

**IN THE MATTER OF AN ARBITRATION
BEFORE ARBITRATOR WILLIAM KAPLAN**

B E T W E E N:

OPSEU/SEFPO

(the “OPSEU”)

- and -

**THE CROWN IN THE RIGHT OF ONTARIO (REPRESENTED BY THE
TREASURY BOARD SECRETARIAT)**

(the “Crown”)

**ARBITRATION BRIEF OF
OPSEU/SEFPO**

October 2, 2023

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PART I. OVERVIEW

1. This interest arbitration will conclude only the second collective agreement of OPSEU's stand-alone Correctional bargaining unit. All workers in the Correctional bargaining unit perform difficult and important frontline work under a ubiquitous threat of violence, the traumatic effects of which have historically been overlooked. Arbitrator Burkett, in 2016, found that these workers are seriously undercompensated for their labour, relative to their comparators, including their correctional colleagues in the Federal sector. Arbitrator Kaplan, in 2019 reached the same conclusion. Since then, the members of the Correctional bargaining unit remain woefully undercompensated compared to their Federal counterparts, and there has been extraordinary inflation, which demands a meaningful response through wage increases.

2. However, this interest arbitration is not only about wages. The parties have engaged in virtually no collective bargaining, in spite of the Union's best efforts, and as of the date of this brief, the Employer has declined to advance a monetary proposal.

3. The Union is advancing proposals in the following areas:

- a) LTIP
- b) Bereavement leave
- c) Recognition of clinical experience for nurses
- d) The definition of medical practitioner definition;
- e) FXT Benefit option;
- f) FXT roll overs;
- g) Military service leave;

- h) Union leave;
- i) Compensating time off;
- j) Probation officers' allowance;
- k) Correctional supervisor wage grid;
- l) Pension factor 85;
- m) Benefits;
- n) Wages; and
- o) Special adjustments

4. In addition, OPSEU/SEFPO and the Employer have agreed to a three year term, with the collective agreement commencing January 1, 2022 and concluding on December 31, 2024.

5. Finally, the Union requests that the parties' previously agreed-upon items be incorporated and ordered in connection with the Arbitrator's award and that all other appendices and articles in the collective agreement, not otherwise amended by the agreement of the parties or awarded by the arbitrator, are to be renewed.

PART II. BACKGROUND TO THIS ARBITRATION

A. The Workers and Work of the Correctional Bargaining Unit

1. Introduction

6. The Correctional bargaining unit is a unique and, since 2018, independent bargaining unit within the Ontario Public Service. Its members are represented by the Ontario Public Service Employees Union / Syndicat des employés de la fonction publique

de l'Ontario ("OPSEU/SEFPO" or the "Union") and are employed by His Majesty the Crown in Right of Ontario (the "Employer" or the "Crown").

7. Collective bargaining in the Ontario Public Service is governed by the *Crown Employees Collective Bargaining Act, 1993*¹ ("CECBA"). Under CECBA, OPSEU/SEFPO is recognized as the bargaining agent for six bargaining units. Five of the six OPSEU/SEFPO bargaining units (institutional and health care, operational, maintenance, administrative, technical and office administration) are combined into one "unified" entity for the purpose of collective bargaining. The sixth bargaining unit is the Correctional unit.

8. Prior to 2018, CECBA required that there be an overarching Central collective agreement covering all six bargaining units – including the Correctional bargaining unit – which dealt with matters such as dispute resolution, pensions, benefits, and job security. The Unified and Correctional bargaining units had separate agreements addressing the non-Central terms and conditions of employment, such as hours of work, schedules, and premiums.

9. Amendments to CECBA have significantly altered the number and composition of bargaining units in the Ontario public sector. Since January 1, 2018, the Correctional bargaining unit stands alone; it is no longer tied to the Unified bargaining unit under the Central collective agreement. In addition, because of these amendments, members of the Correctional bargaining unit lost the right to strike and must instead access a statutory

¹ *Crown Employees Collective Bargaining Act, 1993*, [SO 1993, c 38](#) ["CECBA"], OPSEU Book of Authorities, **Tab 1**.

mechanism of binding interest arbitration to conclude a collective agreement, where the parties find themselves at an impasse.

10. As described below, in recent years, these parties have not had significant success through consensual negotiation. There appears to be a pattern emerging whereby these parties resolve their collective agreements through third party arbitration, rather than at the bargaining table. As described below, this lack of bargaining success is despite the best efforts of the Union.

11. The parties previously agreed that, in connection with these *CECBA* amendments, a number of Unified employees would be transferred to the Correctional bargaining unit, effective January 1, 2018. As a result, the Correctional bargaining unit grew from approximately 5,500 to more than 8,000 members. In its current form, the bargaining unit covers employees who are directly and indirectly engaged in the care, custody, and control of inmates and youth, as well as the supervision of offenders in the community. The unit includes employees who are headquartered at the Corrections Centre for Professional Advancement and Training, Probation/Probation and Parole offices, correctional facilities under the Ministry of the Solicitor General, or youth facilities under the Ministry of Children, Community and Social Services. A high level summary of the composition of the unit is set out below:

Category	Members	Percentage
Correctional Officers and Youth Workers	5020	59.0%
Probation and Parole Officers and Probation Officers	1121	13.2%

Category	Members	Percentage
Health Care (Nurses, Psychologists, Pharmacists, Social Workers etc.)	770	9.0%
Trades and Maintenance (Electricians, Plumbers, Facilities Mechanic/Facilities Technician etc.)	125	1.5%
Food Services	250	3.0%
General Services (Laundry Workers, Groundskeepers, etc.)	146	1.7%
Rehabilitative Services (Rehabilitation Officers, Recreation Officers, Chaplains, Library Technicians, etc.)	320	3.8%
Administrative	750	8.8%
Total	8502	100%

12. Over one-third of all employees are employed on a contract or fixed-term basis.² As described below, fixed-term employees have significantly inferior and precarious employment terms relative to their permanent colleagues.

2. Correctional Services in Canada

13. The Ontario government shares the responsibility of administering correctional services with the Federal government.

² Office of the Auditor General of Ontario, 2019 Annual Report Volume 3: Reports on Correctional Services and Court Operations, Adult Correctional Institutions ["Auditor General Report"], p. 49, OPSEU Book of Documents, **Tab 2**.

14. The Federal government has jurisdiction over adults serving custodial sentences of two or more years and is responsible for supervising such offenders while they are on conditional release. The provincial correctional services programs are responsible for adults serving custodial sentences that are less than two years, adults being held temporarily in remand (such as those awaiting bail, trial, or sentencing), as well as offenders who are subject to community supervision (such as probation or parole).³

15. There are several important consequences flowing from this divided jurisdiction. First, provincial institutions hold a transient and varying population of individuals for shorter periods of time, while Federal institutions hold a relatively stable population of individuals in custody for longer periods of time. As of 2022 the average length of stay in a provincial institution, for remanded inmates, was 48 days, and for sentenced inmates, the average length of stay was 60 days.⁴ Further, as a result of the high proportion of inmates in remand, provincial institutions typically have a high proportion of inmates suffering from substance use/dependence and/or untreated mental illness. This state of affairs means there is an increased risk of violence in provincial correctional institutions relative to their Federal counterparts.⁵ Finally, the provincial correctional system has a significantly larger population of offenders who are subject to various forms of community

³ Jamil Malakieh, "Adult and youth correctional statistics in Canada, 2016/2017", *Canadian Centre for Justice Statistics* (June 19, 2018) ["Malakieh, Correctional Statistics"], p. 3, OPSEU Book of Documents, **Tab 3**.

⁴ Office of the Chief Coroner of Ontario "An Obligation to Prevent", January 2023, ["Chief Coroner's Report"], p. 5 OPSEU Book of Documents, **Tab 4**.

⁵ Freda Burdett, Lynne Gouliquer, and Carmen Poulin, "Culture of Corrections: The Experiences of Women Correctional Officers", *Feminist Criminology* 13, no. 3 (2018): 329-349 ["Burdett, Culture of Corrections"] at pp. 311-312, OPSEU Book of Documents, Tab; Malakieh, Correctional Statistics, p. 4, OPSEU Book of Documents, **Tab 5**.

supervision⁶ (and, therefore, significantly greater workload demands for employees working in community supervision).

16. The proportion of remanded individuals relative to offenders serving sentences has increased in recent years. For example, in Ontario, there was an average of more than 7,400 adults (18 years and older) in custody every day between 2018 and 2019.⁷ In total, 81% of the approximately 51,000 individuals admitted into Ontario institutions in 2018-2019 were on remand.⁸ In 2022, 68.2% of the inmates were on remand, 23.8% were serving provincial sentences, and 8.1% were identified as “other.”⁹

17. For offenders who are less than 18 years old, the provinces are responsible for administering correctional services for both custodial and community sentences, including youth who are being temporarily held while awaiting trial or sentencing.¹⁰ Young offenders are not detained in Federal correctional institutions.

3. Extraordinary Working Conditions for Correctional Staff

18. The purpose of the *CECBA* amendments (and the attendant restructuring of the bargaining unit) was to acknowledge and empower the parties to address longstanding and critical issues in the correctional working environment. The parties commenced that important work with the previous collective agreements; the Union seeks to continue it in the current round.

⁶ Malakieh, Correctional Statistics, p. 3, OPSEU Book of Documents, **Tab 3**.

⁷ Auditor General Report, p. 16, OPSEU Book of Documents, **Tab 2**.

⁸ Auditor General Report, p. 22, OPSEU Book of Documents, **Tab 2**.

⁹ Chief Coroner’s Report, January 2023, OPSEU Book of Documents, **Tab 4**.

¹⁰ Malakieh, Correctional Statistics, p. 3, OPSEU Book of Documents, **Tab 3**.

19. Correctional institutions are closed communities, defined by a complex matrix of relationships, hierarchies, rules, and boundaries. Correctional staff are responsible for safely enforcing and negotiating that matrix vis-à-vis the inmate populations in their care, custody, and control.¹¹

20. In some ways, correctional employment can be relatively mundane. Staff must ensure that inmates remain safe and that their most basic needs are met.¹² To that end, correctional employees perform duties which are also performed in various other institutionalized environments. For example, correctional employees do laundry, cook and serve meals, dispense medications, and fix things when they break.

21. In other ways, however, working in the correctional context can be highly volatile. Many inmates have experienced trauma or suffer from substance addiction and/or mental illness. In 2018-2019, approximately 35% of all inmates in custody had a mental health alert on file, and another 35% had an alert indicating that they may require specialized supervision due to behavioural issues or violent tendencies.¹³ Those numbers are almost certainly higher now. These factors complicate inmate care and may result in unpredictable, disruptive, and even violent behaviour. For example, in a recent review at three Ontario institutions, 57% of “serious incidents” involved at least one inmate with a mental health alert on file. The incidents involved inmates attempting to harm themselves, other inmates, or staff.¹⁴ Similarly, in a 2018 review across all institutions, 44% of inmates

¹¹ Independent Review of Ontario Corrections, “Institutional Violence in Ontario: Interim Report” (August 2018) [“IROC Interim Report”], p. 7, OPSEU Book of Documents, **Tab 7**.

¹² Burdett, Culture of Corrections, at pp. 334-335, OPSEU Book of Documents, **Tab 5**.

¹³ Auditor General Report, p. 33, OPSEU Book of Documents, **Tab 2**.

¹⁴ Auditor General Report, p. 37, OPSEU Book of Documents, **Tab 2**.

with three or more misconducts on file had mental health alerts; misconducts include threatening behaviour, physical assaults, as well as refusing to follow staff instruction.¹⁵

22. These challenging and dangerous conditions are exacerbated by chronic overcrowding. The Crown's optimal rate of inmate occupancy is 85%, which gives institutions the flexibility to adjust for sudden influxes of inmates and to separate inmates who are not compatible for security reasons.¹⁶ However, to address overcrowding, the Crown has in many cases "retrofitted" its older institutions to increase notional capacity figures. In practice, this retrofitting has not generally entailed any physical expansion to the institution but, instead, means that inmates are double-, triple-, or quadruple-bunked, or even required to sleep on mattresses in the shower.¹⁷ For example, in the Thunder Bay Jail, up to four inmates are held in a 40-square-foot cell that was designed for two. The third and fourth inmates sleep on the floor, one underneath the bottom of the bunk bed.¹⁸

23. By 2018-2019, the Crown had, through such retrofitting efforts, expanded the capacity of 16 of its 25 institutions by an average of 81% over their original capacity.¹⁹ Nevertheless, as set out in the table below, during that same period, 56% of the institutions in Ontario were still operating beyond the Crown's 85% optimal occupancy

¹⁵ Auditor General Report, p. 37, OPSEU Book of Documents, **Tab 2**.

¹⁶ Auditor General Report, p. 30, OPSEU Book of Documents, **Tab 2**.

¹⁷ Auditor General Report, p. 18, OPSEU Book of Documents, **Tab 2**; Public Services Foundation of Canada, "[Crisis in Correctional Services: Overcrowding and inmates with mental health problems in correctional facilities](#)" (April 2015) ["PFSC, Crisis in Corrections"], pp. 25-27, OPSEU Book of Documents, **Tab 8**, citing Global News, Andrew Russell and Patrick Cain, "Rough Justice: The human cost of Ontario's crowded, violent jails" (November 19, 2014) [Global, "Rough Justice"], p. 3, OPSEU Book of Documents, **Tab 9**; Ministry of Community Safety and Correctional Services, Ottawa-Carleton Detention Centre Task Force Action Plan, January 13, 2019, p. 1, OPSEU Book of Documents, **Tab 10**.

¹⁸ Auditor General Report, p. 30, OPSEU Book of Documents, **Tab 2**.

¹⁹ Auditor General Report, p. 18, OPSEU Book of Documents, **Tab 2**.

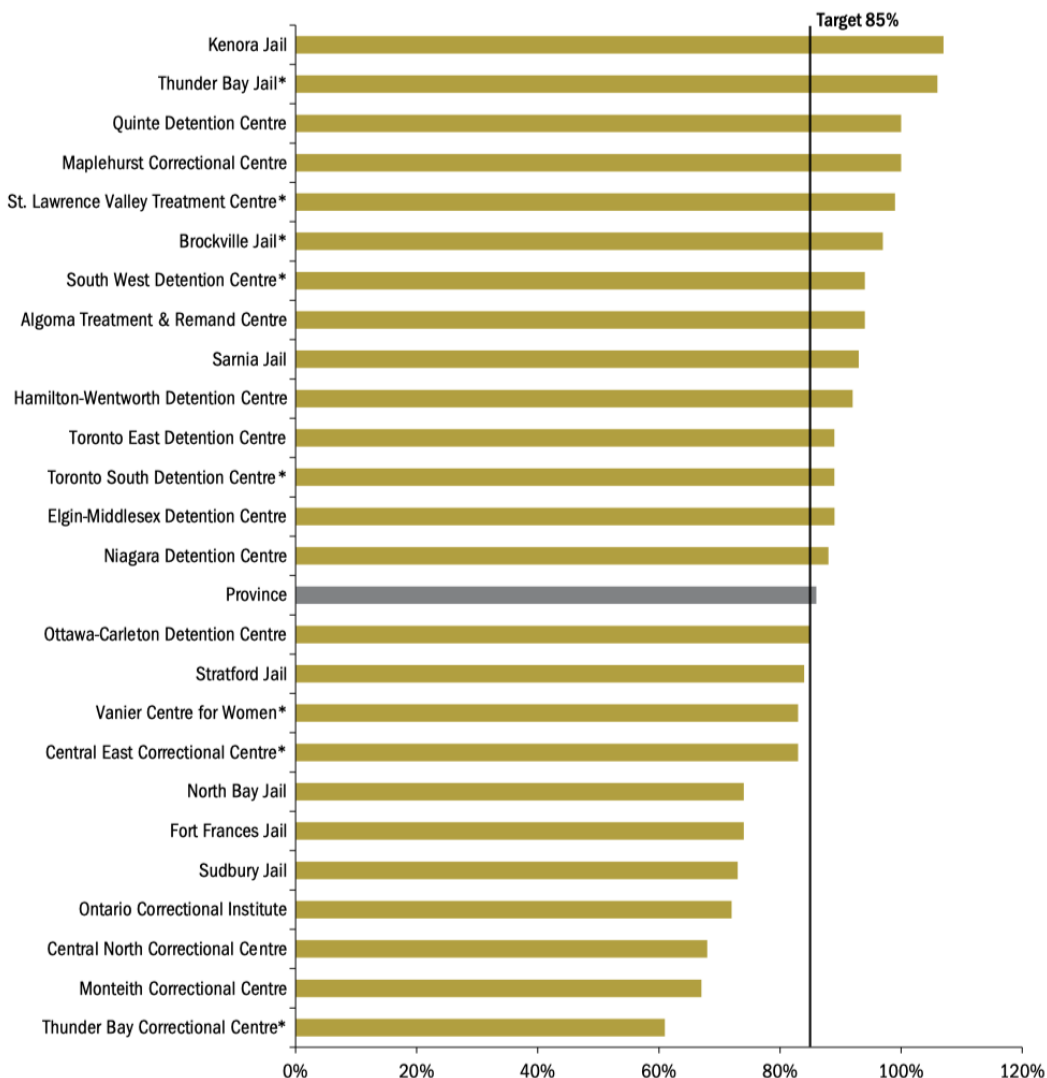
rate.²⁰ If institutions' original capacity is used, rather than their "retrofitted" capacity, the number of institutions operating in excess of optimal capacity increases to 68%.²¹

24. The Crown's efforts to address overcrowding through new builds have been hampered by challenges in recruiting adequate staff to work in the new facilities. By way of example, the Modular Build Facility ("MBF") at the Kenora Jail was completed in December 2022. However, at least in part due to a shortage of staff, it only commenced being partially populated in September 2023. Even this recent use has been accomplished only by shifting staffing resources from other areas of the Kenora Jail, causing short-staffing and leading to lockdowns in these areas. Staffing the MBF ends up being little more than robbing Peter to pay Paul.

²⁰ Auditor General Report, p. 16, OPSEU Book of Documents, **Tab 2**.

²¹ Auditor General Report, p. 32, OPSEU Book of Documents, **Tab 2**.

Occupancy Rates of Ontario Correctional Institutions, 2018/19²²



* Institutions visited by the Office of the Auditor General of Ontario

25. Unsurprisingly, under these conditions, violence has become increasingly common within Ontario’s correctional system. From January 2017 to December 2021, institutional staff recorded over 28,000 incidents of violence or threatened violence in Ontario correctional institutions.²³ The incidents included instances where inmates

²² Auditor General Report, p. 31, OPSEU Book of Documents, **Tab 2**.

²³ OPSEU, “SOLGEN Institutional Services – Violence Statistics”, Data taken from reporting from Employer from Appendix COR14 reports provided by Employer [“SOLGEN Institutional Violence Statistics”], OPSEU Book of Documents, **Tab 11**.

physically assaulted staff, where inmates threatened or attempted to injure staff without actual physical contact, and where inmates committed or threatened violence against other inmates without direct staff involvement.²⁴ This is, unfortunately, common in correctional work. For example, in the United States, individuals working in prisons reported experiencing an average of 28 events of violence, injury, or death, and being a victim of an average of two assaults, throughout their careers.²⁵ Such statistics often fail to include verbal and sexual harassment, which is disproportionately experienced by correctional staff.

26. The extraordinary measures taken to reduce the inmate population during the COVID-19 pandemic offer some insight into the role played by overcrowding in the institutions where the Union’s members work. Statistics on inmate-on-inmate assaults show a significant decrease in violence during 2020 and 2021, when a number of measures were introduced to decrease the inmate population in Ontario.

Year	Inmate-on-Inmate Assaults
2017	4023
2018	4321
2019	5340
2020	3424
2021	3268
2022	Unavailable
2023 *until June 30	2433

²⁴ Auditor General Report, p. 39, OPSEU Book of Documents, **Tab 2**.

²⁵ Nina Fusco et al., “When Our Work Hits Home: Trauma and Mental Disorders in Correctional Officers and Other Correctional Workers”, *Frontiers in Psychiatry*, Vol 11 (2021) [“Nina Fusco et al., When Our Work Hits Home”], p. 2, OPSEU Book of Documents, **Tab 12**.

27. As the COVID-19 pandemic has receded, institutional counts have been steadily climbing. Not surprisingly, this has increase the number of violent incidents as overcrowding once again becomes a significant concern. Statistics for the first have of 2023 indicate the trend to returning to pre-COVID levels of violent assaults.²⁶

28. Correctional work is highly structured and routinized, but it involves extremely unpredictable human behavior, which can cause havoc and compromise the control institutional staff are able to exert over a situation or the population.²⁷ Due to the ever-present threat of violence in the correctional environment, staff must always remain on high alert. This contributes to an atmosphere of vigilance, diminished trust, anxiety, and stress. These realities are felt by both staff and inmates and are part of what make correctional work unique.²⁸

29. All employees in the correctional context are impacted by the volatility and potential violence of the inmates who are, directly or indirectly, under their care. However, these challenges are particularly felt by Correctional Officers (“COs”)²⁹ and, in the Ministry of Children, Community, and Social Services, Youth Services Officers (“YSOs”).³⁰ COs and YSOs have a fundamental role within the correctional environment. They are charged with supervising the activities and behaviours of inmates, enforcing the rules, facilitating

²⁶ See: SOLGEN Institutional Violence Statistics, OPSEU Book of Documents, **Tab 11**.

²⁷ Rosemary Riccardelli et al., “Pervasive Uncertainty Under Threat, Mental Health Disorders and Experiences of Uncertainty for Correctional Workers”, *Criminal Justice and Behavior*, Vol. 49, No. 7 (2022), 991-1009 [“Riccardelli et al., Pervasive Uncertainty Under Threat”], p. 993, OPSEU Book of Documents, **Tab 13**.

²⁸ Independent Review of Ontario Corrections, “Institutional Violence in Ontario: Final Report” (December 2018) [“IROC Final Report”], p. 30, OPSEU Book of Documents, **Tab XX**.

²⁹ Ontario, “OPSEU Class Standard: Correctional Officer Series, 50561-50574”, January, 1970, OPSEU Book of Documents, **Tab 15**.

³⁰ Ontario, “OPSEU Class Standard: Youth Worker, 50577”, January 1, 20002 OPSEU Book of Documents, **Tab 16**.

access to social services and programs, and generally maintaining order within the institution. Given their daily relationships with inmates, they are the first to be exposed to inmates' frustrations and, in some cases, are the primary objects of their aggression.

30. Correctional staff may request support from stress management teams to help them process the aftermath of critical incidents — significant workplace events that overcome their usual coping abilities.³¹ From January 1, 2017 to March 30, 2022, the Crown's Critical Incident Stress Management ("CISM") teams provided support to correctional staff 774 times at SolGen institutions, and from 2018 to 2022 there were 99 CISM activations at Youth Justice institutions. The CISM program was gradually replaced by a Peer Support Program. From summer 2021 to June 2023, there were a total of 1,578 Peer Support Program activations within SolGen institutions and community offices, and 195 Peer Support Program activations at Youth Justice institutions. This amounts to a total of 2,646 such incidents from January 2017 to June 2023.

31. Probation Officers ("POs") play an equally important role in the correctional system.³² They supervise and manage a large caseload of offenders, assessing their individual behaviours, accountabilities, and risk of recidivism. They use policies and their professional judgement to apply legislation, policies, and administrative practices, and prepare written reports and recommendations about the offenders under their supervision. Probation officers are repeatedly exposed to vicarious trauma in the regular performance of their daily duties, including through tasks such as reviewing detailed

³¹ Auditor General Report, pp. 40-41, OPSEU Book of Documents, **Tab 2**.

³² Ontario, "OPSEU Class Standard: Probation and Parole Officer Series", January 1, 2002, OPSEU Book of Documents, **Tab 17**.

police reports, victim impact statements, and their ongoing work with victims. In this regard, POs shoulder an enormous responsibility for making our communities safer.

32. Nurses are primarily responsible for the healthcare of inmates in custody, a population as noted above that is unstable and volatile. Fee-for-service physicians play a limited role in the provision of health care in correctional institutions; it is the nursing staff that respond to the medical needs of the inmate population. Nurses are responsible for assessing physical and mental health needs of inmates, diagnosing conditions, determining treatment plans, liaising with community health services to ensure the continuity of care, and dispensing and administering medications.

33. Employees in a number of classifications complete rehabilitative work with the inmate population. Core duties include completing a variety of psychosocial assessments considering risk-need-responsivity issues, criminogenic targets, and security risk assessments. Many employees in these positions provide individual and group programming to meet inmate social and recreational needs, cultural and spiritual needs, vocational programming, and programming designed to reduce recidivism. In addition to the risk that they experience in their direct engagement with inmates, employees in these positions are exposed to vicarious trauma through individual interviews, collateral contacts and reviewing police/court documents.

34. Employees who work in ancillary services provide vital services to ensure the operation of correctional institutions. From preparing meals, cleaning and laundry services, sorting mail, repairing infrastructure, they work diligently to ensure facilities operate safely while working directly with and around the inmate population. In addition

to these duties, many supervise inmate workers in areas with easy access to weapons and are responsible for the laying of charges where breaches of institutional regulations occur.

35. Correctional staff as a whole perform difficult and important frontline work, all of which is critical to the overall functioning of the provincial correctional system and, therefore, the safety of the public. They are critical members of the public service³³ and should be valued as such. Unfortunately, as described below, this has not been the case in Ontario for a long time.

4. Impact of the COVID-19 Pandemic

36. Providing critical services during the COVID-19 pandemic significantly aggravated the existing challenges of working in the correctional environment.

37. Historically, correctional facilities have been susceptible to the rapid spread of diseases. Limiting the spread of COVID-19 in the correctional environment is particularly challenging given the crowded living conditions, poor ventilation, physical size and layout of the institution, daily movement of staff into the facility who face community transmission, and the daily intake of incarcerated individuals. Moreover, individuals entering the correctional setting are often the most vulnerable members of society, with a high prevalence of mental illness and chronic disease comorbidities which directly contribute to their susceptibility to COVID-19. Given the risks associated with correctional

³³ All Staff Memorandum from Suzanne McGurn, Assistant Deputy Minister, Institutional Services, *Institutional Services Division – Critical Services Update*, March 27, 2020, OPSEU Book of Documents, **Tab 18**.

work, the Canadian government identified correctional workers as a vulnerable population facing a heightened likelihood for infection throughout the pandemic³⁴

38. To reduce the risk of infection, lockdowns and other significant limitations on offender movement were frequently imposed, increasing and modifying the duties of correctional staff.³⁵ Staff were required to maintain the safe care, custody, and control of incarcerated persons, while also observing and enforcing extraordinary infection protocols, all while striving not to infect themselves, and their family members and friends. This occurred in a context where understaffing – while always endemic in Ontario’s institutions – was particularly critical due to COVID-19 infections and isolations among staff.³⁶ Unsurprisingly, a recent study confirmed that staff in provincial correctional institutions reported high levels of stress during the COVID-19 pandemic.³⁷

39. Perhaps inevitably, COVID-19 outbreaks were frequent in correctional institutions. Canadian studies conducted at the onset of the COVID-19 pandemic (February to December 2020) reported infection rates among federally incarcerated populations that were up to three times higher than in the general population, and provincial infection rates even exceeded the federal population numbers.³⁸ Temporary closures occurred

³⁴ Kristina Kocsis and Jennifer Lavoie, “Canadian Correctional Officers’ Experiences of Workplace Safety and Stress During the COVID-19 Pandemic”, *Canadian Journal of Criminology and Criminal Justice*, (2023) [“Kocsis and Lavoie, Safety and Stress During the COVID-19 Pandemic”], p. 12, OPSEU Book of Documents, **Tab 19**.

³⁵ Kocsis and Lavoie, Safety and Stress During the COVID-19 Pandemic, p. 24, OPSEU Book of Documents, **Tab 19**.

³⁶ Kocsis and Lavoie, Safety and Stress During the COVID-19 Pandemic, p. 14, OPSEU Book of Documents, **Tab 19**.

³⁷ Kocsis and Lavoie, Safety and Stress During the COVID-19 Pandemic, p. 29, OPSEU Book of Documents, **Tab 19**.

³⁸ Kocsis and Lavoie, Safety and Stress During the COVID-19 Pandemic, p. 13, OPSEU Book of Documents, **Tab 19**.

throughout the Ontario correctional system, including at the Ontario Correctional Institute, Stratford Jail, Sudbury Jail and Brockville Jail, with the diversion of new admissions required at the larger institutions.³⁹

40. Of course, many of the measures put in place to facilitate requirements and services during the pandemic, such as video/audio court appearances, remain in place. Those measures, barely sustainable with a reduced inmate population, are now stretching staffing resources and infrastructure to the limit, creating permanent processes that put further pressure on frontline employees.

5. Mental Health Impact of the Correctional Environment

41. Understandably, the challenging realities of the correctional work environment are associated with increased adverse health outcomes, work-related stress, and other negative life events (e.g., divorce).⁴⁰ However, due to the high rate of exposure to potentially psychologically traumatic events, trauma-related disorders and other mental health problems are “exceptionally high”.⁴¹

42. Numerous studies have confirmed the prevalence of mental health concerns – notably posttraumatic stress disorder, major depressive disorder, generalized anxiety

³⁹ See for example, TVO Today, Ashley Okwuosa, [“Anatomy of an outbreak: How COVID-19 overran this Ontario Prison”](#) (July 13, 2021), OPSEU book of Documents, **Tab 20**; CBC News, Erik White, [“COVID outbreak sees North Bay jail closed and 61 inmates moves out”](#) (June 24, 2021), OPSEU Book of Documents, **Tab 21**; The Stratford Beacon Herald, Chris Montanini, [“Growing COVID-19 outbreak temporarily closes Stratford Jail”](#) (February 22, 2021), OPSEU Book of Documents, **Tab 22**; CBC News, [“Sudbury Jail closing temporarily due to COVID-19 outbreak”](#) (October 18, 2021), OPSEU Book of Documents, **Tab 23**.

⁴⁰ Nina Fusco et al., When Our Work Hits Home, p. 3, OPSEU Book of Documents, **Tab. 12**

⁴¹ Riccardelli et al., Pervasive Uncertainty Under Threat, p. 1003, OPSEU Book of Documents, **Tab 13**. See also: Rosemary Riccardelli et al., “Exposures to Correctional-Specific Potentially Psychologically Traumatic Events Among Ontario Provincial Correctional Workers”, *Psychological Trauma: Theory, Research, Practice, and Policy*, (2023), [“Riccardelli, Exposures to Correctional-Specific PPTE”] p. 7, OPSEU Book of Documents, **Tab 24**.

disorder, as well as suicidal thoughts, plans, and attempts – among correctional officers, probation officers, and other workers in the correctional environment.⁴² Repeated studies have confirmed the prevalence of mental disorders for Canadian correctional workers to be as high as 55%, which is much greater than the approximately 10% prevalence among the general Canadian population.⁴³ Further, correctional workers have been found to be significantly more likely than municipal and provincial police officers to screen positive for clinically significant symptom clusters consistent with one or more mental disorders. The authors in the latter study hypothesized that the difference may be a result of the “extraordinary” correctional working environment.⁴⁴

43. While the degree of prevalence varies, mental health impacts of correctional work are not limited to employees engaged directly in maintaining inmate custody and control. Correctional worker roles differ substantially, but all workers remain embedded in an unpredictable and uncertain workspace replete with direct (e.g., in-person) and indirect

⁴² See, for example, Abdel Halim Boudoukha et al., "Inmates-to-Staff Assaults, PTSD and Burnout: Profiles of Risk and Vulnerability," *Journal of Interpersonal Violence* 28, no. 11 (2013) ["Boudoukha et al., Inmates-to-Staff Assaults"], p. 2343, OPSEU Book of Documents, **Tab 25**; "Healthy Minds, Safe Communities: Supporting our Public Safety Officers Through a National Strategy for Operational Stress Injuries", Ontario, 42nd Parliament, First Session, "Healthy Minds, Safe Communities: Supporting our Public Safety Officers Through a National Strategy for Operational Stress Injuries", (Robert Oliphant) ["Parliament Report, Healthy Minds"], OPSEU Book of Documents, **Tab 26**; R. Nicholas Carleton et al., "Mental Disorder Symptoms among Public Safety Personnel in Canada", *The Canadian Journal of Psychiatry* 63, no. 1 (2017): 54-64 ["Carleton et al., Public Safety Personnel"], OPSEU Book of Documents, **Tab 27**; Frank Valentino Ferdik and Hayden P. Smith, "Correctional Officer Safety and Wellness Literature Synthesis", *National Institute of Justice*, July 2017, OPSEU Book of Documents, **Tab 28**; R. Nicholas Carleton et al., "Provincial Correctional Service Workers: The Prevalence of Mental Disorders", *International Journal of Environmental Research and Public Health*, 17 (2020) ["Carleton et al., Provincial Correctional Workers, Mental Disorders"], p. 10, OPSEU Book of Documents, **Tab 29**; Riccardelli et al., Pervasive Uncertainty Under Threat, pp. 997-998, OPSEU Book of Documents, **Tab 13**; Nina Fusco et al., When Our Work Hits Home, OPSEU Book of Documents, **Tab 12**; Norman and Riccardelli, *Probation Journal*, p. 88, OPSEU Book of Documents, **Tab 6**.

⁴³ Riccardelli et al., Pervasive Uncertainty Under Threat, pp. 992 and 1003, OPSEU Book of Documents, **Tab 13**.

⁴⁴ Carleton et al., Public Safety Personnel: p. 59, OPSEU Book of Documents, **Tab 27**.

(e.g., reading case files) exposures to traumatic events.⁴⁵ For example, a recent study confirmed that wellness services employees (e.g., nurses) in the correctional environment screened PTSD and depression, and reported suicidal thoughts, plans, and attempts, at higher rates than the general population.⁴⁶ Further, probation and parole officers have been found to suffer mental health impacts from secondary trauma as a result of exposure to details of clients' life histories and crimes as well as the experiences of victims.⁴⁷ A 2023 study noted that correctional workers have a high prevalence of mental disorders, regardless of their occupational category, with diverse job-related risks for potentially psychologically traumatic event exposures.⁴⁸ Notably, this study found that the elimination of correctional-specific potentially psychologically traumatic event exposures may dramatically improve the mental health of correctional workers, leading to an 80% decrease in positive PTSD screenings.⁴⁹

44. A recent study of the Ontario correctional environment confirmed an even greater prevalence of mental health disorders in that context relative to federal correctional workers in Canada. The authors opined that the differences may be due to variations such as working in remand facilities, overcrowding, or casual or fixed-term employment status.⁵⁰

⁴⁵ Riccardelli et al., Pervasive Uncertainty Under Threat, p. 992, OPSEU Book of Documents, **Tab 13**.

⁴⁶ Nina Fusco et al., When Our Work Hits Home, p. 6, OPSEU Book of Documents, **Tab 12**.

⁴⁷ Norman and Riccardelli, Probation Journal, p. 88-90, OPSEU Book of Documents, **Tab 6**.

⁴⁸ Riccardelli, Correctional-Specific Exposures to PPTe, p. S247, OPEU Book of Documents, **Tab 24**.

⁴⁹ Riccardelli, Correctional-Specific Exposures to PPTe p. S255, OPSEU Book of Documents, **Tab 24**.

⁵⁰ Carleton et al., Provincial Correctional Workers, Mental Disorders, p. 9, OPSEU Book of Documents, **Tab 29**.

45. Further, workers in the correctional environment are more susceptible to compassion fatigue and burnout relative to the general population.⁵¹ Studies have established that COs in particular experience elevated rates of work stress regularly and have one of the highest number of work-related stress claims compared to other jobs.⁵² Burnout includes symptoms of emotional exhaustion, depersonalization (the tendency to depersonalize and have a negative attitude towards others), and a sense of a lack of personal accomplishment or self-efficacy. When left unaddressed, stress-related burnout can often lead to depression.⁵³

6. Widespread Staff Shortages

46. Unsurprisingly, given the extremely difficult working conditions, the profound mental health impacts, and (as described below) the sub-normative compensation and other employment terms, correctional job categories are frequently under-staffed.

47. There are high rates of turnover in the correctional environment. In 2018-2019, approximately 25% of COs across the province had less than two years of work experience. During the same period, approximately 50% of Sergeants – employees within the Correctional bargaining unit who supervise COs – had been in their role for less than two years.⁵⁴

⁵¹ Nina Fusco et al., *When Our Work Hits Home*, p. 7, OPSEU Book of Documents, **Tab 12**; Norman and Riccardelli, *Probation Journal*, p. 88, OPSEU Book of Documents, **Tab 6**.

⁵² Kocsis and Lavoie, *Safety and Stress During the COVID-19 Pandemic*, p. 11, OPSEU Book of Documents, **Tab 19**.

⁵³ Boudoukha et al., *Inmates-to-Staff Assaults*, pp. 2333-2334, 2336, OPSEU Book of Documents, **Tab 25**.

⁵⁴ Auditor General Report, p. 42, OPSEU Book of Documents, **Tab 2**.

48. Fundamentally, the Employer has consistently failed to attract and retain an adequate complement of staff across correctional job categories. The Employer is frequently required to cancel job postings across various job categories, having not received sufficient applications.⁵⁵ Specific examples are discussed in greater detail below.

49. At both the MERC and bargaining tables, the Union requested that the Employer produce data identifying the total number of funded FTE positions and the number of vacant positions in each classification. The Employer refused to produce this data. Nevertheless, various other sources illustrate the scope and severity of this bargaining unit's staffing problems.

50. For example, a recent Auditor General Report highlighted a problematic shortage of mental health staff in Ontario's institutions. The Auditor General's analysis indicated that more than half of Ontario's institutions did not have access to a psychologist. The Auditor General also identified inadequate and inconsistent staffing of mental health nurses; in one institution, two nurses served a population in which 1,870 inmates with mental health alerts were admitted in 2018/19. In almost one-third of files reviewed by the Auditor General, the requisite mental health screening of inmates was not completed or documented.⁵⁶

51. The Employer has particularly struggled to fill vacancies in the nursing class series. For example, in July 2020, 75 net new Nurse Practitioner positions were created in the

⁵⁵ OPSEU, "Vacancy Totals – From 2023-08-21 Report", OPSEU Book of Documents, **Tab 30**.

⁵⁶ Auditor General Report, p. 36, OPSEU Book of Documents, **Tab 2**.

bargaining unit, part of more than 500 new positions aimed at addressing challenges in the correctional system.⁵⁷ Despite repeated attempts to hire individuals into these roles, three years later, the vast majority of those positions remain unfilled. The Employer has provided disclosure indicating that – as of July 2021 – it employed only eight Nurse Practitioners across the Province.⁵⁸

52. Facing widespread nursing staff shortages, the Employer has relied increasingly on a supply of temporary contract nurses in order to provide adequate healthcare to inmates. Nurses from temporary agencies are paid at a significantly higher rate than bargaining unit staff, and yet are unable to complete the full scope of nursing duties required to service an inmate population (for example, agency nurses cannot access the computer systems and do not perform mental health nurse duties). This state of affairs has resulted in significant workload and morale problems among the Employer's nurses. Nevertheless, the Employer's use of agency nurses has only increased: in the 2022-2023 fiscal year, the Employer spent \$34,444,695,⁵⁹ while in the 2021-2022 fiscal year the Employer spent \$26,078,369 on agency nurses,⁶⁰ which nearly doubled the \$13,995,130 spent in 2020-2021.⁶¹

⁵⁷ Ontario, "News Release: Ontario Investing in Frontline Corrections Worker", June 16, 2021, Online, *Solicitor General* <<https://news.ontario.ca/en/release/57233/ontario-investing-in-frontline-corrections-workers>>, OPSEU Book of Documents, **Tab 31**.

⁵⁸ Disclosure from Employer, Correction #6: OPSEU Correctional as of July 31, 2021, OPSEU Book of Documents, **Tab 32**.

⁵⁹ Ontario, "Temp Help COVID and NON-COVID for 2022-2023 (HC Nursing)", ["SOLGEN Agency Nurse Usage – 2022-2023"], OPSEU Book of Documents, **Tab 33**.

⁶⁰ Ontario, "Temp Help COVID and NON-COVID for 2021-2022 (HC Nursing)", ["SOLGEN Agency Nurse Usage – 2021-2022"], OPSEU Book of Documents, **Tab 34**.

⁶¹ Ontario, "Temp Help COVID and NON-COVID for 2020-2021 (HC Nursing)", ["SOLGEN Agency Nurse Usage – 2020-2021"], OPSEU Book of Documents, **Tab 35**.

53. Chronic understaffing exacerbates the challenges associated with correctional work, but also erodes the quality of inmate care provided in Ontario’s facilities. Staff shortages increasingly require inmates to be restricted to their cells, deprived of any social interaction, for long periods of time. A 2023 expert report published by Ontario’s Office of the Chief Coroner found that, in 2021, close to 93% of lockdowns were due to staff shortages, while only 0.6% were due to "inmate behaviour".⁶² The Expert Panel concluded that the frequency of lockdowns and general staffing deficiencies present ongoing barriers to effective care, humane conditions, meaningful programs and the connections to family that are all essential to well-being for those in custody. The Expert Panel described a pattern of understaffing which “represents a clear and present danger to everyone, and it is likely among the primary contributing factors to an alarming rise in inmate deaths in Ontario’s correctional facilities”.⁶³

Lockdowns in Ontario Correctional Institutions⁶⁴

Lockdown type	2014	2015	2016	2017	2018	2019	2020	2021
Staff shortage	75.0%	95.8%	88.6%	81.0%	64.9%	82.1%	82.4%	92.9%
Search	25.0%	3.2%	5.8%	10.6%	20.3%	11.4%	8.2%	3.1%
Health care	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	1.8%	1.2%
Administrative maintenance	0.0%	1.0%	4.4%	8.2%	12.4%	6.5%	6.8%	2.2%
Inmate behaviour	0.0%	0.3%	1.1%	1.4%	2.4%	0.7%	0.9%	0.6%
Local investigation	0.0%	0.0%	0.6%	1.0%	2.7%	0.2%	0.7%	0.4%

*Data are incomplete for 2014 and 2021. Incidents are self-reported, and results should be interpreted with caution. Variations may be the result of incomplete reporting.

Figure 7 shows the various causes that have triggered lockdown conditions across all custodial facilities in Ontario. In the eight years studied, the percentage of lockdowns due to staffing shortages has averaged above 82%.

⁶² Chief Coroner’s Report, p. 26, OPSEU Book of Documents, **Tab 4**.

⁶³ Chief Coroner’s Report, p. 26, OPSEU Book of Documents, **Tab 4**.

⁶⁴ Chief Coroner’s Report, p. 26, OPSEU Book of Documents, **Tab 4**.

54. Staffing shortages also impact positions in community services. A review of reports available through the Workload Assessment Tool Monthly Reports from January to August 2023 show an average of 71.5 Probation and Parole Officer positions vacant across the province within the Ministry of the Solicitor General. This represents a vacancy rate of 8.5%. This work cannot be left unattended and must be absorbed by other employees. These staffing shortages disproportionately impact small officers where only a handful of staff are available to absorb an entire caseload. Recruitment and retention issues plague administrative positions in community services, leaving one employee covering duties at multiple office locations spread throughout the geographic regions.

55. The Crown needs to act now to protect its employees and to address the broader systemic issues that have led to this crisis in corrections. The Union recognizes that many of the issues plaguing Ontario's correctional system fall outside the scope of this interest arbitration. However, this background provides important and necessary context for the Union's proposals, including the workplace, morale, and mental health challenges that underlie them.

B. The Parties' Prior Bargaining History

56. In recent years, the parties have concluded their collective bargaining through third party interest arbitration.

57. The 2015-2017 collective agreement between the Employer and the predecessor Correctional bargaining unit was adjudicated by Arbitrator Kevin M. Burkett. During those negotiations, the Crown had taken the position that the only acceptable agreement would fall within a "net zero" framework. The parties negotiated wage increases within the

restrictions imposed by the Crown: there was no increase in 2015, and various cost containment measures were implemented to offset a 1.4% lump sum payment, effective January 1, 2016, and a 1.4% general wage increase, effective January 1, 2017. These terms were identical to, and flowed from, the earlier concluded Unified collective agreement.

58. However, the Union also sought a special “catch-up” wage increase for Correctional bargaining unit members. The Union submitted that a wage increase of 30% was necessary to bring the compensation of Ontario's correctional employees in line with that of the same and similar employees in other Canadian jurisdictions, and to mitigate the widening pay gap between correctional and comparable police employees in Ontario. The parties were unable to resolve the issue of any catch-up increase, and it was referred to arbitration.

59. In his award, dated May 26, 2016, Arbitrator Burkett accepted the Union's submission that a catch-up wage increase was warranted.⁶⁵

Given the deterioration of Ontario correctional salaries relative to Ontario police salaries, given the deterioration of the differential between Ontario Correctional salaries and Ontario Police salaries relative to this differential in other jurisdictions, and given the deterioration of Ontario correctional salaries relative to federal correctional salaries, a catch-up increase is warranted.

60. However, Arbitrator Burkett concluded that the catch-up wage increase should be rolled out incrementally. He found that an incremental approach was particularly

⁶⁵ *Ontario v Ontario Public Service Employees Union Correctional Services Bargaining Unit*, [2016 CanLII 58971](#) (Burkett) [“Burkett Decision 1”], at p. 20, OPSEU Book of Authorities, **Tab 2**.

appropriate because of the “net zero” mandate of the Employer, and in light of the collective agreement improvements upon which the parties had already agreed.⁶⁶

However, because the deterioration of correctional salaries has occurred over a number of rounds of bargaining the replication and gradualism principles support an incremental approach to dealing with the catch-up issue. Further, the demonstrated need test does not override the principles of replication and gradualism in a “net zero” world where, in addition to the normative settlement pattern, a number of additional improvements have already been negotiated for this bargaining unit in this round.

61. In this context, Arbitrator Burkett ordered a catch-up wage increase of 3% for correctional staff and 2% for probation staff, effective in the first year of the collective agreement, as of January 1, 2017. In a subsequent award, Arbitrator Burkett clarified that all employees within the Correctional Bargaining Unit working within a correctional facility were entitled to the 3% increase:

Under a regime of benchmark classification bargaining, which is not unfamiliar to these parties, the focus is upon the benchmark classification(s) as representative of a member of other classifications. Given the referral, given the submissions on the merits and given the fact that this is a multi-classification bargaining unit, the arbitrator proceeded on the basis that the CO/YSO positions and the PPO/PO positions were in the nature of benchmarks such that all of the classifications within the bargaining unit would receive either the 3% special adjustment for correctional staff or the 2% special adjustment for the probation staff effective January 1, 2017.

It was not within the contemplation of the arbitrator that under the terms of the May 26, 2016 Award there would be classifications within the bargaining unit that would not receive a special adjustment. Accordingly, by way of clarification the awarding of the 3% special adjustment to “correctional staff” includes those within all classifications working within a correctional facility.⁶⁷

⁶⁶ [Burkett Decision 1](#), at pp. 20-21, OPSEU Book of Authorities, **Tab 2**.

⁶⁷ *Ontario v Ontario Public Service Employees Union Correctional Services Bargaining Unit*, [2016 CanLII 58972](#) (Burkett), at pp. 3-4, [“Burkett Decision 2”] OPSEU Book of Authorities, **Tab 3**.

62. Through this award, Arbitrator Burkett ensured that the catch-up wage increase applied not only to Correctional Officers and Probation Officers, but to all the classifications in the Correctional Bargaining Unit at the time of the award, including, for example, Correctional Locksmith, Grounds/Maintenance Worker, Hairdresser Instructor, Industrial Officer, Recreation Officer, Rehabilitation Officer, and Trade Instructor.

63. The subsequent round of negotiations related to the first collective agreement of OPSEU's stand-alone Correctional bargaining unit, following the amendments to *CECBA* described above. Wages – particularly catch-up wages – remained a key issue at the table.

64. The parties were unable to resolve all the issues between them, and the matters in dispute proceeded to interest arbitration before Arbitrator William Kaplan. In his award, dated April 1, 2019, Arbitrator Kaplan accepted that significant, additional catch-up was warranted. Arbitrator Kaplan ordered that there should be across the board increases totaling 7.5% over the life of the agreement, with additional staggered increases totaling 7% for Correctional Officers/Youth Workers and 3% for Probation Officers/Nurses.⁶⁸ The resulting collective agreement covered a term from January 1, 2018 to December 31, 2021.⁶⁹

⁶⁸ *Ontario (Treasury Board Secretariat) v Opseu (Correctional Bargaining Unit)*, [2019 CanLII 24936](#) (Kaplan), at p. 3, OPSEU Book of Authorities, **Tab 4**.

⁶⁹ 2018-2021 Collective Agreement, OPSEU Book of Documents, **Tab 1**.

PART III. CURRENT ROUND OF “BARGAINING”

A. *Unsuccessful Negotiations Under Bill 124*

65. The parties commenced the current round of negotiations in November 2021, prior to the expiry of the last collective agreement. Unfortunately, in the context of an unconstitutional labour relations framework, the parties failed to make any meaningful progress towards concluding a renewal collective agreement.

66. Bill 124, the *Protecting a Sustainable Public Sector for Future Generations Act*,⁷⁰ contained draconian restrictions on collective bargaining in the public sector. It capped compensation increases for unionized employees – including members of the Correctional bargaining unit – at a meagre 1% annually for a three-year moderation period.⁷¹ It also prohibited any anti-avoidance measures as a result of the moderation period.⁷² As discussed below, Bill 124 has since been found to violate the *Charter’s* guarantee of free association and, therefore, has been declared void and of no effect.⁷³

67. Given the then-applicable constraints of Bill 124, the Union sought to use the current round of negotiations as an opportunity to address and “clean up” various language issues, including many items which it expected to be uncontroversial or otherwise in the nature of housekeeping. Consequently, while the Union advanced a lengthy list of non-monetary proposals, it anticipated that many items could be resolved between the parties, well in advance of and without the need for third-party mediation or

⁷⁰ Bill 124, *Protecting a Sustainable Public Sector for Future Generations Act*, 2019, [SO 2019, c 12](#) [“Bill 124”], OPSEU Book of Authorities, **Tab 5**.

⁷¹ [Bill 124](#), section 11, OPSEU Book of Authorities, **Tab 5**.

⁷² [Bill 124](#), section 24, OPSEU Book of Authorities, **Tab 5**.

⁷³ *Ontario English Catholic Teachers Assoc v His Majesty*, [2022 ONSC 6658](#) [“Bill 124 Decision”], OPSEU Book of Authorities, **Tab 6**.

interest arbitration. Unfortunately, the Employer did not respond to most of the non-monetary items the Union tabled. Where the Employer did respond, it generally rejected the Union's proposals outright, with little rationale and without countering. As a result, virtually nothing of substance was resolved between the parties directly.

68. The Employer initially identified the provincial election as a significant barrier to its ability to obtain direction to respond. Beginning in approximately May 2022, the Employer suspended the discussions entirely; the parties did not resume bargaining until approximately September 2022.

69. More recently, the Employer has also referenced the number of proposals advanced by the Union as a hurdle impeding the parties' progress. During their direct discussions, the Employer repeatedly asserted that, before it would provide a substantive response, the Union should be required to identify its few key priorities from among its proposals. The Union disagreed with this approach and repeatedly requested that the Employer respond to its comprehensive package in a robust, meaningful way, consistent with the parties' shared obligation to bargain in good faith.

70. The Employer's refusal to grapple with or respond to the Union's proposals continued through to the parties' first mediation, scheduled for two days in September 2022. The parties exchanged briefs in advance, and the Union felt optimistic upon seeing the Employer's brief indicated a willingness to discuss several outstanding items. However, at the mediation, the Employer suddenly reversed its position. It essentially refused to negotiate or otherwise engage with any of the Union's proposals. The Employer repeated its position that the Union should be required to identify its final priority

items and position, and withdraw all other proposals, before the Employer should even be required to engage with the package at all. The Employer even attempted to extract concessions from the Union in exchange for signing off on a short list of housekeeping items that had been previously agreed.⁷⁴

71. As a result, the mediation was over before lunch on the first day. The parties have not met or otherwise engaged in any direct negotiations since that time.

B. Bill 124 Declared Void for Violating the Charter

72. At the same time, the Union had filed an application challenging the constitutionality of Bill 124; approximately 11 separate applications were filed by more than 40 different trade unions. The applications alleged that Bill 124 violated section 2(d) of the *Charter* and, particularly, the right to free collective bargaining. The hearings took place between September 12 and 23, 2022.

73. In a decision dated November 29, 2022, Justice Koehnen of the Ontario Superior Court concluded that Bill 124 is contrary to section 2(d) of the *Charter* and is not justified under section 1. Justice Koehnen declared that Bill 124 is “void and of no effect”.⁷⁵

74. In the decision, Justice Koehnen reaffirmed that section 2(d) of the *Charter* protects not just the right to associate but also the “right to a meaningful process in which the unions can put on the table those issues that are of concern to workers and have them discussed in good faith”. Legislation that “takes issues off the table” – such as Bill

⁷⁴ Email from Steven MacKay, September 16, 2022, OPSEU Book of Documents, **Tab 36**.

⁷⁵ [Bill 124 Decision](#), paras. 5 and 18, OPSEU Book of Authorities, **Tab 6**.

124's prohibition on compensation increases in excess of 1% annually – substantially interferes with collective bargaining.⁷⁶

75. However, Justice Koehnen also recognized the detrimental impact of such restrictions on the collective bargaining process as a whole. He concluded that Bill 124 weakened unions' bargaining power such that they lacked the leverage to make the trade-offs necessary to obtain meaningful gains on non-monetary issues:

[78] The applicants filed an expert's report from Professor Richard Hebdon in which he expressed the view that the 1% salary cap prevents unions from using higher wage increases as a bargaining tool to obtain other, non-monetary benefits. As he describes it, by taking the possibility of wage increases above 1% off the table, a union's bargaining power is weakened such that it lacks the leverage to make necessary trade-offs to obtain meaningful gains on non-monetary issues. Put another way, the Act inhibits the normal bargaining trade-offs between compensation and non-compensation issues.

[79] These views have been echoed by a number of senior and well-respected interest arbitrators. In *Foyer Richelieu Welland v. CUPE, Local 3606*, for example, Arbitrator Keller stated:

The Act clearly limits, or straitjackets, the ability of the parties to engage in the normal give-and-take of collective bargaining that is key to successful negotiations.

...

In free collective bargaining, there will be of necessity, trade-offs. That is, each party determines what their needs are and, in order to achieve those needs to the greatest extent possible must be willing to give up something in order to achieve what they consider to be important. For example, often that involves the employer 'paying' for something sought by the union in return for achieving one of its own collective bargaining aims as, for example, more flexibility in how it manages its operations. **Under the Act, those trade-offs are not possible.**

[80] The views of Professor Hebdon and these arbitrators are also reflected in the experience of the applicants. [...]

⁷⁶ [Bill 124 Decision](#), para. 49, OPSEU Book of Authorities, **Tab 6**.

[86] The reduction in negotiating power that the Act has brought about prevents employees from having their views heard in the context of a meaningful process of consultation that could lead to an improvement of working conditions.⁷⁷

76. The Union submits that the bargaining of these parties under Bill 124 is a perfect example of the *Charter* violation Justice Koehnen described above. The Employer, emboldened by a guaranteed maximum 1% compensation increase, refused to engage with the Union's non-monetary proposals whatsoever. As described below, the Employer has since purported to rely upon that unconstitutional bargaining history to justify its continued rejection of meaningful negotiations.

77. The Crown appealed Justice Koehnen's decision and was heard by the Court of Appeal for Ontario in June 2023. The Court's decision remains under reserve. The Crown did not seek any stay of Justice Koehnen's decision pending the appeal. As a result, Bill 124 remains void and of no effect.

C. *The Employer's Continued Refusal to Bargain*

78. The Employer's bargaining approach has been frustrating for the Union. However, following the release of Justice Koehnen's decision, and the removal of unconstitutional barriers to free collective bargaining, the Union was hopeful that the parties could start fresh and negotiate on terms consistent with the balance that the *Charter's* guarantee of free association seeks to strike. Unfortunately, as described below, the Employer's intransigent approach to collective bargaining did not change.

79. On February 1, 2023, the Union wrote to the Employer to propose that the parties return to the bargaining table. It suggested that the parties should first set a date for the

⁷⁷ [Bill 124 Decision](#), paras. 78-86, OPSEU Book of Authorities, **Tab 6**, Emphasis in original.

exchange of new proposals, absent the restrictions of Bill 124. The Union confirmed its intention to revisit its entire proposals package, to advance reasonable monetary proposals consistent with its comparators, and to focus and streamline its non-monetary proposals. It confirmed its expectation that the Employer would do the same. The Union proposed that the parties adjourn the April 13 and 14 mediation-arbitration dates, and that the parties instead meet directly to discuss their new proposals and attempt to bargain in the normal course and as required by *CECBA*.⁷⁸

80. The Employer rejected the Union's proposed approach. On March 1, 2023, it responded, declining to meet with the Union directly, and indicating its preference to continue with third-party mediation with the assistance of Arbitrator Kaplan. It then asserted that, given the lack of progress under a bargaining framework which violated the Union's members' *Charter* rights, any further mediation "must be restricted to monetary issues," stating:

Given the lack of progress made at the parties' previous mediation session, and the significant amount of time in bargaining already spent discussing nonmonetary issues, we are of the view that the parties are at impasse on outstanding nonmonetary issues and there is limited value, if any, in using these dates to further discuss these issues.⁷⁹

81. The Union responded on March 8, 2023, setting out its concerns with the Employer's proposed approach. It expressed concern as to whether formal mediation could be constructive without the parties having even exchanged proposals or otherwise presented or discussed those proposals. The Union also reminded the Employer of its refusal to bargain at the last mediation, confirming that it was "not interested in another

⁷⁸ Letter from Glenna Caldwell to Steven MacKay, February 1, 2023, OPSEU Book of Documents, **Tab 37**.

⁷⁹ Letter from Steven MacKay to Glenna Caldwell, March 1, 2023, OPSEU Book of Documents, **Tab 38**.

futile mediation in the absence of meaningful bargaining.” However, in a sincere attempt to move the discussions forward, the Union proposed a compromise approach, whereby the parties (i) would meet directly on April 12 and/or 13 to present and discuss their proposals and commence negotiations; and (ii) would ask Arbitrator Kaplan and their respective lawyers to remain available and on standby to assist on April 14, depending on how the parties’ negotiations were going.⁸⁰

82. In its March 8, 2023 letter, the Union also flagged for the Employer that it was maintaining pension Factor 85 as an element of its proposal. It requested specific information from the Employer regarding its position and proposed that the parties meet jointly with a pension consultant from OPTrust to address the Employer’s asserted costing concerns.⁸¹

83. In response to the Union’s proposal, on March 14, 2023, the Employer reiterated that it would not meet with the Union to bargain in any context other than a formal mediation with lawyers. The Employer again purported to justify its position with reference to the fact that, under the unconstitutional restrictions of Bill 124, the parties were unable to make meaningful process towards a collective agreement. It also repeated its previous position that the Union must identify its final priorities, and withdraw all other items, before the Employer would engage with any of the Union’s proposals at all. Finally, the Employer

⁸⁰ Letter from Glenna Caldwell to Steven MacKay, March 8, 2023, OPSEU Book of Documents, **Tab 39**.

⁸¹ Letter from Glenna Caldwell to Steven MacKay, March 8, 2023, p. 2., OPSEU Book of Documents, **Tab 39**

ignored the Union's requests for information regarding its pension proposal, noting merely that it "does not support" the Union's position.⁸²

84. The Employer's letter of March 14, 2023 was disappointing. It left the Union with the understanding that, consistent with its approach to date, the Employer had no intention to engage seriously with the Union's proposals – or even engage in meaningful collective bargaining at all.

85. Rather than waste its time and resources, the Union seriously considered cancelling the April 13 and 14 dates and preparing to proceed directly to interest arbitration on July 25, 2023. However, the Union ultimately concluded that it had little choice but to accept the Employer's terms if it wanted to have any chance of making any progress through consensual negotiation.

86. The Union wrote to the Employer on March 23, 2023 to confirm that the mediation on April 13 and 14, 2023 would proceed. It also confirmed the parties' prior agreement to exchange proposals in advance, on or before April 4, 2023. Finally, the Union reiterated its previous request for pension information, to which the Employer had not responded. The Union requested that the Employer provide the requested information together with its proposal, on April 4, 2023.⁸³

⁸² Letter from Steven MacKay to Glenna Caldwell, March 14, 2023, OPSEU Book of Documents, **Tab 40**.

⁸³ Letter from Glenna Caldwell to Steven MacKay, March 23, 2023, OPSEU Book of Documents, **Tab 41**.

D. Further Failed Mediations, Absent an Employer Wage Proposal

87. As the parties had discussed, on April 4, 2023, the Union provided the Employer with its new, comprehensive proposal for negotiations absent Bill 124's unconstitutional bargaining restrictions.⁸⁴

88. The Union was surprised when, by close of business on April 4, 2023, the Employer had not provided a new bargaining proposal. Instead, the Employer delivered to Arbitrator Kaplan, through counsel, a formal mediation brief; the Employer flipped a copy of its mediation brief to the Union later that evening, as an "FYI".⁸⁵

89. The Union was even more surprised when it reviewed the Employer's mediation brief and found that it had failed to articulate any proposal on wages. The parties had expressly discussed the exchange of comprehensive proposals following the striking of Bill 124. Indeed, the Employer had initially insisted that the mediation should be restricted to monetary issues only. Remarkably, however, the Employer's brief indicated merely that salary was "[t]o be discussed".⁸⁶

90. The Union was extremely disappointed by this development. It was left with the distinct impression that the Employer's failure to advance any position on wages was indicative of an overall lack of respect for the Union and for the negotiation and mediation process.

⁸⁴ Email from Glenna Caldwell to Steven MacKay, without enclosure, April 4, 2023, OPSEU Book of Documents, **Tab 41**.

⁸⁵ Email from Shenouka Dissanayake to Glenna Caldwell, Janet Laverty, and Adam Cygler, without enclosure, April 4, 2023, OPSEU Book of Documents, **Tab 43**.

⁸⁶ Employer's Mediation Brief, April 13-14, 2023 Mediation, p. 4, OPSEU Book of Documents, **Tab 44**.

91. The parties attended on April 13, 2023 for mediation and, with the assistance of the mediator, made modest progress. They agreed to modify certain appendices to the collective agreement and agreed to renew others without modification. The parties also agreed to the mutual withdrawal of their proposals relating to video surveillance in the workplace. However, the parties did not discuss most of the many outstanding proposals between them, including wages, which the Employer was not prepared or willing to discuss. Given the Employer's position, the parties and mediator determined that the April 14 mediation date would not be constructive, and it was cancelled.

92. The Union looked forward, finally, to concluding the Correctional collective agreement at the July 25, 2023 arbitration date. However, shortly after the April 2023 mediation, the Employer contacted the Union (through counsel) to propose that the parties schedule another mediation date on July 10, cancel the July 25 arbitration, and convert the July 25 date to yet a further mediation.⁸⁷ The Employer's proposal was surprising to the Union, given the series of failed mediations which had already occurred. The Union ultimately agreed to add the July 10 mediation date that the Employer requested but declined to cancel the July 25 arbitration.

93. The Union was hopeful that the Employer's sudden and surprising request for a further mediation date was motivated by a good faith interest in making progress towards a consensual resolution to the parties' bargaining. In particular, the Union was hopeful that the Employer was finally prepared to advance a wage position and, therefore, that

⁸⁷ Email from Patrick Pengelly to Lauren Pearce, April 27, 2023, OPSEU Book of Documents, **Tab 45**.

the parties could finally engage in constructive negotiations, free from the arbitrary and unconstitutional restrictions previously imposed by Bill 124.

94. To that end, in the weeks leading up to the July 10 mediation, the Union reached out to the Employer (through counsel) to inquire as to when it expected to share its wage position. Remarkably, however, on July 5, 2023, the Employer confirmed that it still would not be making a proposal on wages. The Employer instead indicated its intention to “focus discussions on the outstanding non-wage issues, in effort to minimize the number of items that may need to proceed to an arbitration”.⁸⁸

95. It is difficult to understand the Employer’s approach in this regard. The parties had already attempted to mediate the outstanding non-wage issues and, without an Employer wage proposal, were unable to make any meaningful progress, so much so that the last mediation date (April 14, 2023) was cancelled on consent. As it turned out, nothing about the Employer’s approach had changed between April and July 2023 so as to suggest that the July 10 mediation would be any different.

96. In the end, unsurprisingly, the July 10 mediation was a complete failure. The Employer did not make any proposals. The parties did not meaningfully discuss any of the outstanding issues. Indeed, the day was terminated shortly after it began without a single proposal being advanced by the Employer.

97. At the mediation, instead of bargaining, the Employer, without any prior notice to the Union, announced that it would not be ready to proceed on the July 25 arbitration date

⁸⁸ Emails exchanged among Patrick Pengelly, Lauren Pearce, and Nini Jones, June 22 to July 5, 2023, OPSEU Book of Documents, **Tab 45**.

and required an adjournment. This was extremely disappointing and frustrating for the Union, who had been diligently preparing for this long-scheduled date, and whose members are growing increasingly frustrated with the parties' failure to conclude a collective agreement.

98. Nevertheless, as a result of the Employer's lack of preparedness, and over the Union's significant reluctance, this arbitration was rescheduled for the weekend of November 25 and 26, 2023.

99. This arbitration is occurring between parties who have engaged in virtually no collective bargaining, and after the Employer has repeatedly and consistently refused to exchange information and rationales for its positions, while demanding the Union simply withdraw its proposals. To date, the Union has no wage proposal from the Employer.

PART IV. DECISION-MAKING FRAMEWORK

A. *The Statutory Criteria*

100. Part III.1 of *CECBA* applies in respect of the negotiation and arbitration of collective agreements for the Correctional bargaining unit.⁸⁹

101. Pursuant to *CECBA* subsection 29.7(1), an arbitrator appointed under Part III.1 shall examine into and decide the matters in dispute and any other matters that appear to the arbitrator to be necessary to be decided to conclude a collective agreement between the parties.

⁸⁹ *CECBA*, Part III.1, OPSEU Book of Authorities, **Tab 1**.

102. In making this decision, *CECBA* requires the arbitrator to consider all factors that he or she determines to be relevant, including:

1. The employer's ability to pay in light of its fiscal situation.
2. The extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased.
3. The economic situation in Ontario.
4. A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
5. The employer's ability to attract and retain qualified employees.⁹⁰

103. To be clear, the legislation requires the arbitrator to take into account "all factors it considers relevant", not just those which are enumerated. Further, *CECBA* does not ascribe a particular weight to any single factor; all relevant factors, including the listed criteria, must be considered in the overall context.⁹¹

B. The Replication Principle

104. It is well-established that the objective of interest arbitration is to replicate the settlement that the parties would have negotiated in a free collective bargaining environment, including the social and economic impact of the Union's members exercising the right to strike.⁹² For example, in *Participating Hospitals v CUPE/OCHU & SEIU (Bill 124 Reopener)*, Arbitrator Kaplan described the overall context for the replication analysis with reference to the right to strike or lockout:

⁹⁰ *CECBA*, s. 29.7(2), OPSEU Book of Authorities, **Tab 1**.

⁹¹ *Participating Hospitals v CUPE/OCHU & SEIU (Bill 124 Reopener)*, 2023 CanLII 50888 (Kaplan), OPSEU Book of Authorities, **Tab 7**.

⁹² *Building SEIU, Local 204 v Peel Memorial Hospital (1969)*, 20 LAC 31 (Ont Arb) (Weiler) at para. 8, OPSEU Book of Authorities, **Tab 8**.

In general, that context is one in which compulsory interest arbitration is imposed because a public policy decision has been made to substitute adjudication rather than strikes and lockouts as the means to reach a collective agreement. The overriding objective is to replicate what the parties would have agreed to do in free collective bargaining where there is the right to strike or lockout. Neither party is to be advantaged or disadvantaged by the substitution of an interest arbitration regime.⁹³

105. Replication is achieved through the analysis and application of objective criteria, as opposed to subjective speculation about what the parties would have agreed to in bargaining had they exerted economic pressure upon one another. Awards and settlements reached in bargaining relationships in which similar work is performed in similar market conditions will be highly relevant.⁹⁴ Ultimately, however, all relevant information must be considered in best replicating free collective bargaining.⁹⁵

106. In addition to the replication principle, interest arbitrators frequently have regard for the competing factors of gradualism and demonstrated need. Arbitrator Burkett has summarized the interplay between these factors as follows:

The principle of gradualism reflects the reality that collective bargaining between mature bargaining parties, as these are, is a continuum that most often accomplishes gradual change as distinct from drastic change. It follows that absent compelling evidence, an interest arbitrator will be loath to award "breakthrough" items.

The principle of demonstrated need, as applied to a major economic item, provides a counterbalance to the principle of gradualism. It does so by establishing the basis upon which a board of interest arbitration will award a "breakthrough" item. A party

⁹³ *Participating Hospitals v CUPE/OCHU & SEIU (Bill 124 Reopener)*, 2023 CanLII 50888 (Kaplan), OPSEU Book of Authorities, **Tab 7**.

⁹⁴ *PAM Gardens Non-Profit Housing Inc and BACU, Re* (2018) 135 CLAS 16 (Ont Arb) (Nyman) [*"PAM Gardens"*] at para. 16, OPSEU Book of Authorities, **Tab 9**.

⁹⁵ *Participating Hospitals v CUPE/OCHU & SEIU (Bill 124 Reopener)*, 2023 CanLII 50888 (Kaplan), OPSEU Book of Authorities, **Tab 7**.

seeking a major or even a radical change must convincingly establish the need for such change; hence the term demonstrated need.⁹⁶

107. Similarly, Arbitrator Kaplan commented on gradualism and demonstrated need as important principles in evaluating the parties' proposed amendments:

Amendments to a collective agreement, especially to provisions that were bargained and have been in place for a very long time, absent compelling evidence-based need, are made on a gradual basis, if at all, and almost always reflect give and take. In general, however, long-standing and freely negotiated provisions should not be tampered with absent the strongest evidence of demonstrated need.⁹⁷

C. Applicable Comparators

108. The identification of appropriate comparators is key to the replication analysis.

109. As Arbitrator Shime indicated in *McMaster University v McMaster University Faculty Assn*, there is a great deal to be said for the principle that (subject to a slight variation due to local conditions) an assistant professor teaching biology at one university in Ontario should not receive less than an assistant professor teaching the same course at another Ontario university.⁹⁸ In other words, it is necessary to find where similar work is performed in similar market conditions.⁹⁹

110. Interest arbitrators will generally consider comparators that the parties have themselves used in their negotiations, as well as comparators that have been accepted

⁹⁶ Burkett Decision 1, pp. 15-16, OPSEU Book of Authorities, Tab 2, citing *Air Canada and CAW-Canada*, September 16, 2011 (Ont Arb) (Burkett (Chair)), OPSEU Book of Authorities, **Tab 10**.

⁹⁷ *Toronto Transit Commission v Amalgamated Transit Union, Local 113*, 2022 CanLII 9, OPSEU Book of Authorities, **Tab 11**.

⁹⁸ *Sunnybrook Health Sciences Centre v SEIU, Local 2*, 2012 CarswellOnt 1895 at para. 27 (Ont Arb) (McNamee (Chair)), OPSEU Book of Authorities, **Tab 12**, citing *McMaster University v McMaster University Faculty Assn* (1990), 13 LAC (4th) 199 (Ont Arb) (Shime) [*"McMaster"*], OPSEU Book of Authorities, **Tab 13**.

⁹⁹ *PAM Gardens* at para. 16, OPSEU Book of Authorities, **Tab 9**.

in previous interest arbitrations between the same parties.¹⁰⁰ Absent a demonstrated and material change in circumstances, interest arbitrators will virtually always accept comparators which have been previously established and accepted between the same parties. This approach promotes certainty at the negotiation table and, ultimately, supports good labour relations.¹⁰¹

111. However, as always, context is important. Comparator settlements and awards will not be automatically applied to replicate the free collective bargaining of subsequent parties where the factual circumstances – including prevailing economic, legal, or other labour conditions – are different.¹⁰²

112. In the present case, the Correctional bargaining unit has two well established comparators: Federal corrections and Ontario policing. These two groups have been repeatedly referenced by these parties in previous rounds of bargaining and have also been applied by the arbitrators in previous interest arbitration awards. Other case-specific comparators are discussed elsewhere in this brief.

1. The Federal Correctional System

113. Federal correctional workers continue to be a key wage and collective agreement comparator for members of the Correctional bargaining unit.

¹⁰⁰ *TTC v ATU, Local 113*, 2018 CanLII 99135 (Ont Arb) (Kaplan), OPSEU Book of Authorities, **Tab 14**.

¹⁰¹ *St Luke's Place v Ontario Nurses' Association*, 2017 CanLII 72329 (Ont Arb) (Sheehan) at p. 7, OPSEU Book of Authorities, **Tab 15**; See also: *TTC v ATU, Local 113*, 2018 CanLII 99135 (Ont Arb) (Kaplan), at p. 5, OPSEU Book of Authorities, **Tab 14**.

¹⁰² *Participating Hospitals v CUPE/OCHU & SEIU (Bill 124 Reopener)*, 2023 CanLII 50888 (Kaplan), p. 20, OPSEU Book of Authorities, **Tab 7**.

114. First, there is a well-established historical compensation relationship between correctional workers in the Federal and Ontario systems. This was confirmed in Arbitrator Burkett's award in the 2015 round of collective bargaining, where he determined that the two groups were essentially at salary parity before 2001. Arbitrator Burkett concluded that the salary differential which has developed since then with respect to the Federal group gave rise to a "specific catch-up objective" for Ontario correctional employees.¹⁰³ Arbitrator Burkett awarded special catch-up wage increases on the basis of the Federal correctional wages, and additional increases were awarded by Arbitrator Kaplan in the subsequent 2018 round. Nothing has changed in the intervening period which would justify deviating from this settled compensation relationship.

115. Second, Federal correctional employees in Ontario perform essentially the same function as Ontario correctional employees. This is clearly the case for provincial COs and their Federal counterparts, CX officers, both of whom are directly responsible for the care, custody, and control of inmates under conditions of confinement.¹⁰⁴ Indeed, in April 2000 – at a time where the two groups were essentially at wage parity – a comparative Willis Job Evaluation was completed, and both groups were rated at an identical 279 points.¹⁰⁵ This was an important factor for Arbitrator Burkett in determining the comparability of Ontario and Federal correctional wages.¹⁰⁶ However, even beyond the two correctional officer roles, it is beyond dispute that these two systems are broadly

¹⁰³ Burkett Decision 1, pp. 19-20, OPSEU Book of Authorities, **Tab 2**.

¹⁰⁴ See: Work Descriptions for the Federal CX-1 and CX-2 Descriptions, OPSEU Book of Documents, **Tabs 47 and 48**.

¹⁰⁵ Joint Committee Report on Federal Correctional Officers, "A Comparison of the Duties, Working Conditions and Compensation Levels of Federal Correctional Officers, Uniformed RCMP Officers, And Selected Provincial Correctional Officers" (April 2000), OPSEU Book of Documents, **Tab 49**.

¹⁰⁶ Burkett Decision 1, pp. 19-20, OPSEU Book of Authorities, **Tab 2**.

consistent, with many of the same duties and functions being performed under the same conditions.

116. Third, and related to the above, Ontario and Federal correctional employees face many of the same challenges in their unique workplaces. For example, studies suggest that Federal correctional officers face substantial challenges in their work environments that contribute to PTSD and other stress-induced mental health challenges.¹⁰⁷ Indeed, as described above, because provincial inmates are mainly held on remand and for short sentences, there is a higher risk of violence and less opportunity for meaningful rehabilitation in the Ontario system.

2. Ontario Policing Employees

117. The difficult work performed by correctional and policing staff, along with other first responders, forms a critical part of maintaining public safety in Ontario. In particular, both correctional and policing employees are responsible for the care, custody, and control of offenders within the context of a complex landscape of criminal law, constitutional rights, and public safety concerns. The rates of other policing personnel in Ontario form a valid point of comparison for the Correctional bargaining unit.

118. The 1978 Report of the Royal Commission on the Toronto Jail and Custodial Services (the “Shapiro Report”) was a public inquiry by Justice B. Barry Shapiro into the treatment of prisoners and the training of correctional officers in the province of Ontario, particularly at the Toronto Jail. Part of the inquiry included a review of the recruitment and service demands on the staff within the institution. The Shapiro Report concluded that, in

¹⁰⁷ Parliament Report, Healthy Minds, p. 12, OPSEU Book of Documents, **Tab 26**.

order to recruit and retain quality candidates, and to provide correctional staff with the professional recognition that they deserve, the increasing disparity between Ontario correctional officers and OPP Constables should be reduced:

I am of the opinion that the duties of a correctional officer at the Toronto Jail are more akin to those of a police officer than to those of an office worker. The correctional officer operates within the justice umbrella. His work is important both for security and for the rehabilitation of inmates and, therefore, for the prevention of crime. Also, his work involves physical risk.¹⁰⁸

119. In the 2015 round of bargaining between these parties, Arbitrator Burkett considered the Shapiro Report but noted that, since its release in 1978, the parties had repeatedly bargained wage settlements without reference to the salaries of OPP Constables.¹⁰⁹ Accordingly, he was unable to conclude that there was a “specific tie-point” to the OPP.¹¹⁰ Nevertheless, Arbitrator Burkett noted that given the “general nature of the work”, the wage rates of Ontario police employees constituted a “valid point of comparison”.¹¹¹ In particular, Arbitrator Burkett found it useful to consider the OPP as a relative comparator.¹¹²

120. The parties had extensive reference to policing comparators before Arbitrator Kaplan in 2019.

121. Again, nothing has changed in the intervening period which would justify deviating from Arbitrator Burkett’s conclusion. OPP and other Ontario police collective agreement

¹⁰⁸ Justice B. Barry Shapiro, *Report of the Royal Commission on the Toronto Jail and Custodial Services* (1978), Volume 1 [“Shapiro Report”], at pp. 139-141, OPSEU Book of Documents, **Tab 50**.

¹⁰⁹ Burkett Decision 1, p. 14, OPSEU Book of Authorities, **Tab 2**.

¹¹⁰ Burkett Decision 1, p. 18, OPSEU Book of Authorities, **Tab 2**.

¹¹¹ Burkett Decision 1, p. 18, OPSEU Book of Authorities, **Tab 2**.

¹¹² Burkett Decision 1, p. 19, OPSEU Book of Authorities, **Tab 2**.

terms, including salaries, continue to be relevant as relative comparators for the Ontario correctional system.

D. Economic Considerations

122. *CECBA* requires the arbitrator to consider the economic situation in Ontario in formulating his or her arbitration award. Even absent this statutory direction, interest arbitrators will frequently consider and rely upon economic data, particularly when determining the extent to which employee wages should be increased. In the present case, where the collective agreement spans a period of extraordinary inflation, the Union submits that economic considerations are especially vital.

1. Entrenched and Soaring Inflation

123. Workers in the Correctional bargaining unit – and, indeed, across the country and the world – are being hit hard by inflation, making it much more difficult to meet daily expenses. Inflation has only very recently begun to decelerate, and barely. Dramatic increases to the cost of living are entrenched in the economy, and will persist for throughout the period covered by this collective agreement.

124. Until recently, for the preceding decade, inflation has hovered between approximately 1-2% and generally below the Bank of Canada target of 2%. For example, the Consumer Price Index (“CPI”) rose 0.7% in 2020. That pattern changed in 2021, when CPI increased on an average annual basis of 3.4%, followed by a historic 6.8% increase

in 2022. The 6.8% CPI inflation rate marked a 40-year high, the largest annual average increase since 1982.¹¹³

125. While some projected inflation to abate to some extent in 2023,¹¹⁴ significant relief remains to be seen. Statistics Canada reports a 4.3% year-over-year increase in March 2023, followed by an uptick to 4.4% in April 2023.¹¹⁵ The inflation rate finally slowed to 3.4% year over year in May 2023, largely driven by lower year over year prices on gasoline (excluding gasoline, the CPI rose 4.4% in May 2023 following a 4.9% increase in April 2023¹¹⁶). Since May 2023, inflation has remained well above the Bank of Canada's target; Statistics Canada reports CPI increases of 2.8% in June and 3.3% in July.¹¹⁷ In August 2023, gasoline prices began to rise again, and the CPI inflation rate jumped up to 4%.¹¹⁸

¹¹³ Statistics Canada, Consumer Price Index: Annual review, 2022, p. 1, OPSEU Book of Documents, **Tab 51**.

¹¹⁴ For example, as of January 30, 2023, the Ontario Ministry of Finance projected 3.6% CPI inflation in 2023. See: 2023 Ontario Budget, Chapter 2: Economic Performance and Outlook, Table 2.1, OPSEU Book of Documents, **Tab 52**.

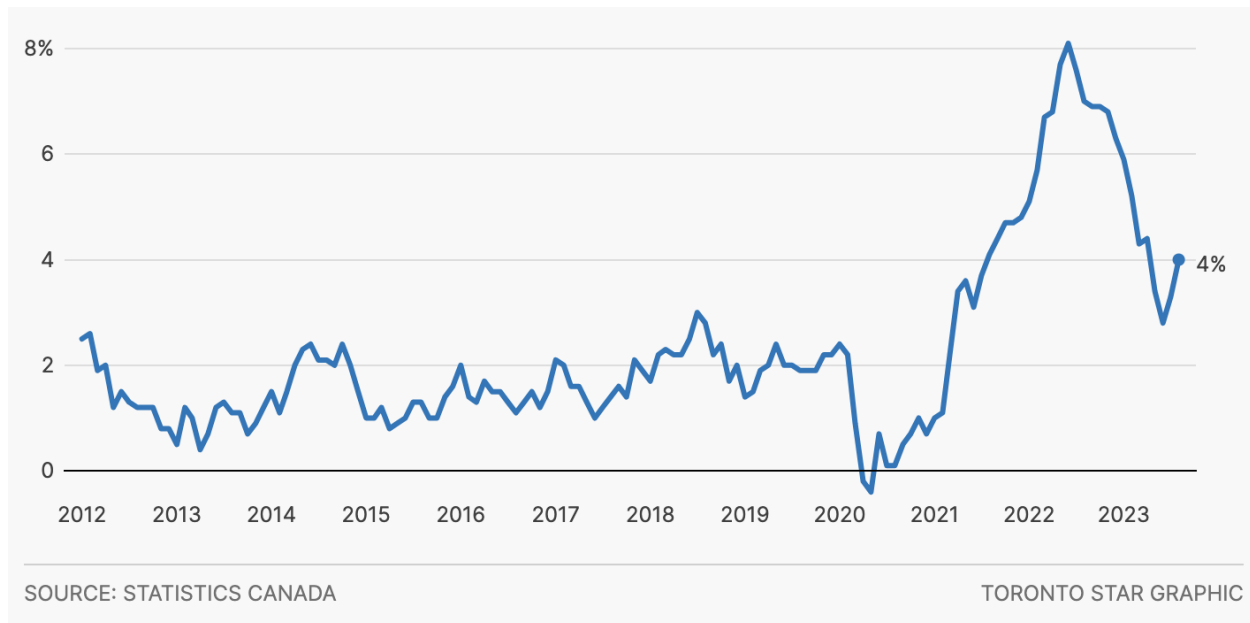
¹¹⁵ Statistics Canada, Consumer Price Index: April 2023, p. 1, OPSEU Book of Documents, **Tab 54**.

¹¹⁶ Statistics Canada, Consumer Price Index: May 2023, p. 1, OPSEU Book of Documents, **Tab 55**.

¹¹⁷ Statistics Canada, Consumer Price Index: July 2023, p. 1, OPSEU Book of Documents, **Tab 57**.

¹¹⁸ Statistics Canada, Consumer Price Index: August 2023, p. 1, OPSEU Book of Documents, **Tab 58**.

CPI Year-Over-Year Percentage Change¹¹⁹



126. In 2022, energy was one of the primary driving forces behind staggering CPI increases. Consumers paid 28.5% more for gasoline on an annual average basis that year. Crude oil prices rose sharply because of supply uncertainty amid Russia's invasion of Ukraine and higher demand in response to the easing of COVID-19 restrictions, pushing prices at the pump higher.¹²⁰ Gasoline prices finally fell in the spring and early summer of 2023; prices were 7.7% lower in April 2023 relative to April 2022,¹²¹ and 18.3% lower in May 2023 compared with historic highs in May 2022.¹²² However, prices rose 0.8% year over year in August, the first yearly increase since January 2023.¹²³

¹¹⁹ [Toronto Star](#), "Canada's inflation rate rises to 4% in August on higher gas costs, raising odds of further rate hike", September 19, 2023, OPSEU Book of Documents, **Tab 59**.

¹²⁰ Statistics Canada, Consumer Price Index: Annual review, 2022, p. 2, OPSEU Book of Documents, **Tab 51**.

¹²¹ Statistics Canada, Consumer Price Index: April 2023, p. 3, OPSEU Book of Documents, **Tab 54**.

¹²² Statistics Canada, Consumer Price Index: May 2023, p. 1, OPSEU Book of Documents, **Tab 55**.

¹²³ Statistics Canada, Consumer Price Index: August 2023, p. 3, OPSEU Book of Documents, **Tab 58**.

127. Another factor contributing to significant inflation – and one in which the consumer has yet to feel any relief – is the price of food. Food purchased from stores rose 9.8% in 2022, the fastest pace since 1981. Food inflation was broad-based, with prices increasing on an annual average basis in virtually every single food category.¹²⁴ Historically high year-over-year grocery price inflation has continued in 2023, with increases of 9.7% in March, 9.1% in April,¹²⁵ 9.0% in May,¹²⁶ 9.1% in June, 8.5% in July,¹²⁷ and 6.9% in August.¹²⁸ These rapid increases are profoundly felt by ordinary Canadians, relative to increases of only 2.2% in 2021.¹²⁹ In a modest effort to offset skyrocketing food costs, the Federal government has introduced a grocery rebate for eligible Canadians in connection with the 2023 budget.¹³⁰

128. More recently, accelerating mortgage interest costs have emerged as the most significant contributor to inflation. These increases are caused by monetary steps taken to curb inflation; the Bank of Canada has repeatedly raised its target interest rate since the pandemic, most recently to 5% in July 2023.¹³¹ The August 2023 CPI inflation rate increase means that further interest rate hikes are more likely.¹³²

¹²⁴ Statistics Canada, Consumer Price Index: Annual review, 2022, p. 3. The only exception was canned salmon (-1.4%), OPSEU Book of Documents, **Tab 51**.

¹²⁵ Statistics Canada, Consumer Price Index: April 2023, p. 6, OPSEU Book of Documents, **Tab 54**.

¹²⁶ Statistics Canada, Consumer Price Index: May 2023, p. 4, OPSEU Book of Documents, **Tab 55**.

¹²⁷ Statistics Canada, Consumer Price Index: July 2023, p. 5, OPSEU Book of Documents, **Tab 57**.

¹²⁸ Statistics Canada, Consumer Price Index: August 2023, p. 5, OPSEU Book of Documents, **Tab 58**.

¹²⁹ Statistics Canada, Consumer Price Index: Annual review, 2022, p. 3, OPSEU Book of Documents, **Tab 51**.

¹³⁰ Canada, New Grocery Rebate, OPSEU Book of Documents, **Tab 60**.

¹³¹ Bank of Canada, Press Release, “Bank of Canada raises policy rate 25 basis points, continues quantitative tightening”, July 12, 2023, OPSEU Book of Documents, **Tab 61**.

¹³² [Toronto Star](#), “Canada’s inflation rate rises to 4% in August on higher gas costs, raising odds of further rate hike”, September 19, 2023, OPSEU Book of Documents, **Tab 59**.

129. In the face of these painful interest rate increases, the mortgage interest cost index rose a massive 30.9% on a year-over-year basis in August 2023,¹³³ following increases of 30.6% in July, 30.1% in June,¹³⁴ 29.9% in May, 28.5% in April,¹³⁵ and 26.4% in March 2023.¹³⁶ That is six consecutive months of new record high increases, as Canadians were forced to renew and initiate mortgages at higher interest rates.¹³⁷

130. Of course, surging interest rates do not only impact homeowners. Elevating borrowing costs mean prospective buyers can no longer afford to enter the housing market, and there is greater demand for rental housing, while at the same time the cost of building new rental units has materially increased. As a result, year over year rental costs are rising, with Statistics Canada reporting increases of 5.3% in March,¹³⁸ 6.1% in April,¹³⁹ 5.7% in May,¹⁴⁰ 5.8% in June,¹⁴¹ 5.5% in July,¹⁴² and 6.5% in August 2023.¹⁴³ For context, national rent prices increased 4.6% in 2022 (when the interest rate increases began) relative to only 1.6% in 2021.¹⁴⁴ The Canada Mortgage and Housing Corporation projects rental affordability to continue to decline nationally in 2023, as demand significantly outpaces supply.¹⁴⁵

¹³³ Statistics Canada, Consumer Price Index: August 2023, p. 4, OPSEU Book of Documents, **Tab 58**.

¹³⁴ Statistics Canada, Consumer Price Index: June 2023, p. 1, OPSEU Book of Documents, **Tab 56**.

¹³⁵ Statistics Canada, Consumer Price Index: May 2023, p. 4, OPSEU Book of Documents, **Tab 55**.

¹³⁶ Statistics Canada, Consumer Price Index: March 2023, p. 6, OPSEU Book of Documents, **Tab 53**.

¹³⁷ Statistics Canada, Consumer Price Index: May 2023, p. 4, OPSEU Book of Documents, **Tab 55**.

¹³⁸ Statistics Canada, Consumer Price Index: March 2023, p. 13, OPSEU Book of Documents, **Tab 53**.

¹³⁹ Statistics Canada, Consumer Price Index: April 2023, p. 4, OPSEU Book of Documents, **Tab 54**.

¹⁴⁰ Statistics Canada, Consumer Price Index: May 2023, p. 10, OPSEU Book of Documents, **Tab 55**.

¹⁴¹ Statistics Canada, Consumer Price Index: June 2023, p. 10, OPSEU Book of Documents, **Tab 56**.

¹⁴² Statistics Canada, Consumer Price Index: July 2023, p. 10, OPSEU Book of Documents, **Tab 57**.

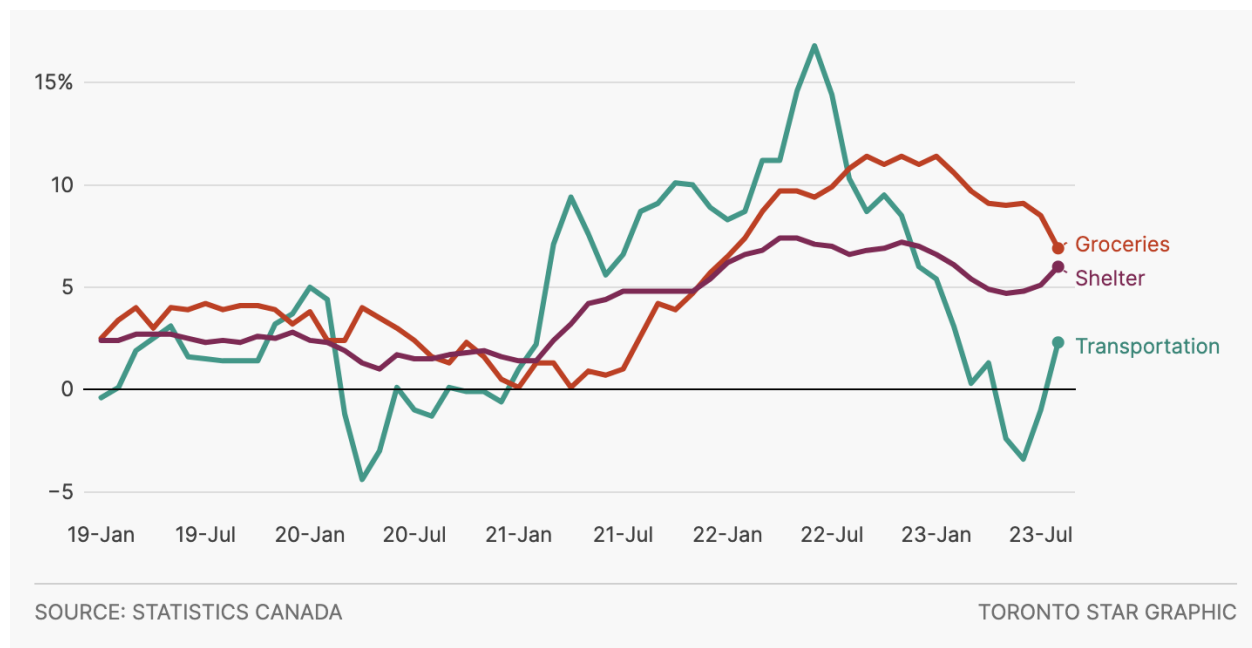
¹⁴³ Statistics Canada, Consumer Price Index: August 2023, p. 4, OPSEU Book of Documents, **Tab 59**.

¹⁴⁴ Statistics Canada, Consumer Price Index: Annual review, 2022, p. 4, OPSEU Book of Documents, **Tab 52**.

¹⁴⁵ CMHC Housing Market Outlook, April 27, 2023, pp. 5-6, OPSEU Book of Documents, **Tab 62**.

131. Energy, food, and housing are merely examples. Significant and prolonged inflationary increases are baked into the cost of living and are profoundly felt by Canadian consumers across the economy. These examples are also, of course, essential; the reduction of individual purchasing power against these basic needs signals a broad decline in employee wealth. Wage growth needs to at least meet inflation to repair the damage that has already been done to employee purchasing power.

CPI Year-Over-Year Percentage Change for Groceries, Shelter, and Transportation¹⁴⁶



132. Unfortunately, inflation has remained stubbornly high, and Canadian consumers are unlikely to see significant relief in the short term. In July 2023, the Bank of Canada modified its prior, more optimistic projections; its most recent forecasts predict that

¹⁴⁶ [Toronto Star](#), “Canada’s inflation rate rises to 4% in August on higher gas costs, raising odds of further rate hike”, September 19, 2023, OPSEU Book of Documents, **Tab 59**.

inflation will stay around 3% for at least 2024 and into 2025.¹⁴⁷ Notably, this Bank of Canada projection does not account for the August 2023 jump in inflation to 4%.

2. A Tight Labour Market, With Significant Job Vacancies

133. Notwithstanding the pandemic, in recent years, Ontario has generally had a tight labour market with a historically low unemployment rate coupled with high levels of employment. The province's unemployment rate averaged 5.6% in 2022, matching the pre-pandemic rates in 2018 and 2019, the lowest annual rate since the late 1980s.¹⁴⁸ Ontario's unemployment rate of 5.6% in July 2023 is near historic lows.¹⁴⁹ After record increases in 2021 and 2022, Ontario's employment increased by over 230,000 net jobs between September 2022 and July 2023.¹⁵⁰

134. Low unemployment has also been observed nationally. The Canadian unemployment rate held steady at 5.0% for five consecutive months from December 2022 to April 2023. As of May 2023, the unemployment rate increased to 5.2%; this was the first monthly rate increase since August 2022.¹⁵¹ The unemployment rate increased again in June 2023 to 5.4%,¹⁵² and increased slightly in July 2023 to 5.5%.¹⁵³ This recent data suggests that the labor market may be starting to give in to higher interest rates after remaining stubbornly tight for a long period.

¹⁴⁷ Bank of Canada, Monetary Policy Report, July 2023, p. 8, OPSEU Book of Documents, **Tab 63**.

¹⁴⁸ 2023 Ontario Budget, Chapter 2: Economic Performance and Outlook, OPSEU Book of Documents, **Tab 64**.

¹⁴⁹ Ontario, 2023–24 First Quarter Finances Report, OPSEU Book of Documents, **Tab 65**.

¹⁵⁰ Ontario, 2023–24 First Quarter Finances Report, OPSEU Book of Documents, **Tab 65**.

¹⁵¹ Statistics Canada, Labour Force Survey, May 2023, OPSEU Book of Documents, **Tab 66**.

¹⁵² Statistics Canada, Labour Force Survey, June 2023, OPSEU Book of Documents, **Tab 67**.

¹⁵³ Statistics Canada, Labour Force Survey, July 2023, OPSEU Book of Documents, **Tab 68**.

135. Notwithstanding consistently low unemployment, Statistics Canada has described sizable imbalances between labour demand and supply as a persistent feature of the recovery from the pandemic:

Despite the addition of 1.4 million payroll jobs from mid-2021 to the spring of 2022, job vacancies—before adjusting for seasonality—rose above the one-million mark from April to June 2022, as challenges around worker recruitment and retention remained widespread. While robust job gains in more recent months have been accompanied by a gradual easing in the number of unfilled positions, total vacancies remain well above pre-pandemic levels, as the ratio of unemployed workers to total vacancies—a key indicator of labour market tightness—remains near historic lows.¹⁵⁴

136. Statistics Canada reports particular recruitment and retention challenges in the areas of health care and social assistance. In those areas, more than 40% of organizations anticipate near-term challenges recruiting skilled workers, while 33% expect difficulties retaining their existing staff. The job vacancy rate in health care and social assistance, at 6%, remains twice its pre-pandemic level. The number of unfilled health care positions has continued to edge higher, led by increased demand for registered nurses and registered psychiatric nurses, licensed practical nurses, as well as nurse aides, orderlies, and patient service associates.¹⁵⁵

137. Compounding these labour challenges is the record pace of net interprovincial migration losses for Ontario, which further reduces the local labour supply pool. Net losses began as early as the first quarter of 2020, but have since been increasing, with a reported net loss of 11,581 persons in the third quarter of 2022 alone – the largest loss

¹⁵⁴ Statistics Canada, Labour market imbalances: Evidence from the Canadian Economic Tracker, June 28, 2023, p. 1, OPSEU Book of Documents, **Tab 69**.

¹⁵⁵ Statistics Canada, Labour market imbalances: Evidence from the Canadian Economic Tracker, June 28, 2023, pp. 3-4, OPSEU Book of Documents, **Tab 69**.

quarter-over-quarter for the province since 1980. Major factors behind this trend include poor housing affordability and more opportunities for remote work.¹⁵⁶

3. Sustained and Robust Government Revenue

138. For individual Canadians, 2022 and 2023 have been difficult, as interest rates climbed and inflation soared. In contrast, however, Ontario's economy has been on an impressive run, and the provincial government is in a strong financial position.

139. Ontario's economy rebounded rapidly from the pandemic, with real GDP rising by 5.2% in 2021 and 3.7% in 2022. This was the strongest two-year increase in more than 20 years.¹⁵⁷ In 2022, the top contributor to total GDP in the province was the professional, scientific and technical services sector, which saw robust growth of 8.6%. In addition, the opening of Ontario's online gambling market contributed to 59.2% growth in gambling industries. Further, transportation equipment manufacturing increased in Ontario on the strength of motor vehicles and parts manufacturing (+12.9%), as supply chains improved in 2022. The accommodation and food services sector as well as the air transportation industry were also significant growth areas for the Ontario economy.¹⁵⁸

140. Despite more conservative projections, the existing 2023 data paints a similarly rosy picture. The Canadian economy grew at an annualized rate of 3.1% in the first quarter of 2023. That growth – the strongest among all G7 countries for the quarter – beat

¹⁵⁶ 2023 Ontario Economic Report, p. 27, OPSEU Book of Documents, **Tab 70**.

¹⁵⁷ Financial Accountability Office of Ontario, Economic and Budget Outlook, Spring 2023, June 13, 2023, p. 9, OPSEU Book of Documents, **Tab 71**.

¹⁵⁸ Statistics Canada, Gross domestic product by industry- Provinces and territories, 2022, May 1, 2023, OPSEU Book of Documents, **Tab 72**.

out the federal agency's own forecast of 2.5%.¹⁵⁹ Ontario's real GDP increased by 1% in the first calendar quarter of 2023, reflecting better-than-expected economic performance so far this year.¹⁶⁰

141. TD Bank estimates that Ontario's economic growth for Q1 2023 was even stronger, and projects a 1.3% real GDP increase for the year:

Ontario's economy likely mustered even stronger first-quarter economic growth than the robust 3.1% annualized print observed for Canada. This view is supported by a healthy pick up in our internal data that tracks debit and credit card spending, which in turn was fueled by sturdy job growth and another robust population increase to begin the year. What's more, exports surged to start the year (Chart 1), driven by U.S. demand, and a massive gain in motor vehicle shipments as improving auto supply chains supported higher production.¹⁶¹

142. Strong GDP growth and resulting tax revenue have meant windfall gains for the Ontario government. The Province experienced a historically strong revenue increase of 12.2% (+\$20.2 billion) in FY 2021-2022,¹⁶² and in FY 2022-2023 surpassed \$200 billion in revenue for the first time ever.¹⁶³ Ontario's FY 2022-2023 revenues were \$20.6 billion higher than forecast in the 2022 Budget.¹⁶⁴ Revenues in FY 2023–2024 are projected to be \$204.4 billion.¹⁶⁵

¹⁵⁹ TD Quarterly Economic Forecast, "Stronger, Faster, Higher", June 15, 2023, OPSEU Book of Documents, **Tab 73**, p. 3; [CTV News](#), What slowdown? Economy outperforms, raising odds of a rate hike, May 31, 2023, OPSEU Book of Documents, **Tab 74**.

¹⁶⁰ Ontario, 2023–24 First Quarter Finances Report, OPSEU Book of Documents, **Tab 65**.

¹⁶¹ TD Provincial Economic Forecast, Provinces Riding a Momentum Wave Into Choppy Waters, June 19, 2023, p. 6, OPSEU Book of Documents, **Tab 75**.

¹⁶² Financial Accountability Office of Ontario, Economic and Budget Outlook, Spring 2023, June 13, 2023, p. 4, OPSEU Book of Documents, **Tab 71**.

¹⁶³ RBC, Ontario Budget 2023: a "stay the course" fiscal plan, March 24, 2023, p. 2, OPSEU Book of Documents, **Tab 77**.

¹⁶⁴ 2023 Ontario Budget, Chapter 3: Ontario's Fiscal Plan and Outlook, OPSEU Book of Documents, **Tab 78**.

¹⁶⁵ Ontario, 2023–24 First Quarter Finances Report, OPSEU Book of Documents, **Tab 65**.

143. As a result of these gains, the government is now projecting a deficit of \$2.2 billion in FY 2022-2023, down dramatically from the 2022 Budget's expected near \$20 billion deficit¹⁶⁶ The province's FY 2023–2024 deficit is projected to be \$1.3 billion.¹⁶⁷ Three years ahead of schedule, the Province's 2023 budget also includes plans to eliminate the deficit altogether by FY 2024-2025.¹⁶⁸

4. Employer “Ability to Pay” is Irrelevant

144. Given Ontario's strong economic position, the Union does not expect the Employer to rely upon any true inability to pay. However, given the virtual certainty that the Employer will protest the cost of the Union's normative monetary proposals, the Union has provided a brief overview of the ability to pay analysis.

145. A particular concern for interest arbitrators in the public sector is ensuring that workers do not unfairly bear the brunt of the government's fiscal policy. This consideration is typically known as “ability to pay” and is generally considered functionally irrelevant in public sector interest arbitrations, where the Crown itself has control over what it can pay. Arbitrator Shime has noted that “public sector workers should not be required to subsidize

¹⁶⁶ 2023 Ontario Budget, Chapter 3: Ontario's Fiscal Plan and Outlook, OPSEU Book of Documents, **Tab 78**.

¹⁶⁷ Ontario, 2023–24 First Quarter Finances Report, OPSEU Book of Documents, **Tab 65**.

¹⁶⁸ 2023 Ontario Budget, Chapter 3: Ontario's Fiscal Plan and Outlook, OPSEU Book of Documents, **Tab 78**; RBC, Ontario Budget 2023: a “stay the course” fiscal plan, March 24, 2023, p. 1, OPSEU Book of Documents, **Tab 77**.

the community by accepting substandard wages and working conditions”.¹⁶⁹ Indeed, if the public wants a particular service, then it should be willing to pay a fair price for it.¹⁷⁰

146. The Union acknowledges that, in the present case, the operative legislation directs the arbitrator to consider a number of criteria which engage the Employer’s “ability to pay”, including the current funding and taxation levels and the economic situation in Ontario broadly.¹⁷¹ However, this does not mean that the ability to pay factor can be a subterfuge for the Crown’s unwillingness to provide the funds necessary to achieve normative comparability.¹⁷²

147. Arbitrators have had the occasion to assess the relevance of statutory ability to pay criteria in the context of a public sector interest arbitration. For example, in *Niagara Regional Police Services Board v Niagara Region Police Assn*, the Board was statutorily required to consider economic factors that were virtually the same as those set out in subsection 29.7(2) of *CECBA*. Chair Jackson concluded that, to the extent that ability to pay is an issue, an award should be based upon what a majority of fair-minded, well-informed taxpayers would consider to be a fair and reasonable award, even if it meant tax increases.¹⁷³ Chair Jackson continued:

The greater the tax increase required to support the arbitration award, the more confident the board must be that that award is a reasonable and credible one, one

¹⁶⁹ *McMaster* at p. 203, OPSEU Book of Authorities, **Tab 13**. See also *Bruce Power LP and Society of Energy Professionals* (2004), 126 LAC (4th) 144 (Ont Arb) (Burkett) at pp. 151-152, OPSEU Book of Authorities, **Tab 16**.

¹⁷⁰ *Niagara Regional Police Services Board v Niagara Region Police Assn* (1997), 78 LAC (4th) 42 (Ont Arb) (Jackson (Chair)) [*“Niagara Regional”*] at p. 58, OPSEU Book of Authorities, **Tab 17**.

¹⁷¹ *CECBA*, s. 29.7(2), OPSEU Book of Authorities, **Tab 1**.

¹⁷² *Windsor Regional Hospital and CAW, Local 2458, Re* (2013) 114 CLAS 18 (Ont Arb) (Tacon (Chair)) at para. 14, OPSEU Book of Authorities, **Tab 18**.

¹⁷³ *Niagara Regional* at pp. 58-59, OPSEU Book of Authorities, **Tab 17**.

that a majority of fair-minded, well-informed taxpayers would see as reasonable and fair. This squares precisely with another of the new criteria, “the extent to which services may have to be reduced, if the current funding levels are not increased”.¹⁷⁴

148. Further, and in any event, interest arbitrators have recognized that the employer is the only party with true visibility into its ability to pay. Accordingly, before any ability to pay argument can be considered, the employer must establish, in evidence, a true inability to pay. For example, in a recent award, Arbitrator Nyman reviewed the arbitral jurisprudence and concluded:

In *Serco Canada Inc. and USW, Local 9511 (Contract Reopener), Re*, [2017] O.L.A.A. No. 189 (Ont. Arb.) (Luborsky) the arbitrator affirmed that where an employer asserts an inability to pay, that argument must be supported with cogent evidence of the full economic resources of the entire corporate structure. I agree with this view. It is far too easy for an employer to claim it is fiscally constrained. While all employers must operate with a degree of fiscal responsibility, that is not the same as being unable to pay. An employer's true financial position is almost exclusively within its own knowledge, and absent an employer conclusively establishing that it cannot pay for any increases without suffering some significant consequence, an arbitrator should not give an ability to pay argument much, if any, weight.¹⁷⁵

149. A true inability to pay argument would be untenable given current economic conditions. Accordingly, in the present case, the Union submits that this factor is irrelevant.

¹⁷⁴ *Niagara Regional* at p. 59, OPSEU Book of Authorities, **Tab 17**.

¹⁷⁵ *PAM Gardens* at para. 31, OPSEU Book of Authorities, **Tab 9**.

E. The Employer's Need to Retain, Motivate, and Recruit Qualified Staff

150. Another important factor is the Crown's ability to hire and retain staff to work in the correctional system. The chronic understaffing of Ontario's correctional institutions, and the concomitant impact upon staff and inmate wellbeing, is discussed in detail above.

151. Arbitrators have repeatedly recognized that the Crown has fallen increasingly behind its correctional comparators. In this context, the Crown will inevitably have a difficult time incentivizing its existing staff to stay, let alone recruiting new employees. The rates that correctional workers could earn at the Federal facilities in Ontario are relevant both to the Employer's competitiveness within the Province and to the employment choices that the employees may make.¹⁷⁶

152. Even leaving aside relative compensation, unfortunately, correctional work does not attract the same prestige or respect accorded to other public safety personnel, such as police officers or firefighters. In this regard, the comments of Justice Shapiro apply with equal force today as they did in 1978:

Recruitment of correctional officers has been, is, and hopefully will not continue to be difficult. The career of being a jail guard has always ranked low in status among social service positions. It has all of the hazards of police service but none of the glamour.¹⁷⁷

¹⁷⁶ *Collegiate Heights Retirement Residence and USW, Local 8748, Re* (2018), 138 CLAS 50 (Ont Arb) (Albertyn) at para. 12, OPSEU Book of Authorities, **Tab 19**.

¹⁷⁷ Shapiro Report, at p. 78, OPSEU Book of Documents, **Tab 50**.

153. The lack of prestige accorded to correctional work has only been exacerbated in recent years, when there seems to be a new negative headline about Ontario's correctional system every other day.

154. Further, as discussed above, the unemployment rate in Ontario has recently held at record lows. Low unemployment rates will make it even more difficult for the Crown to attract new employees, and also may make it more difficult for it to retain its existing employees, who may well be attracted to higher paying opportunities outside of the Ontario system.

155. All of the Union's proposals below are borne out of this context. They are targeted, fair, and focused on legitimate workplace priorities.

F. Proposals

1. – LONG TERM INCOME PROTECTION

Union Proposal

156. The Union is proposing the following addition to Article 42.2.1:

42.2.1(k) Effective date of ratification/arbitration decision and thereafter, the total monthly LTIP benefit payment under the plan shall be adjusted by an increase equal to those provided for under Article COR17 and any applicable special wage adjustments.

Union Submissions

157. The Union is simply seeking to ensure that wage increases – regardless of the name given to them by the parties or by interest arbitrators – are incorporated into the calculation of LTIP benefits for disabled members.

158. The Union negotiated language in Article 42.2.1(j) of the Collective Agreement that states, "... the total monthly LTIP benefit payment under the plan shall be adjusted by an increase equal to those provided for under Article COR17." In amending the collective agreement to reflect the parties' most recent interest arbitration award, the parties included in COR17 only the "across-the-board" wage increases, inserting the list of special wage adjustments in a new Appendix COR39. Neither party averted to the connection between this amendment and Article 42.4.1(j).

159. However, the Grievance Settlement Board found on the language of the Collective Agreement that the parties intention was to deny LTIP recipients the benefit of 'catch-up' wage increases.¹⁷⁸ This was not the Union's intention, and it seeks to remedy the parties' oversight.

160. The parties already have a shared understanding of the impact of salary adjustments on the Union's disabled members in receipt of WSIB benefits, as confirmed by the Grievance Settlement Board in *Ontario Public Service Employees Union (Mills et al) v Ontario (Solicitor General)*.¹⁷⁹ In that decision, Vice-Chair Banks concluded that the term "regular salary" included any collective agreement wage adjustments, whether part of the "across the board" increases, or by way of special classification-specific salary adjustments. There is no principled basis to treat members in receipt of LTIP any differently.

¹⁷⁸ *Ontario Public Service Employees Union (Gareau et al) v Ontario (Solicitor General)*, [2020 CanLII 74254 \(ON GSB\)](#) (Gee), OPSEU Book of Authorities, **Tab 20**.

¹⁷⁹ *Ontario Public Service Employees Union (Mills et al) v Ontario (Solicitor General)*, [2021 CanLII 58427 \(ON GSB\)](#) (Banks) at para. 24, OPSEU Book of Authorities, **Tab 21**.

161. The Union's members absent and in receipt of LTIP benefits should receive the same – proportionate – wage increases as any other member of their home classification, and to permit otherwise is to provide the Employer with an unearned windfall accrued through historical underpayment. The Union's proposal should be awarded.

2. – BEREAVEMENT LEAVE

Union Proposal

162. The Union is proposing the following:

ARTICLE 48 (Bereavement Leave):

- 48.1 An employee shall be allowed up to three (3) days' leave of absence with pay in the event of the death of their spouse, mother, father, mother-in-law, father-in-law, son, daughter, stepson, step-daughter, brother, sister, **stepbrother, stepsister,** son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent **of the employee and spouse,** grandchild, ward, guardian, foster child, stepmother, stepfather, step- grandparent, step-grandchild, or same sex spouse. **“In-law” and “step” relations listed in this article include such relatives of a spouse. At the employee’s discretion, they may elect to take these days non-consecutively.**
- 48.2 An employee who would otherwise have been at work shall be allowed one (1) day leave of absence with pay in the event of the death and to attend the funeral of their aunt, uncle, niece or nephew.
- 48.3 In addition to the foregoing, an employee shall be allowed up to two (2) days' leave of absence with ~~out~~ pay to attend the funeral of a relative listed in Articles 48.1 and 48.2 above if the location of the funeral is greater than **eight four** hundred kilometres (**800 400** km) from the employee's residence. (FXT)
- 48.4 In the event of a miscarriage, stillbirth, or pregnancy loss, either or both prospective parents experiencing the loss shall be entitled to bereavement leave as outlined in article 48.1. This leave shall be in addition to any entitlements under Pregnancy Leave (Articles 50 or 76).**

163. The Union is seeking equivalent amendments to Articles 31A (Fixed-Term), Article 32 (Seasonal), Article 37 (Student), and Article 74 (Regular Part-Time).

Union Submissions

164. The Union's proposed additions to the relatives covered by the bereavement leave language recognize and respect that families take a myriad of forms, and that the parties should not attempt to assign preferential treatment or value to certain family members and relationships over others. The proposed additions seek to recognize and reflect the diversity of contemporary family units and of individual bereavement experiences, while also aligning with the language adopted by comparators.

165. The Union makes this proposal, without seeking to increase the paid dates (as seen in many recent collective agreements, including the recent freely negotiated agreement between Unifor and Ford of Canada, where paid bereavement leave for immediate family members was increased to five (5) days.

166. The inclusion of stepsiblings in bereavement leave provisions is normative, as seen in numerous collective agreements, including direct comparators such as the collective agreements of the Union of Canadian Correctional Officers (2021-2022), the Ontario Provincial Police Association (Uniform and Civilian, 2019-2022), the National Police Federation (2021-2023), the BC General Employees' Union (2022-2025), the Manitoba Government and General Employees' Union (2019-2023), and the Nova Scotia Government & General Employees Union (2021-2024).

167. Within bereavement leave provisions, the expansion of "in-law" and "step" relationships to also include those of a spouse has been incorporated into the collective agreements this Employer has with many of its bargaining units, including our comparator, the Ontario Provincial Police Association, as well as its collective agreement

with AMAPCEO, and the expansion of “grandparent” to also include that of a spouse is included in the collective agreements of the Ontario Provincial Police Association.

168. Finally, the entitlement to bereavement leave by either partner in the event of miscarriage, stillbirth, and pregnancy loss – without any corresponding reduction of pregnancy leave entitlements – is a reasonable and compassionate approach that recognizes these unique, historically overlooked losses, and supports the physical and mental health of any employee who experiences them. It is particularly important for the Union’s FXT members, who have more limited access to support and resources in the event of pregnancy loss.

169. The change to non-consecutive bereavement leave days reaffirms best practices and reflects the reality that, in many cases, employees may require time off from work to process the initial shock of losing a family member, while funeral arrangements may not be finalized until a later date. Reasonable flexibility in access to bereavement leave supports employee mental health and respects the innately individual process of grief and healing following a loss, as well as the variety of arrangements based on social, cultural, and religious circumstances. We note that the collective agreements of the Union of Canadian Correctional Officers, the National Police Federation, and the BC General Employees’ Union explicitly permit employees to divide their bereavement leave into two periods, the first related to the memorial and/or death and the second related to the date of the funeral or ceremony.

170. Finally, the Union has proposed a normative enhancement to the funeral leave entitlement for the purposes of travel to attend the funeral of a listed relative. The status

quo has routinely forced Correctional bargaining unit members to make extremely difficult choices between their work and attending an out-of-town family funeral and can disproportionately impact employees living in remote or rural areas. By setting a 400-kilometre threshold, the Union's proposal is more conservative than the language adopted by a comparator such as the Manitoba Government and General Employees' Union, whose members are entitled to a maximum of two days' leave without loss of salary for attendance at a funeral in excess of 225 kilometers from the employee's residence.

171. Further, the proposed reduction to a 400-kilometre threshold is easily warranted for OPSEU's Correctional bargaining unit members, given the relatively remote location of many Correctional bargaining unit employees' workplaces (including the Fort Frances Jail, the Kenora Jail, the Thunder Bay Correctional Centre and Thunder Bay Jail, the Monteith Correctional Complex, and the Northwest corridor for community services offices, simply by way of example). This change would assist in meeting both the needs of employees taking positions in remote communities away from their extended families, and the Employer's recruitment needs for these remote postings.

172. The Union's proposed amendments to the bereavement leave provision are reasonable and necessary and should be awarded.

3. – EXPERIENCE CREDIT FOR NURSES

Union Proposal

173. The Union is proposing a new appendix to the collective agreement to mirror language in the Ontario Nurses Association central hospital collective agreement regarding the crediting of nursing experience in the placement step on the wage grid. This proposal includes a one-time adjustment for current employees to be placed on the wage grid at the level corresponding to their years of experience.

This letter shall apply to full-time and fixed-term nursing positions. Claims for related clinical experience, if any, shall be made in writing by the nurse within 90-days of the date of hire to their manager. Credit for related experience will be retroactive to the nurse's date of hire. The nurse shall co-operate with the Employer by providing verification of previous experience. Having established the related clinical experience, the Employer will credit a new nurse with 1904 or 1725.50 hours as applicable for each year of experience, up to the maximum of the salary grid. The nurse shall be placed at the corresponding step on the salary grid commensurate with their years of experience. Merit dates/hours shall be adjusted to reflect a partial year's credit.

For clarity, this credit for clinical experience shall only be used for placement on the wage grid, and will have no impact on FXT Seniority (Appendix COR19) or Continuous Service Date (Article 18).

Within 180 days from ratification/interest arbitration award, current employees in nursing positions will have a one (1) time opportunity to submit in writing a claim for related clinical experience to their manager. The nurse shall co-operate with the Employer by providing verification of previous experience. These claims shall be reviewed by the Employer and employees shall be placed at the corresponding step on the salary grid commensurate with their years of experience. Merit dates/hours shall be adjusted to reflect a partial year's credit. Any retroactive amounts owed shall be limited to the date of ratification/interest arbitration award.

Union Submissions

174. The Union's proposal mirrors existing language in the ONA-Central Hospital Collective Agreement, specifically Article 19.05 of the ONA 2021-2023 Central Hospital Collective Agreement.

175. Currently, the failure to recognize past experience – and therefore, requiring nurses to be placed at the bottom of the pay grid – causes enormous problems in both recruitment and retention – as this Employer has repeatedly acknowledged.

176. First, in respect of recruitment, the Employer has acknowledged ongoing recruitment and retention issues in nursing positions. Although the Employer has indicated they provide ongoing advice to hiring managers and human resource advisors – there is no formal policy document regarding wage grid placement and years of experience that has been provided to the Union. As such, any adjustment to a new nursing hire's placement on the wage grid is left to the absolute discretion of the hiring manager, at the time of hire. This, of course, leads to enormous problems, including members being paid in a manner inconsistent with the wage grid, the collective agreement, and at an arbitrary level as compared to their colleagues performing the same job. This undermines the Union as the exclusive bargaining agent, and creates gross unfairness across the classification.

177. The Union's proposal addresses all those existing inequities, and will also assist the specific and sustained challenges that this Employer has with respect to the recruitment and retention of nurses in the Correctional work environment.

178. As there is no formal policy document, individual nurses are placed on the grid without regard to their experience – or sometimes without regard to all of their experience. The Employer's arbitrary practices lead to inequities, both among new hires and current employees, which contributes to workplace conflict and morale issues. This issue demands a consistent approach for all employees – current and future.

179. The issue of consistent placement on the wage grid based on years of experience for nurses has been raised at the SolGen MERC level since 2016. This remains an ongoing issue – which is why the Union seeks a collective agreement amendment to address it fully and finally. These issues and concerns have been repeatedly raised at MERC – without resolution – including on September 14, 2016, April 4, 2017, September 27, 2017, September 23, 2020, September 22, 2021, November 8, 2021, March 4, 2021, June 28, 2022, September 21, 2022, and October 24, 2022. In addition, in other joint Union-Employer meetings, these issues have been raised unsuccessfully by the Union, including on February 8, 2019, May 27, 2019, January 30, 2021, and April 7, 2021.

180. The Employer consistently rebuffs any initiative proposed by the Union, defends its practice as within its rights, and takes the position that there is no breach of the Collective Agreement. That position carries through in grievances, in response to which the Employer relies on its managements rights to refuse to remedy pay inequities. The Union advises its members not to advance such grievances as there is no reasonable chance of success, as a result of cases like these:

GSB 2002-2040 (Mallard)¹⁸⁰ - Nurse at MHCC grieves that new nurses being placed on higher steps on the wage grid than the employee. Employer's position is that there is no CA language regarding credit for past experience to new employees at time of hire. Grievance dismissed in August 2005;

GSB 2008-2878 (Lee et al)¹⁸¹ – Eight nurses at VCFW have their grievances regarding being incorrectly placed on the wage grid dismissed– decision in February 2009;

GSB 2009-1488 (Malkki et al)¹⁸² – Three nurses at ATRC have their grievances dismissed regarding being incorrectly placed on the wage grid based on education and experience. Decision in May 2010;

GSB 2011-0766 (Gregory)¹⁸³ – Grievance alleged that nursing employee was incorrectly placed on the grid upon re-hire by the Ministry. Grievance dismissed December 2012; and

GSB 2021-1454 (Gotsanyuk)¹⁸⁴ – General Duty Nurse (Nurse 2) wins a competition to Mental Health Nurse (Mental Health Nurse) position – this is a promotion. Grievor attempts to seek improved salary-grid placement, based on years of nursing experience. Grievance dismissed.

181. Adding this language would assist with recruitment and retention of nursing positions, while recognizing the clinical experience they bring to their role in Corrections. The extraordinary use of agency nurses, as described above, would be unnecessary, if the Employer remunerated its own employees fairly and equitably.

¹⁸⁰ *Ontario Public Service Employees Union (Mallard) and Ontario (Ministry of Community Safety and Correctional Services)*, 2005 CanLII 55156, GSB 2002-2040, (Stephens), OPSEU Book of Authorities, **Tab 22**.

¹⁸¹ *Ontario Public Service Employees Union (Lee et al) and Ontario (Ministry of Community Safety and Correctional Services)*, GSB 2008-2878 (Leighton), OPSEU Book of Authorities, **Tab 23**.

¹⁸² *Ontario Public Service Employees Union (Malkki et al) and Ontario (Ministry of Community Safety and Correctional Services)*, [GSB 2009-1488](#) (Leighton), OPSEU Book of Authorities, **Tab 24**.

¹⁸³ *Ontario Public Service Employees Union (Gregory) and Ontario (Ministry of Community Safety and Correctional Services)*, 2012 CanLII 83471, [GSB 2011-0766](#) (Stephens), OPSEU Book of Authorities, **Tab 25**.

¹⁸⁴ *Ontario Public Service Employees Union (Gotsanyuk) and Ontario (Ministry of the Solicitor General)*, 2022 CanLII 31380, GSB [2021-1454](#) (Misra), OPSEU Book of Authorities, **Tab 26**.

4. – QUALIFIED MEDICAL PRACTITIONER

Union Proposal

182. The Union is proposing a new appendix to the collective agreement defining the types of medical practitioners who can provide valid medical certificates as follows:

This letter confirms that a legally qualified medical practitioner means a physician, dentist or nurse practitioner, practicing within their respective scope of practice.

Notwithstanding the above, the Employer may accept a certificate of a psychologist (which shall include a member of the College of Psychologists of Ontario, an individual who has a similar status in another province or territory of Canada) or an individual holding a Master of Social Work (who is a member of the Ontario College of Social Workers and Social Service Workers) or a psychotherapist (who is a member of the College of Registered Psychotherapists).

This definition may be amended at any time by the parties with mutual agreement.

Union Submissions

183. The reality is that most individuals who require assistance with mental health related needs or other occupational stress injuries are receiving their primary treatment from psychologists or psychotherapists, not psychiatrists or other physicians. This change, to allow medical certificates from a larger group of regulated health care professionals, would reduce barriers to employees providing required documentation to the Employer, at no risk or cost to the Employer, and without adding unnecessary and duplicative strain on the health care system.

5. – FXT BENEFITS AND ROE

Union Proposal

184. The Union is proposing the following:

31A.7.2 Effective as soon as practical upon ratification or issuance of an interest arbitration award, all active fixed-term employees employed after date of ratification or issuance of an interest arbitration award, shall, within thirty-one (31) days, have an option to elect to pay 100% of the premium toward insured benefit plans set out in Articles 39 (Supplementary Health and Hospital) and 40 (Dental Plan) for the duration of their contract and any subsequent extensions or reappointment not broken by a 13 week or greater period of non-employment. Employees will be insured under the insured benefits plan effective the first of the month immediately following their election and following at least two (2) months of continuous service.

31A.8.4 A record of employment, if required in order to claim Employment Insurance sickness and disability benefits, will be granted to an employee and this document shall not be considered as termination of employment.

Union Submissions

185. Fixed term employees – those members employed on a short-term and temporary contract – generally receive an additional 6% of their hourly wage in lieu of benefit coverage under the collective agreement. However, pursuant to Article 31A.7.2, fixed term employees may, upon hire, elect to obtain coverage under the insured benefit plans set out in Articles 39 (Supplementary Health and Hospital Insurance) and 40 (Dental Plan); where such an election is made, the fixed term employee is responsible for 100% of the applicable premiums.¹⁸⁵

¹⁸⁵ 2018-2021 Collective Agreement, Article 31A.7.2, p. 71, OPSEU Book of Documents, **Tab 1**.

186. In some work areas, it takes years – sometimes even as much as five to ten years – for fixed term employees to roll over to regular, full-time employment.¹⁸⁶ It is common for members' personal circumstances to change significantly during the period in which they are employed on a fixed term basis. New hires, engaged on a fixed term contract, are engaged in significantly more precarious employment and, as such, may be reluctant to take on the additional expense of group benefit coverage. Later in their tenure, those benefits may become increasingly valuable, particularly where there is a change in family status.

187. Consequently, the Union has proposed that Article 31A.7.2 be amended to grant fixed term employees an additional opportunity to elect to pay for benefit coverage, following the conclusion of a collective agreement, either upon ratification or by interest arbitration award. The Union had initially proposed on-going opportunities for members to opt-in to the benefit coverage, but have amended their proposal to address the Employer's resistance to incurring these minor administrative costs on a regular or even annualized basis.

188. In addition, the Union has proposed a modest amendment to confirm the Employer's existing obligation to provide a Record of Employment (ROE). Where a fixed term employee has exhausted their earned attendance credits, the employee may need to access sickness benefits through Employment Insurance. The Union has experienced challenges in accessing an ROE, including denials from the Employer, and while those matters are eventually sorted out, the Union's proposed language will facilitate the

¹⁸⁶ See sample of roll-over agreements and associated straight time hours reviews, OPSEU Book of Documents, **Tabs 79-88**.

efficient resolution of requests for an ROE in such circumstances. Equivalent language already exists for regular members.¹⁸⁷

¹⁸⁷ 2018-2021 Collective Agreement, Article 42.4, p. 100, OPSEU Book of Documents, **Tab 1**.

6. – FXT ROLLOVER

Union Proposal

189. The Union is proposing that the parties agree to a new appendix to the collective agreement confirming the terms on which fixed term employees are eligible to “roll-over” to regular (classified) employee status:

This will confirm that Fixed-Term employees shall be eligible for rollover at 1725.50 straight-time hours or 1904 straight-time hours, as applicable, the equivalent of one year of service per Appendix COR19. All other requirements of agreements regarding recruitment methods shall continue to apply.

Union Submissions

190. The Union’s goal in advancing this proposal is to ensure consistency and transparency across the bargaining unit. The parties have negotiated a number of agreements that provide eligibility for the “roll-over” of fixed term staff in various work groups to regular (classified) employee status; in almost all cases, the one-year threshold is used.¹⁸⁸ Accordingly, in virtually all respects, the Union’s proposal reflects the status quo.

¹⁸⁸ See, for example: Memorandum of Agreement Between Ontario Public Service Employees Union and Ministry of Community Safety and Correctional Services, *Fixed-Term Correctional Officer Rollover Eligibility*, October 16, 2018, para. 1, OPSEU Book of Documents, **Tab 89**; Memorandum of Agreement Between the Ontario Public Service Employees Union and Ministry of the Solicitor General, *Recruitment of Non-Correctional Officers Within Institutional Services*, April 12, 2022, p. 3, OPSEU Book of Documents, **Tab 90**; Memorandum of Agreement Between Ontario Public Service Employees Union and the Ministry of Solicitor General, *Community Services Office Administration Group Recruitment Process*, February 12, 2020, p. 3, OPSEU Book of Documents, **Tab 91**; Memorandum of Agreement Between Ontario Public Service Employees Union and Ministry of Children, Community and Social Services Youth Justice, *Youth Justice Facility Recruitment Process*, June 2019, p. 2, OPSEU Book of Documents, **Tab 92**; Memorandum of Agreement between Ontario Public Service Employees Union and Ministry of Children and Youth Service, *Probation Officers Recruitment Process*, November 29, 2017, p. 2, OPSEU Book of Documents, **Tab 93**.

191. There is, however, one group of FXT employees for whom this would represent an improvement. Currently, Probation and Parole Officers employed under the auspices of the Ministry of the Solicitor General to work with adults are not eligible for full-time status until they have attained 18 months eligible service. This is inconsistent with every other FXT employee group in the bargaining unit, including Probation Officers employed by the Ministry of Children, Community and Social Services, all of whom are eligible for rollover at 12 months. Further, Appendix COR24 of the collective agreement explicitly states the parties' agreement that the positions in both ministries are identical for the purpose of filling a vacancy in either ministry:

For further clarity, the Parties agree that Probation Officer positions in MCCSS are identical to Probation and Parole Officer positions in Ministry of the Solicitor General and any such positions shall be deemed to be within the same Ministry.

192. To be clear, Probation Officers are a single classification, and this differential treatment of adult Probation and Parole Officers as compared to youth Probation Officers (along with all other bargaining unit FXT employees) is arbitrary and without any rationale or purpose.

193. Illustrative of the unfairness of the extended service requirement for FXT rollovers is the parties' own collective agreement: it draws no such distinction between Probation and Parole Officers and all other full time employees in respect of probationary periods. Full-time members of the Correctional bargaining unit serve a nine month probationary period, regardless of their classification.¹⁸⁹

¹⁸⁹ See Collective Agreement, p. 34, Article 18.1.1, OPSEU Book of Documents, **Tab 1**: "An employee's length of continuous service will acculate upon completion of a probationary period of not more than nine (9) months ..."

194. The Union proposes that the collective agreement reflect the one-year threshold for FXT roll-over and that it be applied uniformly and consistently across the bargaining unit. The arbitrary and unfair treatment of some (but not all) FXT Probation and Parole Officers must end and the Union's proposal should be awarded.

7. – MILITARY SERVICE LEAVE

Union Proposal

195. The Union is proposing a significant revision to Article 28.1, which provides for a leave of absence for the purposes of military service:

- 28.1 A Deputy Minister ~~may~~ **shall** grant ~~a~~ leave of absence for not more than one (1) week with pay ~~and not more than one (1) week without pay in a fiscal year to an employee in their ministry for the purpose of Canadian Forces Reserve training, and further unpaid leave as required, in accordance with section 50.2 of the *Employment Standards Act, SO 2000, c 41, 2022, c 7, Sched 2. An employee shall accrue service and credits and be covered by the benefit plans during such leave.*~~

Union Submissions

196. The Union's primary goal in advancing this proposal is to provide both parties with advance certainty regarding the leave and seniority entitlements of members who are also Canadian Armed Forces Reservists. Historically, the parties have had to address a significant number of grievances regarding continuity of service during an employee's military service leave. The Union has proposed normative language confirming that such employees shall not have their employment service interrupted during the leave.

197. In addition, the Union has proposed that the parties agree to broaden the military leave entitlement, to apply in respect of "any obligations pertaining to the Canadian Forces Reserve." The existing language applies only in respect of Canadian Forces Reserve training, notwithstanding the *Employment Standards Act* entitlement to leave in the event of any deployment to a Canadian Forces operation.¹⁹⁰ This change would make it easier for reservists to volunteer and would ensure that a greater number of reservists

¹⁹⁰ *Employment Standards Act, 2000*, [SO 2000, c 41](#), s. 50.1, OPSEU Book of Authorities, **Tab 27**.

would have a job to return to upon the conclusion of their assignment. It is fair, reasonable and necessary.

8. – UNION LEAVE

Union Proposal

198. The Union proposes to amend Appendix COR20, which deals with Provincial Health and Safety. The changes, set out below, constitute a reflection of the parties' current practices, as well as housekeeping changes.

- 2.1.2 (b) **MCSCS SOLGEN** Committee Union co-chair will have approved full-time off and the Union Community Representative will have approved **half full-time off**. ~~**Additional time off requests for the MCSCS Union Community Representative will be considered by the Employer on a case-by-case basis.**~~ The **MCYS MCCSS** Committee Union co-chair will have approved full-time off. The **MCYS MCCSS** Union Community Representative will have an approved minimum of thirty-six and a quarter (36 ¼) hours bi-weekly time off, and additional time off will be considered by the Employer on a case-by-case basis. This time off will be a leave of absence without loss of pay or credits and considered a duty assignment and the time off will be paid by the Employer. Expenses incurred by the Committees' Union co-chairs will be paid for by the Union.

Union Submissions

199. The Union has proposed changes to the language applicable to the SolGen Union Community Representative on the Provincial Joint Health and Safety Committee under COR20; the proposal is consistent with the parties' current practices – in place for approximately the past ten years – and joint recognition that this role has evolved into a full-time role.

200. To date, the parties have shared the costs, with the Employer paying 75% of the total cost and the Union paying 25%. The Union proposes that the Employer assume the full cost of this union release going forward.

201. This change to the collective agreement reflects the reality of the Community Representative's demanding role on the Committee, which includes the oversight of hundreds of workplaces (including 121 Probation and Parole offices and over 100 reporting centres); reviewing Ministry and/or Union health and safety training initiatives; receiving and reviewing all newly-issued health and safety directives; acting as a resource to local workplace committees and representatives; receiving and reviewing accident/occupational illness statistics; and reviewing occupational health and safety and WSIB investigation reports. Moreover, the Employer recognizes the importance of this role and regularly proposes that disputed or new workplace matters should be referred to the Community Representative for review and oversight.

202. The Community Representative is also a member of the Community Services Health and Safety Working Group, the Occupational Stress and Injury Subcommittee, and the Training and Development Subcommittee, and is involved in a number of ongoing Health and Safety Initiatives, necessitating a significant amount of preparatory work in advance of meeting with the Employer.

203. The position is far too significant and important to both parties to be limited to half-time, and the collective agreement should reflect that long-standing reality.

9. – COMPENSATING TIME OFF

Union Proposal

204. The collective agreement provides that certain employees are eligible to receive compensating leave or pay at the overtime rate worked. The Union is seeking normative enhancements to this entitlement, through the following amendments to Appendix COR44:

The Employer agrees to allow employees within the Correctional Bargaining Unit (except employees entitled to receive the Probation Officers Allowance) who are eligible to receive compensating leave or pay at the overtime rate worked as set out in Article COR 8 and as set out below.

Effective date of ratification or arbitration decision April 1, 2019, where an employee receives compensating leave per Article COR 8, no more than a total of **100 60** hours at any given time may be accumulated. Any overtime worked that would result in more than **100 60** hours of compensating leave will be paid out in accordance with the provisions of Article COR8.6. As well, any accumulated compensating leave which is not used by the end of the calendar year in which it was accumulated (i.e. December 31) shall be paid out at the end of the fiscal year (i.e. March 31) and at the rate it was earned.

Where local agreements do not currently exist, at each local facility/institution the Employer and the Union will jointly determine the minimum number of hours that employees may access compensating leave on any given day based on operational needs. Failing agreement, the local parties may refer the issue to the appropriate MERC for resolution.

Compensating leave will not be permitted to be taken between December 20th and December 31st inclusive in each year, **unless operationally feasible**. For clarity compensating leave **shall may** be taken at a time mutually agreed upon. **Failing agreement, such time off may be taken in conjunction with the employee's vacation leave or regular day(s) off, if requested two (2) months in advance, up to the minimum number of hours determined at each facility/institution.**

Notwithstanding the above, any accumulated compensating leave shall not be considered to be accumulated credits for the purposes of Article 44.6 of the Collective Agreement.¹⁹¹

¹⁹¹ U-27, Union Consolidated Pass, April 27, 2022, Book of Documents, Tab 2, p. 6, OPSEU Book of Documents, **Tab 94**.

Union Submissions

205. The Union propose two significant changes: first, to increase the total number of hours which may be accumulated in a year from 60 to 100. This is based on an earlier agreement between the parties, outside of the collective agreement, which granted an additional 40 hours of accumulation, on top of the 60 provided for in the collective agreement.¹⁹² This agreement expired effective December 31, 2021. However, the Employer has continued to honour the expired letter by providing the additional 40 hours on an ongoing basis since then.

206. During at least the first year of the pandemic, the Crown permitted employees to accumulate compensating leave up to 250 hours.¹⁹³ While the circumstances during the pandemic were broadly exceptional, the under-resourcing of Ontario's correctional system continues to be extraordinary. The Union's proposal of 100 hours is reasonable and well within the parties' existing practices.

207. Nevertheless, the Crown is seeking concessions with respect to compensating time off. It has proposed that the parties amend Appendix COR44 to confirm that employees may only accumulate, bank, and utilize a total of 60 hours of compensating time off during a calendar year.¹⁹⁴ The Union's proposal is reasonable, consistent with

¹⁹² Agreed Issues #17, 2017-2018 Collective Bargaining, April 19, 2018, Book of Documents, **Tab 20**, p. 45, OSEU Book of Documents, **Tab 95**.

¹⁹³ Memorandum of Agreement Between Ontario Public Service Employees Union and The Ministry of the Solicitor General, *Enhanced Compensating Time Off*, March 31, 2020, para. 2, OPSEU Book of Documents, **Tab 96**.

¹⁹⁴ E-24, Employer Proposal, April 27, 2022, Book of Documents, Tab 3, p. 34, OPSEU Book of Documents, **Tab 97**.

the parties' practices and recognizes the importance of managing the by-products of our members' stressful and excessive workloads.

208. In addition, the Union has proposed various language changes, to clarify the processes around taking such leave. The Union's proposals are:

- a) that the parties will jointly determine the minimum number of hours that employees may access per day, based on operational needs, and that such determination may be referred to MERC for resolution;
- b) that compensating leave shall not be taken during the holiday period unless it is operationally feasible; and
- c) that, where the timing of such leave is not agreed upon, it may be taken in conjunction with the employee's vacation leave or regular day(s) off, if requested two (2) months in advance, up to the minimum number of hours determined at each facility/institution.¹⁹⁵

209. Overall, these proposals ensure that our members, who are frequently requested or required to work overtime, can achieve a balance in their time away from work as well. Moreover, the codification of the parties' practice, proposed here, benefits the Employer as well, since – as in every workplace – there are members who are incented to work overtime in exchange for time off work. In understaffed workplaces, our members'

¹⁹⁵ U-27, Union Consolidated Pass, April 27, 2022, Book of Documents, Tab 2, p. 6, OPSEU Book of Documents, **Tab 94**.

overtime avoids workplace issues such as lockdowns, risk to frontline staff and inmates, and the limitation of out-of-cell requirements.

210. Finally, this proposal is consistent with the Union's established comparators, including both OPPA Uniform and OPPA Civilian, and the Union's Federal Correctional colleagues, all of whom can bank an unlimited number of overtime hours.¹⁹⁶ OPPA uniform and civilian members can carry over 40 hours into the following year, whereas Federal correctional workers – like the Union's members – have any time left in their banks paid out at the end of the calendar year.

211. The Union's proposal is normative and reasonable and should be awarded.

¹⁹⁶ See, for example: OPPA Uniform Collective Agreement 2015-2018, p. 18, Article 6.04 (a)(i); OPPA Civilian Collective Agreement 2015-2018, p. 23, Article 11.03 (a)(i), Correctional Services (CX) Collective Agreement, Expiry 31 May 2022, p. 26, Article 21.14.

10. – PROBATION OFFICERS' ALLOWANCE

Union Proposal

212. The Union is proposing to amend Appendix COR3, which governs the Probation Officers' Allowance. The changes, set out below, constitute modest improvements as well as housekeeping updates:

This will confirm that in recognition of the additional and flexible hours worked by Probation Officers within the Ministry of ~~Solicitor General~~ Community Safety and Correctional Services, and the Ministry of Children, Community and Social Services – Youth Justice Division and ~~Youth Services~~, the parties hereby agree to the following terms for Probation Officers Allowance, effective the date of ratification of this agreement:

Probation Officers in the Correctional Bargaining Unit will be entitled to a minimum of ~~seven (7)~~ ten (10) days off with pay and no loss of credits in a calendar year.

This allowance will be prorated for periods of active employment of less than one (1) year and may be advanced to the employee on January 1st of each year.

An employee may accumulate their allowance to a maximum of ~~twenty-one (21)~~ thirty (30) days, but an employee's allowance shall be reduced to a maximum of ~~fourteen (14)~~ twenty (20) days not later than the thirty-first (31st) day of December in each year.

~~An employee is not entitled to be paid for any accumulated allowance to which the employee remains entitled when the employee ceases to be an employee.~~

An employee shall have the option to have any of their earned Probation Officer Allowance Leave paid out.

Additional time off with pay and with no loss of credits may be granted at the discretion of the manager of the employee concerned.

All time off under this allowance shall be granted in a manner so as not to interfere with operational requirements.

Union Submissions

213. Probation Officers in the Correctional bargaining unit have extremely demanding workloads, and numerous surveys have indicated a strong need for greater work/life

balance to ensure that the parties are meeting service delivery expectations and to mitigate risks of burnout, fatigue, and other occupational stress injuries.¹⁹⁷

214. The Employer and the Union jointly completed an Occupational Stress and Injury Survey in 2018¹⁹⁸ and the responses were revealing. 83.7% of the respondents were Probation and Parole Officers in the bargaining unit – and they reported working an average of 6.8 hours of overtime worked per month. Over 44% of respondents indicated that they worked extra hours with no additional pay “often” or “most days.”¹⁹⁹ Most respondents had an assigned caseload of between 50 and 79 offenders, and overwhelmingly indicated that they “disagreed” or “strongly disagreed” that the organization had adequate staffing levels. The reported health outcomes of this situation were troubling but unsurprising: over 70% of respondents indicated that they had considered leaving their job because it is negatively affecting their physical and/or mental health, and over 30% reported taking a leave of greater than one week from their job in the last two years because of stress or health-related reasons.

215. Between 2006 and 2016, approximately half of all adults on probation in Canada were located in Ontario. As of 2011, Ontario Probation and Parole Officers had the highest average case load per officer of any province in the country – and in the intervening years there is no indication that this has changed. In fact, the seven-day entitlement to Probation

¹⁹⁷ The mental health impacts of probation work has long been acknowledged by this Employer, including through the inclusion of probation officers in *Bill 163: Supporting Ontario's First Responders Act (Posttraumatic Stress Disorder)*, 2016, SO 2016, c 4 [“Bill 163”], OPSEU Book of Authorities, **Tab 28**, which creates a presumption that PTSD in first responders arises from their employment.

¹⁹⁸ Occupational Health Clinic For Ontario Workers Inc., “Psychosocial Factors at Work: based on the COPSOQ II (Short) and COPSOQ III (Core) with additions from the Mental Injury Tool (MIT) Group 2017 edition”, September 13, 2018, [“Psychosocial Factors at Work, September 13, 2018”] OPSEU Book of Documents, **Tab 98**.

¹⁹⁹ Psychosocial Factors and Work, September 13, 2018, p. 6, OPSEU Book of Documents, **Tab 98**.

Officers' Allowance was established in March of 2009, when demands on Probation Officers were significantly less than they are today. Factors which have increased the overtime and workload demands on Probation Officers in recent years include geographical changes to caseload distribution in the Youth Justice Division, requiring significantly greater travel expectations; new requirements to complete psychometric assessments; added requirements of Pre-Sentence Reports; increased program requirements, requiring the facilitation of programs in addition to caseload duties; and an offender population with increasingly complex needs, requiring the delivery of additional services including Cognitive Behavioural Therapy-based services via Core Correctional Practices.

216. Appendix COR3 already entitles Probation Officers to an "allowance", in the form of paid days off, in recognition of the additional and flexible hours that they work. The Union is seeking to increase the leave entitlement from seven to ten days per calendar year, with a corresponding increase to the accumulation entitlement, and with a new option for such accumulated time to be paid out. An increase from seven to ten days, with a corresponding increase to the accumulation entitlement, would recognize and fairly compensate for the significantly increased workload demands of Probation Officers; enhance work-life balance; promote employee physical and mental health through additional time away from work; and help to reduce employee burnout, time off, and turnover. An increase of three days to the Probation Officers' Allowance would also eliminate the need for employees to apply for additional Probation Officers' Allowance Leave, and eliminate the accompanying grievances which could flow from any denial of the same (as occurred in 2015, and resulted in a settlement which provided employees

with their requested days), conserving resources for both parties and avoiding an adversarial process.

217. Under the current collective agreement, employees are entitled to receive compensating leave or pay for overtime worked, unless they are eligible to receive the Probation Officers' Allowance. Appendix COR3 states that the Probation Officers' Allowance is "in recognition of the additional and flexible hours worked by Probation Officers", making it equivalent to compensating leave for overtime. However, unlike accumulated compensating leave, for which most worker classifications are entitled to elect to be paid out, Probation Officers unjustifiably lack an equivalent entitlement to be paid out for their Probation Officers' Allowance.

218. The addition of the option for employees to have any or all of their Probation Officers' Allowance paid out promotes equity across job classifications, removing an unfair and arbitrary distinction between the overtime worked by Probation Officers and other employees. Probation Officers should be no less entitled than other employees to receive the dollar value of their time worked, especially in the context of significant and increased workload demands, staffing challenges, and physical and mental health stressors.

219. Finally, where, under the previous collective agreements, Appendix COR33 provided a time-limited entitlement to Administrative Compensating Leave for all Correctional bargaining unit members, which could be either taken in paid leave or be paid out, Probation Officers utilized both options. There is no indication that, with the addition of an entitlement to be paid out for accumulated Probation Officers' Allowance,

employees would overwhelmingly choose that option and cause the employer to incur significant additional costs. Indeed, given that employees on Probation Officers' Allowance leave are not backfilled, where an employee chooses not to have their accumulated time paid out, there is no added cost to the Employer. This proposal should be awarded.

11.– CORRECTIONAL SUPERVISOR WAGE GRID

Union Proposal

220. The Union seeks to eliminate steps 1-3 of the wage grid for the Correctional Supervisor classification.

Union Submissions

221. After a lengthy dispute regarding the rights of previously excluded Correctional Supervisors' (or Sergeants, as they are commonly known) to the benefits of collective bargaining, in 2022, the Grievance Settlement Board ("GSB") issued a decision resolving the issue.²⁰⁰ The GSB clarified that bargaining rights in respect of Correctional Supervisors are held by OPSEU/SEFPO. The GSB then referred the dispute to OPSEU and the Crown to consult, and advise the GSB on next steps.

222. There was no consultation or negotiation with the Union over the compensation for the Correctional Supervisor classification. In fact, at a joint meeting, on October 7, 2022, the Employer announced the creation of the new classification and introduced a nine-step wage grid that had been fully and finally approved by Cabinet and would not be subject to amendment.

223. A subsequent meeting between OPSEU/SEFPO and the Employer was held on October 31, 2022. The Union raised issue with the nine-step wage grid and the Employer remained firm that there would be no negotiations over the grid as it had already received

²⁰⁰ *Association of Management, Administrative and Professional Crown Employees of Ontario (Association) v Ontario (Solicitor General)*, [2022 CanLII 31316](#) (ON GSB) (McLean), OPSEU Book of Authorities, **Tab 29**.

Cabinet approval. Despite being engaged in collective bargaining for a year, no discussions occurred at the bargaining table at all.

224. The Employer unilaterally introduced and rolled out the Correctional Supervisor Grid in a series of memos released to the Union’s membership on November 2, 2022.²⁰¹ On page 6 of the “Q-A Document for Impacted Sergeant Group,” the Employer set out its wage grid:

How will the Correctional Supervisor be compensated?

The approved wage grid for the Correctional Supervisor is found below. Future wage increases will be determined in successive rounds of collective bargaining. Your current Sergeant salary will be converted to an hourly wage when moving into the Correctional Supervisory position. Your pay will not be negatively impacted by this change.

Class Title	Hours of Work Schedule	Standard Hours	Hourly Wage and Steps								
			1	2	3	4	5	6	7	8	9
Corr. Supervisor	4-7	40	32.01	33.51	35.09	36.74	38.47	40.27	42.17	44.15	46.30

225. On December 14, 2022, the Union wrote to the Employer reviewing its concerns with the Employer’s unilateral reorganization. Among those concerns were the introduction of the nine-step grid. The Union wrote:

The Ministry’s 9-step wage grid was not negotiated with the Union. A 9-step grid is not the norm in the bargaining unit and has never been negotiated with the Union. The grid that was announced also overlaps the CO1, CO2 and CO3 wage grids, and is not appropriate for the position description developed by the Ministry. We expect that this grid will interfere

²⁰¹ Memo to Sergeants, from D. Pitfield, “Organization Review Update for Impacted Staff – Rank Structure within Adult Correctional Institutions,” November 2, 2022, OPSEU Book of Documents, **Tab 99**; Memorandum to All Staff, from D. Pitfield, “Organization Review Update for Impacted Staff – Rank Structure within Adult Correctional Institutions,” dated November 2, 2022, OPSEU Book of Documents, **Tab 100**; and Ministry of the Solicitor General, “IS Rank Structure: Q-A Document for Impacted Sergeant Group”, November 2, 2022, OPSEU Book of Documents, **Tab 101**.

with the Ministry's stated intentions to provide greater developmental opportunities and create defined career pathways into leadership.²⁰²

226. The Union and Employer met again, on January 24, 2023, and the Employer reiterated its position that it would not change the grid.

227. The unilaterally developed and introduced Correctional Supervisor grid is out of step with virtually all wage grids for Correctional bargaining unit positions, and substantially overlaps with existing Correctional Officer positions. The Union is seeking to eliminate the three first steps of the Correctional Supervisor wage grid.

CO 1	28.98	29.87	32.35	34.08							
CO 2		31.14	32.09	34.60	36.53	38.28	39.37				
CO 3				35.42	36.53	37.33	38.25	40.30			
CS			32.01	33.51	35.09	36.74	38.47	40.27	42.17	44.15	46.30

228. This proposal is reasonable and measured. The Union's proposal brings the nine-step grid into line with the vast majority of existing grids in the collective agreement. In fact, of the 147 classifications in the bargaining unit, there are only 11 nine-step grids.

229. Moreover, the Union's proposal reduces the substantial overlap with the CO1, CO2 and CO3 classifications. In other supervisory grids, there is – at most – only minor overlap. By way of example, page the next page of this brief shows the wage grids for:

²⁰² Letter from JP Hornick and Chad Oldfield, OPSEU/SEFPO to D. Pitfield and C. Pyl, Re Reorganization of Staffing in Adult Correctional Institutions, December 14, 2022, p. 2, OPSEU Book of Documents, **Tab 102**.

Facilities Mechanics/Facilities Technicians, and Facilities Mechanic/Facilities Technician Forepersons; and Social Workers and Social Worker Supervisors. While OPSEU/SEFPO intends to continue to reduce the overlap of the Correctional Supervisor classification, that can be accomplished over two rounds of bargaining.

230. Finally, wage grid compression is a common and normative bargaining proposal, regularly consensually negotiated between bargaining parties and awarded at interest arbitration.²⁰³

²⁰³ See for example, *The Participating Hospitals (Represented by the Ontario Hospital Association) and ONA*, 2023 CanLII 65431 (Kaplan), pp. 33-34, OPSEU Book of Authorities, **Tab 30**; and Unifor, “Summary of the 2023 Tentative Agreement Between Unifor and Ford of Canada”, *Unifor Autotalks 2023*, September 2023, OPSEU Book of Documents, **Tab 103**.

Wage grids for Facilities Mechanics/Facilities Technicians, and Facilities Mechanic/Facilities Technician Forepersons

FM/FT 1	22.87	23.57	24.02	24.72								
FM/FT 2				24.56	25.33	25.84	26.43	27.23				
FM/FT 3							26.83	27.66	28.24	29.11		
FM/FT FP									28.77	29.66	30.29	31.19

Wage grids for Social Workers, and Social Worker Supervisors

SW 2	1,231.98	1,270.06	1,307.33	1,347.14	1,386.83	1,429.17	1,473.92	1,518.69	1,564.23				
SW S 1						1,434.87	1,479.24	1,529.12	1,596.63	1,664.17	1,711.13	1,762.47	
SW S 2							1,500.39	1,546.76	1,614.28	1,684.72	1,759.60	1,803.66	1,857.76

12. – PENSION IMPROVEMENT: FACTOR 85

Union Proposal

231. The Union seeks to have an unreduced pension Factor 85 introduced for all Correctional bargaining unit employees. The Union proposes that increased contribution costs be shared equally in respect of both past service and future service. This pension improvement is intended to replace the existing “Factor 90” option, and is in addition to the existing “60 and 20”, to which the Union seeks no amendment.

232. The Union proposes that the pension amendments be effective for the third year of the parties’ collective agreement, January 1, 2024.

Union Submissions

233. The Union is seeking improvements to the pension plan to bring it into line with **all** of its established comparators. Currently, Ontario correctional employees have a “Factor 90” retirement plan, which permits them to retire on an unreduced pension when their age plus their years (and part years) of service total at least 90 years. The Union is seeking an amendment to its members’ pension entitlements to allow members to retire on an unreduced pension upon achieving “Factor 85.” This improvement would allow members to retire 2.5 years earlier than the current Factor 90 and has long been a priority bargaining proposal for OPSEU members in the Correctional bargaining unit.

234. This leaves Ontario as the lone outlier with a retirement factor greater than “Factor 85” in Canadian Corrections. Factor 85 retirement eligibility is normative in

Corrections. Without this improvement, Ontario Corrections would remain an outlier on pension eligibility with Factor 90.

235. This Employer granted Factor 85 to the OPP Civilian Division. This was achieved in an arbitrated decision (April 26, 2019) with the assistance of Arbitrator Kaplan. The Union is aware that this decision resulted in the OPP Civilian Division receiving less than the OPP Uniformed Division in terms of a general wage increase over the 3-year life of the collective agreement.

236. Factor 85 is not a ‘Breakthrough’ improvement. The Parties have long considered and negotiated various pension improvements and early retirement factors, as evidenced by Factor 90 and 80/20, and previous surplus Factor 80, in the collective agreement.²⁰⁴ Absent these negotiated improvements, the normal retirement age for Corrections members would be 65 years of age.

237. This proposal is normative across the Canadian correctional landscape, and even as against this Employer, the Correctional bargaining unit’s relevant comparator freely negotiated the same pension improvement proposed here more than four years ago, in early 2019.

238. Set out in the chart below are the years of service and/or factor (combined age and years of service) at which correctional employees, along with uniform and civilian members of the OPP, across Canada are entitled to retire with an unreduced pension.

²⁰⁴ See Collective Agreement, Appendix 9 and 17, OPSEU Book of Documents, **Tab 1**.

Comparator Government Employee	Earliest Unreduced Pension Eligibility	Reference
CSC Correctional Services Canada	25 Years Service	https://www.canada.ca/en/treasury-board-secretariat/services/pension-plan/plan-information/operational-service-provisions.html
Yukon/NWT	25 Years Service	https://www.canada.ca/en/treasury-board-secretariat/services/pension-plan/plan-information/operational-service-provisions.html
Newfoundland	25 Years Service	https://www.gov.nl.ca/exec/tbs/pensions/plans/uspp/uspp-provisions/eligibility-for-pension-benefit/
Saskatchewan	Age 50	https://pepp.peba.ca/understand-your-pension/preparing-to-retire
Manitoba	Factor 75; or 32 Years of Service	https://cssb.mb.ca/wp-content/uploads/2021/10/Pension-Plan-Administration-Manual-1.pdf
Quebec	Factor 80; or 32 Years of Service	https://www.legisquebec.gouv.qc.ca/en/document/cs/r-9.2
OPP – Uniform	Factor 80	https://www.opb.ca/about-opb/pspp-plan-text/plan-text
OPP – Civilian	Factor 85	https://www.opb.ca/about-opb/pspp-plan-text/plan-text
British Columbia	Factor 85 Minimum Age 55	https://pspp.pensionsbc.ca/correctional-employees
Alberta	Factor 85	https://www.pspp.ca/page/when-can-i-retire
Nova Scotia	Factor 85	https://www.nspssp.ca/members/your-working-years/pension-benefit/retirement-eligibility
Nunavut	Factor 85	See Northern Employee Benefits Services (NEBS) Pension Plan Summary ²⁰⁵
PEI	Factor 87 Age 55/32 Years of Service	https://www.peipspp.ca/active-members/terminating-before-retirement
Ontario	Factor 90	https://www.optrust.com/home/default.asp

²⁰⁵ Northern Employee Benefits Service (NEBS), “Pension Plan Summary”, April 2023, OPSEU Book of Documents, **Tab 104**.

239. The fact that this proposed pension improvement is entirely normative – and that the members of this bargaining units are directly and materially undercompensated relative to every reasonable and available comparator – is a sufficient basis to award this improvement.

240. However, it is worth considering the reason why correctional employees across the country, and the Employer's employees working at its police force, including civilians, have this earlier access to their retirement benefits.

241. The physical and mental demands imposed on employees working in the Correctional environment are unique – and that has long been recognized by this Employer.

242. In 2016, Bill 163: *Supporting Ontario First Responders Act* amended the *Workplace Safety and Insurance Act, 1997* to require the presumptive approval of post-traumatic stress disorder for our members working as Corrections Officers, Youth Services Officers, and any “worker who is employed at a correctional institution or secure custody facility to provide direct health care services to an inmate confined to a correctional institution.”²⁰⁶ The following year, the Employer amended its legislation to include Bailiffs, Probation Officers and Probation and Parole Officers.

243. Since that time, repeated studies and reports have recognized the particular and devastating long-term impact that our members' work imposes upon them. A 2022

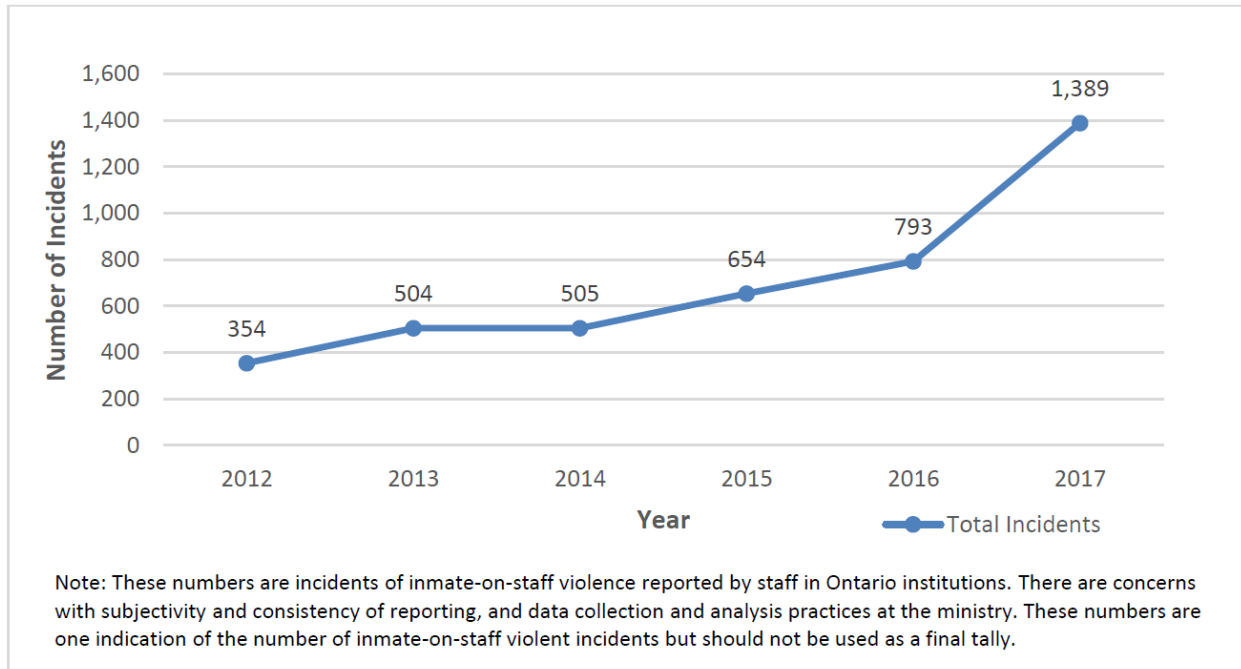
²⁰⁶ Bill 163, OPSEU Book of Authorities, **Tab 28**.

longitudinal study of correctional workers' wellbeing and the prevalence of mental health disorders concludes that "an important causal relationship may exist between correctional work and detrimental health outcomes."²⁰⁷

244. The Union's members face incidents of workplace violence at alarming and ever-increasing rates. In May of 2018, the Minister of Correctional Services commissioned an Independent Report from Howard Sapers to explore the rates of workplace violence in Correctional Facilities. The graph below is taken directly from the Institutional Violence in Ontario: Final Report²⁰⁸ and indicates troubling rates and trends in respect of workplace violence.

²⁰⁷ Bethany Easterbrook et al., "[Longitudinal study of Canadian correctional workers' wellbeing, organizations, roles and knowledge \(CCWORK\): Baseline demographics and prevalence of mental health disorders](#)", *Frontiers in Psychiatry*, Vol 13 (2022), pp. 1-2, OPSEU Book of Documents, **Tab 105**; See also, for example: CBC News, Nick Purdon, "[PTSD taking its toll on Canada's prison guards](#)" (July 24, 2015), OPSEU Book of Documents, **Tab 106**; Canadian Labour Institute, "Hard Time: Working behind bars can ruin your mental health", July 31, 2017, online: *Canadian Labour Institute* <<http://www.canadianlabourinstitute.org/index.php/story/hard-time>> , OPSEU Book of Documents, **Tab 107**; Amanda Silliker, "Correctional officers calling for presumptive PTSD coverage across Canada", February 1, 2018, online: *Canadian Occupational Safety* <<https://www.thesafetymag.com/ca/topics/psychological-safety/correctional-officers-calling-for-presumptive-ptsd-coverage-across-canada/186406>>, OPSEU Book of Documents, **Tab 108**; Elina Feyginberg, "Corrections – you can leave the job but it never leaves you" (22 May 2018), online: *Blue Line: Canada's Law Enforcement Magazine* <<https://www.blueline.ca/corrections-you-can-leave-the-job-but-it-never-leaves-you-5449/>>, OPSEU Book of Documents, **Tab 109**.

²⁰⁸ IROC Final Report, p. 16, OPSEU Book of Documents, **Tab 14**.



245. Although Sapers did not have access to workplace violence statistics from 2018 or 2020, the statistics from 2019 were available and they showed a staggering 1,946 incidents of workplace violence – a spike in violence that reflects the volatile and dangerous nature of our members’ work.

246. Factor 85 is one answer to a dangerous, stressful, and difficult working environment. It is a response that virtually every other equivalent worker in similar workplaces has access to and there is no reason why Ontario correctional employees should be treated differently than their comparators everywhere else.

247. Moreover, the cost of implementing Factor 85 is by no means prohibitive.

248. The proposed Factor 85 amendments represents an annual cost of \$9,197,658 to the Employer.²⁰⁹ This amount equates to the cost of approximately a 1% salary increase.²¹⁰

249. While the Employer has asserted that the Union's financial costing of this item is incorrect, it has repeatedly refused to provide any rationale for its assertion, let alone any costing data of its own. There is little doubt that the Employer's refusal to answer the Union's repeated and reasonable questions about its position is inconsistent with its duty to bargain in good faith. The Union's proposal is reasonable, normative, and should be awarded.

²⁰⁹ See: Letter from Krystal Foo and Julie Belair (OPTrust) to Cheri Hearty (OPSEU) and Karen Elstone (TBS), *Benefit Change Costing for Corrections*, April 24, 2023, p. 2, OPSEU Book of Documents, **Tab 110**: citing a contribution rate increase of 1.6%; See also: Employer Disclosure, "OPSEU-SEFPO Corr Comp_FINAL_01.10.22", January 10, 2022 ["2021 Corrections Compensation Data"], OPSEU Book of Documents, **Tab 111**, indicating total straight time wages of \$605,041,475 in 2021. 1.6% of \$605,041,475 is \$9,680,663. The Union's costing estimate of \$9,187,658 is based on an estimate that 22.4% of wages of fixed-term employees are not subject to pension contributions.

²¹⁰ The Employer has advised the Union that its 2021 total wage plus wage related costs for the Correctional Bargaining Unit were \$813,232,997, See: 2021 Corrections Compensation Data, OPSEU Book of Documents, **Tab 111**.

13. – BENEFIT IMPROVEMENTS

Union Proposal

250. The Union seeks a number of benefit changes, including amendments to Article 39, Article 40, and consequential changes to Article 67 and Article 68. The benefit improvements sought at interest arbitration are as follows:

- a) Add coverage for psychotherapists, and remove the \$40 per half-hour session cap for covered mental health care professionals for all employees and dependents and increase the annual maximum for psychologists to from \$1,400 to \$10,000 for all employees, and from \$1,400 to \$2,500 dependents; and
- b) Increase paramedical reimbursement from \$25 to \$50 per session for physiotherapists, chiropractor and massage therapy, and increase paramedical reimbursement from \$25 to \$35 per session;
- c) Increase vision care coverage maximum from \$340 to \$400 per person every twenty-four-month period;
- d) Amend the co-insurance reimbursement for dental care from 85% to 90%; and
- e) Remove the \$120 per day maximum for semi-private hospital accommodation.

251. The Union also proposes that updated benefits booklets be provided to all members within 180 days of the date of ratification or award.

Union Submissions

a) Mental Health Proposals

252. The Union proposes a suite of improvements to the mental health benefits provided to our members. The wellbeing and mental health of our members remains an enormous challenge created by the correctional workplace. The Union – whose members

regularly suffer from PTSD, depression and anxiety brought about by their work – proposes meaningful changes to the benefit plan to provide members with better support.

253. First, the Union proposes a cost savings measure: to add registered psychotherapists to the mental health care providers covered under the benefit plan. The Employer has acknowledged that there is no cost associated with this improvement to the benefits plan.

254. Given the shortage of psychologists and social workers in communities across Ontario, an increasing amount of mental health care treatment is provided by psychotherapists practicing under the supervision of a psychologist.²¹¹ However, the billing is done by and at the psychologist's rate. Expanding coverage to include independently practicing and registered psychotherapists permits members to access meaningful mental health care support from a larger pool of providers, but also at a lower cost point than currently available under the benefit. This proposal is reasonable, cost efficient, and should be awarded.²¹²

255. The Union also proposes increases to the coverage available in two respects. First, the Union seeks to remove the \$40 per half-hour session cap for covered mental health care professionals for all employees and dependents; and second, to increase the

²¹¹ Treasury Board Secretariat, "Fact Sheet: Changes to Coverage for the Services of a Psychologist for Eligible OPSEU Unified and Corrections Represented Employees", May 19, 2023, OPSEU Book of Documents, **Tab 112**.

²¹² This proposal is broadly consistent with the Union's comparators, such as Federal correctional Employees. See: Government of Canada, "Update: Improvements and changes to the Public Service Health Care Plan", March 16, 2023, OPSEU Book of Documents, **Tab 113**, and an ever-increasing number of Police sector benefits plans.

annual maximum for psychologists from \$1,400 to \$10,000 for all employees, and from \$1,400 to \$2,500 for dependents.

256. The \$40 per half-hour cap is a barrier to our members and their families accessing mental health care, as are the annual caps.

257. Almost a decade ago, the Ontario Psychological Association recommended an hourly fee of \$225.²¹³ At that rate, our members end up paying \$145 out of pocket per session, while the benefits plan covers only \$80. A member requiring weekly sessions for a couple of months would be out of pocket over \$1000 – a significant and often unmanageable financial burden. In a single year, an employee seeking weekly treatment would be expected to expend more than \$6,500 in after-tax dollars – this is not sustainable, nor is it normative.

258. Of course, the annual cap creates similar barriers to treatment, even if there was a change to the per visit cap. An annual limit of \$1,400 with the current cap gives member's access to a maximum of 17.5 sessions in a year, but as the per visit cap rises or is lifted, the number of appointments covered decreases. The Union proposes to increase the annual limit to \$10,000 per member, and \$2,500 for dependents.

259. As reviewed above, this Employer has advanced fully unlimited and unrestricted psychological coverage to its employees working at the OPP. Federal correctional

²¹³ Ontario Psychological Association, "Guidelines for Fees and Billing Practices 2015", OPA Board of Directors, July 2015, p. 3, OPSEU Book of Documents, **Tab 114**.

workers have a \$5,000 per year limit, with no per visit cap, and police employers across the province have expanded their mental health benefits for all employees.²¹⁴

260. This barrier to care must be addressed, so that Correctional workers can access the care that both the Employer and the Union know that they need because of their job.

261. Eliminating the per visit cap, and addressing the annual cap, are also entirely normative. This Employer and the OPPA have negotiated unlimited psychological coverage – with no per visit and no annual cap, fully funded by the Employer. In addition, they have introduced an “Integrated Mental Health Program” designed to provide “timely access to confidential, effective, and safe mental health support and services.”²¹⁵ The concierge service provided to all members of the OPPA uniform and civilian bargaining units is not being sought by OPSEU/SEFPO for our members – nor is the Union seeking the full elimination of all per visit and annual caps. However, our members suffer from recurring and severe exposure to trauma and have high risk of negative mental health outcomes and every study draws a direct line from correctional work to detrimental mental health outcomes.²¹⁶

²¹⁴ For example, Waterloo Police Service: \$10,000 per member and \$4,000 per dependent; Halton Police Service: \$24,000 per member and \$2,000 per family member; York Regional Police: \$10,000 per uniform and civilian member; Thunder Bay Police: unlimited for uniform and civilian members; Niagara Police Service: \$20,000 per member.

²¹⁵ See OPPA Civilian Collective Agreement 2015-2018, Article 45.02(c); and OPPA Uniform Collective Agreement 2015-2018, Article 38.02(c), regarding the elimination of any annual and per visit caps, and Letter of Intent No. 15 (Civilian) and 19 (Uniform) – Integrated Mental Health Program, regarding the IMHP.

²¹⁶ See for example, Carleton et al., Public Safety Personnel, p. 59, OPSEU Book of Documents, **Tab 27**; and Carleton et al., Provincial Correctional Workers: The Prevalence of Mental Disorders, p. 10, OPSEU Book of Documents, **Tab 29**.

262. Finally, this is a proposal that the parties ought to have already agreed upon before coming to interest arbitration: both the Employer and the Union share the same objective, and the Ministry describes its objective as “to improve mental health awareness and wellness supports for public safety personnel such as police, fire, paramedics, coroners and correctional staff”.²¹⁷ One of the key priorities from the Solicitor General Corrections Mental Health Collaborative Table was expanding treatment supports for employees.

263. The Union’s proposals help achieve this objective and should be awarded.

b) Paramedical Coverage Proposals

264. The Union proposes to amend the collective agreement to provide reimbursement from \$25 to \$50 per session for physiotherapists, chiropractor and massage therapy, and increase paramedical reimbursement from \$25 to \$35 per session.

265. The current cap of \$25 per session has been in place and unchanged since at least 2002. While costs for services have skyrocketed in the last two decades, our members have had their ability to access care increasingly constrained. These caps are not normative nor reasonable.

266. Again, the gap between this benefit entitlement and the actual cost of service is a substantial barrier for members in seeking the treatment they require, and of course, is entirely unmanageable for many corrections workers.

²¹⁷ Ontario, “[Published plans and annual reports 2022-2023: Ministry of the Solicitor General](#)”, February 15, 2023, OPSEU Book of Documents, **Tab 115**.

267. Simply by way of example, the Ontario Chiropractic Association Recommended Fee Schedule (2019) suggests a fee range of \$88-\$150 for a moderate assessment (20-40 minutes).²¹⁸ Similarly, the Ontario Society of Chiropractors Guide to Chiropractic and Fee Schedule indicates that a basic diagnostic appointment can range from \$60-\$120.²¹⁹

268. Regardless, it is clear that per visit caps at \$25 are wholly inadequate for members seeking to access these paramedical services for themselves or their families.

269. The Union proposes a more significant amendment to the core paramedical services that are tied to the physical demands of correctional work: physiotherapists, chiropractor and massage therapy.

270. Those physical demands include substantial time spent on members' feet, walking, standing and running on concrete floors. Wearing heavy duty belts creates additional strains due to weight and placement of equipment (radios, handcuffs, pepper spray, ASP batons, flashlight, search gloves), and corresponding high rates of repetitive strain injuries to feet, knees, hips. The Employer already acknowledges this difference in the in the provision of orthotics (Article 39.2.7) where employees in institutions are provided with a second pair per year due to the physical demands of working in institutions – and constantly walking and standing on concrete. The vast majority of workstations and equipment are not ergonomically designed. Medication carts are heavy and cumbersome to move, workstations are generally static and not adjustable to the worker. Most

²¹⁸ Ontario Chiropractic Association, "[OCA Recommended Service Codes and Fee Schedule](#)", January 2019, p. 5, OPSEU Book of Documents, **Tab 116**.

²¹⁹ Ontario Society of Chiropractors, "[Guide to Chiropractic Service Codes and Fee Schedule](#)", 2021, p. 4, OPSEU Book of Documents, **Tab 117**.

workstations are shared so inadjustability creates additional physical impacts on workers. Of course, as reviewed above, correctional members are also much more likely to be injured via physical assault and workplace violence.

271. There are no comparators with such similarly anemic paramedical benefits. Federal correctional workers have paramedical benefits with a per session cap at 80%, with an annual cap for Physiotherapy at \$1500; and \$500 annual caps for each of Chiropractor, Speech Therapist, Naturopath, Osteopath, Chiropodist, Podiatrist, and Massage Therapy.

c) Vision Care

272. The Union proposes to increase the vision care coverage maximum from \$340 to \$400 per person every twenty-four-month period. This proposals represents a minimal cost to the Employer. This proposal is consistent with the Union's comparators and should be awarded.

273. The cost of eyeglasses has significantly increased since this amount was last increased in 2005, and in 2009 the Employer began paying for the cost of one routine eye examination every 24 months.²²⁰

274. The Union's comparators in the Federal correctional system have coverage for eyeglasses at 80% up to \$400 annually, and most police comparators are between \$400-700 every two years.

²²⁰ See: CBC Radio, Anis Heydari, "[Wondering why your glasses are so pricey? One company controls almost everything about them](#)", September 20, 2020, OPSEU Book of Documents, **Tab 118**.

d) Co-insurance for Dental Care

275. The Union proposes to amend the co-insurance reimbursement for dental care from 85% to 90%. This is consistent with comparators, whereby federal employees engaged in correctional work have 90% co-insurance, and most police employees have access to 100% co-insurance.

e) Semi-private Hospital Accommodation

276. The Union proposes to remove the \$120 per day maximum for semi-private hospital accommodation to address the spiraling costs of accessing this benefit. The current \$120 maximum was last negotiated in 2002 and represents an outdated cost of semi-private hospital accommodation, which is generally well in excess of \$200 per day.

277. Federal correctional employees have access to benefits that cover up to \$220, and most police comparators have significantly better coverage, generally including 100% coverage.

f) Benefits Booklets

278. Finally, the Union proposes that updated benefits booklets be provided to all members within 180 days of the date of ratification or award, as the last update was completed a full decade ago, in 2013.

279. The Union's benefit proposals are normative, reasonable and fulfil a clear and demonstrated need. All the proposed amendments should be awarded.

14. – GENERAL WAGE INCREASES

Union Proposal

280. The Union is proposing across the board wage increases in each year of the collective agreement, as follows:

January 1, 2022: 6.8%

January 1, 2023: 5.0%

January 1, 2024: 4.0%

Union Submissions

281. It is beyond dispute that this collective agreement covers a period marked by exceptional and persistent inflation, which has dramatically affected employee spending power. This reality has already been acknowledged by numerous interest arbitrators.²²¹

²²¹ See, by way of example only: *Homewood Health Centre Inc. v United Food and Commercial Workers, Local 75*, 2022 CanLII 46392 (Hayes), OPSEU Book of Authorities, **Tab 31**, in which Arbitrator Hayes described inflation in 2021 and 2022 as “unmistakable, significant, persistent, [and] rising” (para. 19); *Chartwell Colonial Retirement Residence v United Food and Commercial Workers, Local 175*, 2022 CanLII 51849 (Steinberg), para. 8, OPSEU Book of Authorities, **Tab 32**, in which Arbitrator Steinberg adopted Arbitrator Hayes’ description in the *Homewood Health Centre* award; *Mon Sheong Richmond Hill Long-term Care Centre v Service Employees International Union, Local 1*, 2022 CanLII 77203 (Goodfellow), p. 2, OPSEU Book of Authorities, **Tab 33**, in which Arbitrator Goodfellow described inflation as “stubborn and persistent”; *Participating Nursing Homes v Service Employees’ International Union Local 1, Canada*, 2022 CanLII 90597 (Stout), p. 8, OPSEU Book of Authorities, **Tab 34**, in which Arbitrator Stout described inflation as having become “persistent and entrenched in the economy”; *Hamilton Jewish Home for the Aged v Service Employees International Union, Local 1 Canada*, 2022 CanLII 69765 (Price), para. 8, OPSEU Book of Authorities, **Tab 35**, in which Arbitrator Price described the “high rate of inflation” as being of particular significance to the round of bargaining before her; *OPG v The Society*, 2023 CanLII 37956 (Kaplan), pp. 11-12, 15 and 19, OPSEU Book of Authorities, **Tab 36**, in which Arbitrator Kaplan described inflation as “substantial and continuing” (pp. 11-12), “significant”, “sustained” and “entrenched” (p. 15), as well as “dramatic” (p. 19); *Participating Hospitals v Ontario Nurses Association*, 2023 CanLII 33967 (Kaplan), p. 28, OPSEU Book of Authorities, **Tab 37**, in which Arbitrator Kaplan described inflation as “high and sustained” and having “dramatically affected spending power”; *Participating Hospitals v OPSEU*, 2023 CanLII 75478 (Kaplan), p. 23, OPSEU Book of Authorities, **Tab 38**, in which Arbitrator

282. It is similarly beyond dispute that when wages fail to keep up with inflation, workers fall behind. Absent material advancements in the years covered by this collective agreement, real wages for the Union's members have been and will continue to be significantly eroded relative to the cost of daily living, including for essentials such as food and shelter.

283. Consequently, as described in detail below, there is now a broad and established pattern of collective bargaining settlements and awards incorporating significant inflationary wage adjustments for the period covered by this collective agreement. As Arbitrator Kaplan recently observed, addressing inflation in settlements and awards has become normative.²²²

284. The Union acknowledges that the settlements and awards canvassed below do not all emanate from traditional comparators to the Correctional bargaining unit. However, given the extraordinary economic conditions at present, the Union submits that it is entirely appropriate to consider wages set in bargaining relationships not normally applicable to these parties. This was precisely the approach recently taken by Arbitrator Kaplan in *Participating Hospitals v CUPE/OCHU & SEIU (Bill 124 Reopener)*, adopting prior decisions by Arbitrators Weiler²²³ and Gray²²⁴ in similarly extraordinary circumstances:

Kaplan described inflation as having “seriously eroded spending power” with “its results ... now entrenched”.

²²² *OPG v The Society*, 2023 CanLII 37956 (Kaplan), p. 19, OPSEU Book of Authorities, **Tab 36**.

²²³ *Participating Hospitals & CUPE*, Unreported Award of Arbitrator Weiler, dated June 1, 1981, OPSEU Book of Authorities, **Tab 39**.

²²⁴ *Participating Hospitals & OPSEU*, Unreported Award of Arbitrator Gray, dated November 4, 2009, OPSEU Book of Authorities, **Tab 40**.

In summary, the Weiler Board held that the appropriate standard for decisions in this sphere should be drawn from external collective bargaining between sophisticated union and management negotiators whose bargains are shaped by real economic forces: “The parameters of change in the Hospital system as a whole must be drawn from and be compatible with the external world of collective bargaining in the Province” (at 6).

Adopting this exact approach, we agree with both the Gray Board – acting at the behest of the Participating Hospitals and with Arbitrator Weiler and many others – that in extraordinary circumstances it is entirely appropriate to look at settlements from sectors not normally considered.²²⁵

A. Bargained Wage Settlements

285. It is trite law that interest arbitration attempts to replicate the result that would most likely have occurred had the parties freely bargained their collective agreement.

286. Interest arbitrators have repeatedly recognized that the best evidence available to replicate free collective bargaining are the settlements negotiated between other parties, under similar market conditions, where there is the right to strike or lockout. Indeed, in two recent awards, Arbitrator Kaplan described freely bargained outcomes in the energy sector and the federal public service as “the touchstone” for achieving replication in the current economic circumstances:

It is our view that freely bargained outcomes are the touchstone – and in the federal sphere were achieved after relatively lengthy strikes. We conclude that these voluntarily negotiated outcomes covering so many employees in the public and quasi-public sector are the best comparator for setting compensation in the current circumstances. Our job, as noted above, is to replicate free collective bargaining,

²²⁵ *Participating Hospitals v CUPE/OCHU & SEIU (Bill 124 Reopener)*, 2023 CanLII 50888 (Kaplan), at pp. 30-31, OPSEU Book of Authorities, **Tab 7**. See also *Participating Hospitals v OPSEU*, 2023 CanLII 75478 (Kaplan), p. 22, OPSEU Book of Authorities, **Tab 38**, in which Arbitrator Kaplan stated that “It is now well established that reopener awards must consider all relevant information including negotiated and awarded outcomes from all sectors, not just traditional comparators.”

and to ensure that the parties end up no better and no worse than if their right to strike and lockout had not been curtailed.²²⁶

287. The Union submits that Arbitrator Kaplan’s comments – and the settlements he references, along with the freely negotiated Unifor and Ford Canada agreement (barely ratified on September 24, 2023) – apply with equal force to the bargaining between these parties.

1. The PWU-OPG Settlement

288. The Power Workers Union and Ontario Power Generation settled their 2022-2024 agreement through free collective bargaining.²²⁷ Those parties negotiated the following wage increases:

April 1, 2022	4.75%
April 1, 2023	3.5%

289. In addition, the parties agreed that all active employees would receive a signing bonus of \$2,500 upon ratification of the agreement, and a further bonus payment of \$2,500 on April 1, 2023. The agreement contained several other significant compensation improvements, including health benefit and other allowance improvements, a special case wage adjustment, an increase to the minimum premium payment for emergency

²²⁶ *Participating Hospitals v CUPE/OCHU & SEIU (Bill 124 Reopener)*, 2023 CanLII 50888 (Kaplan), p. 31, OPSEU Book of Authorities, **Tab 7**; *Participating Hospitals v Ontario Nurses Association*, 2023 CanLII 33967 (Kaplan), p. 28. OPSEU Book of Authorities, **Tab 37**; See also *Participating Hospitals v OPSEU*, 2023 CanLII 75478 (Kaplan), p. 5, OPSEU Book of Authorities, **Tab 38** in which Arbitrator Kaplan described those same settlements as having “established the baseline for replicating free collective bargaining”.

²²⁷ Power Workers Union, “Member Bulletin 23-035: PWU and OPG Memorandum of Settlement – Summary”, March 10, 2023, OPSEU Book of Documents, **Tab 119**.

overtime, increased vacation for Term employees, and a new voluntary separation package of up to 120 weeks' severance.

290. The Union submits that the PWU-OPG settlement provides highly persuasive evidence informing the replication analysis for the current parties for the years 2022 and 2023.

291. First, the PWU-OPG settlement was reached in a sophisticated labour relationship, in the same extreme inflationary economy, but where free bargaining was permitted to continue in a strike-lockout regime. Indeed, in February 2023, members of the PWU voted overwhelmingly in favour of a strike. In the face of that strike mandate, OPG returned to the bargaining table and, in March 2023, agreed to the compensation terms summarized above.²²⁸ These are precisely the free bargaining conditions which interest arbitration seeks to replicate.

292. Further, the Crown authorized the compensation terms reached in the PWU-OPG settlement. OPG is a Crown corporation, wholly owned by the government of Ontario. OPG obtained its collective bargaining mandate directly from Treasury Board.²²⁹ In applying the replication principle, negotiated outcomes with the same employer are the very best evidence of free collective bargaining.²³⁰ The fact that OPSEU's bargaining

²²⁸ Power Workers Union – “Member Bulletin 23-035: PWU and OPG Memorandum of Settlement – Summary”, March 10, 2023, OPSEU Book of Documents, **Tab 119**; *OPG v The Society*, 2023 CanLII 37956 (Kaplan), p. 14, OPSEU Book of Authorities, **Tab 36**.

²²⁹ *OPG v The Society*, 2023 CanLII 37956, p. 14, OPSEU Book of Authorities, **Tab 36**; *Participating Hospitals v CUPE/OCHU & SEIU (Bill 124 Reopener)*, 2023 CanLII 50888 (Kaplan), p. 31, OPSEU Book of Authorities, **Tab 7**; *Participating Hospitals v Ontario Nurses Association*, 2023 CanLII 33967 (Kaplan), p. 28, OPSEU Book of Authorities, **Tab 37**; *Participating Hospitals v OPSEU*, 2023 CanLII 75478 (Kaplan), p. 22, OPSEU Book of Authorities, **Tab 38**.

²³⁰ *OPG v The Society*, 2023 CanLII 37956 (Kaplan), p. 14, OPSEU Book of Authorities, Tab 36.

partner – the Crown – authorized the PWU-OPG settlement renders it exceptionally relevant to the replication analysis in the present case.

2. The Federal Public Service Settlements

293. Following relatively lengthy strikes, the Public Service Alliance of Canada negotiated agreements covering more than 120,000 Federal government employees²³¹ and, separately through its Union of Taxation Employees, more than 35,000 employees of the Canada Revenue Agency. The Federal public service settlements include the following wage increases (with effective dates differing across the various worker groups)²³²:

June 21, 2021	1.5%
June 21, 2022	4.75%
June 21, 2023	3.5%
June 21, 2024	2.25%

294. Notably, the first and final years of these settlements cover partial years and, on that basis, provide for only partial wage increases.

²³¹ Agreement Between the Treasury Board and the Public Service Alliance of Canada, Group: Program and Administrative Services (PA), expiry June 20, 2025; Agreement Between the Treasury Board and the Public Service Alliance of Canada, Group: Operational Services (SV), expiry August 4, 2025; Agreement Between the Treasury Board and the Public Service Alliance of Canada, Group: Technical Services (TC), expiry June 21, 2025; Agreement Between the Treasury Board and the Public Service Alliance of Canada, Group: Education and Library Science (EB), expiry June 30, 2025.

²³² See, for example: PSAC, "[Highlighting the victories in PSAC-UTE's Canada Revenue Agency settlement](#)", May 6, 2023, OPSEU Book of Documents, **Tab 120**.

295. In addition, the Federal public service settlements included a one-time signing bonus of \$2,500. PSAC also made gains on one of their key bargaining priorities – remote work.

296. Similar to the PWU-OPG settlement, PSAC and the Federal government / CRA reached negotiated settlements after bargaining in the face of extraordinary inflation and with recourse to the economic sanction of a strike. In this case, however, PSAC actually exercised its right to strike. The strike commenced on April 19, 2023 and lasted until May 1, 2023 for employees of the Federal government, and until May 3, 2023 for employees of the CRA.

3. The Unifor and Ford Canada Settlement

297. Unifor and Ford Canada settled their September 25, 2023 – September 20, 2026 collective agreement through free collective bargaining.²³³ Those parties negotiated the following wage increases:

September 25, 2023	10%
September 25, 2024	2%
September 25, 2025	3%

298. In addition, all employees received a COLA fold-in to their base wage of \$1.21, with quarterly COLA adjustments starting in late 2024. The agreement contained special adjustments for the skilled trades in the amount of 2.75% on September 25, 2023, and 2.5% on September 25, 2025. Several other significant compensation improvements

²³³ Unifor, "[Summary of the 2023 Tentative Agreement Between Unifor and Ford of Canada](#)", *Unifor Autotalks 2023*, September 2023, p. 8, OPSEU Book of Documents, **Tab 103**.

were also part of the agreement, including significant pension improvements for Unifor members who had been part of a defined contribution pension plan. The parties also compressed their wage grid from an eight year progression to a four year progression and agreed that all active employees would receive a one-time bonus of \$10,000 upon ratification of the agreement. Improved paid time off, improvements to the health and welfare benefits, and job security and guaranteed investments were all features of the agreement, along with significant investments in equity and diversity, mental health, workplace health and safety initiatives.

299. The 2023-2024 increase of at least 10% + \$1.21 per hour in the first year – and 20-25% over the three years of the agreement demonstrates that unions and employers are continuing to take significant steps to address the real wage decreases that workers have been experiencing.²³⁴

B. Arbitrated Wages

300. Several other public sector parties have had their wages for the years covered by this collective agreement adjudicated at interest arbitration. The Union has identified the following awards as especially relevant to the present case:

²³⁴ The St. Thomas Police Association and St. Thomas Police Services Board have also very recently reached a settlement of their 2024-2029 collective agreement, for their union and civilian members. That collective Agreement includes wage increases of 3%, 3%, 3%, 4%, 5% in each year of the agreement, as well as a number of other substantial improvements including seniority pay at 4%, 5%, and 6% for civilian communicators with 10, 20 and 25 years of service, a mental health spending account for each dependant starting at \$4000 and growing to \$5000 per year.

Parties	Award	2022	2023	2024
CUPE/OCHU & SEIU and Participating Hospitals	Initial award: November 3, 2022 ²³⁵ Reopener: June 13, 2023 ²³⁶	4.75%	3.5%	x
ONA and Participating Hospitals	July 20, 2023 ²³⁷	x	3.5%	3%
OPSEU and Participating Hospitals	Initial award: July 7, 2022 ²³⁸ Reopener: August 3, 2023 ²³⁹	4.75%	3.5%	3%
OPG and Society of United Professionals	Initial award: December 3, 2021, ²⁴⁰ Reopener: May 8, 2023 ²⁴¹	4%	3.25%	x

²³⁵ *Participating Hospitals v Canadian Union of Public Employees/Ontario Council of Hospital Unions & Service Employees International Union*, 2022 CanLII 127685 (Sheehan), OPSEU Book of Authorities, **Tab 41**.

²³⁶ *Participating Hospitals v CUPE/OCHU & SEIU (Bill 124 Reopener)*, 2023 CanLII 50888 (Kaplan), OPSEU Book of Authorities, **Tab 7**.

²³⁷ *Participating Hospitals v Ontario Nurses Association*, 2023 CanLII 33967 (Kaplan), OPSEU Book of Authorities, **Tab 37**.

²³⁸ *Participating Hospitals v OPSEU*, 2022 CanLII 58798 (Kaplan), OPSEU Book of Authorities, **Tab 42**.

²³⁹ *Participating Hospitals v OPSEU*, 2023 CanLII 75478 (Kaplan), OPSEU Book of Authorities, **Tab 38**.

²⁴⁰ *OPG v The Society*, 2021 CanLII 124010 (Kaplan), OPSEU Book of Authorities, **Tab 43**.

²⁴¹ *OPG v The Society*, 2023 CanLII 37956 (Kaplan), OPSEU Book of Authorities, **Tab 36**.

Parties	Award	2022	2023	2024
IESO and Society of United Professionals	Initial awards: December 31, 2021 ²⁴² and January 16, 2023 ²⁴³ Reopener: July 10, 2023 ²⁴⁴	4%	3.25%	2.75%*

301. All the above awards were rendered well into 2023, at a time when extraordinary inflationary increases were not only baked into the economy, but also had come to be reflected in the wage settlements freely negotiated in other bargaining relationships. That is vital context for the application of the replication principle in the above awards and, similarly, in the present case.

302. The Union anticipates that the Employer may also point to reopener awards issued for the 2020-2021 and 2022 wages of ONA and Participating Hospitals. Arbitrator Stout ordered increases of 1.75% in 2020 and 2% in 2021,²⁴⁵ while Arbitrator Gedalof ordered an increase of 3% in 2022.²⁴⁶

²⁴² *Independent Electricity System Operator v Society of United Professionals*, 2021 CanLII 137444 (Stout), OPSEU Book of Authorities, **Tab 44**.

²⁴³ *Independent Electricity System Operator v The Society of United Professionals*, 2023 CanLII 19309 (Stout), OPSEU Book of Authorities, **Tab 45**.

²⁴⁴ *Independent Electricity System Operator v Society of United Professionals*, 2023 CanLII 73081 (Stout), OPSEU Book of Authorities, **Tab 46**.

²⁴⁵ *Ontario Hospital Association v Ontario Nurses' Association*, 2023 CanLII 29345, OPSEU Book of Authorities, **Tab 47**.

²⁴⁶ *Participating Hospitals v Ontario Nurses Association*, 2023 CanLII 33967, OPSEU Book of Authorities, **Tab 37**.

303. The Union submits that the wage increases ordered in the Stout and Gedalof reopener awards are essentially irrelevant to the present exercise. The Stout Reopener set ONA wage increases for 2020 and 2021, years which are not at issue between these parties. More fundamentally, however, neither the Stout nor the Gedalof awards grapple at all with the corrosive impact of spiraling inflation on wages (not to mention the RN recruitment and retention crisis in Ontario's hospitals). As Arbitrator Kaplan observed in *Participating Hospitals v CUPE/OCHU & SEIU (Bill 124 Reopener)*, time constraints were at issue in both cases, and ONA maintained its original, modest wage requests notwithstanding dramatic and profound changes to the economic landscape. ONA received the increases it requested, along with other improvements.²⁴⁷ It is impossible to know what underlay those modest asks, but the resulting awards are not helpful in setting wages for the Correctional bargaining unit given the current economic landscape.

304. Indeed, the Stout and Gedalof reopener awards have previously been found to be unpersuasive for the purpose of applying the replication principle in the current inflationary economy.²⁴⁸ The Union submits that the same is true in the present case.

C. Application to the Correctional Bargaining Unit

1. Historic Employer Wage Controls and Erosion

²⁴⁷ *Participating Hospitals v CUPE/OCHU & SEIU (Bill 124 Reopener)*, 2023 CanLII 50888 (Kaplan) at p. 21, OPSEU Book of Authorities, **Tab 7**.

²⁴⁸ *Participating Hospitals v CUPE/OCHU & SEIU (Bill 124 Reopener)*, 2023 CanLII 50888 (Kaplan) at p. 28, OPSEU Book of Authorities, **Tab 7**; *Participating Hospitals v Ontario Nurses Association*, 2023 CanLII 33967 (Kaplan) at p. 26, OPSEU Book of Authorities, **Tab 37**; *Participating Hospitals v OPSEU*, 2023 CanLII 75478 (Kaplan) at p. 24, OPSEU Book of Authorities, **Tab 38**.

305. The members the Correctional bargaining unit (previously under OPSEU's Central collective agreement) have been the target of several cost containment measures in the name of government financial restraint. As a result, over the years, the Crown has retained significant cost-savings out of the pockets of the Union's members.

2009 *▼	2010 ▼	2011	2012	2013	2014	2015	2016 △	2017 ♣	2018 Φ	2019 ΦΣ	2020 ΦΣ	2021 ΦΣ
1.75 %	2.0%	2.0%	2.0%	0%	0%	0%	0%	1.4%	1.5%	1% / 1%	1% / 1%	1% / 1%

- * COs and YSOs received a special 2% wage increase
- ▼ POs received a 1% special wage increase
- △ All bargaining unit members received a 1.4% lump sum payment
- ♣ POs received a 2% special adjustment; all other bargaining unit members received a 3% adjustment
- Φ COs and YSOs received a special adjustment of 1.75%
- Σ POs and Nurses received a special adjustment of 1%

306. Notably, bargaining for the 2009 to 2012 collective agreement was done prior to the recession, and the negotiated wage increases did not reflect the economic context that emerged after that settlement was reached. Nevertheless, the Crown then bargained for 0% general wage increases in 2013 and 2014. In the 2015-2017 round of bargaining, the Crown continued to assert a "net zero" mandate, and various cost containments measures. The negotiated settlement included a number of concessions, a salary progression freeze for 2016 and 2017, a 1.4% lump sum payment effective January 1, 2016 and, for the first time since 2012, an across-the-board wage increase of 1.4% effective January 1, 2017. In the subsequent round, increases of less totalling less than 2% were ordered in each year of the 2018-2021 collective agreement.

307. The meagre wage improvements afforded to correctional employees over the last decade have been accompanied by actual and substantial losses in spending power due

to increases in the cost of living. As described in detail above, and as has been recognized in virtually every recent interest arbitration award, inflation has increased dramatically since 2021.

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Ontario CPI (2002 = 100) ²⁴⁹	116.5	120.1	121.8	123	125.9	127.4	129.7	131.9	135	137.5	138.4	143.2	152.9
CPI inflation	2.5%	3.0%	1.4%	1.0%	2.4%	1.2%	1.8%	1.7%	2.35%	1.85%	0.65%	3.47%	6.77%

308. Concerns about the Crown’s financial circumstances, whether ultimately well-founded or not, have historically had a negative total impact on the parties’ bargaining, resulting in the unacceptable and unjustified degradation of provincial public sector wages relative to the cost of living.

2. Replication Requires Significant Wage Increases

309. The Union submits that, had these parties engaged in free collective bargaining with recourse to the rights to strike or lockout as necessary, they would have negotiated significant across the board wage increases accounting for the corrosive impact of extraordinary inflation on employee purchasing power.

310. Significant wage increases are amply supported by the comparator data. As set out above, the PWU-OPG settlement (which was authorized by the Crown), the PSAC-

²⁴⁹ [Statista](#), Consumer Price Index in Ontario from 2000 to 2022, OPSEU Book of Documents, **Tab 121**.

Federal Treasury Board settlement, the PSAC (UTE)-CRA, and the Unifor-Ford Canada settlement demonstrate a pattern of inflationary wage adjustments, accounting for current market forces. That pattern has now been picked up and replicated in numerous interest arbitration decisions. Those various settlements and awards provided for average increases of 4.54% in 2022 and 3.44% in 2023.

311. Significant wage increases are also consistent with the unique circumstances of the Correctional bargaining unit. As described above, the Union's members perform vital work under extremely adverse conditions in exchange for wages which have been virtually stagnant for the last decade. It is no wonder that, in the current circumstances, Ontario's correctional facilities are chronically and dangerously understaffed.

312. The Union's proposed wage increases are therefore reasonable, consistent with established market patterns, and would ensure that members of the Correctional bargaining unit do not lose further spending power relative to increasing inflation. The Union is seeking a 6.8% increase in 2022, which is commensurate with the annual average increase to the Consumer Price Index for that year.²⁵⁰ In 2023, the Union's proposed increase of 5% represents a modest increase above Canada's average year-over-year CPI increase to date.²⁵¹

²⁵⁰ Statistics Canada, [Consumer Price Index: Annual review, 2022](#), January 17, 2023, p. 1, OPSEU Book of Documents, **Tab 51**.

²⁵¹ See: Bank of Canada, "Consumer price index", online: <https://www.bankofcanada.ca/rates/price-indexes/cpi/>, OPSEU Book of Documents, **Tab 122**.

2023	CPI year-over-year increase
January	5.9%
February	5.2%
March	4.3%
April	4.4%
May	3.4%
June	2.8%
July	3.3%
August	4%
Average	4.2%

313. The data is more limited for 2024; the PSAC settlements provide only for a partial year increase (2.25%), and the IESO and Society award for that year (2.75%) is subject to a cost-of-living allowance escalator. The Union submits that it is reasonable to infer that the actual 2024 wage increases for those parties will exceed 3%, likely by a significant margin. In the circumstances, the Union’s proposed increase of 4.0% is reasonable and should be ordered.

15.– SPECIAL WAGE ADJUSTMENTS

Union Proposal

314. The Union submits that before general wage increases can be considered, “catch-up” or special wage increases are necessary and appropriate given the well-recognized gap between the wage rates of employees in the Correctional bargaining unit and their accepted comparators. In particular, the Union is seeking wage parity for the following employee groups:

Classification Name	Classifications Included	Number of Employees	Catch Up Required
Correctional Officer and Youth Worker Class Series	Correctional Officer 1-3 Correctional Supervisor Youth Worker	5020	9.0%
Probation Officer Class Series	Probation Officer 1-3	1121	7.5%
Nursing Class Series	Registered Practical Nurse 1-4 Nurse 1-3, General (including G24 Salary Note) Mental Health Nurse Nurse Practitioner	597	19.5%
Rehabilitation Officer Class Series	Rehabilitation Officer 1-2	119	31.0%
Recreation Officer Class Series	Recreation Officer 1-3	98	17.0%
Psychology Series	Psychometrist 1-2 Psychologist 1-3	16	21.5%
Maintenance and Trades	Maintenance Electrician Maintenance Electrician, Foreman/Woman Facilities Mechanic/Facilities Technician 1-3A Facilities Mechanic/Facilities Technician Foreman/Woman Maintenance Carpenter Maintenance Carpenter, Foreman/Woman Maintenance Plumber Maintenance Plumber, Foreman/Woman Maintenance Welder	125	15.5%
Food Services	Helper, Food Service Cook 1-3	250	13.0%

	Food Services (10OFS-14OFS)		
Social Worker	Social Worker 1-2 Social Work Supervisor 1-2	140	12.5%
Pharmacy	16 Pharmacy Pharmacy Technician 1-2	17	7.0%

Union Submissions

A. *The Decision-Making Framework*

315. It is well-established that, in appropriate cases, interest arbitrators will award special catch-up wage adjustments to correct demonstrated inequities between similarly situated employees.

316. The case for catch-up depends entirely upon a comparative salary analysis as between the employees and their appropriate comparator classifications. In this regard, the analysis differs materially from the approach taken in interest arbitration to set salary increases. That approach requires the arbitrator to replicate the settlement that the parties would have negotiated in a free collective bargaining environment in light of the parties' history, their relative positions, and market norms. Instead, when asked to award catch-up, the arbitrator must consider the wage rates of appropriate comparators and consider, as a matter of fairness and equity, to what extent the affected employees have fallen behind.

317. In his previous award between these parties, Arbitrator Burkett recognized the important distinction between the replication and "catch-up" analyses:

The results of free collective bargaining govern public sector interest arbitration as it applies to across-the-board economic determination. This is the replication principle. However, special adjustment determination, as here, requires a comparative salary analysis as between the classification(s) that is at issue and relevant comparator classifications (that may be either internal or external). The

purpose is to determine if the classification at issue is underpaid relative to the comparator classifications such that a special adjustment, distinct and apart from any across-the-board salary increase, is warranted. While the replication principle drives the across-the-board analysis, it is of little assistance in determining whether a specific classification warrants special treatment distinct and apart from the salary treatment accorded the bargaining unit generally or in this case the Ontario Public Service generally.²⁵²

318. Once a need for catch-up has been established, and the appropriate quantum identified, other factors may come into play. For example, interest arbitrators have recognized that the prevailing economic climate may be relied upon to moderate the extent to which the gap should be closed within a single collective agreement.²⁵³ Indeed, this was precisely the approach taken by Arbitrator Burkett in a previous round between these parties. At the time of that decision, Ontario correctional officers were paid approximately 10% less than their Federal counterparts, with a difference of 6.9% in respect of probation officers. As discussed in greater detail below, Arbitrator Burkett held this differential gave rise to a specific catch-up objective for Ontario correctional employees. However, he concluded that “in a net zero world” the gap should be closed on an incremental basis and ordered catch-up increases of 3% for correctional staff and 2% for probation officers.²⁵⁴

²⁵² Burkett Decision 1, p. 17, OPSEU Book of Authorities, **Tab 2**.

²⁵³ *Police Services Board of the City of Pembroke v Pembroke Police Association*, Unreported, October 7, 1992 (Burkett), p. 5, OPSEU Book of Authorities, **Tab 48**.

²⁵⁴ Burkett Decision 1, pp. 19-21, OPSEU Book of Authorities, **Tab 2**.

319. Subsequently, in the next round of bargaining, Arbitrator Kaplan ordered additional catch-up wage over the course of the four-year collective agreement for a subset of classifications.²⁵⁵

320. The Union acknowledges that interest arbitrators are generally reluctant to accomplish parity within a single collective agreement and will instead structure gains over multiple rounds. However, where a significant disparity exists, and in the appropriate circumstances, material increases have been awarded within a single collective agreement, particularly where the term is long enough to spread the increases over a number of years. For example, material catch-up increases were ordered in the following cases:

Case	Wage gap	Term awarded	Total catch-up awarded
<i>Assn of Law Officers of the Crown v Ontario (Management Board of Cabinet) (Salaries Grievance)</i> ²⁵⁶	33.5%	Two years	30% (7.5% spread across first year, 22.5% spread across second year)
<i>West Nipissing Police Service Board and West Nipissing Police Assn, Re</i> ²⁵⁷	29.4-36.4%	Three years	18% (6% spread across each year)*

²⁵⁵ *Ontario (Treasury Board Secretariat) v OPSEU (Correctional Bargaining Unit)*, [2019 CanLII 24936](#) (Kaplan), OPSEU Book of Authorities, **Tab 4**.

²⁵⁶ *Assn of Law Officers of the Crown v Ontario (Management Board of Cabinet) (Salaries Grievance)*, [2000] OLAA No 790 (Kaplan), OPSEU Book of Authorities, **Tab 49**.

²⁵⁷ *West Nipissing Police Service Board and West Nipissing Police Assn, Re* (2012), 111 CLAS 302 (Schmidt), OPSEU Book of Authorities, **Tab 50**.

Case	Wage gap	Term awarded	Total catch-up awarded
<i>Re Pembroke Police Services Board and Pembroke Police Association</i> ²⁵⁸	Dispatchers: 12.5% Special Cst: 21%	Three years	Dispatchers: 11% (9.2% in first year, 1.8% in second year) Special Cst: 11.5% (9.5% in first year, 2% in second year)
<i>Fort Frances (Town) v Fort Frances Professional Fire Fighters Assn</i> ²⁵⁹	Not specified	Four years	16% (staged over four years: 3%, 4%, 4%, and 5%)*
<i>Mohawk Council of Akwesasne (Akwesasne Mohawk Police Service) v Akwesasne Police Association</i> ²⁶⁰	15.6%	Four years	15.6% (staged over four years: 6%, 3%, 3%, and 3.6%)

* Inclusive of general wage increases.

321. The Union submits that, as in the cases canvassed above, it is necessary and appropriate to impose a substantial catch-up increase over the course of this collective agreement. First, as reviewed below, catch-up increases were ordered in both the previous rounds between these parties, but the affected employees remain significantly behind their key comparators working in the Federal Correctional System. Three collective agreements, collectively spanning nearly a decade, should be sufficiently incremental for these employees to finally achieve parity. Further, the current economic climate is one marked by extraordinary inflation and, consequently, relatively large wage increases have become normative. While Arbitrator Burkett found that the “net zero world”

²⁵⁸ *Pembroke Police Services Board v Pembroke Police Association (Civilian Members)*, Unreported, November 15, 2010 (Marcotte), OPSEU Book of Authorities, **Tab 51**.

²⁵⁹ *Fort Frances (Town) v Fort Frances Professional Fire Fighters Assn*, [2011] OLAA No 123 (Burkett), OPSEU Book of Authorities, **Tab 52**.

²⁶⁰ *Mohawk Council of Akwesasne (Akwesasne Mohawk Police Service) v Akwesasne Police Association*, 2018 CanLII 2401 (Slotnick), OPSEU Book of Authorities, **Tab 53**.

should moderate the rate at which the wage gap was closed, the current inflationary environment demands that longstanding wage inequity be addressed as quickly as possible.

B. Longstanding and Settled Wage Inequity

322. The need for material catch-up wage increases was established and accepted in the parties' last two rounds of bargaining.

323. This pattern began with the 2015-2017 round of collective bargaining, and the associated awards of Arbitrator Burkett. In particular, Arbitrator Burkett found that:

- a) It is valid to compare the salaries of Ontario and Federal correctional employees, who perform essentially the same function, and previously received essentially the same salary. The widening salary differential in favour of Federal employees "establishes a specific catch-up objective for Ontario correctional employees."²⁶¹
- b) Correctional employees in Ontario perform a range of duties which are generally comparable to the duties performed by policing employees in Ontario, including First Class Constables and Special Constables. The salaries of these classifications are a valid point of comparison, but there is no specific tie-point to the correctional context.²⁶²
- c) The expanding differential between Ontario police salaries and Ontario correctional salaries (significantly in favour of police salaries), compared to the

²⁶¹ Burkett Decision 1, pp. 19-20, OPSEU Book of Authorities, **Tab 2**.

²⁶² Burkett Decision 1, p. 18, OPSEU Book of Authorities, **Tab 2**.

same differential in other jurisdictions – including the Federal jurisdiction – supports the conclusion that Ontario correctional salaries have fallen well behind.²⁶³

324. Arbitrator Burkett found that, in these circumstances, members of the Correctional unit were underpaid to such an extent that a catch-up adjustment was warranted. However, because of the Employer’s “net zero” approach to collective agreement negotiation across the Ontario public service, Arbitrator Burkett decided that an incremental approach should be adopted. As a first step towards closing the gap, Arbitrator Burkett ordered a 2% catch-up wage increase for probation officers, and a 3% catch-up wage increase for other correctional staff.²⁶⁴

325. In a subsequent award, Arbitrator Burkett clarified that all employees working within a correctional facility were entitled to the 3% increase:

It was not within the contemplation of the arbitrator that under the terms of the May 26, 2016 Award there would be classifications within the bargaining unit that would not receive a special adjustment. Accordingly, by way of clarification the awarding of the 3% special adjustment to “correctional staff” includes those within all classifications working within a correctional facility.²⁶⁵

326. Through this award, Arbitrator Burkett ensured that the catch-up wage increase applied not only to Correctional Officers and Probation Officers, but to all the classifications in the Correctional bargaining unit at the time of the award, including, for

²⁶³ Burkett Decision 1, p. 19, OPSEU Book of Authorities, **Tab 2**.

²⁶⁴ Burkett Decision 1, pp. 20-21, OPSEU Book of Authorities, **Tab 2**.

²⁶⁵ Burkett Decision 2, pp. 3-4, OPSEU Book of Authorities, **Tab 3**.

example, Correctional Locksmith, Grounds/Maintenance Worker, Hairdresser Instructor, Industrial Officer, Recreation Officer, Rehabilitation Officer, and Trade Instructor.

327. The Crown did not seek judicial review or otherwise seek to challenge Arbitrator Burkett's decisions and findings, including with respect to his conclusion that Federal correctional employees and Ontario policing employees constituted appropriate comparators against which Ontario correctional wages should be measured.

328. In the subsequent 2018-2021 round of negotiations, Arbitrator Kaplan ordered special wage increases to further reduce the pay gap first identified by Arbitrator Burkett. He concluded that there should be across-the-board increases totaling 7.5% over the life of the agreement, with additional staggered increases totaling 7% for Correctional Officers/Youth Workers and 3% for Probation Officers/Nurses.²⁶⁶

329. In the current round, the Union seeks only to continue the pattern established in previous rounds, and finally address longstanding wage inequity for members of the Correctional bargaining unit. However, while Arbitrator Kaplan focused the special adjustments on the CO/YSO, PO, and Nurse job categories, inequities persist across the bargaining unit. In this round, the Union has identified additional job classes where the wage gaps are stark and therefore in need of urgent attention.

²⁶⁶ *Ontario (Treasury Board Secretariat) v OPSEU (Correctional Bargaining Unit)*, [2019 CanLII 24936](#) (Kaplan), at p. 3, OPSEU Book of Authorities, **Tab 4**.

a) Correctional Officer and Youth Worker Class Series

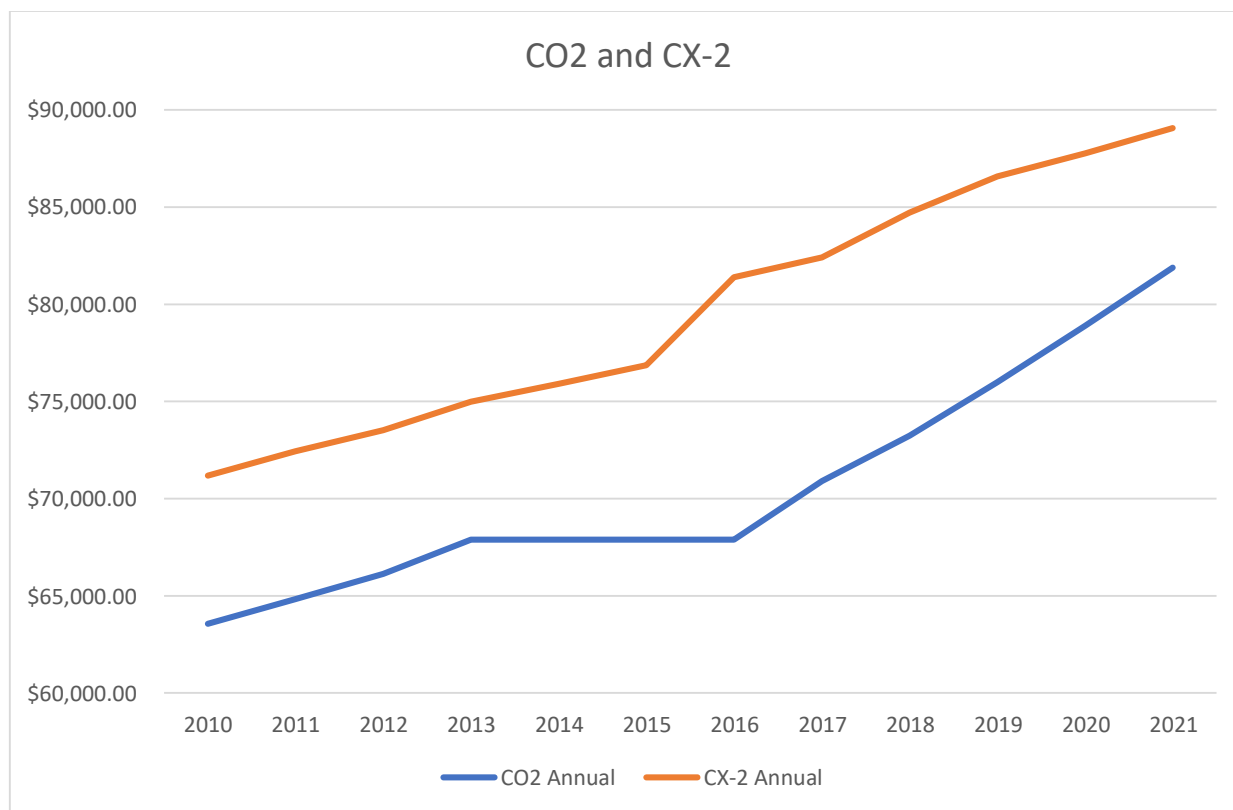
330. The Union seeks a one-time wage increase of 9.0%. As shown in the chart below, Ontario’s correctional officer wages have continued to lag behind their comparators, whether those comparators are direct or relative.

Year	CO2 Annual	CX-2 Annual	OPP First Class Constable Annual	RCMP Annual
2010	\$63,564.80	\$71,183.00	\$79,451.00	\$76,792.00
2011	\$64,833.60	\$72,429.00	\$81,040.00	\$77,944.00
2012	\$66,123.20	\$73,515.00	\$83,483.00	\$79,308.00
2013	\$67,891.20	\$74,985.00	\$83,483.00	\$80,498.00
2014	\$67,891.20	\$75,922.00	\$90,621.00	\$82,108.00
2015	\$67,891.20	\$76,871.00	\$93,034.00	\$83,134.00
2016	\$67,891.20	\$81,394.00	\$94,855.00	\$86,110.00
2017	\$70,907.20	\$82,411.00	\$96,663.00	\$88,931.00
2018	\$73,236.80	\$84,719.00	\$98,355.00	\$91,844.00
2019	\$76,003.20	\$86,583.00	\$100,469.63	\$95,787.00
2020	\$78,894.40	\$87,754.00	\$102,629.73	\$99,169.00
2021	\$81,889.60	\$89,068.00	\$104,661.49	\$102,418.00

331. The single most relevant comparator for the Union’s correctional officers’ group is their Federal counterparts, who perform similar work, under similar conditions.²⁶⁷ As set

²⁶⁷ See Ontario, “Position Description Report (PDR) – NON OAG, Ministry of Correctional Services, Correctional Officer 2, 50563”, July 5, 2017, OPSEU Book of Documents, **Tab 123**; and Government of Canada, “Work Description, Correctional Officer II, CX 02, Correctional Service of Canada”, September 22, 2006, OPSEU Book of Documents, **Tab 124**.

out in the table above, mapping the provincial CO2 role, with a 2021 salary of \$81,889.60, onto the Federal correctional worker employed in the CSC CX-02 classification, with an annual salary of \$89,068.00 reveals a wage disparity of about 9%. As the chart below indicates, the repeated efforts by the Union – and by interest arbitrators – to close the gap between Ontario Correctional Officers and their Federal counterparts has had a limited impact.



332. Like OPSEU/SEFPO, the Union for Federal correctional employees, UCCO-CSN, is currently in collective bargaining a renewal Collective Agreement, to be effective June 1, 2022. In the Union’s submission, and consistent with virtually all the other classifications for which a catch-up wage increase is sought, the only reasonable approach is to impose a material front-end increase, designed to place the employees in

equivalent positions as they bargain their 2022 wages moving forward. The Union’s proposed adjustment of 9.0% should be awarded.

b) Probation Officer Class Series

333. Like the Correctional Officer Class Series, the Probation Officer Class series, comprised of PO1, PO2 and PO3 classifications, has a straightforward comparator in the Federal system. During the last round of bargaining and at interest arbitration, the Union demonstrated that, as of 2017, members of the Probation Officer class were 9.2% behind their WP-04 Federal Parole Officer comparator. As a result, Probation Officer Class employees received a special increase and wage increases totaling 10.5% for the period January 1, 2018 to December 31, 2021. However, in October 2020, the PSAC collective agreement, effective June 2018 to June 2021, was ratified, and once again the salary for WP-04 Federal Parole Officer group leapt ahead of Ontario Probation Officers.

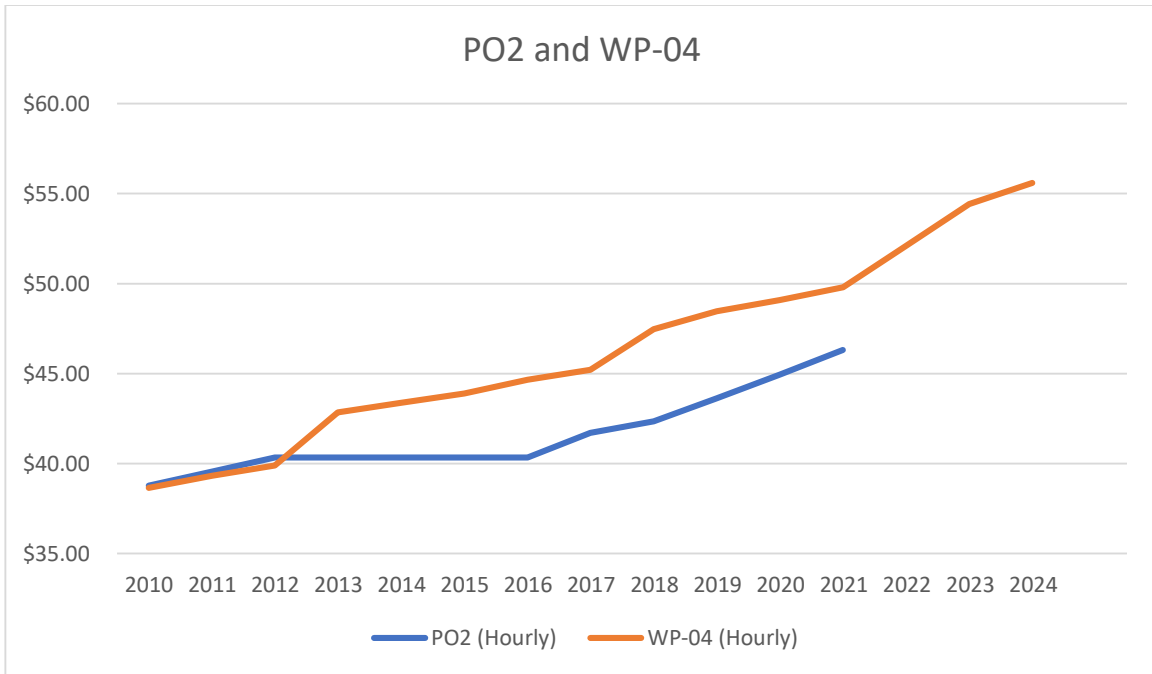
334. As of December 31, 2021, the wage differential between an Ontario PO at \$87,300 and a WP-04 Federal CSC Parole Officer was \$97,107.98, a difference of \$9,807.98 or 11.23%.²⁶⁸

Year	PO2 Annual	PO2 Hourly	WP-04 Annual	WP-04 Hourly
2010	\$73,083.400	\$38.77	\$75,363.00	\$38.65
2011	\$74,545.120	\$39.55	\$76,647.00	\$39.31
2012	\$76,035.960	\$40.34	\$77,767.00	\$39.88

²⁶⁸ Work description for the WP-04 position is attached at **Tab 125** of the Union’s Book of Documents, and the Position Description Report for the PO2 roles are attached at **Tabs 126 and 127** of the Union’s Book f Documents.

2013	\$76,035.960	\$40.34	\$83,566.00	\$42.85
2014	\$76,035.960	\$40.34	\$84,586.00	\$43.38
2015	\$76,035.960	\$40.34	\$85,618.00	\$43.91
2016	\$76,035.960	\$40.34	\$87,086.00	\$44.66
2017	\$78,642.720	\$41.72	\$88,150.00	\$45.21
2018	\$79,822.600	\$42.35	\$92,562.00	\$47.47
2019	\$82,241.120	\$43.63	\$94,510.00	\$48.47
2020	\$84,732.960	\$44.95	\$95,732.00	\$49.09
2021	\$87,300.200	\$46.31	\$97,108.00	\$49.80
2022			\$101,572.00	\$52.09
2023			\$106,141.00	\$54.43
2024			\$108,419.00	\$55.60

335. Of course, WP-04s work slightly different hours than PO2s, and the chart below converts annual salaries into hourly, to show the difference more accurately.



336. The chart above shows clearly that while the comparator classifications had been at parity in 2010-2012, the extraordinary wage freezes imposed on the Union, starting a decade ago, have made catch-up extremely challenging. In addition to a general wage increase, a material and front-end salary increase of 7.5% is required to remedy the gap and accelerate the accepted need to catch the Union’s members’ salaries up to those paid to their main comparator group of employees doing virtually the same job.

c) Nursing Class Series

337. The Nurse class series under the OPSEU/SEFPO Collective Agreement include the classifications of Registered Practical Nurse 1-4, Nurse 1-3 General, Mental Health Nurse, and Nurse Practitioner.²⁶⁹

338. Like their colleagues working in the Correctional Officer and Probation Officer series, nurses employed in the correctional setting have been repeatedly recognized as requiring additional wage increases to make up for the significant lag behind comparator nursing classifications salary levels. However, despite these past adjustments, nurses in the Correctional bargaining unit remain well behind provincial and federal comparators, leading to a chronic recruitment and retention issues for these positions.

339. For example, and as reviewed above,²⁷⁰ the Employer created 75 new Nurse Practitioner positions in July 2020, but has been – essentially – wholly unable to fill the roles, with its last disclosure to the Union indicating that there were only 8 Nurse Practitioners employed across the entire province.

340. The growing service gaps – along with the strains imposed by the Covid-19 pandemic – have required heavy reliance on temporary agency nurses to cover basic health care delivery within the correctional institutions, with costs escalating year over year, as reviewed above. Of course, agency nurses are paid at rates that are astronomical compared to their colleagues in the Union's bargaining unit who are working directly for

²⁶⁹ See OPSEU Class Standards for each Class Series, attached at **Tabs 129-134** of the Union's Book of Documents, and the Position Description Report for the Nurse 2, General position attached at **Tab 135** of the Union's Book of Documents.

²⁷⁰ See above Section 3: Clinical Experience for Nurses, at para. 51.

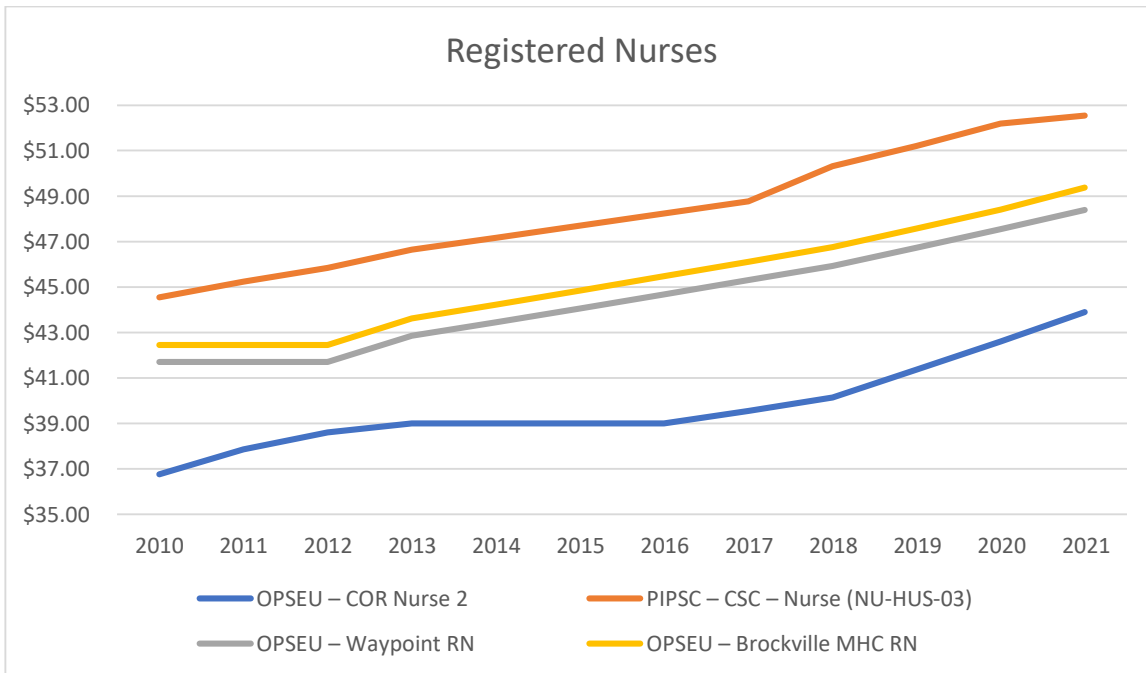
the Government of Ontario and struggling to provide meaningful health care on a much broader scale than agency nurses are permitted to be assigned.

341. An appropriate comparator for nurses working in the correctional system are their peers working at Brockville Mental Health Centre (“Brockville MHC”). Brockville MHC provides a treatment program for sentenced inmates (not those on remand) with major mental health diagnoses. Members of the bargaining unit provide front line health care to these inmates, before and at referral, as well as to a large proportion of other inmates facing mental health challenges. Of course, nurses in the correctional bargaining unit are also providing responsive health care to a transient and unstable remand population during their most volatile period.

342. The following charts show the scope of the salary gap, in the largest classification, Registered Nurses, known as “Nurse 2”:

Year	OPSEU – COR Nurse 2 (RN)	PIPSC – CSC – Nurse (NU-HUS-03)	OPSEU – Waypoint RN	ONA – Brockville MHC RN
2010	\$36.75	\$44.54	\$41.70	\$42.44
2011	\$37.86	\$45.23	\$41.70	\$42.44
2012	\$38.61	\$45.84	\$41.70	\$42.44
2013	\$39.00	\$46.65	\$42.85	\$43.61
2014	\$39.00	\$47.17	\$43.45	\$44.22
2015	\$39.00	\$47.70	\$44.05	\$44.84
2016	\$39.00	\$48.23	\$44.67	\$45.47
2017	\$39.55	\$48.77	\$45.30	\$46.11

2018	\$40.14	\$50.31	\$45.93	\$46.76
2019	\$41.36	\$51.21	\$46.73	\$47.57
2020	\$42.61	\$52.19	\$47.55	\$48.40
2021	\$43.90	\$52.54	\$48.39	\$49.37



343. Of course, the unacceptable under-compensation of Registered Nurses in the correctional setting compared to all reasonable comparators runs through every classification in the Nursing group. For example, the hourly wage for Nurse Practitioners in the correctional setting is \$57.17. When compared to an hourly wage rate of \$64.85 in the Federal correctional system and \$62.41 at Brockville MHC, it should come as no surprise that the Employer, as reviewed above, has been effectively unable to hire Nurse Practitioners for some time.

344. The Union's proposed wage adjustment of 19.5% is reasonable and fair.

d) Rehabilitation Officer Class Series

345. Rehabilitation Officers are key employees responsible for the core function of the correctional system: facilitating core programming, completing psychosocial risk assessments, developing a correctional treatment plan, case management functions, supervising offenders on temporary absence permits in the community, addictions counselling and programming, liaising with a variety of multi-disciplinary teams, and developing discharge plans to provide adults and youth with assistance in returning to the community – all with an eye to helping inmates avoid reoffending.²⁷¹

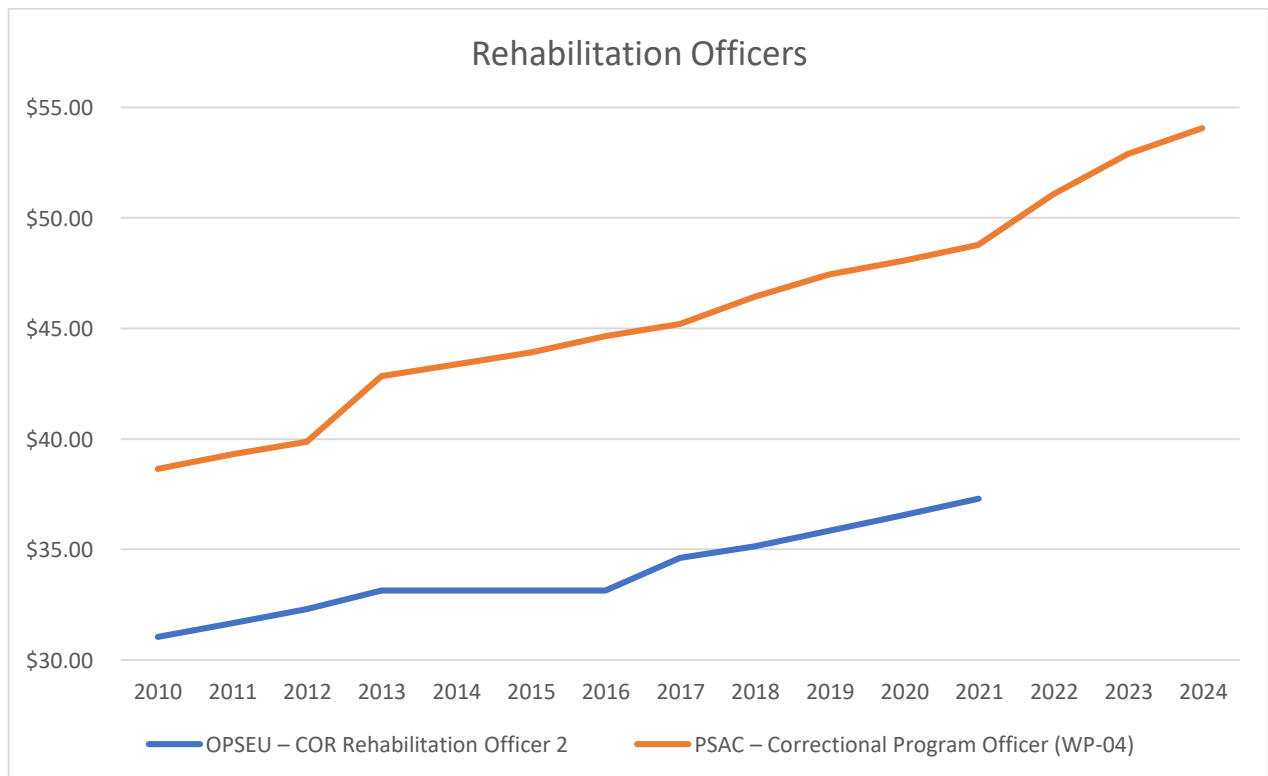
346. This group is directly comparable to the Correctional Program Officer (WP-04) employed in the Correctional Service of Canada and represented by PSAC.²⁷²

Year	OPSEU – COR Rehabilitation Officer 2	PSAC – Correctional Program Officer (WP-04)
2010	\$31.04	\$38.65
2011	\$31.66	\$39.31
2012	\$32.29	\$39.88
2013	\$33.14	\$42.85
2014	\$33.14	\$43.38

²⁷¹ See Rehabilitation Officer, Correctional Services Class Standards Documents attached at **Tabs 139-141** and Position Description Reports for Rehabilitation Officer 2, special cases positions at **Tabs 142-144**.

²⁷² See: Government of Canada Jobs, "Correctional Services Canada, WP-04 – Correctional Program Officer", February 2, 2023, OPSEU Book of Documents, **Tab 145**.

2015	\$33.14	\$43.91
2016	\$33.14	\$44.66
2017	\$34.61	\$45.21
2018	\$35.13	\$46.44
2019	\$35.84	\$47.44
2020	\$36.56	\$48.07
2021	\$37.29	\$48.77
2022		\$51.06
2023		\$52.89
2024		\$54.06



347. This gap – in 2021 – of just under 31% is untenable and must be rectified. The Union’s proposal of 31% is reasonable and urgent.

e) Recreation Officer Class Series

348. While not as severe as their colleagues in Rehabilitative Services, the OPSEU/SEFPO members working in the Recreation Officer classifications are also underpaid relative to their direct comparators in the federal sector.

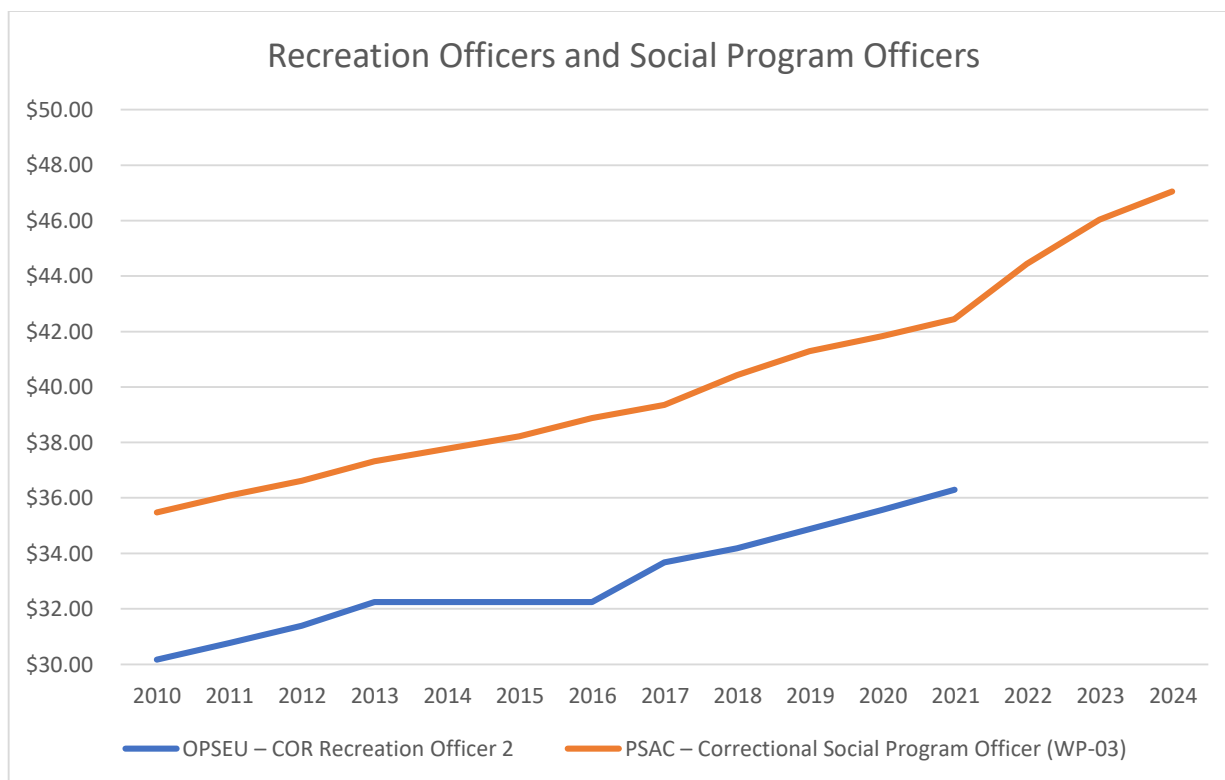
349. This group of employees develops, implements, operates and evaluates physical, social, cultural and educational recreation programs for inmates, including various sports and games (baseball, hockey, volleyball, table-tennis, badminton, etc.) and physical fitness programming (weight training, yoga, aerobics, etc.). They facilitate core programming to inmates to assist with community reintegration, and they also work with adults and youth to direct, advise and provide leadership to clubs or individuals in hobby and handicraft activities.²⁷³ Having inmates participate in these programs is key to meeting the time out of cell requirements for inmates embedded in the Employer's institutional policies in order to meet human rights and other legal obligations.

350. Again, like their colleagues in rehabilitative roles, they are also directly comparable to their counterparts employed by the Correctional Services of Canada as Social Program Officers.²⁷⁴ However, they are paid 17% less than those peers, for no demonstrable reason. The Union's proposal for a 17% catch up is reasonable and should be awarded.

²⁷³ See: Recreation Officer, Correctional Services Class Standard Documents attached at **Tabs 147-149** of the Union's Book of Documents; and Ontario, "Position Description Report (PDR) NON-OAG, Ministry of Correctional Services, Recreation Officer, Recreational Offr 2, 50494", January 1, 2013, OPSEU Book of Documents, **Tab 150**.

²⁷⁴ See: Government of Canada Jobs, "Correctional Services Canada, WP-03 – Social Program Officer", February 2, 2023, OPSEU Book of Documents, **Tab 151**.

Year	OPSEU – COR Recreation Officer 2	PSAC – Correctional Social Program Officer (WP-03)
2010	\$30.17	\$35.48
2011	\$30.77	\$36.08
2012	\$31.39	\$36.61
2013	\$32.24	\$37.32
2014	\$32.24	\$37.77
2015	\$32.24	\$38.23
2016	\$32.24	\$38.88
2017	\$33.67	\$39.36
2018	\$34.18	\$40.43
2019	\$34.87	\$41.30
2020	\$35.57	\$41.84
2021	\$36.29	\$42.45
2022		\$44.44
2023		\$46.04
2024		\$47.05



f) Psychology and Psychometrist Class Series

351. The psychology class series is comprised of two classifications, Psychologist 1 and Psychologist 2, although the vast majority of employees are employed as a Psychologist 1. Their primary duties are to provide psychological services for inmates, including the assessment, development, and maintenance of treatment plans.²⁷⁵

352. The Psychometrist class series is also comprised of two classifications, Psychometrist 1 and Psychometrist 2, but all the psychometrists work in the Psychometrist 2 classification. Their duties include the provision of testing, assessment,

²⁷⁵ See: Ontario, “Position Description Report (PDR) NON-OAG, Ministry of Correctional Services, Psychologist 1, C09380”, January 29, 2014, pp. 1-2, OPSEU Book of Documents, **Tab 152**.

treatment, and clinical consultation, utilizing standardized assessment tools and interviews.²⁷⁶

353. Both these groups are a relatively small proportion of the membership, but the members working in these capacities are significantly under-compensated compared to all their relevant comparators. In addition, there are substantial recruitment and retention issues for the Employer.

354. For example, currently there are only 10 psychologists across the province, half of which are assigned to the Ontario Correctional Institute in Brampton. This means that other institutions are without any psychologists, including the Algoma Treatment and Remand Centre, a designated treatment center for violent high-risk offenders. Moreover, many institutions have had these positions vacant for a number of years and have simply been unable to fill them.

355. The suppressed wages have put Corrections out of step with all the other institutions with equivalent workers – workers doing similar jobs in similar settings and under similar conditions are being paid anywhere from 15-26% more.

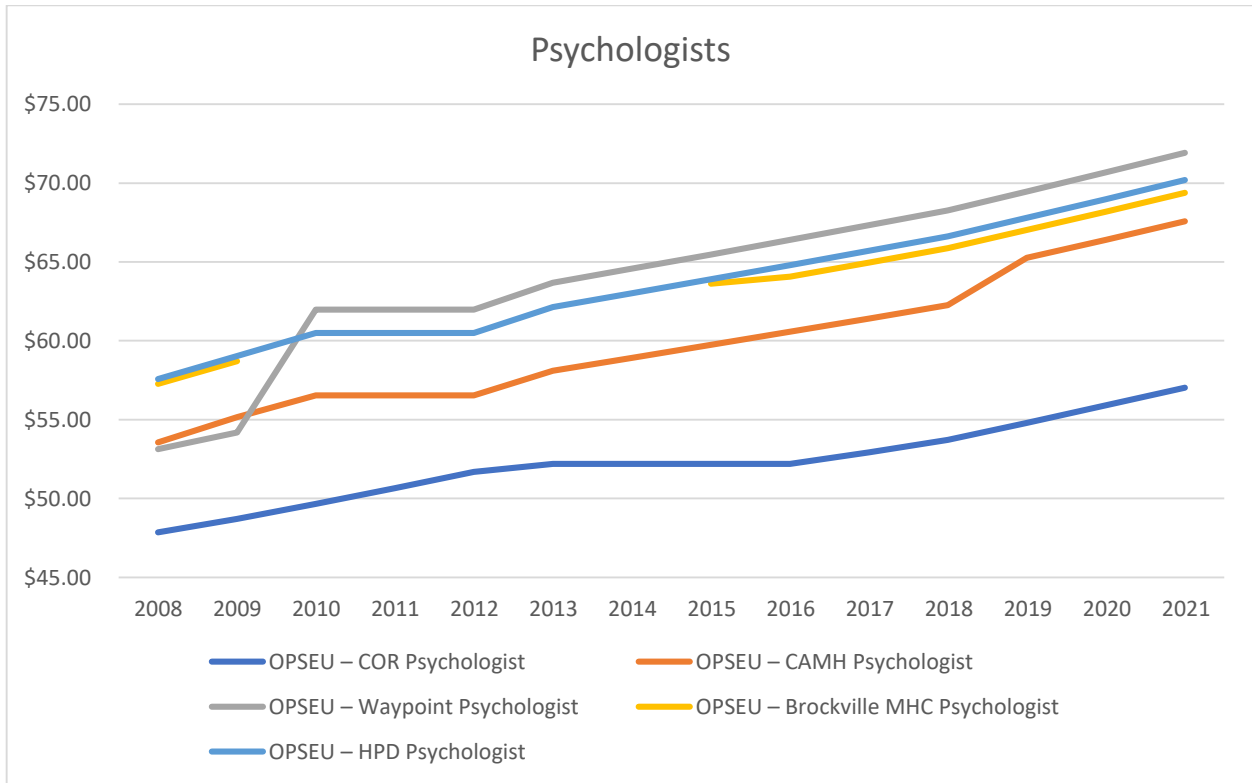
356. An appropriate comparator is Brockville MHC, which provides a treatment program for sentenced inmates with a major mental health diagnosis.²⁷⁷ Inmates are referred by employees in this bargaining unit, including psychologists and psychometrists. The

²⁷⁶ Ontario, "Position Description Report (PRD) – NON OAG, Ministry of Correctional Services, Psychometrist 2", C09375 January 1, 2013, OPSEU Book of Documents, **Tab 153**.

²⁷⁷ See: Royal Ottawa Mental Health Centre, "Job Posting BMHC23-001E, Psychologist 1 (RFT 1.0 FTE), Brockville Mental Health Centre, OPSEU Local 439" *theroyal.ca*, OPSEU Book of Documents, **Tab 154**.

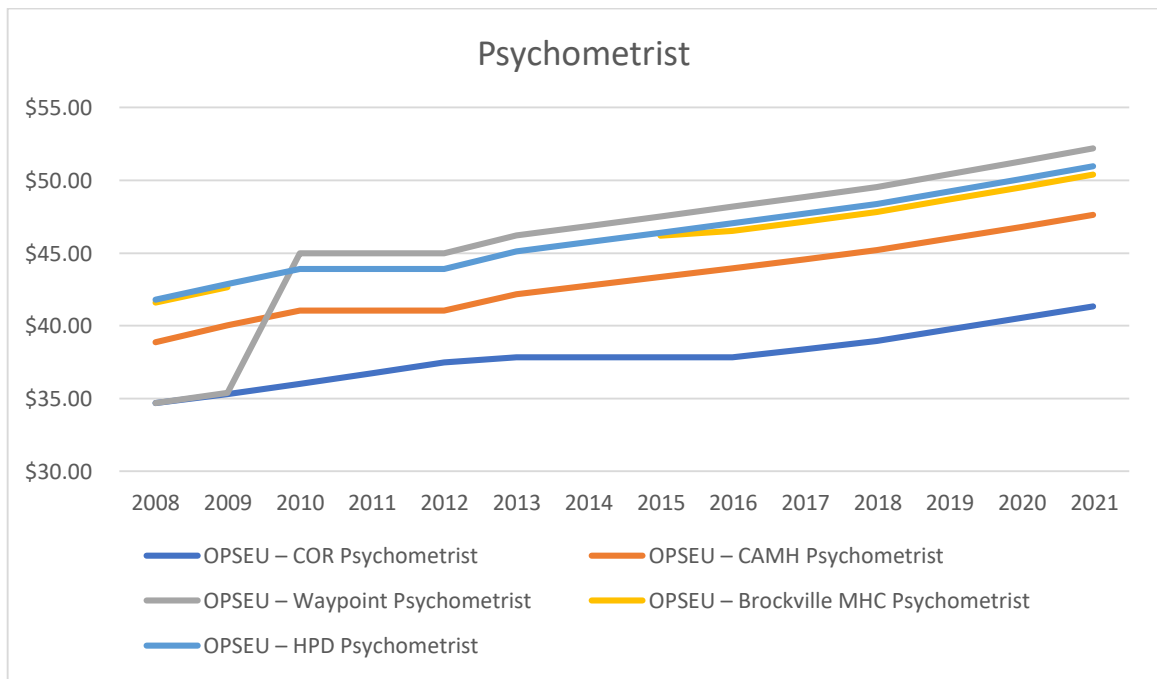
psychologists and psychometrists at Brockville MHC, a secure facility, have similar working conditions. Of course, inmates are only eligible to access the Brockville MHC treatment programs while serving a custodial sentence. While on remand status, during a more volatile and unstable time for the inmate population, inmates are solely cared for by Correctional bargaining unit psychologists and psychometrists who are paid almost 22% less than those at Brockville MHC.

Year	OPSEU – COR Psychologist	OPSEU – CAMH Psychologist	OPSEU – Waypoint Psychologist	OPSEU – Brockville MHC Psychologist	OPSEU – HPD Psychologist
2008	\$47.86	\$53.56	\$53.13	\$57.28	\$57.58
2009	\$48.70	\$55.16	\$54.19	\$58.71	\$59.02
2010	\$49.67	\$56.54	\$61.98		\$60.49
2011	\$50.66	\$56.54	\$61.98		\$60.49
2012	\$51.68	\$56.54	\$61.98		\$60.49
2013	\$52.19	\$58.10	\$63.68		\$62.15
2014	\$52.19	\$58.91	\$64.58		\$63.02
2015	\$52.19	\$59.73	\$65.48	\$63.62	\$63.91
2016	\$52.19	\$60.57	\$66.40	\$64.07	\$64.80
2017	\$52.92	\$61.42	\$67.33	\$64.97	\$65.71
2018	\$53.72	\$62.28	\$68.27	\$65.88	\$66.63
2019	\$54.80	\$65.27	\$69.46	\$67.03	\$67.80
2020	\$55.90	\$66.41	\$70.68	\$68.20	\$68.98
2021	\$57.02	\$67.57	\$71.92	\$69.39	\$70.19



Year	OPSEU – COR Psychometrist	OPSEU – CAMH Psychometrist	OPSEU – Waypoint Psychometrist	OPSEU – Brockville MHC Psychometrist	OPSEU – HPD Psychometrist
2008	\$34.70	\$38.86	\$34.70	\$41.59	\$41.80
2009	\$35.31	\$40.03	\$35.39	\$42.63	\$42.85
2010	\$36.01	\$41.03	\$44.98		\$43.92
2011	\$36.73	\$41.03	\$44.98		\$43.92
2012	\$37.47	\$41.03	\$44.98		\$43.92
2013	\$37.84	\$42.16	\$46.22		\$45.13
2014	\$37.84	\$42.75	\$46.86		\$45.76

2015	\$37.84	\$43.35	\$47.52	\$46.20	\$46.40
2016	\$37.84	\$43.96	\$48.19	\$46.52	\$47.05
2017	\$38.37	\$44.58	\$48.86	\$47.17	\$47.71
2018	\$38.95	\$45.20	\$49.54	\$47.83	\$48.38
2019	\$39.73	\$45.99	\$50.41	\$48.67	\$49.23
2020	\$40.53	\$46.79	\$51.29	\$49.52	\$50.09
2021	\$41.34	\$47.61	\$52.19	\$50.39	\$50.96



357. The Union’s proposal for a catch-up wage increase for Psychologists and Psychometrists is reasonable and fair. A 21.5% special wage adjustment should be awarded, which will provide this group of employees with approximate parity with their peers at Brockville MHC.

g) Maintenance and Trades

358. The Maintenance and Trades class series include the following classifications: Facilities Mechanic/Facilities Technician 1-3 & 3A, Facilities Mechanic/Facilities Technician Foreman/Woman, Maintenance Carpenter, Maintenance Carpenter Foreman/Woman, Maintenance Electrician, Maintenance Electrician Foreman/Woman, Maintenance Plumber, Maintenance Plumber Foreman/Woman, and Maintenance Welder.²⁷⁸

359. The duties of the Maintenance and Trades positions in these classifications obviously vary widely. Overall, these members support all aspects of the maintenance of the physical plants at correctional institutions and youth facilities in the province. Their responsibilities include building, operating and/or maintaining mechanical systems, electrical distribution networks and circuitry, general infrastructure, generators, oil tanks, thermal power stations, heating and cooling systems, water treatment and purification, roads, fences and barriers, HVAC systems, fire suppression systems, locks and security locks, and plumbing and water supply networks. General upkeep, installation, renovation, and construction duties are also part of the job.

360. Many positions oversee specific projects and contracts, are responsible for tracking and ordering supplies, and help in developing long-term projects, including preparing estimates and budget submissions.

²⁷⁸ See Various Class Series Documents and Position Description Reports for the Maintenance and Trades class series at **Tabs 155-169** of the Union's Book of Documents.

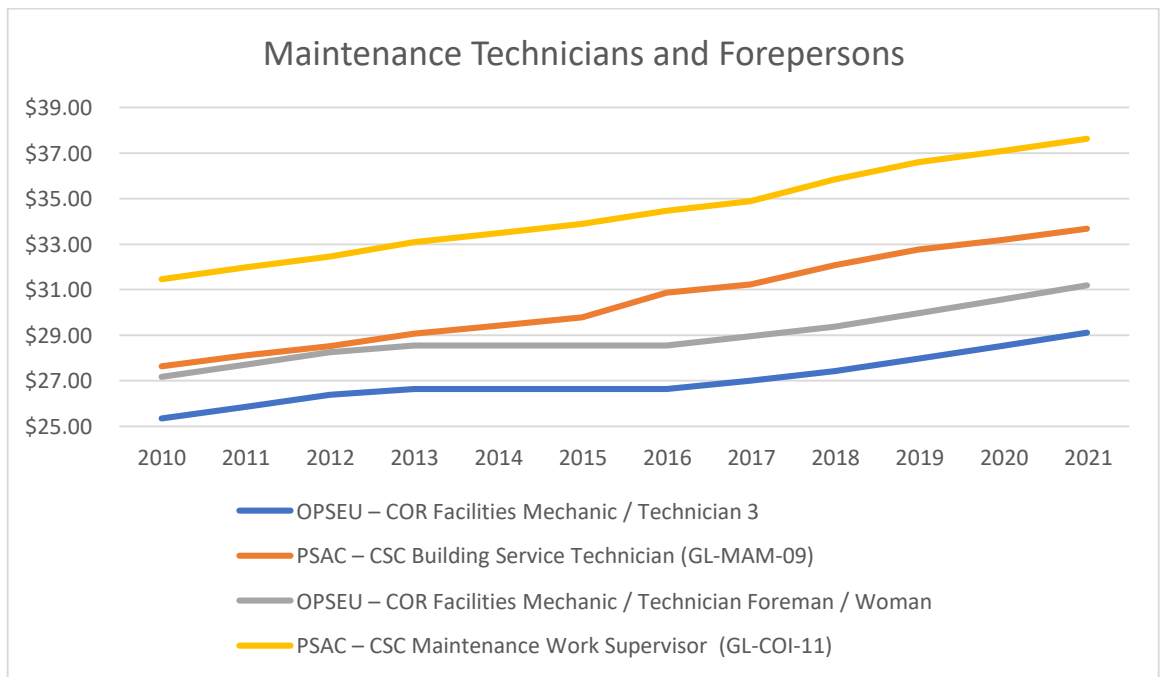
361. As with many of the other specialty roles reviewed in this section, recruitment and retention issues plague the Maintenance and Trade positions. Currently there are only 125 employees in these positions, and there are numerous vacancies throughout the system. Job postings receive limited responses, and the Employer is forced to repeatedly re-post jobs. For example, the Employer posted and re-posted Electrician and Plumber classification jobs at the Ontario Correctional Institute for over six months, and received no applicants.

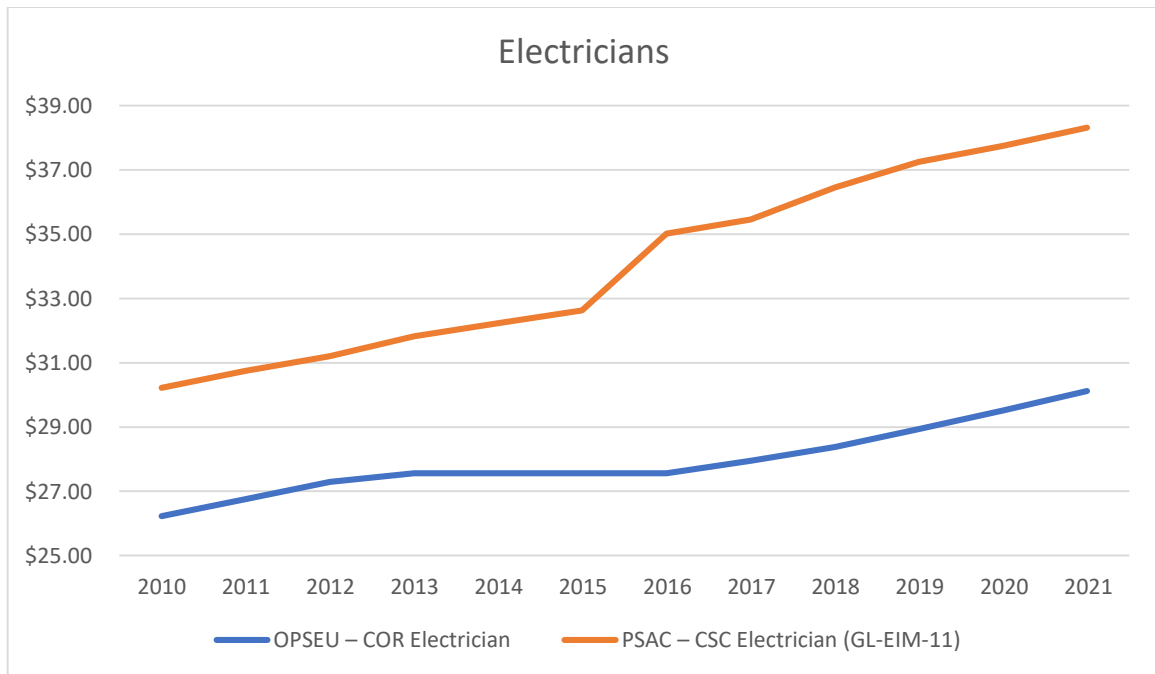
362. The disproportionate under-compensation of the Union's members in this work group is extreme when their salaries are compared to those of their colleagues doing the same work in the Federal correctional system.²⁷⁹ In 2021, the total gap ranged from 15-27% and can be seen in the chart below.

Year	OPSEU – COR Electrician	PSAC – CSC Electrician (GL-EIM-11)	OPSEU – COR Facilities Mechanic/Technician 3	PSAC – CSC Building Service Technician (GL-MAM-09)	OPSEU – COR Facilities Mechanic/Technician Foreman/Woman	PSAC – CSC Maintenance Work Supervisor (GL-COI-11)
2010	\$26.23	\$30.22	\$25.35	\$27.64	\$27.17	\$31.46
2011	\$26.75	\$30.75	\$25.86	\$28.11	\$27.71	\$31.99
2012	\$27.29	\$31.21	\$26.38	\$28.52	\$28.26	\$32.46
2013	\$27.56	\$31.83	\$26.64	\$29.07	\$28.55	\$33.09
2014	\$27.56	\$32.23	\$26.64	\$29.42	\$28.55	\$33.49
2015	\$27.56	\$32.63	\$26.64	\$29.78	\$28.55	\$33.90

²⁷⁹ Corrections Services Canada – Technical Services and Facilities Management job post and job description documents attached at **Tabs 170-174** of the Union's Book of Documents

2016	\$27.56	\$35.02	\$26.64	\$30.87	\$28.55	\$34.47
2017	\$27.95	\$35.46	\$27.01	\$31.24	\$28.95	\$34.89
2018	\$28.37	\$36.45	\$27.42	\$32.09	\$29.38	\$35.84
2019	\$28.94	\$37.25	\$27.97	\$32.77	\$29.97	\$36.61
2020	\$29.52	\$37.75	\$28.53	\$33.20	\$30.57	\$37.09
2021	\$30.12	\$38.32	\$29.11	\$33.68	\$31.19	\$37.63





h) Food Services Class Series

363. The Food Services Class Series is comprised of ten classifications: Helper, Food Service, Cook 1, Cook 2, Cook 3, Food Services (10OFS), Food Services (11OFS), Food Services (12OFS), Food Services (13OFS), and Food Services (14OFS). The class series includes 250 members. Their duties are the crucial functions of preparing, cooking, serving, cleaning, and storing of meals for institutions across the province.

364. The wage disparity for the Union's members working in Food Services has become extraordinary over the years when compared to similar workers doing similar work in the Federal Correctional system. The gap ranges from 13-29% difference, and the Union's request for a 13% catch up wage is eminently reasonable.

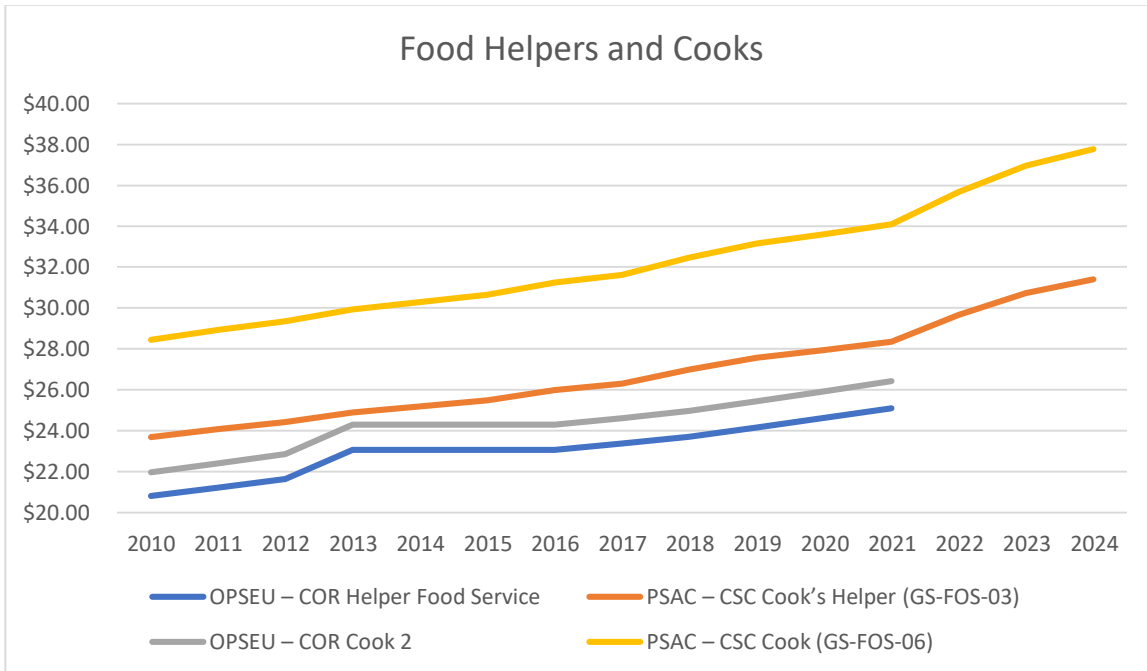
365. The comparator employees at Correctional Services Canada have a wage differential in their favour of 13% for the Food Services Helper classification, and 29% for

the Cook 2 classification.²⁸⁰ Of course, PSAC has recently reached a tentative agreement that provides for additional wage increases through to 2024, which risks further widening this gap.

Year	OPSEU – COR Helper Food Service	PSAC – CSC Cook’s Helper (GS-FOS-03)	OPSEU – COR Cook 2	PSAC – CSC Cook (GS-FOS- 06)
2010	\$20.80	\$23.68	\$21.97	\$28.45
2011	\$21.22	\$24.07	\$22.41	\$28.93
2012	\$21.64	\$24.42	\$22.86	\$29.35
2013	\$23.06	\$24.89	\$24.29	\$29.92
2014	\$23.06	\$25.19	\$24.29	\$30.28
2015	\$23.06	\$25.49	\$24.29	\$30.64
2016	\$23.06	\$25.98	\$24.29	\$31.24
2017	\$23.37	\$26.29	\$24.61	\$31.62
2018	\$23.70	\$26.99	\$24.96	\$32.47
2019	\$24.16	\$27.57	\$25.44	\$33.17
2020	\$24.62	\$27.94	\$25.92	\$33.61
2021	\$25.09	\$28.34	\$26.42	\$34.10
2022		\$29.66		\$35.68
2023		\$30.73		\$36.97

²⁸⁰ See Position Descriptions Reports and OPSEU Class Standards for Cook 2 (50214) and Helper, Food Service (50230) at **Tabs 175-178** of the Union’s Book of Documents; Compare to: Government of Canada Jobs, “Cook’s Helper, Correctional Service Canada, GS-FOS-03”, May 8, 2023, OPSEU Book of Documents, **Tab 179** which outlines similar duties and knowledge as the Helper, Food Service Classification; and Government of Canada Jobs, “Cook (GS-FOS-06) – Casual Inventory, Correctional Service Canada”, January 26, 2021, OPSEU Book of Documents, **Tab 180**, which outlines similar duties and knowledge as the Cook 2 classification.

2024		\$31.41		\$37.78
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366. The Union’s proposal for a catch-up increase of 13% is reasonable and measured, given the long history of under-compensation for this group of workers.

i) Social Worker

367. Social workers, employed in the Social Worker 1 and 2, and Social Worker Supervisor 1 and 2, classifications play an integral role in the correctional setting, with duties as varied as preparing psycho-social risk assessments for the Ontario Parole Board, completing mental health assessments, crisis intervention and suicide risk

assessments, rehabilitative programming, and formulating discharge plans for special needs inmates.²⁸¹

368. There is significant wage differential of 16.6% between social worker positions within Federal Correctional system and the Union's members working in the Ontario system.²⁸²

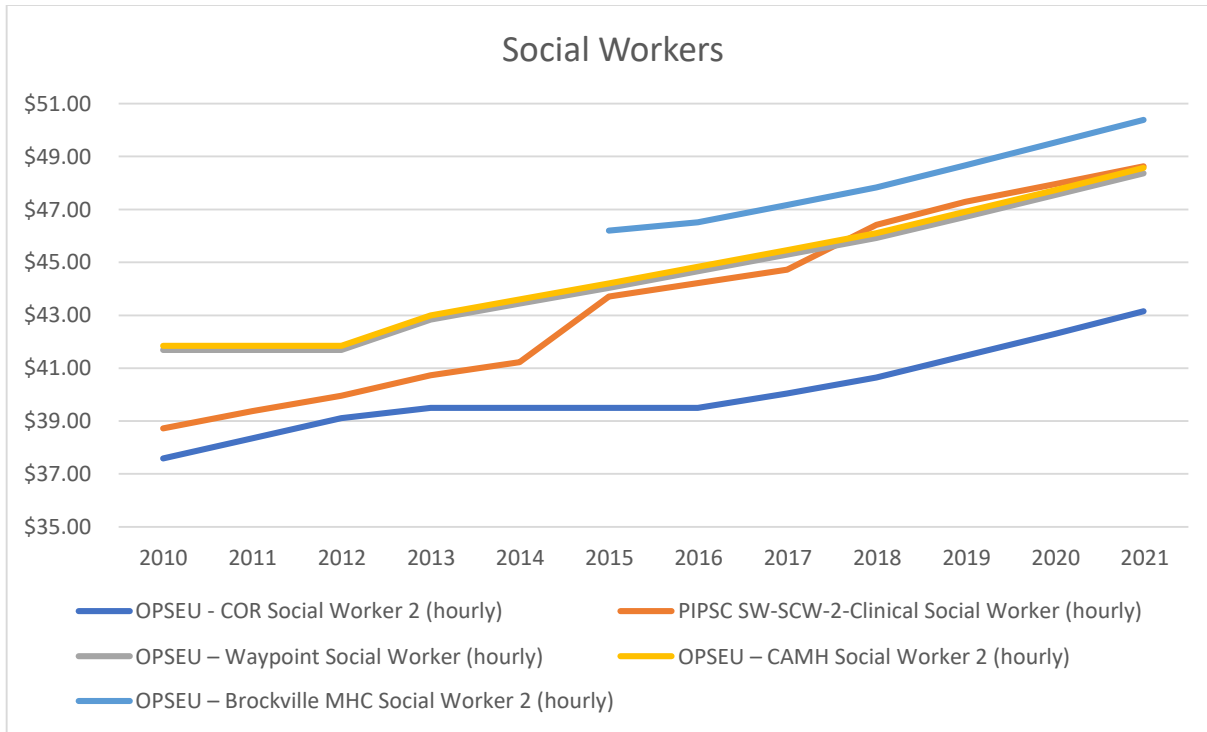
369. An additional useful comparator is the social workers at Brockville MHC. Inmates with major mental health diagnoses are referred by health care employees, including social workers, to Brockville MHC, a secure facility. Wages for social workers are 16.8% higher at Brockville MHC than in Ontario Corrections. Social workers at CAMH, which operates both a Sexual Behaviours Clinic and forensic psychiatric units, are also an appropriate comparator.²⁸³ In fact, CAMH also operates forensic programs within Ontario Correctional Institutions, such as the Forensic Early Intervention Service at TSDC and VCFW, where CAMH Social Workers work alongside Social Workers in the Correctional bargaining unit, but while receiving a salary that is 12.5% higher than OPSEU/SEFPO members.

²⁸¹ See Class Standards documents for the Social Worker and Social Worker Supervisor classes attached at **Tab 181-186** of the Union's Book of Documents, See also: Ontario, "Position Description Report (PDR) – NON OAG), Ministry of Correctional Services, Social Worker 2, C10104", August 27, 2013, OPSEU Book of Documents, **Tab 187**.

²⁸² See Various Correctional Service of Canada Job Postings, attached at **Tab 188-190** of the Union's Book of Documents.

²⁸³ See: CAMH, "Employment Opportunity: Social Worker 2, Sexual Behaviour Clinic, Complex Care and Recovery Program", June 5, 2023, OPSEU Book of Documents, **Tab 191**; and CAMH, "Employment Opportunity: Social Worker 2, Forensic Consultation and Assessment Team, Complex Care and Recovery Program", May 16, 2023, OPSEU Book of Documents, **Tab 192**.

Year	OPSEU – Corrections Social Worker 2 (hourly)	OPSEU – Corrections Social Work (annual)	PIPSC Social Worker (SW-SCW- 2) (annual)	PIPSC Social Worker (SW-SCW- 2) (hourly)	OPSEU – CAMH Social Worker 2	OPSEU - Waypoint Social Worker (hourly)	OPSEU – Brockville MHC Social Worker 2 (hourly)
2010	\$37.59	\$70,852.08	\$75,511.00	\$38.72	\$41.85	\$41.69	
2011	\$38.34	\$72,269.08	\$76,797.00	\$39.38	\$41.85	\$41.69	
2012	\$39.11	\$73,714.68	\$77,919.00	\$39.96	\$41.85	\$41.69	
2013	\$39.50	\$74,451.52	\$79,437.00	\$40.74	\$43.00	\$42.84	
2014	\$39.50	\$74,451.52	\$80,405.00	\$41.23	\$43.60	\$43.44	
2015	\$39.50	\$74,451.52	\$85,235.00	\$43.71	\$44.21	\$44.04	\$46.20
2016	\$39.50	\$74,451.52	\$86,227.00	\$44.22	\$44.83	\$44.66	\$46.52
2017	\$40.05	\$75,493.60	\$87,232.00	\$44.73	\$45.46	\$45.29	\$47.17
2018	\$40.65	\$76,626.16	\$90,520.00	\$46.42	\$46.10	\$45.92	\$47.83
2019	\$41.47	\$78,166.40	\$92,213.00	\$47.29	\$46.91	\$46.72	\$48.67
2020	\$42.30	\$79,737.32	\$93,508.00	\$47.95	\$47.73	\$47.54	\$49.52
2021	\$43.15	\$81,339.96	\$94,823.00	\$48.63	\$48.57	\$48.37	\$50.39



370. The Union’s proposal of a 12.5% catch up special increase is reasonable and appropriate, and entirely justifiable given the significant and longstanding under-compensation of these health care professionals.

j) Pharmacy

371. The Employer employs Pharmacy employees in two classifications: Pharmacy Technician 2 and 16 Pharmacy (there are no employees currently employed in the Pharmacy Technician 1, Pharmacist – Staff, and 17 Pharmacy roles). The Union members working in these roles are significantly undercompensated relative to their comparators on the federal level, as well as those engaged in other correctional workplaces.

372. These classifications see the same recruitment challenges as other classifications described above, with the Employer required to post and re-post job vacancies due to a

lack of qualified applicants. For example, in March 2023, the Toronto South Detention Centre had to repost a pharmacist Technician position after receiving no qualified applicants.

373. As demonstrated by the tables and charts below, the OPSEU/SEFPO Correctional Pharmacist Technician 2 position is significantly undercompensated relative to its direct comparator in the Federal correctional system.²⁸⁴ While it had a history of parity, the gap has substantially widened in recent years.

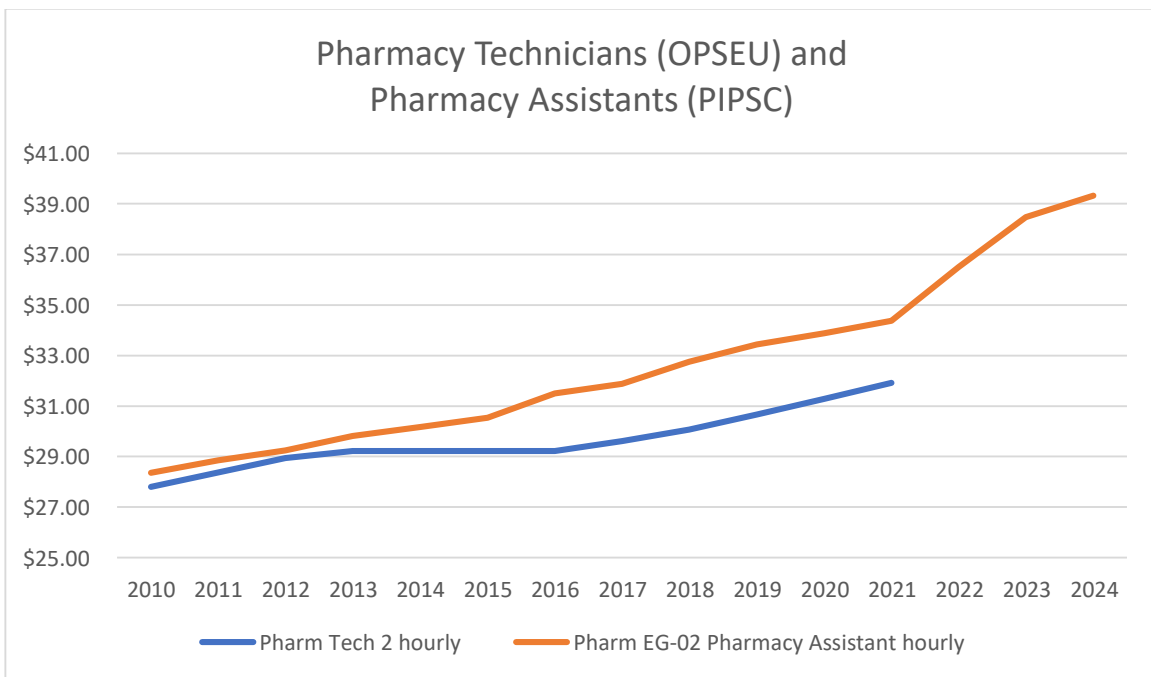
374. The Pharmacist classification is even more starkly undercompensated when compared to the PIPSC-represented Pharmacists working in the federal correctional system, as well as when compared to Pharmacists working in other secure facilities across the Province.²⁸⁵

Year	Pharm Tech 2 hourly	Pharm Tech 2 annual	PSAC EG-02 Pharm assistant annual	PSAC EG-02 Pharmacy Assistant hourly
2010	\$27.80	\$52,407.16	\$ 55,300.00	\$28.36
2011	\$28.36	\$53,455.48	\$ 56,233.00	\$28.84
2012	\$28.93	\$54,524.60	\$ 57,046.00	\$29.25
2013	\$29.21	\$55,070.08	\$ 58,147.00	\$29.82

²⁸⁴ See: Ontario, “Position Description Report (PDR) – NON OAG, Ministry of Correctional Services, Pharmacist Technician, Pharmacy Tech 2, C61202”, August 29, 2013, OPSEU Book of Documents, **Tab 193**; and Government of Canada Jobs, “Pharmacy Assistant, Correctional Service Canada, EG-02”, May 8, 2023, OPSEU Book of Documents, **Tab 194**.

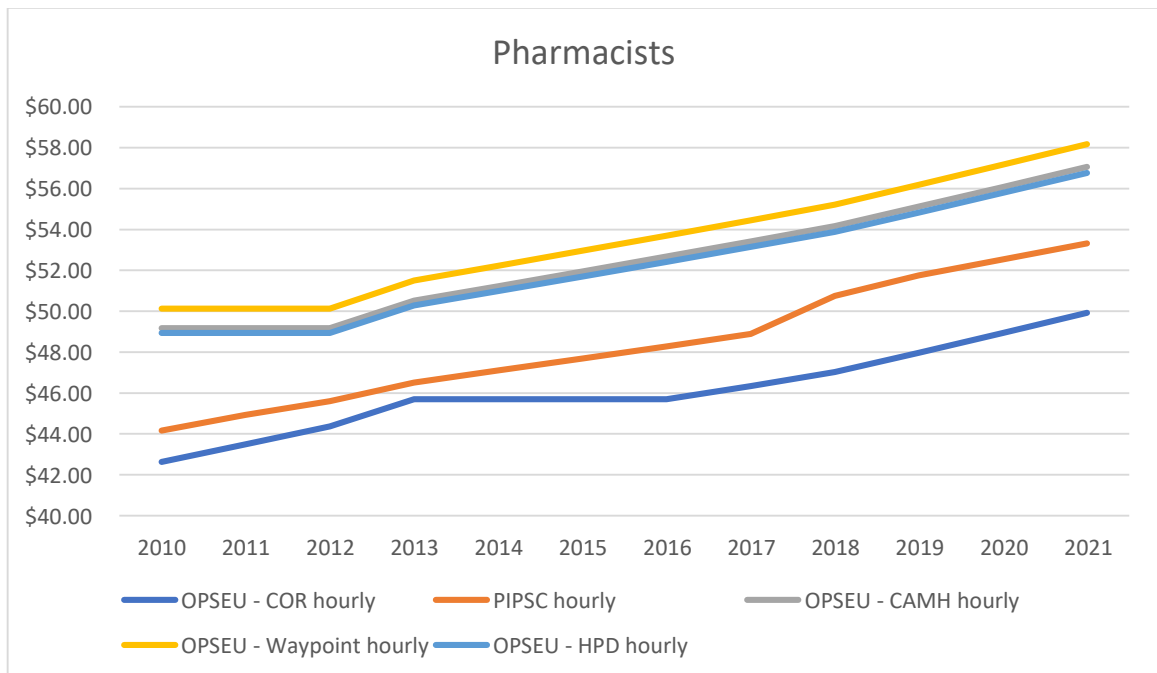
²⁸⁵ See Ontario, “Position Description Report (PDR) – NON OAG, Ministry of Correctional Services, Pharmacist, 16 Pharmacy, C50585”, November 14, 2014, OPSEU Book of Documents, **Tab 195**; Government of Canada Jobs, “Pharmacist, Correctional Service of Canada, PH-01”, June 1, 2023, OPSEU Book of Documents, **Tab 196**; and CAMH, “Employment Opportunity: Pharmacist, Pharmacy”, May 24, 2023, OPSEU Book of Documents, **Tab 197**.

2014	\$29.21	\$55,070.08	\$ 58,849.00	\$30.18
2015	\$29.21	55,070.08	\$ 59,560.00	\$30.54
2016	\$29.21	\$55,070.08	\$ 61,428.00	\$31.50
2017	\$29.62	\$55,841.24	\$ 62,171.00	\$31.88
2018	\$30.07	\$56,678.96	\$ 63,856.00	\$32.75
2019	\$30.67	\$57,818.28	\$ 65,217.00	\$33.44
2020	\$31.29	\$58,980.48	\$ 66,070.00	\$33.88
2021	\$31.92	\$60,166.08	\$ 67,031.00	\$34.37
2022			\$ 71,170.00	\$36.50
2023			\$ 75,030.00	\$38.48
2024			\$ 76,674.00	\$39.32



Year	OPSEU – Corrections Pharmacist (hourly)	OPSEU – Corrections Pharmacist (annual)	PIPSC Pharmacist (annual)	PIPSC Pharmacist (hourly)	OPSEU – CAMH Pharmacist	OPSEU - Waypoint Pharmacist (hourly)	OPSEU - HPD Pharmacist (hourly)
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2010	\$42.63	\$80,586.00	\$86,122.00	\$44.17	\$49.17	\$50.13	\$48.94
2011	\$43.49	\$82,198.00	\$87,629.00	\$44.94	\$49.17	\$50.13	\$48.94
2012	\$44.36	\$83,842.00	\$88,943.00	\$45.61	\$49.17	\$50.13	\$48.94
2013	\$45.70	\$86,374.00	\$90,722.00	\$46.52	\$50.52	\$51.51	\$50.29
2014	\$45.70	\$86,374.00	\$91,856.00	\$47.11	\$51.23	\$52.23	\$50.99
2015	\$45.70	\$86,374.00	\$93,004.00	\$47.69	\$51.95	\$52.96	\$51.70
2016	\$45.70	\$86,374.00	\$94,167.00	\$48.29	\$52.68	\$53.70	\$52.42
2017	\$46.34	\$87,583.00	\$95,344.00	\$48.89	\$53.42	\$54.45	\$53.15
2018	\$47.03	\$88,897.00	\$98,953.00	\$50.75	\$54.17	\$55.22	\$53.89
2019	\$47.98	\$90,684.00	\$100,932.00	\$51.76	\$55.12	\$56.18	\$54.83
2020	\$48.94	\$92,507.00	\$102,446.00	\$52.54	\$56.08	\$57.17	\$55.79
2021	\$49.93	\$94,366.00	\$103,983.00	\$53.32	\$57.06	\$58.17	\$56.77



375. A 7% special wage adjustment is necessary to rectify the inequitable level of compensation provided to Pharmacy employees employed in Corrections.

ALL OF WHICH IS RESPECTFULLY SUBMITTED