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")

REPLY ARBITRATION SUBMISSIONS BRIEF OF OPSEU/SEFPO

November 3, 2023

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PART I. OVERVIEW

1. This is the Reply Brief of the Ontario Public Service Union/Syndicat des Employées des Functions Publique de L'Ontario ("OPSEU/SEFPO" or "OPSEU" or "Union").

2. The background to this dispute and the collective agreement framework are set out in the Union's Brief. In short, the parties have engaged in virtually no collective bargaining, despite the Union's best efforts. In particular, the Employer failed to advance a monetary proposal until October 3, 2023, when it delivered its arbitration brief. Even then, Employer's salary proposal of 1% increases for each year of a three-year collective agreement is unserious and highlights how the Employer's bargaining strategy, arbitration brief, and proposals fail to respond to the challenges faced by members of the Correctional Bargaining Unit at work, as well as extraordinary inflation and their persistent under-compensation relative to their established comparators.

3. This Reply Brief addresses each of the Employer's proposals. This Brief also addresses what the Union views as broad themes in the Employer's Arbitration Brief. The first is the unreliability of many of the Employer's factual arguments and methods of comparison. The second is the Employer's unserious and irresponsible position on wages.

4. OPSEU submits that many of the arguments and factual assertions made by the Employer in its Brief are unreliable. In particular, the Employer's arguments around using Federal CX-2s as a comparator are largely repeated verbatim from the Employer's position on the same issue in its 2019 Arbitration Brief ("2019 Brief"), which were rejected by the arbitrator. That argument largely relies on the affidavit of Barry Scanlon ("Scanlon Affidavit"), which rests on a poor methodology and an inaccurate summary of the information provided by third parties. Indeed, many of the Employer's arguments that purport to rely on the Scanlon Affidavit are not supported by the information that is provided in the Scanlon Affidavit. The Union also submits that the Employer's comparison of "total compensation" between Correctional Bargaining Unit workers and their

comparators flagrantly inflates the “total compensation” of Correctional Bargaining Unit workers, by factoring in items such as WSIB charges and overtime estimates for the Union’s members, but not for their comparators.

5. The second recurring theme in the Employer’s Brief is the Employer’s unserious position and rationales for its wage proposal. The Employer proposes that the Correctional Bargaining Unit should receive the same 1% across-the-board wage increases that Unified agreed to while Bill 124 was in force, plus whatever adjustments Unified is able to achieve in wage re-opener negotiations that have not yet been concluded.

6. The Union submits that the Employer’s wage proposal is plainly absurd. First, the Employer’s proposal attempts to replicate bargaining results that were reached under unconstitutional wage constraints that have been struck down by the courts. This cannot be justified under the replication principle. In addition, the Employer’s position that the Unified Collective Agreement should be largely replicated in this interest arbitration proceeding flies in the face of the Employer’s agreement to create a stand-alone Correctional Bargaining Unit. Finally, the Union would never agree to tie its members wage increases to the bargaining results reached by another bargaining unit under unconstitutional wage constraints. The Employer’s wage proposal should be rejected out of hand.

(i) The Employer’s Brief is Unreliable and/or Outdated

7. The Employer’s Brief makes several unreliable factual claims that undermine its legal positions on total compensation, appropriate comparators, and the application of the interest arbitration criteria.

8. There is a lot that the Employer’s Brief gets wrong about the Correctional Bargaining Unit and the work its members do. First, the Employer’s comparative argument that the Correctional Bargaining Unit’s closest comparator is Unified Bargaining Unit is erroneous. As set out in the Union’s Arbitration Brief, the Union’s position is that other workers in the law enforcement sector, such as Federal Correctional workers and

the OPP Civilian Bargaining Unit are better comparators given the distinctive work performed by our members. The Correctional Bargaining Unit has sole and exclusive bargaining rights separate and apart from the Unified Bargaining Unit by the vote of its members, the agreement of the Employer, and an act of the Legislature. The Employer knew that there would be deviation in the terms and conditions of Employment for the Unified and Correctional Bargaining Units, as occurred when the OPP Civilian Bargaining Unit split off from the Unified Bargaining Unit in 2002.

9. Second, The Employer's comparative arguments do not rely on sound methodology and the Employer's information is often outdated, despite the Employer undertaking to modernize its job evaluation process and update its job descriptions.[1] In some instances, the Employer's Brief does not attempt to make a comparative argument. For example, at paragraph 189 of its Brief, the Employer explicitly acknowledges that the legacy positions in the Correctional Bargaining Unit do not have "mirror positions" in the Unified Bargaining Unit but argues that the salaries of these positions should remain in lock step with the Unified Bargaining Unit anyway.

10. The Union submits that the following arguments made by the Employer are unreliable and should be rejected:

a. The Employer's arguments about the validity of the Federal CX-2 comparator for Ontario CO2s. The Employer made the same argument based on the same 2019 affidavit evidence in the 2019 interest arbitration, which was rejected by Arbitrator Kaplan. The Employer's evidence is outdated, the affidavit evidence is not reliable, and the affidavit does not support the Employer's sweeping claims.

b. The Employer's arguments about the validity of the Federal WP-04 comparator for Ontario PO2s. Like the Federal CX-2 comparator, Arbitrator Burkett and Arbitrator Kaplan have accepted the validity of the Federal WP-04 comparator

[1] 2018-2021 OPSEU Correctional Bargaining Unit Collective Agreement, Appendix 34, OPSEU Book of Documents **Tab 1**.

for the last two rounds of interest arbitration. The Employer has not provided convincing evidence to depart from this result.

c. The Employer has obviously cherry-picked Alberta Correctional workers as a valid comparator due to their relatively low compensation compared to correctional workers in other jurisdictions. Moreover, Ontario CO2s and PO2s have different educational requirements and job duties than their counterparts in Alberta that the Employer ignores in its Brief.

d. The Employer's arguments about its recruitment and retention data are misleading.

e. Finally, the Employer's approach to "total compensation" is unfair and inflates the "total compensation" estimate of Ontario correctional workers by calculating "total compensation" differently for Ontario, Federal and Alberta correctional workers.

a. The Employer's Arguments that Federal CX-2s are Not a Proper Comparator Were Rejected in the Last Two Rounds of Arbitration

11. Arbitrator Burkett and Arbitrator Kaplan accepted Federal CX-2s as a valid comparator for Ontario CO2s in each of the last two rounds of interest arbitration, conclusions that were not challenged through judicial review.[2] This round, the Employer has not provided any new evidence or arguments to justify a different result, instead relying on the same arguments and evidence it used before. In fact, the Employer's evidentiary basis for its arguments discounting the Federal CX-2 comparator is grounded in the Scanlon Affidavit, sworn March 22, 2019, and which the Employer also put before the interest arbitrator in 2019.

12. The central basis upon which the Employer's dismissal of the Federal CX-2 comparator rests is that "case management" by Federal CX-2s makes them a "more

[2] See Burkett Decision 1, pp. 19-20, OPSEU Book of Authorities, **Tab 2;** and *Ontario (Treasury Board Secretariat) v OPSEU (Correctional Bargaining Unit)*, 2019 CanLII 24936 (Kaplan), p. 3, OPSEU Book of Authorities **Tab 4.**

valued classification" than Ontario CO2s.[3] As shown below, the Scanlon Affidavit is not a serious job evaluation or comparison and is not based on sound methodology. Even if the inclusion of "case management" duties in the job description of Federal CX-2s indicates some limited difference between the duties of Federal CX-2s and Ontario CO2s, which the Union strongly disputes, the evidence in the Scanlon Affidavit is insufficient to establish any kind of comparative argument between Federal CX-2s and Ontario CO2s. This is because the Scanlon Affidavit's sources were not undergoing a comparative exercise or even providing any comprehensive review of the job duties of Federal CX-2s and Ontario CO2s.

13. Further, many of the Employer's arguments advanced in reliance on the Scanlon Affidavit are not actually supported by the evidence set out in the Scanlon Affidavit, such as the Employer's assertion that only 1.7% of Ontario CO2s perform case management duties similar to their Federal counterparts.[4] Rather, not unlike a game of broken telephone, the Employer's Brief inaccurately relays information set out in the Scanlon Affidavit, which in turn inaccurately relays the information set out in the emails attached to the Affidavit, until the information is distorted from its original limited content.

14. Ontario CO2s carry out many duties which can be understood as participating in "case management" at Ontario Correctional Services ("OCS") facilities. Correctional Officers in Ontario are specifically identified as participants in inter-professional teams "that work collaboratively to provide and develop strategies to support individualized inmate care in the Employer's "Inmate Housing Placement" policy.[5] The Employer's Guidance Document on Inmate Care Plans outlines that Correctional Officers are responsible for reviewing Inmate Care Plans on a regular basis in their posted areas.[6] Inmate Care Plans are required for inmates in Managed Clinical Care Units, Stabilization Units, and inmates with a serious mental illness regardless of where they are housed. CO2s are required to document their observations of inmates in the Inmate Care Plan

[3] See Employer's Arbitration Brief, para. 302.
[4] See Employer's Arbitration Brief, para. 297.
[5] Ministry of the Solicitor General, *Institutional Services Policy and Procedures Manual*, "Inmate Housing Placement", February 17, 2023, s. 4.7, p. 2/3, OPSEU Supplemental Book of Documents, **Tab 1**.
[6] Ministry of the Solicitor General, *Inmate Care Plan Guidance Document*, CS 010-152-A, August 2022, p. 2/3, OPSEU Supplemental Book of Documents, **Tab 2**.

appropriately and participate in inter-professional team meetings whenever Inmate Care Plans are reviewed.

15. In fact, since the Employer first made its arguments in 2019, there have been several regulatory and legislative changes introduced to restrict, monitor and review the use of administrative segregation in OCS facilities.[7] Other relevant changes to Regulation 778 include a requirement that correctional officers consider an alternate resolution process for inmate misconduct.[8] Many of these changes were necessitated by the decision of the Ontario Court of Appeal in *Canadian Civil Liberties Association v. Canada (Attorney General)*[9] where the Court of Appeal found that placing inmates in administrative segregation violated s. 12 of the *Charter*, as well as various public interest remedies ordered by the Human Rights Tribunal in a number of applications before it related to the use of inmate segregation in correctional institutions.[10] Other relevant changes include:

a. Regulatory changes restricting the use of inmate searches;

b. Regulatory changes requiring two hours of meaningful social interaction for inmates per day;

c. Regulatory changes regarding training for human rights, anti-racism, de-escalation and use-of-force;

d. Introduction of security classification tools for inmates on remand; and

e. Introduction of direct supervision units and institutions across the province.

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[7] See: Regulation 778: General, R.R.O. 1990, under *Ministry of Correctional Services Act*, R.S.O. 1990, c. M. 22, ss. 28.2 – 28.11 ["*Regulation 778*"], OPSEU Supplemental Book of Authorities, **Tab 1**.
[8] *Regulation 778*, s. 30, OPSEU Supplemental Book of Authorities, **Tab 1**.
[9] *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 243, OPSEU Supplemental Book of Authorities, **Tab 2**.
[10] See, for example: *Ontario Human Rights Commission v Ontario (Community Safety and Correctional Services)*, 2018 HRTO 60, OPSEU Supplemental Book of Authorities, **Tab 3**.

16. In light of these changes, the Scanlon Affidavit is less reliable than it was in 2019 when the Employer first tried and failed to rely on it to assert that Federal CX-2s are not valid comparators.

i. *The Employer's argument that CX-2s are not a valid comparator is a repeat from its 2019 Brief.*

17. Paragraphs 281-314 of the Employer's Brief are copied almost verbatim from the arguments the Employer made at paragraphs 275-307 of its 2019 Arbitration Brief. In other words, the Employer has provided no new evidence or arguments to justify a departure from the Arbitrators' findings that Federal CX-2s remain a valid comparator.

18. The Employer has challenged Federal CX-2s as a valid comparator for the past two (2) rounds of bargaining. In 2016, Arbitrator Burkett found that Federal CX-2s were a valid comparator and awarded "catch-up increases" for CO2s in the Correctional Bargaining Unit. In 2019, Arbitrator Kaplan rejected the same factual argument the Employer makes in its Brief now and awarded further "catch-up increases" to CO2s.

ii. The Scanlon Affidavit is not a serious job comparison exercise

19. The methodology behind the Scanlon Affidavit is set out at paragraphs 14 to 20 of the affidavit. In short, Barry Scanlon collected information regarding job duties of Ontario CO2s and Federal CX-2s by emailing the following two (2) people:

a. Katherine Belhumeur, Acting Director, Correctional Operations and Program Sector, Correctional Service of Canada; and

b. Brad Tamcsu, Superintendent, Ontario Correctional Institute (one of the 25 correctional institutions in Ontario).

20. To collect information about the involvement of Ontario CO2s in case management, Mr. Scanlon emailed Mr. Tamcsu on January 7, 2019 requesting information about "case management and the role of the CO in case management" at the Ministry of Community Safety and Correctional Services. Mr. Tamcsu responded in an

email later the same day ("The January 7, 2019 email").[11] The January 7, 2019 email is the source for the Employer's argument that "only 5 of Ontario's 25 facilities…provide some type of case management, and only 1 (OCI) of those 5 facilities provides structured case management similar to structured case management in the Federal jurisdiction."

21. However, Mr. Tamcsu's email does not provide any comparison of or comment on the Federal CX-2 job duties. In fact, there is no mention of case management practices in Correctional Service Canada in any of the correspondence between Barry Scanlon and Brad Tamcsu. Rather, Mr. Scanlon's initial email to Mr. Tamcsu sets out seven questions about "the role of the CO in case management in order to assist in the [2019] COR arbitration." The first question is "What is case management in the Correctional Facilities and what does it include?"

22. Mr. Tamcsu responded the same day:

> At present (January 2019), case management within correctional facilities varies from institution to institution and the case management process appears to have evolved out of the specific needs of the institution and the clients being served. Case Management is typically being used in settings that provide treatment or have a client (inmate) population presenting with special needs.
>
> The institutions that are currently identified as having a structured case management process are:
>
> a) **Ontario Correctional Institute** – *Correctional Officers act as "primary" case managers and oversee aspects of the resident's involvement in treatment and community reintegration. The case management process is supported by clinical team consisting of: Social Worker, Psychologist, Health Care, Rehabilitation Officer.*
>
> b) **Vanier Centre for Women (IMAT: Intensive Management, Assessment and Treatment Unit)** – *Clinical Case Management – Social Worker / Psychologist provide direct case management, supported by Correctional Officers working the IMAT Unit*
>
> c) **Hamilton Wentworth Detention Centre – Special Needs Unit** – *Clinical Case Management – Social Worker acts as primary case*

[11] Sworn Affidavit of Barry Scanlon, March 22, 2019 ["Scanlon Affidavit"], para. 14 and Exhibit D, Employer's Book of Exhibits, **Tab DD**.

manager, supported by Correctional Officers assigned to the Special Needs Unit

d) **Toronto South Detention Centre – Special Needs Unit** – *Clinical case management focus… Correctional officers provide case management support for clients housed on the Mental Health Assessment Unit*

e) **Elgin Middlesex Detention Centre – Special Needs Unit** – *Clinical Case Management – Social Worker provides primary case management services, supported by Correctional Officers who are working the Special Needs Unit*

23. There is no support in Mr. Tamcsu's email for the Employer's sweeping claims like "Only 101 of Ontario's 3,078 CO2s are involved in any sort of case management" at paragraph 297 of the Employer's Brief. The email above states that "case management…varies from institution to institution" and "is typically used in settings that provide treatment or have a client (inmate) population with special needs". Then Mr. Tamcsu cites five facilities in Ontario Correctional Services "that are identified as using structured case management". All five are specialty treatment facilities or special needs units that provide therapeutic services beyond the standard case management services offered to the general population in Federal institutions.

24. Obviously, the Scanlon Affidavit contradicts the Employer's assertion that only the Ontario CO2s at Ontario Correctional Institute "are directly involved in case management" similar to their Federal counterparts. The January 7, 2019 email distinguishes OCI in that CO2s at OCI are the "primary case manager" whereas CO2s in the other four institutions with "structured case management" play a support role in case management. The problem with the Employer's argument is twofold. First, correctional officers do not have to be "primary case managers" to be "directly involved" in case management. Second, the information in the Scanlon Affidavit about Federal CX-2 case management duties does not suggest that Federal CX-2s are "primary case managers" like the CO2s at OCI. The information Barry Scanlon received from Ms. Belhumeur about Federal CX-2 case management duties included this succinct summary by Ms. Belhumeur: "CXII play an active role in the Case Management Team through both static

and dynamic security interactions with offenders."[12] This is not equivalent to the "primary case manager" role of CO2s at OCI.

25. It's not clear whether Mr. Tamcsu's conception of case management accords with case management practices within CSC. Mr. Tamcsu gave a definition for "case management" in a second email to Mr. Scanlon on January 7, 2019 at 7:48 PM. Mr. Tamcsu's definition of "case management" involves a "multidisciplinary team establishing a rehabilitative relationship" with an inmate. However, in Correctional Services Canada, the case management team does not always involve multi-disciplinary care. According to Ms. Belhumeur, "the case management team "at minimum", includes a parole officer, CX-2 or primary worker, the offender, an assessment and interventions manager and a community correctional centre manager.[13]

26. As per Mr. Tamcsu's 5:42 PM email on January 7, 2019, case management varies from institution to institution in Ontario Correctional Services. However, many of the individual aspects of "case management" practices at CSC are present throughout Ontario's jails and institutions. Mr. Tamcsu's definition of "case management" is focused on "multi-disciplinary" care, which is the kind of "structured case management" provided at OCI, the institution Mr. Tamcsu managed as its Superintendent. It is worth noting that OCI is a specialty facility providing treatment to a therapeutic milieu of inmates.

27. Finally, Mr. Tamcsu did not provide any review of the job duties at institutions that were not identified as having "structured case management". There is no support for the Employer's arguments that most Ontario CO2s do not consult and provide input to other professional staff or are not involved in making recommendations regarding an offender's ability to be temporarily released, as the Employer suggests at paragraphs 306-307 of its Brief. To the contrary, Ontario CO2s regularly provide input on Inmate Care Plans and participate in inter-professional teams. Ontario CO2s also provide input and recommendations on temporary absences. The Employer's Temporary Absence

[12] Scanlon Affidavit, Exhibit G, Employer's Book of Exhibits, **Tab DD**.
[13] Scanlon Affidavit, Exhibit G, Employer's Book of Exhibits, **Tab DD**.

Program policy states that a "Temporary Absence Coordinator… may be a Correctional Officer, Rehab Officer or Social Worker."[14]

iii. Federal CX-2s do not "complete correctional plans"

28. The Employer's description of the duties of Federal CX-2s is not supported by the Scanlon Affidavit. For example, the Employer argues at paragraph 291 that:

> "As part of their core duties, Federal CX-2s are required to complete correctional plans. Correctional plans are living documents, which outline what should happen during an offender's sentence. A correctional plan sets out what correctional interventions, such as programs or other treatments, need to be assigned to reduce risk. It is also used to continuously assess an offender's progress during their sentence. The correctional plan is completed in consultation with the case management team."

29. The reference to Federal CX-2s "complet[ing] correctional plans" as part of their "core duties" is not accurate and is not found in the Scanlon Affidavit. The Scanlon Affidavit sets out the information Barry Scanlon collected from Ms. Belhumeur on the job duties of Federal CX-2s at paragraph 22(h)(i), which states, in part:

> "Federal CX-2s maintain regular contact and communication with inmates assigned to their caseload and document inmate behaviour. They process and complete case management reports and inmate requests/reports, and motivate and encourage inmates to develop life skills within their units and through participation in correctional interventions."

30. Nowhere in the Scanlon Affidavit does it state that Federal CX-2s complete correctional plans for inmates. Barry Scanlon's source for information regarding "correctional plans" and case management in the Federal jurisdiction is an email he received from Ms. Belhumeur on February 1, 2019, which is attached to the Scanlon Affidavit at Exhibit G. That email includes a table in which Ms. Belhumeur provides her responses to various questions Mr. Scanlon posed about case management at the

[14] Ministry of the Solicitor General, *Institutional Services Policy and Procedures Manual*, "Temporary Absence Program", March 31, 2023, s. 4.12, p. 3, OPSEU Supplemental Book of Documents, **Tab 3**.

Correctional Service of Canada. The relevant portion of Ms. Belhumeur's response is reproduced below:

Question	CSC Response
3. What is the Correctional Plan and what is the importance and impact	A correctional plan is a living document, which outlines what should happen during an offender's sentence. It sets out what correctional interventions, such as programs, or other treatments need to be assigned to reduce risk. It is also used to continuously assess an offender's progress during their sentence. The correctional plan is completed in consultation with the case management team…
6. What is the role of the CXII in case management?	CXII in Men's institutions are responsible for completing the following Case Management Reports: Structured Casework records (completed every 45 days), Inmate Pay recommendations, Assessments for Decision for Perimeter Clearance, Threat Risk Assessments for Private Family Visits, Escorted and Unescorted Absences following first positive decision, Work Releases following first positive decision. CXII play an active role in the Case Management Team through both static and dynamic security interactions with offenders. In Women Offender Institutions CXII are Primary Workers (PWs) and Older Sisters or Brothers at Okimaw Ohci Healing Lodge. They complete the reports listed above in addition to: Assessments for Decisions for Review of Security Classifications, Voluntary and Section 81 Transfers, Movement within a Clustered/Multi-Level institution, all Temporary Absences under CSC Authority and all Work Releases.

31. Ms. Belhumeur's description of the "correctional plan" is almost identical to the Employer's description at paragraph 291 of its Brief, including the words "living document". However, Ms. Belhumeur's response does not state that CX-2s are responsible for completing these documents. Rather, Ms. Belhumeur indicates that CX-2s are involved in completing several types of case management reports. The relationship between these reports and the "correctional plan" is unclear. In other words, there is no

evidence in the Scanlon Affidavit or its exhibits which supports the Employer's statement that CX-2s are responsible for completing correctional plans.

32. The Union submits that the information in the Scanlon Affidavit does not support the Employer's argument that the case management role of Federal CX-2s is a "stark difference" from the duties of an Ontario CO2. According to Ms. Belhumeur, the source of the Scanlon Affidavit's information, and thus the source for the Employer's comparative argument, Federal CX-2s are involved in case management through writing reports and "through both static and dynamic security interactions with offenders." This description readily applies to Ontario CO2s.

iv. Conclusion on the Employer's Federal CX-2 Argument

33. The Employer takes issue with the use of the Federal CX-2 comparator which has been accepted by Arbitrators Burkett and Kaplan in the last two rounds of arbitration. It has advanced the same argument as it did in its 2019 Brief, based on the same affidavit evidence, sworn March 22, 2019.

34. There is less reason to rely on Mr. Scanlon's evidence in 2023 than there was in 2019. Since the 2019 interest arbitration between the parties, a number of regulatory changes including changes related to administrative segregation, searches of inmates, alternative resolution processes, human rights and anti-racism training and introducing direct supervision units and institutions across Ontario. Introductory training for Ontario CO2s has also significantly changed since 2019 as well.

35. Furthermore, the methodology of the Scanlon Affidavit is not that of a serious job comparison exercise and is by no means exhaustive. Arguably the most important information in the Scanlon Affidavit is the January 7, 2019 email from Mr. Tamcsu, which was drafted in less than a day.

36. Finally, the evidence from the Scanlon Affidavit does not support the sweeping statements and the comparative arguments the Employer makes. The evidence is unreliable, and the Brief's augmentation of that evidence effectively undermines any remaining reliability.

b. The Employer's Arguments Regarding Federal WP-04 Workers Should Be Rejected

37. The Employer takes issue with the use of Federal Parole Officers as a comparator for Ontario Probation Officers ("Ontario POs"), and specifically with Arbitrator Burkett's award to the same effect. However, both Arbitrator Burkett and Arbitrator Kaplan have accepted Federal Parole Officers as a valid comparator in two rounds of arbitration to date.[15]

38. It is clear from the Employer's submissions that it disputes the characterization of the Ontario Probation Officer position as understood by the Union as well as by the arbitrators who have found Federal Parole Officers to be appropriate comparators. It is worth noting that in multiple rounds of bargaining, the Union has proposed that the parties engage in a joint job evaluation process for the jobs in the Correctional Bargaining Unit. However, the Employer has rejected this proposal in each round.

39. The Employer has also emphasized what it characterizes as a "significant difference" between the duties and responsibilities of Federal Parole Officers and Ontario POs, largely on the basis of the alleged differences between the populations supervised by each group. However, the factors that the Employer points to as indicators that the Federal offender population is "higher-risk and higher-need" are also present in provincial offender populations that Ontario POs supervise in the community, including serious and repeat violent offenders and sexual offenders. Ontario POs also commonly supervise offenders for periods longer than five years where those offenders are under longer-term community supervision orders. In fact, the Employer has a specific policy and stream for what are termed "Intensive Supervision Offenders."[16] The policy applies to offenders with

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[15] See Burkett Decision 1, pp. 19-20, OPSEU Book of Authorities, **Tab 2** and *Ontario (Treasury Board Secretariat) v OPSEU (Correctional Bargaining Unit)*, 2019 CanLII 24936 (Kaplan), p. 3, OPSEU Book of Authorities **Tab 4.**

[16] Ministry of the Solicitor General, *Probation, Parole and Conditional Sentence Policy Procedures and Manual*, "Intensive Supervision Offenders", March 14, 2022, OPSEU Supplemental Book of Documents, **Tab 4.**

a pattern of violent and/or aggressive behaviour, escalating offences, predatory behaviour, and/or a history of domestic violence.

40. The Intensive Supervision Offenders Policy states that "[a]n offender who is assessed as being the highest risk of re-offending and poses an imminent threat to life or serious bodily harm to a specific victim, victim target group or the general public will be streamed and supervised as an Intensive Supervision Offender (ISO)."[17] As shown in the following chart, serious and repeat violent offenders and sexual offenders comprise a significant portion of the workload, and when combined with domestic violence offenders, represent more than a third of the population under provincial community supervision in Ontario.

Date	Sexual Offender		Domestic Violence Offender		Intensive Supervision Offender		Total Community Supervision Caseload
	#	%	#	%	#	%	
31-Mar-19	3,402	8.5%	10,225	25.7%	1,085	2.7%	39,803
31-Mar-20	3,280	8.3%	10,107	25.6%	1,059	2.7%	39,463
31-Mar-21	2,668	8.8%	7,682	25.4%	1,038	3.4%	30,226

Number of provincial "Intensive Supervision Offenders" stream with additional supervision requirements

41. Moreover, Ontario POs frequently supervise offenders who have a prior history of federal incarceration.

42. Although at paragraph 353 of its Brief the Employer points to the longer sentences of parolees correlating with convictions of more serious crimes, offender risk/need levels are not determined solely on the basis of the criminal conviction for which an inmate is presently serving their sentence. Rather, the risk/need levels are determined based on a risk assessment completed using the province's Level of Service Inventory

[17] Ministry of the Solicitor General, *Probation, Parole and Conditional Sentence Policy Procedures and Manual*, "Intensive Supervision Offenders", March 14, 2022, p. 1/12, OPSEU Supplemental Book of Documents, **Tab 4.**

that reviews static and dynamic criminogenic factors. Additionally, specific risk assessment tools are used for sexual offenders and domestic violence offenders.

43. As can be seen in the following table, approximately 35% of offenders under provincial community supervision are deemed high- or very high-risk offenders, based on the Employer's own risk assessment tool.

Year	Very High	High	Medium	Low	Very Low
2011-2012	7.71%	22.59%	34.19%	23.85%	11.67%
2012-2013	8.24%	23.68%	33.91%	22.86%	11.31%
2013-2014	9.42%	24.33%	33.76%	21.92%	10.79%
2014-2015	10.62%	25.25%	32.10%	20.90%	11.13%
2015-2016	11.52%	25.68%	31.99%	20.29%	10.51%
2016-2017	9.31%	25.29%	32.97%	21.68%	10.76%

Breakdown of provincial offender risk levels, 2011-2017

44. The Union sought a breakdown of provincial offender risk levels for the years subsequent to the data in the table above during this round of bargaining. However, the Employer declined to provide this information. Nevertheless, it is clear from the table above that the percentages across all risk levels are relatively stable. In the absence of any evidence to the contrary from the Employer, there is no reason to believe that there would be any substantial change in the most recent years.

45. The Employer also attempts to contrast supervision of parolees with the supervision of probationers throughout section 9 of its Brief, and in particular at paragraph 344. However, this is a distinction without a difference. Like Federal Parole Officers, Ontario POs use assessment tools to develop a case management plan for supervising offenders in the community with a focus on rehabilitation and reintegration under a public safety mandate. Both exclusively supervise sentenced offenders.

46. Moreover, the Employer's caseload numbers for Ontario POs are unreliable. They do not correspond to caseload averages the Union received from SOLGEN, through MERC, which are significantly higher than the Employer has claimed in its Brief.

Jan-Dec 2021				Jan-Dec 2022				Jan-Dec 2023		
Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
46.37	49.64	51.90	53.35	54.03	56.49	56.03	55.82	56.66	60.25	58.87

SOLGEN provincial caseload average, provided through MERC

47. The Employer has provided an oversimplified outline of the supervisory role of Ontario POs at paragraph 347 of its Brief. The Employer's scant bullet point outline belies the fact that nearly 50% of the duties and responsibilities outlined for Ontario POs are to "assess, manage and supervise cases according to risk and need."[18] Ontario POs carry out their supervisory duties according to policies that outline specific approaches for different types of offenders.[19] Ontario POs also follow rules and standards similar to those of Federal Parole Officers referred to in paragraph 352 of the Employer's Brief. The standards for Ontario POs are not lower than those of Federal Parole Officers; rather, they differ according to the Employer's policies and procedures. Nevertheless, both federal and provincial standards are founded on ensuring public safety, rehabilitation and reintegration of offenders into the community, and compliance with the *Criminal Code* of Canada and other applicable federal or provincial legislation.[20]

48. The duties of Ontario POs overlap with those of Federal Parole Officers. For example, Ontario POs work with collateral contacts, such as victim contacts, police, offenders' families, and clinical and programming resources. They carry out home visits as well as in-person meetings with offenders. Ontario POs also work with offenders in

[18] Ontario, "Position Description Report, (PDR) NON OAG, Ministry of Community Safety and Correctional Services, Probation Officer 2, 10172," November 5, 2013, Part 3: Duties/Responsibilities, OPSEU Book of Documents **Tab 126**.

[19] See, for example: Ministry of the Solicitor General, *Probation, Parole and Conditional Sentence Policy Procedures and Manual*, "Parole Supervision Policy", March 30, 2023, OPSEU Supplemental Book of Documents, **Tab 5**; Ministry of the Solicitor General, *Probation, Parole and Conditional Sentence Policy Procedures and Manual*, "Sex Offenders", June 22, 2022, OPSEU Supplemental Book of Documents, **Tab 6**; Ministry of the Solicitor General, *Probation, Parole and Conditional Sentence Policy Procedures and Manual*, "Guide for Recording Risk Assessment Information on Men Who Sexually Offend", April 19, 2018, OPSEU Supplemental Book of Documents, **Tab 7**; and Ministry of the Solicitor General, *Probation, Parole and Conditional Sentence Policy Procedures and Manual*, "Domestic Violence Offenders Policy", March 14, 2022, OPSEU Supplemental Book of Documents, **Tab 8.**

[20] For example, the *Corrections and Conditional Release Act*, S.C. 1992, c. 20, OPSEU Supplemental Book of Authorities, **Tab 4**, and the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22, OPSEU Supplemental Book of Authorities, **Tab 5**.

helping them achieve their rehabilitative goals and engage in cognitive behavioural interventions to address criminogenic needs of offenders, such as how to engage in prosocial behaviours through means such as modelling and offering practice opportunities.

49. The Employer's arguments are based on a meaningless distinction between the supervision of parolees versus probationers, an over-simplified version of the various factors that determine offender risk/need levels, and a disregard for the demanding supervisory duties that comprise a significant portion of Ontario Probation Officers' jobs. The Employer has provided no compelling rationale for departing from the use of Federal Parole Officers as a comparator for Ontario Probation Officers.

c. Employer Inappropriately Identifies Alberta Correctional Workers as a Proper Comparator

50. The Employer's proposed comparator of Alberta Correctional Service Workers is poorly founded, and the lack of any clear reasoning for selecting Alberta over any other province gives the appearance of "cherry-picking" by the Employer. The Employer's own comparative charts of the respective job duties of Ontario CO2s versus Alberta CPO2s, and Ontario PO2s versus Alberta CSW2s, reveal substantial differences between Ontario and Alberta Correctional workers.

51. For Correctional Officers, the chart at paragraph 317 of the Employer's Brief indicates that Ontario CO2s, as part of their duties and responsibilities, "take charge of an assigned area to maintain custody of and supervise all offender activity occurring on that post" whereas Alberta CPO2s "oversee inmate/young person movements within assigned work area" and "[c]onduct rounds to observe behaviour… and reporting notable incidents…" The Ontario CO2s job description of "taking charge" of their assigned area implies more responsibility and accountability than the passive descriptions of the Alberta CSW2s job description. "Accountability" is a factor the employer points to in its comparison of Ontario CO2s and Federal CX-2s at paragraph 306.

52. The Employer's description of Ontario CO2 job duties at paragraph 317 of its own Brief also quotes the CO2 job description's reference to their participation in case

management. Clearly this undermines the Employer's emphatic arguments about the Federal CX-2 comparator eight (8) pages earlier in its Brief that "**Only 101 of Ontario's 3,078 CO2s** are involved in any sort of case management at **5 of Ontario's 25 facilities**…"[21] Meanwhile, the Alberta CPO2 job description contains no mention of case management at all.[22]

53. There are also substantial differences in the jobs and duties of Ontario CO2s and Alberta CPO2s that are not mentioned in the Employer's Brief. For example, Ontario CO2s complete secure-to-secure transfers, whereas these are carried out not by Alberta CPO2s but by Security and Transport Sheriffs.[23] Ontario COs also deal with the public, external agencies, professionals and other third parties, which Alberta CPO2s do not, as shown in the final row of the Employer's chart.

54. There are significant differences between the duties and responsibilities of Ontario POs and the Employer's proposed comparator, Alberta CSWs. Alberta CSWs also do not work within institutions, while Ontario POs do work in institutions as Institution Liaison Officers and Community Reintegration Officers.

55. There are also different educational requirements for Ontario POs and Alberta CSWs. Alberta CSWs are required to have a two year diploma in a field relevant to the role and two years of related job experience, or a related one year diploma and three years of related job experience.[24] However, the Ontario PO2 position requires a bachelor's degree in social work, psychology, sociology or criminology, or a different degree along with more than five years of experience at a social services or correctional organization in one or more roles involving the formal assessment of human behaviour and the application of structured interventions aimed at supporting the changing of human behaviour.[25] Notably, the educational requirement for Federal Parole Officers is also a

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[21] Employer's Arbitration Brief, para. 297 [emphasis the Employer's].
[22] See Alberta, "Probation Officers", OPSEU Supplemental Book of Documents, **Tab 9**.
[23] See, Alberta Public Service Benchmark Listings, *Sheriff, Security and Transport – Subsidiary 3*, "Benchmark Evaluation – 035SH19: Law Courts sheriff", January 2023, p. 33, OPSEU Supplemental Book of Documents **Tab 10**.
[24] Alberta, "Probation Officers", OPSEU Supplemental Book of Documents, **Tab 9**.
[25] Ontario, "Position Description Report, (PDR) NON OAG, Ministry of Community Safety and Correctional Services, Probation Officer 2, 10172", November 5, 2013, p. 3/4, OPSEU Book of Documents, **Tab 126**.

university degree related to the social science field, such as social work, psychology, sociology or criminology.[26]

d. The Employer's Arguments about Recruitment and Retention of Employees are Misleading

56. The Employer's argument at paragraph 211 of its Brief that its retention data reflects "a high degree of employee retention and satisfaction with levels of compensation" is misleading. As explained below, the voluntary turnover rate, or "quit rate," the Employer provides does not account for fixed-term employees (FXTs) – who are particularly vulnerable and make up 1/3 of the Correctional Bargaining Unit. Virtually all new hires are FXTs. The Employer's recruitment data is also incomplete. The Employer has shown that it receives many applicants for its online job posts but has not disclosed how many applicants met even the minimum education requirements or graduated from correctional officer training.

57. The Employer's general argument that its "positive recruitment and retention data" demonstrate that Correctional Bargaining Unit members receive competitive compensation packages are misleading. There have been numerous surveys reflecting dissatisfaction with rate of pay among members of the Correctional Bargaining Unit – and that has been repeatedly acknowledged by the Employer.[27]

58. The Employer has acknowledged the Correctional Bargaining Unit's dissatisfaction with its compensation package. For example, on October 27, 2022, Deputy Solicitor General Karen Ellis and Deputy Solicitor General Mario Di Tommaso, issued a memo to OPS employees in response to the results of an OPS-wide employee experience survey, noting:

[26] See: Government of Canada, "Work Description, WP-04, 4156 – Probation and Parole Officers and Related Occupations", March 13, 2007, pp. 3-5, OPSEU Book of Documents **Tab 125**.
[27] See, for example: Ministry of the Solicitor General, 2022 Health Workforce Survey Results, July 18, 2022, pp. 16-17, OPSEU Supplemental Book of Documents, **Tab 11**.

> "You identified fairness of pay and suitability of benefits as opportunities for growth. We are committed to ensuring your voice is heard on these issues and to working with our partners to identify valuable and sustainable solutions."[28]

59. The Union is also aware that representatives from the Ministry of the Solicitor General have met with a group of Nurse Practitioners (NPs) working in SOLGEN and discussed the NPs' concerns regarding their compensation and remuneration in the Correctional Bargaining Unit – and has done so without the Union being present. The Union's understanding is that Employer representatives have been telling the NPs that it is the Union acting as the barrier to fair compensation for NPs in the Correctional Bargaining Unit. On September 22, 2023, the NPs wrote to J.P. Hornick, stating:

> "Our group of eleven NPs meet biweekly with Andrea Winzer and Linda Ogilvie to discuss NP issues. **We have full support of management and corporate for fair wages and compensation**. However, an outstanding barrier was the introduction of the NP role into the union."[29]

60. Aside from the fact that the Employer's actions appear to breach s. 70 of the *Labour Relations Act*,[30] the NP's letter indicates that the Employer is aware of the issue of unfair wages for Nurses in the Correctional Bargaining Unit. Despite this, the Employer has now stated that its only official position on wages is the proposal it has made in its Brief – 1% per year for Nurses, and for the rest of the bargaining unit.[31]

61. A comparison between the Employer's charts at paragraph 211 of its Brief with the corresponding charts from the 2019 Brief reveals that between December 31, 2018 to December 30, 2022:

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[28] Sol Gen News, Memo from DSGs Ellis and Di Tommaso: SOLGEN Employee Experience Survey Results October 27, 2022, OPSEU Supplemental Book of Documents, **Tab 12.**
[29] Letter from SOLGEN Nurse Practitioners to J.P. Hornick, September 22, 2023, OPSEU Supplemental Book of Documents, **Tab 13**. [Emphasis added].
[30] *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched A, s. 70, OPSEU Supplemental Book of Authorities, **Tab 6**; see also Letter from J.P. Hornick to Steven MacKay et al, October 13, 2023, OPSEU Supplementary Book of Documents, **Tab 14.**
[31] Letter from Steven MacKay to J. P. Hornick, October 24, 2023, OPSEU Supplementary Book of Documents, **Tab 15**.

a. the number of employees dropped despite the addition of 500 net new positions across SOLGEN in 2020; and

b. the share of employees in the Correctional Bargaining Unit with more than 10 years of service dropped from 42% of all employees to 37% of all employees. This represents a drop of 11.9% in the share of employees in the Correctional Bargaining Unit with more than 10 years of experience.

62. The relevant chart from paragraph 211 of the Employer's Brief and the corresponding chart from its 2019 Brief are reproduced below:

Employees with More/Less than 10 Years Service (Regular and Fixed-Term Employees

	Total Employees	Employees more than 10 years	% of Total	Employees less than 10 years	% of Total
Regular	6,046	3,195	53%	2,851	47%
Fixed Term	2,716	48	2%	2,668	98%
Grand Total	**8,762**	**3,243**	**37%**	**5,519**	**63%**

Employer's 2023 Brief at para. 211

	Total Employees	Employees more than 10 years	% of Total
COR Legacy	6,632.0	2,858.0	43%
W2W Unified	2 262 0	846.0	37%
Grand Total	**8,894.0**	**3,704.0**	**42%**

Note:
Population includes regular and fixed term employees

Employer's 2019 Brief at para. 216

63. The Employer's data at paragraphs 212-214 of its Brief regarding voluntary turnover rates excludes data for fixed-term employees (FXTs), which account for approximately 1/3 of the Correctional Bargaining Unit and the majority of new hires. FXTs

experience much higher voluntary and involuntary turnover rates than regular employees due to the precarity of their employment and because most new employees are FXTs. Indeed, the Coroner's Report noted that the permanent versus fixed-term employment arrangement contributes to increased turnover and an unhealthy work environment due to the "evident hierarchy and power imbalance that exists…between permanent employees and fixed-term employees".[32] The Employer's voluntary turnover rates do not tell the whole story.

64. Similarly, the Employer's assertion at paragraph 194 of its Brief that "current employees are steadfastly loyal" is subject to the same lack of reliability, as a result of the exclusion of the one third of the workforce employed as FXTs. The Employer did not respond to the Union's disclosure request for turnover and exit survey data by classification. However, the voluntary exit data the Employer did provide at paragraph 212 of its Brief shows that nurses in the Correctional Bargaining Unit consistently leave at much higher rates than the OPS average.

65. The Employer's reference to the Correctional Officer Training and Assessment ("COTA") program at paragraph 200 of its Brief is outdated. The COTA program was replaced by the Correctional Foundation Training-Correctional Officer (CFT-CO) Program in January 2020. The cost of the COTA program was paid for by individual candidates. However, in January 2021, the Employer introduced a stipend for correctional officer recruits undergoing training and began offering virtual delivery of the corrections training program in an effort to "reduce[] the financial and geographic barriers to recruitment."[33]

66. Similarly, on April 25, 2022, the Employer announced the Northern Attraction Incentive Program (NAIP) pilot to attract and retain correctional staff in the north. The NAIP provides between $4,000 and $15,000 in onboarding supports for new candidates working at select adult institutions. Existing and new employees who transfer to select locations can also claim relocation expenses of up to $5,000 per year for up to

[32] Coroner's Report, p. 27, OPSEU Book of Documents, **Tab 4**.
[33] Ontario, "News Release: Ontario Building Pathways to Careers in Corrections", March 9, 2021, OPSEU Supplemental Book of Documents, **Tab 16**.

three years.[34] The Employer also introduced a weekly stipend of $800 for Youth Services Officer candidates attending the 6-week mandatory pre-employment YSO basic training for a total of $4800.[35]

67. It is difficult to accept that there are no problems attracting and recruiting qualified staff in corrections when the Employer is eliminating tuition, paying out bonuses, and developing targeted pilot programs to bolster recruitment.

68. The Employer's reference to "vacancies" at paragraph 202 of its Brief is similarly inaccurate. The job posts created for the two mass centralized recruitment processes between April 1, 2021 and March 31, 2023 were for irregularly scheduled fixed-term positions. The Employer's argument at paragraph 202 of its Brief that applications exceeded the number of jobs posted is unhelpful absent more accurate data that would show the how many applicants followed through with the interview, met the security clearance, attended training, and graduated from the CFT-CO program.

69. The Employer's argument at paragraph 203 of its Brief that the number of applications for Probation and Parole Officer positions exceeded the number of positions available is misleading for largely all the same reasons. The number of applications the Employer receives for an online job posting is a poor proxy for the Employer's ability to recruit qualified candidates. Many applicants who submit their resumes online will not even meet minimum qualifications and pass a security clearance, let alone attend interviews and be successful in the competition process.

70. The Union also submits that the Employer's significant use of overtime – 1,270,000 hours per year – reflects the issue of chronic understaffing within OCS.

e. Employer's Approach to Estimating Total Compensation is Unfair and Opaque.

[34] Ontario, "News Release: Ontario Investing in Corrections in the North", April 25, 2022, OPSEU Supplemental Book of Documents, **Tab 17**.
[35] Ontario Public Service Careers, Youth Services Officer, Ministry of Children, Community and Social Services, last modified October 27, 2023, OPSEU Book of Documents, **Tab 18**.

71. One of the most important areas of the Employer's Brief is its reliance on total compensation to support its argument that no catch-up wage increases are appropriate. Unfortunately, the comparisons advanced by the Employer are unreliable at best. Repeatedly, the Employer has included certain forms of "compensation" in the calculation of the total compensation of Correctional Bargaining Unit members, while excluding those same elements from the total compensation of its comparators.

72. This is most clear at paragraphs 320 to 321 of the Employer's Brief, under the subheadings "Total Compensation of Federal CX-1s and CX-2s" and "Total Compensation of Ontario CO2s". The Employer's calculation of the total compensation of Ontario CO2s and YSOs is reproduced below:

Correctional Officer 2 and Youth Services Officer

2021/22 Regular Staff Benefits	Salary-Related	Non Salary-Related	Total	2021 Salary Maximum + Benefits Estimates
				$82,171
Insured Benefits (including supplementary health and hospital coverage plus vision and hearing, dental, LTIP, basic life coverage and insured benefits for employees on LTIP)	**4.50%**	**5.27%**	**9.77%**	$8,026
Statutory Benefits (including CPP, EI, Employer Health Tax and WSIB charges)	**3.04%**	**10.57%**	**13.61%**	$11,181
Pension (including pension buybacks and pension for employees on LTIP)	**11.77%**	**0.00%**	**11.77%**	$9,668
Premiums (including overtime premium, call back and shift premium payments)	**22.88%**	**1.16%**	**24.04%**	$19,752
Termination Pay (including transition exit pay, termination pay, salary continuance, severance payment and death benefit)	**0.07%**	**1.40%**	**1.47%**	$1,210
Total Benefits/Pension/Premiums/Termination	**42.25%**	**18.40%**	**60.65%**	**$49,838**
Estimated Salary and Benefits				**$132,009**

Pay for Time Not Worked (2020 Experience)		
Vacation	**6.61%**	$5,436
Sick Leave	**8.73%**	$7,170
Holidays (12 statutory holidays)	**4.33%**	$3,555

Notes:

- The benefits cost factors represent the Employer's annual benefits cost expressed as a percentage of base payroll. They are based on 2021/22 rates and 2020 premium, termination, WSIB and pension buybacks experience. The bulk of the annual benefits cost applies to actively working employees, however a portion is also attributable to inactive employees, i.e. insured benefits and pension cost for employees on LTIP, cost for employees in receipt of WSIB benefits, and termination payments for employees exiting the OPS.
- Insured benefits, statutory benefits and pension estimates are based on the salary maximum, except for the cost for employees on LTIP (insured benefits and pension factors) and pension buybacks (pension factor) which are based on Correctional Officers 2 average experience
- Premiums and termination estimates are based on Correctional Officer 2 average experience
- Average FTEs based on Regular Staff FTEs on December 31, 2019 & December 31, 2020 were used to estimate vacation and holidays experience
- Average Daily Rate based on Regular Staff FTEs (3,228.91) as of July 31, 2021 excluding LTIPs
- Sick Leave Pay for Time Not Worked estimate based on first 6 days paid at 100% and remainder at 75%

73. The Employer's calculation of the total compensation of $132,009 includes $11,181 for "statutory benefits" (including CPP, EI, Employer Health Tax and WSIB Charges); $19,752 for premiums (including overtime premium, call back and shift payments); and $1,210 for termination pay (including transition exit pay, termination pay, salary continuance and death benefit). Further, and as explained below, the use of "including" when enumerating these benefits suggests that there may be other benefits included but unlisted in the Employer's calculation. The calculation also includes unaccounted figures for insured benefits and pension contributions for employees on LTIP. As explained below, these pay components are not typically taken into account when calculating total compensation for the purposes of comparing the total compensation between two positions.

74. Indeed, the Employer's calculation for total compensation for Federal CX-1s and CX-2s does not include WSIB charges or Employer Health Tax, and includes only a marginal sum for Allowances and Premiums. The Employer calculated the total compensation of Federal CX-1s and CX-2s as $104,839 and $110,915, respectively. The compensation estimates are reproduced below:

Estimated Total Compensation for Employees in the Core Public Administration

As of 2021-22 Fiscal Year

Compensation Component	CX01	CX02
FTFYE Population	3,656	2,658
Salary *(Maximum Pay Rate, March 2022)*	**$84,045**	**$89,068**
Allowances and Premiums	**$107**	**$166**
Pension	**$11,559**	**$12,376**
PSSA Pension	$8,311	$9,128
CPP contributions	$3,248	$3,248
Benefits	**$9,128**	**$9,305**
Current Health and Dental	$3,015	$3,015
Post-Employment Health and Dental	$2,013	$2,013
Disability Insurance	$1,994	$2,112
Public Service Supplementary Death Benefit	$172	$183
Maternity/Parental SUB plan payments	$804	$852
EI Contributions	$1,130	$1,130
TOTAL COMPENSATION ESTIMATE	**$104,839**	**$110,915**
Salary - Paid Time At Work	*64%*	*63%*
Salary - Paid Time Off Work (Paid Leave)	*16%*	*17%*
Allowances and Premiums	*0.1%*	*0.1%*
Pension	*11%*	*11%*
Benefits	*9%*	*8%*

**Typically, for the purposes of external comparability, the following pay components are not taken into account when calculating total compensation.*

Allowances and Premiums	$19,890	$20,129
Overtime	*$11,768*	*$12,111*
Shift Premiums/Non-Standard Hours	*$7,376*	*$7,308*
Other Allowances	*$746*	*$710*
Severance	*n/a*	*n/a*
Health Payroll Tax (Ontario 1.95%)	*$1,639*	*$1,737*

Source: Pay System, Entitlement and Deductions System, Leave Reporting System, Pensions
Notes:
1. The table represents the typical total compensation package for employees in the CX01, CX02 classifications.
2. Allowances and Premiums (showed in the top-panel) include bilingual bonus and allowances to compensate for additional duties (e.g. emergency response team allowance, dog handler's allowance, correctional service specific duty allowance).

75. It is obviously improper to compare the “total compensation” of Ontario CO2s and Federal CX-2s and take into account overtime, call back, shift premiums,

Health tax, WSIB Charges, pension/benefits for members in receipt of LTIP and termination pay for Ontario CO2s but not for Federal CX-2s.

76. Accordingly, the Employer's statement at paragraph 324 of its Brief that "Ontario CO2s total compensation is greater than the total compensation provided to Federal CX-2s is misleading and false. The compensation of Federal CX-2s is greater than the total compensation of Ontario CO2s when the same compensation components are taken into account for each position.

77. Furthermore, the Employer's calculation of various components of total compensation is opaque and unjustified. Various components of the total compensation are not broken down but provide what appear to be incomplete lists of subcomponents. For CO2s, at paragraph 321 of the Employer's Brief for example, $11,181 is given as a figure for statutory benefits "including CPP, EI, Employer Health Tax and WSIB charges" but it does not break down the estimated value of each of those components. Given the use of the word "including", this estimation also does not indicate whether CPP, EI, Employer Health Tax and WSIB charges make up all of the "statutory benefits" included in the estimate, or if there are other hidden sub-components the Employer is using to inflate its total compensation estimate for Ontario CO2s. The same is true for each of the total compensation components of "insured benefits", "pension", "premiums" and "termination pay". The Employer uses the same approach at paragraph 359 of its Brief regarding Ontario POs.

78. Finally, the Employer's inclusion of items such as overtime, call-back and shift premiums, pension and benefits for LTIP recipients, Employer Health Tax and WSIB charges in its total compensation estimate for OPSEU Correctional workers is inappropriate. As set out above, the Employer did not include these components in its total compensation for the comparators in its Brief, rendering the Employer's comparison of total compensation unreliable and misleading at best. Furthermore, these figures are not appropriate to take into account when comparing total compensation between two or more positions.

79. Voluntary assumption of overtime as well as receipt of at least some shift premiums may also distort comparisons, as they are not part of every employee's compensation – and may in fact be significantly over-accounted for in environments like the Ontario Correctional Bargaining Unit which is pervasively short-staffed and requires 1,270,000 hours of overtime per year, across the 25 institutions.

80. Employer Health Tax and WSIB charges are not properly considered when calculating total compensation for comparison purposes because they are statutory requirements for the Employer that do not go towards compensating employees. Employer Health Tax and WSIB charges are not taken into account in the total compensation for any of the comparators in the Employer's Brief. Given the robust sick leave, disability coverage, and retirement benefits provided to workers in the Federal sector, it is likely that the inclusion of the various elements would tilt the balance of compensation even more in the Federal employees' favour.

81. The Employer's comparison of total compensation between Ontario PO2s and Federal WP-04s has the same problems. As with the Employer's comparison of total compensation between the Ontario and Federal Correctional Officer positions, the Employer includes vague total compensation components for Ontario POs but not for their comparators in other jurisdictions.

82. The Employer's calculation of "total compensation" of Alberta Correctional Workers is similarly opaque and unfair to compare to the Ontario CO2 estimate. The Employer's total compensation estimate for Alberta CPO's is reproduced below:

Compensation Component (The compensation cost reflects employer costs, and does not include the employees' contribution to benefits.)	CPO2	
	% of Salary	At Salary Max
Salary		**$74,467**
Insured Benefits (Health Spending Account, Prescription Drugs, Dental, Extended Medical, Life Insurance, AD/D, Long Term Disability)	5.50%	$4,096
Statutory Benefits (CPP, EI)	5.60%	$4,170
Pension	7.02%	$5,228
Premiums (including overtime premium which is a significant proportion of Premiums, shift differential)	17.00%	$12,659
Termination Pay	N/A	N/A
Estimated (Benefits/Pension/Premiums/Termination)	**35.12%**	**$28,162**
Estimated Salary and Benefits		**$102,629**

83. Like the total compensation estimate for Federal CX-2s, the total compensation estimate for Alberta CPO2s does not include all the components of the Ontario CO2 estimate. For example, statutory benefits for Alberta Benefits indicates an estimate that includes CPP and EI only, compared to the Ontario CO2 estimate for statutory benefits "including CPP, EI, Employer Health Tax and WSIB charges". Similarly, the Alberta CPO2 estimate does not factor in termination pay. Of note, statutory benefits are valued at $4,170 for Alberta CPO2s and $11,181 for Ontario CO2s – a difference of $7,011.

84. The estimate for premiums for Alberta CPO2s, at $12,659, includes overtime but is significantly lower than the premiums estimate for Ontario CO2s at $19,752. The Employer's methodology for estimating the value of the relevant "premiums" is opaque. However, the significant gap for Alberta CPO2s and Ontario CO2s is surprising given that Alberta CPO2s have more generous overtime entitlements in their collective agreement. Alberta CPO2s typically earn premium pay at a rate of 1.5 times their base hourly wage for their first two hours of overtime, after which they earn premium pay at a

rate of two (2) times their base hourly wage.[36] By comparison, Ontario CO2s earn overtime pay at a premium rate of 1.5 times for all overtime hours. As such, if these figures are reliable, then presumably Alberta is staffing its institutions in such a manner that it does not require the same extensive reliance of overtime to meet its staffing needs. Of course, those improved working conditions and better work-life balance still does not justify the underinclusive total compensation comparison put forward by the Employer.

85. The Employer's comparison of total compensation between Ontario PO2s and Alberta CSW2s raises the same problems as in the Employer's comparison of total comparison between the Ontario and Federal Correctional Officer positions.

(ii) The Employer's Wage Proposal is Unserious

86. The Employer's position on wages is entirely inappropriate. Bill 124 is void and of no effect. The replication principle should not operate to recreate bargaining results reached under unconstitutional wage restraints.

87. The Employer places too much reliance on OPSEU's bargaining history before Unified and Correctional became separate bargaining units on January 1, 2018. The Union's position is that this history is largely not relevant to the legal question of what bargain the parties would have reached under a right to strike regime. Unified and Correctional were made separate bargaining units by agreement of the parties and through steps the Employer took to facilitate that split, including the Legislature's amendments to the *Crown Employees Collective Bargaining Act*[37] ("CECBA").

88. The Employer's wage proposal of 1% in each of the three years, along with whatever wage increase Unified and the Employer agree to under their re-opener

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[36] Collective Agreement between Alberta and Alberta Union of Provincial Employees, Correctional and Regulatory Services (Subsidiary Agreement #3), December 14, 2021, Article 3, OPSEU Supplemental Book of Documents, **Tab 19**; Collective Agreement between Alberta and Alberta Union of Provincial Employees (Master Agreement), December 14, 2021, Article 17.02, OPSEU Supplemental Book of Documents, **Tab 20**.

[37] *Crown Employees Collective Bargaining Act, 1993*, S.O. 1993, c. 38 ["*CECBA*"], OPSEU Book of Authorities, **Tab 1**.

language, is unjustifiable. It is worth noting that Unified's wage reopener language does not appear to allow for recourse to a strike or interest arbitration to resolve the impact of the 1% wage constraints.[38] In other words, the Employer's proposal is to tie the wage increases of Correctional Bargaining Unit members to the bargaining results Unified can achieve, without any constitutionally-compliant right to strike or equivalent substitute.

89. The Employer's proposal is unserious at best.

90. While there are examples of "flow through" or "me too" language in various collective agreements, such language has normally been agreed upon by the parties – and always with reference to the constitutionally-compliant bargaining of accepted comparators. The Union submits that it would be inappropriate for an Arbitrator to impose this kind of "flow through" language at interest arbitration. A "me too" wage term would impose the results of an unconstitutional dispute resolution process on a bargaining unit that does have access to a constitutionally-compliant dispute resolution process. Further, such language would effectively reward the Employer for delayed and ineffective bargaining and encourage more in the future. Finally, the Employer's proposal would have the effect of rendering the Legislature's clear intention nugatory – the intention of the Legislature in amending the *CECBA* was to grant independent and distinct bargaining rights to the Correctional Bargaining Unit. Introducing a "me too" wage model will undermine the Legislature's intention and render the Correctional Bargaining Unit's collective bargaining processes hollow.

a. The Unified Bargaining Unit is not an Appropriate Comparator

91. The Employer's absurd request that the Arbitrator award "the same across the board wage increases reached for the Unified Bargaining Unit, and any additional across the board wage increases reached as a result of the Unified Wage Reopener"[39] is based on two factual arguments the Employer insists are relevant to the replication principle: "the longstanding patterned history between the Unified and Correctional

[38] OPSEU Unified MOS (2022-2024 Collective Agreement), December 21, 2021, pp. 65-66, OPSEU Supplemental Book of Documents, **Tab 21**.
[39] Employer's Arbitration Brief, para. 234.

Bargaining Units" and "the permeability agreement each bargaining unit has in each respective collective agreement".[40]

92. First, the Employer argues the OPSEU/SEFPO bargaining history from 1994 to date demonstrates a "clear and well-established pattern of OPSEU/SEFPO Unified and Correctional employees"[41] receiving "consistent and modest" across-the-board wage increases. The Union disputes that there is any "clear and well-established pattern" with respect to the Correctional Bargaining Unit, which has only bargained as a stand-alone bargaining unit in two rounds of collective bargaining, including this round.

93. In the only completed round of collective bargaining, the Unified and Correctional collective agreements have already deviated from each other in respect of various terms – including both wages and benefits. When the first interest arbitration is added, the pattern is clear: different wage increases have been awarded by interest arbitrators in every round of bargaining. That is these parties' established pattern.

94. Moreover, the Employer obviously expected this deviation between the terms and conditions applicable to the Unified and Correctional Bargaining Units, as it participated in the same process with the OPP Civilian Bargaining Unit, starting in 2002. Since the OPS employees working with the OPP were split into their own bargaining unit, virtually every element of their collective agreement has changed – including their wages and benefits – compared to the terms in place at their former bargaining unit, OPSEU Unified.

95. Second, the Employer argues that if members of the Correctional Bargaining Unit receive across-the-board increases that differ from Unified, it would "disrupt the seamless movement of employees between bargaining units" under the permeability agreement which facilitates the movement between the Unified and Correctional Bargaining Units.[42] However, the Employer has not provided any explanation as to why differences in wages might affect the movement of employees between

[40] Employer's Arbitration Brief, para. 220
[41] Employer's Arbitration Brief, para. 223.
[42] See Employer's Arbitration Brief, para. 369 c).

bargaining units. In fact, Unified received across-the-board wage increases in 2022 but the Employer has brought no evidence that this has had any effect on mobility between the bargaining units.

96. Finally, the Employer's portrayal of the "bargaining history" of the Unified and Correctional Bargaining Units is unreliable and inaccurate. For example, at paragraph 370 c), the Employer states that in 2005, COs/YSOs received a 3% new step at the top of the grid as a special adjustment while the "legacy sub-group received nothing." In fact, the legacy sub-group received a special adjustment of 0.5% effective January 1, 2005.[43]

97. OPSEU submits that there is no justification for tying the salaries of the legacy subgroup to the Unified Bargaining Unit. As the Employer acknowledges at paragraphs 40 and 189 of its Brief, the legacy subgroup has no comparator positions in the Unified Bargaining Unit. As set out in the Union's Arbitration Brief, these positions should be awarded a special adjustment based on their established comparators in Federal Corrections.

98. The Employer's argument that the permeability agreement demands consistency in wages between the Unified and Correctional Bargaining Units is not consistent with the purpose or the effect of the permeability agreement. The purpose of the permeability agreement is to "neither reduce nor enhance the entitlements of members of the Unified and Correctional Bargaining Units with respect to employment stability, recruitment and transfers related to employment accommodation". The effect of the permeability agreement is that Seniority and/or CSD is mutually recognized across the Correctional and Unified Bargaining Units. In other words, neither the stated purpose nor the effect of the permeability agreement has anything to do with wages.

99. Both rationales for "replicating" the Unified across-the-board increases are responded to in further detail below. However, the Union will first address the Employer's assumption that a collective agreement reached while Bill 124 was in force, such as the 2022-2024 OPSEU Unified Collective Agreement, is evidence of the kind of agreements

[43] 2005-2008 OPSEU Unified Collective Agreement, Article COR17 (d), OPSEU Supplemental Book of Documents, **Tab 22**.

would have reached in a freely negotiated environment now that Bill 124 has been struck down. The Employer's argument that the Unified agreement should be replicated fails to reckon with fact the Correctional Bargaining Unit is not bargaining under the same unconstitutional wage constraints as Unified was.

i. Bargaining Results Reached Under Unconstitutional Bargaining Conditions Should not be Replicated

100. The Employer's argument that Unified's wage increases should be "replicated" is based on the replication principle, which holds that the goal of interest arbitration is to replicate the bargain that the parties would have freely negotiated if they were able to have recourse to the economic sanction of strike or lockout. However, the Employer's Brief does not engage with the question of what effect, if any, Bill 124 has on the replication principal analysis.

101. In its rationale for its wage proposal, the Employer notes that its proposal is consistent with the Unified agreement and the AMAPCEO agreement – both ratified before Bill 124 was struck down. According to the Employer:

> "Both provide for across-the-board wage increases of 1% in each year of the collective agreement. In accordance with the replication principle, these outcomes should guide the Arbitrator's analysis of the agreement the Parties would have otherwise struck in a freely negotiated collective bargaining environment."

102. Clearly, the Employer's rationale rests on the assumption that striking down Bill 124 had little to no effect on what kind of collective agreement the parties could have freely negotiated. This assumption is not well-founded. Clearly, the wage constraints imposed by Bill 124 profoundly affected public sector collective bargaining in Ontario. As Justice Koehnen found in the *Bill 124 Decision*, Bill 124 brought about a reduction in negotiating power for unions by inhibiting the normal bargaining trade-offs between compensation and non-compensation issues.[44]

[44] Bill 124 Decision, paras. 78 and 86, OPSEU Book of Authorities, **Tab 8.**

103. The Employer's proposal that any additional increases that are reached with Unified in its wage re-opener negotiations also apply to the Correctional Bargaining Unit is also not justifiable under the replication principal. As set out above, Unified bargained wage-reopener language that does not appear to allow for recourse to the economic sanction of strike or to interest arbitration. Further, the wage reopener language itself was bargained by Unified under Bill 124, when Unified was straightjacketed from engaging in the normal give-and-take of collective bargaining.[45] It makes no sense to award the Employer's wage proposal in this interest arbitration concerning the Correctional Bargaining Unit, considering that the Correctional Bargaining Unit has recourse to interest arbitration, and is not bargaining under unconstitutional wage constraints.

ii. The Unified and Correctional Bargaining Units are Separate and Distinct

104. The Union disagrees with the Employer that there is a "well-established pattern" of the Unified and Correctional Bargaining Units achieving "consistent and modest" across-the-board increases. In fact, the Correctional Bargaining Unit has only bargained as a stand-alone bargaining unit for two (2) rounds of bargaining, including this round. Each round has resulted in interest arbitration which further obscures any "pattern of… [bargaining] outcomes" between the Employer and the Correctional Bargaining Unit.

105. The short bargaining history shows that Unified and Correctional do not bargain as a monolith. In paragraph 232 of its Brief, the Employer describes the bargaining for the 2018-2021 Collective Agreement. The Employer notes that it reached tentative extension agreements with Unified and Correctional on June 2, 2017. The extension agreement was ratified by Unified, but not by Correctional. Even this short bargaining history demonstrates a distinction between the Unified and Correctional Bargaining Units.

106. The Employer argues the following at paragraph 236 of its Brief:

> "Generally speaking, when the Unified and Correctional Bargaining Units split off with the ability to negotiate their respective collective agreements

[45] Bill 124 Decision, para. 79, OPSEU Book of Authorities, **Tab 8.**

> separately, the 2015-2017 collective agreement covering both bargaining units was the starting point for each bargaining unit. Since the split (which became effective January 1, 2018), each bargaining unit has largely retained the same collective agreement language with some modifications as appropriate. This is again compelling evidence that the replication principle should strongly be considered when looking at the outcomes of the Unified and Correctional Bargaining Units as the bargaining units' collective agreements are still similar on a large number of Articles and Appendices."

107. One round of arbitrated wage increases is hardly "compelling evidence" to support the result the Employer urges here – that is, to deny any opportunity to the Correctional Bargaining Unit to bargain its own wages. Further, the result the Employer urges is inconsistent with the steps the Employer took to facilitate the Correctional Bargaining Unit becoming a stand-alone bargaining unit, including the Legislature's decision to amend the *CECBA*.

108. The Unified and Correctional Bargaining Units are separate bargaining units negotiating separate collective agreements. The 2015-2017 Unified Collective Agreement covering both bargaining units was the "starting point" for both OPSEU bargaining units, but past that point each is free to negotiate wages separately – and they have. Accordingly, interest arbitrators may award different across-the-board increases and other amendments that result in different "outcomes" for the Unified and Correctional Bargaining Units depending on all the relevant circumstances – and they have.

109. As set out in detail in the Union's Arbitration Brief, the purpose of the *CECBA* amendments and of the Correctional Bargaining Unit becoming a stand-alone bargaining unit was to acknowledge and empower the Union to address longstanding issues of volatile and sometimes dangerous working conditions for correctional staff. The Union submits that every Correctional Bargaining Unit member works under exceptionally challenging working conditions, including the 2,000 wall-to-wall employees who transferred from the Unified Bargaining Unit to the Correctional Bargaining Unit on January 23, 2021, 22 days after the creation of the Correctional Bargaining Unit` as a stand-alone bargaining unit. The Union – and the Employer – endorsed the wall-to-wall

transfer in recognition of the distinctive working conditions within correctional institutions and facilities.

110. As an example of these differences, all employees within correctional institutions and facilities were deemed critical during the COVID-19 Pandemic, including the wall-to-wall employees, while many Unified Bargaining Unit employees were not. In any event, by agreeing to transfer the wall-to-wall employees, the Employer agreed that across-the-board wage increases would be negotiated for these employees as members of the Correctional, not Unified, Bargaining Unit.

111. Furthermore, as set out in detail in the Union's Arbitration Brief, the wall-to-wall employees – including office administration staff, food service staff, nurses, maintenance and trades staff, and social workers – are chronically undercompensated compared to their counterparts working in Federal Corrections and the Employer has pronounced recruitment and retention issues with respect to these positions. For example, there are currently only 125 employees in Maintenance and Trades class series positions, with numerous vacancies throughout the system, and the Employer has been forced to repeatedly re-post job vacancies in this class series.

112. The Union also notes that the Employer's example at paragraph 180 b) of its Brief, comparing the court clerk and registrar position to the records clerk position in an adult institution, is outdated. The Employer has reclassified the court clerk and registrar position to an Office Administration 10 classification.[46]

iii. The Permeability Agreement is not aimed at Wages or Wage Suppression

113. The Employer argues throughout its Brief that the mutual permeability agreement in the Unified and Correctional collective agreements "underscores the importance of maintaining the same across-the-board wage increases…to ensure continued ease of mobility between the bargaining." This argument is not compelling.

[46] Ontario Public Services Careers, Job Specification, Court and Client Representative, October 23, 2023, OPSEU Supplemental Book of Documents **Tab 23**.

114. The Employer has not provided any evidence that differences in wages across similar positions would affect employment mobility between the Unified and Correctional Bargaining Units. In fact, there is no evidence of resulting impacts on mobility arising from Unified's across-the-board's increase in its 2022-2024 agreement ratified almost two years ago.

115. The Employer's argument at 369 c) of its Brief that unequal wage adjustments between the Unified and Correctional Bargaining Units would go against "the spirit and intent of the permeability agreement" is absurd. There is no support for the proposition that the permeability agreement is aimed at limiting the ability of the Unified and Correctional Bargaining Units to bargain their own wages separately. Regarding its "spirit and intent", the permeability agreement states:

> "the intention of the parties is to neither reduce nor enhance the entitlements of members of the Unified and Correctional Bargaining Units with respect to employment stability, recruitment and transfers related to employment accommodation as those entitlements existed in the January 1, 2015 to December 31, 2017 OPSEU Collective Agreements"[47]

116. The effect of the permeability agreement is mutual recognition of seniority and continuous service date accrual across OPSEU-represented bargaining units.[48] The agreement does not suggest that consistent wages across bargaining units are part and parcel of the "spirit and intent" of the agreement." On its face, and in "spirit and intent," the permeability agreement has nothing to do with wages.

117. In fact, in the two most recent closures that resulted in the placement of a Correctional Bargaining Unit member into the Unified Bargaining Unit (Brookside Youth Centre in 2021 and Ontario Monitoring Centre in 2022), the Employer never raised differences in pay as a barrier to transferring affected employees during reskilling negotiations.

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[47] Collective Agreement, p. 314, Appendix 64, OPSEU Book of Documents, **Tab 1**.
[48] Collective Agreement, Appendix 64, OPSEU Book of Documents, **Tab 1**.

118. Of note, from 2018 to 2022, when Unified ratified its 2022-2024 collective agreement, the Correctional Bargaining Unit adopted a more generous method calculating seniority when FXTs are appointed into FTE positions. As a result, there remain differences in the calculation of seniority due to the different effective date for the adoption of the changed calculation, in 2022, and there will be for years to come. None of this has impacted mobility between the bargaining units.

b. The Employer's Position that the Compensation Gap Between Ontario CO2s and Federal CX-2s Should be Maintained is Flawed

119. The Employer argues that the Correctional Bargaining Unit's bargaining history has established a persistent gap between total compensation for Ontario CO2s and Federal CX-2s that should be replicated.[49] This argument is flawed. First, in 2016, Arbitrator Burkett awarded an additional 3% wage increase to every member of the Correctional Bargaining Unit, and 2% for probation officers to facilitate their catch up to federal correctional salaries. The Correctional Bargaining Unit has only reached one collective agreement since then, and as a stand-alone bargaining unit, in 2019 when Arbitrator Kaplan awarded "catch-up" specialty adjustments to CO2s based on the Federal CX-2 comparator. In fact, successive rounds of bargaining that kept CO2 wages significantly behind CX-2 wages were a key driver to the Union's priority demand in the 2016/17 round of bargaining for a stand-alone Correctional Bargaining Unit.

120. The Employer's submissions on the gradualism principle at paragraphs 277 to 279 of its Brief do not offer any useful guidance on how that principle should be operate over multiple rounds of bargaining. To date, "gradual" catch-up increases have been awarded for two of the last two rounds of collective bargaining – and as reviewed in the Union's Brief, the catch-up has not been completed.

121. Finally, the Employer's alternative position at paragraph 255 of its Brief that "an Ontario CO2 differential of 16.63 percent behind the Federal CX-2 is both realistic

[49] Employer's Arbitration Brief, paras. 273-275

and appropriate" is mystifying. It is not clear how the Employer determined that a 16.63 percent wage gap could be either realistic or appropriate.

c. The Employer's Other Rationales for its Wage Proposals

122. The other rationales the Employer offers for its wage proposal are not compelling and underline the unserious nature of the Employer's Brief.

i. Specialty Adjustment for Nurses

123. The Employer proposes no special wage increases for nurses. This is despite the Employer acknowledging that "Correctional Bargaining Unit Nurses have been recognized as distinct… for the purposes of special adjustments"[50] and the Employer's explicit admission that it has challenges attracting Correctional Bargaining Unit nurses, requiring it to use agency nurses as a "necessary operational measure."[51] The Employer also says it is "not opposed to a modest, fair and appropriate special wage adjustment" for Correctional Bargaining Unit nurse classifications, but it tables no such proposal.[52] The Employer's approach to wages for the nurse classifications is indicative of the Employer's unserious approach to wages in general.

124. As set out in the Union's Arbitration Brief, the Employer's inability to attract and fill vacancies in the Correctional Bargaining Unit for nurse classifications is due to the low wages for these positions in relation to comparator positions in ONA bargaining units. Furthermore, the Employer is aware of the serious under-compensation of nurses, as it has repeatedly told members of the Nurse Practitioner Working Group. In fact, the Employer has told the working group that it is the Union that stands in the way of meaningful wage increases for nurses employed in the Correctional Bargaining Unit.[53] Of course, the Employer has since reverted to confirming that the position set out in its Brief

[50] Employer's Arbitration Brief, para. 187.
[51] Employer's Arbitration Brief, para. 366.
[52] Employer's Arbitration Brief, para. 366.
[53] Letter from SOLGEN Nurse Practitioners to J.P. Hornick, September 22, 2023, OPSEU Supplemental Book of Documents, **Tab 13**; Letter from J.P. Hornick to Steven MacKay et al, October 13, 2023, OPSEU Supplementary Book of Documents, **Tab 14**.

– that these nurses should receive a substandard wage increase of only 1% – is "the Employer's official and only compensation position."[54]

125. The Employer's argument at paragraphs 364-365 of its Brief that Correctional's bargaining history has established an "acceptance by OPSEU/SEFPO of a salary rate that has been traditionally lower than the ONA Hospital Nurse" should be dismissed out of hand. Nurses in the OCS have never been able to either strike or bargain for their own wages, unlike ONA hospital nurses. Further, the Correctional Bargaining Unit has only bargained as a stand-alone bargaining unit since 2018, and special adjustments for nurses in the Correctional Bargaining Unit were awarded in the only bargaining cycle since then to address the pay gap with ONA.

ii. Compensation Environment

126. At paragraphs 120-121 of its Brief, the Employer addresses inflation by warning about the wage-price spiral that could occur if the government raises wages in an inflationary environment. This argument fails to seriously consider the increasing financial burden imposed on Correctional Bargaining Unit members by historic inflation levels. As set out in the Union's Brief, arbitrators regularly consider high inflation as a factor in favour of awarding higher wage increases. Recently, in *Via Rail and TCRC*, Arbitrator Kaplan held that:

> "**existing bargaining patterns – relied on by the employer – are of diminishing relevance given the impact of inflation on wages** – an impact that was fully outlined in the CPI data in the union brief – an impact that appears to show signs of stabilizing but still shows no signs of abating. While there will hopefully be a return to historical inflation norms sooner rather than later, no one is seriously predicting that occurring during the term of the two collective agreements (and any increase awarded here does not, needless to say, account for the impact of inflation in the last year of the predecessor collective agreements (2022) when the general wage increase was 3% and inflation was 6%)."[55]

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[54] Letter from Steven MacKay to J. P. Hornick, October 24, 2023, OPSEU Supplementary Book of Documents, **Tab 15**.

[55] *Via Rail v. TCRC*, 2023 CanLII 78973 (Kaplan), OPSEU Supplementary Book of Authorities, **Tab 7**; see also *Participating Hospitals and OPSEU*, 2023 CanLII 75478 (Kaplan), paras 46-48, OPSEU Supplementary Book of Authorities, **Tab 8**.

127. On October 31, 2023, Vancouver Police reached a negotiated settlement that included a wage increase of 4.5% for January 1, 2023 and another 4.5% wage increase effective January 1, 2024. The effect of this award will undoubtedly ricochet throughout British Columbia, where numerous police services' collective agreements contain "Me Too" clauses tied to Vancouver, including for example the Victoria Police Service. Significant wage increases are already evident in Ontario, including for example, in St. Thomas, Sault Ste. Marie, and other police services, and are further evidence of how grossly inappropriate the Employer's 1% across-the-board proposal is in the current environment.

128. The Employer also argues at paragraph 123 of its Brief that its policy of "Agency Collective Bargaining Oversight", which the Employer says achieved "cost avoidances" estimated at $8 million in 10 months between 2018 and 2019, is somehow relevant to the Employer's wage proposals. The Employer's "cost avoidance" estimate is opaque and not supported by the Employer's citation at Tab O of its Book of Documents. In any event, the Union submits that the Employer's wage suppression measures are not especially compelling evidence in this proceeding and notes that "cost avoidance" is more generally this employer's goal in its collective bargaining, but that is no reason to deviate from sector-wide norms.

iii. Interest Arbitration Principles

129. The Employer's arguments do not account for the consideration of the specific industry that should be considered under the replication principle. The Union's Arbitration Brief sets out why consideration of the Correctional "industry" warrants comparisons between OPSEU Correctional, Federal Corrections and OPPA Civilian workers.

iv. Ramifications for OPSEU Unified Bargaining, Pay Equity

130. The Employer argues at paragraph 182 of its Brief that:

> "if interest arbitration attracts higher wages for…Correctional Bargaining Unit positions, it could cause the Unified Bargaining Unit to seek these same wage increases during the next round of bargaining, resulting for

> significant cost implications for the Employer if the Unified Bargaining Unit were to be successful in replicating these outcomes."

131. The Union notes that Unified is likely to seek wage improvements in its next round of bargaining regardless of the results of these negotiations between the Employer and Correctional Bargaining Unit.

132. The Employer also argues at paragraph 183 of its Brief that:

> "There could also be significant repercussions from a pay equity and mobility (e.g., job security) perspective if the Wall-to-Wall employees were to be granted higher or lower wage outcomes than their Unified Bargaining Unit counterparts."

133. The Employer mentions at paragraph 184 of its Brief that "[c]urrently the same pay equity plan covers all OPSEU/SEFPO employees in the Unified and Correctional Bargaining Units."

134. The Employer's Brief does not mention that the Employer has already agreed to create a new pay equity plan for the Correctional Bargaining Unit and the parties are in the process of negotiating the Terms of Reference to begin the review.

v. The Employer Selectively Advances the OPSEU Unified Amendments it Urges the Arbitrator to "Replicate"

135. The Employer appears to be picking and choosing which amendments to the Unified Collective Agreement the arbitrator should replicate for Correctional. For example, paragraph 219 of the Employer's Brief sets out the amendments to the Unified agreement, including an increase to the on-call premium and increasing shift premiums. The Employer has not included corresponding proposals to increase to the on-call and shift premiums for Correctional members in its proposals.

Response to Employer Proposal 12.1 – Psychological Services

(i) Employer's Proposal

136. The Employer proposes to increase entitlements to the services of a psychologist from forty dollars ($40) to eighty dollars ($80) per half-hour for non-COs and Youth Workers while maintaining no half-hour cap for COs and Youth Workers, and increasing the annual maximum claim amount from $1,400 to $1,600. The Employer also proposes adding psychotherapist coverage "where such services are equivalent to those provided by a psychologist.

(ii) Employer's Proposed Collective Agreement Language

39.2.6 ~~Effective June 1, 2002 and up to March 31, 2019, charges for the services of a psychologist (which shall include Master of Social Work) up to twenty-five dollars ($25) per half-hour to an annual maximum of one thousand and four hundred dollars ($1400).~~

Effective April 1, 2019 **and up to [day before 90 days from date of ratification/or day before date of interest arbitration decision]**, charges for the services of a **P**~~p~~sychologist (which shall include Master of Social Work) up to forty dollars ($40) per half-hour to an annual maximum of one thousand and four hundred dollars ($1400). Notwithstanding the foregoing, the per half-hour cap of forty dollars ($40) shall not apply for employees who are Correctional Officers and Youth Workers (excluding eligible dependents).

Effective [90 days from date of ratification/ or date of interest arbitration decision], charges for the services of a Psychologist (which shall include Master of Social Work or a Psychotherapist where such services are equivalent to the services that would otherwise be provided by a Psychologist) up to eighty dollars ($80) per half-hour to an annual maximum of one thousand and six hundred dollars ($1600). Notwithstanding the foregoing, the per half-hour cap of eighty dollars ($80) shall not apply for employees who are Correctional Officers and Youth Workers (excluding eligible dependents).

…

67.2.6 ~~Effective June 1, 2002 and up to March 31, 2019, charges for the services of a psychologist (which shall include Master of Social Work) up to~~

~~twenty-five dollars ($25) per half-hour to an annual maximum of one thousand and four hundred dollars ($1400).~~

Effective April 1, 2019 **and up to [day before 90 days from date of ratification/or day before date of interest arbitration decision]**, charges for the services of a **P**~~p~~sychologist (which shall include Master of Social Work) up to forty dollars ($40) per half-hour to an annual maximum of one thousand and four hundred dollars ($1400). Notwithstanding the foregoing, the per half-hour cap of forty dollars ($40) shall not apply for employees who are Correctional Officers and Youth Workers (excluding eligible dependents).

Effective [90 days from date of ratification/ or date of interest arbitration decision], charges for the services of a Psychologist (which shall include Master of Social Work or a Psychotherapist where such services are equivalent to the services that would otherwise be provided by a Psychologist) up to eighty dollars ($80) per half-hour to an annual maximum of one thousand and six hundred dollars ($1600). Notwithstanding the foregoing, the per half-hour cap of eighty dollars ($80) shall not apply for employees who are Correctional Officers and Youth Workers (excluding eligible dependents).

(iii) Union's Response and Rationale

137. Both the Employer and the Union agree to adding psychotherapist coverage to psychological benefits. However, the Union's proposal includes simplified language and coverage for "charges for the services of a Psychologist (which shall include Master of Social Work) or Registered Psychotherapist." This language more fully achieves the goal of permitting members to access meaningful health care support from a larger pool of providers, with the benefit of clear and straightforward criteria for the administration of the benefit. The Employer has already acknowledged that there is no cost associated with this improvement to the benefits plan.

138. The Union does not agree with the Employer's proposal to maintain the per half-hour session cap for covered mental health care professionals all dependents and members other than COs and YWs. The significant impact of Corrections work on mental health is seen across all areas of Correctional services,[56] not just COs and YWs, and the

[56] "Carleton et al, Provincial Correctional Workers, Mental Disorders", p. 2, OPSEU Book of Documents, **Tab 29**.

per half-hour cap acts as a significant barrier to access to mental health for members and their families working in those areas.

139. The Union's proposal is normative alongside the Union's comparators in the law enforcement sector, where there are similar mental health challenges and demands. For example, Arbitrator Kaplan awarded unlimited coverage for psychological services for the OPPA in their 2019 interest arbitration award[57] and, in the same round of collective bargaining, the Employer also agreed to fund a unique Integrated Mental Health Program designed to "provide timely access to confidential, effective, and safe mental health support and services."[58] These two items came at considerable cost to the Employer and are increasingly normative in the justice sector across police and peace officer and civilian bargaining units.

[57] OPP & OPPA, Unreported Award of Arbitrator Kaplan, dated May 6, 2019, OPSEU Supplementary Book of Authorities, **Tab 9**.
[58] OPP and OPPA Uniform Collective Agreement, 2019-2022, Letter of Intent No. 19-Integrated Mental Health Program, OPSEU Supplementary Book of Documents, **Tab 24**.

Response to Employer Proposal 12.2 – Absenteeism/Overtime

(i) Employer's Proposal

140. The Employer has proposed changing the definition of "overtime" so that employees are only eligible to be paid the overtime premium rate once they have worked in excess of their regularly scheduled number of hours over two pay periods. For any leaves of absence taken during the period, an employee would need to work an equivalent number of hours at straight time compensation before the overtime premium rate would apply.

(ii) Employer's Proposed Collective Agreement Language

COR 8.2.3 **Up to [day before 90 days from date of ratification/or day before date of interest arbitration decision], I~~i~~**n this article, "overtime" means an authorized period of work calculated to the nearest half-hour and performed on a scheduled working day in addition to the regular working period, or performed on a scheduled day(s) off.

COR 8.2.3.1 Effective [ninety (90) days from date of ratification/or interest arbitration decision], the following shall apply. In this article, "overtime" means an authorized period of work calculated to the nearest half-hour and performed on a scheduled working day in addition to the regular working period, or performed on a scheduled day(s) off, calculated over a period of two (2) pay periods by reducing total overtime hours worked during such period by the sum of scheduled hours less hours worked.

…

COR 15.1.1 **Up to [day before 90 days from date of ratification/or day before date of interest arbitration decision],** "**O~~o~~**vertime" means an authorized period of work, calculated to the nearest half-hour, and performed in excess of seven and one-quarter (7 ¼) or eight (8) hours, as applicable, on a normal working day and for all hours worked on a non-working day.

COR 15.1.1.2 Effective [ninety (90) days from date of ratification/or interest arbitration decision], the following shall apply. In this article, "overtime" means an authorized period of work, calculated to the nearest half-hour, and performed in excess of seven and one-quarter (7¼) or eight (8) hours, as applicable, on a normal working day and for all hours worked on a non-working day, calculated over a period of two

(2) pay periods by reducing total overtime hours worked during such period by the sum of scheduled hours less hours worked.

…

32.7.2 **Up to [day before 90 days from date of ratification/or day before date of interest arbitration decision], I**~~i~~n Article 32.7, "overtime" means an authorized period of work calculated to the nearest half-hour and performed on a scheduled working day in addition to the regular working period or performed on a scheduled day(s) off.

32.7.2.1 Effective [ninety (90) days from date of ratification/ or interest arbitration decision], the following shall apply. In Article 32.7, "overtime" means an authorized period of work calculated to the - 172 - nearest half-hour and performed on a scheduled working day in addition to the regular working period or performed on a scheduled day(s) off, calculated over a period of two (2) pay periods by reducing total overtime hours worked during such period by the sum of scheduled hours less hours worked.

(iii) Union's Repose and Rationale to Employer's Proposal

141. The Union is opposed to the Employers proposed amendments to the Collective Agreement.

142. In its Brief, the Employer asserts that it wishes to address an existing and long-term crisis in staffing and a parallel crisis in the mental health of Correctional Bargaining Unit members, not by hiring more full-time staff or even FXTs, not by expanding mental health resources and support, but instead by eliminating the entitlement of members to weekly overtime.

143. This is a bizarre and unreasonable proposal that should be rejected out of hand. Given the Employer's stated rationale for the proposal, it appears that this proposal would constitute a breach of the guarantee of freedom from discrimination based on disability contained in the *Human Rights Code*.[59]

[59] *Human Rights Code*, R.S.O. 1990, c. H.19, s.5, OPSEU Supplementary Book of Authorities, **Tab 10**; see also *North Bay Regional Health Centre v. ONA*, 2014 CanLII 1352, OPSEU Supplementary Book of Authorities, **Tab 11** – similar to the discriminatory effect of the "three week rule" that reduced access to sick pay for an employee who required treatment for a chronic condition every six weeks, the operation of

144. Even if the Employer could somehow avoid the application of the *Human Rights Code*, the proposed changes to the calculation of overtime are not normative – in fact, the Employer does not point to any other collective agreement, let alone one that might reasonably be considered a comparator, that contains such a strange provision.

145. As a result, the Employer's proposal is completely unjustifiable under any of the usual considerations at interest arbitration, including demonstrated need or comparability and replication. It is not possible to conclude e that the Union would – or could – agree to restrict its members from appropriate overtime pay, because of absences due to illness or disability.

146. As has been previously canvassed in detail, the high sick leave usage is a function of the unaddressed impact of the toxic work environments, minimal preventative measures, and barriers to accessing current mental health benefits.[60] The Employer's reliance on the increased usage of STSP in the Correctional Bargaining Unit compared to other work groups in the Ontario Public Service is unpersuasive. The higher rate of STSP usage in the Correctional Bargaining Unit is simply further proof of the well-documented toxic work environment and mental health crisis in corrections.

147. Contrary to the Employer's approach, many of the Union's proposals, including improvement to mental health services and additional compensated time off, are aimed at addressing the root causes of high absenteeism and sick leave usage. While the Employer has acknowledged the need to address the toxic work environment in Corrections by introducing several types of training as part of their wellness strategy, they have come to the collective bargaining table with this punitive and regressive measure that is disconnected from the workplace realities.

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the Employer's proposal would limit access to overtime for employees who require regular treatment through the arbitrary two pay period overtime average proposed.

[60] "Chief Coroner's Report", pp. 25-30, OPSEU Book of Documents, **Tab 4**.

148. Of course, the Employer's proposed definition of overtime will lead to situations where members' entitlement to overtime would fall below the standard statutory minimum overtime entitlement for non-excluded workers under the *Employment Standards Act,* which requires overtime to be paid to employees who work more than 44 hours in any given week. Although these sections of the *Employment Standards Act* do not apply to the Crown, it is surprising to have the Employer take a position that is inconsistent with its bare statutory minimums.[61]

149. Finally, if the Employer had a genuine concern about sick leave, it already has a myriad of collective agreement tools available to it to permit it to manage high absenteeism, including articles 2 and 44.10, the latter of which states:

> After five (5) days' absence caused by sickness, no leave with pay shall be allowed unless a certificate of a legally qualified medical practitioner is forwarded to the employee's manager, certifying that the employee is unable to attend to their official duties. Notwithstanding this provision, where it is suspected that there may be an abuse of sick leave, the employee's manager may require an employee to submit a medical certificate for a period of absence of less than five (5) days.

150. It is this provision in article 44.10 that makes the Employer's reference to a single employee's absenteeism in paragraph 385(f) of its Brief particularly troubling. It is deeply inappropriate for the Employer to demand breakthrough language based on the behaviour of one person out of approximately 8,500 bargaining unit members. Moreover, the Union is not aware of this individual, his or her 2018 sick time use or overtime hours. Presumably, if the Employer actually had a concern about the abuse of sick leave by this one member, it addressed it appropriately and in compliance with the Collective Agreement.

151. Of course, the Employer's reliance on the Auditor General's Report is undermined by the failure to understand the broader staffing challenges that lead to significant overtime work being used to cover STSP absences. This is because, before addressing STSP absences, the Employer assigns employees to cover other staffing

[61] *Employment Standards Act, 2000*, S.O. 2000, c. 41, Part VIII: Overtime Pay, OPSEU Book of Authorities, **Tab 27**.

pressures that arise in the regular course of operations, such as inmate transfers, medical escorts and temporary assignments. The Employer uses FXT resources to satisfy these staffing requirements. This utilizes most or even all of the available FXT resources, and as a result the Employer is required to resort to overtime pay for other employees in order to cover STSP absences. The Employer could reprioritize covering STSP absences using FXT employees (a more appropriate use of FXT employees, than routine understaffing of regular work) or even hire more regular and FXT staff. The Employer's proposed change to calculating overtime is effectively penalizing members for its own failure to staff its facilities appropriately.

152. Of course, much of the discussion around sick leave is made murkier by the 12-hour shift schedule on which the vast majority of the bargaining unit work (including most COs, YSOs, Nurses, Kitchen staff, and some programming staff). Employees who work 12-hour shifts will have 1.5 "days" of sick day credits deducted for each shift they call in sick. It is not clear whether the "days" of sick day usage referred to in the Employer's brief are based on the amount of STSP credits deducted, or based on the number of shifts that employees have in sick. Given the Employer's use of days as opposed to shifts, it appears that its numbers may be inflated by something close to 50%.

153. The Employer's overtime proposal was rejected by this arbitrator last round and it should be rejected again.

Response to Employer Proposal 12.5 – Health Care Spending Account/Administrative Changes – New LOUs

(i) Employer's Proposal

154. The Employer proposes implementing a Health Care Spending Account (HCSA) of $300 per eligible regular and seasonal employee on an annual basis per calendar year (inclusive of funding for dependents). The creation of the HCSA is contingent on a "complete package" of administrative changes being implemented, including:

a. Implementation of a Prior Authorization program
b. Enhanced (mandatory) generic substitution prescribed drug program
c. Dispensing fee cap of $11.99
d. Limit number of dispensing fees to 5 times a year for maintenance drugs
e. *Manulife DrugWatch*™ program
f. Speciality drug care program
g. Vitamin B6/B12 injections: Apply adjudication terms limiting coverage to expenses incurred for treatment considered "reasonable and customary" for a patient's medical condition e.g., vitamin deficiency

(ii) Employer's Proposed Collective Agreement Language

NEW LETTER OF UNDERSTANDING

APPENDIX XX
EFFECTIVE [90 DAYS FROM DATE OF RATIFICATION/DATE OF INTEREST ARBITRATION DECISION]

HEALTH CARE SPENDING ACCOUNT

Glenna Caldwell
Chief Negotiator, OPSEU
100 Lesmill Road
North York, Ontario
M3B 3P8

Dear Glenna:

The Employer agrees to establish a Health Care Spending Account (HCSA) in the amount of $300 annually for each eligible regular and seasonal employee in the OPSEU Correctional Bargaining Unit enrolled in the Supplementary Health and Hospital (SH&H) and/or Dental plans, effective [90 days from date of ratification/or date of interest arbitration decision]. For clarity, the HCSA is not an insured benefit and is not part of the SH&H plan and/or Dental plan. This amount is not taxable to employees. New employees are eligible for HCSA credit effective the first day of the month following the month in which the employee has completed two (2) months of continuous service.

The HCSA must be utilized for eligible medical expenses as defined in the Income Tax Act. Any remaining annual balance in the account shall carry over for a maximum of one calendar year. If the carry over balance is not used at the end of the carry over year, it is forfeited.

Coverage under the HCSA is applicable to the eligible employee and eligible dependents. This includes any dependent that the employee could claim as an eligible dependent under Canada Revenue Agency ("CRA") guidelines. For clarity, the amount of $300 annually is the total maximum amount available to the employee including dependents. Therefore, eligible medical expenses, incurred by the employee and/or the employee's eligible dependents, if any, can be claimed through the employee's account. All coverage under the HCSA will be cancelled effective as of the last day of the month in which employment terminates.

Yours truly,

Steven MacKay
Director, Negotiations Branch
Employee Relations and Negotiations Division
Centre for Public Sector Labour Relations and Compensation
Treasury Board Secretariat

[This letter forms part of the Collective Agreement]

…

NEW LETTER OF UNDERSTANDING

APPENDIX XX
EFFECTIVE [90 DAYS FROM DATE OF RATIFICATION OR DATE OF INTEREST ARBITRATION DECISION]

Glenna Caldwell
Chief Negotiator, OPSEU
100 Lesmill Road
North York, Ontario
M3B 3P8

Dear Glenna:

This letter will confirm the parties' agreement to implement the following administrative changes under the Insurance Carrier's insured benefits plan for OPSEU Correctional Bargaining Unit-represented employees. Notwithstanding Articles 39 and 67 (Supplemental Health and Hospital Insurance) of the OPSEU Correctional Bargaining Unit Collective Agreement, the parties agree to implement the following changes concerning the administration of insured benefits, effective [90 days from date of ratification/or date of interest arbitration decision]:

i. **Implementation of a standard Prior Authorization program, which will be actively managed and updated by the Insurance Carrier, for specified eligible prescribed drugs covered under the drug plan. The program supports management of drug cost while continuing to provide access to medically necessary drug therapy that is appropriate for a patient's medical condition. Employees currently taking drugs on the prior authorization list will be "grand-parented" and the drugs they are currently receiving will not be affected by the expanded program.**
ii. **Implementation of an Enhanced (Mandatory) Generic Substitution prescribed drug program. Reimbursement will be based on the lowest cost eligible generic drug product price, even if no substitution is prescribed by a physician. If a patient cannot tolerate the generic drug, or it is therapeutically ineffective, medical evidence can be submitted to support why the brand-drug is being prescribed.**
iii. **Establishment of a Dispensing Fee Cap for prescription drugs of $11.99 per prescription.**
iv. **Implementation of an Annual Dispensing Fee Frequency Cap of five (5) times a calendar year in relation to eligible prescribed maintenance drugs that can be reasonably dispensed over a longer term.**
v. **Implementation of Manulife's DrugWatch program to closely monitor and analyze the effectiveness and value of certain new drugs in comparison to existing drugs that target similar**

conditions or newly approved uses for existing drugs. Before a targeted drug can be approved for coverage under the Insurance Carrier's drug plans, it must undergo this review process.

vi. Implementation of a Specialty Drug Care program on a mandatory basis which provides the support of a nurse case manager for individuals taking medications to treat complex, chronic or lifethreatening conditions. In partnership with the Insurance Carrier's provider, the program also enables access to preferred pricing for specialty drugs.

vii. Application of reasonable and customary prescription drug adjudication practice to claims for injectable Vitamin B6/B12 expenses. Coverage will be limited to injectable Vitamin B6/B12 expenses incurred in relation to treatment considered reasonable and customary for a patient's medical condition.

Yours truly,

Steven MacKay
Director, Negotiations Branch
Employee Relations and Negotiations Division
Centre for Public Sector Labour Relations and Compensation
Treasury Board Secretariat

(iii) Union's Response to Proposal and Rationale

155. The Union is opposed to the Employer's proposed HCSA and its proposed changes to the drug plan. The Union has not proposed and is not seeking a Health Care Spending Account for its members. The Union has a number of benefit proposals that are of the utmost importance to its members, and a Health Care Spending Account is simply not a priority for this Union's membership.

156. Moreover, the Employer's proposal is unbalanced and unfair. The Employer asserts that the modest HCSA would be provided to regular and "seasonal employees", (which as far as the Union is aware, do not exist in the Correctional Bargaining Unit), however, not to FXT employees (who pay 100% of their health care premiums).[62] Nevertheless, in spite of paying for full benefit coverage, FXT members would be subject to all of the "trade off" restrictions imposed as part of the Employer's

[62] 2018-2021 Collective Agreement, article 31A.7.2, OPSEU Book of Documents, **Tab 1**.

proposal, but would not receive the HCSA. This unfairness is reason enough to reject this proposal, as it would result in the exclusion of approximately one-third of the Union's members from any benefit at all from the proposal. Moreover, the $300 HCSA account is a per employee amount – there is no HCSA for members' spouses or dependants, who will be similarly covered by the various restrictions that make up the bulk of the Employer's benefit proposal. This stands in stark contrast to the Union's proposed benefit changes which will accrue to the benefit of every member covered under the benefit plan, as well as to their families. Given the difference in the make-up of the bargaining unit, even if Unified were an appropriate comparator for some purposes, that would not be the case in respect of this grossly unbalanced proposal.

157. Further, not only would this proposal amount to a concession on the Union's part, it is also a proposal for an entirely new drug plan scheme that is not currently part of the Collective Agreement, and as such amounts to breakthrough language. A scheme of this nature should involve a careful consideration of the plan as it currently exists – and as it is set out over six pages of detailed terms included in the body of the Collective Agreement – and is something that should be negotiated freely, not imposed at arbitration.

158. In fact, the failure of the Employer to propose carefully tailored and reasonable amendments to the actual language of the Collective Agreement, and instead to propose to override the Collective Agreement language through a broad and vague appendix tacked onto the back, reveals that it is not genuinely engaged in an appropriate review of the benefit as it currently operates for the Union's members.

<u>Prior Authorization program</u>

159. The proposed PA program imposes an additional administrative burden on members who are sick and need quick access to their prescribed medications. Under the current benefits plan, there are three drugs that require prior authorization. The Employer's proposal would dramatically increase this number to as much as 200, amounting to a significant departure from the requirements of the current Collective Agreement.

160. In addition, this aspect of the proposal is substantively the same as the Employer's proposal for a Prior Authorization Plan in the last round of bargaining. That proposal was rejected at interest arbitration. There is no compelling reason to award it now.

161. Finally, the Employer has already bargained a Drug Utilization Review.[63] Its proposal fails to even reference how that existing program would intersect with the PA or any other element of its proposals.

Enhanced (mandatory) generic drug substitution

162. The Employer asserts that this proposal "would help to manage plan costs by reimbursing the cost of prescription drugs based on the price of the lowest cost alternative medication, which is typically a 'generic' drug."[64] However, as the Employer notes in its brief, this bargaining unit already has mandatory generic substitution:

> Effective June 1, 2002, the Supplementary Health and Hospital Plan shall provide for the reimbursement of ninety percent (90%) of the cost of prescribed drugs and medicines that require a physician's prescription. **The Supplementary Health and Hospital Plan shall provide reimbursement for ninety percent (90%) of the generic equivalent where a generic equivalent exists. Where the brand name product is dispensed, the employee will pay the difference between the cost of the brand name product and the ninety percent (90%) of the generic equivalent product cost that is reimbursed by the Supplementary Health and Hospital Plan.** Notwithstanding the foregoing, if no generic product exists the Supplementary Health and Hospital Plan shall provide reimbursement for ninety percent (90%) of the cost of the brand name product.[65] [emphasis added]

163. The only impact of the Employer's proposed change is to require physicians to complete a "Request for Approval of a Brand-Name Drug Form" and submit it to Manulife for approval in advance of the dispensing of any brand name drug for which the Employee seeks reimbursement. This program would significantly increase the

[63] 2018-2021 Collective Agreement, article 39.2.1.2 3), OPSEU Book of Documents, **Tab 1**.
[64] Employer's Brief, para 419.
[65] 2018-2021 Collective Agreement, article 39.2.1, OPSEU Book of Documents, **Tab 1**.

administrative burden on the few members who are unable to use generic drugs (the scope of which is not reviewed or accounted for in the Employer's justification for this proposal). Consequently, there are no cost savings to the plan or to the employee in any but the most marginal of circumstances. The Employer provides no explanation as to how or on what possible basis this could "reduce[d] costs for employees and their dependents,"[66] and has indicated through its disclosure that it would benefit the Employer only to the extent of a relatively minimal cost savings of $319,000, or 0.04% of its base budget.

164. Given the existing language in the Collective Agreement, there is absolutely no basis to award this proposal and it should be rejected.

Pharmacy dispensing fee cap of $11.99

165. The proposed pharmacy dispensing fee cap of $11.99 is a departure from the current plan that determines the Employer's co-pay amount on a percentage basis (ninety percent (90%) of the generic equivalent product cost), along with an already existing $3.00 charge imposed on employees for each drug that is dispensed.[67]

166. While it is technically true that "currently there is no dispensing fee cap for the OPSEU Correctional plan," the reality is that the existing drug plan actually builds in an additional $3.00 expense employees must pay each time they fill a prescription. Adding a restriction to the reimbursement provided under the benefit plan when already imposing an additional dispensing charge is a significant concession that is indefensible given the current terms of the plan.

167. Moreover, it is noteworthy that the Employer has disclosed that it would achieve no cost savings through this proposed change.[68]

[66] Employer's Arbitration Brief at para 420.
[67] 2018-2021 Collective Agreement, articles 39.2.1 and 39.2.1.2, OPSEU Book of Documents, **Tab 1**.
[68] Costing Note, HCSA/Admin Changes, May 10, 2022, OPSEU Supplemental Book of Documents, **Tab 25**.

168. The Employer has also stated that despite the proposed dispensing fee cap, employees may choose to purchase prescription drugs at a pharmacy with a higher dispensing fee and pay the offset, which "would encourage smart consumerism." This ignores the fact that for many of our members, more factors than cost may go into choosing a pharmacy, including but not limited to location, hours, drug availability, and pharmacist expertise and familiarity with the member's medical history. The Employer's proposed dispensing fee cap would adversely affect members who use pharmacies with higher dispensing fees for reasons beyond simple preference and would especially burden members in small and northern communities where "choice" is particularly limited, if not non-existent, and who would necessarily be required to incur significant travel expenses in order to exercise the "smart consumerism" the Employer espouses in its proposal. This is particularly so as the pharmacy industry itself undergoes significant consolidation into only a small handful of large players – the risk of the industry consolidation is not one that should be imposed on employees in this bargaining unit.

169. The burden this proposal would impose on members far outweighs the Employer's cost savings – in that there are none – and it should not be awarded.

<u>Dispensing fee frequency cap</u>

170. Awarding this element of the proposal would amount to a concession on the Union's part with virtually non-existent cost savings to the Employer. The Employer's estimated annual cost savings in relation to this proposal is $67,000.[69]

171. The proposed cap of five purchases per 12-month period for maintenance drugs would impose an administrative burden on employees who rely on such drugs, as well as risk imposing a financial burden in circumstances of drug shortages, or conflicting direction from this restriction and those imposed through the already existing Drug Utilization Review, which, among other things, restricts the duration for which medications

[69] Costing Note, HCSA/Admin Changes, May 10, 2022, OPSEU Supplemental Book of Documents, **Tab 25**.

can be prescribed and the timing of refills. The Employer has not addressed how its new proposal would interact with the existing restrictions.

172. Of course, the Union is also denied any ability to assess the impact of this proposal because the Employer has not shared necessary details to permit a comprehensive consideration of the proposal. The Union does not know what drugs are covered, how frequently that list is reviewed, how members would be advised that they are covered by this restrictive provision, and how many members would be affected.

173. The Employer has simply advised the Union that Manulife considers the list of drugs included in its "Limited Number of Dispensing Fees (LNDF)" Program as proprietary information.[70]

174. Finally, and similar to the Employer's proposed standard Prior Authorization program, the Employer made the same substantially the same proposal in the last round of bargaining, which was rejected at interest arbitration. There is no compelling reason to award it now.

Manulife DrugWatch Program

175. The Manulife DrugWatch Program proposed by the Employer would impose a significant negative impact on the Union's sickest members who rely on new and emerging drugs approved by Health Canada. Anecdotal evidence suggests that this program causes delays of 6 to 9 months – or even longer – in approving benefit coverage of new drugs under this program after they have been approved by Health Canada. This delay is primarily incurred to permit Manulife to negotiate with the pharmaceutical companies who provide these drugs.

176. In other words, the DrugWatch program would reduce benefits because it allows the insurer to deny or delay coverage for new drugs that would be otherwise

[70] Email from Barry Scanlon, re: Proposed HCSA/Administration changes – additional materials, September 15, 2022, OPSEU Supplementary Book of Documents, **Tab 26**.

covered under the terms of the benefit plan.[71] Meanwhile, there is no option available under the Program or in the Employer's proposal for members to access these drugs under their health benefits coverage. This would place an administrative and financial burden on sick employees to find alternative funding for necessary health care.

177. There are also significant equity concerns with the program. As the media reported when Manulife implemented the DrugWatch program:

> Manulife…is clamping down on coverage if they don't offer value for their exorbitant price tags.
> The insurer has begun evaluating new high-cost and high-volume medications, and for the first time will exclude drugs from coverage if they don't meet clinical effectiveness standards in relation to their expense.[72]

178. DrugWatch program reviewers use clinical averages in determining whether a drug's effectiveness in comparison with other drugs on the market justifies its cost for inclusion in Manulife's formularies. However, the use of clinical averages overlooks the different effectiveness and side effects of drugs for different individuals because of genetics, gender, race, health conditions, other drug treatments, pre-existing risks and other factors. Access to one drug that is effective on average but not another drug in the same class with the same average effectiveness denies some individuals access to a drug that works or works better for them.[73]

179. The effect of this proposal would be that reimbursement coverage for all plan members can be delayed and denied for any drug Manulife selects for evaluation of the drug's cost-effectiveness based on unknown manufacturer submissions; unknown Manulife research, which might or might not include reports and recommendations from

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[71] See "From Contracts to Claims: Helping Plan Sponsors With Effective Drug Plan Solutions", 4th Annual Benefits Advisors' Drug Plan Outlook – 2017, OPSEU Supplementary Book of Documents, **Tab 27**: "These new drug review programs allow these insurers the ability to decline coverage on all their drug plans until the review process is completed. The outcome of each review may result in coverage, coverage with claims management features, or exclusion from the insurer's plans." (pg. 2)

[72] The Globe and Mail, "Manulife begins program to scrutinize coverage of pricey drugs", November 15, 2015, OPSEU Supplementary Book of Documents, **Tab 28**.

[73] *Federation of Post-secondary Educators of BC v., Post-secondary Employers' Association*, 2021 CanLII 72615 ["*Federation of Post-secondary* Educators"] at paras 191-192, OPSEU Supplementary Book of Authorities, **Tab 12**.

the Canadian Agency for Drugs and Technologies in Health; unknown Manulife evaluation criteria; and confidential Manulife negotiations with the manufacturer.[74] While the consequences for individual employees of the Employees are clear, the cost-savings for the Employer are minimal. The Employer's disclosure estimates that implementing the DrugWatch program would result in annual costs savings of $83,000.[75] As such, this proposal should not be awarded.

Speciality Drug Care program

180. The SDC program would require mandatory assignment of a case manager from the insurance carrier in the case members with certain health conditions. This would impose a further intrusive aspect of the administrative process on sick members. The Auditor General Report specifically speaks to a lack of trust with the Corrections workforce. Imposing a program that adds increasingly intrusive elements to the administration of sick employees' health benefits coverage will serve to further erode trust between members and the Employer.

181. This is particularly unreasonable for our members who are dealing with "complex, chronic or life-threatening conditions." Having insurance company staff second-guess the decisions of the member's health care team while adding extra administrative burdens and challenges around accessing prescribed treatments is of little benefit to our sickest members. The employer's suggestion that coaching on "diet, exercise, or stress management" should come from these individuals – who are not in a treatment relationship with our members – as opposed to their chosen health care and support providers offers only the coldest of comfort.

182. This proposed change would achieve minimal annual cost savings for the Employer, which the Employer estimates as $269,000, or 0.03% of base total

[74] *Federation of Post-Secondary Educators* at para. 281, OPSEU Supplementary Book of Authorities, **Tab 12**.
[75] Costing Note, HCSA/Admin Changes, May 10, 2022, OPSEU Supplemental Book of Documents, **Tab 25**.

compensation.[76] Again, the minimal cost savings are outweighed by the negative impact it would have on members and their relationship with the Employer, and the proposal should not be awarded.

Vitamin B6/B12 injections

183. As the Employer notes, B6/B12 injections as part of a weight loss program are currently covered, and it seeks to end this coverage. This element of the proposal amounts to a concession on the Union's part with minimal cost savings to the Employer. The Employer estimates it annual costs savings related to this proposal to be $49,000, less than 0.01% of base total compensation.[77] There is no compelling reason to award it.

[76] Costing Note, HCSA/Admin Changes, May 10, 2022, OPSEU Supplemental Book of Documents, **Tab 25**.
[77] Costing Note, HCSA/Admin Changes, May 10, 2022, OPSEU Supplemental Book of Documents, **Tab 25**.

Response to Employer Proposal 12.6 – Pregnancy/Parental Leave

(i) Employer's Proposal

184. The Employer proposes to amend the Collective Agreement as a result of changes to the Employment Insurance and *Employment Standards Act* provisions relating to pregnancy and parental leave. The Employer's proposed changes are as follows:

a. For a regular employee whose pregnancy and/or parental leave begins on or after 90 days of ratification/or date of interest arbitration decision, the second week waiting period SUB plan payment paid at 93% of the employee's salary will be moved so that it is taken during the pregnancy and parental leave period when the employee is not in receipt of Employment Insurance (EI) benefit payments, and prior to the employee returning to the workplace; and

b. For a regular employee whose extended parental leave begins on or after 90 days of ratification/or date of interest arbitration decision, SUB plan payments will decrease proportionally with the decrease in the EI benefits payment amount in instances where an employee elects to take the optional extended parental leave.

c. Update the language of pregnancy and parental leave provisions to align with the following changes which have been made to the Employment Standards Act, 2000 under Bill 148:

    i. Effective December 3, 2017, an employee can opt to extend parental leave up to sixty-one (61) weeks for birth mothers who take pregnancy leave (previously up to thirty-five (35) weeks) and up to sixty-three (63) weeks for all other new parents (previously up to thirty-seven (37) weeks).

ii. Effective January 1, 2018, an employee who is not entitled to parental leave can now end pregnancy leave twelve (12) weeks after stillbirth or miscarriage (previously six (6) weeks).

iii. Effective December 3, 2017, parental leave may begin up to seventy-eight (78) weeks after the birth or the date the child comes into the employee's custody, care or control for the first time (previously fifty-two (52) weeks).

d. In the event of any subsequent amendments to the EI Act and/or Employment Standards Act, 2000 which would impact provisions for pregnancy and parental leave, the parties will meet in a timely manner to review the changes and negotiate any applicable cost-neutral changes to the current pregnancy and parental leave provisions in the collective agreement.

(ii) Employer's Proposed Collective Agreement Language

Full Time Regular Employees

ARTICLE 50 – PREGNANCY LEAVE

…

50.3.2.**1** **The following applies for any pregnancy leave which begins before [90 days of ratification/or date of interest arbitration decision].** In respect of the period of pregnancy leave, payments made according to the Supplementary Unemployment Benefit Plan will consist of the following:

(a) for the first two (2) weeks **(the waiting period)**, payments equivalent to ninety-three percent (93%) of the actual weekly rate of pay for their classification, which the employee was receiving on the last day worked prior to the commencement of the pregnancy leave, but which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented,

and

(b) up to a maximum of fifteen (15) additional weeks, payments equivalent to the difference between the sum of the weekly *EI* benefits the employee is eligible to receive and any other earnings received by the employee, and ninety-three percent (93%) of the actual weekly rate of pay for their classification, which they were receiving on the last day worked prior to the commencement of the pregnancy leave, but which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented.

50.3.2.2 **The following applies for any pregnancy leave which begins on or after [90 days of ratification/or date of interest arbitration decision]. In respect of the period of pregnancy leave, payments made according to the Supplementary Unemployment Benefit Plan will consist of the following:**

(a) **for the first one week (waiting period), payment equivalent to ninety-three percent (93%) of the actual weekly rate of pay for their classification, which the employee was receiving on the last day worked prior to the commencement of the pregnancy leave, but which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented,**

and

(b) **up to a maximum of fifteen (15) additional weeks, payments equivalent to the difference between the sum of the weekly *EI* benefits the employee is eligible to receive and any other earnings received by the employee, and ninety-three percent (93%) of the actual weekly rate of pay for their classification, which they were receiving on the last day worked prior to the commencement of the pregnancy leave, but which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented.**

and

(c) **on production of proof of payments in accordance with employment insurance pursuant to the *Employment Insurance Act, (Canada*) have terminated, the employee shall be entitled to a further one week of pregnancy leave with payment equivalent to ninety-three percent (93%) of the actual weekly rate of pay for their classification, which they were receiving on the last day worked prior to the commencement of the pregnancy leave, but which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented. This further one week of leave must be taken immediately after the date when the *EI* benefits referenced in Article 50.3.2.2(b) have terminated and prior to returning to the workplace.**

(d) **where an employee takes parental leave in conjunction with pregnancy leave, Article 50.3.2.2(c) shall not apply.**

50.3.3 Notwithstanding Articles 50.3.2**.1**~~(a) and (b)~~ **and 50.3.2.2**, where an employee assigned to a vacancy in accordance with Article 9.7.2 (Health and Safety and Video Display Terminals) is eligible to receive an allowance under this article, and the salary rate the employee was receiving on the last day worked prior to the pregnancy leave is less than the salary rate they was receiving on the last day worked prior to the assignment, the allowance shall be based on the actual weekly rate of pay for their classification which they were receiving on the last day worked prior to the assignment.

50.4 Notwithstanding Article 36.2 (Insured Benefits Plans – General), an employee on pregnancy leave shall have their benefits coverage continued unless the employee elects in writing not to do so.

50.5 **(a)** **Where the child in respect of whom the employee takes parental leave was born or came into the employee's custody, care and control for the first time before December 3, 2017**, ~~A~~**a**n employee on pregnancy leave is entitled, upon application in writing at least two (2) weeks prior to the expiry of the leave, to a leave of absence without pay but with accumulation of credits for not more than thirty-five (35) weeks. This leave shall be in accordance with the provisions of parental leave granted under Article 51 (Parental Leave).

(b) Where the child in respect of whom the employee takes parental leave was born or came into the employee's custody, care and control for the first time on or after December 3, 2017, an employee on pregnancy leave is entitled, upon application in writing at least two (2) weeks prior to the expiry of the leave, to a leave of absence without pay but with accumulation of credits for not more than sixty-one (61) weeks. This leave shall be in accordance with the provisions of parental leave granted under Article 51 (Parental Leave).

50.6.1 An eligible employee returning from a leave of absence under Articles 50.1 or 50.5 to the ministry in which they were employed immediately prior to such leave shall be assigned to the position she most recently held, if it still exists, or to a comparable position, if it does not, and continue to be paid at the step in the salary range that they would have attained had they worked during the leave of absence.

50.6.2 An employee who has been assigned in accordance with Article 9.7.2 (Health and Safety and Video Display Terminals) and who returns to their former ministry from a leave of absence under this article, shall be assigned to the position they most recently held prior to the assignment under Article 9.7.2, if it still exists, or to a comparable position, if it does not, and continue to be paid at the step in the salary range that they would have attained had they worked during the leave of absence.

50.7 Supplementary Unemployment Benefit

In accordance with Articles 50.3.2**.1,** ~~(a) and (b) and~~ **50.3.2.2**, and 50.3.3, the Unemployment Benefit shall be based on the salary the employee was receiving on the last day worked prior to the commencement of the pregnancy leave, including any retroactive salary adjustment to which she may become entitled during the leave.

50.8 **Where** ~~T~~**t**he pregnancy leave of a person who is not entitled to take parental leave **began before January 1, 2018, the pregnancy leave** ends on the later of the day that is seventeen (17) weeks after the pregnancy leave began or the day that is six (6) weeks after the birth, still birth or miscarriage of the child unless the employee chooses to end the leave earlier and submits a certificate from a legally qualified medical practitioner.

Where the pregnancy leave of a person who is not entitled to take parental leave began on or after January 1, 2018, the pregnancy leave ends on the later of the day that is seventeen (17) weeks after the pregnancy leave began or the day that is twelve (12) weeks after the birth, still birth or miscarriage of the child unless the employee chooses to end the leave earlier and submits a certificate from a legally qualified medical practitioner.

ARTICLE 51 – PARENTAL LEAVE

…

51.2**.1** **Where the child in respect of whom the employee takes parental leave was born or came into the employee's custody, care and control for the first time before December 3, 2017,** ~~P~~**p**arental leave may begin,

(a) no earlier than the day the child is born or comes into the custody, care and control of the ~~parent~~ **employee** for the first time; and

(b) no later than fifty-two (52) weeks after the day the child is born or comes into the custody, care and control of the ~~parent~~ **employee** for the first time;

(c) the parental leave of an employee who takes pregnancy leave must begin when the

pregnancy leave ends unless the child has not yet come into the custody, care and control of a**n** ~~parent~~ **employee** for the first time. Parental leave shall end thirty-five (35) weeks after it begins for an employee who takes pregnancy leave and thirty-seven (37) weeks after it begins for an employee who did not take pregnancy leave, or on an earlier day if the person gives the Employer at least four (4) weeks' written notice of that day.

51.2.2 **Where the child in respect of whom the employee takes parental leave was born or came into the employee's custody, care and control for the first time on or after December 3, 2017, parental leave may begin,**

(a) **no earlier than the day the child is born or comes into the custody, care and control of the employee for the first time; and**

(b) **no later than seventy-eight (78) weeks after the day the child is born or comes into the custody, care and control of the employee for the first time;**

(c) **the parental leave of an employee who takes pregnancy leave must begin when the pregnancy leave ends unless the child has not yet come into the custody, care and control of an employee for the first time. Parental leave shall end sixty-one (61) weeks after it begins for an employee who takes pregnancy leave and sixty-three (63) weeks after it begins for an employee who did not take pregnancy leave, or on an earlier day if the person gives the Employer at least four (4) weeks' written notice of that day.**

51.3 Notwithstanding Article 36.2 (Insured Benefits Plans – General), an employee on parental leave shall have their benefits coverage continued unless the employee elects in writing not to do so.

51.4 Except for an employee to whom Article 50 (Pregnancy Leave) applies, an employee on parental leave is entitled, upon application in writing at least two (2) weeks prior to the expiry of the leave, to a further consecutive leave of absence without pay but with accumulation of credits for not more than six (6) weeks.

51.5.1 An employee who is entitled to parental leave and who provides the Employer with proof that the employee is in receipt of employment insurance benefits pursuant to the *Employment Insurance Act, (Canada)* shall be paid an allowance in accordance with the Supplementary Unemployment Benefit Plan.

51.5.2**.1** **The following applies for any parental leave which begins before [90 days of ratification/or date of interest arbitration decision].** In respect of the period of parental leave, payments made according to the Supplementary Unemployment Benefit Plan will consist of the following:

(a) where an employee elects to serve the two (2) week waiting period under the *Employment Insurance Act, (Canada)* before receiving benefits under that Act, for the first two (2) weeks, payments equivalent to ninety-three percent (93%) of the actual weekly rate of pay for their classification, which they were receiving on the last day worked prior to the commencement of the leave, which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented~~.~~**,**

and

(b) up to a maximum of fifteen (15) additional weeks, payments equivalent to the difference between the sum of the weekly EI benefits the employee is eligible to receive and any other earnings received by the employee, and ninety-three percent (93%) of the actual weekly rate of pay for their classification, which they were receiving on the last day worked prior to the commencement of the leave, which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are

implemented.

51.5.2.2 **The following applies for any parental leave which begins on or after [90 days of ratification/or date of interest arbitration decision]. In respect of the period of parental leave, payments made according to the Supplementary Unemployment Benefit Plan will consist of the following:**

(a) **where an employee elects to serve the one week waiting period under the *Employment Insurance Act, (Canada)* before receiving benefits under that Act, for the first one week, payment equivalent to ninety-three percent (93%) of the actual weekly rate of pay for their classification, which they were receiving on the last day worked prior to the commencement of the leave, which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented.**

and

(b) **up to a maximum of fifteen (15) additional weeks, payments equivalent to the difference between the sum of the weekly Standard EI parental benefits the employee is eligible to receive and any other earnings received by the employee, and ninety-three percent (93%) of the actual weekly rate of pay for their classification, which they were receiving on the last day worked prior to the commencement of the leave, which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented.**

and

(c) **where the employee served the one week waiting period in accordance with Article 51.5.2.2(a), and on production of proof that payments in accordance with employment insurance pursuant to the *Employment Insurance Act, (Canada*) have terminated, the employee shall be entitled to a further one week of parental leave with payment equivalent to ninety-three percent (93%) of the actual weekly rate of pay for their classification, which they were receiving on the last day worked prior to the commencement of the leave, but which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented. This further one week of leave must be taken immediately after the date when the EI benefits referenced in Article 51.5.2.2(b) have terminated and prior to returning to the workplace.**

or

(d) **where the employee served the waiting period in accordance with Article 50.3.2.2(a), has taken parental leave in conjunction with pregnancy leave, and on production of proof that payments in accordance with employment insurance pursuant to the *Employment Insurance Act, (Canada*) have terminated, the employee shall be entitled to a further one week of parental leave with payment equivalent to ninety-three percent (93%) of the actual weekly rate of pay for their classification, which they were receiving on the last day worked prior to the commencement of the leave, but which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented. This further one week of leave must be taken immediately after the date when the *EI* benefits referenced in Article 51.5.2.2(b) have terminated and prior to returning to the workplace.**

51.6 An employee returning from a leave of absence under Articles 51.1 or 51.4 to the ministry in which they were employed immediately prior to such leave, shall be assigned to the position they most recently held, if it still exists, or to a comparable position, if it does not, and continue to be paid at the step in the salary range that they would have attained had they worked during the leave of

absence.

51.7 In accordance with Article**s** 51.5.2.**1 and 51.5.2.2**, the Supplementary Unemployment Benefit shall be based on the salary the employee was receiving on the last day worked prior to the commencement of the leave, including any retroactive salary adjustment to which they may have been entitled during the leave.

ARTICLE 76 – PREGNANCY LEAVE

…

76.3.2**.1 The following applies for any pregnancy leave which begins before [90 days of ratification/or date of interest arbitration decision].** In respect of the period of pregnancy leave, payments made according to the Supplementary Unemployment Benefit Plan will consist of the following:

(a) for the first two (2) weeks **(the waiting period)**, payments equivalent to ninety-three percent (93%) of the actual weekly rate of pay for their classification, which they were receiving on the last day worked prior to the commencement of the pregnancy leave, but which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented,

and

(b) up to a maximum of fifteen (15) additional weeks, payments equivalent to the difference between the sum of the weekly *EI* benefits the employee is eligible to receive and any other earnings received by the employee, and ninety-three percent (93%) of the actual weekly rate of pay for their classification, which they were receiving on the last day worked prior to the commencement of the pregnancy leave but which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented.

76.3.2.2 The following applies for any pregnancy leave which begins on or after [90 days of Ratification/or date of interest arbitration decision]. In respect of the period of pregnancy leave, payments made according to the Supplementary Unemployment Benefit Plan will consist of the following:

(a) for the first one week (waiting period), payment equivalent to ninety-three percent (93%) of the actual weekly rate of pay for their classification, which the employee was receiving on the last day worked prior to the commencement of the pregnancy leave, but which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented,

and

(e) up to a maximum of fifteen (15) additional weeks, payments equivalent to the difference between the sum of the weekly *EI* benefits the employee is eligible to receive and any other earnings received by the employee, and ninety-three percent (93%) of the actual weekly rate of pay for their classification, which they were receiving on the last day worked prior to the commencement of the pregnancy leave, but which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented.

and

(f) on production of proof of payments in accordance with employment insurance

pursuant to the *Employment Insurance Act, (Canada*) have terminated, the employee shall be entitled to a further one week of pregnancy leave with payment equivalent to ninety three percent (93%) of the actual weekly rate of pay for their classification, which they were receiving on the last day worked prior to the commencement of the pregnancy leave, but which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented. This further one week of leave must be taken immediately after the date when the *EI* benefits referenced in Article 76.3.2.2(b) have terminated and prior to returning to the workplace.

(g) where an employee takes parental leave in conjunction with pregnancy leave, Article 76.3.2.2 (c) shall not apply.

76.3.3 Notwithstanding Article 76.3.2**.1**~~(a) and (b)~~ **and 76.3.2.2**, where an employee assigned to a vacancy in accordance with Article 60.4.2 (Health and Safety and Video Display Terminals) is eligible to receive an allowance under this article, and the salary rate they were receiving on the last day worked prior to the pregnancy leave is less than the salary rate they were receiving on the last day worked prior to the assignment, the allowance shall be based on the actual weekly rate of pay for their classification which they were receiving on the last day worked prior to the assignment.

76.4 Notwithstanding Article 64.2 (Insured Benefits Plans – General), an employee on pregnancy leave shall have their benefits coverage continued unless the employee elects in writing not to do so.

76.5 (a) Where the child in respect of whom the employee takes parental leave was born or came into the employee's custody, care and control for the first time before December 3, 2017, ~~A~~**a**n employee on pregnancy leave is entitled, upon application in writing at least two (2) weeks prior to the expiry of the leave, to a leave of absence without pay but with accumulation of credits for not more than thirty-five (35) weeks. This leave shall be in accordance with the provisions of parental leave granted under Article 77 (Parental Leave).

(b) Where the child in respect of whom the employee takes parental leave was born or came into the employee's custody, care and control for the first time on or after December 3, 2017, an employee on pregnancy leave is entitled, upon application in writing at least two (2) weeks prior to the expiry of the leave, to a leave of absence without pay but with accumulation of credits for not more than sixty-one (61) weeks. This leave shall be in accordance with the provisions of parental leave granted under Article 77 (Parental Leave).

76.6.1 A**n** ~~female~~ employee returning from a leave of absence under Articles 76.1 or 76.5 to the ministry in

which **they were** ~~she was~~ employed immediately prior to such leave shall be assigned to the position they most recently held, if it still exists, or to a comparable position, if it does not, and continue to be paid at the step in the salary range that they would have attained had they worked during the leave of absence.

76.6.2 An employee who has been assigned in accordance with Article 60.4.2 (Health and Safety and Video Display Terminals) and who returns to their former ministry from a leave of absence under this article, shall be assigned to the position they most recently held prior to the assignment under Article 60.4.2, if it still exists, or to a comparable position, if it does not, and continue to be paid at the step in the salary range that they would have attained had they worked during the leave of absence.

76.7 In accordance with Articles 76.3.2**.1**~~(a) and (b)~~, **76.3.2.2** and 76.3.3, the Supplementary Unemployment Benefit shall be based on the salary the employee was receiving on the last day worked prior to the commencement of the pregnancy leave, including any retroactive salary adjustment to which they may become entitled during the leave.

76.8 **Where** ~~T~~**t**he pregnancy leave of a person who is not entitled to take parental leave **began before January 1, 2018, the pregnancy leave** ends on the later of the day that is seventeen (17) weeks after the pregnancy leave began or the day that is six (6) weeks after the birth, still birth or miscarriage of the child unless the employee chooses to end the leave earlier and submits a certificate from a legally qualified medical practitioner.

Where the pregnancy leave of a person who is not entitled to take parental leave began on or after January 1, 2018, the pregnancy leave ends on the later of the day that is seventeen (17) weeks after the pregnancy leave began or the day that is twelve (12) weeks after the birth, still birth or miscarriage of the child unless the employee chooses to end the leave earlier and submits a certificate from a legally qualified medical practitioner.

ARTICLE 77 – PARENTAL LEAVE

…

77.2**.1 Where the child in respect of whom the employee takes parental leave was born or came into the employee's custody, care and control for the first time before December 3, 2017,** ~~P~~**p**arental leave may begin,

(a) no earlier than the day the child is born or comes into the custody, care and control of the ~~parent~~ **employee** for the first time; and

(b) no later than fifty-two (52) weeks after the day the child is born or comes into the custody, care and control of the ~~parent~~ **employee** for the first time;

(c) the parental leave of an employee who takes pregnancy leave must begin when the pregnancy leave ends unless the child has not yet come into the custody, care and control of a**n** ~~parent~~ **employee** for the first time. Parental leave shall end thirty-five (35) weeks after it begins for an employee who takes pregnancy leave and thirty-seven (37) weeks after it begins for an employee who did not take pregnancy leave, or on an earlier day if the person gives the Employer at least four (4) weeks' written notice of that day.

77.2.2 Where the child in respect of whom the employee takes parental leave was born or came into the employee's custody, care and control for the first time on or after December 3, 2017, parental leave may begin,

(a) no earlier than the day the child is born or comes into the custody, care and control of the employee for the first time; and

(b) no later than seventy-eight (78) weeks after the day the child is born or comes into the custody, care and control of the employee for the first time;

(c) the parental leave of an employee who takes pregnancy leave must begin when the pregnancy leave ends unless the child has not yet come into the custody, care and control of an employee for the first time. Parental leave shall end sixty-one (61) weeks after it begins for an employee who takes pregnancy leave and sixty-three (63) weeks after it begins for an employee who did not take pregnancy leave, or on an earlier day if the person gives the Employer at least four (4) weeks' written notice of that day.

…

77.5.**2.1 The following applies for any parental leave which begins before [90 days of ratification/or date of interest arbitration decision].** In respect of the period of parental leave, payments made according to the Supplementary Unemployment Benefit Plan will consist of the following:

(a)where the employee elects to serve the two (2) week waiting period under the *Employment Insurance Act, (Canada)* before receiving benefits under that Act, for the first two (2) weeks, payments equivalent to ninety-three percent (93%) of the actual weekly rate of pay for their classification, which the employee was receiving on the last day worked prior to the commencement of the leave, which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented,

and

(b) up to a maximum of fifteen (15) additional weeks, payments equivalent to the difference between the sum of the weekly *EI* benefits the employee is eligible to receive and any other earnings received by the employee, and ninety-three percent (93%) of the actual weekly rate of pay for their classification, which the employee was receiving on the last day worked prior to the commencement of the leave which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented.

77.5.2.2 The following applies for any parental leave which begins on or after [90 days of ratification/or interest arbitration decision]. In respect of the period of parental leave, payments made according to the Supplementary Unemployment Benefit Plan will consist of the following:

(a) where an employee elects to serve the one week waiting period under the *Employment Insurance Act, (Canada)* before receiving benefits under that Act, for the first one week, payment equivalent to ninety-three percent (93%) of the actual weekly rate of pay for their classification, which they were receiving on the last day worked prior to the commencement of the leave, which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented.

and

(b) up to a maximum of fifteen (15) additional weeks, payments equivalent to the difference between the sum of the weekly Standard EI parental benefits the employee is eligible to receive and any other earnings received by the employee, and ninety-three percent (93%) of the actual weekly rate of pay for their classification, which they were receiving on the last day worked prior to the commencement of the leave, which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented.

and

(c) where the employee served the one week waiting period in accordance with Article 77.5.2.2(a), and on production of proof that payments in accordance with employment insurance pursuant to the *Employment Insurance Act, (Canada*) have terminated, the employee shall be entitled to a further one week of parental leave with payment equivalent to ninety-three percent (93%) of the actual weekly rate of

pay for their classification, which they were receiving on the last day worked prior to the commencement of the leave, but which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented. This further one week of leave must be taken immediately after the date when the EI benefits referenced in Article 77.5.2.2(b) have terminated and prior to returning to the workplace.

or

(d) where the employee served the waiting period in accordance with Article 76.3.2.2(a), has taken parental leave in conjunction with pregnancy leave, and on production of proof that payments in accordance with employment insurance pursuant to the *Employment Insurance Act, (Canada*) have terminated, the employee shall be entitled to a further one week of parental leave with payment equivalent to ninety-three percent (93%) of the actual weekly rate of pay for their classification, which they were receiving on the last day worked prior to the commencement of the leave, but which shall also include their progression on the wage grid and any negotiated or amended wage rates for their classification as they are implemented. This further one week of leave must be taken immediately after the date when the *EI* benefits referenced in Article 77.5.2.2(b) have terminated and prior to returning to the workplace.

…

77.6 An employee returning from a leave of absence under Articles 77.1 or 77.4 to the ministry in which the employee was employed immediately prior to such leave, shall be assigned to the position they most recently held, if it still exists, or to a comparable position, if it does not, and continue to be paid at the step in the salary range that they would have attained had they worked during the leave of absence.

77.7 In accordance with Article 77.5.2.**1 and 77.5.2.2**, the Supplementary Unemployment Benefit shall be based on the salary the employee was receiving on the last day worked prior to the commencement of the leave, including any retroactive salary adjustment to which they may have been entitled during the leave.

ARTICLE 31A – FIXED-TERM EMPLOYEES OTHER THAN SEASONAL, STUDENT AND GO TEMP EMPLOYEES (FXT)

…

31A.9 PREGNANCY AND PARENTAL LEAVE

31A.9.1 Pregnancy and parental leaves will be granted to employees under the terms of the *Employment Standards Act 2000*. Pregnancy leave shall be granted for up to seventeen (17) weeks and may begin no earlier than seventeen (17) weeks before the expected birth date.

31A.9.2 **Where the child in respect of whom the employee takes parental leave was born or came into the employee's custody, care and control for the first time before December 3, 2017, P~~p~~**arental leaves shall be granted for up to thirty-five (35) weeks for an employee who took pregnancy leave, or up to thirty-seven (37) weeks after it began otherwise.

Where the child in respect of whom the employee takes parental leave was born or came into the employee's custody, care and control for the first time on or after December 3, 2017, parental leaves shall be granted for up to sixty-one (61) weeks for an employee who took pregnancy leave, or up to sixty-three (63) weeks after it began otherwise.

…

ARTICLE 32 – SEASONAL EMPLOYEES (SE)

…

32.19 PREGNANCY AND PARENTAL LEAVE

32.19.1 Pregnancy and parental leaves will be granted to employees under the terms of the *Employment Standards Act 2000*. Pregnancy leave shall be granted for up to seventeen (17) weeks and may begin no earlier than seventeen (17) weeks before the expected birth date.

32.19.2 Where the child in respect of whom the employee takes parental leave was born or came into the employee's custody, care and control for the first time before December 3, 2017, ~~P~~parental leaves shall be granted for up to thirty-five (35) weeks for an employee who took pregnancy leave, or up to thirty-seven (37)) weeks after it began otherwise.

Where the child in respect of whom the employee takes parental leave was born or came into the employee's custody, care and control for the first time on or after December 3, 2017, parental leaves shall be granted for up to sixty-one (61) weeks for an employee who took pregnancy leave, or up to sixty-three (63) weeks after it began otherwise.

…

NEW – Pregnancy and Parental Leave

[Date of Ratification/or Interest Arbitration Decision]

Pregnancy and Parental Leave

LETTER OF UNDERSTANDING

Ms. Glenna Caldwell
Chief Negotiator, OPSEU
100 Lesmill Road
North York, Ontario
M3B 3P8

Dear Ms. Caldwell:

This letter shall confirm the parties agreement that in the event of any subsequent amendments to the Employment Insurance Act and/or the *Employment Standards Act, 2000* which impact provisions for pregnancy and parental leave, the parties will meet in a timely manner to review the changes and negotiate any applicable cost-neutral changes to the current pregnancy and parental leave provisions in the Collective Agreement.

Sincerely,

Steven MacKay
Director, Negotiations Branch
Centre for Public Sector Labour Relations and Compensation
Treasury Board Secretariat

[This letter does not form part of the Collective Agreement]

(iii) Union's Response to Proposal and Rationale

a. Moving the second week waiting period SUB plan payment paid at 93% of the employee's salary so that it is taken during the pregnancy and parental leave period when the employee is not in receipt of EI;

185. The Union is in agreement with this aspect of the Employer's proposal as it would avoid employees being in an overpayment situation in week 2 of the EI benefit.

b. Decreasing SUB plan payments proportionally with the decrease in EI benefits payment amount in instances where an employee elects to take the optional extended parental leave

186. The Union is opposed to this change as it would represent a concession on the Union's part as compared to the current collective agreement language, which provides an employee the full top up of 93% during the extended parental leave period.

187. The Employer's disclosure shows that the annual costs savings to the employer for making this change are estimated at $158,000. This is 0.02% of the base budget, representing a minimal cost saving for the Employer. However, the proposed change would have a significant impact on employees who opt to use the extended leave.

188. In any event, as the Employer points out in its brief, from December 2017 to July 2023, 301 OPSEU/SEFPO Corrections members took an extended parental leave, compared to 829 instances where members elected to take the standard parental leave.

c. Updating the language of pregnancy and parental leave provisions to align with various changes to the ESA under Bill 148.

189. The Union is in agreement with the Employer's proposed changes to reflect the updates in the ESA.

d. In the event of any subsequent amendments to the EI Act and/or Employment Standards Act, 2000 which would impact provisions for pregnancy and parental leave, the parties will meet in a timely manner to review the changes and negotiate any applicable cost-neutral changes to the current pregnancy and parental leave provisions in the collective agreement.

190. The Union is opposed to this proposal. Should any changes occur in the future, the Employer may choose to engage in free negotiations with the Union to amend language in the Collective Agreement. The Union is not in agreement to set cost-neutral parameters for such negotiations in perpetuity.

191. The inclusion of this language in the OPSEU Unified 2022-2024 collective agreement is not compelling evidence that the Parties would have agreed to this language under the replication principle. As stated throughout this Reply brief, the replication principle should not be used to replicate agreements made under constitutionally deficient bargaining conditions.

192. In contrast to the OPSEU Unified Collective Agreement, this restrictive language, binding the Union's bargaining provision, was not proposed by the Employer, and was not included in Arbitrator Kaplan's 2019 interest arbitration award for the OPPA Collective Agreement. This constitutionally compliant bargaining and interest arbitration framework is a more appropriate comparator for the application of the replication principle, as urged by the Employer. This restriction should not form part of the award.

Response to Employer Proposal 12.7 – Use of Lieu Days/Holiday Payment

(i) Employer's Proposal

193. The Employer proposes to amend Article COR 13.6 to remove the ability for lieu days to be taken along with vacation leave or regular day(s) off if requested one (1) month in advance. The Employer proposes that lieu time shall only be taken at a time that is mutually agreed upon and failing agreement the Employer shall determine the scheduling of the lieu time.

(ii) Employer's Proposed Collective Agreement Language

> COR 13.6 **Up to [day before 90 days of ratification/or interest arbitration decision], A**~~a~~ny compensating leave accumulated under Articles COR13.2 and COR13.5 may be taken off 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 one (1) month in advance.
>
> **Effective [90 days after ratification/or interest arbitration decision], any compensating leave accumulated under Articles COR13.2 and COR13.5 may be taken off at a time mutually agreed upon. Failing agreement, the Employer shall reasonably determine the time of the compensating leave.**

(iii) Union's Response and Rationale

194. The Union is opposed to this change. This issue arises with respect to the paid day off that employees earn as a result of statutory holidays. The Collective Agreement requires the Employer and the employee to agree on a time for the employee to take the day off. It is only where they have been unable to agree, that an employee is entitled to use the day to extend vacation or regular days off, with at least one month notice. The Employer has every tool available to facilitate and address its staffing needs, and its failure to do so does not justify eliminating employees' access to time off at a reasonable and meaningful time.

195. Article COR 13.6 is longstanding language in the Collective Agreement and provides the only ability for members to access guaranteed time away from the workplace. As confirmed by the Grievance Settlement Board, in *Ontario Public Service*

Employees Union (Manna) v Ontario (Ministry of Community Safety and Correctional Services,[78] Article COR 13.6 is the only provision in the Collective Agreement that allows employees to take time off regardless of operational requirements – and only after the Employer and the employee have been unable to agree to a convenient time to schedule the day off.

196. Of course, in every example that the Employer provided to support its request, it referenced absences on sick leave, along with vacation, and absences on lieu time generally – as opposed to providing an accurate assessment of the impact of statutory holiday lieu time arising under Article COR 13.6.

197. For example, the Employer describes peak holiday periods during which many members seek to use their lieu time. Assuming that at least some of these absences are in fact due to employee's utilizing statutory holiday compensating time, this appears both predictable and – frankly – expected. The Employer and the Union agreed that where the Employer and the employee cannot agree to schedule the compensating statutory holiday time, then it can only be used in one of two ways: in conjunction with vacation leave or in conjunction with regular days off. While it is hardly the Union's job to staff and schedule employees, these annual trends are easily planned for by the Employer's staffing professionals.

198. Of course, the Employer takes this assertion further in its brief, asserting that "several institutions" were required to partially or fully lock down and/or disrupt programming on December 24, 2022 "due to the high usage of lieu time, vacation, and STSP absences." It is impossible for the Union to assess the veracity of that statement. However, even accepting it as accurate, in the midst of what was described as a Tripledemic (December 2022 saw an exceptionally severe period of flu, Respiratory Syncytial Virus (RSV), and COVID-19 infections), it seems more than a little unbelievable to claim that the culprit was employees using their statutory holiday compensating leave.

[78] *Ontario Public Service Employees Union (Manna) v. Ontario (Community Safety and Correctional Services)*, 2016 CanLII 48154 (ON GSB), OPSEU Supplementary Book of Authorities, **Tab 13**.

199. Even so, there are a myriad of reasons why lockdowns occur in correctional institutions, including regularly and repeatedly as a result of the COVID-19 pandemic. While the Employer has not disclosed COVID-19 outbreak information despite the Union's request for COVID-19 absence-related data, the Union was able to collect information on a number of unit-specific and institution-wide shutdowns due to COVID-19 outbreaks. The data indicates that some of the staffing shortages that led to lockdowns during the cyclical periods referred to by the Employer were caused, at least in part, by COVID-19 outbreaks at Correctional institutions. For example, in December 2021 COVID-19 outbreaks were declared in at least eight (8) Correctional institutions,[79] and in March 2022, COVID-19 outbreaks were declared in at least six (6) Correctional institutions.[80]

200. Similarly, there are also many examples of lockdowns being caused by shortages of managers and/or sergeants. For example, at CECC, Sergeant shortages caused full or partial lockdowns on multiple days in May 2023, as well as multiple days in July and August, 2023. It's noteworthy that access to various types of leave has not bee restricted for managers/sergeants despite the cause of these lockdowns being sergeant shortages.

201. Ultimately, stripping employees of the ability to schedule their one element of their compensating time off over which they maintain some control is unjustifiable, and the Employer cannot support its request with comparators or a demonstrated need. The proposal should be rejected.

[79] Email from David Wilson to Ryan Graham, re: covid update dec 31, 2021, December 31, 2021, OPSEU Supplementary Book of Documents, **Tab 29**.
[80] Email from David Wilson to Ryan Graham, re: inmates then staff, March 23, 2022, OPSEU Supplementary Book of Documents, **Tab 30**.

Response to Employer Proposal 12.8 – Overtime for Regular Part-Time Employees

(i) Employer's Proposal

202. The Employer proposes amendments to Article COR15 – Overtime to revise the overtime provision for Regular Part-Time (RPT) employees so that the premium rate is earned only when the corresponding full-time hours per week are exceeded. This proposal would mean that extra hours worked in excess of an RPT employee's regularly scheduled daily hours but less than the applicable weekly full-time hours would be compensated at the straight time rate of pay.

(ii) Employer's Proposed Collective Agreement Language

> COR 15.1.1 **Up to [day before 90 days of ratification/or interest arbitration decision], "O**~~o~~vertime" means an authorized period of work, calculated to the nearest half-hour, and performed in excess of seven and one quarter (7¼) or eight (8) hours, as applicable, on a normal working day and for all hours worked on a nonworking day.
>
> **Effective [90 days of ratification/or interest arbitration decision], "overtime" means an authorized period of work, calculated to the nearest half hour, and performed in excess of thirty-six and one quarter (36¼) or forty (40) hours per week, as applicable.**

(iii) Union Response and Rationale

203. The Union opposes this change. RPT employees who work beyond their regular shift or on their days off should be compensated for the extra work in the same way as Full Time (FTE) employees and Fixed Term (FXT) employees.

204. Regular part-time employees are only hired to work certain reduced hours per week, and having them work overtime imposes the same inconveniences as it does for any other employees, and appropriately comes with the same compensation. If the problem for the Employer is that they need more hours from RPT on a weekly basis, there is nothing that stops them from converting these positions to full time regular employees (which the Employer has the ability and elects to do from time to time), which would reduce the need for overtime scheduling of RPT employees, and thus reduce the

Employer's cost associated with providing premium pay to RPT employees who work outside their regularly scheduled hours.

205. The Employer's proposal is particularly unjustifiable in respect of the elimination of daily hours of overtime – it posits that RPT employees could work a regular eight-hour shift, and then be required to work additional hours of overtime at straight time – presumably without limitation.

206. As always, the impact of the Employer's proposal would almost certainly be to decrease the amount of voluntary overtime taken by RPT, exacerbating the already existing staffing pressures. Moreover, the Employer has indicated that the cost of paying overtime to RPT employees under the current collective agreement has amounted to $156,965 over the course of a two-year period – or just $78,482.50 in a year. This represents a minimal cost saving to the Employer at the expense of significant rights and entitlements for part-time employees.

207. There is simply no justification or rationale provided for this proposal, beyond the Employer's bald assertion of savings. This can hardly be a basis upon which to justify a proposal that would strip such a fundamental entitlement as pay for overtime away from members of the bargaining unit. This proposal should not be awarded.

Response to Employer Proposal 12.9 – Compensating Time Off

(i) Employer Proposal

208. The Employer proposes to amend Appendix COR44 such that eligible employees can only accumulate, bank and utilize up to a maximum of 60 hours of compensating time off (CTO) in a calendar year.

(ii) Employer's Proposed Collective Agreement Language

APPENDIX COR44
~~April 1, 2019~~[REVISED DATE OF RATIFICATION OR INTEREST ARBITRATION DECISION]

COMPENSATING TIME OFF FOR OVERTIME HOURS WORKED

LETTER OF UNDERSTANDING

Ms. ~~Gissel Yanez~~ **Glenna Caldwell**
OPS Negotiator, OPSEU
100 Lesmill Road
North York, Ontario
M3B 3P8

Re: Letter of Understanding
Compensating Time Off for Overtime Worked

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 April 1, 2019**, and up to [day before ratification/or interest arbitration decision],** where an employee receives compensating leave per Article COR 8, no more than a total of 60 hours at any given time may be accumulated. Any overtime worked that would result in more than 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.

Effective [date of ratification/or interest arbitration decision], where an employee receives compensating leave per Article COR 8, no more than a total of 60 hours may be accumulated in a calendar year. Any

overtime worked that would otherwise result in more than 60 hours of compensating leave being accumulated in a calendar year will be paid out at the overtime rate. For clarity, an employee will only be able to accumulate, bank and utilize a total of 60 hours of Compensating Time Off during the period of a calendar year. 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.

Compensating leave will not be permitted to be taken between December 20th and December 31st inclusive in each year. For clarity compensating leave shall be taken at a time mutually agreed upon.

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.

Your truly,

~~Matt Siple~~**Steven MacKay**
Director, Negotiations Branch
Employee Relations and Negotiations Division
Centre for Public Sector Labour Relations and Compensation
Treasury Board Secretariat

(iii) Union's Response and Rationale

209. The Union opposes this proposal. The Union has proposed changes to CTO such that employees will be able to bank 100 hours at a time (which is refillable), up from the current entitlement of 60 hours at a time (which is refillable).

210. As set out in the Union's mediation brief, the Union's proposal is consistent with the current practice of the parties, which was first set out in an earlier agreement that expired December 31, 2021. However, the Employer has continued to honour the expired letter by permitting the accumulation and banking of the additional 40 hours.

211. The Employer's proposal represents a significant concession with respect to CTO. The Employer's rationale in limiting members' ability to bank CTO is that permitting members to utilize the earned time as time off instead of pay leads to increased overtime costs. However, as repeatedly reviewed, the Employer has a number of tools to limit the amount of overtime that results from an employee utilizing CTO. First, the

Employer maintains discretion to refuse CTO leave based on operational needs. As discussed further below, the Employer regularly does so. Second, the Employer can hire more full time regular or FXT employees so that it does not have to resort to overtime.

212. The reality is that the Union's members are frequently requested or required to work overtime. CTO is an important benefit that permits our members time away from work and assists in maintaining the equilibrium that allows them to continue working in a challenging environment. The Employer's proposals would greatly reduce the efficacy of CTO in helping our members achieve balance in life and work. Moreover, the existence of a CTO bank incentivizes members to work overtime in exchange for time off work, instead of limiting the compensation to pay. Reduced access to time away from work would also lead to fewer members accepting or being available for overtime, further exacerbating staffing pressures.

213. There is no dispute that CTO costs the Employer. However, the Employer's "demonstration" of how CTO usage can "stack" overtime resources for the Employer ignores the fact that the Employer must approve CTO, which must be scheduled when mutually agreeable. Indeed, there are many examples of institutions that have applied blanket policies which deny or significantly restrict CTO usage:

a. Kenora Jail instituted a blanket denial of CTO from September 5, 2023 to October 23, 2023. As of October 25, 2023, only one person can use a maximum of 8 hours of CTO in a 24-hour period.

b. The South West Detention Centre (SWDC) instituted a policy on March 9, 2023 requiring any requests for CTO usage for the period between June 5, 2023 to September 3, 2023 to be submitted between May 1, 2023 and May 12, 2023. The policy further states that these requests will not be granted until approximately one (1) week prior to the requested dates and that no overtime hours will be used to cover CTO absences. On October 13, 2023, the SWDC implemented a similar policy for the December 18, 2023 to December 31, 2023 period.

c. In response to ongoing concerns with the inability to utilize CTO at Central East Correctional Centre since January 2021, the Employer confirmed on or around September 29, 2022 that it would continue to deny CTO use due to lack of FXT resources.

d. At St. Lawrence/Brockville Jail, CTO usage is denied if less than 30 days' notice is given.

214. As noted in the Union's response to the Employer's proposal regarding use of lieu time at paragraph 200 of this Reply Brief, access to various types of leaves, including CTO, has not been restricted for managers and sergeants at Central East Correctional Centre, despite the cause of multiple lockdowns as a result of sergeant shortages.

215. Again, the answer to the Employer's unreasonable denial of a modest amount of time away from work (while simultaneously demanding that they work 1,270,000 hours of overtime on an annual basis) is not to reduce entitlements, but to ask the Employer why it has apparently failed to ensure that it has enough staff to provide base service levels in its institutions.

216. This proposal should not be awarded. It is not normative, it is not consistent with comparators, and it is not reasonable given the Employer's insatiable demands for extra work by our members. Our members should be permitted some time away from work – if for no other reason than to make up for the impact of those 1.27 million hours of overtime.

Response to Employer Proposal 12.10 – FXT Shift Schedules

(i) Employer's Proposal

217. The Employer proposes amending Article COR5.6 which requires the Employer to pre-schedule shifts for Fixed-Term (FXT) Employees two (2) weeks in advance and requires verbal confirmation to any change to the pre-scheduled shifts. The Employer proposes that verbal confirmation only be required for any change to a pre-scheduled shift within forty-eight (48) hours from the commencement of the shift in question.

(ii) Employer's Proposed Collective Agreement Language

COR5.6 **Up to [day before 90 days of ratification/or interest arbitration decision],** ~~F~~**f**ixed-term employees will be pre-scheduled two (2) weeks in advance with all known shifts being scheduled. Any change to the pre-scheduled shifts must be verbally confirmed.

Effective [90 days after ratification/or interest arbitration decision], fixed-term employees will be pre-scheduled two (2) weeks in advance with all known shifts being scheduled. Where the employer makes changes to any pre-scheduled shift, or adds any new shift, forty-eight (48) hours or less from the commencement of the shift in question, such changes or additions must be verbally confirmed. Where any such changes or additions are made more than forty-eight (48) hours from the commencement of the shift in question, they will be communicated through an operationally practical method.

(iii) Union's Response and Rationale

218. The Union opposes this proposal. This change would be a significant concession affecting the 2,370 (and counting) FXT employees in the bargaining unit. The Employer's proposal would have the impact of turning FXT employees into on-call employees without any corresponding compensation for the restrictions and inconvenience of being on-call.

219. What the Employer characterizes as the "challenges" of the verbal confirmation system is actually the product of overwork and understaffing. Vacant shifts are not being filled because there are not enough full-time regular staff to fill them, and not because FXT members can't be reached by telephone. To the contrary, most calls

are made by the Correctional Officer Bargaining Unit Scheduling Assistant ("COBUSA"), rather than by managers.

220. Requiring employees to check their schedule for changes within the forty-eight (48) hour window proposed by the Employer is impractical due to time constraints as well as insufficient access to computers on a daily basis. The Employer's e-Roster program is unreliable – from home and at work – and there are limited computer resources available in the workplaces for employees to check schedules after they have been posted. Further, changing schedules with little notice will cause an increase in leaves of absence, under various heads, when employees are unable to modify childcare arrangements, previously scheduled appointments, and other responsibilities on such short notice.

221. Moreover, the Employer's proposal that FXT employees to engage in work-related activities on a regular day off, by logging onto the Employer's e-Roster and addressing any scheduling issues, would attract compensation for time worked under the Collective Agreement.[81] The Employer – at least according to their proposal – ignores this off-duty work assignment and presumably has not accounted for the added costs of compensating our members.

222. The Union accepts that there are occasionally difficult days or weeks when the Employer has under-scheduled its institutions. But having to make a number of calls over five days during the first week of summer to fill shifts – that were apparently filled – does not justify upending the hard-earned scheduling rights of more than 2,300 bargaining unit members.

223. Ultimately, this proposal is designed to make a large and already contingent workforce even more vulnerable to the demands of an understaffed Employer. FXT

[81] See for example, *Ontario Public Service Employees Union (Union) v Ontario (Solicitor General),* 2022 CanLII 106485 (ON GSB), GSB # 2021-3633; 2021-4288, OPSEU Supplementary Book of Authorities, **Tab 14**, in which Vice-Chair McLean found that the Employer's requirement that employees self-administer a Rapid Antigen Test and fill out an electronic form within a specified timeframe where there is often no practical way for that test to be completed during working hours constituted a claim on an employees' time requiring compensation.

employees do not receive employer-paid benefits[82] or vacation, for example, and the uncertainty and short-term nature of their employment already make these positions undesirable. The Employer's proposal – to the effect that these employees should have their schedules unilaterally altered long after they have been posted – will obviously further deteriorate the already difficult working conditions.

224. The Employer's proposal does not provide any insight into how they propose schedule changes would be communicated to employees, or than "through an operationally practical method." This is remarkably vague, particularly in light of the current Provincial Overtime Protocol, agreed to by the parties, that specifically identifies a telephone call as a method of communication.

225. A clear and traceable means of communication is important for both members and the Employer in the event that there is a dispute regarding whether an employee has been contacted regarding a change in schedule, such as through timestamped called records or voicemails left on the employee's phone. By comparison, the Employer's vague reference to an "operationally practical method" leaves the means of communicating important schedule changes entirely in the Employer's discretion, and it's unclear to whom a particular method may be considered "practical." For instance, the Employer may use a variety of what it considers "operationally practical" methods such as text messages, emails to an employee's work address, and postings in sign-in rooms. This would lead to inconsistency, uncertainty and an undue burden on members in ascertaining their fluctuating schedules, and would increase the risk of members inadvertently being unaware of scheduled shifts. Any disputes arising from communications regarding schedule changes would also become more difficult to resolve without a clear procedure for informing employees with the benefit of traceable records of communications.

226. The Employer already has the ability to change pre-scheduled shifts by obtaining verbal confirmation from FXT employees. The Employer's proposal would

[82] Rosemary Ricciardelli et al., "Understanding Needs, Breaking Down Barriers: Examining Mental Health Challenges and Well-Being of Correctional Staff in Ontario, Canada", *Frontiers in Psychology*", Vol 11:1036 (2020), 1-10, OPSEU Supplementary Book of Documents, **Tab 31**.

effectively claim time from FXT employees on scheduled days off as well as exacerbate the effects of irregular and unscheduled shifts on all aspects of FXT employees' lives and health. This is a substantial and unjustifiable concession. The proposal should be rejected.

Response to Employer Proposal 12.11 – Short Term Sickness Leave Plan

(i) Employer's Proposal

227. The Employer proposes lowering the current requirement to provide a medical certificate after five (5) days of absence caused by sickness or injury to requiring a medical certificate after three (3) days of absence.

(ii) Employer's Proposed Collective Agreement Language

44.10 **Up to [day before 30 days of ratification/or interest arbitration decision],** ~~A~~**a**fter five (5) days' absence caused by sickness, no leave with pay shall be allowed unless a certificate of a legally qualified medical practitioner is forwarded to the employee's manager, certifying that the employee is unable to attend to their official duties. Notwithstanding this provision, where it is suspected that there may be an abuse of sick leave, the employee's manager may require an employee to submit a medical certificate for a period of absence of less than five (5) days.

Effective [30 days after ratification/or interest arbitration decision], after three (3) days' absence caused by sickness, no leave with pay shall be allowed unless a certificate of a legally qualified medical practitioner is forwarded to the employee's manager, certifying that the employee is unable to attend to their official duties. Notwithstanding this provision, where it is suspected that there may be an abuse of sick leave, the employee's manager may require an employee to submit a medical certificate for a period of absence of less than three (3) days.

…

[*Consequential changes would be required to other STSP articles*].

(iii) Union's Response and Rationale

228. The Union opposes the Employer's proposal. Like the Employer's proposal regarding changing the definition of overtime, this proposal takes a punitive approach to the high usage of sick leave in the Correctional Bargaining Unit while ignoring the root cause of high sick leave usage – the toxic environment in which Correctional Bargaining Unit members are required to work. The Employer's proposal also ignores the barriers to health care faced by Bargaining Unit members and all Ontarians.

229. The Employer pays lip service to the "challenging and demanding jobs" of Correctional Bargaining Unit members but complains that its members use of sick days

is “significantly higher” than the OPS wide average. The Union understands the cause of high sick leave usage in the Bargaining Unit to be the work environment, operational and organizational stressors, burnout, fatigue and overwhelming occupational demands. The Employer has addressed the need to address the toxic work environment in Corrections by introducing several types of voluntary training as part of the wellness strategy. This understanding is not reflected in the Employer’s proposal.

230. Indeed, the Employer cites sick leave usage at CECC and TSDC in 2018 as an example of “[t]he issue of high sick leave usage in the correctional institutional services part of the Correctional Bargaining Unit.”[83] As it happens, CECC and TSDC had culture audits done in and around 2018. The reports highlighted a toxic work culture.[84]

231. Another factor contributing to the higher use of sick days in Corrections compared to the OPS in 2020-2022 is the impact of COVID-19 on employees. From 2020 to 2021, employees who tested positive for COVID-19 were required to remain away from the workplace for 10 to 14 days and use STSP days to be paid while doing so. In contrast, many employees in the OPS were able to work remotely, an option not available to Correctional Bargaining Unit members because they were deemed essential workers.

232. The statistics the Employer cites from the 2019 AG report at paragraph 503 of its brief are outdated and, in some respects, unreliable. First, it is not clear if the sick day usage data from British Columbia and Alberta count actual days taken off, or if sick day usage is counted as it is in the Correctional Bargaining Unit, where a 12-hour shift counts as 1.5 days of sick credit deductions. Further, the impact of staff shortages on lockdowns detailed in the 2019 AG report is inconsistent with the data the Union received in disclosure which indicated that from 2017-2021, 27% of lockdowns at CECC were caused by staffing shortages and 47% of lockdowns at TSDC were caused by staffing shortages.

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[83] Employer’s Arbitration Brief, para 503.

[84] Workplace Review Summary Report, Central East Correctional Centre (CECC), Correctional Services, Ministry of the Solicitor General, July 29, 2020, OPSEU Book of Supplementary Documents, **Tab 32**; Summary Report for Staff Workplace Review, Toronto South Detention Centre (TSDC), Ministry of the Solicitor General, September 27, 2019, OPSEU Supplementary Book of Documents, **Tab 33**.

233. The Employer's assertion at paragraph 507 that "[u]sually COs, YSOs and nurses are scheduled a maximum of three (3) consecutive 12-hour shifts" is inaccurate. The Employer's own example of a shift schedule at paragraph 506 of its Brief shows two instances of four consecutive 12-hour shifts in week 3 and across weeks 4 and 5. Indeed, more than half of Ontario's jails and correctional institutes regularly schedule four or more consecutive 12-hour shifts: ATRC, CECC, CNCC, Fort Frances Jail, Kenora Jail, MHCC, OCDC, QDC, Sarnia Jail, St. Lawrence/Brockville Jail, Stratford Jail, Sudbury Jail, TBCC, Thunder Bay Jail, TEDC and SWDC.

234. The Employer's proposal would place significant demands on sick employees and in many cases would require a member on sick leave to obtain a medical certificate within two (2) calendar days. As the Employer sets out at paragraphs 506-507 of its Brief, Regular full time COs, YSOs and nurses work on a compressed work week schedule with 12-hour shifts that rotate over several weeks. These employees are usually scheduled a maximum of three (3) consecutive 12-hour shifts, with each 12-hour shift being equivalent to 1.5 days' absence.

235. If an employee is off sick during a period in which they are scheduled for two or three consecutive 12-hour shifts, under the Employer's proposal, they would be required to provide a medical note after the second absence.

236. The Employer's proposal would represent a significant burden on sick members at a time when there is a "full-blown crisis" in access to family medicine in Ontario. According to a survey conducted by the Ontario College of Family Physicians (OCFP), 2.2 million Ontarians do not have a family doctor. This figure is expected to get worse, with the OCFP reporting that 65% of family doctors are preparing to leave the profession or reduce hours in the next five years,[85] and anticipating that by 2026 4.4 million, or one in four, Ontarians will be without a family doctor.[86] The OCFP reports that

[85] Ontario College of Family Physicians, "New Survey Shows Full-Blown Crisis in Family Medicine", May 31, 2023, OPSEU Supplementary Book of Documents, **Tab 34**.
[86] Ontario College of Family Physicians, "More Than Four Million Ontarians Will Be Without a Family Doctor by 2026", October 25, 2023, OPSEU Supplementary Book of Documents, **Tab 35**.

1.7 million Ontarians have a family doctor who is over 65 and poised to retire.[87] Compounding the crisis, fewer medical students are choosing family medicine. Across Canada, more than 100 residency spots in family medicine went unfilled for 2023. No other specialty had more than two spots left unfilled.[88]

237. The shortage of family doctors is particularly acute in Northern Ontario, where many rural physicians must act as primary and emergency room physicians. Hospitals in Northern Ontario regularly face gaps of 40-50 shifts in the ERs every month. Those shifts are often filled by family doctors, who must cancel their primary care clinics. There is already a shortage of more than 200 family doctors in Northern Ontario, leaving patients in almost every community without adequate access to a family doctor.[89]

238. The Employer's proposal would still be a burden for sick employees even in the absence of a shortage of family doctors. The Employer's proposal would require employees in many cases to provide a medical certificate after two (2) calendar days of absence due to sickness or injury. When considering the barriers to health care and the shortage of family doctors in Ontario, this requirement would be unfeasible for many sick bargaining unit members, especially those in the North. The Employer's position is not a reasonable response to high sick leave usage in the Correctional Bargaining Unit and would effectively bar many members from accessing sick leave.

239. Canadian doctors have long questioned the utility of sick notes for short term absences for years. In 2014, during influenza season, the president of the Ontario Medical Association urged Employers to stop requiring sick notes for employees home sick with the flu.[90] In an interview with the Toronto Star, he commented that sick note visits

[87] Ontario College of Family Physicians, "1-in-5 Ontarians could be without a family doctor by 2025", September 13, 2022, OPSEU Supplementary Book of Documents, **Tab 36**.
[88] Ontario Medical Association, "Ontario's doctors say primary care is in crisis, burnout at record levels", May 31, 2023, OPSEU Supplementary Book of Documents, **Tab 37**.
[89] Ontario College of Family Physicians, "Immediate Action is Needed to Support Northern Ontario Family Doctors Working to Keep Emergency Rooms on the Brink of Closure Open", August 9, 2023, OPSEU Supplementary Book of Documents, **Tab 38**.
[90] Ontario Medical Association, "Please Stay Home if You Are Sick: Ontario's Doctors", January 7, 2014, OPSEU Supplementary Book of Documents, **Tab 39**.

"are expensive, they're unnecessary and they put other people at risk… We don't have resources in the health care system to police absenteeism for employers."[91]

240. In 2017, the Canadian Medical Association (CMA) published an updated policy on third-party forms. In respect of short-term illnesses, the CMA's position is that:

> "Confirmation of a short-term absence from work because of a minor illness is a matter to be addressed between an employer and an employee directly. Such an absence does not require physician confirmation of illness and represents an inefficient use of scarce health care resources. It is the employer's responsibility – not the physician's – to oversee employee absenteeism…If an employer…requests an illness confirmation for a short term, minor illness that would otherwise not have required medical attention, said party should recognize that completion of the certificate is an uninsured service for which physicians are entitled to compensation, preferably from the third party requesting the information, rather than burdening the patient."[92]

241. In 2018, several associations of doctors and physicians opposed provisions in Bill 47 which reinstated the right of employers to request a medical note for short-term illnesses. According to an IPSOS poll conducted by the Canadian Medical Association, 70% of employed Canadians opposed re-instating an employer's ability to require sick notes for short illnesses. 82% of the respondents said they would go to work sick rather than get a sick note. The Canadian Medical Association noted these findings "highlight the potential public health implications of sick notes" and that "[f]or physicians, writing a sick note is added administrative work – time that should be spent providing direct care to patients."[93] The Canadian Association of Emergency Physicians noted that requiring sick notes causes employees to use Emergency Departments for minor cases of the flu,

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[91] Toronto Star, "Bosses shouldn't ask sick workers for doctor's notes: OMA", January 8, 2014, OPSEU Supplementary Book of Documents, **Tab 40**.
[92] Canadian Medical Association, CMA Policy, "Third-Party Forms", 2017, p. 4, OPSEU Supplementary Book of Documents, **Tab 41**.
[93] Canadian Medical Association, "The Canadian Medical Association (CMA) urges the Ontario government not to reinstate sick notes for short-term illnesses", November 16, 2018, OPSEU Supplementary Book of Documents, **Tab 42**.

which strains healthcare resources and exposes other patients to harm.[94] The Ontario College of Family Physicians raised similar concerns.[95]

242. On May 15, 2020, the CMA urged employers to discontinue requiring sick notes during COVID-19, noting that sick notes "place an unnecessary burden on the health care system."[96]

243. The Employer's proposal to lower the number of days before an employee is required to provide a sick note would place an unfeasible burden on our members and goes directly against the advice of the OMA and CMA, among other health care associations. In addition, the Employer's proposal could lead to more Correctional workers coming to work sick rather than obtaining a sick note within two (2) calendar days, putting inmates and corrections workers at risk, and possibly leading to shutdowns like those that occurred during the pandemic.

244. Finally, the Employer already has the ability to require an employee to submit a medical certificate for a period of absence of less than five (5) days under Article 44.10 if sick leave abuse is suspected. Requiring a medical certificate after three (3) days is punitive, not normative and ignores the barriers to family medicine in Ontario that are well-documented and expected to get worse. This proposal should not be awarded.

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[94] Jesse McLaren et al., "CAEP Position Statement – Sick notes for minor illnesses", *Canadian Journal of Emergency Medicine*, Vol. 22, No. 4 (2020), 475-476, OPSEU Supplementary Book of Documents, **Tab 43**.
[95] Ontario College of Family Physicians, "Reinstated Ability for Employers to Require Sick Notes from their Employees", December 19, 2018, OPSEU Supplementary Book of Documents, **Tab 44**.
[96] Canadian Medical Association, "CMA urges all employers to discontinue requirement for sick notes during COVID-19", March 15, 2020, OPSEU Supplementary Book of Documents, **Tab 45**.

Response to Employer Proposal 12.12 – Employee Portfolio

(i) Employer's Proposal

245. The Employer proposes to add collective agreement language to reflect updated process requirements as the Employer implements an electronic system to access and store digital employee portfolios.

(ii) Employer's Proposed Collective Agreement Language

20.1.4 EMPLOYEE PORTFOLIO

20.1.4.1 An Employee Portfolio will be deemed to include the qualifications and knowledge as identified in the employee's current position description for the purposes of Article 20.3 (Targeted Direct Assignment), 20.4 (Displacement) and 20.8 (Temporary Vacancies**), and Appendix [xx] (Transition and Reskilling MOU)** unless otherwise modified by the employee.

20.1.4.2 All new employees must complete an Employee Portfolio within their probationary period. The Employee Portfolio will be provided in electronic format, such that it can be edited by the employee. The Employee Portfolio will be placed on the employee's personnel file**, or stored on an electronic system accessible by the employee and Employer.**

Notwithstanding the above, the Employer shall require any employee that it has reasonable grounds to believe may be declared surplus to complete an Employee Portfolio within six (6) days.

20.1.4.3 **Where an electronic system is not yet available to A**~~**a**~~**a**n employee, they may advise the Employer in writing at any time of their desire to update the employee portion of an Employee Portfolio to reflect the acquisition of new or improved skills, knowledge and abilities, and/or change the geographic parameters. Such changes shall be implemented within three (3) working days of the Employer receiving the updated employee portion of the Employee Portfolio. **Where an electronic system is implemented and available to an employee, they may directly access and edit their employee portfolio.**

20.1.4.4 Once an employee has completed an employee portfolio and submitted it to the Employer, it shall remain on file **or on an electronic system** and will be considered to be current. It is the responsibility of the employee to update their portfolio to reflect the acquisition of new or improved skills, knowledge and abilities.

(iii) Union's Response and Rationale

246. The Union is not opposed in principle to the Employer's proposal, and has previously provided proposals to the Employer on making changes to Article 20.1.4 in order to incorporate references to an electronic portfolio.

247. However, the Union is opposed to any "packaging" of this proposal with the Employer's proposal regarding Reskilling (Employer Proposal 12.13). Accordingly, the Union agrees to the forgoing proposal with the following amendment:

> 20.1.4.1 An Employee Portfolio will be deemed to include the qualifications and knowledge as identified in the employee's current position description for the purposes of Article 20.3 (Targeted Direct Assignment), 20.4 (Displacement) and 20.8 (Temporary Vacancies**~~), and Appendix [xx] (Transition and Reskilling MOU)~~** unless otherwise modified by the employee.

Response to Employer Proposal 12.13 – Employee Transition and Reskilling

(i) Employer's Proposal

248. The Employer proposes to renew the Parties' 2019 Employee Transition and Reskilling Memorandum of Agreement (MOA) and incorporate it into the Collective Agreement as a new Appendix. The Employer's proposal includes "housekeeping changes" to the original MOA, as well as a provision confirming the Parties' intention to continue current practices regarding utilizing Appendix COR24. Further, the Employer proposes a new provision to develop processes for identifying employment transition opportunities for employees impacted by organizational transformation.

(ii) Employer's Proposed Collective Agreement Language

APPENDIX [XX]

[DATE OF RATIFICATION/OR INTEREST ARBITRATION DECISION]
EMPLOYEE TRANSITION AND RESKILLING

MEMORANDUM OF AGREEMENT

Between

The Crown in Right of Ontario
As represented by the Treasury Board Secretariat
(The "Employer")

and

The Ontario Public Service Employees Union
("OPSEU" or the "Union")

WHEREAS the parties have a joint interest in maintaining critical, front-line services and minimizing the impacts to OPSEU-represented employees during organizational transformation in the Ontario Public Services;

AND WHEREAS it is in the interests of both parties for opportunities across the OPS to be created for the purposes of reskilling of employees since this leads to increased employment stability as well as expanded opportunities for reassignment with the OPS and job retention;

AND WHEREAS the parties recognize that, in the reskilling, retraining and reassignment of employees, employees who face job loss due to organizational transformation shall be given priority over employees who do not;

AND WHEREAS the parties have a mutual interest to work cooperatively to develop a process that supports reskilling and increased internal mobility within and across ministries without triggering job security provisions for OPSEU-represented employees;

AND WHEREAS this agreement is intended to complement existing provisions under the current ~~Unified and~~ Corrections Collective Agreement~~s~~;

NOW THEREFORE the parties agree to the following:

1. The parties agree to establish a Joint Transition & Reskilling Committee ("the Committee") that shall operate as a sub-committee of the ~~Central Employee Relations Committee ("CERC") and/or~~ Bi-Ministry Employee Relations Committee ("BMERC")~~, as applicable~~. When an organizational transformation takes place that ~~may~~ will impact OPSEU-represented employees, the Committee shall be responsible for reviewing the following information provided by the Employer:

    a) A list of OPSEU-represented employees impacted by organizational transformation ("referred to as employees");

    b) The OPSEU-represented positions throughout the OPS that are available and suitable for these employees to be considered for;

    c) The current skills of the employees and requirements for further skill development; and

    d) Any proposed training activity, if required, that will support the reskilling of employees who will be impacted.

2. Following this review, the Committee shall oversee reassignment and transition of employees to other OPSEU-represented positions throughout the organization without triggering job security provisions for those employees who elect such assignment. This includes assigning employees to meet the needs of short-term project-based initiatives and developmental opportunities.

3. The parties recognize that OPSEU-represented employees have entitlements to job security provisions as set out in the ~~respective~~ OPSEU **Correctional Bargaining Unit** Collective Agreement**s** but that the parties may mutually agree to vary these provisions where it meets the mutual interests of the parties.

4. The Committee shall consist of four (4) representatives each of the Employer and of **the** OPSEU **Correctional Bargaining Unit**. The Committee will consult with and engage subject-matter expertise as it sees fit, which may include representatives from the applicable Ministry Employee Relations Committee (MERC) **and the Central Employee Relations Committee (CERC)**. Each party will notify the other, in advance, of the representatives that will attend the committee meetings.

5. The parties agree that the process set out in Appendix A (OPSEU Reskilling and Transition) shall be in place until the expiry of the current collective agreement.

6. ~~After the initial six (6) month period, the parties may review the process and negotiate any modifications necessary for future application~~.

7. Union representatives of the committee shall be entitled to be absent from work for the purposes of attending to the committee meetings, including reasonable preparation time without loss of regular pay, credits and benefits.

8. The Parties share a mutual understanding that together they have effectively utilized the cross-ministry agreements that are negotiated per Appendix COR24 (Staffing Realignments and Cross Ministry Transfers) to develop processes for identifying employment transition opportunities and election options for job-threatened employees in the Correctional Bargaining Unit. In recognition of this understanding, this ~~letter~~ provision confirms the parties' intention to continue the practice of ~~concurrently~~ utilizing ~~both~~ Appendix COR24 and Appendix XX (Employee Transition and Reskilling Memorandum of Agreement).

9. This agreement will expire upon the expiry of the collective agreement or with six (6) months' notice by either party ~~following the review period set out in Article 6~~.

For the **Union** ~~Employer~~: For the **Employer** ~~Union~~:

~~Appendix A: OPSEU Re~~skilling and Transition

Article 1 – DEFINITIONS:

Day refers to business days.

Collective Agreement shall mean the **Correctional Bargaining Unit** collective agreement~~s (Unified or Corrections)~~ between OPSEU and the Crown in Right of Ontario dated January 1, 20**22**~~18~~ to December 31, 202**X**~~1~~.

Employee(s) shall mean OPSEU-represented regular **and**~~,~~ regular part-time ~~and flexible part-time~~ employees who have been identified by the Employer as impacted by organizational changes.

Joint Transition and Reskilling Committee ("the Committee") refers to the union/management committee that has been established to review opportunities identified by the Employer for employees impacted by organizational changes to develop or refine new employment-related skills and abilities to help them transition to future employment opportunities in the OPS.

Article 2 – NOTIFICATION TO OPSEU:

2.1 Where an organizational transformation activity occurs which will result in employment changes for OPSEU-represented employees, the Employer will identify this activity for consideration under the Joint Transition and Reskilling process. When that occurs, the Employer will provide the President of the Union, the OPSEU Co-Chair of the Committee and affected OPSEU MERC Co-chair**(s)**, advance notice about the planned organizational transformation initiative not less than ten (10) days prior to notification to employees, unless the parties agree to extend the timelines.

2.2 As part of the advance notice, the Employer will provide the Union with the following information on a without prejudice basis:

a) Relevant information about the organizational change to enable meaningful discussion, including the reason for the decision when a final decision has been made and how the planned initiative meets the Government's objectives.

b) A list of employees including the names, position title, classification and job code, continuous service date, employment status, ministry/division/branch name and work location. This list will be based on information known at the time of the notification and may be subject to change.

c) Information on the OPSEU-represented positions that each of the employees will be assigned to, including information such as position title, job code and job code description, ministry/division/branch name, work location and job description.

d) A list of the reskilling and training that may be required for each of the employees in order to meet the duties of the identified assignment.

Article 3 – JOINT TRANSITION & RESKILLING COMMITTEE:

3.1 Within thirty (30) days of receipt of the notification set out in Article 2, the Committee shall meet to discuss the information that has been provided to the Union as per Article 2.2, including;

a) the potential impacts to employees as a result of the potential organizational transformation;

b) reassignment of employees to other permanent or temporary positions within the OPS. It is understood that where the Employer identifies an assignment the preferred outcome is to maintain the employee at or above their current salary; -and

c) any potential employment-related retraining associated with reskilling the employees.

3.2 Where seasonal employees are impacted by an organizational transformation activity impacting employees as defined in this Agreement, the Employer may consider options to assist these employees in securing an alternate seasonal assignment. For clarity, no other provisions of this agreement apply to seasonal employees.

3.3 The parties agree that any discussions, disclosure or information revealed as part of or in any way related to this framework shall remain confidential as between the parties and shall not be communicated, disclosed, disseminated or publicized, in any manner by the Union, nor shall it be used for any purpose other than to advance the work of the Committee, and for the purpose of consulting internally on the matter.

Article 4 - NOTIFICATION TO EMPLOYEES:

4.1 Employees will receive notification of the potential organizational change affecting their administrative district, unit, institution or other such work area, and will be provided with information regarding the organizational transformation and the assignment and reskilling information regarding the OPSEU-represented position that has been identified for them. Employees will be provided an opportunity to submit an updated employee portfolio to assist the committee in their review.

4.2 Employees will be provided with the following options:

a) Accept the assignment to an OPSEU-represented position that has been identified as suitable for them by the Employer, including any reskilling or training activity (if required), which may help improve their employment-related skills and abilities for their identified assignment; or

b) Voluntary exit from the OPS with a severance package, not exceeding the pay-in-lieu entitlements provided in Article 20.2.1.4, or;

c) Exercise their rights under Article 20 of the Collective Agreement~~s~~.

4.3 Article 4.1 and 4.2 will be applied in accordance with seniority as set out in the respective collective agreement.

4.4 Notwithstanding Article 4.2 above, where an employee has a pending Transition Exit Initiative (TEI) request, the Employer will consider the request for approval prior to notification under Article 4.1.

4.5 Training and developmental opportunities, if required, shall include one or more of the following activities:

a) On-the-job training;
b) Course-based training;
c) Job shadowing;
d) Temporary assignment to a position;
e) Any other learning activity deemed appropriate by the Employer.

4.6 Employees must respond to the Employer in writing within six (6) days of the issuance of the notification. The response must indicate which one of the above options **outlined in Article 4.2 and Article 4.4** the employee selects.

4.7 Employees who elect to voluntarily exit from the OPS must exit within five (5) days of their selection, or another time that is mutually agreed between the employee and the Employer.

4.8 Where an employee chooses to exercise their entitlements in accordance with Article 20 of the OPSEU **Correctional Bargaining Unit** collective agreement~~s~~, the notice set out in Article 4.1 shall be deemed to have satisfied the Employer's disclosure obligations to OPSEU.

Article 5 – ASSIGNMENT OF EMPLOYEE:

5.1 Where an employee is assigned in accordance with this agreement, the Employer will provide the employee with a period of time working in the new assignment of three (3) months, during or following the employment-related retraining, to allow for an assessment to be made regarding the qualifications and suitability of the employee for the assigned position.

5.2 Where an employee is offered and accepts an assignment beyond a forty (40) kilometre radius of the employee's headquarters, no relocation expenses will be paid. Before a position is offered outside of forty (40) kilometers, the Employer will share with the committee all assignments that were considered.

5.3 If, at the end of the temporary review period referred to in Article 5.1, the employee is not qualified to perform the work of the position to which ~~he or she has~~ **they have** been assigned, the parties can refer the matter to the Committee for further discussion and recommendations. Failing resolution by the Committee, the employee is entitled to their rights under Article 20 based on their original position.

Article 6 – DISPUTE PROCESS:

6.1 It is understood that the only disputes and/or grievances that may be filed are in regard to whether the terms of the process set out in this Appendix are followed. Any assignments made under this process shall not be subject to any dispute or grievance.

~~6.2 The parties further agree that, within thirty (30) days of signing this agreement, they will jointly develop a expedited dispute resolution process and determine a roster of three (3) neutral third parties that can be used to help mediate and/or arbitrate any disputes that arise between the parties in accordance with Article 6.1 above. The costs of mediation and/or arbitration will be shared equally.~~

6.2 In the event that a dispute and/or grievance is filed as set out in Article 6.1, the parties recognize that time is of the essence and any such dispute and/or grievance will be referred to a mediator/arbitrator that the parties agree to, within seven (7) calendar days after being filed.

6.3 Notwithstanding Article 6.2, the parties can meet to further discuss the dispute and/or grievance at any time and continue their efforts to arrive at a resolution.

6.4 Subject to the availability of the mediator/arbitrators identified in Article 6.2, the parties will make best efforts to commence hearing within thirty (30) days of the referral to the mediator/arbitrator.

6.5 To the extent possible, written decisions will be issues within five (5) days of conclusion of the hearing(s) and will be without precedent or prejudice, unless agreed to otherwise by the parties.

6.6 The costs of mediation and/or arbitration will be shared equally by the parties.

(iii) Union's Response and Rationale

249. The Union opposes this proposal for two main reasons: first, the parties' experience with the first iteration of this reskilling MOA was unsuccessful and led to

unnecessary conflict; and second, the language proposed by the Employer is redundant and unnecessary under the Correctional Bargaining Unit Collective Agreement.

250. The 2019 MOA expired in 2021 and was used only two times during its operational life. The first time that the MOA was relied upon was to justify what the Union saw as unilateral and arbitrary decision-making by the Employer. In 2021, the Brookside Youth Centre was closed, and the Employer relied on the Reskilling MOA to support the placement of one employee internally in the Correctional Bargaining Unit.

251. The affected employee was a 60-year-old Maintenance worker with experience in groundskeeping, general maintenance and locksmithing. The Employer assigned the employee to a Recreation Officer position at the Toronto East Detention Centre (TEDC), despite the employee having no previous experience as a Recreation Officer and, more generally, no experience supervising adult inmates, running programs, or related to recreation. This employee did not want to become a Recreation Officer, even given the substantial pay increase.

252. At the same time, there was a Locksmith position available at TEDC that the employee was prepared to accept. The employee had previous job experience in locksmithing at the Central East Correctional Centre and had taken courses related to locksmithing. However, the Employer – seemingly without any rational basis – determined that the employee was not qualified for the Locksmith job but was qualified for the Recreation Officer position.

253. The Union attempted to advocate on behalf of the employee but was unable to bring a dispute under the language of the expired MOA – the same language as is proposed by the Employer here (see proposed Article 6.1). Consequently, the employee was forced to accept the assignment to Recreation Officer in order to maintain employment within the OPS. The Employer never provided any visibility into its decision-making and the Union has no information as to how the Employer came to the conclusion that the maintenance employee was suited to the Recreation Officer role (and not qualified for the Locksmith role).

254. The Union's second objection to the Employer's proposal is grounded in the Employer's stated rationales for the proposal. The Employer points to the recent agreement of both AMAPCEO and OPSEU Unified to embed the MOA into their Collective Agreements as evidence the arbitrator should do the same. The Employer's repeated efforts to justify its proposals under the replication principle through comparison to agreements that were negotiated and ratified under unconstitutional bargaining conditions should be rejected, and there is no difference here. As the Court stated in the Bill 124 decision:

> The Act prevents collective bargaining for wage increases of more than 1%. This restriction interferes with collective bargaining not only in the sense that it limits the scope of bargaining over wage increases, but also interferes with collective bargaining in a number of other ways. For example, it prevents unions from trading off salary demands against non-monetary benefits, prevents the collective bargaining process from addressing staff shortages, interferes with the usefulness of the right to strike, interferes with the independence of interest arbitration… and interferes with the power balance between employer and employees.[97]

255. Unlike AMAPCEO and Unified, Correctional and the Employer have existing language in their collective agreement designed to address staffing realignments/downsizing. Appendix COR24 requires that, where there is downsizing, the parties will look to cross-Ministry (as between the Ministries of the Solicitor General and of Children, Community, and Social Services) agreements to permit movement between Ministries, and within the Correctional Bargaining Unit. Neither AMAPCEO nor Unified have language similar to Appendix COR24.

256. In fact, the Employer has told the Union that the Reskilling MOA negotiated with Unified and AMAPCEO is based on the processes set out in Appendix COR24. Even the Employer recognizes that Appendix COR24 renders this MOA unnecessary and duplicative. Simply asserting that a similar MOA is in place for some other bargaining units, given the already existing differences between the collective agreements and the workforce, does not support an award of this proposal, and it should not be awarded.

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[97] *Bill 124 Decision*, 2022 ONSC 6658, at para 9, OPSEU Book of Authorities, **Tab 6**.

257. Further, the Union is not aware of any seasonal employees currently working in the Correctional Bargaining Unit. Therefore, Article 3.2 of Appendix A to the Employer's proposed Appendix would have no application to the bargaining unit in its current composition.

258. However, the Union remains open, as it always has been, to consider necessary and appropriate amendments to Appendix COR24, as well as its inclusion in the body of the collective agreement.

259. Ultimately, if the Employer actually has a basis to assert that Appendix COR24 is under-inclusive or requires amendment, it should come to the bargaining table with both proposed amendments and substantive rationales for its proposals so that the parties may engage in meaningful consideration of the needs of the members of this bargaining unit and of the Employer. Specifically, the Union is open to discussions around the following elements of the Employer's proposal:

a. An expedited dispute mechanism process that covers all aspects of the process and the outcome;

b. Explicit processes, timelines, and restrictions around information sharing to promote transparency; and

c. Joint decision-making to promote collaboration and cooperation.

260. This type of process for members faced with the loss of their job is foundational to the collective agreement and the rights of our members. Therefore, such a provision should be freely negotiated between the parties rather than imposed upon the Union through arbitration.

261. The Employer's proposal should not be awarded. Instead, the Union proposes that the Employer and Union be directed to convene a subcommittee to develop a mutually agreeable provision, before the commencement of collective bargaining next year, to be included in the parties next collective agreement.

Response to Employer Proposal 12.14 – Recruitment and Staffing – Article 6, 56, New Appendix on Reach-back and Appendix 39

(i) Employer's Proposal

262. The Employer proposes a number of amendments to provisions related to posting and filling positions.

263. The Employer proposes to amend Article 6.1 and Article 56.1 to change the starting point from which the Employer can reach-back from a competition. Currently, the Employer can hire a qualified candidate within 14 months following the closing date of the posting. The Employer proposes that it be able to hire a qualified candidate within 14 months following the conclusion of a competition.

264. The Employer proposes that where a job competition requires an employee to live or work within 125 kilometres of the work location, an employee may apply for the position if they don't meet the geographic limitations of a competition, but the employee will be deemed to have waived entitlements to any relocation and related expenses.

265. The Employer proposes a new letter of understanding allowing the Employer to use reach-back provisions to fill vacancies in the Office Administration (OAD) classification series within a range of two classifications below the original posting for the OAD classification series.

266. The Employer proposes the following amendments to Appendix 39 regarding the mass centralized recruitment process:

a. Amend the mass recruitment period to allow the Employer to fill positions that occur during the 18-month period following the conclusion of the competition rather than following the closing date of the competition; and

b. Remove the Employer's requirement to provide individual ranking to all candidates.

267. Finally, the Employer proposes the following "housekeeping" changes:

a. Respecting Article 6.1.1 and Article 56.1.1, removing the reference to "effective date of March 16, 1987" and clarifying that positions shall be advertised for at least ten "working" days instead of "calendar" days; and

b. Respecting Appendix 39, removing the reference to the Employer having to obtain a valid surplus clearance number prior to filling a position.

(ii) Employer's Proposed Collective Agreement Language

ARTICLE 6 – POSTING AND FILLING OF VACANCIES OR NEW POSITIONS

…

6.1.2.1 Notwithstanding Article 6.1.1 above, the Employer may hire qualified candidates in rank order who previously applied for the same vacancy or new position provided that a competition was held during the previous fourteen (14) months following the ~~closing date of the posting~~ **conclusion of the competition** and was within 125 kilometres of the work location of the previously posted position, and provided that the position has cleared surplus. The Employer in these circumstances is not required to post or advertise the vacancy or new position. Where the Employer uses this provision, it shall notify the Local Union President where the vacancy or new position exists, five (5) working days prior to filling the vacancy or new position. The five (5) working day period can be waived with mutual agreement by the parties. (FXT, SE)

…

6.1.3 Effective [90 days after ratification/or interest arbitration decision], notwithstanding that a position is advertised within a restricted area of search, any employee who works or resides outside the identified area of search may apply for the position. If they apply, they will be deemed to have waived entitlements to any relocation and related expenses, if any, pursuant to Employer policies or directives or Article 6.5 for restricted competitions, as a condition of gaining access to the competition process. For greater certainty, no claim can be made for any expenses incurred during the competition process or arising from the decision to hire the employee into the position. (FXT, SE)

…

ARTICLE 56 – POSTING AND FILING OF REGULAR PART-TIME POSITIONS

56.1.1 ~~Effective March 16, 1987, w~~**W**hen a vacancy occurs in the Regular Service for a regular part-time position in the bargaining unit or a new regular part-time position is created in the bargaining unit, it shall be advertised for at least ten (10) ~~calendar~~ **working** days prior to the established closing date. Notice of vacancies shall be posted either electronically or on bulletin boards and, upon request, shall be provided in large-sized print or braille where the posting location has the capacity to do so.

56.1.2 Notwithstanding Article 56.1.1 above, the Employer may hire qualified candidates who previously applied for the same regular part-time vacancy or new position provided that a competition was held during the previous fourteen (14) months following the ~~closing date of the posting~~ **conclusion of the competition**. The Employer in these circumstances, is not required to post or advertise the vacancy or new position. Where the Employer uses this provision, it shall notify the Local Union President where the vacancy or new position exists, ten (10) working days prior to filling the vacancy or new position.

56.1.3 Effective [90 days after ratification/or interest arbitration decision], notwithstanding that a position is advertised within a restricted area of search, any employee who works or resides outside the identified area of search may apply for the position. If they apply, they will be deemed to have waived entitlement to any relocation and related expenses, if any, pursuant to the Employer's policies - 195 - or directives, as a condition of gaining access to the competition process. For greater certainty, no claim can be made for any expenses incurred during the competition process or arising from the decision to hire the employee into the position.

…

NEW APPENDIX

[Date of Ratification/Interest Arbitration Decision]
REACHBACK CLASSIFICATION SERIES

LETTER OF UNDERSTANDING

Glenna Caldwell
OPS Negotiator, OPSEU
100 Lesmill Road
North York, Ontario
M3B 3P8

Dear Ms. Caldwell:

For vacancies that are posted greater than ninety (90) days after ratification/or interest arbitration decision of the 2022-XXXX Correctional Bargaining Unit Collective Agreement, the parties agree that further to Article 6.1.2.1 and Article 56.1.2, the Employer may also consider using reach back provisions to fill vacancies in the same classification series within a range of two classifications below the original posting for the following classification series:

- **Office Administration**

The list of classification series above may, as necessary, be amended via mutual agreement of the parties after review and discussion at the Bi-Ministry Employee Relations Committee.

Yours Truly,

Steven MacKay
Director, Negotiations Branch
Employee Relations and Negotiations Division
Centre for Public Sector Labour Relations and Compensation
Treasury Board Secretariat

[*This letter forms part of the Collective Agreement*]

…

APPENDIX 39
Revised [Date of Ratification/or Interest Arbitration Decision] ~~**April 1, 2019**~~
MASS CENTRALIZED RECRUITMENT PROCESS

LETTER OF UNDERSTANDING

It is agreed that:

i. In addition to the posting requirements under Article 6.1.1, 6.1.2 and 6.2, the Employer may post potential opportunities for permanent positions or temporary assignments that may arise during the next 18-month - 196 - time period. The posting shall state the duties, nature and title of the position(s), qualifications required, full or part time status, permanent or temporary status, bargaining unit status, hours of work schedule, travel expectations/ work location(s) and salary range of the classification. The Employer will identify on the posting that it may be used to fill positions that occur during the 18-month time period, following the ~~closing date of the posting~~ **conclusion of the competition**. The posting shall state that candidates

must indicate their work location preference, if applicable, in their application. The posting period will be for at least fifteen (15) working days prior to the established closing date. This closing date may be extended should the Employer determine that there is an insufficient number of potential qualified candidates.

…

c) The Employer ~~shall advise candidates of their individual rank order upon the completion of the competitive process under paragraph (b) and the Employer~~ shall pull from the list in rank order.

…

e) ~~The Employer shall obtain a valid surplus clearance number prior to filling a position under this process.~~ **It is understood that the position or positions would have cleared surplus prior to filling.**

…

This letter of understanding will expire on **[end of collective agreement term]** ~~December 31, 2021~~, but should the parties not have reached a new collective agreement by that date, the letter shall continue to operate until a new collective agreement has been ratified or an interest arbitration decision issued.

(iii) Union's Response and Rationale

a. Reach Back under Article 6.1 and Article 56.1

268. The Union opposes this proposal. Currently, the Union is unable to track 14-months from the conclusion of a competition – and it is unclear what metric would be used to identify the conclusion of any given competition. As the Employer notes, the length of a competition depends on several variables which are exclusively within the Employer's control, including applicant screening, interviews, reference checks, background checks and offers. However, all of these elements happen outside of the Union's view – which is why the parties have agreed on language that ties the reach back provisions to an easily identifiable and undisputed date.

269. The Union is not informed by the Employer of when a competition is completed. The Employer's proposed change would make it impossible for the Union to track for compliance.

270. The Union disagrees that allowing additional time to use the results of a competition could be beneficial for employees. The Employer's proposal would make job competitions more opaque, as there is no way to track how the Employer can use the reach-back provision.

b. Permit employees to apply to competitions outside the geographic area of search and the employee is deemed to have waived entitlement to relocation expenses.

271. The Union opposes this proposal. The Employer's proposal is a concession as employees are entitled to relocation expenses when the Employer runs open competitions.

272. It is entirely and solely within the Employer's discretion as to how competitions are posted, including geographic limitations. Accordingly, if the Employer is interested in drawing from current qualified employees to fill vacancies, they are free to remove geographic limitations from job postings, but they are required to pay relocation expenses outlined in the Collective Agreement.

273. The Union will not agree to language that allows individual members to waive significant collective agreement rights – and compensation – without the Union's involvement.

c. New Letter of Understanding – Reach-back classification series

274. The Union opposes this proposal. The Employer's proposal is inconsistent with its historical position that when filling OAD classification positions qualifications are position-specific rather than classification-specific. For example, when examining rollover entitlements, a Records Clerk classified at OAD08 is not eligible for rollover into a Finance Clerk position at the OAD08 level. The Employer's proposal would violate their own rules and MOAs for filling these positions.

275. The Employer's proposal would leave some employees ineligible to rollover or move laterally into vacancies at the same classification as their current position, while

simultaneously making other employees eligible for positions they never applied for through the reach-back clause. Thus, the Employer's proposal results in an absurdity.

276. The current recruitment MOA for non-Corrections Officer positions (including OAD positions) at the Ministry of the Solicitor General has site-specific eligibility. Correctional has specific MOAs outside the Collective Agreement respecting how positions are filled. This is a significant difference from Unified.

277. On a practical level, employees only apply for positions they are interested in. The Employer's proposal would lead to a situation where every employee seeking an OAD classified position would have to apply to every OAD classified position at all locations within the 125km reach-back provision in order to be considered for the positions they are actually interested in under the Employer's proposed letter of understanding. This would lead to a significant administrative burden for the Employer as well as employees.

278. Further, employees generally do not apply to positions where they cannot meet the qualifications. By being able to pull from two levels below, the Employer would be excluding a significant number of employees who were discouraged from applying to an earlier posting at a higher classification. For example, to fill a Records Clerk (OAD08) position, the Employer could use the results of a Community Service Representative (OAD10) competition.

279. Alternatively, the Employer's proposal could lead to employees applying to positions for which they reasonably believe that they are unqualified, so that the Employer might use the results of the earlier competition to fill a position at a lower classification posted later within the reach-back window. Again, this would result in a higher administrative burden for the Employer and increased uncertainty for employees as to what job openings they are or are not being considered for, likely resulting in redundant applications.

280. This proposal should not be awarded.

d. Appendix 39 – amend mass recruitment period to commence from the conclusion of the competition.

281. The Union opposes this proposal for the same reason it opposes the Employer's similar proposal to amend Article 6.1 and 56.1. The Union is unable to track the conclusion of a competition. It should not be awarded.

e. Appendix 39 – Remove the requirement to provide individual ranking to all candidates.

282. The Union opposes this proposal, which would remove transparency in the mass recruitment process. Internal candidates are not always able to obtain formal feedback on their performance in job competitions. Removing this level of transparency makes it difficult for employees to identify areas for improvement.

283. Providing individual rankings to all candidates is language of longstanding in the Collective Agreement. The Union disputes that the practice could lead to "discord in the workplace" and notes that the Employer cites no examples of such despite the longstanding practice. There is no compelling reason to award this proposal.

f. Housekeeping re Article 6.1.1 and Article 56.1.1 (remove reference to "effective date of March 16, 1987" and change reference to "calendar" days to "working" days.

284. The Union is in agreement with these housekeeping amendments.

g. Housekeeping re Appendix 39 – Remove requirement of employer to obtain a valid surplus clearance number; clearance of surplus assumed.

285. The Union opposes this proposal, which would remove accountability and transparency in the surplus clearance process.

286. The Union is not tied to receiving a "surplus clearance number;" however, the Union's position is that confirmation of the surplus clearance process is required. The Union had proposed the following language as an amendment to the current language to be responsive to the Employer's proposal:

~~The Employer shall obtain a valid surplus clearance number prior to filling a position under this process.~~ **The Employer shall provide a confirmation to the Union that valid surplus clearance is obtained prior to filling a position under this process.**

287. The Union would also be comfortable with the following newly-amended language in the AMAPCEO agreement regarding surplus clearance:

The parties agree that it will continue to be the practice that the Employer shall obtain surplus clearance prior to filling position.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.