals seem to be premature. In some circumstances we have recommended processes by which to settle matters rather than articulating substantive terms for the contract.

6. This Commission, both in its mediation discussions with the parties and its organizing of recommendations in this Report, has structured its approach around what it sees as inter-related clusters of issues. These clusters include both PA specific and common issues, but the Commission believes that this approach can help the parties to reach a settlement where a pragmatic solution lies in seeing where the PA specific and common issues interact. Each individual recommendation below makes reference to the relevant part of the Collective Agreement and to whether the matter is a PA specific or a common issue.

C. Proposals and Recommendations

7. We have arranged proposals and made recommendations under the following clusters: (i) monetary proposals on wages and allowances; (ii) proposals on leaves with monetary implications; (iii) proposals related to the evolution in the way work is done; (iv) proposals on equity and diversity at work; (v) proposals related to implementation and administration of the collective agreement; and (vi) procedural and miscellaneous proposals.

1. Monetary Proposals on Wages and Allowances

8. Under this cluster heading, the Commission addresses perhaps the most significant common issue for the parties, which is the “general economic increase” or, in other words, the annual wage increases for the various bargaining units within our remit. This section then deals with proposals for a number of premiums and allowances which are issues specific to the PA Bargaining Unit.

(a) General Economic Increases for Each Year of a Three-Year Contract [Common Issue]

9. The Bargaining Agent proposed a three-year term for the new Collective Agreements at issue before the Commission and argued for a 4.50% increase for each year; that is effective for the years 2021, 2022 and 2023 in each case. The Bargaining Agent asserted that its proposal was taking into account all of the statutory factors, including particularly recent relevant comparative wage increases, and trends in the Consumer Price Index. Complex calculations were made by the union in detailed charts covering various classifications in its bargaining units showing the impact of its wage proposal. The Employer proposed a four-year term for the Collective Agreement and argued for the following general economic increases for each of the proposed four years: 1.5% for 2021, 3.0% for 2022, 2.0% for 2023 and 1.75% for 2024. The Employer presented complex data in relation to issues of recruitment and retention, external comparability, internal relativity, economic and fiscal circumstances (the state of the economy and the Government’s fiscal position, the Consumer Price Index, the Canadian labour market, and working conditions in the public versus private sectors), the replication principle (core public sector settlements, provincial and territorial compensation and first agreements in this round of bargaining) as well as an assessment of total compensation components in the parties’ two overall proposals. The Employer estimated

that the Bargaining Agent's total proposed cumulative general economic increases would amount to 22.22% over three years, whereas the estimate for the Employer's four-year proposal would be an 8.5% cumulative increase. Taking into account the mandatory factors listed in section 175 — including the state of the Canadian economy, which has recently experienced unusually high inflation — along with patterns in other wage settlements (the replication principle) and the written and oral information and arguments presented by the parties, **the Commission recommends that the general economic increase over its recommended three-year Collective Agreements be as follows: 1.5% for 2021; 4.5% for 2022; and 3.0 for 2023.** (A discussion of the Commission's recommendation for a three-year term for all the relevant collective agreements is found below in relation to Article 68 in section 5. (f) of this Report).

(b) Shift and Weekend Premiums – Article 27 [PA Specific Issue]

10. Article 27 currently provides a shift and weekend premium of \$2.00 per hour for employees whose schedules have them working outside regular 8 am to 4 pm hours or on weekends and their equivalents overseas. The Bargaining Agent made an original proposal for an increase to \$2.50 per hour. The Employer argued that there should be no increase in the shift premium at all. **The Commission recommends that the shift and weekend premiums in the new PA Collective Agreement be increased to \$2.25 per hour.**

**(c) Correctional Service Specific Duty Allowance – Article 61
[PA specific Issue]**

11. Article 61 of the Collective Agreement creates a Correctional Service specific duty allowance for which certain positions in the bargaining unit are eligible. The allowance is currently in the amount of \$2,000 per year but is paid on a bi-weekly basis. The bargaining agent proposed that this amount be increased by the percentage of the general economic increase for each year of the new Collective Agreement. The Employer objected to this proposal. **The Commission recommends that this allowance be increased on a one-time basis in the first year of the new Collective Agreement by 7% (and not necessarily as a precedent for future collective agreements).**

**(d) Increased Allowance for Compensation Centres – Appendix J
[PA Specific Issue]**

12. This Appendix provides allowances for retention purposes, for employees in Compensation Centres, of an annual amount pro-rated, where appropriate, in relation to an equivalent hourly wage. The Bargaining Agent proposed that Appendix J be renewed but that the annual allowances be increased by the general economic increase for each year of the new Collective Agreement. The Employer proposed fixed increases of various amounts. **The Commission recommends that this Appendix J be renewed and that the annual allowances be increased on a one-time basis in the first year of the new Collective Agreement by 7% (and not necessarily as a precedent for future collective agreements).**

**(e) Increased Annual Allowance for Fisheries Officers – Appendix O
[PA Specific Issue]**

13. The Bargaining Agent proposed that the annual allowance for Fisheries Officers found in Appendix O of the Collective Agreement be increased annually by the general economic increase for the year. The Employer argued that this allowance not be increased. **The Commission recommends that this Appendix O be renewed and that the annual allowance be increased on a one-time basis in the first year of the new Collective Agreement by 7% (and not necessarily as a precedent for future collective agreements).**

(f) Appendix P or a New Article on Indigenous Language Allowances [PA Specific Issue]

14. The parties established a Joint Committee on Indigenous Languages under Appendix P which has not yet reported. Nonetheless, the Bargaining Agent proposes a new Article under which an employee who uses an indigenous language in the workplace should be paid an allowance of \$1,500 annually to be increased by the general economic increase during each year of the Collective Agreement. The Employer proposes that Appendix P be dropped from the Collective Agreement, and that the parties await the recommendations of the Appendix P Committee's Report. **The Commission recommends that this matter be kept on hold awaiting the Report of the Appendix P Committee and that the parties respond to that report in a collaborative fashion when it becomes available.**

(g) Annual Allowance for Parole Officers – Appendix Q [PA Specific Issue]

15. The Bargaining Agent proposes that the annual allowance for parole officers, supervisors and managers be increased from \$2,000 per year to \$7,000.00 per year and have it increased by the general economic increase in each year of the new Collective Agreement. The Employer proposes a one-time increase to the amount by \$138 or 6.9%. Consistent with previous allowance recommendations, **the Commission recommends that the parole officer's allowance under Appendix Q be increased on a one-time basis in the first year of the new Collective Agreement by 7% (and not necessarily as a precedent for future collective agreements).**

(h) New Allowance for Case Managers in Veteran's Affairs [PA Specific Issue]

16. The Bargaining Agent proposed a new allowance of \$2,000 per year to be increased annually by the general economic increase for case managers in the Veterans' Affairs department. The Bargaining Agent's rationale was that such employees have a unique role dealing with former members of the armed forces who often suffer from serious mental health issues, such as PTSD. The Bargaining Agent argues that the clients of case managers often exhibit volatile or challenging behaviours which can be targeted at these employees and result in highly stressful interactions. The Employer opposes this allowance on the ground that, through their classification, case managers are adequately compensated for their work and that special training and supports are available to these employees. Moreover, the Employer argues that there are not recruitment or retention issues for these positions at their current levels of classification and remuneration. The Commission concludes that the information in support of the positions of each of the parties is

inconclusive. **The Commission recommends that the parties establish a joint committee to study the matter which should report prior to the expiration of the new Collective Agreement.**

2. Proposals on Leaves with Monetary Implications

17. As the title indicates, in this cluster, the Commission has gathered proposals on a variety of Articles in the Collective Agreement which authorize different leaves, or address leave related matters, which have associated costs. Those affecting the PA Bargaining Unit only will be dealt with first, while those concerning issues common to all the relevant bargaining units will be examined thereafter.

(a) Reimbursing the Cost of Medical Certificates – Article 35 [PA Specific Issue]

18. Article 35 of the current Collective Agreement establishes a system whereby employees earn sick leave credits as a proportion of the hours they work per month. Article 35.02 provides that such employees shall be granted sick leave with pay when unable to perform their duties “because of illness or injury” *provided* they have the necessary sick leave credits and “he or she satisfies the Employer of this condition in such manner and at such time as may be determined by the Employer”. The Bargaining Agent proposed an addition to Article 35 which would read: “When an employee is asked to provide a medical certificate, the employee shall be reimbursed by the Employer for all costs associated with obtaining a certificate.” The Bargaining Agent argues that requests that employees provide medical certificates are going up, despite the following test of the current Article 35.03: “Unless otherwise informed by the employer, a statement signed by the employee stating that, because of illness or injury, he or she is unable to perform his or her work duties, shall, when delivered to the Employer, be considered as meeting the requirements of [Article 35.02]. The Employer asserts that the burden of proof is on the employee in cases of doubt and disagrees with the union proposal. The Commission finds it reasonable to conclude that obtaining a medical certificate for sick leave of 3 days (22.5 hours) can be onerous and costly for employees and that a contribution from the Employer seeking such a certificate is in order. **The Commission recommends that to address concerns about quantifying the cost associated with obtaining a medical certificate, Article 35.03 should be amended to state that the Employer shall reimburse employees up to a maximum of \$35.00 for the costs of obtaining a medical certificate for a period of absence of 3 days (22.5 hours) or less.**

(b) Leave with Pay for Family-related Responsibilities – Article 44 [PA Specific Issue]

19. Article 44 of the current Collective Agreement provides leave of 37.5 hours in a fiscal year for a list of seven reasons, plus an extension for interim care of a sick family member where there is a medical certificate and a need to arrange longer term care. The Bargaining Agent proposes that the core leave with pay under Article 44.02 be increased to 45 hours per year, and that an expansion of the circumstances for which leave can be granted be elaborated. The Employer acknowledges the importance of leave for family care, but requests that the Article be renewed without any changes. The Commission does not recommend the expansion of the yearly number of hours of family leave. On the other hand, the Commission does accept, with some adjustments,

a number of the Bargaining Agent's proposals for the expansion of the circumstances under which leave can be granted, given employee concerns about work/life balance. **Therefore, the Commission recommends:**

- (i) that Article 44.03(a), in addition to leaves for medical and dental appointments, also include "emergency legal" and "emergency financial" appointments;
- (ii) that Article 44.03(c) should read – "to provide for the immediate and temporary care of an elderly or seriously ill member of the employee's family"; and
- (iii) that a new sub-article 44.03(h) should read – "to visit a family member who, due to an incurable terminal illness or condition, is experiencing an irreversible decline and nearing the end of their life".

(c) Bereavement Leave with Pay – Article 47 [PA Specific Issue]

20. Article 47 of the Current Collective Agreement provides bereavement leave for immediate family members of a variable number of days, depending on funeral arrangements (Article 45.02), and for one day in relation to brothers-in-law, sisters-in-law and grandparents (Article 47.03). During processes of mediation, the parties withdrew or modified certain of their original proposals. The Commission will make comment only on the Bargaining Agent's proposal on Article 47.03. **The Commission recommends that Article 47.03, which provides for one day of bereavement leave to brothers-in-law, sisters-in-law and grandparents, be amended to add aunts and uncles to the list.**

(d) Leave, general – Article 33 [Common Issue]

21. Article 33 of the current Collective Agreement establishes general rules applicable to different leave provisions in the agreement. Article 33.09 provides a rule to prevent what might colloquially be called "double dipping" on leaves or leave credit entitlements applicable to employees who change bargaining units or organizations within the public service. A proposal from the Employer would clarify the language on this provision, and expand its scope. The Union objects to the breadth of the proposal, and its essential content, on the grounds that it limits entitlements which are separately applicable to employees under the individual collective agreements to which Employer is a party. **The Commission recommends adoption of the Employer's proposal clarifying the language by referencing "or be granted" and "nor in the fiscal year" in the current language.** The Commission further agrees that the principle of receiving a dual allotment of leave entitlement when an employee changes bargaining units in a fiscal year should not occur and we encourage the parties to explore alternative language that achieves this principle in a fair and reasonable manner. **The Commission recommends that the parties work corroboratively to craft mutually acceptable language for this clause.**

(e) Maternity Leave without Pay (Article 38) and Parental Leave without Pay (Article 40) [Common Issue]

22. Article 38 of the current Collective Agreement provides for a system of leave without pay for employees who become pregnant and Article 40 provides an analogous system for couples who are expecting a newborn or are in the process of adopting a child. These systems, of course, involve leave *without* pay since those affected operate on the assumption that income replacement at

various levels will be received by those going on such leave through either the Canada *Employment Insurance Act* or the parallel Quebec Parental Insurance Plan. The difficulty faced by the parties is that the governments of the relevant jurisdictions providing these benefits alter their complex rules from time to time, necessitating alterations to the Collective Agreement. The provisions of the Collective Agreement on these two topics are correspondingly complex and cover several pages each. The Bargaining Agent has proposed amendments to both Article 38 and 40 which are aimed simultaneously at improving the potential levels of benefits and responding to legislative or regulatory changes from the both the governments of Canada and Quebec. The Employer argues that the levels of benefits under both schemes are generous (having been revised relatively recently) and that responses to the Canada and Quebec changes can be achieved relatively simply. The Commission accepts the principle that it is necessary to have equitable maternity and parental leave treatment for employees in the bargaining unit who work under different regulatory systems. However, the Commission is simply not able to engage in the detailed process of assessing and redrafting the nuances of these proposed provisions of the Collective Agreement in their complex regulatory contexts. **The Commission recommends that the parties adopt a collaborative framework for assessing the current situation and negotiating the adjustments necessary to ensure that employees who are expectant parents may receive fair and equitable treatment in matters of maternity and parental leave benefits wherever they may reside across the country.**

3. Proposals Related to the Evolution in the Way Work is Done

23. The Commission has gathered in this cluster a number of proposals from the parties which relate to flexibility in relation to hours and location of work and to broader forms in evolution of the workplace related to telework, technological change and workforce adjustment.

(a) Hours of Work and the Right to Disconnect – Article 25 [Common Issue]

24. The Bargaining Agent proposed the following language as a preamble to Article 25 of the Collective Agreement which deals with hours of work: “Unless specified elsewhere in this Collective Agreement, an employee is under no obligation to engage in work-related communications including, but not limited to, answering calls or emails outside of normal working hours, nor shall they be subject to discipline or reprisals for exercising their rights under this Article.” While recognizing the importance of life/work boundaries, the Employer objects to the proposed preamble in the context of a Collective Agreement which contains provisions on hours of work, overtime, call-back, standby and reporting pay. The Employer argues that it must maintain the ability of Departments to reach out to their employees outside their regular working hours for emergencies affecting the lives of Canadians, health and safety reasons, and for issues related to shift changes and call-back, and that such after-hours communications cannot necessarily be limited to employees on standby. **The Commission recommends that the parties adopt an Article for inclusion in the new Collective Agreement which balances the interests of employees and the Employer in this matter.**

(b) Flexible Hours for Employees on Day Work – Article 25.08 [Common Issue]

25. Article 25.08 of the Collective Agreement provides: “Subject to operational requirements, an employee on day work shall have the right to select and request flexible hours between 7 am and 6 pm and such request shall not be unreasonably denied”. The parties have basically agreed that the possible start time should be set back to an hour. Therefore, **the Commission recommends that the opportunity for day work run from 6 am to 6 pm and that Article 25.08 be amended accordingly.**

(c) Flexibility related to Remote Work – Article 25 (Hours of Work), Article 26 Shift Principle), Article 28 (Overtime), Article 29 (Standby) and Article 30 (Designated Paid Holidays) [PA Specific Issues]

26. The Employer proposed many detailed amendments to the above-mentioned articles which related to its desire to increase flexibility with respect to variable hours and to remote work. The Bargaining Agent also proposed a new Article on Remote Work which contained ten detailed subparagraphs. The Commission notes that since the submissions of written briefs and the oral hearings, the Treasury Board Secretariat released a direction requiring that public servants work 2-3 days per week in the workplace, and each of the parties has filed complaints with **the Board.**

27. Notwithstanding this context, **the Commission suggests the parties consider acknowledging that employees may request, on a voluntary basis, telework arrangements and may ask to revise or terminate those arrangements at any time.** Such an acknowledgement would not change the fact that telework arrangements are at management’s discretion and subject to management approval.

28. **The Commission further recommends that provisions on compensation and meal allowances related to extra duty work be adjusted, in line with the level of disruption, to distinguish between situations in which an employee has to physically report to the workplace and situations in which an employee teleworks from their residence or another location requested by the employee.**

(d) Micro-Breaks at Call-Centres – Article 59 [PA Specific Issue]

29. The present Article 59 of the Collective Agreement deals with the particular working conditions of call-centre employees, of whom there are apparently some 7,000 in the PA bargaining unit in various departments and units. The Employer objects to the Union proposal for the addition of a paragraph which would read: “Employees working in call centres shall be provided with a minimum of a forty (40) second cognitive microbreak between calls”. The Commission, at the hearing, had the benefit of testimony from two witnesses, one called by each of the parties, who each had extensive experience with call centre work. The Commission was also told of academic research and a Joint Study conducted for the parties on the ‘psycho-social hazards’ of working in call centres. The Commission is convinced that micro-breaks between calls should be instituted, but is not convinced that a “one-size fits all” break of 40 seconds is the solution. Consistent with Recommendation 6 of their Joint Study, **the Commission recommends that the parties undertake pilot studies in different departments and agencies to assess the**

impact of “respite time” of different lengths in different settings and take action in accordance with their findings.

(e) Technological Change – Article 24 [Common Issue]

30. The threshold for the invocation of Article 24.01, which provides for the minimization of adverse effects on employees of technological change and which triggers the application of Appendix D on Workforce Adjustment, currently speaks of “lack of work or the discontinuance of a function”. The Bargaining Agent proposed the addition of “the relocation of a work unit or work formerly performed by a work unit” to that threshold. The Employer opposed this proposal. **The Commission recommends that the Bargaining Agent’s proposed addition to Article 24.01 be adopted.** The rest of Article 24 applies to protections against the adverse effects of technological change which are not governed by Appendix D. The Bargaining Agent proposed that the definition of technological change in Article 24.02, which currently speaks only of the “introduction of equipment or material”, have the words “systems or software” added. The Employer objected to this expanded coverage. **The Commission recommends that the Bargaining Agent proposal on amending Article 24.02 be adopted.** Article 24.04 says that the Employer shall, except in cases of emergency, provide as much notice of technological change as is practicable, but not less than 180 days. The Bargaining Agent proposed that the normal notice period be extended to 360 days, while the Employer proposed that it be reduced to 90 days. **The Commission recommends that the normal time period for the Employer to give notice should remain at 180 days.**

(f) Workforce Adjustment Proposals – Appendix D [Common Issue]

31. Appendix D deals with “Workforce Adjustment” which is defined as a situation where indeterminate employees “...will no longer be required 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”. As noted above, this kind of situation may (or may not) be linked to technological change. It seems clear that both parties remain committed to the Objectives of this Workforce Adjustment Appendix, but each has made significant proposals for its amendment. There appears to have been agreement between the parties during mediation that certain changes related to administrative and editorial details can be made without controversy (for example, departments will notify an employee when they have sent the PSC a notice that the employee’s position is surplus, will explain why retraining is not to be offered or will give status reports to employees doing retraining). **The Commission recommends that such proposals be adopted.** But the parties remain far apart on other proposals. The Commission is not in a position to redraft this important 32- page document for the parties. However, we make certain observations below which we trust may assist the parties in resolving some key issues.

32. **The Commission recommends that the parties consider a hybrid or remote work option, in a manner consistent with the Government of Canada’s telework policy and other relevant policies, where it would otherwise be impossible to provide an employee with a reasonable job offer because that employee has accommodation needs related to a protected ground such as disability or family status; and**

33. **The Commission encourages the parties to agree to a set of updates to Appendix D that reflect its fundamental objective of achieving continued employment for as many affected indeterminate employees as possible while easing transitions for those for whom continued employment is not feasible.**

4. Proposals on Equity and Diversity at Work

34. The Commission has gathered its comments on the proposals from the parties dealing with equity and diversity into a cluster of issues which is oriented to matters common to all the relevant bargaining units.

(a) Leave for Indigenous Traditional Practices – New Article - [Common Issue]

35. The Bargaining Agent proposed a new article for the Collective Agreements which would grant five days of paid leave for any employee who self-identifies as indigenous to engage in hunting, fishing, harvesting and “any practice prescribed by regulation under the *Canada Labour Code*.” The Employer tabled a counter-proposal in mediation which would omit the reference to regulations under the *Canada Labour Code*, require the Employer to make reasonable efforts to accommodate the employee in this regard, but require the employee to make up the time at a mutually agreeable time. Much of the wording of the Employer counter-proposal is taken directly from the current Article 31 of the Collective Agreement on time off for religious observances. The Commission agrees with the Bargaining Agent that the adoption of an article on this subject is an important step toward building a more inclusive workplace, would reduce barriers to recruiting indigenous employees in the federal public service, and is in line with Truth and Reconciliation Commission recommendations. The Commission, however, has concluded that the Employer’s counter-proposal effectively meets these objectives and therefore **the Commission recommends that the Employer’s counter-proposal be adopted.**

(b) No Discrimination – Article 19 [Common Issue]

36. The current Collective Agreement contains an article on responding to discrimination that has four paragraphs. The first declares that there shall be no discriminatory actions or practices directed towards employees on sixteen enumerated grounds. The second deals with avoiding potentially biased personnel in responding to grievances. The third allows for mediation of grievance allegations involving discrimination, and the fourth allows complainants to see investigation reports upon request, with conditions on privacy. The Bargaining Agent proposes eight new amendments or changes to the Article. The parties recognize that discrimination has been identified in studies as a serious issue in the Public Service. The Bargaining Agent’s proposed amendments to Article 19 would, among other things require the Employer to conduct an investigation upon observing discrimination or upon receipt of a complaint, would set criteria for choice of investigators, would establish parameters for investigations, require tracking and reporting upon incidents, and require mandatory training on the subject, with minimal curriculum content, for all employees. The Employer asserts that it is already engaged in responses to discrimination in the workplace, including the activities of the Centre on Diversity and Inclusion, and that the Bargaining Agent’s proposals would both constrain and render more complex its responses to the problem. The Commission is sympathetic to the Employer’s concerns.

Nevertheless, the **Commission recommends that the parties include in Article 19 the Bargaining Agent’s proposal that the Employer shall provide a grievor, a complainant and/or a responding party with an official copy of any investigation report, subject to the Access to Information Act and the Privacy Act.**

(c) Violence, Harassment and Sexual Harassment – Article 20 [Common Issue]

37. Parallel to the above-mentioned article on discrimination, Article 20 of the current Collective Agreement addresses sexual harassment in four similar paragraphs. The Bargaining Agent, as it did for Article 19, proposes a more complex framework touching on alternate recourses and mandatory regulatory processes, investigation and training. However, it also proposes that the ambit of Article 20 be expanded to include not only sexual harassment but other forms of harassment, violence *and* abuse of authority. The Employer opposes the Bargaining Agents proposals for both imposing a more complex regulatory framework and for expanding the scope of Article 20’s subject matter. The Commission, consistent with its recommendation in relation to Article 19, does not recommend inclusion in the Collective Agreement of a more complex and mandatory regulatory framework. Nor does it recommend the expansion of Article 20 to include “abuse of authority” (particularly as broadly defined in the Bargaining Agents proposal). However, **the Commission recommends that Article 20 cover not only sexual harassment but other forms of discriminatory harassment and violence, and that the Article be headed “Violence and Harassment”.**

(d) Equity in the Workplace – New Article or Other Initiatives [Common Issues]

38. The Bargaining Agent proposes a new article for inclusion in the Collective Agreement which would require the Employer to provide to all employees and managers with a mandatory, instructor-led and facilitated, interactive training, utilizing educational materials that the Employer and the PSAC have consulted and collaborated on, dealing with subjects which would include, but not be limited to, (i) diversity and inclusion, (ii) employment equity, (iii) unconscious bias and (iv) the implementation of Call to Action #57 of the Truth and Reconciliation Commission. The Employer takes the view that such an article is unnecessary because of other initiatives which are under way such as those under the aegis of the Centre on Diversity and Inclusion and the PSAC-TBS Joint Learning Program found in Appendix C of the Collective Agreement. The Bargaining Agent approves of the latter program and requests that the Employer increase the funding from the Employer for occupational health and safety committees. **The Commission endorses the cooperative participation of the parties in both the Joint Learning Program and the Centre on Diversity and Inclusion. The Commission recommends that the ambit of the programs operating under these two institutional structures be provided increased funding by the Employer which will allow expansion of their activities into some of the areas suggested by the Bargaining Agent.**

5. Proposals Related to Implementation and Administration of the Collective Agreement

39. The Commission has gathered its comments on the proposals from the parties dealing with the implementation and administration of the Collective Agreements into a cluster which includes both those common to all the relevant bargaining units and to the PA unit in particular.

(a) Modernization of Occupational Group Structures [PA Group Specific]

40. As part of a broader public service-wide effort to modernize occupational group structures, the Employer proposed a revised “Appendix A-1” to the PA Collective Agreement which, on a go-forward basis, would provide new “pay lines” or rates of pay for 5 new employee sub-groups and classifications, which would replace the current 9 subgroups and classifications at an indeterminate point in the future, when the public service modernization is implemented. This would involve new classification standards and the slotting of every incumbent in a PA job position under the Collective Agreement into the new structure. There would be a revised accompanying “Appendix A-2” which would constitute “Pay Notes” to assist in this process. In addition, of course, the Employer proposes the eventual deletion of the current Appendix G which contains the existing classifications and pay rates. By contrast, the Bargaining Agent proposes an MOU as a new “Appendix S” to the Agreement which would establish a joint union-employer “Occupational Group Structure Review” that would involve agreement to ensure job evaluation standards meet Canadian Human Rights Act requirements, that there would be “meaningful consultation” between the parties on classification reform, and that the Employer would pay employees in the bargaining unit a monthly penalty if the process extended beyond an agreed-upon date. Neither party agreed with the other’s proposals in this matter. The parties seem in agreement, however, that the implementation date for the modernization process has become a moving target. The Commission recognizes that this modernization project is an important one for the Public Service, and that it would bring to fruition a long-anticipated and no doubt valuable improvement to the way Canada’s public service is structured and administered. However, the Commission concludes that it is premature to recommend that the changes or additions proposed by either the Employer or the Bargaining Agent be included in the PA Collective Agreement in this round of bargaining. The parties are nonetheless urged to continue to cooperate in this important modernization activity.

(b) Provision of Electronic Copies of Collective Agreements to Employees –Article 10.02 [Common Issue]

41. The Employer proposed an amendment to Article 10.02 that, instead of providing paper copies of the collective agreement to all employees:

“Employees of the bargaining unit will be given electronic access to the collective agreement. Where access to the agreement is deemed unavailable or impractical; by an employee, the employee will be supplied with a printed copy of the agreement upon request once during the life of the current collective agreement.”

Despite the objection of the Bargaining Agent to this proposal, the Commission finds it to be eminently practical and fair in its approach. **The Commission recommends the adoption of this proposal.**

(c) Information to Union on Bargaining Unit Employees – Article 10.01 [Common Issue]

42. The Bargaining Agent proposed an amendment to Article 10.01 to expand the information it receives on bargaining unit members to include not only the name, geographic location and classification of each new employee, but also the work location address, mailing address and telephone number of each employee. In addition, the bargaining agent proposed that the Employer provide, on a monthly basis, the date of appointment for each new employee and the date of departure of each severed employee.

43. The Union relied on a decision of the Board that such information be supplied to a union in order to carry out its statutory obligations (2008 PSLRB 13). The Employer objected to this amendment on grounds it would constitute an unreasonable administrative burden and could put employee privacy at risk.

44. The Commission is of the view that the Union's proposal is broadly consistent with the decision of the Supreme Court of Canada in *Bernard v. Canada (Attorney General)* 2014 SCC 13. The Commission also notes the following provision in the *Canada Labour Code*:

109.1 (1) On application by a trade union, the Board may, by order, require an employer to give an authorized representative of the trade union mentioned in the order, or the Board, or both, the names and addresses of employees whose normal workplace is not on premises owned or controlled by their employer and authorize the trade union to communicate with those employees, by electronic means or otherwise, if the Board is of the opinion that such communication is required for purposes relating to soliciting trade union memberships, the negotiation or administration of a collective agreement, the processing of a grievance or the provision of a trade union service to employees.

45. The Commission is not in a position to draft a provision on this matter for the parties, but recognizes the importance of the subject matter to the Union and its essential statutory role, particularly in the context of increasing telework done in all of the relevant bargaining units as well as the concerns about privacy as analyzed in the *Bernard* decision. The Commission therefore urges the parties to reach an agreement on this issue in the current round of collective bargaining.

(d) Union Access to Employer Premises for Union Representational Activities Article 12.03 [Common Issue]

46. The current Article 12.03 provides that duly accredited Bargaining Agent representatives may be permitted access to Employer's premises "to assist in the resolution of a complaint or grievance and to attend meetings called by management..." with the permission of the Employer, "...which permission shall not be unreasonably withheld." The Bargaining Agent seeks to add to

the purpose for access the phrase “and/or meetings with Alliance-represented employees”. The Employer objected to this amendment on the grounds that the proposed “open and broad language would “impede on [sic] the Employer’s ability to effectively control and adequately manage the workplace”. The Commission **recommends that the purposes for which the union seeks access to Employer should be made more precise** by reference to such matters as soliciting memberships, negotiation or administration of the collective agreement or the provision of a trade union service, in addition to grievance and complaint resolution. This, along with the current authority to refuse permission where there are reasonable grounds for the Employer to do so, ought to assuage the Employer’s concerns. This would also align with analogous approaches in the private sector.

(e) The Provision of a Statement of Duties at the Request of an Employee Article 56.01 [Common Issues]

47. The current Collective Agreement in Article 56.01 provides that the Employer shall upon written request provide an employee with “a complete and current statement of the duties and responsibilities of his or her position...” The Employer proposes to replace the words “complete and current” with the word “official” in the light of definitions in the Employer’s 2021 Directive on Classification. The Bargaining Agent objects to the proposal on the ground that the current wording is clearer. The Commission sees a practical link on this issue with the process of the modernization of occupational group structures as discussed in section 6(a) above. Consistent with the Commission’s views on that subject, the Commission refrains from making any recommendation on the issue.

(f) Duration of the Collective Agreement and Implementation Timelines – Article 68 [Common Issue]

48. The Bargaining Agent has proposed that the duration of the Collective Agreements for the four bargaining units at issue be three years. The Employer has proposed that the duration for all be four years. Given the changes being proposed by the Employer with respect to occupational group structures and given the current uncertainty in the economy (particularly with respect to inflation and its relationship to the monetary issues in this round of collective bargaining), **the Commission recommends that, as proposed by the Bargaining Agent, the term of the Collective Agreements be three years:** that is, the PA agreement should expire on June 20, 2024 (Article 68); the EB agreement on June 30, 2024 (Article 63); the SV agreement on August 4, 2024 (Article 70); and the TC agreement on June 21, 2024).

49. The Employer has proposed that the timelines for implementing compensation elements of the Collective Agreements be 180 days after signature of the Collective Agreements for prospective increases and retroactive amounts payable where there is no need for manual intervention, and 460 days after signature for prospective increases and retroactive amounts where manual processing is required. The comparable timelines for the current Collective Agreements (contained in Appendix F), which were implemented smoothly, were 180 days and 560 days. The Bargaining Agent has argued for shorter implementation timelines. Given the complexity of the collective agreements and ongoing issues with the pay system – and the fact that it is helpful to employees generally and compensation officers specifically when there is sufficient time to

implement collective agreement provisions without undue pressure and high error rates – **the Commission recommends that the Employer’s proposal for 180/460-day implementation timelines be included in the new Collective Agreements for the purpose of their implementation (and not necessarily as a precedent for future Collective Agreements).**

6. Procedural and Miscellaneous Proposals

(a) The Definition of Continuous Employment – Article 2 – [PA Specific Issue]

50. Article 2 of the current PA Collective Agreement on “Interpretation and Definitions” states that “continuous employment (emploi continu)” has the same meaning as specified in the *Directive on Terms and Conditions of Employment* on the date of signing of this Agreement”. The Employer proposes that the last eight words of the definition be struck out to ensure that the language would always be aligned with the most current version of the *Directive* and be consistent with the language in many other collective agreements in the core public administration, including the EB and SV agreements at issue before the Commission. The Commission understands that in the latter agreements the analogous phrases say: “have the same meaning as in the “existing” *Directive on Terms and Conditions of Employment*”. **The Commission recommends that for certainty and consistency in the PSAC represented bargaining units, the language should be the same as that in the EB and SV agreements and contain the word “existing”.**

(b) Proposed New Article on Parole Officer Caseloads [PA Specific]

51. The Bargaining Agent proposed the adoption of a new article which would (i) set detailed limits for caseloads of parole officers working in different institutional and community settings, (ii) limit the number of community assessments reports to be written monthly, (iii) impose a penalty payable by the Employer to the employee of \$75 per day where the defined caseloads or ratios were exceeded, and (iv) payment of OT for such employees to meet their statutory and FOC obligations. The Bargaining Agent cited several studies which supported its claim that excessive parole officer caseloads constitute a serious labour relations problem. The Employer argued that such provisions should not be included in the Collective Agreement because they were operational considerations which constituted an inappropriate, or even illegal, interference with managerial rights/prerogatives. The Commission has concluded that, assuming that the parties might properly negotiate for such provisions to be included in the Collective Agreement, their nature is such that they go beyond an incremental approach to altering a collective agreement which is appropriate for the role of a public interest commission, as stated in the introduction to this Report.

(c) Appendix B – Sessional Leave for Certain Employees of the Translation Bureau – [PA Specific Issue]

52. In the final analysis, both parties agreed that this Appendix should be renewed. Therefore, **the Commission recommends that Appendix B be renewed in the up-coming Collective Agreement.**

(d) Appendix L – Archived Provisions for the Elimination of Severance Pay for Voluntary Separations (Resignation and Retirement) [PA Specific Issue]

53. Both parties agree that this Appendix be renewed. Therefore, **the Commission recommends that Appendix L be renewed in the next Collective Agreement.**

(e) Appendix M – Mental Health in the Workplace [Common Issue]

54. Since 2015 the Bargaining Agent and the Employer have cooperated in addressing mental health issues in the workplace, having first created a joint task force on the subject and then, in 2017, together created the Centre of Expertise on Mental Health. The latter body had an Executive Board and an Advisory Board with equal representation from both parties. These arrangements were enshrined in Appendix M of the Collective Agreement which was to expire at the end of the current Collective Agreement. The Bargaining Agent proposed the renewal of the Appendix with a removal of the expiry date. Given that there is long-term funding for the Centre, the Employer originally suggested the elimination of the Appendix, but then counter-proposed that the Appendix be continued, but expire at the end of the new Collective Agreement, subject to a review of the governance structure which would perhaps remove the joint Executive Board. **The Commission recommends the renewal of Appendix M, and leaves to the parties the questions of expiry date, if any, and the renewal of the governance structure.**

D. Concluding Observations

55. The Commission is pleased to state that the Chair and both Members all concur with the recommendations and observations found in this Report. We trust that the Report can form the basis for the parties to resume collective bargaining in a collaborative way and to reach a new Collective Agreement for the PA Group, as well as to assist in reaching Collective Agreements for those Groups covered by the Common Issues.

Signed this 15th day of February, 2023 by Bruce P. Archibald, Commission Chair, on his own behalf, and on behalf of Commission Members, Susan Jones (Bargaining Agent Nominee) and Scott Streiner (Employer Nominee).

Bruce P. Archibald, K.C.