

IN THE MATTER OF AN ARBITRATION ESTABLISHED PURSUANT TO THE *CROWN  
EMPLOYEES COLLECTIVE BARGAINING ACT, 1993*

TO DEAL WITH A DISPUTE BETWEEN:

**THE CROWN IN RIGHT OF ONTARIO**  
(as represented by Treasury Board Secretariat)

- and -

**ONTARIO PUBLIC SERVICE EMPLOYEES UNION/SYNDICAT DES EMPLOYÉS DE LA  
FONCTION PUBLIQUE DE L'ONTARIO (OPSEU/SEFPO) CORRECTIONAL BARGAINING  
UNIT**

ARBITRATOR: WILLIAM KAPLAN

NOVEMBER 25 AND 26, 2023

## **EMPLOYER'S ARBITRATION BRIEF**

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## 1. INTRODUCTION

1. This is an arbitration between the Crown in Right of Ontario (as represented by Treasury Board Secretariat) (the “Employer” or “TBS”) and the Ontario Public Service Employees Union/Syndicat des employés de la fonction publique de l’Ontario (“OPSEU/SEFPO” or the “Union”) to decide the matters remaining in dispute following collective bargaining for the renewal of the collective agreement for the Correctional Bargaining Unit which expired on December 31, 2021.
2. The Parties have agreed to the appointment of arbitrator William Kaplan (the “Arbitrator”) in accordance with Section 29.1 of the *Crown Employees Collective Bargaining Act, 1993* (“CECBA”) (Employer’s Book of Authorities, Tab 1). The Arbitrator had also been appointed as the mediator in accordance with Section 29.4(2) of CECBA.
3. The Employer and OPSEU/SEFPO agree that each party shall have a full opportunity to present its arguments and make submissions pertaining to the outstanding matters in dispute.
4. In accordance with Section 29.7(2) of CECBA, in making a decision or award, the Arbitrator shall take into consideration all factors they consider relevant, including the following enumerated criteria:
  - a) The Employer’s ability to pay in light of its fiscal situation.
  - b) The extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased.
  - c) The economic situation in Ontario.
  - d) A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
  - e) The employer’s ability to attract and retain qualified employees.
5. The Employer requests full reasons for any decision issued by the Arbitrator.

6. The Parties have agreed to limited non-monetary items (as outlined in Section 4 of this brief). The Employer requests that the Arbitrator incorporate by reference these items in the award.
7. The Employer made considerable and meaningful efforts to reach a collective agreement prior to engaging in arbitration. The Parties participated in a number of bargaining meetings/small group discussions between November 15, 2021, and April 27, 2022, and exchanged bargaining proposals and counter proposals, disclosure and correspondence on a number of occasions between meetings. Despite these efforts, it became abundantly clear that the Parties were very far apart on non-monetary items. The Parties were also even further apart when monetary items were tabled in April 2022. As such, it became clear that resolution of a new collective agreement would not be achieved without the assistance of a mediator and/or through interest arbitration. As such, the Parties engaged in mediation in September 2022 and April 2023. This resulted in the resolution of a few further non-monetary proposals.
8. The Employer's efforts included its commitment to negotiating public sector collective agreements, including for the Correctional Bargaining Unit, that are consistent with the Province's fiscal situation and in line with outcomes elsewhere in the Ontario Public Service ("OPS").
9. The Employer respects and values the critical services performed by Correctional Bargaining Unit employees. Correctional Bargaining Unit employees work hard every day in our communities to keep us safe and we acknowledge the difficult challenges they face. This was particularly apparent over the pandemic period, as OPSEU/SEFPO Correctional Bargaining Unit members played an important role in supporting the government's front-line response to the pandemic within the justice sector.
10. The Employer's objective is to reach a collective agreement that is both fair and reasonable to members of the Correctional Bargaining Unit, and fiscally responsible to the public and the taxpayers of Ontario. The Employer therefore seeks measured and justifiable compensation control.
11. In this respect, the Employer proposes the following monetary items with respect to the collective agreement:

- a) A three-year term from January 1, 2022 to December 31, 2024.
  - b) Across-the-board salary increases of 1.0% in each year of the collective agreement.
  - c) Creation of a Health Care Spending Account (“HCSA”) contingent on the implementation of ongoing cost saving administrative changes to fund the HCSA on an ongoing basis.
  - d) Improvements to coverage for psychological services.
  - e) Amendments to the collective agreement provisions regarding pregnancy and parental leave to reflect amendments to the *Employment Insurance Act* (“EI”) and the *Employment Standards Act, 2000* (“ESA”).
  - f) To address absenteeism issues, changes to the collective agreement definition of “overtime” so that employees are only eligible to be paid the overtime premium rate once they have performed work in excess of their regularly scheduled number of hours over two pay periods. For any leaves of absence taken during the two pay periods, employees would need to work an equivalent number of hours at straight time compensation before the overtime premium rate would apply.
12. The Employer also proposes the following non-monetary items with respect to the collective agreement:
- a) Amend the collective agreement so that lieu time under Article COR13.6 can only be taken at a time that is mutually agreed upon.
  - b) Revise the overtime provisions for Regular Part-Time employees so that the overtime premium rate is earned only when the corresponding full-time hours per week are exceeded.
  - c) Amend the collective agreement such that eligible employees can only accumulate, bank, and use up to a maximum of 60 hours of overtime Compensating Time Off (“CTO”) in a calendar year.

- d) Amendments to provide greater certainty when fixed-term schedule changes are required due to operational reasons.
  - e) Reduce the threshold concerning the number of days of absence requiring a medical note to qualify for short-term sickness plan ("STSP") days.
  - f) Reflect updated process requirements as the Employer gradually implements an electronic system to access and store digital employee portfolios.
  - g) Renew the Parties' reskilling memorandum of agreement and incorporate as a new Appendix in the collective agreement.
  - h) Amend provisions that would enhance recruitment and staffing.
13. The above monetary and non-monetary proposals reflect the Employer's objective to reach a collective agreement that is both fair and reasonable to members of the Correctional Bargaining Unit, and fiscally responsible to the public and the taxpayers of Ontario.

## **2. OVERVIEW OF THE OPS, THE MINISTRY OF THE SOLICITOR GENERAL, THE MINISTRY OF CHILDREN, COMMUNITY AND SOCIAL SERVICES, AND THE OPSEU/SEFPO CORRECTIONAL BARGAINING UNIT**

### **2.1 The OPS and its Bargaining Agents**

14. The Crown in Right of Ontario, as represented by TBS, has authority over salary and benefits for all OPS employees.
15. Approximately 85% of all OPS employees are represented by one of seven OPS bargaining agents.
16. OPSEU/SEFPO is the largest bargaining agent in the OPS, representing over 30,000 employees.
17. Correctional Bargaining Unit employees are spread across two Ministries:
  - a) Ministry of the Solicitor General
  - b) Ministry of Children, Community and Social Services

### **2.2 The Ministry of the Solicitor General**

18. The Ministry of the Solicitor General ("SOLGEN") ensures that Ontario's communities are supported and protected by law enforcement, and that public safety and correctional systems are safe, effective, efficient and accountable.
19. SOLGEN's responsibilities fall into three general categories:
  - a) Correctional Services:
    - (i) Establishes, maintains, operates and monitors Ontario's adult correctional institutions and probation and parole offices.
    - (ii) Oversees adult offenders under parole supervision.
    - (iii) Provides programs and facilities to help rehabilitate offenders.
    - (iv) Ensures the safety of individuals placed in the correctional system while safeguarding their human rights.



- b) Public Safety and Security:
  - (i) Maintains the security of Ontario by coordinating public safety initiatives among municipal, fire and emergency services organizations within and outside the Province.
  - (ii) Delivers grant programs and promotes partnerships to minimize or eliminate hazards to people or property through:
    - (A) Public education initiatives.
    - (B) Emergency measures.
    - (C) Scientific investigations.
    - (D) Coordination of fire safety services and the coroner's system.
- c) Policing Services:
  - (i) Oversees policing services throughout Ontario, including the Ontario Provincial Police ("OPP").
  - (ii) Licenses, regulates and investigates the activities of private investigation and security agencies and their employees in Ontario.

### **2.3 Ministry of Children, Community and Social Services**

- 20. The Ministry of Children, Community and Social Services ("MCCSS") was created in 2003, with the primary aim of aligning and integrating a diverse range of services cutting across the developmental stages of children and youth. These services were previously delivered by the Ministries of Community and Social Services, Health and Long-Term Care, and Community Safety and Correctional Services.
- 21. MCCSS was founded with the over-arching objective of achieving better outcomes and better service experiences for children, youth and their families across Ontario.
- 22. The Youth Justice Division became part of Ministry of Children and Youth Services ("MCYS") in the spring of 2004.

23. MCCSS combined the former MCYS, the Ministry of Community and Social Services and a segment of the Ministry of Citizenship and Immigration in June 2018.
24. Some of the programs that comprise the MCCSS include: Social Assistance; Children's programs (including for children with autism and other special needs); Child Welfare; Women's Social and Economic Opportunities; Youth Opportunities; Youth Justice; the Family Responsibility Office; Poverty Reduction; Developmental Services, Violence Against Women; Human Trafficking; and Human Services Integration.
25. The mandate of the Youth Justice Services Division includes the detention, incarceration and community supervision of young persons aged 12 to 17 at the time of offence. The majority of youth are under terms of community supervision; others are held in open and secure custody/detention facilities. MCCSS strives to be a leader in youth justice through the provision of a continuum of rehabilitative programs which, in partnership with the community, address criminogenic-risk factors in order to reduce youth re-offending rates, reintegrate youth and meet public safety needs.

#### **2.4 OPSEU/SEFPO Correctional Bargaining Unit Collective Bargaining Framework**

26. CECBA provides for collective bargaining for the OPS and designated Crown agency employees. The collective bargaining framework for the Correctional Bargaining Unit is set out under CECBA.
27. Section 22 of CECBA defines the designated bargaining units with respect to collective bargaining for OPS employees covered under CECBA:
  - a) The Correctional Bargaining Unit – the bargaining unit that was formerly Unit II – Corrections Bargaining Unit, as set out in Order in Council 243/94 and as modified from time to time by the collective agreement that applies to the members of the unit.
  - b) The Engineer Bargaining Unit – the bargaining unit as set out in the collective agreement that applies to the members of the unit.
  - c) The Fourth Bargaining Unit – the bargaining unit that was formerly Unit VII – Seventh Bargaining Unit, as set out in Order in Council 243/94 and as modified

from time to time by the collective agreement that applies to the members of the unit.

- d) The Unified Bargaining Unit – the bargaining unit that was formerly composed of the following units, as set out in Order in Council 243/94 and as modified from time to time by the collective agreement that applies to the members of the unit:
  - (i) Unit I – Administrative Bargaining Unit
  - (ii) Unit III – Institutional & Health Care Bargaining Unit
  - (iii) Unit IV – Office Administration Bargaining Unit
  - (iv) Unit V – Operational & Maintenance Bargaining Unit
  - (v) Unit VI – Technical Bargaining Unit
- 28. In addition, there are other OPS bargaining agents, which are not recognized under CECBA, but are either recognized by a different statute or have voluntary recognition agreements which govern the collective bargaining relationship.
- 29. Pursuant to Section 24(1) of CECBA, OPSEU/SEFPO is recognized as the exclusive bargaining agent for employees in the Unified and Correctional Bargaining Units. Each of these bargaining units has its own standalone collective agreement.
- 30. The OPSEU/SEFPO Unified Bargaining Unit membership comprises approximately 26,500 employees. The current collective agreement for OPSEU/SEFPO's Unified Bargaining Unit expires on December 31, 2024 (Employer's Book of Exhibits, Tab A).
- 31. The Correctional Bargaining Unit membership comprises approximately 8,800 employees.
- 32. Approximately 6,500 of these employees mainly work directly with adult offenders and youth. These employees include Correctional Officers (COs), Youth Services Officers (YSOs), Probation Officers (POs) and Probation and Parole Officers (PPOs), and other classifications such as Recreation Officer, Industrial Officer etc.
- 33. The balance of Correctional Bargaining Unit employees are headquartered in correctional and youth justice workplaces and include office administration staff, food service staff,

nurses, maintenance staff, social workers and others. This group of approximately 2,000 employees transferred from the OPSEU/SEFPO Unified Bargaining Unit into the Correctional Bargaining Unit effective January 1, 2018 pursuant to the December 15, 2016 agreement between the Parties and a further agreement dated January 23, 2018 (Employer's Book of Exhibits, Tab B).

34. Part III.1 of CECBA applies in respect of collective bargaining for the Correctional Bargaining Unit.
35. Section 28 of Part III.1 of CECBA requires that if a conciliation officer appointed under Section 18 of the *Labour Relations Act, 1995* (the "OLRA") is unable to effect a collective agreement for the Correctional Bargaining Unit within the time allowed under Section 20 of that Act, the following rules apply:
  - a) The Minister shall forthwith by notice in writing inform each of the Parties that the conciliation officer has been unable to effect a collective agreement.
  - b) Sections 19 and 21 of the *Labour Relations Act, 1995* do not apply.
  - c) The matters in dispute between the Parties shall be decided by arbitration in accordance with this Part.
36. Accordingly, interest arbitration is the final dispute mechanism in the event of a collective bargaining impasse between the Employer and the Correctional Bargaining Unit.
37. In contrast, the collective bargaining framework for other OPS employees governed by Part III (Collective Bargaining) of CECBA, including OPSEU/SEFPO's Unified Bargaining Unit, provides for the right to strike in the event of a collective bargaining impasse.

## **2.5 Evolution of the Correctional Bargaining Unit**

38. Following the introduction of CECBA in 1972, membership of the then-Civil Service Association of Ontario ("CSAO") sought a more formal union structure and approach. In 1975, the delegates approved the change of name from CSAO to OPSEU/SEFPO, and OPSEU/SEFPO passed a new constitution which forms the basis of OPSEU/SEFPO's current constitution (central model offset by a regional political structure and elections for senior officers).

39. In 1977, there was one collective agreement for the OPSEU/SEFPO bargaining unit, with eight categories contained within the unit. Each OPSEU/SEFPO category elected representatives who negotiated wages with the Employer for their respective category. An OPSEU/SEFPO negotiating team representing all of the categories negotiated with the Employer at a central table all other terms and conditions of employment.
40. An illegal strike in 1979 was resolved by an arbitrated settlement under which Corrections became a separate ninth category. The Corrections category was created by moving classifications from the Institutional Care Services category to the new Correctional Services category. The classifications that moved included CO, Recreation Officer, Industrial Officer and other institution-based classifications, as well as the Attendant, Oak Ridge classifications from the Ministry of Health. The classifications in the Correctional Services category were largely unique to the category.
41. In the next round of collective bargaining, COs received a 27 per cent wage increase.
42. Changes to CECBA in 1993 provided the OPS bargaining agents under CECBA with the right to strike. Those changes also resulted in the formerly nine categories (which had shrunk to eight categories in the 1980s) being consolidated into six bargaining units, comprised of a Correctional Bargaining Unit plus five other units.
43. By agreement, the PO classifications were moved out of the Administrative Services bargaining unit into the Correctional Bargaining Unit. From that point forward, the PO classifications were unique to the Correctional Bargaining Unit.
44. In 2001, the Parties agreed to consolidate the six OPSEU/SEFPO bargaining units into two bargaining units – the Correctional Bargaining Unit and the Unified Bargaining Unit (the latter consisting of the other five bargaining units) - for the next collective agreement beginning in 2002.
45. In 2002, a new bargaining unit for OPPA civilian employees was created after an employee representation vote was conducted and former OPSEU/SEFPO-represented employees who worked for the OPP were transferred into the newly created OPPA civilian bargaining unit.

46. In 2016, the Parties agreed, effective January 1, 2018, to transfer OPSEU/SEFPO-represented positions and incumbents in the Unified Bargaining Unit who were headquartered in correctional institutions, youth facilities, probation offices, probation and parole offices and the Ontario Correctional Services College into the Correctional Bargaining Unit (Employer's Book of Exhibits, Tab B). The classifications related to the positions that moved over to the Correctional Bargaining Unit continue to exist in the Unified Bargaining Unit.
47. In 2019, the Parties agreed to update the recognition clauses for the respective OPSEU/SEFPO Unified and OPSEU/SEFPO Correctional Bargaining Units to reflect the standalone nature of each unit. The updated recognition clauses were effective January 1, 2018 and were subsequently incorporated into the respective collective agreements for Unified and Corrections.

### **3. OVERVIEW OF PREVIOUS ROUNDS OF BARGAINING**

48. The outcomes of the previous rounds of collective bargaining are highly relevant to this interest arbitration.
49. The terms and conditions negotiated in these past rounds have contributed to the current robust state of the Correctional collective agreement and demonstrate (as described in Section 7 below) a pattern of comparable treatment of Correctional Bargaining Unit employees and members of the Unified Bargaining Unit with respect to across-the-board wage increases and benefits. These previous agreements therefore set the stage for the current set of negotiations.

#### **3.1 2008 Collective Bargaining**

50. The 2008 round of collective bargaining resulted in a four-year collective agreement for the term from January 1, 2009 to December 31, 2012 (Employer's Book of Exhibits, Tab C).
51. The same across-the-board salary increases were negotiated for the Unified and Correctional Bargaining Units:
- (i) January 1, 2009 – 1.75%
  - (ii) January 1, 2010 – 2%
  - (iii) January 1, 2011 – 2%
  - (iv) January 1, 2012 – 2%

52. There were also special adjustments for employees in both the Unified and Correctional Bargaining Units, including for all steps in the CO 1, 2, 3 class series.

#### **3.2 2013-2014 Collective Bargaining**

53. The 2013-2014 round of collective bargaining resulted in a two-year collective agreement for the term January 1, 2013 to December 31, 2014 for each of the Central, Unified and Correctional agreements comprising the OPSEU/SEFPO collective agreement (Employer's Book of Exhibits, Tab D).

54. The Central Agreement covered both the Unified and Correctional Bargaining Units and was voted on by both units.
55. The Unified Bargaining Unit agreement applied to and was voted on by the Unified Bargaining Unit only.
56. The Correctional Bargaining Unit agreement applied to and was voted on by the Correctional Bargaining Unit only.
57. The Correctional Bargaining Unit agreement was marginally ratified, with OPSEU/SEFPO's 6,000 Institutional and Community Correctional workers ratifying their portion of the contract by slightly less than a 2/3 majority.
58. The dominant themes of the 2013-2014 agreement complied with the government's fiscal plan at the time, which included compensation restraint and increasing operational efficiency and flexibility.
59. Key provisions of the agreement, applicable to both the Unified and the Correctional Bargaining Unit employees, included:
  - a) Two-year term.
  - b) Zero across-the-board increases for the duration of the collective agreement.
  - c) Continued movement through the wage grid (offset by cost savings elsewhere in the collective agreement).
  - d) New hires start rate 3% below the current first step of the existing wage grid.
  - e) Elimination of weekend shift premium with savings used to fund an increase of \$0.85 per step in all classifications that had been in receipt of weekend shift premium.
  - f) Newly established committees:
    - (i) Health and Productivity Program Sub-Committees
    - (ii) Offender Transportation Sub-Committee



- (iii) Peer Mentorship Program for Institutions and Facilities & Probation/Probation and Parole
  - (iv) Use of Force Sub-Committees
  - (v) Mental Health Training
  - (vi) Alternative Discipline Resolution Process Committee
  - (vii) Backfills in Community Services
- g) Elimination of termination pay upon retirement for employees hired after on or after January 1, 2013.
  - h) Short-term sickness pay for absences over and above six days of illness reduced from 75% pay to 66 2/3% pay.
  - i) Employee-driven job security process for redeployment and recall.
  - j) Improved employee exit options to facilitate reduction in size of OPS.
  - k) Streamlined grievance procedure.

### **3.3 2015-2017 Collective Bargaining**

- 60. The 2015-2017 round of collective bargaining resulted in three-year Central, Unified and Correctional Bargaining Unit agreements (Employer's Book of Exhibits, Tab E).
- 61. The Central Agreement covered members of both the Unified and Correctional Bargaining Units and was voted on by employees in both units.
- 62. The Unified Bargaining Unit agreement applied to and was voted on by the Unified Bargaining Unit only.
- 63. The Correctional category agreement applied to and was voted on by the Correctional Bargaining Unit only.
- 64. Collective bargaining commenced on November 20, 2014 and a tentative agreement was reached for the Central and Unified agreements on September 22, 2015. OPSEU/SEFPO

Central and Unified ratification occurred on October 30, 2015. The Central Agreement, which covered members of the Unified and Correctional Bargaining Units, was ratified by 67%. Comparatively, the Unified Bargaining Unit agreement, which was not voted on by Correctional Bargaining Unit members, was ratified by 78% of the voting membership.

65. A tentative agreement for the Correctional Bargaining Unit was reached on November 24, 2015. The tentative agreement included a commitment to pursue legislative changes in order to provide the Correctional Bargaining Unit with a standalone collective agreement and access to interest arbitration in lieu of the right to strike in the event of collective bargaining impasse.
66. The tentative agreement also provided monetary items nearly identical to those in the previously ratified Unified category agreement, including:
  - a) Wage increases:
    - (i) 2015 – 0%
    - (ii) 2016 – 0%
    - (iii) 2017 – 1.4%
  - b) Salary progression (merit increases) freeze from January 1, 2016 to December 31, 2017.
    - (i) Lump sum payment of 1.4% of “earned base salary” for all members of the bargaining unit as of January 1, 2016.
67. The tentative Correctional agreement included two other key provisions: (1) a new temporary entitlement to Administrative Compensating Leave (“ACL”), which provided regular and fixed-term employees with 36 hours of compensating leave, pro-rated for part-time employees, on January 1, 2016 and again on January 1, 2017; and (2) reinstatement of employees’ ability to accumulate compensating time off for overtime worked, but with specific restrictions related to the number of days that could be accumulated and timelines for payout.

68. The tentative Correctional agreement also incorporated the Parties' agreement to create a standalone Correctional Bargaining Unit collective agreement with a term commencing January 1, 2018, which would govern all terms and conditions of employment for employees in the Correctional Bargaining Unit (i.e. the Correctional Bargaining Unit would no longer share central terms with the Unified Bargaining Unit) and provide access to interest arbitration in lieu of the right to strike in the event of collective bargaining impasse.
69. The tentative agreement was rejected by Correctional Bargaining Unit members on December 10, 2015, with members of the Correctional Bargaining Unit voting 67% against the tentative agreement.
70. On December 24, 2015, the Ministry of Labour issued a "No Board" report at OPSEU/SEFPO's request. This resulted in a legal strike or lockout position effective 12:01 am on January 10, 2016.
71. The Parties resumed negotiations on January 8, 2016. On January 9, 2016, they reached a final agreement for the Correctional Bargaining Unit (Employer's Book of Exhibits, Tab F).
72. In that agreement, the Employer committed to pursuing legislative changes to *CECBA* to allow the Parties to negotiate a future standalone collective agreement for the Correctional Bargaining Unit. These legislative changes were introduced on November 16, 2016, as part of *Bill 70, Building Ontario Up for Everyone Act (Budget Measures), 2016* and received Royal Assent on December 8, 2016 (Employer's Book of Authorities, Tab 2). The legislative changes included providing binding interest arbitration as the dispute resolution mechanism rather than the right to strike in the event of a collective bargaining impasse for the Correctional Bargaining Unit. The legislative changes also created a standalone collective agreement for the Correctional Bargaining Unit with a term commencing January 1, 2018.
73. The Correctional Bargaining Unit final agreement incorporated the previous tentative agreement that was rejected, but also included a number of amendments to the rejected agreement. More importantly, the final agreement included an agreement to refer certain matters in dispute to interest arbitration.

74. The matters in dispute that were referred to interest arbitration included:
- a) Special wage adjustments for 2016 and 2017; and
  - b) Application of a salary progression freeze for 2016 and 2017 (Employer's Book of Exhibits, Tab F).
75. On May 26, 2016, Arbitrator Kevin Burkett issued an interest arbitration decision providing for implementation of a salary progression freeze for the Correctional Bargaining Unit in 2016 and 2017 (i.e. same as the Unified Bargaining Unit), and special wage adjustments of 3% for correctional staff and 2% for probation staff effective January 1, 2017 (Employer's Book of Authorities, Tab 3).
76. On August 18, 2016, Arbitrator Burkett issued a supplementary award to address two specific issues that arose between the Parties during implementation of the May 26, 2016 award, which included:
- a) Whether all employees in the bargaining unit were entitled to special adjustments.
  - b) Whether the salary progression freeze for 2016 is effective January 1, 2016 or from the date of the award (Employer's Book of Authorities, Tab 3A).
77. With respect to the special wage adjustment issue, Arbitrator Burkett clarified that all positions in correctional facilities would be provided the 3% special wage adjustment. Of note, Arbitrator Burkett included as part of his rationale that evidence had not been presented to suggest that there would be classifications that would not qualify.

### **3.4 2017 Collective Agreement Extension Discussions**

78. On June 2, 2017, the Employer and OPSEU/SEFPO engaged in early discussions of a potential collective agreement extension for the Unified and Correctional Bargaining Units.
79. The Parties reached tentative four-year extension agreements for the Unified and Correctional Bargaining Units on the same day (Employer's Book of Exhibits, Tab G).

80. The tentative four-year extension agreement reached by the Employer and OPSEU/SEFPO for the Correctional Bargaining Unit provided for the following across-the-board wage adjustments:
- a) 1.5% ATB (July 1, 2017 or date of ratification, whichever is later)
  - b) 1.0% ATB (January 1, 2019)
  - c) 1.0% ATB (July 1, 2019)
  - d) 1.0% ATB (January 1, 2020)
  - e) 1.0% ATB (July 1, 2020)
  - f) 1.0% ATB (January 1, 2021)
  - g) 1.0% ATB (July 1, 2021)
81. The tentative four-year extension agreement reached by the Employer and OPSEU/SEFPO for the Unified Bargaining Unit provided for across-the-board wage adjustments identical to those agreed to for the Correctional Bargaining Unit.
82. The Unified and Correctional tentative extension agreements were put to the respective memberships for a vote. The Unified extension agreement was approved by 81.7% of voting Unified Bargaining Unit members. The Correctional extension agreement was rejected by 94.7% of voting Correctional Bargaining Unit members.
83. The Employer and the Association of Management, Administrative and Professional Crown Employees of Ontario (“AMAPCEO”) Bargaining Unit subsequently reached a four-year extension agreement with across-the-board increases essentially identical to those agreed to by the OPSEU/SEFPO Unified Bargaining Unit. Thus, the OPSEU/SEFPO Unified Bargaining Unit and AMAPCEO extension agreements provided salary and wage adjustments equivalent to an annualized fiscal cost of 1.5% over the length of the agreements. The outcomes of these agreements were consistent with wage trends at the time, and with the need for a balanced approach to managing compensation. They were also consistent with the proposed extension agreement negotiated for the Correctional Bargaining Unit, which had been rejected by the membership.

84. Additionally, the OPSEU/SEFPO Unified Bargaining Unit and AMAPCEO had negotiated minor changes to their collective agreements, including:
- a) Out-of-country medical coverage, special and compassionate leave entitlement expansion and Psychological Services improvements (OPSEU/SEFPO Unified Bargaining Unit, not AMAPCEO).
  - b) Agreement with the OPSEU/SEFPO Unified Bargaining Unit and AMAPCEO to phase out the Attendance Support and Management Program effective January 1, 2018.

**3.5 2017-2019 OPSEU/SEFPO Correctional Bargaining Unit Collective Bargaining**

85. On November 15, 2017, the Employer's bargaining team and OPSEU/SEFPO's Correctional bargaining team met to commence negotiations on the first standalone Correctional Bargaining Unit collective agreement.
86. By April 19, 2018, through agreement or withdrawal, the Parties had resolved almost all key non-monetary issues. Some key non-monetary issues agreed to by the Parties included:
- a) Permitting accrual of compensating time off (in lieu of overtime pay) to a maximum number of hours.
  - b) Changes made to Provincial Overtime Protocol to provide for greater flexibility.
  - c) Consolidation or elimination of various ministry sub-committees.
  - d) Elimination of shift divisions and new provisions for fixed-term employees including development of a provincial fixed-term contract transfer opportunities list.
  - e) Process for rollovers of fixed-term employees into permanent positions and application of some additional collective agreement articles to fixed-term employees.

87. Monetary discussions commenced on April 20, 2018. The Parties were unable to resolve all of the monetary items and subsequently the Parties agreed to refer the remaining outstanding monetary and non-monetary items to interest arbitration.
88. Some key outstanding issues that were referred to arbitration by the Employer included:
- a) Term of the collective agreement.
  - b) Wages.
  - c) Administrative changes to insured benefits.
  - d) Change to the collective agreement definition of overtime to mean “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 pay periods by reducing total overtime hours worked during such period by the sum of scheduled hours less hours worked.”
89. Some of the key outstanding issues that were referred to arbitration by OPSEU/SEFPO included:
- a) Wages/Special Adjustments.
  - b) Improved psychological services entitlements.
  - c) Employer-paid trade licensing and professional liability expenses.
  - d) Changes to paid union leave.
  - e) An unreduced pension at factor 85.
90. On April 1, 2019, Arbitrator Kaplan issued an arbitration award (Employer’s Book of Authorities, Tab 21). The award included a four-year term and across-the-board wage increases consistent with those in the agreements reached with the OPSEU/SEFPO Unified Bargaining Unit and AMAPCEO Bargaining Unit, and, in addition, other monetary items, as follows:

- a) **Term** – Four-year term from January 1, 2018 – December 31, 2021
- b) **Across-the-Board Wage Increases:**
  - (i) January 1, 2018 – 1.5%
  - (ii) January 1, 2019 – 1.0%
  - (iii) July 1, 2019 – 1.0%
  - (iv) January 1, 2020 – 1.0%
  - (v) July 1, 2020 – 1.0%
  - (vi) January 1, 2021 – 1.0%
  - (vii) July 1, 2021 – 1.0%
- c) **Special Wage Adjustments** each January 1 of 2018, 2019, 2020 and 2021, as follows for the following groups:
  - (i) COs/Youth Workers Classifications: 1.75%
  - (ii) POs: 1.0%
  - (iii) Nurse Classifications: 1.0%
- d) **One-Time Lump Sum Payment**
  - (i) A one-time lump sum payment of \$200 to be paid to employees who were previously in the Unified Bargaining Unit working in a Correctional bargaining unit workplace on July 1, 2017 and who were still employed in the Correctional bargaining unit as of April 1, 2019.
- e) **Psychological Services Coverage**
  - (i) Half-hour cap of \$25 eliminated for COs/Youth Workers only (no change to annual cap of \$1,400); and



- (ii) Increase half-hour cap from \$25 to \$40 for all other employees and all dependents (no change to annual cap of \$1,400).

f) **Union Leave**

- (i) Amend Article 23.2.1 to provide leave of absence for up to seven employees to participate in collective bargaining negotiations.
- (ii) Amend COR4 to provide that an additional MERC representative be granted leave of absence without loss of pay or credits for the duration of their term.

91. Any outstanding OPSEU/SEFPO or Employer issues not specifically addressed by Arbitrator Kaplan's decision were deemed dismissed. All items agreed to by the Parties prior to arbitration were deemed to have formed part of the collective agreement.

#### 4. OVERVIEW OF CURRENT ROUND OF COLLECTIVE BARGAINING

##### 4.1 Overview of Current 2021-2023 Negotiations

92. Given the previous rounds of collective bargaining, the legislative parameters in place at the time, and the recent experience of the COVID-19 pandemic, the Employer fully expected this round of collective bargaining with the OPSEU/SEFPO Correctional Bargaining Unit to be challenging. Prior to the commencement of bargaining, the government had also passed the *Protecting a Sustainable Public Sector for Future Generations Act, 2019* (“PSPSFGA”). The PSPSFGA established three-year moderation periods for represented and non-represented employees under provincial oversight, moderating impacted employees to total compensation and salary increases limited to one per cent annually.
93. Nevertheless, despite the above-noted circumstances, there was an expectation that the Parties would work together to reach mutually beneficial outcomes that would address bargaining unit members’ interests while respecting the then current fiscal and the existing legislative environment, as other OPS unions and associations have done.
94. On November 15, 2021, the Employer’s bargaining team and OPSEU/SEFPO’s Correctional bargaining team met to commence negotiations. The Parties delivered opening statements and tabled their respective proposals on Appendices and housekeeping items.
95. The Employer’s opening statement noted that a key theme in its proposals is that the Employer supports a modern and flexible organization, and that its proposals must be balanced in light of the legislative parameters seeking compensation moderation.
96. OPSEU/SEFPO’s opening statement emphasized its concerns over OPSEU/SEFPO’s assertions regarding employee workload, staffing shortages and retention issues. OPSEU/SEFPO indicated that it would be seeking improvements on items including, but not limited to, significant improvements to pensions and benefits, improvements for fixed term employees, workload and staffing levels. In OPSEU/SEFPO’s view, addressing its proposals would assist the government in resolving what OPSEU/SEFPO referred to as chronic and systemic problems.

#### **4.2 Appendices and Housekeeping Items**

97. The Parties have reached agreement on a number of the proposed Appendices and housekeeping items, particularly as a result of mediation in September 2022 and April 2023 (as described below).
98. Outstanding appendices/housekeeping items include, but are not limited to, agreement on a limited list of Appendices to be renewed and minor amendments to Appendices.
99. Tab H of the Employer's Book of Exhibits sets out the Appendices and housekeeping items that have been agreed to and items that have been withdrawn. There are still seven Appendices outstanding.

#### **4.3 Non-Monetary Issues Negotiations**

100. On December 15, 2021, the Parties began exchanging non-monetary proposals. The Employer's opening non-monetary proposal included a modest number of items (Employer's Book of Exhibits, Tab I). OPSEU/SEFPO tabled an extensive number of opening non-monetary items (upwards of 85 items, including sub-components of proposals) over the course of several days, a number of which, in the Employer's view, had monetary impacts (Employer's Book of Exhibits, Tab J).
101. Progress was slow on non-monetary issues primarily due to the large volume of opening non-monetary proposals presented by OPSEU/SEFPO, as well as OPSEU/SEFPO's failure to identify main priorities amongst its proposals.
102. Between December 2021 and April 2022, the Parties engaged in numerous discussions and exchanged multiple proposals on non-monetary items. Despite the Employer's efforts to engage with OPSEU/SEFPO on proposals from the union, the Parties were only able to reach agreement on a very limited number of items due to the large volume of proposals from OPSEU/SEFPO most of which remain active. As noted, Tab H of the Employer's Book of Exhibits also sets out the non-monetary items that have been agreed to and withdrawn.
103. On April 27, 2022, the Parties exchanged consolidated non-monetary and opening monetary proposals. While OPSEU/SEFPO withdrew a small number of its previous non-

monetary proposals, many were re-tabled. Tab K of the Employer's Book of Exhibits sets out each Parties' April 27, 2022 non-monetary and opening monetary proposals.

104. As stated in Section 1 above, the Employer requests that the Arbitrator incorporate by reference all issues already agreed to between the Parties in any resulting award.

#### **4.4 Monetary Issues Negotiations – Prior to Superior Court Decision**

105. Monetary discussions commenced on April 27, 2022. At this time, the PSPSFGA was in effect. It was abundantly clear from the outset that the Parties' monetary proposals were very far apart.

106. OPSEU/SEFPO indicated that it was seeking:

- a) Across-the-board (ATB) wage increases of 1% in year 1 and in year 3 of the collective agreement.
- b) Pension improvements (i.e. introduction of Factor 85) and linked to foregoing ATB increases in year 2 of the collective agreement, a number of other forms of compensation improvements (e.g., improvements to time off provisions, and benefits).
- c) Enhancements to Probation Officer Allowance and imposing a probation & parole officer workload cap.

107. The cost over a three-year term of the monetary proposals that OPSEU/SEFPO put forward during monetary discussions would substantively increase costs. These requested improvements would add significantly to the already very high compensation figure and did not fall within the legislative parameters at that time.

108. The Employer's position with respect to monetary items was consistent with the approach the government has taken with its other bargaining groups and was within the legislative parameters.

109. After the exchange of monetary proposals, the Parties continued to remain far apart and collective bargaining was paused. On September 7, 2022, the Parties engaged in conciliation and were unable to reach a collective agreement. On September 17, 2022,

the Parties resumed collective bargaining and participated in mediation, however, were not able to reach agreement on any monetary items or any other substantive items.

#### **4.5 Monetary Issues Negotiations – Post Superior Court Decision**

110. On November 29, 2022 the Ontario Superior Court struck down the PSPSFGA (Employer's Book of Authorities, Tab 4). This decision is currently under appeal. Subsequently, on April 4, 2023, prior to the Parties' agreement to re-engage in mediation on April 13 and 14, 2023, OPSEU/SEFPO tabled a revised proposal of monetary and non-monetary items titled Consolidated Pass 2023 (Amended U-28) (Employer's Book of Exhibits, Tab L).
111. OPSEU/SEFPO's amended proposal continued to seek pension improvements (i.e. introduction of Factor 85), improvements to time off provisions, a number of benefit enhancements, and improvements to the Probation Officer Allowance and imposing a workload cap for probation and parole officers. In addition, OPSEU/SEFPO sought additional entitlements including but not limited to:
  - a) Revised increased wage increases of 6.8% in Year 1, 5% in Year 2, and 3.5% in Year 3.
  - b) Special wage adjustments spanning 13 class series ranging from 7.1%-33%.
  - c) Improvements to post-retirement benefits.
  - d) Increased psychological service entitlements such as removing the half hour cap for all bargaining unit and dependents and changing the \$1400 annual limit to \$10000 for employees, and \$2500 for dependents.
  - e) Significant increases to the custodial responsibility allowance.
  - f) Recognition of nursing experience and corresponding salary adjustments.
  - g) Eliminating two steps in the new Correctional Supervisor classification wage grid.
112. The cost of the revised monetary proposals from OPSEU/SEFPO is extensive, and substantially higher than its previous monetary proposal tabled in April 2022. The revised

proposals would result in an ongoing cost increase of \$300.8M annually which would add significantly to compensation costs. This would represent approximately 36% of the bargaining unit's base total compensation.

113. On April 13, 2023, the Parties continued in mediation, and with the assistance of the mediator were able to reach agreement on some further housekeeping and non-monetary issues (e.g., renewing and making minor updates to appendices; establishing a committee to review the collective agreement from a diversity and inclusion perspective; and changes to Article 22 – Grievance Procedure, in respect of confirming letters of counsel are non-disciplinary and cannot be grieved).

## 5. CURRENT ENVIRONMENT OF COMPENSATION

### 5.1 The Government's Fiscal Plan

114. The Government of Ontario is taking a responsible approach to its finances so Ontario can have a strong fiscal foundation now and in the future. The economic strategy is predicated on controlled spending as Ontario continues to face uncertainty due to ongoing geopolitical instability, high interest rates and inflation. After record investments during the COVID-19 pandemic, the government will continue to invest responsibly to build a strong province.
115. The 2023 Ontario Budget is projecting a deficit of \$2.2 billion. It also indicates that over the medium term, the government is projecting a deficit of \$1.3 billion in 2023–24 before planning for surpluses in 2024–25. While Ontario is on a path to balance the budget, it must continue to invest responsibly to build a strong province. Elevated uncertainty still remains about the future pace of economic growth, which may impact these projections further, and which underscores the need for the government to take a responsible, targeted approach to spending.
116. *Managing Transformation: A Modernization Action Plan for Ontario*, September 21, 2018 (the “Line-by-Line Review”, Employer’s Book of Exhibits, Tab M) identifies labour as the single largest expenditure across the OPS and broader public sector (“BPS”). At the time, \$71 billion was spent annually on labour. A 1% increase in compensation meant an additional \$710 million in annual expenditures (Line-by-Line Review, Employer’s Book of Exhibits, Tab M at page 27).
117. Over the past several years, the Provincial government has been successful in moderating wage growth across the OPS and BPS. Through a deliberate approach to managing compensation, the government has met its fiscal commitments while also investing in critical public services.
118. The government continues to take a balanced approach to managing compensation. This balanced approach recognizes the need to maintain a stable, flexible and high-performing public-sector workforce that supports the government’s transformational priorities and at the same time ensures that public services continue to remain affordable.

119. Going forward, the government will focus on addressing longer-term workforce challenges that affect the sustainability of public services. Sector and service-wide transformation opportunities will underpin the development of a dynamic and skilled public-sector workforce that is best positioned to meet the needs of Ontarians, now and in the future.

## **5.2 Public Policy and Fiscal Restraint**

120. The Bank of Canada in their February 27, 2023 report, *Firms' inflation expectations and price-setting behaviour* (Employer's Book of Exhibits, Tab N) stated that tightening monetary policy slows price growth by reducing overall demand, slowing cost increases and raising competitive pressure on firms. High inflation expectations may encourage large price increases if firms believe that cost growth will remain high after a tightening of monetary policy. High inflation and elevated inflation expectations could cause a wage-price spiral, anchoring high inflation with harmful economic consequences.
121. A wage-price spiral occurs when workers expect inflation to continue rising so workers demand, and achieve, wage increases to keep up with rising prices. Rising wages result in firms raising the prices of goods and services. At the same time, workers have more disposable income to increase demand for goods and services. This creates an inflationary loop. The government, as a key contributor to wage-setting across the province, must carefully consider the impact of wage increases on the overall economy.
122. The PPSFSGA was created to ensure increases in public sector compensation reflected the fiscal situation of the province and protected the sustainability of public services. The PPSFSGA established three-year moderation periods for represented and non-represented employees under provincial oversight, moderating impacted employees to salary increases limited to 1%. On November 29, 2022, the Ontario Superior Court struck down the act as unconstitutional and void and of no effect. The government is currently appealing the decision. While this issue remains before the courts, employers are required to address existing collective bargaining obligations.

### **b) Agency Collective Bargaining Oversight**

123. As announced in the 2018 Fall Economic Statement, managing compensation costs on a go forward basis "...represents a key element in the government's plan to restore



sustainability to the Province's finances, and is an important step in making government more efficient and effective" (Employer's Book of Exhibits, Tab O at page 27).

124. To adhere to its own commitment, the government requires Provincial agencies to obtain approval of their bargaining mandates and ratification of collective agreements through the Treasury Board / Management Board of Cabinet approval process.
  
125. This practice continues today and has resulted in fiscally sustainable negotiated outcomes across the public sector. In the roughly 10 months between implementation of agency bargaining oversight in 2018, and the implementation of the PSPSFGA in 2019, agency bargaining oversight generated estimated total compensation cost avoidances of \$8.0M, based on a comparison to prevailing wage trends. This requirement has provided the government with additional tools to better manage the estimated \$3.3 billion that Provincial agencies under government oversight spend each year on compensation. (Employer's Book of Exhibits, Tab O at page 27).

## 6. OVERVIEW OF INTEREST ARBITRATION CRITERIA

### 6.1 The Statutory Criteria

126. Section 29.7 of *CECBA* sets out the criteria to be considered in making an interest arbitration decision or award. Section 29.7 states:

(2) In making a decision or award, the board of arbitration shall take into consideration all factors it considers relevant, including the following criteria:

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

127. In Section 7 below, the Employer elaborates on how these principles should apply to the terms and conditions for Correctional Bargaining Unit members.

### 6.2 Other Relevant Considerations

128. In addition to the statutory criteria, the Arbitrator is empowered by Section 29.7(2) of *CECBA* to take into account all factors he considers relevant.

129. In making his award, the Arbitrator should take into account the well-established principles of replication and total compensation.

#### **(a) *Replication Principle***

130. The primary purpose of interest arbitration is to try to replicate what the Parties might achieve had they freely negotiated a settlement. As Arbitrator Teplitsky wrote in his August 1982 decision in *46 Participating Hospitals and SEIU* (Employer's Book of Authorities, Tab 5) at pages 4 and 5:

... [T]he goal of compulsory binding arbitration is to ensure that the parties affected by the loss of the right to strike fare as well, **although not better**

**than, those parties whose settlements are negotiated within the context of the right to strike.**

*[Emphasis added]*

131. Replication refers to the objective of fashioning an award which, to the extent possible, approximates what the Parties themselves would have achieved in a free collective bargaining environment. With that, it is important to view replication from the lens of the Employer as the OPS having regard to OPS bargaining outcomes, and a long history of similar bargaining outcomes between the Correctional and Unified Bargaining Units, both in free collective bargaining environments and hybrid free collective bargaining/interest arbitration environments. The OPSEU/SEFPO Unified and Correctional Bargaining Units also share a permeability agreement (Appendix 64 in their respective collective agreements) which underscores the importance of maintaining the same across-the-board wage increases for the same/similar jobs to ensure continued ease of mobility between the bargaining units, particularly for job security purposes.
132. Accordingly, the OPSEU/SEFPO Unified Bargaining Unit is a key viable comparative environment in which to turn to for replication purposes.
133. When assessing the OPSEU/SEFPO Unified Bargaining Unit for replication purposes, it is important to note that the collective bargaining process is still ongoing in accordance with wage re-opener negotiations. This fact does not negate the relevance, similarity, and applicability of replication between the OPSEU/SEFPO Correctional and Unified Bargaining Units.
134. The replication principle is universally accepted as the overriding principle that captures all relevant criteria for an interest arbitration decision. Arbitrators assume that Parties engaged in collective bargaining will take all relevant criteria into account at the bargaining table in order to reach a settlement. It is likewise assumed that the Parties have assigned the correct weight and relative importance to the often competing criteria that inform settlements.
135. As Arbitrator Owen Shime wrote in *British Columbia Railway and General Truck Drivers and Helpers Union, Local 31* (1976) (Employer's Book of Authorities, Tab 6), due

consideration must be given to freely negotiated bargaining outcomes, without puzzling too deeply as to the reasons that Parties may have agreed to a particular compromise:

Also, one must assume that where settlements were voluntarily reached, the parties considered their positions relative to the rest of the economy at that time and accepted the terms and conditions. Whether these past settlements were achieved because of satisfaction by the parties with the bargain after consideration of the total economy, or whether these past settlements were arrived at because of an assessment or testing of the relative economic strengths of the employers or the unions matters little.

136. Parties who make the tough decisions inherent in calling a strike or implementing a lockout respond to significant economic changes. In the private sector, for example, unions and employers have a mutual interest in maintaining a viable business. Therefore, in times of recession and adverse financial conditions, strikes and lockouts are not common as parties negotiate settlements and re-open existing contracts to respond to the changed economic circumstances.
137. In applying the replication principle, a primary objective of the arbitrator is to replicate or construct a collective agreement which reflects, as nearly as possible, the agreement that conventional bargaining between the Parties would have produced had they themselves been successful in concluding a collective agreement. In *Halifax (Regional Municipality) and I.A.F.F., Loc. 268 (Re)* (1998) (Employer's Book of Authorities, Tab 7), the board of arbitration commented at page 140 as follows:

[21] Both parties readily accept what has become axiomatic in the interest arbitration jurisprudence, namely that:

**... the task of an interest arbitrator is to simulate or attempt to replicate what might have been agreed to by the parties in a free collective bargaining environment where there may be the threat and the resort to a work stoppage in an effort to obtain demands...**an arbitrator's notions of social justice or fairness are not to be substituted for market and economic realities.

*[Emphasis added]*

[22] Those are the words of Arbitrator Dorsey summarizing what he terms "a consensus in British Columbia" in *Re Board of School Trustees, School District 1 (Fernie) and Fernie District Teachers' Assn.* (1982), 8 L.A.C. (3d) 157 at p. 159.

[23] That consensus is not limited to British Columbia, but is universal throughout Canada.

138. This was reflected in *Cichon Enterprises Limited c.o.b. as Imperial Dust Control and Teamsters Local 847* (Employer's Book of Authorities, Tab 8) where, in a first contract arbitration situation, the Arbitrator observed at page 5 that the process,

...An arbitrated ... contract should reflect what the board considers the parties would have arrived at if they had overcome their impasse themselves and bargained to completion in the manner and spirit intended by the Labour Relations Act. That is a matter of guesswork, albeit educated guesswork. It is not a matter of "splitting the difference" between the parties' final positions.

139. In replicating the agreement that the Parties may have reached during collective bargaining, the arbitrator should have regard to market and economic realities. In *University of Toronto (Governing Council) and University of Toronto Faculty Assn. (Re)* (2006) ("*University of Toronto*") (Employer's Book of Authorities, Tab 9) at paragraph 12, the board of arbitration stated the following regarding what should be considered when attempting to replicate the agreement that the parties may have reached during collective bargaining:

Determining an award in replication of an agreement that might have been reached in the context of the "economic power struggle" and the "exigencies of the market-place"...requires consideration of a number of dynamic elements including the specific employer-employee relationship, the specific "industry" or "industry segment" and the general economic conditions and climate in which both exist.

140. Further to this point, the board in *University of Toronto* made the following comment at paragraph 17:

The replication principle requires the panel to fashion an adjudicative replication of the bargain that the parties would have struck had free collective bargaining continued. The positions of the parties are relevant to frame the issues and to provide the bargaining matrix. However, it must be remembered that it is the parties' refusal to yield from their respective positions that necessitates third party intervention. Accordingly, the panel must resort to objective criteria, in preference to the subjective self-imposed limitations of the parties, in formulating an award. In other words, to adjudicatively replicate a likely "bargained" result, the panel must have regard to the market forces and economic realities that would have ultimately driven the parties to a bargain.

141. It is important to emphasize that replication is not “splitting the difference”. If it were, the best strategy for a union would be to file a long list of issues with extreme positions, hoping to achieve a compromise on some or all. As Arbitrator Stanley stated in his award for *Ten Participating Nursing Homes and SEIU (1987)* (Employer’s Book of Authorities, Tab 10):

Arbitration is a conservative process in the sense that it has a tendency toward maintenance of the ‘Status Quo’. There must be a demonstrated need for change before we can address ourselves to the question of what change is acceptable. **The Arbitration process should not be viewed as an opportunity to make changes in a collective agreement based on philosophical preferences.**

[*Emphasis added*]

142. When engaged in the exercise of determining what the parties would have freely negotiated, outstanding matters are not to be decided upon on the basis of an arbitrator’s view of “fairness” or “social justice”. This principle is reflected in *Pembroke Professional Fire Fighters’ Association*, 2000 CanLII 29504 (ON LA) (Employer’s Book of Authorities, Tab 11), where Arbitrator Paula Knopf said:

First and foremost, as a board of arbitration resolving an interest dispute, the task is to try to replicate collective bargaining as closely as possible... **The task of an interest board of arbitration is not to impose terms and conditions that seem attractive or even fair to the board of arbitration.** Instead, the task of a board of arbitration is to design a collective agreement that comes as close as possible to what the parties could have expected to achieve if they had been forced to impasse.

[*Emphasis added*]

143. The objective, therefore, is not to determine “right” or “wrong”, “fair” or “unfair,” or reach a decision that reinforces a matter of a social justice nature that an arbitrator prefers. The objective is to replicate the deal the Parties would have reached in a free collective bargaining environment.

**(b) Total Compensation**

144. Boards of arbitration have long held that it is the aggregate cost of all proposed improvements, or the total compensation package, which must be considered.

145. The term “total compensation” encompasses all compensation items that accrue to employees, including wages and all other forms of employee benefits, both direct and indirect, which represent a cost to the Employer.
146. The following paragraph from *46 Participating Hospitals v. Service Employees International Union* (1981) (Weiler) (Employer’s Book of Authorities, Tab 12) succinctly captures the concept as applicable to interest arbitration:

I have always thought it essential not to look at any such item in isolation. With rare exceptions any such proposed improvement looks plausible on its face. The Union can point to some number of bargaining relationships where this point has already been conceded. It may even be true that, taken one by one, no single revision will actually cost that much. **Thus, sophisticated parties in free collective bargaining look upon their settlement as a total compensation package, in which all of the improvements are costed out and fitted within the global percentage increase which is deemed to be fair to the employees and sound for their employer that year.**

[*Emphasis added*]

147. While the issues in dispute will necessarily be dealt with on an individual basis, no single element of compensation will adequately reflect “total compensation”. Any selection of individual and favourable precedent lacks significance without comparison to the value of all other wage and benefit components as a whole. No doubt examples can be found of generous or favourable awards with respect to any individual demand, but until the entire package is revealed, the precedent is of little weight. Total compensation must be accepted as presenting a more complete and realistic picture than wages alone or any element in isolation.
148. In Section 7 below, the Employer elaborates how the principles of replication and total compensation should apply to the terms and conditions for Correctional Bargaining Unit members.

## 7. APPLICATION OF INTEREST ARBITRATION CRITERIA

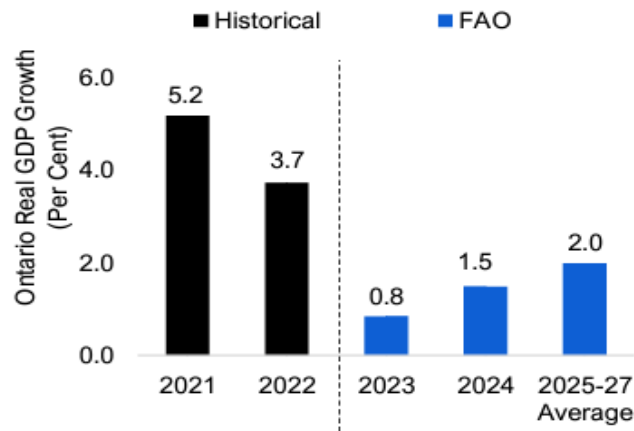
149. In this Section, the Employer addresses how the relevant criteria, set out in Section 6, should govern the Arbitrator's determination of terms and conditions for members of the Correctional Bargaining Unit.

### 7.1 **The Extent to which Services May Have to be Reduced in Light of the Decision or Award if Current Funding and Taxation Levels are Not Increased**

150. In September 2013, the Government of Ontario established the Financial Accountability Office (FAO) by passing the *Financial Accountability Officer Act, 2013*. The FAO's mandate is to provide expert independent analysis on the state of the Province's finances, trends in the provincial economy and related matters important to the Legislative Assembly of Ontario.
151. On June 13 2023, the Financial Accountability Office released the Economic and Budget Outlook, Spring 2023 (Employer's Book of Exhibits, Tab P). The report reflected that their budget outlook for 2022-23 moved from a surplus of \$2.1 billion to a surplus of only \$0.5 billion, mainly due to new government revenue and spending measures (approximately \$1.3 billion) and a slight deterioration in the economic outlook for 2023. The report also projects a modest surplus in 2023-24 of \$3.0 billion. Despite this surplus, the report highlights a number of downside risks to this outlook including persistent inflation, geopolitical instability, and more locally, the legal challenge to Bill 124. To mitigate these risks, the government must ensure it takes a balanced approach to compensation to ensure program spending is not at risk in the event of an economic downturn.
152. Ontario's real gross domestic product ("GDP") expanded by 3.7% in 2022, down from 5.2% growth in 2021. The FAO projects that anticipated elevated inflation, rising interest rates and the weaker global environment will further slow Ontario's economic growth to 0.8% in 2023, before growth recovers to 1.5% in 2024 and averages 2.0% over the rest of the outlook.



**Figure 5.4**  
Ontario's economic growth to slow in 2023



Source: Ontario Economic Accounts and FAO.

153. Under an inflation scenario recently developed by the FAO, elevated inflation could add \$6.1 billion in additional provincial spending on wages over the five-year forecast period to 2026-27 (FAO, “Ontario Public Sector Employment and Compensation, 2022 Report”, Employer’s Book of Exhibits, Tab Q). To maintain front-line services without increased tax revenue, compensation increases must be restrained.

## **7.2 The Economic Situation in Ontario and the Employer’s Ability to Pay in Light of its Fiscal Situation**

154. Section 29.7 of *CECBA* requires the board of arbitration to take into consideration: (i) the employer’s ability to pay in light of its fiscal situation, (ii) the extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased, and (iii) the economic situation in the Province. The economic environment, including the financial obligations and challenges facing the Province, informs the analysis of all these factors.

### **a) Debt and Borrowing**

155. An important consideration for every board of arbitration is whether monetary improvements sought by employees are fair and reasonable given the prevailing economic conditions and overall state of provincial finances.

156. Government services and investments have corresponding costs to taxpayers. To pay for programs and services, the Province collects taxes and other revenues, and receives transfers from the Federal government. When the Province runs a deficit, it is spending more than it collects and effectively it must borrow to make up the difference. Borrowing creates an obligation that has to be repaid in the future, which allows for lower taxes and sustained services today at the expense of lower services and/or higher taxes in the future.
157. Ontario's ability to manage its debt is in part a function of the Province's GDP. An important indicator related to the Province's fiscal position is the net debt to GDP ratio, which is the measurement of debt as a percentage of GDP. As the debt increases dramatically relative to the level of GDP, the ability to manage and repay becomes more and more difficult.
158. As Ontario continues its path to balance the budget, the borrowing program remains responsibly and prudently managed to minimize interest on debt ("IOD") costs. Ontario is forecast to pay \$13.4 billion in interest costs in 2022–23, \$14.1 billion in 2023–24 and \$14.4 billion in 2024-25, down from the 2022 Budget forecasts of \$13.5 billion, \$14.3 billion and \$14.9 billion, respectively (Ontario Financing Authority, "Province's Debt History", Employer's Book of Exhibits, Tab R and "Building a Strong Ontario: 2023 Ontario Budget, Chapter 4", page 12, Employer's Book of Exhibits, Tab II).
159. A one percentage point change in interest rates either up or down from the current interest rate forecast is estimated to have a corresponding change in Ontario's borrowing costs of approximately \$600 million in the first full year, if the size of the borrowing program remains unchanged from the current projection. The current interest rate environment poses a risk to the government given the large IOD costs, as such it is essential that the government spends responsibly, especially in advance of a period of economic uncertainty and rising interest rates.
160. The Province's debt and interest on debt over the past ten years is illustrated below. Ontario remains a highly indebted jurisdiction, with its debt projected to increase from \$276.2 billion in 2013-14 to \$395.8 billion in 2022-23 (FAO, "Economic and Budget Outlook, Winter 2023", page 15, Employer's Book of Exhibits, Tab S).

**Net Debt and Interest-on-Debt**

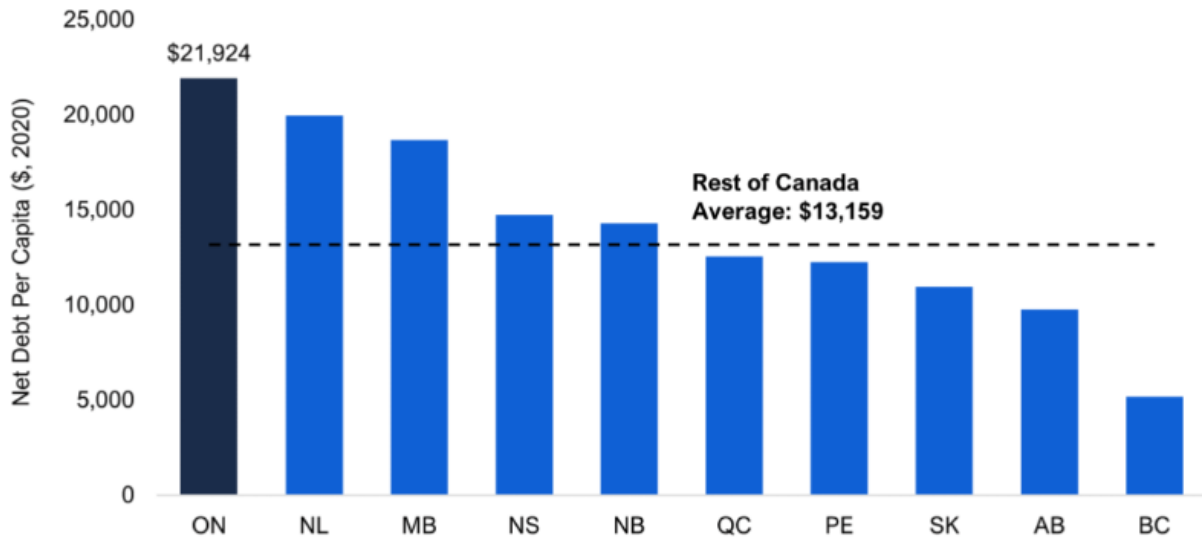
	Fiscal Years 2013–14 to 2025–26 (\$ Millions)												
	Actuals									Interim <sup>[1]</sup>	Medium-Term Outlook		
	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
<b>Net Debt</b>	276,169	294,557	306,357	314,077	323,834	338,496	353,332	373,564	380,415	395,785	406,411	420,326	429,869
<b>Net-Debt-to-GDP</b>	39.7%	40.5%	40.3%	39.7%	39.3%	39.4%	39.6%	43.1%	39.8%	37.8%	37.8%	37.7%	36.9%
<b>Net-Debt-to-Revenue</b>	224.6%	233.5%	225.0%	223.2%	215.0%	220.2%	226.4%	226.5%	205.6%	197.5%	198.9%	197.3%	190.2%
<b>Interest-on-Debt (IOD)</b>	11,155	11,221	11,589	11,727	11,922	12,403	12,515	12,308	12,587	13,424	14,058	14,379	15,059
<b>IOD-to-Revenue</b>	9.1%	8.9%	8.5%	8.3%	7.9%	8.1%	8.0%	7.5%	6.8%	6.7%	6.9%	6.8%	6.7%

<sup>1</sup> Interim represents the 2023 Budget projection for the 2022–23 fiscal year.   
Source: Ontario Financing Authority.

161. Meeting the Provincial 2023 budget targets would reduce the debt burden, improve the provincial credit rating, and achieve a reduced cost of borrowing.
162. The government made a strong commitment in the 2023 Budget regarding its debt reduction strategy, with new targets over the medium-term outlook for relevant measures of debt sustainability. Ontario’s 2022–23 net debt-to-GDP ratio is now forecast to be 37.8%. This ratio measures the relationship between a government’s obligations and its ability to meet them, indicating the burden of government debt as a share of the economy.
163. The FAO reports that budget surpluses are expected over the outlook, and if these projected surpluses were used to pay down public debt Ontario’s debt burden would significantly decline. Reducing Ontario’s debt is a responsible strategy that ensures more money can be devoted to program spending in the long-run. Despite some improvement over the outlook, Ontario continues to have a large deficit that necessitates responsible spending, especially as the province moves towards a challenging economic period with little near-term improvement projected for the province’s debt ratio.
164. The Province is already one of the world’s largest sub-sovereign borrowers. In FAO’s April 6, 2022, 2020-21 Interprovincial Comparison (Employer’s Book of Exhibits, Tab T),

Ontario's debt per capita was the highest in Canada and well above the average of the rest of Canada.

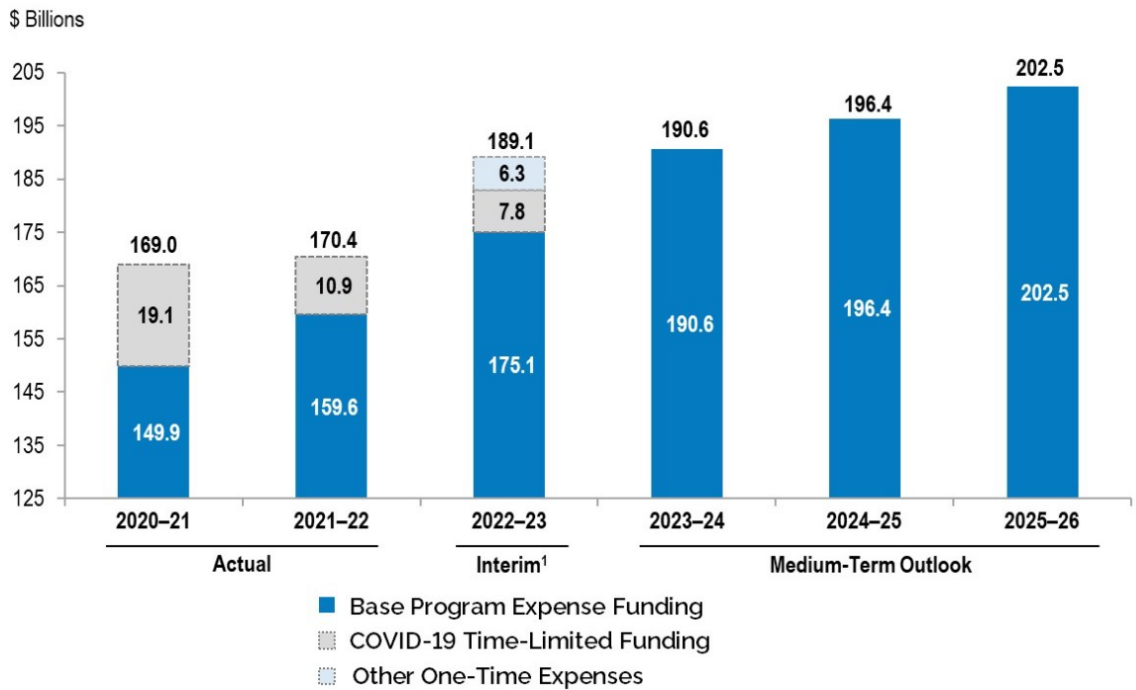
Figure 7: Ontario's net debt per capita was well above the rest of Canada average



Sources: Statistics Canada Tables [10-10-0017-01](#), [17-10-0005-01](#), [36-10-0222-01](#) and FAO.

165. Additionally, the FAO notes that the government's revenue growth is expected to moderate substantially over the next three fiscal years. After total revenues grew by an exceptional 12.2% (+\$20.2 billion) in 2021-22, revenue growth is projected to moderate to 6.5% (+\$12.0 billion) in 2022-23, and ease further to 2.0% (+\$4.0 billion) in 2023-24. In its report, the FAO also noted that while revenues did increase in 2021-22, this was the result in one time inflation driven growth in tax revenues resulting from a rebound in economic activity, rising inflation, consumer spending and corporate profits. According to the FAO "...total revenue growth is projected to slow to 6.5% in 2022-23, reflecting the loss of one-time revenue, declines in housing market activity, the reduction in the Gasoline and Fuel Tax, and the enhanced Low-income Individuals and Families Tax (LIFT) Credit."
166. Program spending will remain a substantial financial burden for government moving forward as revenues decline. In the FAO's Economic and Budget Outlook, Spring 2023, it is expected that the province will spend \$183.6 billion on programs in fiscal 2022-23 which is a \$13.2 billion or 7.7% increase from fiscal 2021-22. It is projected that by fiscal 2027-28 program spending will reach \$210.1 billion with average cost increases of 3.6%.

## Program Expense Growth



### b) The Province's Program Expenses

167. In the 2023 Ontario Budget, the Province's projected total program expenses of \$189.1 billion for 2022-23 would represent a \$68.3 billion or 57% increase since 2010-11 when program spending was \$120.8 billion. Total program expenditures are projected to continue increasing to \$190.6 billion for 2023-24 and to \$202.5 billion by 2025-26.

**c) Budget Risks and Sensitivities**

168. To illustrate the impact of potential policy changes on Ontario's fiscal projection, the FAO estimated the sensitivity of key budget indicators to changes in three main policy areas: tax revenues, federal transfers and program expenditures.
169. The FAO Economic and Budget Outlook report concluded that Ontario's budget outlook is subject to the same risks affecting the economic outlook, in addition to various other uncertainties. It indicated that several domestic and global factors pose downside risks to the economic outlook such as the persistence of higher inflation, higher interest rates and the impact of interest rates hikes to the U.S. economy and geopolitical tensions disrupting global markets.
170. A change in these factors could affect total expenses for providing government services and the public sector, causing variances in the overall fiscal forecast. These sensitivities illustrate possible effects on the government's key programs and can vary, depending on the nature and composition of potential risks.
171. Although Ontario's economy rebounded rapidly from the pandemic, with real GDP rising strongly by 5.2% in 2021 and 3.7% in 2022, the Province is facing elevated inflation, high interest rates and a weaker global environment. As such Ontario's economic growth is projected to slow.
172. Ontario's average annual inflation rate reached a 40 year high of 6.8% in 2022, led by a 22.9% increase in energy prices and a 9.1% increase in food prices. Year-over-year Consumer Price Index (CPI) inflation remained elevated in May 2023, at 3.4%. The Bank of Canada felt monetary policy was not sufficiently restrictive to bring supply and demand back into balance and return inflation sustainably to the 2% target. In response to elevated inflation, the Bank of Canada aggressively raised its policy interest rate 0.25% to 4.75% on June 7, 2023, the highest in 16 years. In line with most private sector economists, the FAO projects that short-term interest rates will stay above long-term rates in 2023, which has historically indicated the possibility of weak economic growth and the risk of a recession.

173. Wage settlements above the historical average could result in a deterioration of the Province's finances. The FAO's program spending forecast assumes wage growth is consistent with existing collective agreements. Given the forecast for elevated inflation, potential exists for above-average wage settlements.
174. The Province's economic strategy is predicated on controlled spending and the management of provincial debt. This is essential to ensure continued economic growth. Unduly increasing the Province's compensation requirements hampers the government's ability to establish and maintain a balanced budget and would require the government to either reduce program spending and/or increase taxes in order to cover these additional costs, while also maintaining other commitments and priorities.

**7.3 A Comparison, as Between the Employees and Other Comparable Employees in the Public and Private Sectors, of the Terms and Conditions of Employment and the Nature of the Work Performed**

175. The Parties themselves in their numerous settlements since 1993 (when the right to strike replaced the interest arbitration regime) have not based their determination of across-the-board wage issues for the Correctional Bargaining Unit on outside comparisons. The transfer of approximately 2,000 employees from the Unified Bargaining Unit to the Correctional Bargaining Unit effective January 1, 2018 (Employer's Book of Exhibits, Tab B) is especially compelling in that it further demonstrates that the Unified Bargaining Unit is the closest comparator for the Correctional Unit.
176. In accordance with a Memorandum of Settlement dated December 15, 2016, approximately 2,000 employees (e.g., administrative employees, nurses, maintenance, tradespersons) ("Wall-to-Wall employees") in OPSEU/SEFPO Unified Bargaining Unit positions transferred from the Unified Bargaining Unit to the Correctional Bargaining Unit effective January 1, 2018. A subsequent Memorandum of Understanding, dated January 23, 2018, sets out specific classifications from the Unified Bargaining Unit to be transferred and established in the Correctional Bargaining Unit (Employer Book of Exhibits, Tab B).
177. The Wall-to-Wall employees were not transferred because the work they performed was any different from the employees in the Unified Bargaining Unit who held the same positions. Rather, the Employer and Union agreed to transfer the Wall-to-Wall employees

because they were headquartered at adult correctional facilities, youth justice facilities, probation and parole offices, and probation offices as well as the SOLGEN training college (i.e., Corrections Centre for Professional Advancement and Training, which was previously known as the Correctional Services Recruitment and Training Centre), and worked alongside Correctional Bargaining Unit employees in these facilities. The transfer also avoided any future labour disruptions in the correctional facilities in the event of a labour disruption involving Unified Bargaining Unit employees.

178. Effective January 1, 2018, the Wall-to-Wall employees transferred from the Unified Bargaining Unit to the Correctional Bargaining Unit.
179. The Unified Bargaining Unit employees, who hold the same or similar positions as the Wall-to-Wall employees, but are not headquartered in a correctional facility, youth justice facility, probation and parole office, probation office or the training centre, remain in the Unified Bargaining Unit. The Wall-to-Wall employees and the Unified Bargaining Unit employees holding the same or similar positions in each bargaining unit have the same or similar duties and responsibilities.
180. The Employer submits that the appropriate comparator positions for the Wall-to-Wall employees are the Unified Bargaining Unit employees who hold the same or similar positions for the following reasons:
  - a) Prior to the transfer, the Wall-to-Wall employees and the Unified Bargaining Unit employees who held the same position were in the same bargaining unit, performing the same or similar duties and responsibilities.
  - b) After the transfer, the Wall-to-Wall employees have continued to perform the same work. The employees in the same or similar positions that remained in the Unified Bargaining Unit continue to perform the same work. For example, there is no change in the scope of work performed by a court clerk and registrar (Office Administration 08 classification) working in a courthouse (i.e., a position in the Unified Bargaining Unit) and the scope of work performed by a records clerk in an adult institution (i.e., a position in the Correctional Bargaining Unit at the Office Administration 08 classification) as a result of the transfer of positions from the Unified Bargaining Unit. The only difference between the positions is the location



where the work is performed and the bargaining unit that they now sit in, which does not impact the substance of the work performed for these types of employees. There is no reason why they should be compensated differently.

181. Accordingly, if a higher or lower wage increase is granted to the Wall-to-Wall employees, there would be wage disparities between employees who are performing similar or the same work in the same parallel classifications across the two OPSEU/SEFPO bargaining units. This could result in future recruitment and retention issues in the Unified Bargaining Unit or the Correctional Bargaining Unit if interest arbitration attracts higher or lower wages for these Correctional Bargaining Unit employees in positions that are performing work that is similar or the same to that of positions in the Unified Bargaining Unit.
182. If interest arbitration attracts higher wages for these Correctional Bargaining Unit positions, it could also cause the Unified Bargaining Unit to seek these same wage increases during the next round of collective bargaining, resulting in significant cost implications for the Employer if the Unified Bargaining Unit were to be successful in replicating these outcomes.
183. 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.
184. Currently the same pay equity plan covers all OPSEU/SEFPO employees in both the Unified and Correctional Bargaining Units. Maintaining the same wages across the positions that exist in both bargaining units reduces the risk of pay disparities within the Unified Bargaining Unit.
185. The Employer and OPSEU/SEFPO also agreed pursuant to the MOS of December 15, 2016 (paragraph 9): "If ratified, the parties agree that they will make the necessary changes to the Unified and Correctional Bargaining Unit collective agreements commencing January 1, 2018 to reflect the changes to the Unified and Correctional Bargaining Units pursuant to this Memorandum and to provide for movement between the two bargaining unit as part of the normal operation of the collective agreements in future, including with respect to the application of seniority." These changes include the provisions under employment stability, recruitment and transfers related to employment

accommodation. The inherent purpose underpinning this specific provision was to allow for the continued seamless movement between both bargaining units as it existed prior to the changes to the Correctional Bargaining Unit being implemented. If the same position in each bargaining unit attracts different wage rates, this agreement to a seamless movement would likely be compromised.

186. To ensure seamless mobility between the two bargaining units as agreed by the Parties in its permeability agreement in Appendix 64 of the respective Unified and Corrections collective agreements, in respect of provisions such as job security, recruitment, and employment accommodation, it is essential that wages for this group of 2,000 Wall-to-Wall employees remain the same as those of their Unified Bargaining Unit counterparts. In the past, when there have been downsizings, the ability of impacted employees to access jobs in other Ministries has been seamless because of the fact that the Correctional Bargaining Unit and Unified Bargaining Unit have had the same permeable job security provisions, and the same compensation.
187. Similarly, any special adjustments or increases that may be awarded to classifications in the rest of the bargaining unit (e.g., COs) that are over and above those increases which are in place for the Unified Bargaining Unit should not apply to the Wall-to-Wall group of employees. It should be noted that Correctional Bargaining Unit Nurses have been recognized as distinct also for the purposes of special adjustments, as set out in the arbitration decision during the last round of collective bargaining. Historically, the OPSEU/SEFPO Correctional Bargaining Unit has achieved special wage adjustments that did not apply to the Unified Bargaining Unit (e.g., in January 1, 2002 an additional step was added to all classifications within the Correctional Bargaining Unit with the step being 5% above the current highest step in the classification. Also effective January 1, 2002, in addition to the additional step being added, a 4% increase was made to all rates in the salary range for PO 1 and 2 classes).
188. For these reasons, the outcomes reached in free collective bargaining for the Employer and the OPSEU/SEFPO Unified Bargaining Unit, ratified by the Parties on January 26, 2022, should be replicated for this group of approximately 2,000 employees.
189. For the purposes of this interest arbitration, the Employer submits that there is an identifiable group of approximately 300 employees working in "legacy" positions (e.g.,

recreation officers, rehabilitation officers, industrial officers) which were part of the Correctional Bargaining Unit prior to the transfer of former Unified Bargaining Unit Wall-to-Wall positions into the Correctional Bargaining Unit in accordance with the Wall-to-Wall Agreement (this legacy group does not include COs/YSOs or POs). While the legacy positions do not have mirror positions in the Unified Bargaining Unit, the salaries of these positions have increased largely in step with those of the Unified Bargaining Unit over the last 15 years.

190. For these reasons, the outcomes reached in free collective bargaining for the Employer and the OPSEU/SEFPO Unified Bargaining Unit should be replicated for this legacy subgroup.

#### **7.4 The Employer's Ability to Attract and Retain Qualified Employees**

191. This criterion pertains to "market forces", or the supply and demand for labour. Simply put, do individuals seek out this form of employment and if they are successful in obtaining it, do they stay?
192. The Employer has a strong positive record with respect to retention and recruitment of employees in the OPSEU/SEFPO Correctional Bargaining Unit, which demonstrates that the current compensation package and other terms of employment strike an appropriate balance between the competing market forces of supply and demand. In simple terms, demand for a position within the Correctional Bargaining Unit outstrips supply.
193. Morley Gunderson emphasized the importance of an economic and quantitative approach to this aspect of interest arbitration in *Economics Aspects of Interest Arbitration* (Toronto: Ontario Economic Council, 1983) (Employer's Book of Authorities, Tab 13) at p. 43:

...all the criteria now in general use in interest arbitration have practical or theoretical disadvantages; many have both. Thus, arbitrators and policymakers search for better standards to use in setting compensation that is equitable and practical.

A guide can be found in the basic principles of economics, which suggest that arbitrators can use measures of disequilibrium on the quantity side as a proxy for disequilibrium on the wage side. **That is, wage rates that are too high, relative to their private-sector counterparts or for the requirements of the jobs, result in excess supplies of workers for those jobs. Conversely, wage rates that are too low result in**

**shortages of workers. Provided any such disequilibrium can be quantified and measured, an arbitrator can use it as a criterion for a settlement.**

Such disequilibrium quantity measurements can be obtained with relative ease. **One measure of supply is the number of applicants relative to the number of jobs. Another is the quit rates (a measure that has the advantage of counting only workers who have been judged qualified to do the relevant jobs) [...]**

One virtue of such disequilibrium quantity measures is that they do not require the arbitrator to evaluate all the non-wage aspects of a job in setting compensation for it. **When workers vote with their feet by attempting to obtain jobs or leave them, they evaluate all the components of compensation - fringe benefits, the cost of living, job security, and working conditions (perhaps those associated with productivity change), as well as wages. This consideration is important since evaluating such non-wage differences is a crucial issue in determining appropriate wage awards, especially when public-private sector comparison are involved. Another advantage is that workers' actions indicate their own relative evaluations of public and private-sector jobs, even then they are not directly comparable; hence, the disequilibrium quantity measures do not require finding private-sector counterparts or making comparisons within the same region. Also, such measures reflect the employees' perception of the long-run worth of particular contractual arrangements. They are not unduly influenced by a single anomalous contract whose results can be expected to be transitory and rectified over time.**

*[Emphasis added]*

194. The use of interest arbitration to resolve collective agreement negotiations requires the Arbitrator to ascertain what the Parties would have agreed upon if they were able to use the traditional economic sanctions of a strike or lockout. As Mr. Gunderson's analysis makes clear, an inquiry into the demand for and supply of positions in the Correctional Bargaining Unit is an effective, objective method for determining what would be the relative bargaining strengths of the Parties in the traditional labour relations model. The economic supply and demand model is a reflection of what employees and employers do in an open free market system. In fact, it is not a "true" open market system for the Employer because of the constraints placed upon it by the collective agreement. An employee, on the other hand, has the freedom to move from employer to employer as it suits the employee's needs. In the case of the Correctional Bargaining Unit, applicants are applying in ample numbers to the Employer and current employees are steadfastly loyal.

195. As Mr. Gunderson recognized, it is very instructive to watch employees vote with their feet. An employee is in the best position to evaluate all the components of compensation – fringe benefits, the cost of living, job security, pension and working conditions, and wages – and their relative value to the individual. This comprehensive perspective is important, since evaluating such non-wage differences is a crucial issue in determining appropriate wage awards.

196. The approach developed by Mr. Gunderson has been adopted by interest arbitrators in several decisions, including *Leacock Care Centre and Christian Labour Assn of Canada, Re*, 2007 CarswellOnt 10533 (ON LA) (Luborsky) (Employer's Book of Authorities, Tab 14). In that case, the arbitrator stated at para. 14:

The employer points out that there are several competing nursing homes in Orillia and immediate area that the number of Leacock employees leaving to work for those competing homes is low, being three part-time employees who left for full-time hours and two other full-time employees. While the union suggested that employees are leaving Leacock because of unsatisfactory pay levels, there was not firm evidence contradicting the employer's reported employee losses. We agree with the observations by a number of commentators that employees who are unsatisfied with the terms and conditions of employment and have a practical alternative employment option typically "vote with their feet". From the perspective of replicating free collective bargaining there appears to be little pressure on this employer to close the gap by increasing its wage rates to the same level as mature builds having regard to the absence of evidence to date showing that substantial employees are leaving Leacock for better wages elsewhere. That does not mean to diminish the valuable contributions of the employees to the nursing home, but merely points to a market reality within which collective bargaining subsists.

197. In *Cape Breton (Regional Municipality) and NSGEU, Re*, 2006 CarswellINS 705 (NS LA) (Employer's Book of Authorities, Tab 15), the arbitrator held at para. 56 that favourable recruitment and retention statistics leads "to the inference that working conditions [are] more or less what and where they should be."

198. Several decisions specifically applied this analysis while making note of the importance of the work performed by the employees in question, a consideration which is of considerable relevance in the instant case. These include *Yarmouth (Town) and Yarmouth Firefighters' Assn. Local 2094, Re*, 2003 CarswellINS 671 (NS LA) (Veniot) at para 50 (Employer's Book of Authorities, Tab 16):

It is essential that these positions be filled, and if the wages which are being offered to fill them are not adequate, this should be reflected by difficulty experienced in attracting and retaining appropriately qualified bargaining unit members. Conversely, where there are no indications that recruitment and retention is an issue, this is indirect but strong evidence that the employer is meeting the wage demands of the market. The Employer recognizes the critical work that Correctional Bargaining Unit employees perform and it currently accounts for this with justifiable compensation policies. The effectiveness of these policies is evidenced by the data presented in the next section, which demonstrate the Employer's recruitment and retention record.

**(a) Recruitment**

199. The OPS is one of the largest employers in the province, employing more than 60,000 people. OPS employees perform a wide range of meaningful and challenging work and the OPS is committed to remaining an employer of choice and attracting top talent. The OPS has an established reputation of attraction and retention, including within the OPSEU/SEFPO Correctional Bargaining Unit.

*(i) SOLGEN*

200. The Correctional Officer Training and Assessment ("COTA") Program is an eight-week training and assessment program containing theory and practical skills based on job-related topics. It includes behavioural and skills-based assessment of recruits. The cost of the COTA Program is paid by the individual candidates.

201. Over the period from April 2019 to June 2023, there were a total of 2,125 successful COTA graduates. In the past two fiscal years (April 2021 to March 2023) alone, there were a total of 1,346 successful COTA graduates or an average of 673 graduates per year. The large number of successful COTA graduates shows that the Employer continues to have no difficulty finding a body of qualified applicants for CO positions from which to recruit.

202. There were two mass centralized recruitment processes for CO positions completed in SOLGEN between April 1, 2021 to March 31, 2023, both of which yielded application volumes which far exceeded the number of vacancies. The first competition yielded 1,425 applications to fill 158 vacancies, while the second yielded 2,163 applications to fill 180 vacancies.

203. For Probation and Parole Officer competitions in SOLGEN that were completed between April 1, 2021 to March 31, 2023, applications again far exceeded the number of available positions. There were a total of 5,646 applications received across 114 postings, or an average of approximately 50 applications per posting.
204. Across all OPSEU/SEFPO Correctional competitions completed in SOLGEN between April 1, 2021 to March 31, 2023 (excluding cancelled competitions), there were a total of 39,956 applications across 704 job postings, i.e., an average of approximately 57 applications per competition. Further, almost half of these postings (294 out of 704) were restricted to OPS employees or posted as open targeted. Open targeted competitions are open to both internal and external candidates, however they are not broadly advertised on the OPS Careers public portal. This posting method is utilized to target qualified external applicants through targeted posting sources, while reducing the overall volume of applications. Of the open competitions that were completed within the period, there was an average of 82 applications received per posting. The high ratio of restricted and open targeted postings paired with high application volumes and COTA program graduates demonstrates that there is a strong pool of interested and qualified talent for positions within the Correctional Bargaining Unit within SOLGEN.

(ii) MCCSS

205. Many more applications are received for bargaining unit positions in MCCSS than there are vacancies.
206. For PO competitions completed in MCCSS between April 1, 2021 to March 31, 2023, there were a total of 269 applications received across 6 postings, or an average of approximately 45 applications per posting.
207. YSO postings are posted on a continuous basis, meaning that postings are active throughout the year and used to fill vacancies as they arise, and as such, applications cannot be isolated to a specific competition. In 2021-22, 849 applications were received for YSO positions, and in 2022-23, 1,098 applications were received, which significantly exceeded the number of vacancies available.

208. For all OPSEU Correctional competitions completed in MCCSS between April 1, 2021 to March 31, 2023 (excluding cancelled competitions and where competition applications are received outside of the OPS Careers portal), there was a total of 1,418 applications across 43 job postings, i.e., an average of approximately 33 applications per competition. It should be noted that almost half of these competitions (18 out of 43) were restricted to OPS employees which typically yield a lower volume of candidates than external competitions and also demonstrates that there is a strong pool of internal candidates who are willing and able to fill Correctional Bargaining Unit vacancies within MCCSS. For open competitions, there was an average of approximately 43 applications per posting.

*(iii) OPSEU/SEFPO Correctional Recruitment Summary – SOLGEN and MCCSS*

209. Overall, there were a total of 41,374 applications received across 747 completed competitions between April 1, 2021 to March 31, 2023 for positions within the OPSEU/SEFPO Correctional Bargaining Unit across SOLGEN and MCCSS (excluding competition applications received outside of the OPS Careers portal). This represents an overall average of 55 applications received per competition. When considering only competitions that were posted as open (435 out of 747 competitions), the number of applications received increases to an average of approximately 80 applications per posting.

210. In summary, the recruitment data for SOLGEN and MCCSS demonstrates that overall the Employer has a positive record with respect to its ability to attract talent to positions in the OPSEU/SEFPO Correctional Bargaining Unit.

**(b) Retention**

211. The following charts show the average years of service for current employees in the Correctional Bargaining Unit as at the end of calendar year 2022. These statistics reflect a high degree of employee retention and satisfaction with the levels of compensation. As illustrated by the tables below, approximately 53% of regular employees have been employed for more than ten years. When factoring in regular employees with more than five years of service, this ratio increases to 83%. The retention rate is indicative of a good degree of employee satisfaction with the levels of compensation.



**Service Year Groupings (Regular and Fixed-Term Employees)**

AS\_OF\_DATE 12/30/2022  
 SS\_INCLUSION\_INDY  
 DW\_LTIPIND N

STAFF_GRP	ServYrsGrp							Grand Total
	>=0 and <5	>=5 and <10	>=10 and <15	>=15 and <20	>=20 and <25	>=25 and <30	>=30	
Regular	1,057	1,794	908	917	725	264	381	6,046
Fixed Term	2,411	257	21	11	5	2	9	2,716
<b>Grand Total</b>	<b>3,468</b>	<b>2,051</b>	<b>929</b>	<b>928</b>	<b>730</b>	<b>266</b>	<b>390</b>	<b>8,762</b>

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

	Total Employees	Employees more than 10 years		Employees less than 10 years	
		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%
<b>Grand Total</b>	<b>8,762</b>	<b>3,243</b>	<b>37%</b>	<b>5,519</b>	<b>63%</b>

212. The following chart sets out regular staff termination rates by job group and reason, demonstrating low levels of voluntary termination. Between 2018 to 2022, the voluntary turnover rate (excluding retirements) for the overall OPSEU/SEFPO Correctional Bargaining Unit was low, being between 2.1% to 3%. This rate is on par with the overall OPS voluntary turnover rate which ranged between 1.8% to 3.9% during the same period. These figures suggest that there are high levels of job satisfaction among employees within the Correctional Bargaining Unit, as well as the broader OPS.

**Correctional Bargaining Unit  
Regular Staff Terminations Rates by Job Group and Reason**

2018 Job Group	Avg Head Counts	Retirement		Voluntary		Involuntary		Total Terminations	
	Dec 29/17 & Dec 31/18	Employees	Rate	Employees	Rate	Employees	Rate	Employees	Rate
Correctional Officer	2,679	74	2.8%	23	0.9%	16	0.6%	113	4.2%
Youth Worker	266	11	4.1%	8	3.0%	3	1.1%	22	8.3%
Probation Officer	1,121	23	2.1%	5	0.4%	3	0.3%	31	2.8%
Nursing	413	6	1.5%	36	8.7%	4	1.0%	46	11.1%
Other	914	55	6.0%	42	4.6%	11	1.2%	107	11.7%
<b>2018 COR Total</b>	<b>5,392</b>	<b>169</b>	<b>3.1%</b>	<b>114</b>	<b>2.1%</b>	<b>37</b>	<b>0.7%</b>	<b>319</b>	<b>5.9%</b>
2018 OPS Total	56,274	1,444	2.6%	989	1.8%	218	0.4%	2,647	4.7%

2019 Job Group	Avg Head Counts	Retirement		Voluntary		Involuntary		Total Terminations	
	Dec 31/18 & Dec 31/19	Employees	Rate	Employees	Rate	Employees	Rate	Employees	Rate
Correctional Officer	2,655	85	3.2%	41	1.5%	18	0.7%	144	5.4%
Youth Worker	264	5	1.9%	11	4.2%	1	0.4%	17	6.5%
Probation Officer	1,110	18	1.6%	24	2.2%	3	0.3%	45	4.1%
Nursing	415	5	1.2%	33	8.0%	2	0.5%	40	9.6%
Other	1,556	35	2.3%	69	4.4%	9	0.6%	112	7.2%
<b>2019 COR Total</b>	<b>5,999</b>	<b>148</b>	<b>2.5%</b>	<b>178</b>	<b>3.0%</b>	<b>33</b>	<b>0.6%</b>	<b>358</b>	<b>6.0%</b>
2019 OPS Total	55,814	1,088	1.9%	1,876	3.4%	190	0.3%	3,149	5.6%

2020 Job Group	Avg Head Counts	Retirement		Voluntary		Involuntary		Total Terminations	
	Dec 31/19 & Dec 31/20	Employees	Rate	Employees	Rate	Employees	Rate	Employees	Rate
Correctional Officer	2,779	85	3.1%	24	0.9%	7	0.3%	116	4.2%
Youth Worker	263	10	3.8%	8	3.0%	0	0.0%	18	6.8%
Probation Officer	1,065	25	2.3%	31	2.9%	3	0.3%	59	5.5%
Nursing	423	4	0.9%	32	7.6%	3	0.7%	39	9.2%
Other	1,510	37	2.5%	86	5.7%	9	0.6%	132	8.7%
<b>2020 COR Total</b>	<b>6,040</b>	<b>161</b>	<b>2.7%</b>	<b>181</b>	<b>3.0%</b>	<b>22</b>	<b>0.4%</b>	<b>364</b>	<b>6.0%</b>
2020 OPS Total	54,784	1,136	2.1%	2,119	3.9%	158	0.3%	3,406	6.2%

2021 Job Group	Avg Head Counts	Retirement		Voluntary		Involuntary		Total Terminations	
	Dec 31/20 & Dec 31/21	Employees	Rate	Employees	Rate	Employees	Rate	Employees	Rate
Correctional Officer	2,976	81	2.7%	36	1.2%	22	0.7%	139	4.7%
Youth Worker	246	8	3.3%	12	4.9%	3	1.2%	23	9.4%
Probation Officer	1,014	33	3.3%	16	1.6%	1	0.1%	50	4.9%
Nursing	418	8	1.9%	43	10.3%	5	1.2%	56	13.4%
Other	1,497	43	2.9%	63	4.2%	9	0.6%	115	7.7%
<b>2021 COR Total</b>	<b>6,149</b>	<b>173</b>	<b>2.8%</b>	<b>170</b>	<b>2.8%</b>	<b>40</b>	<b>0.7%</b>	<b>383</b>	<b>6.2%</b>
2021 OPS Total	54,750	1,294	2.4%	1,342	2.5%	156	0.3%	2,790	5.1%

2022 Job Group	Avg Head Counts	Retirement		Voluntary		Involuntary		Total Terminations	
	Dec 31/21 & Dec 30/22	Employees	Rate	Employees	Rate	Employees	Rate	Employees	Rate
Correctional Officer	3,013	91	3.0%	43	1.4%	19	0.6%	153	5.1%
Youth Worker	226	6	2.7%	3	1.3%	4	1.8%	13	5.8%
Probation Officer	978	30	3.1%	12	1.2%	5	0.5%	46	4.7%
Nursing	410	6	1.5%	37	9.0%	0	0.0%	43	10.5%
Other	1,481	66	4.5%	84	5.7%	10	0.7%	158	10.7%
<b>2022 COR Total</b>	<b>6,107</b>	<b>199</b>	<b>3.3%</b>	<b>179</b>	<b>2.9%</b>	<b>38</b>	<b>0.6%</b>	<b>413</b>	<b>6.8%</b>
2022 OPS Total	55,289	1,596	2.9%	1,419	2.6%	196	0.4%	3,205	5.8%

Notes:

Avg Head Counts: WIN Theoretical Payroll for 2 periods (i.e. Dec 31 in current and prior year) and reflect regular staff

Retirement Exits Include: Retirements, factor 80, factor 90 and factor 60/20.

Voluntary Exits are the results of employee initiated voluntary resignations, including TEI terminations

Involuntary Exits Include: With cause; death; termination with enhanced severance; or release during PR period

213. The table below shows the voluntary turnover rate (excluding retirements) for regular employees within the OPSEU/SEFPO Correctional Bargaining Unit and the OPS overall over the 10-year period from 2013 to 2022. Voluntary turnover rates within the Correctional Bargaining Unit have been consistently low over the 10-year period and are fairly

consistent with overall OPS turnover rates. Voluntary turnover for the Correctional Bargaining Unit was between 0.9% to 3% over the 10-year period. These rates are consistent overall with the OPS average; the voluntary turnover rate in the OPS was between 1.5% to 3.9% during the same period. In fact, the voluntary turnover rate in the Correctional Bargaining Unit was slightly lower than the OPS average for seven out of the 10 years examined. The 10-year trend is compelling evidence that compensation and employment conditions support the attraction and retention of staff within the Correctional Bargaining Unit.

**Regular Staff Voluntary Turnover Rates (Excluding Retirements) 10-Year Trend  
OPSEU/SEFPO Correctional vs. OPS Overall Average**

<b>Year</b>	<b>OPSEU/SEFPO Correctional</b>	<b>OPS</b>
<b>2013</b>	0.9%	1.5%
<b>2014</b>	1.3%	2.3%
<b>2015</b>	1.2%	2.6%
<b>2016</b>	1.6%	2.5%
<b>2017</b>	1.4%	1.6%
<b>2018</b>	2.1%	1.8%
<b>2019</b>	3.0%	3.4%
<b>2020</b>	3.0%	3.9%
<b>2021</b>	2.8%	2.5%
<b>2022</b>	2.9%	2.6%

214. In summary, the Employer’s strong talent attraction record, paired with high retention and low voluntary turnover rates within the Correctional Bargaining Unit demonstrates that compensation, combined with other employment conditions for Correctional and Unified Bargaining Unit members, has continued to strike an appropriate balance between the market competing forces of supply and demand.

**7.5 Replication**

215. The most relevant precedents to consider when applying the replication principle are settlements reached by the Employer and other bargaining agents in the OPS, and primarily, settlements reached with the OPSEU/SEFPO Unified Bargaining Unit.

216. The pattern of collective agreements negotiated between the Employer and OPSEU/SEFPO is important evidence on the replication principle as described below.
217. Peter Barton in his 1982 Award in the Participating Hospitals and London and District Service Workers' Union, Local 220 set out:

*...It is quite clear that **interest arbitration is something more than throwing a number of issues at a Board and hoping that the Board will accept at least some of them.** We have not taken a position that because there are a lot of demands we must therefore necessarily grant a lot of them. **One of the considerations that has influenced us** is whether or not there has been a **proven need for a change.***

**(a) Agreement for OPSEU/SEFPO Unified Bargaining Unit Should be Replicated**

218. The agreement negotiated by these Parties for the Unified Bargaining Unit ratified on January 26, 2022, which forms the Unified Collective Agreement for the term from January 1, 2022 to December 31, 2024, serves as compelling evidence of the deal the Parties would have struck for the Correctional Bargaining Unit in a free collective bargaining environment.
219. The agreement with the OPSEU/SEFPO Unified Bargaining Unit provided for the following:
- a) **Term:** 3 years
  - b) **Across the Board Wage Adjustments:**
    - i. January 1, 2022 –1.0% ATB
    - ii. January 1, 2023 –1.0% ATB
    - iii. January 1, 2024 –1.0% ATB
  - c) **On-Call Duty:** Effective January 1, 2022, increase on-call premium from \$1.40 to \$1.95 per hour.

**d) Shift Premiums:**

- i. Effective January 1, 2023, increase shift premium from \$0.98 to \$1.23 for eligible hours.
- ii. Effective January 1, 2024, increase shift premium from \$1.23 to \$1.43 for eligible hours.

**e) Health Care Spending Account (HCSA):** Effective 90 days from date of ratification, regular and seasonal employees to be allotted an annual amount of \$300 in a new health care spending account to be used for eligible medical expenses.

**f) Administrative Changes to Insured Benefits Plan:** Effective 90 days from date of ratification, a number of administrative/best practices changes to be implemented to help support the sustainability of the prescription drug benefit plan:

- i. Prior Authorization, which means pre-approval will now be required for specified eligible prescribed drugs.
- ii. Enhanced Mandatory Generic Substitution, which is reimbursement of prescribed drugs to be based on the lowest cost eligible generic drug price.
- iii. Dispensing Fee Cap of \$11.99.
- iv. Dispensing Fee Limit of 5 times a year for eligible prescribed maintenance drugs that can be reasonably dispensed over a longer term.
- v. *Manulife DrugWatch* Program, which monitors and analyzes the effectiveness and value of certain new drugs in comparison to existing drugs that target similar conditions.
- vi. Specialty Drug Care Program, which provides support of a nurse case manager for individuals taking medications to treat complex, chronic or life-threatening conditions.
- vii. Enhanced Controls on Vitamin B6/B12 Injections.

**g) Pregnancy and Parental Leave:**

Effective 90 days from date of ratification:

- i. Move the second week waiting period SUB plan payment paid at 93% of the employee's salary so that it is taken during the leave period when the employee is not in receipt of Employment Insurance (EI) benefits, and prior to the employee returning to the workplace.
- ii. 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.
- iii. 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.

**iv. Supplementary Health and Hospital Insurance:**

- i. **Psychological Services** – Effective January 1, 2022, increase Per Half Hour Cap from \$40 to \$80 and increase annual maximum from \$1400 to \$1600.
- ii. **Paramedical Services** – Effective January 1, 2023, increase per Visit Cap for Eligible Practitioners and Per Half Hour Cap for Speech Therapist from \$25 to \$30. Effective January 1, 2024, increase per Visit Cap for Eligible Practitioners and Per Half Hour Cap for Speech Therapist from \$30 to \$35. Annual Maximums are unchanged.

- v. **Fixed-Term Benefits:** Enhanced opportunities for fixed-term employees to opt-in to the insured benefits

**vi. Posting and Filling of Positions or New Vacancies**

- i. Effective 90 days from date of ratification, an employee who works or resides outside the identified area of search may apply to a restricted position and if they

apply, they will be deemed to have waived entitlements to any relocation and related expenses, as a condition of gaining access to the competition process.

- ii. Reach-back may be used to fill the same vacancy or new position within 14 months following the conclusion of the previous competition (previously from closing date of the posting).

vii. **Mass Centralized Recruitment Process**

- i. Elimination of the requirement to advise candidates of their individual rank order upon the completion of the competitive process.
- ii. Mass centralized recruitment may be used to fill positions that arise within 18 months from the conclusion of the competition. Previously the 18-month period started from the closing date of the posting.
- iii. Reference to obtaining a valid surplus clearance number was removed; positions will still require clearance prior to filling.

viii. **Reskilling and Employee Portfolio**

- i. Language has been added to allow the Employer the option of implementing an electronic system to access and store digital employee portfolios for job security processes.
- ii. The employee transition and reskilling agreement has been renewed and the terms have been incorporated into the collective agreement in a new appendix.

220. The OPSEU/SEFPO Unified Bargaining Unit 2022-2024 memorandum of settlement is compelling evidence of what a fair and reasonable resolution of the matters in dispute would be in a freely negotiated environment. If OPSEU/SEFPO seeks improvements and/or variances on the terms of that agreement, the Union bears a heavy onus to show clear and compelling reasons justifying its demands in light of the longstanding patterned bargaining history between the Unified and Correctional Bargaining Units (as described below), and in light of the permeability agreement each bargaining unit has in each respective collective agreement. Accordingly, in this regard, any interest arbitration award

should follow the Unified Bargaining Unit, as the Correctional Bargaining Unit has typically followed the pattern set by Unified.

**(b) Other OPS Settlements**

221. As mentioned in Section 3 above, the Employer and AMAPCEO reached a three-year agreement which was ratified in November 2022. The AMAPCEO agreement provides for the same across-the-board wage increases as the Unified Bargaining Unit.
222. The table below shows across-the-board wage increases for the OPSEU/SEFPO Unified Bargaining Unit, OPSEU/SEFPO Correctional Bargaining Unit and AMAPCEO Bargaining Unit. This chart demonstrates, among other things, that across-the-board increases for the Correctional group historically align with those of the Unified group and, for the most part, with AMAPCEO.

	1997-2021 Compounded		1997-2021 Annual Average (with compounding)	
	In Range	At Max	In Range	At Max
<b>OPSEU/SEFPO Unified Bargaining Unit</b>	48.81%	53.27%	1.60%	1.72%
<b>OPSEU/SEFPO Correctional Bargaining Unit</b>	50.28%	58.58%	1.64%	1.86%
<b>AMAPCEO</b>	47.87%	55.40%	1.58%	1.78%

*(i) Pattern of Unified and Correctional Units Being Treated in a Consistent Manner*

223. It is important to examine the historical context to understand the particular bargaining patterns of the Parties. These patterns are paramount in applying the replication principle in determining the appropriate arbitrated outcome and demonstrate a clear and well-established pattern of OPSEU/SEFPO Unified and Correctional Bargaining Unit employees achieving outcomes that are both consistent and modest with respect to across-the-board wage increases.



224. We outline below OPSEU/SEFPO OPS bargaining outcomes from 1993. In that year, legislative changes were made to give the OPSEU/SEFPO OPS Bargaining Unit the right to strike which replaced the former binding interest arbitration regime.
225. **1994 to 1998 Collective Agreement:** From 1993 to 1998, there was a consistent bargaining outcome for both the Correctional Bargaining Unit and the Office Administration bargaining unit, which resulted in zero percent across the board wage increases for the five years. This round of bargaining included the reaching of a settlement after a protracted strike in 1996 (Employer's Book of Exhibits, Tab U).
226. **1999 to 2001 Collective Agreement:** Following five years of wage freezes, this settlement was the first since 1993 to result in across-the-board increases. This collective agreement resulted in the same across-the-board increases for both the Correctional Bargaining Unit and the other OPSEU/SEFPO OPS bargaining units (i.e., comprising the future Unified Bargaining Unit), without any special adjustments. (Employer's Book of Exhibits, Tab V).
227. **2002 to 2004 Collective Agreement:** The Parties agreed to negotiate wages at two tables from this round of negotiations going forward. One table would be for the Correctional Bargaining Unit and the other table would be for the newly created Unified Bargaining Unit which became the umbrella unit for the remaining OPSEU/SEFPO OPS bargaining units other than Correctional. This round of collective bargaining resulted in across-the-board increases of 3.5% for 2002, 2.45% for 2003 and 2.5% for 2004 (the same for Correctional and Unified bargaining units). This round also resulted in an additional step at the maximum salary grids for all job classes in both the Correctional Bargaining Unit and the Unified group (although there was differential treatment between the Correctional and Unified groups in terms of the quantum and application of the additional step). This settlement was reached after a nearly two-month OPSEU/SEFPO strike (Employer's Book of Exhibits, Tab W).
228. **2005 to 2008 Collective Agreement:** In the 2005 round of OPSEU/SEFPO OPS bargaining, a four-year deal was achieved with the across-the-board increases applying equally to both the Correctional Bargaining Unit and the Unified Bargaining Unit. (Employer's Book of Exhibits, Tab X).

229. **2009 to 2012 Collective Agreement:** This settlement resulted in across-the-board increases being applied to all job classifications, The across-the-board increases were 1.75% for 2009, 2.0% for 2010, 2.0% for 2011 and 2.0% for 2012 (the same for the Unified and Correctional bargaining units). However, after the Memorandum of Agreement was reached with Unified, the Employer, by way of a letter, agreed to provide an extra one percent over and above the agreed across the board wage increases number for January 1, 2012 for members of that bargaining unit resulting in an ATB of 3.02% for Unified versus the Correctional Bargaining Unit increase of 2% (Employer's Book of Exhibits, Tab C).
230. **2013 to 2014 Collective Agreement:** This collective agreement round of negotiations resulted in identical outcomes for the Correctional bargaining unit and the Unified bargaining unit and provided for a two-year wage freeze and an additional step at the minimum of the salary grid was introduced (3% lower than the previous rate), which changes applied to all job classes. The agreement included an increase of \$0.85 per hour for applicable correctional job classes, including the CO2 classification, which was directly offset by the elimination of a weekend premium provision (\$3.00 per hour). (Employer's Book of Exhibits, Tab D)
231. **2015 to 2017 Collective Agreement:** The 2015 to 2017 settlement provided for another two-year wage freeze and 1.4% across-the-board increases in the final year of the contract, covering employees in both the Correctional Bargaining Unit and the Unified Bargaining Unit (Employer's Book of Exhibits, Tab E).
232. **2018 to 2021 Collective Agreement:** As a result of changes to CECBA in 2016 which provided for interest arbitration as the dispute resolution mechanism for the Correctional Bargaining Unit, this was the first round of bargaining standalone collective agreements for the OPSEU/SEFPO Unified and Correctional Bargaining Units. On June 2, 2017, the Employer reached tentative extension agreements with both the OPSEU/SEFPO Unified and Correctional Bargaining Units. While ratified by the OPSEU/SEFPO Unified Bargaining Unit, the OPSEU/SEFPO Correctional Bargaining Unit did not ratify. Ultimately, the 2018 to 2021 interest arbitration decision for the Correctional Bargaining Unit replicated the across-the-board wage increases from the Unified Bargaining Unit. However, the only difference was that the first year of the across-the-board wage increase

was implemented six months prior to the start of the Unified collective agreement in accordance with the ratified extension agreement (Employer's Book of Exhibits, Tab Y).

233. These previous freely negotiated awards for the OPSEU/SEFPO Unified and Correctional Bargaining Units and across the-board increases from 2022 - 2024 are demonstrated by the chart below:

**Across the Board (ATB) Wage Increases for OPSEU/SEFPO Unified  
and Correctional Bargaining Units**

<b>Year</b>	<b>Effective Date</b>	<b>Type of Increase</b>	<b>OPSEU/SEFPO Unified</b>	<b>OPSEU/SEFPO Corrections</b>	<b>Tentative Settlement Timing</b>
2002 – New Collective Agreement	2002-01-01	General Wage Increase	1.95%	1.95%	<b>Unified – May 2, 2002</b>  <b>Corrections – May 2, 2002</b>
2003	2003-01-01	General Wage Increase	1.95%	1.95%	Same as above
2004	2004-01-01	General Wage Increase	2.50%	2.50%	Same as above
2005 – New Collective Agreement	2005-01-01	General Wage Increase	2.00%	2.00%	<b>Unified – June 11, 2005</b>  <b>Corrections – June 11, 2005</b>
2006	2006-01-01	General Wage Increase	2.25%	2.25%	Same as above
2007	2007-01-01	General Wage Increase	2.50%	2.50%	Same as above
2008	2008-01-01	General Wage Increase	3.00%	3.00%	Same as above
2009 – New Collective Agreement	2009-01-01	General Wage Increase	1.75%	1.75%	<b>Unified – December 24, 2008</b>  <b>Corrections – March 1, 2009</b>
2010	2010-01-01	General Wage Increase	2.00%	2.00%	Same as above
2011	2011-01-01	General Wage Increase	2.00%	2.00%	Same as above

<b>Year</b>	<b>Effective Date</b>	<b>Type of Increase</b>	<b>OPSEU/ SEFPO Unified</b>	<b>OPSEU/ SEFPO Corrections</b>	<b>Tentative Settlement Timing</b>
2012	2012-01-01	General Wage Increase	3.02%	2.00%	Same as above
2013 – New Collective Agreement		No increase			<b>Unified – January 9, 2013</b>  <b>Corrections – January 9, 2013</b>
2014		No increase			Same as above
2015 – New Collective Agreement		No increase			<b>Unified – September 22, 2015</b>  <b>Corrections – January 9, 2016 (Final Memorandum of Settlement)</b>
2016		No increase	Lump sum 1.40%	Lump sum 1.40%	Same as above
2017 <sup>1</sup>	2017-01-01	General Wage Increase	1.40%	1.40%	Same as above
	2017-07-01	General Wage Increase	1.50% <sup>1</sup>		
2018 – New Collective Agreement	2018-01-01	General Wage Increase		1.50%	<b>Unified – June 2, 2017</b>  <b>Corrections – June 2, 2017<sup>2</sup></b>

<sup>1</sup> Increase was negotiated in June 2017 for the Unified Collective Agreement extension agreement that covered January 1, 2018 to December 31, 2021. The agreement implemented January 1, 2018 increase 6 months early.

<sup>2</sup> OPSEU Correctional bargaining unit rejected the June 2, 2017 tentative settlement which set out the same across the board increases for the Unified and COR bargaining units. An interest arbitration award for the COR bargaining unit issued on April 1, 2019 replicated the across the board increases of the Unified bargaining unit although the award did not include the six month early implementation of the first increase.

<b>Year</b>	<b>Effective Date</b>	<b>Type of Increase</b>	<b>OPSEU/ SEFPO Unified</b>	<b>OPSEU/ SEFPO Corrections</b>	<b>Tentative Settlement Timing</b>
2019	2019-01-01	General Wage Increase	1.00%	1.00%	Same as above
	2019-07-01	General Wage Increase	1.00%	1.00%	Same as above
2020	2020-01-01	General Wage Increase	1.00%	1.00%	Same as above
	2020-07-01	General Wage Increase	1.00%	1.00%	Same as above
2021	2021-01-01	General Wage Increase	1.00%	1.00%	Same as above
	2021-07-01	General Wage Increase	1.00%	1.00%	Same as above
2022 – New Collective Agreement	2022-01-01	General Wage Increase	1.00%	TBD	TBD
2023	2023-01-01	General Wage Increase	1.00%	TBD	TBD
2024	2024-01-01	General Wage Increase	1.00%	TBD	TBD

234. Therefore, the historical bargaining outcomes between the Parties demonstrate that the provision of across-the-board wage increases for the Correctional Bargaining Unit and the Unified Bargaining Unit were essentially the same over an extended period of time. The replication principle strongly suggests that the Parties would have provided the same across-the-board wage increases for Correctional Bargaining Unit members as for members of the Unified unit. The Employer urges the Arbitrator to reach that same result. In light of the fact that the Unified Bargaining Unit has not completed its wage re-opener for the 2022-2024 collective agreement, which was a requirement under their negotiated memorandum of settlement, the Employer respectfully requests 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 re-opener.

235. Given the Correctional Bargaining Units history of replicating Unified across-the-board increases, the Employer submits this is an appropriate result. There is also precedent for a flow through (i.e. tying to an outcome which has not yet occurred) in the OPS. In 2013, the OPPA agreed to a re-opener provision which set out a date that would trigger a wage increase in alignment with wage increases reached in the police sector. Similarly, the Commissioned Officers Association has a memorandum of agreement that establishes a flow-through clause to replicate salary increases which are reached with the Ontario Provincial Police Association ("OPPA") Uniform Bargaining Unit (Employer's Book of Exhibits, Tab Z).
236. Generally speaking, when the Unified and Correctional Bargaining Units split off with the ability to negotiate their respective collective agreements 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.

#### **7.6 Total Compensation**

237. The principle of total compensation requires consideration of all items of compensation. Each monetary demand cannot be examined in isolation, but rather ought to be examined having regard to the entire monetary package: *Oneida Nation of the Thames EMS v Ontario Public Service Employees' Union*, 2014 CanLII 22358 (ON LA) (Stout) (Employer's Book of Authorities, Tab 17).
238. The term "total compensation" encompasses all monetary compensation entitlements that accrue to employees, including wages and all other forms of employee benefits, such as pension and health and welfare benefits, which represent a cost to the Employer.

239. Generally, the largest component of compensation is a “base wage” or salary. However, other components of total compensation can increase compensation beyond just an employee’s base wage. For example, employer-sponsored benefits can add significantly to total compensation. Total compensation should also be considered when comparing salaries to market rates.
240. Benefits and pensions are undoubtedly valued by employees, and also by employers who recognize that these benefits reduce turnover and contribute to workforce continuity and stability. Thus, they must be considered as part of the total compensation package.
241. Arbitrators have long held that the total compensation cost increase of a given settlement or award is of paramount consideration. It is the aggregate cost increase of all of the proposed improvements that must be considered, rather than monetary items in isolation from one another.
242. While the issues in dispute will necessarily be argued at arbitration on an individual basis, no single element of compensation will adequately reflect “total compensation.” Any selection of individual and favourable precedents lacks significance without comparison to the value of all other wage and benefit components considered as a whole. No doubt, examples can be found of generous or favourable awards with respect to any individual demand (e.g. wages), but unless the entire compensation package is revealed, the precedent may be of little to no value. Total compensation must be accepted as presenting a more complete and realistic picture than wages alone or any one element in isolation.
243. Paul Weiler’s interest arbitration award in *65 Participating Hospitals and CUPE*, 1981 CarswellOnt 3551 (ON LA) at paras 46-47 (Employer’s Book of Authorities, Tab 18), is particularly helpful as he reviewed the total compensation concept in depth in his reasons:

I have always thought it essential not to look at any such item in isolation. **With rare exceptions any such proposed improvement looks plausible on its face.** The Union can point to some number of bargaining relationships where this point has already been conceded. It may even be true that, taken one by one, no single revision will actually cost that much. But, **cumulatively, these changes can mount up substantially.** Thus, sophisticated parties in free collective bargaining look upon their settlement as a total compensation package, in which all of the improvements are **costed out and fitted within the global percentage increase which is**



**deemed to be fair to the employees and sound for their employer that year.** In fact, the general wage hike itself generates corresponding increases in the vast bulk of the compensation package represented by the wages, since it increases the regular hourly rate upon which holidays, vacations, overtime and other premiums depend. This means that in any one negotiating round only limited room is left available for improvements in the scope and number of these contract revisions, and the Union must establish its own priorities among these various fringe items.

These facts of free collective bargaining must be kept in mind if arbitration is, indeed, **to try to replicate the results** which would be achieved in the former setting. **The reason is that the arbitration model does not inherently require the parties to make these tough choices in their negotiating positions.** Inside the bargaining unit, for example, one group of employees may want higher pensions, another segment seeks longer vacations, a third is interested in a new dental plan, while others simply want as much higher take-home pay as possible (depending on their respective positions, ages, family situations, and so on). In the arbitration context, the Union does not have to worry that if it asks for too many things at once, the result will be a painful work stoppage. Indeed, the Union may be tempted -- as also the Employer which has its own diverse constituencies which it does not want to alienate -- to carry all of these initial demands forward to the arbitration hearing, on the theory that it has nothing to lose by asking. **And perhaps, a party may even hope that the more improvement it does ask for, the more will be given.** Certainly, it is essential to the integrity of arbitration that these latter assumptions not be reinforced.

[*Emphasis added*]

244. Similarly, Arbitrator Martin Teplitsky recognized the importance of the total compensation criteria in his interest arbitration award in *Windsor Police Board and Windsor Police Association*, June 15, 1981 (unreported) (Employer's Book of Authorities, Tab 19) at pp 1-2:

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

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

245. Further, Arbitrator Gordon Luborsky, in his 2012 interest arbitration award *Royal Oak Long Term Care Centre and Ontario Federation of Health Care Workers (LIUNA, Local 1110)*, Re, [2012] OLAA No 566 (Employer's Book of Authorities, Tab 20) at paras 12-13, applied the total compensation principle and declined to award the enhanced benefits argued for by the Union:

Aside from its requests for wage increases dealt with above, the Union has proposed a number of improvements to benefits, including an additional statutory holiday, increases to vacation entitlement, vision care, drug card, in lieu payment for part-time nurses, responsibility and night responsibility pay, weekend premium, etc., all of which have monetary implications.

Applying the principle of "total compensation", we do not award any of these requests that increase the financial burden on the Employer beyond the awarded wage increases set out above in the prevailing restrictive economic circumstances. Consequently, all other proposals to enhance the benefits and premiums currently payable to employees of the bargaining unit are hereby denied as not being likely achievable at the applicable time in a free strike/lockout bargaining environment.

246. The total compensation model profile illustrated below shows just how substantial CO2, YSO and PO compensation already is, taking into account salary and non-salary related benefits.

## Illustration of CO2 and YSO Total Compensation

### Correctional Officer 2 and Youth Services Officer

2021/22 Regular Staff Benefits	Salary-Related	Non Salary-Related	Total	2021 Salary Maximum + Benefits Estimates
				<b>\$82,171</b>
<b>Insured Benefits</b> (including supplementary health and hospital coverage plus vision and hearing, dental, LTIP, basic life coverage and insured benefits for employees on LTIP)	<b>4.50%</b>	<b>5.27%</b>	<b>9.77%</b>	\$8,026
<b>Statutory Benefits</b> (including CPP, EI, Employer Health Tax and WSIB charges)	<b>3.04%</b>	<b>10.57%</b>	<b>13.61%</b>	\$11,181
<b>Pension</b> (including pension buybacks and pension for employees on LTIP)	<b>11.77%</b>	<b>0.00%</b>	<b>11.77%</b>	\$9,668
<b>Premiums</b> (including overtime premium, call back and shift premium payments)	<b>22.88%</b>	<b>1.16%</b>	<b>24.04%</b>	\$19,752
<b>Termination Pay</b> (including transition exit pay, termination pay, salary continuance, severance payment and death benefit)	<b>0.07%</b>	<b>1.40%</b>	<b>1.47%</b>	\$1,210
<b>Total Benefits/Pension/Premiums/Termination</b>	<b>42.25%</b>	<b>18.40%</b>	<b>60.65%</b>	<b>\$49,838</b>
<b>Estimated Salary and Benefits</b>				<b>\$132,009</b>
<b>Pay for Time Not Worked (2020 Experience)</b>				
Vacation	<b>6.61%</b>			\$5,436
Sick Leave	<b>8.73%</b>			\$7,170
Holidays (12 statutory holidays)	<b>4.33%</b>			\$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%

## Illustration of PO2 Total Compensation

### Probation Officer 2

2021/ 22 Regular Staff Benefits	Salary-Related	Non Salary-Related	Total	2021 Salary Maximum + Benefits Estimates
				<b>\$87,600</b>
<b>Insured Benefits</b> (including supplementary health and hospital coverage plus vision and hearing, dental, LTIP, basic life coverage and insured benefits for employees on LTIP)	<b>4.49%</b>	<b>4.79%</b>	<b>9.28%</b>	\$8,130
<b>Statutory Benefits</b> (including CPP, EI, Employer Health Tax and WSIB charges)	<b>2.58%</b>	<b>10.23%</b>	<b>12.80%</b>	\$11,216
<b>Pension</b> (including pension buybacks and pension for employees on LTIP)	<b>11.29%</b>	<b>0.00%</b>	<b>11.29%</b>	\$9,889
<b>Premiums</b> (including overtime premium, call back and shift premium payments)	<b>0.03%</b>	<b>0.01%</b>	<b>0.04%</b>	\$34
<b>Termination Pay</b> (including transition exit pay, termination pay, salary continuance, severance payment and death benefit)	<b>0.63%</b>	<b>1.07%</b>	<b>1.69%</b>	\$1,483
<b>Total Benefits/Pension/Premiums/Termination</b>	<b>19.01%</b>	<b>16.10%</b>	<b>35.11%</b>	<b>\$30,753</b>
<b>Estimated Salary and Benefits</b>				<b>\$118,353</b>

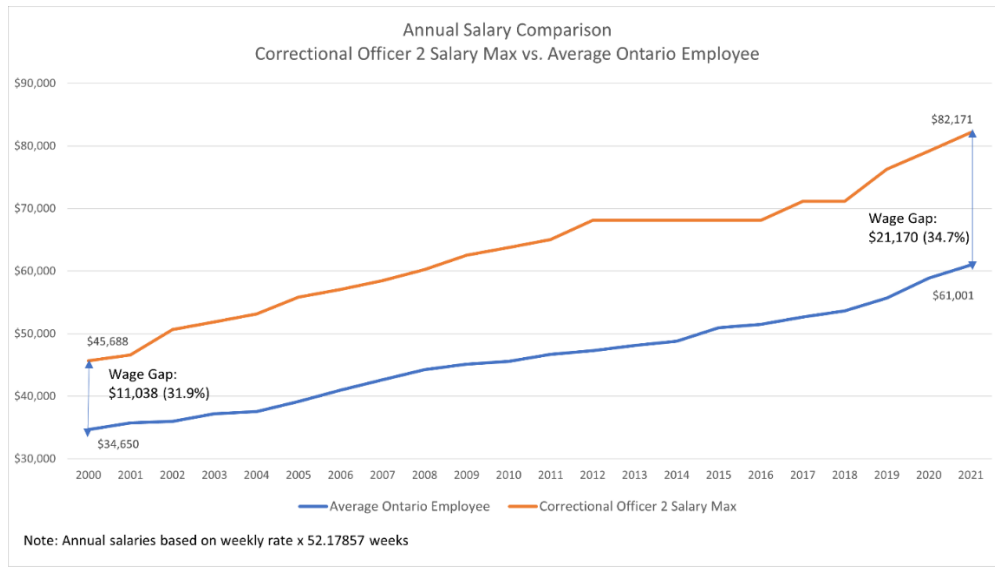
Pay for Time Not Worked (2020 Experience)		
Vacation	<b>6.34%</b>	\$5,556
Sick Leave	<b>3.20%</b>	\$2,803
Holidays (12 statutory holidays)	<b>4.92%</b>	\$4,310
POA Days	<b>2.23%</b>	\$1,951

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 Probation Officer 2 average experience
- Premiums and termination estimates are based on Probation Officer 2 average experience
- Average FTEs based on Regular Staff FTEs on December 31, 2019 & December 31, 2020 were used to estimate vacation, holidays and POA Days experience
- Average Daily Rate based on Regular Staff FTEs (967.64) 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%

247. As illustrated in the charts above, as of March 31, 2022, the approximate total compensation for CO2s and YSOs at maximum salary was \$132,009, and \$118,353 for POs at maximum salary.

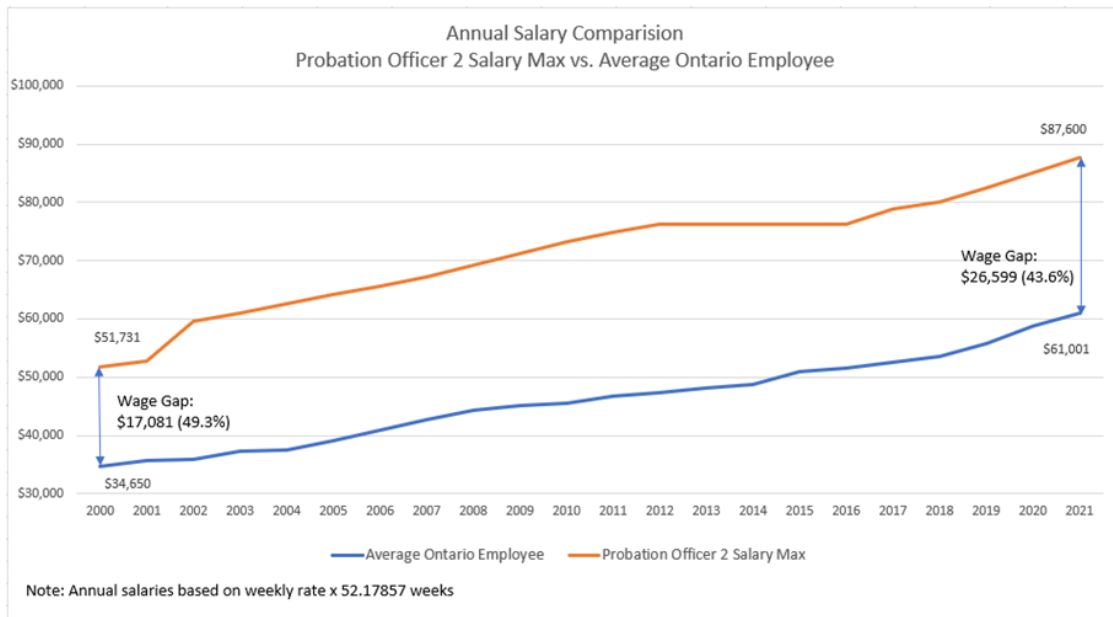
248. The total compensation figures for the average Ontarian are not available. However, when comparing the average Ontarian's annual wages to the CO2 annual base wage end rates over a 21-year period (2000 – 2021), there is a significant gap, which has steadily increased. For example, the gap has increased from \$11,038 in 2000, to \$21,170 in 2021. This is demonstrated in the chart below.



Statistics Canada. [Table 14-10-0063-01 Employee wages by industry, monthly, unadjusted for seasonality.](#)

Release Date: 2023-06-09.

249. When comparing the average Ontarian’s annual wages to the PO2 annual base wage end rates over a 21-year period (2000 – 2021), there is an even greater gap, which has steadily increased. For example, the gap has increased from \$17,081 in 2000, to \$26,599 in 2021. This is demonstrated in the chart below.



Statistics Canada. [Table 14-10-0063-01 Employee wages by industry, monthly, unadjusted for seasonality.](#)

Release Date: 2023-06-09.

## **8. COMPARISON TO FEDERAL CORRECTIONS CX-2 OUTCOMES ACROSS THE OPSEU/SEFPO CORRECTIONAL BARGAINING UNIT IS NOT APPROPRIATE**

### **8.1 Overview of Employer's Position**

250. Despite the Parties' clear bargaining pattern for more than 24 years in an environment of freely negotiated settlements, OPSEU/SEFPO points this Arbitrator to the Federal jurisdiction as a valid comparator for Ontario Correctional Bargaining Unit members. In particular, OPSEU/SEFPO points to the Federal Corrections Officer II ("**Federal CX-2**") as a valid comparator for employees in the Ontario Correctional Officer II ("**Ontario CO2**") position. OPSEU/SEFPO relies on the May 26, 2016 award of Kevin Burkett and his conclusion that Federal correctional officers are a valid comparator (Employer's Book of Authorities, Tab 3).

251. Comparison of the Federal jurisdiction across the OPSEU/SEFPO Correctional Bargaining Unit is not appropriate for four reasons: (1) the Parties' bargaining history shows a clearly established pattern of consistent across-the-board increases between the OPSEU/SEFPO Unified and Correctional Bargaining Units, not the Federal jurisdiction; (2) the Federal CX-2s' duties and responsibilities are not comparable to the duties of an overwhelming majority of Ontario CO2s; (3) total compensation does not support a "catch-up" increase award for Ontario CO2s; and (4) generally, a "catch-up" increase is not justifiable.

### **8.2 The Parties' Bargaining History Should be Replicated**

#### ***(a) Overview of Wage Differential***

252. From 1994 to 2017 (24 years), the Parties freely negotiated collective agreement after collective agreement without regard for the outcomes of negotiated settlements in the Federal jurisdiction. Even the interest arbitration award in respect of the 2018 to 2021 collective agreement again replicated across-the-board increases consistent with the OPSEU/SEFPO Unified agreement, without regard to settlements in the Federal jurisdiction. This is clearly and unequivocally demonstrated by the hourly wage differential between the Ontario CO2 and the Federal Correctional Officer (CX) classifications. The chart below sets out the specifics of the wage differential:

Year	Ontario CO 2 / Youth Worker Max Annual Rate	CX-1 (CO / UCCO) Max Annual Rate	% Difference	CX-2 (CO / UCCO) Max Annual Rate	% Difference	Ontario CO 2 / Youth Worker Hourly Rate	CX-1 (CO / UCCO) Hourly Rate	% Difference	CX-2 (CO / UCCO) Hourly Rate	% Difference
	Annual Basis					Hourly Basis				
1993	\$44,644	\$38,960	-12.73%	\$42,369	-5.10%	\$21.39	\$19.91	-6.91%	\$21.65	1.23%
1994	\$44,644	\$38,960	-12.73%	\$42,369	-5.10%	\$21.39	\$19.91	-6.91%	\$21.65	1.23%
1995	\$44,644	\$38,960	-12.73%	\$42,369	-5.10%	\$21.39	\$19.91	-6.91%	\$21.65	1.23%
1996	\$44,644	\$38,960	-12.73%	\$42,369	-5.10%	\$21.39	\$19.91	-6.91%	\$21.65	1.23%
1997	\$44,644	\$41,782	-6.41%	\$43,998	-1.45%	\$21.39	\$21.35	-0.17%	\$22.49	5.12%
1998	\$44,644	\$42,618	-4.54%	\$46,000	3.04%	\$21.39	\$21.78	1.83%	\$23.51	9.91%
1999	\$45,082	\$43,470	-3.58%	\$46,920	4.08%	\$21.60	\$22.22	2.85%	\$23.98	11.01%
2000	\$45,688	\$46,590	1.97%	\$49,847	9.10%	\$21.89	\$23.81	8.77%	\$25.48	16.38%
2001	\$46,585	\$50,071	7.48%	\$53,137	14.06%	\$22.32	\$25.59	14.65%	\$27.16	21.67%
2002	\$50,634	\$51,323	1.36%	\$54,465	7.57%	\$24.26	\$26.23	8.12%	\$27.84	14.74%
2003	\$51,865	\$52,606	1.43%	\$55,827	7.64%	\$24.85	\$26.89	8.19%	\$28.53	14.81%
2004	\$53,160	\$53,790	1.19%	\$57,083	7.38%	\$25.47	\$27.49	7.93%	\$29.17	14.54%
2005	\$55,831	\$55,081	-1.34%	\$58,453	4.70%	\$26.75	\$28.15	5.23%	\$29.87	11.68%
2006	\$57,083	\$56,458	-1.09%	\$66,412	16.34%	\$27.35	\$27.05	-1.10%	\$31.82	16.34%
2007	\$58,503	\$63,834	9.11%	\$67,740	15.79%	\$28.03	\$30.58	9.11%	\$32.46	15.79%
2008	\$60,256	\$65,111	8.06%	\$69,095	14.67%	\$28.87	\$31.20	8.06%	\$33.11	14.67%
2009	\$62,531	\$66,413	6.21%	\$70,477	12.71%	\$29.96	\$31.82	6.21%	\$33.77	12.71%
2010	\$63,783	\$67,079	5.17%	\$71,183	11.60%	\$30.56	\$32.14	5.17%	\$34.11	11.60%
2011	\$65,056	\$68,253	4.91%	\$72,429	11.33%	\$31.17	\$32.70	4.91%	\$34.70	11.33%
2012	\$66,350	\$69,277	4.41%	\$73,515	10.80%	\$31.79	\$33.19	4.41%	\$35.22	10.80%
2013	\$68,124	\$70,663	3.73%	\$74,985	10.07%	\$32.64	\$33.86	3.73%	\$35.93	10.07%
2014	\$68,124	\$71,546	5.02%	\$75,922	11.45%	\$32.64	\$34.28	5.02%	\$36.38	11.45%
2015	\$68,124	\$75,857	11.35%	\$80,389	18.00%	\$32.64	\$36.34	11.35%	\$38.52	18.00%

Year	Ontario CO 2 / Youth Worker Max Annual Rate	CX-1 (CO / UCCO) Max Annual Rate	% Difference	CX-2 (CO / UCCO) Max Annual Rate	% Difference	Ontario CO 2 / Youth Worker Hourly Rate	CX-1 (CO / UCCO) Hourly Rate	% Difference	CX-2 (CO / UCCO) Hourly Rate	% Difference
	Annual Basis					Hourly Basis				
2016	\$68,124	\$76,805	12.74%	\$81,394	19.48%	\$32.64	\$36.80	12.74%	\$39.00	19.48%
2017	\$71,151	\$77,765	9.30%	\$82,412	15.83%	\$34.09	\$37.26	9.30%	\$39.49	15.83%
2018	\$73,488	\$79,941	8.78%	\$84,719	15.28%	\$35.21	\$38.30	8.78%	\$40.59	15.28%
2019	\$76,264	\$81,700	7.13%	\$86,583	13.53%	\$36.54	\$39.14	7.13%	\$41.48	13.53%
2020	\$79,165	\$82,803	4.60%	\$87,752	10.85%	\$37.93	\$39.67	4.60%	\$42.04	10.85%
2021	\$82,171	\$84,045	2.28%	\$89,068	8.39%	\$39.37	\$40.27	2.28%	\$42.67	8.39%

253. It is very important to note that during a period of free collective bargaining for the Ontario Correctional Officer 2 shown in the chart from 1995 to 2017 inclusive, the CO2 hourly salary has consistently lagged behind the CX-2 salary rate. The difference in salaries varied between the CO2 being 1.23% below the CX-2 in 1995/1996 to 21.67% in 2001. Overall, the average weighted difference between the salaries was 12.92% over the 23 years between 1995 and 2017, a period when the Federal CX-2 had access only to interest arbitration while the Ontario CO2 had access to right to strike. In fact, the Ontario CO2s struck in both 1996 and in 2002.

254. Accordingly, while the Ontario CO2 had access to the right to strike there appeared to be an acceptance of a salary rate lower than the Federal CX-2 and the difference between the two salaries actually grew larger over the years. In fact, in back-to-back contracts covering the periods 2013 to 2014 and 2015 to 2017 the Ontario CO2 accepted four years of zero increases from 2013 to 2016 inclusive while the Federal CX-2 received an increase of 10.72% over the same period. It is important to note that during the two collective bargaining periods referred to above there was no legislative or other encumbrance preventing the Ontario CO2s from striking on the issue of salary had they been dissatisfied with the Employer's offer at the time.



255. While the Employer has provided strong evidence that the Federal CX-2 is not an appropriate comparator for the Ontario CO2, should the arbitrator decide that it is an appropriate comparator then the arbitrator must view the lengthy period of the Ontario CO2 free collective bargaining history of the salary lagging behind the Federal CX-2. If the Employer's wage proposal is awarded, it is the Employer's position that an Ontario CO2 differential of 16.63 percent behind the Federal CX-2 is both realistic and appropriate.

**(b) History of Freely Negotiated Modest Increases**

256. Further, the wage differential illustrated above grew in an environment of freely negotiated agreements from 1994 to 2017, in which OPSEU/SEFPO exercised its right to strike when unsatisfied with the offer presented by the Employer and agreed to modest wage increases in exchange for items that its membership assigned a greater value to at the time. A brief overview of the bargaining history is set out below.

257. **1994 to 1998.** In 1996 (two years after OPSEU/SEFPO gained the right to strike through changes to the *CECBA*), the OPSEU/SEFPO Correctional Bargaining Unit engaged in a five-week lawful strike primarily around the issue of job security. The OPSEU/SEFPO website states:

For the first time, in February, the OPS strikes. The five-week walkout by 55,000 members achieves language around "reasonable efforts" in the contracting out of OPS work to mitigate the loss of successor rights. In the following years, OPSEU/SEFPO pushes the language to the limits to save thousands of jobs and to ensure that contracted out work is well paid (Employer's Book of Exhibits, Tab AA).

258. In exchange for the job security provisions that were attained to address the impact of a legislative change to successor rights, in a freely negotiated environment OPSEU/SEFPO accepted **five years of zero increases over the five-year term** of the collective agreement (from 1994 to 1998 inclusive - including CO2s). Accordingly, by 1998 the **Ontario CO2 annual rate (\$44,644) was 3.04% lower than the Federal CX-2 rate (\$46,000)** and the **Ontario CO2 hourly rate of pay (\$21.39) was 9.91% lower than the Federal CX-2 hourly rate of pay (\$23.51)**.

259. **1999 to 2001.** OPSEU/SEFPO accepted modest wage increases in the 1999 to 2001 collective agreement (1999 – 1%, 2000 – 1.35%, 2001 – 1.95%). OPSEU/SEFPO notes on its website in reference to the 1999 collective agreement:

A strike vote is required to reach an OPS settlement that wins early retirement for surplussed workers, speedier justice for grievances, a 50-per-cent increase in paid time off for local presidents and the first wage increase in six years (Employer Book of Exhibits, Tab AA).

260. By the end of the term of this collective agreement, the Ontario CO2 annual salary of \$46,585 was 14.06% lower than the CX-2 salary of \$53,137 and the hourly rate of pay of the Ontario CO2 (\$22.32) was 21.67% lower than the CX-2 hourly rate of pay (\$27.16).
261. **2002 to 2004.** In 2002, the OPSEU/SEFPO bargaining unit engaged in a lawful eight-week strike. OPSEU/SEFPO's website states the following with respect to the strike:

May 2 sees a tentative settlement to the OPS strike. It maintains employees control over pension surpluses, boosts wages and improves job quality for the 26 per cent of members on temporary contracts. Members ratify the contract on May 5 and most return to work May 6 (Employer's Book of Exhibits, Tab BB).

262. The following increases and adjustments were included in the 2002 to 2004 OPSEU/SEFPO collective agreement: (i) January 1, 2002 – 1.95%, 1.00% for productivity and efficiency gains, 0.55% special adjustment ATB; (ii) January 1, 2003 – 1.95%, 0.5% special adjustment ATB; (iii) January 1, 2004 – 2.5%; (iv) January 1, 2002- an additional step to all classifications within the Correctional Bargaining Unit with the step to be 5% above the current highest step in the classification; (v) January 1, 2002 - a 4% increase to all rates in the salary range for Probation 1 and Probation Officer 2 classes; and (vi) January 1, 2002 – establishment of a new Youth Worker classification to be paid at the same rate as the Correctional Officer 2.
263. By the last year of this collective agreement, the annual wage rate of an Ontario CO2 (\$53,160) was 7.38% lower than a CX-2 (\$57,083) while the hourly rate of the Ontario CO2 (\$25.47) was 14.54% lower than the CX-2 (\$29.17).
264. **2005 to 2008.** In 2005 OPSEU/SEFPO ratified a 4-year collective agreement which is described on the OPSEU/SEFPO website as follows:

265. On May 25-27, OPS members vote 65 per cent to reject a contract offer from the McGuinty Government and to give their bargaining team a strike mandate. The turnout was 66 per cent of the 42,000-member bargaining unit. A new OPS contract is reached on June 11 with wage increases totaling 9.75 per cent over four years (Employer's Book of Exhibits, Tab BB)
266. The Correctional Bargaining Unit collective agreement also included: "an additional step on the grid to all CO2's and Youth Workers and Attendant 2-3 Oakridge within the Correctional Bargaining Unit, such step to be three percent (3%) above the current highest step in the classifications- effective January 1, 2005 ...", and effective January 1, 2005, a 0.5% increase to the maximum rate for the other classifications in the bargaining unit (Employer's Book of Exhibits, Tab BB).
267. In the first year of this contract (2005), the Ontario CO2 annual salary (\$55,831) was 4.7% lower than the Federal CX-2 (\$58,453) while the hourly rate of the CO2 (\$26.75) was 11.68% lower than the CX-2 (\$29.87). By the last year of the contract (2008), the Ontario CO2 annual rate (\$60,256) was 14.67% lower than the Federal CX-2 rate (\$69,095) while the hourly rate of the Ontario CO2 (\$28.87) was 14.47% lower than the Federal CX-2 rate (\$33.11).
268. It is important to note that on June 26, 2006, a collective agreement covering the Federal CX-2s was ratified and the duration of that agreement was from **June 1, 2002 to May 31, 2010**. Effective 2006, the weekly hours of work for a CX-2 were increased from the previous 37.5 hours weekly to 40 hours weekly. Accordingly, from 2006 forward the differences between the annual and hourly rates of Ontario CO2s and CX-2s would be the same percentage, as both were now working the same annual hours.
269. **2009 to 2012.** The OPSEU/SEFPO Correctional Bargaining Unit collective agreement from 2009-2012 included across-the-board wage increases as follows: (i) January 1, 2009 - 1.75 %; (ii) January 1, 2010 - 2.0 %; (iii) January 1, 2011 2.0 %; (iv) January 1, 2012 - 2.0 %. The agreement also included special adjustments. The increases were to be applied to existing rates prior to any across-the-board increases, and an across-the-board increase on the same date would be compounded on the special adjustment. In 2012, the Ontario CO2 annual wage (\$66,350) and hourly rate (\$31.79) were 10.80%

lower than the Federal CX-2 annual wage (\$73,515) and hourly rate of pay (\$35.22) (Employer's Book of Exhibits, Tab C).

270. **2013 to 2014.** In the 2013 to 2014 collective agreement, the Parties set out that there would be **no increases to salary rates**, other than an increase of \$0.85 per hour to be implemented for all Correctional Bargaining Unit classifications that formerly received a weekend premium of \$3.00 per hour, effective January 24, 2013. Also, effective January 24, 2013 a new start rate 3% below the start rate in effect December 31, 2012 would be implemented for all classifications. There was an increase of \$0.85 per hour to be implemented for all Correctional Bargaining Unit classifications that formerly received a weekend premium of \$3.00 per hour, effective January 24, 2013. Accordingly, in 2014 the annual and hourly Ontario CO2 rates (\$68,124 and \$32.64) were 11.45% lower than the Federal CX-2 rates (\$75,922 and \$36.38) (Employer's Book of Exhibits, Tab D).
271. **2015 to 2017.** For the 2015 to 2017 collective agreement, the Parties agreed to **no increase in 2015, a 1.4% lump sum payment effective January 1, 2016 and a 1.4% across-the-board wage increase effective January 1, 2017.** The issue of special adjustments was referred to Arbitrator Burkett, who ordered a catch-up adjustment of 3% for correctional staff and 2% for probation staff effective January 1, 2017. As of 2017, the Ontario CO2 annual and hourly rates of pay (\$71,151 and \$34.09) were 15.83 % lower than the Federal CX-2 rates (\$82,412 and \$39.49) (Employer's Book of Exhibits, Tab E).
272. **2018 to 2021.** The 2018 to 2021 collective agreement across-the-board increases were achieved through interest arbitration. Arbitrator Kaplan awarded across-the-board wage **increases of 1.5% in 2018 and 2.0% in each of 2019, 2020 and 2021.** These were consistent with the across-the-board increases negotiated with the OPSEU/SEFPO Unified Bargaining Unit. Arbitrator Kaplan also ordered annual special wage adjustments effective each January 1 of the agreement of 1.75% for correctional officer/youth worker staff, 1.0% for probation and parole officers and 1.0% for nurse classifications. As of 2021, the Ontario CO2 annual and hourly rates of pay (\$82,171 and \$39.97 respectively) were 8.39% lower than the Federal CX-2 rates (\$89,068 and \$42.67 respectively) (Correspondence from Mark Sweiha re Alberta IJR – CO, PO, NU, August 17, 2023, Employer's Book of Exhibits, Tab FF).

**(c) Modest Increases Should Be Replicated**

273. As the above chronology illustrates, the wage differential between the Ontario and Federal Correctional Officers was established and maintained by the Parties over a period of 24 years. These Ontario agreements between 1994 and 2017 were reached under a right-to-strike regime.
274. As set out above in Section 7.5, the well-established principle of replication holds that replication of free collective bargaining outcomes is the primary criteria for interest arbitration. The Arbitrator's task is to fashion an award which, to the extent possible, approximates what the Parties themselves would have achieved in a free collective bargaining environment.
275. The most relevant precedents to consider when applying the replication principle to these Parties, is the pattern of settlements reached by the Employer and the OPSEU/SEFPO Correctional Bargaining Unit.
276. Further, the Union should be required to present "clear and compelling" evidence to support its demand that this Arbitrator depart from the historical pattern of negotiations between the Parties and settlements in which the OPSEU/SEFPO Correctional Bargaining Unit freely accepted no across-the-board increases (1994-1998, 2013-2014) or achieved modest increases, generally falling within the range of 1-2% per year.
277. Even if this Arbitrator determines that a "catch-up" increase is warranted, which is not admitted but expressly denied, the Arbitrator should follow the guiding principle of gradualism and consider the hourly wage, not the annual salary, in making such an award.
278. In his May 26, 2016 award, Arbitrator Burkett identified gradualism as a guiding principle of interest arbitration. He explained:
- The principle of gradualism reflects the reality that collective bargaining between mature bargaining parties, as these are, is a continuum that most often accomplishes gradual change as distinct from drastic change. It follows that absent compelling evidence, an interest arbitrator will be loath to award "breakthrough" items.
279. In accordance with the gradualism principle, Arbitrator Burkett adopted an incremental approach to dealing with the catch-up increase he identified as being warranted. Further,

in the subsequent interest arbitration award by Arbitrator Kaplan the principle of gradualism was also adopted based on the catch-up increases awarded.

### 8.3 Federal Correctional Officers Are Not Valid Comparators

#### (a) *The Burkett Decision and the 2000 Joint Committee Report on Federal Correctional Officers*

280. In 2016, the Parties referred residual issues, including special wage adjustments, in the January 1, 2015 to December 31, 2017 OPSEU/SEFPO Correctional Bargaining Unit Collective Agreement to interest arbitration before Kevin M. Burkett. On May 26, 2016, Arbitrator Burkett issued an arbitration award and, among other things, identified the Federal correctional officer as a valid comparator, stating the following:

**The federal correctional officer comparator is a valid one. Federal correctional officers work in Ontario performing essentially the same function as Ontario correctional officers.** The 2000 Joint Committee Report on Federal Correctional Officers recorded that under the Willis Job Evaluation Plan, both the Federal and Ontario correctional officers were rated at an identical 279 points. Accordingly, whereas the salaries for the Federal and Ontario correctional officers were at essential parity between 1998 and 2000, **the current approximate 10% salary differential in favour of the Federal correctional officers over their Ontario counterparts (6.9% for probation officers) establishes a specific catch-up objective for Ontario correctional employees.** ...the Ontario correctional salary, in addition to being about 10% behind the Federal salary...**given the deterioration of Ontario correctional salaries relative to Federal correctional salaries, a catch-up increase is warranted** (Employer's Book of Authorities, Tab 3).

*[Emphasis Added]*

281. The Federal Correctional Officer classifications are not valid comparators. The Employer takes issue with Arbitrator Burkett's statement that Federal Correctional Officers perform essentially the same function as Ontario Correctional Officers. All Correctional Officers are required to ensure the security of the facility and protection of the public. However, there is a stark difference between the duties and responsibilities of a Federal CX-2 and an Ontario CO2 regarding the requirement to perform case management – a job function identified by Federal CX-2s as inherently challenging that should inform the Arbitrator's analysis of the Union's assertion of their comparability. The evidence set out below will demonstrate that the now 23-year-old *2000 Joint Committee Report on Federal*

*Correctional Officers* which sets out a valuation of the Federal CX-2 and the Ontario CO2 jobs as being equal is clearly outdated and absolutely not the case today. In addition to long term trends that have seen the Ontario inmate population change from a percentage of 40% remanded individuals to a percentage that is now greater than 70% of the inmate population, SOLGEN undertook a massive restructuring of institutions beginning in 2001 that resulted in the downsizing and, in some cases, the elimination of rehabilitative and treatment programs in some locations across the province. This inmate population profile change and the consequences of restructuring activities further exemplifies the stark differences in job duties and functions between the Ontario CO2 and the Federal CX-2.

(i) Case Management Defined

282. Case management, as performed by Federal CX-2s, is based on dynamic security in which corrections officers engage with offenders in a living unit throughout their shift. It is a dynamic process that includes assessing, counselling, planning programs for, and supervising an offender throughout their sentence; assessing an offender's needs and developing and implementing a correctional plan and interventions to meet those needs; providing clear behavioural expectations for an offender to be met within specific timeframes; regularly assessing an offender's progress in relation to their correctional plan; encouraging an offender to demonstrate progress through responsible behaviour; and putting controls in place to ensure that an offender's correctional plan is realistic and viable.
283. Case management in the Ontario corrections system (carried out at very few facilities) has a much less significant role for most corrections workers in Ontario. A designated staff member or multidisciplinary team establishes a rehabilitative relationship with the offender that focuses on ensuring that offender needs are properly addressed both during and after incarceration. Case management typically entails the creation of an integrated case plan that identifies and addresses the care needs of the client during incarceration and also leverages community supports that will facilitate the offender's successful community reintegration.
284. "Indirect" supervision in Ontario is defined as the method of supervising inmates whereby correctional officers monitor inmate living areas from enclosed posts, while "direct" supervision places correctional officers right in the living unit where they are required to have continuous, direct personal interaction with inmates. Living units tend to offer inmates

more physical amenities, such as games tables, exercise equipment and access to controls for lights in their cells. Larger dayrooms are also more common (“Forum on Corrections Research”, Correctional Services Canada, Employer’s Book of Exhibits, Tab CC).

(ii) Overview of Correctional Services Canada and Ontario Correctional Services

(A) *Correctional Services Canada*

285. Correctional Services Canada (“CSC”) operates 43 institutions, 15 community correctional centers, and 91 parole and sub-parole offices. CSC’s workforce is comprised of approximately 18,000 employees (4,318 indeterminate Federal CX1s and 3,019 indeterminate Federal CX-2s as of December 30, 2018). There are two levels of correctional officers in the Federal jurisdiction. Federal CX1s are involved in the safety and protection of the public, staff and inmates. Federal CX-2s are also involved in these functions, but case management services is their primary role.
286. All offenders (approximately 14,000 individuals) under CSC’s jurisdiction are subject to clinical and rehabilitative (or “structured”) case management. Generally, all 3,000 Federal CX-2s are directly involved in providing structured case management and each Federal CX-2 is assigned a caseload (Sworn Affidavit of Barry Scanlon, March 22, 2019, Employer’s Book of Exhibits, Tab DD). The Federal CX-2 position is responsible for long term clients in the Federal system who have been given custodial sentences of two years or more, suggesting these are not rudimentary cases the CX-2 deals with.

(B) *Ontario Correctional Services*

287. Ontario Correctional Services (“OCS”) operates 25 correctional facilities, which include correctional centres, detention centres, jails and treatment centres. As of July 31, 2023, there were a total of 9,698 Correctional Services employees, of which there are 3,078 Regular Ontario CO2s and 2,014 FXT COs. FXTs include both CO1s and CO2s. In Ontario there are two active levels of correctional officers. CO1 is considered an entry training level, while CO2 is the working level.
288. Unlike the Federal jurisdiction where all offenders are subject to structured case management and all Federal CX-2s are directly involved in the same, **only 5 of Ontario’s 25 facilities** (Vanier Centre for Women (“VCFW”), Hamilton Wentworth Detention Centre



("HWDC"), Toronto South Detention Centre ("TSDC"), Elgin Middlesex Detention Centre ("EMDC") and the Ontario Correctional Institute ("OCI") 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.

(iii) Federal Correctional Officer II Duties and Responsibilities and Training

289. The Federal CX-2s' primary function is structured case management, which at a penitentiary is a dynamic process. Case management includes: (i) assessing, counselling, planning programs for and supervising an offender throughout their sentence; (ii) assessing an offender's needs and developing and implementing a correctional plan and interventions to meet those needs; (iii) providing clear behavioural expectations for an offender to be met within specific timeframes; (iv) regularly assessing an offender's progress in relation to their correctional plan; (v) encouraging an offender to demonstrate progress through responsible behaviour; and (vi) putting in place a plan to ensure that an offender's correctional plan is realistic and viable (Scanlon Affidavit, Employer's Book of Exhibits, Tab DD).
290. Federal CX-2s are generally assigned duties in a living unit, where they maintain regular contact and communication with inmates assigned to their caseload. Federal CX-2s document inmate behaviour, process and complete management reports and inmate requests/reports, motivate and encourage inmates to develop life skills within their units and through participation in correctional interventions and play an active role as part of the inmate's interdisciplinary case management team.
291. 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.
292. Federal CX-2s complete the following training: (i) CTP Training approximately 20 weeks; (ii) case management training OMS 4.0 hours and OMS Radar 3.0 hours; (iii) 9mm Pistol

Training 3.8 hours (Medium or maximum security); shot Gun Training 3.5 hours (Medium or maximum security), as well as standard training as follows:

- a) Annual: (i) Self-Contained Breathing Apparatus (SCBA) 5.5 hours; (ii) Personal Safety Training 3.5 hours; (iii) Dynamic Security 3.5 hours; (iv) Chemical and Inflammatory Agents 3.5 hours; (v) Suicide and Self-Injury Intervention Continuous Development Training – On line 1 hour;
- b) Biennial: Suicide and Self-Injury Intervention Continuous Development Training – In Class 2 hours;
- c) Triennial: (i) First Aid and CPR/AED 15 hours; (ii) intro to EIM online 1 hour; (iii) Women-Centred Training Continuous Development (exclusively for staff working in a WOI)
- d) Quinquennial Training: Creating a Respectful Workplace 4 hours.

(iv) Federal Correctional Officer I Duties and Responsibilities and Training

293. Federal CX-1s are not directly involved in structured case management, do not have an assigned case management caseload, and are not assigned to a living unit. Their job duties are primarily related to static security functions, which include: (i) supervising, controlling and monitoring inmate movement and activities within and outside the institution; (ii) conducting counts and patrols; (iii) performing security checks and searches of living units, the physical plant, buildings, vehicles, inmates, other persons and their personal property, and other areas for contraband; (iv) monitoring the movement and activity of visitors and civilian contractors; (v) recording observations of inmate movement and behaviour on specific activity records in order to keep supervisors informed; (vi) participating in escorts and inmate transfers outside the institution; (vii) seizing and recording unauthorized items and contraband for security purposes; and (viii) responding to emergencies. Federal CX-1s have Peace Officer status (Scanlon Affidavit, Employer's Book of Exhibits, Tab DD).

294. Unlike Federal CX-2s, Federal CX-1s are only indirectly involved in structured case management. For example, in the course of conducting security escorts, Federal CX-1s might observe inmate behaviour that has the potential to disrupt the safety and security of

the institution. In that case, a Federal CX-1 would document the behaviour and share the observations with the inmate's case management team (Scanlon Affidavit, Employer's Book of Exhibits, Tab DD).

295. Federal CX-1s receive the same CTP training as Federal CX-2s and the same Standard Training as set out in above in Section 8.4 (c). Additionally, Federal CX-1s at medium and maximum security sites receive requalification in all Firearms (11.1 hours). Federal CX-1s at maximum security sites also receive requalification on Special Impact Munitions 40mm launcher (2.0 hours).

(v) Ontario CO2 Duties and Responsibilities and Training

296. The typical Ontario CO2 (more than 96%) is primarily responsible for static security functions, which include the following: (i) maintaining custody of, and supervising all offender activity occurring on that post; (ii) processing offenders on admission and discharge; (iii) managing records systems, ensuring proper receipt, storage and recording of offenders' personal property within established facility practices, policy, processes and institutional standing orders; (iv) interacting with offenders to maintain security and safety of all persons in assigned area, instructing offenders in expectations of the facility, reports and controls risks and behaviours, and acting as a role model on a day to day basis; (v) conducting searches of offenders, their living areas and the institutional property for irregularities and taking appropriate corrective action to maintain security and safety of the facility, offenders and staff; (vi) responding to emergencies in accordance with institutional standing orders and ministry policies and procedures; (vii) providing institution/community escort duties for offenders to ensure the safety of offenders, staff, visitors and the public; (viii) maintaining communications with a range of contacts; and participating in case management meetings and reviews as required; (ix) maintaining ongoing discussions to provide and/or exchange information, provide updates and discuss issues internally; and (x) dealing with the public, external agencies and professionals visiting the facility (Scanlon Affidavit, Employer's Book of Exhibits, Tab DD).
297. Only **101 of Ontario's 3,078 CO2s** are involved in any sort of case management at **5 of Ontario's 25 facilities**, and only **53 of those 101 Ontario CO2s (or 1.7% of Ontario CO2s)** are directly involved in structured case management similar to case management

performed by Federal CX-2s as described above (Scanlon Affidavit, Employer's Book of Exhibits, Tab DD).

298. The 53 Ontario CO2s who perform structured case management work at OCI (the **only Ontario facility** that provides structured case management to offenders comparable to Federal case management) are directly involved in case management that is clinical and rehabilitative in nature (e.g. the CO2s are the primary case managers who oversee aspects of the residents' involvement in treatment and community integration). The case management process is supported by a clinical team consisting of a social worker, psychologist, health care, and rehabilitation officer (Scanlon Affidavit, Employer's Book of Exhibits, Tab DD).
299. Case managers at OCI are expected to interact/support/guide residents on their caseload regularly and document resident progress every two months in the section entitled Progress Report on the Resident Status Report. This review focuses on progress made in pro-social thinking, attitudes, behaviour, new skills acquired, improvements in interpersonal relationships and programs completed. Positive reinforcement is given for any progress made. There should be consideration of any changes in treatment plan and future directions (Scanlon Affidavit, Employer's Book of Exhibits, Tab DD).
300. The remaining **48 of Ontario's 101 CO2s (or 1.6% of Ontario CO2s)** who perform case management duties are indirectly involved in clinical case management. Clinical case management is not the same as structured case management. Unlike structured case management, clinical case management focuses on ensuring that the offender is properly dealt with while at the facility but does not aim to rehabilitate the offender for re-entry into the community. Ontario CO2s are indirectly involved in clinical case management in the four Ontario facilities (TDSC, HWDC, VCFW and EMDC) (Scanlon Affidavit, Employer's Book of Exhibits, Tab DD). For example, Ontario CO2s at these four facilities do not have a caseload and are not focused on rehabilitating the offender.
301. Ontario CO2s at OCI engaged in case management roles receive 1.5 hour case management orientation with the Chief Psychologist and Manager of Social Work. They are then provided with the OCI Case Management Manual, with the expectation that they will engage in self-directed learning and review. Ontario CO2s at TSDC do not receive case management training but do receive Working with Mental Illness training offered as

an in-service training by the Centre for Addiction and Mental Health Toronto. Ontario CO2s at HWDC do not receive case management training. Ontario CO2s at VCFW do not receive case management training. However, the officers at VCFW receive working with Women in Conflict with the Law training and Working with Mental Illness training at Centre for Addiction and Mental Health Toronto. Aside from these 101 Ontario CO2s, the remaining 2,977 Ontario CO2s do not receive any training regarding case management.

**(b) Federal Corrections Officers are Not Valid Comparators**

302. Unlike Federal CX-1s and Ontario CO2s (with the exception of the 53 Ontario CO2s at OCI), case management duties and responsibilities are material and integral duties and responsibilities performed by Federal CX-2s on a day-to-day basis. As a result, Federal CX-2s are required to develop a specialized skillset not required of Ontario CO2s, which makes the Federal CX-2 classification a more valued classification that warrants higher remuneration.
303. The case management duties and responsibilities performed by Federal CX-2s are performed while they maintain the security of the facility, offenders and the safety of the public. The key responsibility of more than 96% of Ontario CO2s is to maintain the security of the facility, offenders and the safety of the public.
304. The case management duties and responsibilities that a Federal CX-2 performs while maintaining a secure facility require the Federal CX-2 to: (i) maintain regular contact and communication with inmates assigned to their caseload and document their behaviour; (ii) process and complete case management verbal and written reports and inmate requests/reports; and (iii) motivate and encourage inmates to develop life skills within their units and through participation in correctional interventions. Federal CX-2s play an active role as part of the inmate's interdisciplinary case management team ("CMT").
305. Federal CX-2s are provided with different training than Federal CX-1s to prepare them to directly engage with offenders when carrying out their case management duties and responsibilities on a day-to-day basis. Ontario CO2s and Federal CX-1s are not provided with similar training, with the exception the 53 Ontario CO2s who work at OCI.

306. Unlike Ontario CO2s, Federal CX-2s also have more accountability as a result of the impact that their decisions could have on the safety of the general public. For example, Federal CX-2s are responsible for making recommendations regarding an offender's eligibility to be temporarily released, including escorted and unescorted absences and work releases. Temporary releases may be granted when it is considered that the inmate will not, by re-offending, present an undue risk to society during the absence. The temporary absence must also fit within the framework of the offender's correctional plan. Temporary absences may be granted for medical, administrative, community service, family contact, parental responsibility, personal development (rehabilitation), or compassionate reasons. Temporary absences are determined, in part, based on recommendations made by Federal CX-2s regarding such absences. If Federal CX-2s make inappropriate recommendations and an offender is released on an unescorted absence when the offender should not have been, there is significant risk of that offender reoffending while on the unescorted release and harming a member of the public.
307. Further, unlike Ontario CO2s, Federal CX-2s must also consult with and provide input to the other professional staff, including parole officers, teachers, psychologists, psychiatrists, chaplains, health care professionals, and others on a regular basis regarding the offender's needs, criminal risk, the development and revision of correctional plans, and release suitability.
308. These duties require Federal CX-2s to exercise superior interpersonal skills, excellent judgement and vigilance, given their direct contact with the offenders in the living unit during their shifts. The ability to read and interpret body language in order to prevent potentially volatile situations cannot be overlooked. Federal CX-2s are also expected to know and understand psychological terminology, how to identify and react to changes in medication and how to identify the use of non-prescribed drugs and their effects. They must maintain awareness of offenders' case histories in order to maintain continuity of program delivery and participate in crisis intervention as required. The Federal CX-2s must engage with the offenders on a very regular basis to case manage them, while still ensuring that the security of the facility and the public is protected. This specialized skillset of Federal CX-2s warrants higher remuneration than Ontario CO2s.

309. Even Federal CX-1s when compared to Ontario CO2s have more involvement with case management on a regular basis due to the fact that all offenders in the federal jurisdiction are provided with structured case management.

310. In 2000, the Joint Committee Report on Federal Correctional Officers was published (the “2000” Report”). The 2000 Report was a comparative job evaluation exercise, with Federal correctional officers at the heart of the study. The 2000 Report highlighted the difficulty faced by Federal CX-2s in balancing their case management duties and responsibilities with the security of the facility/public, quoting a Federal CX-2 as follows:

A difficulty is handing the two philosophies of corrections right now, which is security and rehabilitation. Having a caseload and security. The caseload ... it's hard to be a guard and hug him in the morning and then mace him in the afternoon because he's been a bad person. Don't laugh, it happens.

311. The 2000 Report also relies on the case management duties performed by Federal CX-2s as justification for scoring the Federal CX-2 classification higher than the Federal CX-1 classification:

- With respect to **Knowledge and Skills**, the Federal CX-1 was rated at 122 points while the Federal CX-2 position was rated at 140 points because they must balance “case management responsibilities with their security duties” as set out on page 27 of the 2000 Report.
- With respect to the points allotted for **Mental Demands**, the Federal CX-2s were rated at 40 points on the basis that “while the work is controlled by strict procedures and methods, there are alternative courses of action to choose”. The Federal CX-1 rating of 30 points was assigned because the position “was seen to focus mainly on security with limited input in case management” as set out on page 28 of the 2000 Report.
- With respect to the points allocated for **Accountability**, the federal CX-2 position was rated at 53 points because the federal CX-2 “does perform a number of casework duties and has input into a number of decisions”. The federal CX-1 position was rated at 46 points because a CX-1 is “often required to counsel offenders in crisis situations” and, “in some cases to assume a leadership role (for example on the Emergency Response Team)”, and the CX-1 “must possess

excellent observation skills and be able to anticipate and prevent incidents, including death or serious injury”. Notwithstanding these responsibilities, the rating for CX-1s was lower than the CX-2 “because the focus on security requires that the work must be completed in accordance with many routine procedures, offering limited options” (Scanlon Affidavit, Employer’s Book of Exhibits, Tab DD).

312. Notably, the justifications in the 2000 Report for scoring the Federal CX-2 classification higher than the Federal CX-1 classification are not applicable to approximately 96% of Ontario CO2s.
313. In summary, the key differences between the Federal Correctional Officers and the Ontario CO2s can best be described as:

<b>Federal CX-2</b>	<b>Ontario CO2</b>
Supervises offender population that are all sentenced to terms of incarceration.	Supervises a population of inmates that is more than 70% remanded prisoners awaiting trial and supervises less than 30% sentenced prisoners.
100% of CX-2s are engaged in structured case management.	Less than 2% of CO2s are engaged in case management.
Responsible for security of facility and public safety in addition to case management responsibilities.	Primarily responsible for security of facility and public safety.
Mandatory requirement of CX-2 position is to take part in case management.	No similar requirement.

(Scanlon Affidavit, Employer’s Book of Exhibits, Tab DD)

314. Given the stark differences between the Federal Correctional Officers and the Ontario CO2s, it is the Employer’s position that if this Arbitrator is looking for an outside comparator, a more valid comparator is the Alberta Correctional Officers.



**(c) Ontario CO2 and Alberta Correctional Peace Officer 2 (“CPO2”)**

315. In Alberta, there are 8 adult correctional and remand centres. Correctional centres normally house inmates serving sentences of up to 2 years and remand centres house those awaiting trial. There are 60 probation offices in 44 communities in Alberta, including three Indigenous contracted agencies. In 2017 to 2018 there were a daily average of 3,704 persons in provincial custody. In 2017/2018, 8 of 13 jurisdictions had a higher proportion of remanded offenders versus those in sentenced custody: **Alberta (71%), Ontario (70%),** Manitoba (68%), British Columbia (65%), Nova Scotia (60%), Northwest Territories (57%), Yukon (56%) and Nunavut (53%) (Employer’s Book of Exhibits, Tab FF). The following chart shows the number of CPO2s who work in the Alberta Correctional institutions:

<b>Alberta Classification</b>	<b>Headcount*</b>
Correctional Peace Officer 1	545
Correctional Peace Officer 2	1,116
Correctional Peace Officer 3	120
<b>Total</b>	<b>1,781</b>

\*Headcounts as of August 1, 2023 (Employer’s Book of Exhibits, Tab FF)

316. The Alberta CPO2’s job description sets out a number of duties and responsibilities, which include: (i) performing a variety of security functions to ensure the security of the centre and the safety of the public, staff and other offenders and the prevention of property damage; (ii) performing a variety of duties related to offender management and supervision; (iii) performing a variety of administrative duties related to security and offender management; and (iv) undertaking available training to maintain a high standard of professional development (“Correctional Peace Officers”, Alberta.ca, Employer’s Book of Exhibits, Tab GG).

317. Both the Ontario CO2 and the Alberta CPO2 have peace officer status. Of the eight duties and responsibilities listed for the Ontario CO2 in the job description, seven are similar, the same or comparable to the duties and responsibilities listed in the Alberta CPO2 job description (Employer’s Book of Exhibits, Tab GG).

<p style="text-align: center;"><b>Ontario CO2 Duties/Responsibilities</b></p>	<p style="text-align: center;"><b>Alberta CPO2 Duties/Responsibilities – (Same, Similar)</b></p>
<p>Peace Officer Status</p>	<p>Peace Officer Status</p>
<p>Takes charge of an assigned area to maintain custody of and supervise all offender activity occurring on that post.</p>	<p>Oversee and monitor inmate/young person movements within assigned work area.</p> <p>Conducting rounds to observe behaviour and mood of individual and groups of inmates/young persons and reporting notable incidents of sudden or unusual changes.</p>
<p>Processes offenders on admission and discharge including verifying committal warrants and holding document(s), updating computerized offender management record systems, ensuring proper receipt, storage and recording of offenders; personal property such as money and clothing within established facility practices, policy, processes and institutional standing orders.</p>	<p>Maintain up-to-date and accurate written routine records and reports on inmate/young person movements, counts, searches, inmate/young person behaviour, property records, logs, etc.</p>
<p>Interacts with offenders to maintain security and safety of all persons in assigned area, instructs offenders in expectations of the facility, reports and controls risks and behaviours and acts as a role model on a day to day basis.</p>	<p>Provide direction to inmates/young persons with respect to schedules, rules and behavioural requirements.</p> <p>Acts as a role model to demonstrate appropriate behaviour to inmates/young persons.</p>
<p>Conducts searches of offenders, their living areas and the facility property for irregularities and taking appropriate corrective action to maintain security and safety of the facility, offenders and staff.</p>	<p>Conducting searches of inmates/young persons and the physical plant.</p>
<p>Responds to emergencies including but not limited to medical, fire, escape attempts and offender disturbances in accordance with institutional standing orders and ministry policies and procedures.</p>	<p>Responding to emergency situations by participating as a member of the centre emergency response teams and/or otherwise responding to emergency situations as they arise.</p>
<p>Provides institution/community escort duties for offenders to ensure the safety of offenders, staff, visitors and the public.</p>	<p>Escorting inmates/young persons within the confines of the centre or to and from community locations.</p>

<p align="center"><b>Ontario CO2 Duties/Responsibilities</b></p>	<p align="center"><b>Alberta CPO2 Duties/Responsibilities – (Same, Similar)</b></p>
<p>Maintains communication with a range of contacts including preparing written reports regarding incidents, offenders' conduct/behaviour, accidents or injuries sustained by staff or offenders and action taken, preparing daily log entries and completing forms to meet legal and/or legislative requirements , and participating in case management meeting and reviews as required. Maintains ongoing discussions to provide and/or exchange information, provide updates and discuss issues internally.</p>	<p>Maintain up-to-date and accurate written routine records and reports on inmate/young person movements, counts, searches, inmate/young person behaviour, property records, logs, etc.</p> <p>Provide accurate verbal and/or written incident reports, on an as required basis, related to maintenance of physical plant, incidents, special situations, etc.</p>
<p>Deals with the public, external agencies and professionals visiting the facility including answering phone calls, testifying/presenting evidence at court hearings, coroner's inquests and ministry investigations.</p>	<p>N/A</p>

318. Both the Ontario CO2 and the Alberta CPO2 supervise an inmate population that is more than 70% remanded inmates and the remainder are sentenced to periods that are less than 2 years of incarceration. The daily activities of an Ontario CO2 and an Alberta CPO2 are, for the most part, identical, as the inmate population they supervise is virtually identical with respect to incarceration status, needs, issues and rights. In practice, approximately 96% of Ontario CO2s do not have direct responsibility for case management and based on the job description for Alberta CPO2s, neither do they. Both the Ontario CO2 and the Alberta CPO2 are primarily security focussed.

**(d) Total Compensation of Alberta CPO2s**

d) The following chart illustrates the total compensation of Alberta CP02:

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

**8.4 Total Compensation Does Not Support a “Catch-up” Increase Award for Ontario CO2s**

319. This Arbitrator should follow the preponderance of case law and consider total compensation, rather than the salary “catch-up” increase advocated for by Arbitrator Burkett.

**(a) Total Compensation of Federal CX-1s and CX-2s**

320. The total compensation estimate of Federal correctional officers includes salary at the maximum payable rate, allowance and premiums, pension and benefits. The total compensation provided to Federal CX-1s is estimated to be \$104,839 and the total compensation provided to Federal CX-2s is estimated to be \$110,915. These estimates are set out in more detail in the charts 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
<b>Salary</b> <i>(Maximum Pay Rate, March 2022)</i>	<b>\$84,045</b>	<b>\$89,068</b>
<b>Allowances and Premiums</b>	<b>\$107</b>	<b>\$166</b>
<b>Pension</b>	<b>\$11,559</b>	<b>\$12,376</b>
<i>PSSA Pension</i>	\$8,311	\$9,128
<i>CPP contributions</i>	\$3,248	\$3,248
<b>Benefits</b>	<b>\$9,128</b>	<b>\$9,305</b>
<i>Current Health and Dental</i>	\$3,015	\$3,015
<i>Post-Employment Health and Dental</i>	\$2,013	\$2,013
<i>Disability Insurance</i>	\$1,994	\$2,112
<i>Public Service Supplementary Death Benefit</i>	\$172	\$183
<i>Maternity/Parental SUB plan payments</i>	\$804	\$852
<i>EI Contributions</i>	\$1,130	\$1,130
<b>TOTAL COMPENSATION ESTIMATE</b>	<b>\$104,839</b>	<b>\$110,915</b>
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.*

<b>Allowances and Premiums</b>	\$19,890	\$20,129
<i>Overtime</i>	\$11,768	\$12,111
<i>Shift Premiums/Non-Standard Hours</i>	\$7,376	\$7,308
<i>Other Allowances</i>	\$746	\$710
<i>Severance</i>	n/a	n/a
<b>Health Payroll Tax (Ontario 1.95%)</b>	\$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).

**(b) Total Compensation of Ontario CO2s**

321. The total compensation estimate of Ontario Correctional Officers includes regular base salary, insured benefits, statutory benefits, pension, premiums and termination pay.

## Illustration of CO2 and YSO Total Compensation

### 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
<b>Insured Benefits</b> (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
<b>Statutory Benefits</b> (including CPP, EI, Employer Health Tax and WSIB charges)	3.04%	10.57%	13.61%	\$11,181
<b>Pension</b> (including pension buybacks and pension for employees on LTIP)	11.77%	0.00%	11.77%	\$9,668
<b>Premiums</b> (including overtime premium, call back and shift premium payments)	22.88%	1.16%	24.04%	\$19,752
<b>Termination Pay</b> (including transition exit pay, termination pay, salary continuance, severance payment and death benefit)	0.07%	1.40%	1.47%	\$1,210
<b>Total Benefits/Pension/Premiums/Termination</b>	<b>42.25%</b>	<b>18.40%</b>	<b>60.65%</b>	<b>\$49,838</b>
<b>Estimated Salary and Benefits</b>				<b>\$132,009</b>
<b>Pay for Time Not Worked (2020 Experience)</b>				
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%

**(c) Total Compensation Should Be Considered, Not Salary Alone**

322. This Arbitrator should not depart from the preponderance of case law that supports the analysis of compensation on a total compensation basis. The Employer urges this Arbitrator not to focus on the wage differential, which is only one component of an already very generous compensation package provided to Ontario CO2s.
323. As set out above in Section 7.6, arbitrators have long held that the total compensation cost increase of a given settlement or award is of paramount consideration. It is the aggregate cost increase of all of the proposed improvements that must be considered, rather than monetary items in isolation from one another.
324. While the issues in dispute will necessarily be argued at arbitration on an individual basis, no single element of compensation will adequately reflect "total compensation." Any

selection of individual and favourable precedents lacks significance without comparison to the value of all other wage and benefit components considered as a whole. Accordingly, total compensation must be accepted as presenting a more complete and realistic picture than wages alone or any one element in isolation. Ontario CO2s total compensation is greater than the total compensation provided to Federal CX-2s. Accordingly, it is the Employer's position that a catch-up increase to wages is not warranted.

**(d) *The "Catch-Up" Increase Proposed by Arbitrator Burkett is Not Justifiable***

325. As stated above, in his 2016 decision Arbitrator Burkett concluded that Federal correctional officers perform essentially the same functions as Ontario Correctional Officers. That conclusion was apparently based on the assumption that the rating of the Federal CX-2 and Ontario CO2 classifications in the 2000 Report was accurate and could be used for compensation purposes.

326. The 2000 Report is severely outdated and does not reflect the day-to-day activities of the typical Ontario CO2, nor should the scores assigned to the classifications in the 2000 Report be used by this Arbitrator for compensation purposes (Employer's Book of Exhibits, Tab DD).

**(e) *Day-to-Day Activities Not Comparable***

327. The 2000 Report assigned the same score to the Federal CX-2 and Ontario CO2 classifications, apparently based on an incorrect assumption that the typical Ontario CO2 is directly involved in structured case management.

328. Notably, the 2000 Report rated Federal CX-1s lower than Federal CX-2s primarily because Federal CX-1s are responsible for security of the facility and safety of the public and only play a supporting role in case management, while Federal CX-2s are directly involved in case management and are still responsible for security of the facility and safety of the public (Employer's Book of Exhibits, Tab DD). This was set out on page 12 of the 2000 Report:

As a general rule, CX-1s are mainly responsible for the care, custody and control of offenders, the security of the institution and the protection of the public. CX-2s have these responsibilities as well, but are also primarily responsible for correctional influence (case management) of offenders.

**The common distinction between CX-1s and CX-2s, in fact, is the level of responsibility for case management.** While both CX-1s and CX-2s are responsible for input into the case management process, CX-2s are required to complete a number of specific case management reports in accordance with the case management accountability matrix.

*[Emphasis added]*

329. Yet, when it came to rating the Ontario CO2s, the 2000 Report assigned the same score to the Federal CX-2 and Ontario CO2 classifications, apparently based on an incorrect assumption that the typical Ontario CO2 is directly involved in structured case management, when in fact **fewer than 2%** of Ontario CO2s are involved in the same structured case management. The 2000 Report at page 30 acknowledges that Ontario CO2s, who do not have to balance security and case management in the same manner as their Federal counterparts, are actually more similar to Federal CX-1s:

The General Duty Officer, Correctional Services, Ontario (279) was **extremely difficult to rate** because in this province there are two types of provincial facilities: one that is **heavily focused on security** (for example Remand Centers) and others that are strongly focused on programming and case management. **In contrast to Federal facilities, these functions are seen as completely separate and as such the Knowledge and Skills component is rated lower because officers do not have to balance security and case management in the same manner as their Federal counterparts.** The job evaluation team agreed that this position would be classified **somewhere between the CX-1 level and the Primary Worker position**". Notwithstanding the indication that the Knowledge and Skills component is "rated lower" for Ontario CO2s the rating chart in the Report provides the same rating for the Federal CX-2 and the Ontario CO2.

*[Emphasis added]*

330. Further, the current day-to-day activities of Federal CX-2s and Ontario CO2s do not support the conclusion drawn by Arbitrator Burkett in 2016 or the 2000 Report's scoring of the Ontario CO2 classification.
331. As set out above, of the 101 Ontario CO2s who are involved in case management, only 53 of those Ontario CO2s (1.7% of Ontario CO2s) are actually involved in case management that closely mirrors the structured case management that Federal CX-2s perform on a day-to-day basis. The remaining 48 Ontario CO2s who work at the Vanier Centre for Women, Hamilton Wentworth Detention Centre, Toronto South Detention Centre and Elgin Middlesex only support case management and perform duties that are



more akin to those performed by a Federal CX-1, not a Federal CX-2. More specifically, the 48 Ontario CO2s and Federal CX-1s **support** case management and are only indirectly involved in it. The remaining **2,977 or 96.7%** of Ontario CO2s have **no direct or indirect** involvement in structured or clinical case management (Employer's Book of Exhibits, Tab DD).

**(f) The 2000 Report Scores are Not to be Used for Compensation Purposes**

332. Further, the authors of the 2000 Report cautioned readers not to use the results of the 2000 Report for compensation purposes (Employer's Book of Exhibits, Tab DD). The caution set out on page 31 in the 2000 Report reads as follows:

The analysis only shows the relative evaluations of the eleven positions based upon a comparative analysis. The numerical values assigned **should not be used to determine the value of the positions for classification or compensation purposes. To attempt to do so would not fall within standard statistical practice.**

*[Emphasis added]*

333. Despite the clear and unequivocal caution not to use the scores assigned to the classifications in the 2000 Report for compensation purposes, Arbitrator Burkett concluded that the same score assigned to the Federal CX-2 and Ontario CO2 warranted a "catch-up" increase to close the gap between Federal CX-2 and Ontario CO2 salaries.
334. Given the issues with the scoring of Ontario CO2s clearly and unequivocally identified in the 2000 Report, the caution not to use the scoring for compensation purposes, and that more than 96% of Ontario CO2s **do not** perform essentially the same functions as a Federal CX-2, Arbitrator Burkett's sweeping conclusion that a catch-up increase is warranted should be disregarded (Employer's Book of Exhibits, Tab DD).

**8.5 The Economic Environment Cannot Support the "Catch-up" Increase**

335. Further, given the Province's current situation, compensation must be justifiable. The cost to the Employer if the Union's proposed special adjustment of 8.5% for COs were to be awarded upfront, is an ongoing cost of approximately \$50.5 million annually by the end of 2024.

336. Further, that increase would catch 3,078 Ontario CO2s up to the Federal CX-2s salary amount on the basis that they perform essentially the same functions, when only 53 of those Ontario CO2s (about 1.7%) perform similar duties and responsibilities to the case management responsibilities performed by a Federal CX-2 that justify higher remuneration paid to Federal CX-2s. Accordingly, such a “catch-up” increase is not justifiable.
337. Accordingly, for the reasons set out above, the Federal jurisdiction is not an appropriate comparator for the OPSEU/SEFPO Correctional Bargaining Unit for four reasons: (1) the Parties’ bargaining history shows a clearly established pattern of consistent across-the-board increases between the OPSEU/SEFPO Unified and Correctional Bargaining Units, not the Federal jurisdiction; (2) the Federal CX-2s’ duties and responsibilities are not comparable to the duties of an overwhelming majority of Ontario CO2s; (3) total compensation does not support a “catch-up” increase award for Ontario CO2s; and (4) generally, a “catch-up” increase is not justifiable.
338. Given the differences between the Federal Correctional Officers and the Ontario CO2s, it is the Employer’s position that if this Arbitrator is looking for an outside comparator, a more valid comparator is the Alberta Correctional Officers. For the reasons set out above, it is the Employer’s view that an Alberta CPO2 is much more comparable to an Ontario CO2 than the Federal CX-2 or the Federal CX-1.

## 9. FEDERAL PAROLE OFFICERS ARE NOT VALID COMPARATORS

339. The Federal Parole Officer classifications are not valid comparators for Ontario Probation Officers. The Employer takes issue with Arbitrator Burkett's inference in his 2016 decision that Federal Parole Officers perform essentially the same function as Ontario Probation Officers: *"Accordingly, whereas the salaries for the Federal and Ontario correctional officers were at essential parity between 1998 and 2000, the current approximate 10% salary differential in favour of the Federal correctional officers over their Ontario counterparts (6.9% for probation officers) establishes a specific catch-up objective for Ontario correctional employees."*
340. All Ontario SOLGEN Probation and Parole Officers (PPOs) are required to provide probation, parole and conditional sentence services to adult offenders. However, generally, there is a significant difference between the duties and responsibilities of an Ontario PPO and a Federal Parole Officer with respect to the comparatively intensive and often very lengthy periods of supervision of a Federal offender population that is increasingly complex and difficult to manage. This higher-risk and higher-need Federal population is characterized by offenders with extensive histories of violence and violent crimes (including high profile cases), sexual offences, previous youth and adult convictions, affiliations with gangs and organized crime, and these factors should be recognized as inherently challenging and should inform the Arbitrator's analysis of the Union's assertion of their comparability.
341. As at May 31, 2023, the Ontario SOLGEN employed 957 PPOs and the Ontario Children, Community and Social Services (MCCSS) employed 175 Probation Officers (POs). For the purposes of this interest arbitration, the Employer's position is that the functions and duties of the Ontario SOLGEN PPOs are the appropriate comparator to review when looking at potential comparators since POs employed at MCCSS supervise youth and those supervised youth have no access to parole under the legislation that governs youth.
342. As at May 31, 2023, SOLGEN employed PPOs supervised 33,822 probationers, 3,938 conditionally sentenced offenders, 152 parolees, had 327 Pre-Sentence Reports ordered in May 2023, had 101 Pre-Parole Reports ordered in May 2023, and accepted 729 Pre-Transfer Inquiries. The PPOs are based in 121 probation and parole offices.

343. Correctional Services Canada employed 1,244 Federal Parole Officers as at March 31, 2022. In contrast, the Parole Officers, at that time, were responsible for the supervision of 12,328 incarcerated individuals and 8,479 community supervised individuals for a total of 20,807 offenders altogether. The Federal Parole Officers are based in 43 Federal institutions and 90 parole offices and sub-offices and 14 community correctional centres. (Correspondence from Gregory Enright re Urgent Request for Job Descriptions (Parole Officer), August 10, 2023, Employer's Book of Exhibits, Tab HH)
344. Federal Parole Officers, on average, supervise 6.8 parolees (individuals who are on a form of conditional release that allows the offender to serve part of a prison sentence in the community) in the community while their Ontario counterparts, on average, supervise 0.16 parolees in the community. Federal Parole Officers supervise zero probationers (probation is a type of sentence and an alternative to jail) in the community while their Ontario counterparts supervise, on average, 35.3 probationers in the community. Clearly the Federal officers' primary community supervision is parolee dominant while the Ontario officers' primary community supervision is overwhelmingly probationers.
345. Probation is ordered by the courts and allows the offender to serve their sentence in the community, subject to conditions prescribed in a probation order. The Criminal Code permits a probation order when it is attached to a sentence of imprisonment of less than 2 years.
346. A probation order:
- cannot remain in force for more than three years
  - cannot be made to run consecutive to another order (although orders do run concurrently where the offender is bound by several different orders at the same time)
  - only ends on the expiry date, unless the court revokes or terminates the order early. The court can also, at any time, shorten the term of probation.
347. The supervisory role of an Ontario PPO is to:
- prepare reports for courts and the Parole Board

- monitor and enforce probation and conditional sentence orders, and parole certificates
- conduct comprehensive assessments
- make effective case management decisions for offenders
- determine rehabilitative interventions for offenders, for example, referral to internal or community-based counselling and treatment programs or other supportive services such as employment and housing.

348. Most of Canada's Federal offenders serve part of their sentences in institutions. Federal offenders are persons who have been sentenced by the courts to a period of incarceration that is two years or greater. The rest of their time is served in the community, where they must follow certain conditions and are supervised by parole officers. Under current legislation, there are different types of releases for offenders:

- temporary absences
- escorted temporary absence (ETA)
- unescorted temporary absence (UTA)
- work release
- day parole
- full parole
- statutory release
- release on expiry of sentence

349. In addition to playing a critical role in the process for Federal offenders seeking temporary absence, escorted/unescorted absences, and work releases, a Federal Parole Officer participates fully in Parole Board of Canada hearings, from preparing cases, to conducting assessments, and subsequently attending at the hearing itself.

350. The Federal Parole Officer then ensures that the offender follows their correctional plan by visiting with:

- the offender - with or without warning
- family, police and employers
- people who may be assisting the offender in a program

351. If the offender breaches parole conditions or seems likely to do so, the parole officer can take disciplinary measures, which include sending the offender back to prison.
352. Federal Parole Officers follow rules and standards. They routinely write reports on the progress of each offender. All cases are discussed with their supervisors on a regular basis. Officers work together with many community agencies to help offenders secure:
- stable housing
  - employment
  - income
  - positive personal contacts
353. Clearly the Federal Parole Officer is a poor fit as a comparator for the Ontario PPO for a number of reasons which include:
- Federal Parole Officers do not supervise probationers while the caseload of Ontario PPOs is almost exclusively probationers.
  - the individuals that the Federal Parole Officer supervises have all received sentences of greater than 2 years which correlates with an individual being convicted of a more serious crime while Ontario PPOs generally supervise individuals who have committed less serious crimes, be it probationary supervision or parole supervision.
354. A profile of offenders on parole seen in the chart below that Federal Parole Officers supervise in the community demonstrates the seriousness of the crimes that a significant percentage of offenders on parole have committed that lead to their incarceration and subsequent parole (2,055 parolees serving life sentences, 46 parolee dangerous offenders serving indeterminate sentences, 2 parolees serving life due to a designation, 4,007 parolees serving determinate sentences):

Table C14: Total offender population (2019-20)

		Total Offender Population		In Custody in a CSC Facility		In Community Under Supervision		
		#	%	Incarcerated	Day Parole	Full Parole	Other	
Offenders with a life sentence for:	1st Degree Murder	1,293	5.6	1,010	69	214	0	
	2nd Degree Murder	3,604	15.6	1,920	235	1,449	0	
	Other Offences	190	0.8	102	12	76	0	
	<b>Total</b>	<b>5,087</b>	<b>22.0</b>	<b>3,032</b>	<b>316</b>	<b>1,739</b>	<b>0</b>	
Offenders with indeterminate sentences resulting from the special designation of:	Dangerous Offender	643	2.8	603	18	22	0	
	Dangerous Sexual Offender	11	0.0	7	0	4	0	
	Habitual Offender	2	0.0	0	0	2	0	
	<b>Total</b>	<b>656</b>	<b>2.8</b>	<b>610</b>	<b>18</b>	<b>28</b>	<b>0</b>	
Offenders serving an indeterminate sentence (due to a special designation) and a life sentence (due to an offence)		21	0.1	19	0	2	0	
<b>Total offenders with life and/or indeterminate sentence</b>		<b>5,764</b>	<b>25.0</b>	<b>3,661</b>	<b>334</b>	<b>1,769</b>	<b>0</b>	
Offenders Serving Determinate sentences		17,338	75.0	10,059	1,205	2,802	3,272	
<b>Total</b>		<b>23,102</b>	<b>100</b>	<b>13,720</b>	<b>1,539</b>	<b>4,571</b>	<b>3,272</b>	

**9.1 Ontario PO2 and Alberta Correctional Service Worker 2 (“CSW2”)**

355. In Alberta, there are 60 probation offices in 44 communities in Alberta, including three Indigenous contracted agencies (Employer’s Book of Exhibits, Tab FF). The following chart shows the number of CSW2s who work in the Alberta probation offices:

Classification	Headcount*
Correctional Services Worker 1	110
Correctional Services Worker 2	439
Correctional Services Worker 3	74
<b>Total</b>	<b>623</b>

\*Headcounts as of August 1, 2023

356. The Alberta Probation Officer's job description sets out a number of duties and responsibilities (Employer's Book of Exhibits, Tab DD). Both the Ontario PO2 and the Alberta CSW2 have peace officer status. Of the duties and responsibilities listed for the Alberta CSW2 in the job description, all 11 are similar, the same or comparable to the duties and responsibilities listed in the Ontario PO2 job description.

	<b>Ontario PO2 Duties/Responsibilities</b>	<b>Alberta CSW2 Duties/Responsibilities – (Same, Similar)</b>
	Peace Officer Status	Peace Officer Status
1	Gathering, maintaining and disclosing offender records/information per legislation and policy; preparing critical incident reports or file summaries as per policy.	Complete reports and case documentation.
2	Monitoring and enforcing conditions of court orders (e.g., probation orders, conditional sentence orders, and orders of disposition) and parole certificates, reporting violations/breaches, and recommending and/or initiating corrective or enforcement action; monitoring offender compliance with conditions of supervision through approved methods of contact and communication.	Address violations of court orders.
3	Contacting and liaising with community and justice partners, actively supporting the continuum of correctional service, and addressing the diverse needs of offenders; assisting offenders in meeting and complying with the legal obligations of their community supervision orders, and responding to their criminogenic risks and needs through a variety of interventions including: program delivery and correctional interventions (individual or group facilitation), motivational interviewing, counselling, modelling pro-social behaviours, challenging antisocial attitudes/behaviours, liaising with and providing referrals to other agencies, and enforcement.	Assist with release plans.



	<b>Ontario PO2 Duties/Responsibilities</b>	<b>Alberta CSW2 Duties/Responsibilities – (Same, Similar)</b>
4	Providing an individualized case management approach that is guided by assessment, compliant with supervision policies, and involves ongoing evaluation of risk/need with the goal of reducing criminal behaviour and advancing pro social lifestyles.	Assess client risk factors, needs, strengths and motivations.
5	Contacting and liaising with community and justice partners, actively supporting the continuum of correctional service, and addressing the diverse needs of offenders.	Engage members of the client's support system.
6	Positively contributing and promoting the health, wellness and inclusiveness of the team environment including positively engaging in meetings, respectful and ethical behaviour, and working through conflict in a productive manner that promotes mutual interest, respect, and integrity.	Collaborate with colleagues.
7	Assisting offenders in meeting and complying with the legal obligations of their community supervision orders, and responding to their criminogenic risks and needs through a variety of interventions including: program delivery and correctional interventions (individual or group facilitation), motivational interviewing, counselling, modelling pro-social behaviours, challenging antisocial attitudes/behaviours, liaising with and providing referrals to other agencies, and enforcement.	Make referrals to appropriate programs and services.
8	Providing appropriate crisis intervention for offenders and victims; assisting offenders in meeting and complying with the legal obligations of their community supervision orders, and responding to their criminogenic risks and needs through a variety of interventions.	Provide interventions aimed at reducing criminal behaviour.
9	Participating in case management review to ensure cases are supervised according to Ministry policy, procedures, and legislation.	Participate in case discussions.

	<b>Ontario PO2 Duties/Responsibilities</b>	<b>Alberta CSW2 Duties/Responsibilities – (Same, Similar)</b>
10	Conducting community visits with offender/collateral(s) as a method of validating information, enhancing offender assessments and supervision and to enhance community safety.	Complete home and field visits.
11	Fulfilling the role of “officer of the court” with integrity and in a professional, and impartial manner that is consistent with the role, mandate, and authority of a Probation & Parole Officer (including demonstrating proper courtroom etiquette/attire); providing testimony in Court as required.	Attend court.

357. Both the Ontario PO2 and the Alberta CSW2 supervise an offender population that are almost exclusively probationers. The daily activities of an Ontario PO2 and an Alberta CSW2 are, for the most part, identical, as the offender population they supervise is virtually identical with respect to needs, issues and rights.
358. Given the similarities between these two jurisdictions, the Alberta CSW2 is much more comparable to an Ontario PO2 than the Federal WP4 Parole Officer.
359. Below are charts representing the total compensation amounts for the Ontario Probation Officer (PO2), the Federal Parole Officer (WP4) and the Alberta Probation Officer (CSW2).

**Probation Officer 2**

<b>2021/22 Regular Staff Benefits</b>	<b>Salary-Related</b>	<b>Non Salary-Related</b>	<b>Total</b>	<b>2021 Salary Maximum + Benefits Estimates</b>
				<b>\$87,600</b>
<b>Insured Benefits</b> (including supplementary health and hospital coverage plus vision and hearing, dental, LTIP, basic life coverage and insured benefits for employees on LTIP)	<b>4.49%</b>	<b>4.79%</b>	<b>9.28%</b>	\$8,130
<b>Statutory Benefits</b> (including CPP, EI, Employer Health Tax and WSIB charges)	<b>2.58%</b>	<b>10.23%</b>	<b>12.80%</b>	\$11,216
<b>Pension</b> (including pension buybacks and pension for employees on LTIP)	<b>11.29%</b>	<b>0.00%</b>	<b>11.29%</b>	\$9,889
<b>Premiums</b> (including overtime premium, call back and shift premium payments)	<b>0.03%</b>	<b>0.01%</b>	<b>0.04%</b>	\$34
<b>Termination Pay</b> (including transition exit pay, termination pay, salary continuance, severance payment and death benefit)	<b>0.63%</b>	<b>1.07%</b>	<b>1.69%</b>	\$1,483
<b>Total Benefits/Pension/Premiums/Termination</b>	<b>19.01%</b>	<b>16.10%</b>	<b>35.11%</b>	<b>\$30,753</b>
<b>Estimated Salary and Benefits</b>				<b>\$118,353</b>

<b>Pay for Time Not Worked (2020 Experience)</b>		
Vacation	<b>6.34%</b>	\$5,556
Sick Leave	<b>3.20%</b>	\$2,803
Holidays (12 statutory holidays)	<b>4.92%</b>	\$4,310
POA Days	<b>2.23%</b>	\$1,951

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 Probation Officer 2 average experience
- Premiums and termination estimates are based on Probation Officer 2 average experience
- Average FTEs based on Regular Staff FTEs on December 31, 2019 & December 31, 2020 were used to estimate vacation, holidays and POA Days experience
- Average Daily Rate based on Regular Staff FTEs (967.64) 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%

**Estimated Total Compensation for Employees in the Core  
Public Administration**

As of 2021-22 Fiscal Year

<b>Compensation Component</b>		<b>WP04</b>
	FTFYE Population	2,457
<b>Salary</b>	<i>(Maximum Pay Rate, March 2022)</i>	<b>\$93,108</b>
<b>Allowances and Premiums</b>		<b>\$3,206</b>
<b>Pension</b>		<b>\$12,679</b>
	PSSA Pension	\$9,431
	CPP contributions	\$3,248
<b>Benefits</b>		<b>\$9,452</b>
	Current Health and Dental	\$3,015
	Post-Employment Health and Dental	\$2,013
	Disability Insurance	\$2,213
	Public Service Supplementary Death Benefit	\$191
	Maternity/Parental SUB plan payments	\$891
	EI Contributions	\$1,130
<b>TOTAL COMPENSATION ESTIMATE</b>		<b>\$118,446</b>
	Salary - Paid Time At Work	64%
	Salary - Paid Time Off Work (Paid Leave)	15%
	Allowances and Premiums	3%
	Pension	11%
	Benefits	8%

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

<b>Allowances and Premiums</b>	\$624
Overtime	\$441
Shift Premiums/Non-Standard Hours	\$64
Other Allowances	\$120
Severance	n/a
<b>Health Payroll Tax (Ontario 1.95%)</b>	<b>\$1,816</b>

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 WP04 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).

**Alberta Probation Officer**

<b>Compensation Component</b>	<b>CSW2</b>	
	<b>% of Salary</b>	<b>At Salary Max</b>
(The compensation cost reflects employer costs, and does not include the employees' contribution to benefits.)		
<b>Salary</b>		<b>\$85,759</b>
<b>Insured Benefits</b> (Health Spending Account, Prescription Drugs, Dental, Extended Medical, Life Insurance, AD/D, Long Term Disability)	5.09%	\$4,365
<b>Statutory Benefits</b> (CPP, EI)	5.03%	\$4,314
<b>Pension</b>	7.36%	\$6,312
<b>Premiums</b> (including overtime premium which is a significant proportion of Premiums, shift differential)	2.89%	\$2,478
<b>Termination Pay</b>	N/A	N/A
<b>Estimated (Benefits/Pension/Premiums/Termination)</b>	<b>20.37%</b>	<b>\$17,469</b>
<b>Estimated Salary and Benefits</b>		<b>\$103,229</b>

360. Despite the similarities between the Alberta CSW2s and the Ontario PO2s, and the fact that the Alberta CSW2s are a more appropriate comparator based on a review of their duties and responsibilities, the total compensation charts above show that Ontario PO2s earn more total compensation (\$118,353) than Alberta CSW2s (\$103,229). Further, even if this Arbitrator decides that Federal WP4s are an appropriate comparator (which the Employer denies), the Ontario PO2s are currently on par with the total compensation of Federal WP4s (\$118,446).

**10. COMPARISON TO ONTARIO NURSES' ASSOCIATION ACROSS THE OPSEU/SEFPO CORRECTIONAL BARGAINING UNIT IS NOT APPROPRIATE**

361. Correctional Nurse classifications, currently occupied by approximately 400 employees, are a group that for the purposes of this interest arbitration should be separated out from the former Unified Wall-to-Wall group.
362. The employees in Correctional Nurse classifications perform unique and critical, safety-sensitive work in correctional and youth justice facilities. The Employer recognizes that correctional and youth justice facilities are not immune to the challenges faced by nurses in other healthcare settings (e.g., hospitals, nursing homes, extended care facilities, etc.). Nurses in correctional and youth justice facilities perform work that has some similarities to the work performed by nurses in hospitals.
363. In the last round of collective bargaining, this group was awarded special adjustments in each year of the 2018-2021 collective agreement as a means to recognize the importance of these positions. That said, it is important to note that for the term of the 2018 to 2021 collective agreement, the Correctional Nurse classifications received the same across-the-board (ATB) increases as the rest of the members of the Correctional Bargaining Unit, which were also the same as the ATB increases received by all members of the Unified Bargaining Unit. The Employer's position is that the ATB increases for all positions, including Nurses, in the two bargaining units should continue to be the same for the term of the renewal collective agreement.

### Hourly Salary Rate Comparison - OPSEU Nurse 2 to ONA Hospital nurse

Year	Hourly Basis				
	OPSEU Cor Nurse 2, General Hourly Rate	ONA Step 9 Hourly Rate	% Difference	ONA Step 10 Hourly Rate	% Difference
2010	\$36.75	\$41.70	13.48%	\$42.44	15.49%
2011	\$37.86	\$41.70	10.15%	\$42.44	12.10%
2012	\$39.00	\$41.70	6.92%	\$42.44	8.82%
2013	\$39.00	\$42.85	9.87%	\$43.61	11.82%
2014	\$39.00	\$43.45	11.41%	\$44.22	13.38%
2015	\$39.00	\$44.06	12.97%	\$44.84	14.97%
2016	\$39.00	\$44.68	14.56%	\$45.47	16.59%
2017	\$39.55	\$45.31	14.57%	\$46.11	16.60%

**Notes**

- 1 - Ontario Nurse 2, General has a total of 9 steps, with the maximum 9th step reached after 8 years
- 2 - ONA also has 9 steps reached after 8 years, followed by an additional 10th step reached after 25 years
- 3 - Rate variances represent % of Ontario Nurse 2, General rate to reach ONA rate
- 4 - Weekly rates variances between OPS and ONA are less than for the hourly rates because OPS Nurses jobs are 40 hours per week vs. 37.5 hours per week for ONA nurses
- 5 - Terms awarded: Retroactive to April 1, 2022, amend RN wage grid to merge 25 Year Rate into 8 Year Rate and eliminate 25 Year Rate. Retroactive to April 1, 2022, apply a 3% across the board wage increase

364. It is very important to note that during a period of free collective bargaining for the OPSEU/SEFPO Nurse 2 shown in the chart above from 2010 to 2017 (OPSEU/SEFPO Nurses had access to free collective bargaining from 1994 to 2017), the Nurse 2 hourly salary has consistently lagged behind the ONA Hospital Nurse Step 9 salary rate. The difference in salary rate varied between the OPSEU/SEFPO Nurse 2, being almost 8% below the ONA Hospital Nurse Step 9 in 2012 to approximately 14.5% below in 2017. Overall, the average weighted difference between the salaries was nearly 12% over the 8 years between 2010 and 2017, a period when the ONA Hospital Nurses had access only to interest arbitration while the OPSEU/SEFPO Nurse 2 had access to right to strike. In fact, the OPSEU/SEFPO Nurse 2s went on strike in both 1996 and again in 2002.
365. Accordingly, during this period when the OPSEU/SEFPO Nurse 2 had access to the right to strike as members of the OPSEU/SEFPO Unified Bargaining Unit, there appeared to be an acceptance by OPSEU/SEFPO of a salary rate that has been traditionally lower than the ONA Hospital Nurse. The difference between the two salaries has grown larger over the years. In fact, in back-to-back contracts covering the periods 2013 to 2014 and 2015 to 2017, the OPSEU/SEFPO Nurse 2 accepted four years of zero increases from 2013 to 2016 inclusive while the ONA Hospital Step 9 Nurse received an increase of 7.15% over the same period. It is important to be aware that during the two collective

bargaining periods referred to above there was no legislative or other encumbrance preventing the OPSEU/SEFPO Nurses from striking on the issue of salary had they been dissatisfied with the outcome they were able to achieve at the time.

366. Notwithstanding, the Employer recognizes that SOLGEN and MCCSS have experienced challenges in recent years with attraction and retention of OPSEU/SEFPO Correctional Nurses. To mitigate these challenges the ministries have supplemented the availability of OPSEU/SEFPO Correctional Nurses with the use of third-party agency Nurses to fill staffing gaps. While this approach is not the most preferred method of providing medical care, it has become a necessary operational measure. That being said, the Employer is not opposed to a modest, fair and appropriate special wage adjustment for OPSEU/SEFPO Correctional Nurse classifications, especially considering the recent wage outcomes achieved by ONA Hospital Nurses.
367. Any special adjustment for OPSEU/SEFPO Correctional Bargaining Unit Nursing classifications that might be contemplated by the Arbitrator should take into account all of the points outlined above.



**11. APPROPRIATE COMPARATOR FOR OTHER OPSEU/SEFPO CORRECTIONAL POSITIONS IS OPSEU/SEFPO UNIFIED**

368. The fourth group of employees within the Correctional Bargaining Unit, for purposes of comparison in the Employer's view, is comprised of employees who are not COs/YSOs, POs or nurses. In turn this fourth group can be divided in to two sub-groups, the first being former members of the Unified Bargaining Unit whose positions were transferred into the Correctional Bargaining Unit effective January 1, 2018 and the second being those legacy sub-group positions which were in the Correctional Bargaining Unit prior to January 1, 2018 that include, but are not limited to, rehabilitation officers, recreation officers and industrial officers.

**11.1 Former Unified Bargaining Unit Positions**

369. For the first sub-group, the classifications that were formerly in the Unified Bargaining Unit, there is compelling evidence and bargaining history that bolsters the argument that these classifications must maintain wage levels that align with their mirror classifications that remain in the current Unified Bargaining Unit:

- a) From the time when the right to strike was legislated in 1993 until December 31, 2017 the former Unified and current Unified classifications were all together under the same bargaining unit(s) receiving the same wages, wage increases and wage adjustments.
- b) In the interest arbitration under the new, expanded and standalone Correctional Bargaining Unit, OPSEU/SEFPO sought a special wage adjustment of 16.5% for the Trades group. In the April 1, 2019 interest arbitration award, Arbitrator Kaplan did not order any special adjustment for this group or any other classifications that came from the former Unified group with the exception of Nurses. Now, in this round of collective bargaining, in addition to seeking numerous other special adjustments for various groups, OPSEU is seeking a 23% special adjustment for Maintenance and Trades classifications. The union presumably bases its demand on choosing comparators in other jurisdictions. The appropriate comparators are classifications in the Unified Bargaining Unit as evidenced by the collective bargaining history and previous interest arbitration award.

- c) Following the implementation of the legislative changes to CECBA that created the two standalone bargaining units, Correctional and Unified which formalized the separate negotiation of collective agreements, the Parties formally agreed to a permeability agreement. The terms of this agreement are now set out in Appendix 64 of both the Correctional and Unified Bargaining Unit collective agreements, which allows for movement between the bargaining units for a number of purposes including employment stability, posting and filling of vacancies, health reassignment, pay administration, and accommodation. As such, continuing the alignment of wages for mirror classifications in the two bargaining units is necessary in order for these important mobility provisions to function, particularly for job security purposes. For example, if a facility in a remote location were to close down, it is possible that an Administrative Assistant at the Office Administration 08 level could be assigned to a position classified at the same level in Unified through the employment transition process. If wage adjustments for the Correctional Bargaining Unit were different than those of Unified, this move would be considered as either a demotion or promotion (depending which group had the higher wage adjustment), rather than a lateral move. In the case of a demotion, employees could be negatively impacted from a salary perspective. In any event, unequal wage adjustments between groups would disrupt the seamless movement of employees between bargaining units and go against the spirit and intent of the permeability agreement.
- d) There is a long, continuing history of good attraction and retention for these classifications and there is no need to look beyond the Unified Bargaining Unit for comparators.

## **11.2 Legacy Sub-Group Correctional Bargaining Unit Positions**

370. For the other sub-group, the Correctional legacy sub-group, there is compelling evidence and bargaining history that bolsters the argument that there is no justification for special adjustments for any of the positions in this sub-group:
- a) The classifications in this sub-group have, for the most part, been part of what was originally the Correctional Wage category group from 1980 to 1993 and then continuing as part of the Correctional Bargaining Unit from 1993 to present. These

classifications have largely received the same wage adjustments as those received in the Unified Bargaining Unit.

- b) In the interest arbitration under the new, expanded and standalone Correctional Bargaining Unit, OPSEU/SEFPO sought special wage adjustment for four groups: COs/YSOs, POs, nurses and the trades group. OPSEU/SEFPO did not seek special adjustments for any of the classifications in the legacy sub-group. Now, in this round of bargaining, in addition to seeking numerous other special adjustments for various groups, OPSEU/SEFPO is seeking an astounding 33% special adjustment for the rehabilitation class series which is a classification in the legacy sub-group. When combined with OPSEU/SEFPO's proposed across the board increases, the rehabilitation officer class series incumbents would receive a greater than a 50% wage increase over the life of the contract. The union bases its demands on choosing comparators in other jurisdictions. The positions in the legacy sub-group are well compensated and there is no foundation for providing special adjustments to any of the classifications.
  
- c) In the six rounds of bargaining from 2002 to date, the positions in the legacy sub-group have received fewer special adjustments than those received by COs/YSOs and POs.
  - o In 2002, all Correctional Bargaining Unit classifications received a 5% additional new step at the top of the grid while POs also received a special adjustment of a 4% ATB.
  - o In 2005, COs/YSOs received a special adjustment of a 3 % new step at the top of the grid. The legacy sub-group received nothing.
  - o In the 2009 collective agreement, the legacy sub-group received a single 1% special adjustment that was significantly less than the 4% received by COs/YSOs and 2% received by POs in special adjustments.
  - o The legacy sub-group received, through an arbitration awarded, a special adjustment of 3% in January 2017 which was equivalent to the amount received by COs/YSOs officers during the term of the 2015 to 2017 collective agreement.

- In the following collective agreement of 2018-2021, the COs/YSOs, POs and Nurses received significant special adjustments over the term of the collective agreement (COs/YSOs – 7%, POs/Nurses – 4%) while the legacy sub-group received nothing.
371. Clearly the bargaining history indicates that this sub-group sometimes is included in receiving special adjustments that other groups within the bargaining unit receive and sometimes not. This is not an occasion to include the legacy sub-group as another group to receive a special adjustment nor is it a time for the sub-group to receive a special adjustment independent of other groups.
372. There is also a long, continuing history of good attraction and retention for the legacy sub-group classifications and there has been no compelling evidence brought forward by the union to justify a special adjustment for any or all of the classifications in the legacy sub-group.
373. Accordingly, it is the Employer's position there is no justification to award any special adjustments for the legacy sub-group during the term of this collective agreement.

## 12. EMPLOYER'S PROPOSALS

374. The Employer's proposals and rationale are outlined below. The corresponding proposed collective agreement language is set out in Appendix A.

### 12.1 Psychological Services

#### (i) Employer's Proposal

375. The Employer proposes improvements to entitlements for the services of a Psychologist set out in the collective agreement. Effective 90 days from the date of ratification or interest arbitration decision, for all regular and regular part-time employees:

*Increase charges for the services of a Psychologist (which shall include Master of Social Work) from forty dollars (\$40) to eighty dollars (\$80) per half-hour for the rest of the bargaining unit and their dependents (except Correctional Officers and Youth Workers). The non-applicability of a half hour cap for Correctional Officers and Youth Workers remains the same.*

*Increase the annual maximum claim amount from \$1,400 to \$1,600.*

*Add Psychotherapist coverage, where such services are equivalent to those provided by a Psychologist to existing Psychological services coverage. For clarity the annual maximum would cover charges for the services of a Psychologist, which would include Master of Social Work or a Psychotherapist.*

#### (ii) Rationale for Employer's Proposal

376. The Employer is proposing amendments to psychological services coverage as a way to recognize and support employees and dependents who may need mental health support. The change would impact eligible non-CO/Youth Worker employees as well as eligible dependents of all bargaining unit employees. For clarity, the Employer's proposal does not change the existing no per half hour cap for COs and Youth Workers.

377. The Employer's proposal to increase psychological service coverage entitlements would align OPSEU Corrections with entitlements recently negotiated with other OPS bargaining agents (OPSEU Unified, AMAPCEO, ALOC/OCAA) during this round of collective

bargaining. The psychological services collective agreement entitlements of these other OPS bargaining groups are as follows:

Bargaining Unit	Amount	Accepted Providers
OPSEU Unified	Effective January 1, 2022, \$80 per half hour to an annual maximum of \$1,600.	Psychologist (which shall include Master of Social Work)
AMAPCEO	Effective April 1, 2023, \$80 per half hour to an annual maximum of \$1,600.	Psychologist Psychotherapist and Social Worker with a Master's degree in Social Work, where such services are equivalent to the services that would otherwise be provided by a Psychologist.
ALOC/OCAA	Effective July 1, 2022, \$80 per half hour to an annual maximum of \$1,600.	Psychologist (which shall include a Master of Social Work) Psychotherapist

378. It should be noted that OPSEU Corrections in their last monetary proposal (amended U-28) tabled to the Employer on April 11, 2023, also included adding psychotherapist coverage to psychologist benefits, which would align with the Employer's proposal.

379. According to Manulife usage statistics, total claims for the services of Psychologist and Master of Social Work for the Correctional Bargaining Unit are as follows:

Year	Service Provider/Claim	Number of Occurrences	Total
August 2018 – July 2019	Psychologist Office Visit	2,088	3,414
	Master of Social Work	1,326	
August 2019 – July 2020	Psychologist Office Visit	2,389	4,190
	Master of Social Work	1,801	
	Psychologist Office Visit	2,212	4,589

Year	Service Provider/Claim	Number of Occurrences	Total
August 2020 – July 2021	Master of Social Work	2,377	
August 2021 – July 2022	Psychologist Office Visit	2,737	6,950
	Master of Social Work	4,213	

380. The above data illustrates that there has been steadily increasing utilization of Psychologist and Master of Social Work visits by members of Correctional Bargaining Unit and their dependents.

381. In addition, increased usage of Master of Social Work visits may also be an indication that OPSEU Corrections Bargaining Unit members and their dependents are open to other forms of psychological service providers other than just Psychologists. Expanding the range of providers to include Psychotherapists, offers more affordable options for Correctional Bargaining Unit members when compared to Psychologists, which would in turn stretch available coverage funds further.

**12.2 Absenteeism/Overtime**

*(i) Employer's Proposal*

382. In order to address absenteeism, including high sick leave usage and corresponding operational difficulties and increased overtime costs in the Correctional Bargaining Unit, the Employer proposes changing the definition of overtime effective ninety (90) days from date of ratification or interest arbitration decision so that employees are only eligible to be paid the premium overtime rate once they have performed work 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 premium overtime rate would apply.

*(ii) Rationale for Employer's Proposal*

383. Currently, overtime is defined as 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. Any leaves that the employee has taken

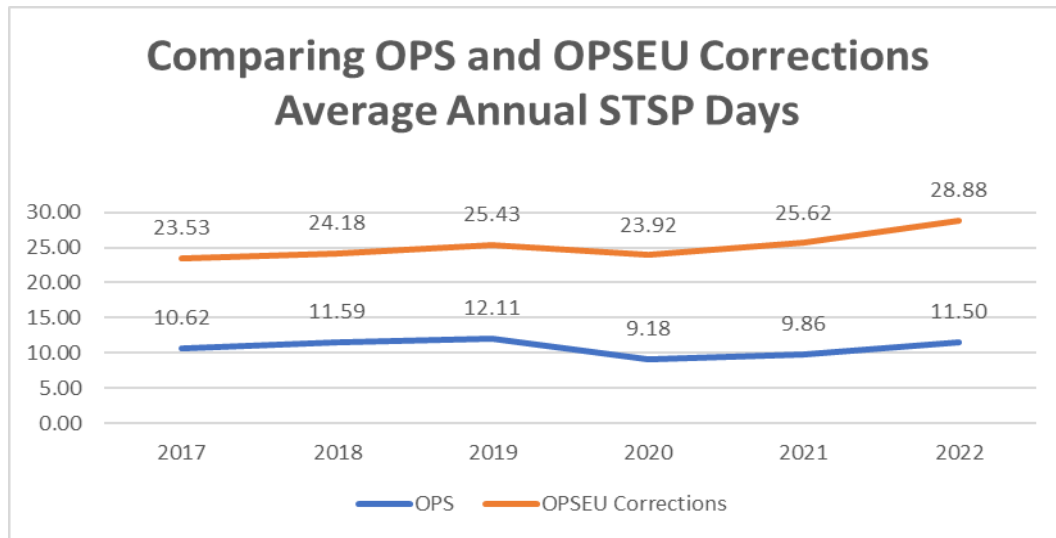
are not considered when determining if an employee is entitled to pay at the premium overtime rate.

384. The 2019 Ontario Auditor General Report (“the AG report”) noted that current collective agreement sick leave entitlements, combined with the opportunity to work paid overtime, may create an incentive for some staff to call in sick for their scheduled shifts in favour of working overtime to accumulate compensated time off or receive pay at a rate of one-and-a half times their regular rate.
385. Absenteeism was a key issue highlighted in the report. The AG report found that:
- a) Sick leave replacement costs as a result of absenteeism increased 280% from 2008 to 2018 and cost the Employer \$42 million in 2018/19.
  - b) Overtime pay totaled \$60 million in 2018/19 for three quarters of staff and amounted to 16% of regular salaries.
  - c) Average sick day costs range for \$570,000 at Thunder Bay Correctional Centre to \$5.1 million at Toronto South Detention Centre.
  - d) Large numbers of staff calling in sick for a particular shift and/or on particular days often results in staffing shortages that have a direct impact on the security of the institution as well as on the safety of those employees who remain to run the shift.
  - e) Half of staff worked less than two-thirds of their scheduled shifts, yet more than a quarter worked an average of 50 overtime shifts.
  - f) One employee worked just 8 of 88 scheduled shifts, called in sick 74 times and worked 43 overtime shifts not scheduled. This person earned \$19,000 in overtime pay in 2018/19.
386. Since the release of the AG report, Short-Term Sickness Plan (“STSP”) utilization for the Correctional Bargaining Unit has continued to increase. In 2022 the average annual STSP was approximately:
- a) 36 days for COs



- b) 30 days for Nurses
- c) 26 days for YSOs
- d) 17 days for POs
- e) 24 days for the balance of the Correctional Bargaining Unit (excluding COs, Nurses, YSOs, and POs)

387. As demonstrated by the chart below, average STSP usage by the Correctional Bargaining Unit is also significantly higher than other employee groups across the OPS.



388. The excessive costs and operational burdens associated with these high rates of STSP utilization are exacerbated by extremely high costs associated with replacing absent employees through overtime backfilling. It is estimated that in 2022 the Employer spent over \$51 million on replacement costs to backfill CO, YSO and Nurse STSP absences.

389. As a mechanism to support the reduction of high STSP utilization, the Employer proposes that the overtime rate of pay in the pay period will be tied to the employee working all scheduled hours in the two pay periods before the overtime premium pay would apply.

390. For example, an employee who is scheduled to work 14 twelve hours shifts over two pay periods (168 straight time hours total) uses 12 hours STSP and also 12 hours of vacation leave (total absences of 24 hours). During the same two pay periods, the employee works

three twelve-hour overtime shifts (total of 36 hours). For the first 24 hours of the 36 hours of overtime worked the employee would be compensated at straight time (24 hours pay). For the remaining 12 hours of overtime, the employee would receive the premium overtime rate of pay (12 hours at 1.5 times rate of pay = 18 hours pay).

391. Implementation of the Employer's proposal would result in an estimated cost avoidance of overtime expenses of almost \$6 million on an annual basis, even assuming that there is no reduction in the rate of STSP usage in the bargaining unit.
392. This is a key proposal that the employer advanced in the last round of negotiations and it's an issue that the parties have contested for a long time. The Employer's proposal would help to reduce the costs and operational burdens attributed to high STSP usage and seek to remove the incentive for employees to call in sick for their regular shifts in favour of working overtime at other times. Therefore, the definition of overtime should be changed so that the premium overtime rate of pay would be tied to working all scheduled hours over two pay periods before the premium overtime rate would apply.

### 12.3 **Salary**

#### (i) Employer's Proposal

393. Taking into account and properly weighing all of the relevant criteria, the Employer proposes that across-the-board increases in each year of the collective agreement as follows are appropriate:
- i. January 1, 2022 – 1.0%
  - ii. January 1, 2023 – 1.0%
  - iii. January 1, 2024 – 1.0%

394. The Employer proposes that any additional wage increases as may be reached with the OPSEU/SEFPO Unified Bargaining Unit as a result of its wage re-opener clause also apply to the OPSEU/SEFPO Correctional Bargaining Unit.

#### (ii) Rationale for Employer's Proposal

395. The Employer's proposal is consistent with the wage provisions of the OPSEU/SEFPO Unified Bargaining Unit Memorandum of Settlement ratified on January 26, 2022,

negotiated between the Employer and OPSEU/SEFPO, as well as the Employer's settlement with AMAPCEO. 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.

396. The Employer recognizes that the Unified Bargaining Unit negotiated a wage re-opener clause with respect to wage increases as they relate to the PSPSFGA. It is not known when the parties will conclude these wage re-opener negotiations. The Employer therefore proposes that any additional wage increases in excess of the 1% annual across-the-board increases that are reached with the Unified Bargaining Unit as a result of its wage re-opener clause also apply to the Correctional Bargaining Unit.
397. The Employer's position with respect to wages is also consistent with the statutory criteria set out in Section 29.7(2) of CECBA, including the Employer's ability to attract and retain qualified employees, comparability, the Employer's ability to pay in light of its fiscal situation, the economic situation in Ontario, and the extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased. Furthermore, the Employer's position with respect to wages is consistent with the Replication and Total Compensation criteria.

#### **12.4 Term**

*(i) Employer's Proposal*

398. The Employer proposes that the collective agreement have a term of three years, from January 1, 2022 to December 31, 2024.

*(ii) Rationale for Employer's Proposal*

399. In addition to the Employer proposing a three-year collective agreement term, OPSEU has also proposed a three-year term.
400. Further, generally the bargaining units in the OPS have reached a three-year term collective agreement during this round of collective bargaining (only one is four years). The following chart shows the term of these OPS collective agreements.

### Term of OPS Collective Agreements

Bargaining Unit	No. of Employees	Length of Term in Years	Term
OPSEU Unified Bargaining Unit	24,890	3	January 1, 2022 - December 31, 2024
AMAPCEO	13,600	3	April 1, 2022 - March 31, 2025
Association of Law Officers of the Crown/Ontario Crown Attorneys Association	1,900	4	July 1, 2021 - June 30, 2025 (Term per framework agreement. Year 4 collective agreement issues pending the outcome of an interest arbitration award.)

401. Under the principle of replication, this is compelling evidence that the Parties would have agreed to a three-year term in a free collective bargaining environment. In fact, OPSEU's previous proposals to the Employer during this round of negotiations have proposed a three-year term.
402. A longer-term labour contract (i.e., three years) is also preferred because it will provide labour stability over a longer period of time. Given that the Parties are well into the 2023 calendar year, a collective agreement term ending in 2024 makes practical sense from the perspective of implementation of new terms and conditions.
403. It is also of note that the Correctional and Unified Bargaining Units have had the same term of collective agreements to date.

**12.5 Health Care Spending Account/Administrative Changes – New LOUs**

*(iii) Employer's Proposal*

404. Effective 90 days from the date of ratification or interest arbitration decision, 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. The HCSA could be used for expenses incurred on or after the effective date.
405. The creation of this HCSA is contingent on a complete package of administrative changes also being implemented. This package of administrative changes include:
- a) Implementation of a standard 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) Specialty drug care program
  - g) Vitamin B6/B12 injections: Apply standard reasonable and customary adjudication terms. Specifically, coverage will be limited to expenses incurred for treatment considered reasonable and customary for a patient's medical condition e.g., vitamin deficiency.

*(iv) Rationale for Employer's Proposal*

406. The identical provisions the Employer is seeking for the OPSEU Correctional Bargaining Unit were recently freely negotiated and agreed to between the Employer and the OPSEU Unified Bargaining Unit as part of the 2022-2024 collective agreement ratified by the Parties. In addition, AMAPCEO has also recently freely negotiated similar changes (establishment of a healthcare spending account and corresponding administrative changes). Under the principle of replication, this is compelling evidence that the Parties would have agreed to these provisions in a free collective bargaining environment.

407. The Employer's proposal is seeking to modernize insured benefits to address the evolving and diverse needs of its workforce and in alignment with industry recommended best practices. This proposal balances the consideration of employees' health needs and their interest in having more choice and flexibility to meet individual needs along with the Employer's consideration of cost management and long-term plan sustainability. From August 1, 2022 to July 31, 2023, the Employer spent approximately \$13.8 million on prescription drugs alone under the OPSEU Correctional insured benefits plan. The proposed administrative drug plan changes support a dual bottom line, where the needs of employees and their dependents are met and balanced with drug plan features that support long term plan sustainability.
408. The HCSA is an employer-funded account for eligible regular and seasonal employees to use to pay for eligible medical expenses for themselves and eligible dependents as defined in the *Income Tax Act*. The HCSA would be beneficial to employees as it promotes greater choice in utilizing benefits. The Employer would, on an ongoing basis, credit the HCSA account with \$300 annually per regular and seasonal employee. This amount would not be taxable to employees. Unused credit from the applicable calendar year that was remaining at the end of the calendar year would be eligible to be carried forward for one additional calendar year.
409. Another benefit of the HCSA is that employees could use the HCSA to top-up eligible medical expenses for themselves and their eligible dependents that are not fully covered by the Supplementary Health and Hospital (SHH) or dental plans, including deductibles and co-payment amounts, or to cover expenses that may not be payable under the SHH or dental plans. For example, employees who choose to see an Occupational Therapist would be able to use their HCSA to cover the cost of these services which are not currently covered under the SHH plan but may be considered as eligible expenses under the Canada Revenue Agency (CRA) guidelines. Employees would also be able to claim reimbursement for any employee-paid premiums for health care or dental benefits, which could include the premium costs for coverage such as Catastrophic Drug Coverage.
410. The HCSA would also allow employees to cover expenses for a wider range of dependents than the SHH and dental plans. Under the existing SHH and dental plans, an employee's spouse and dependent children are considered eligible for family coverage. Under the

HCSA, an employee who can claim an aging parent as a dependent on their personal income tax return can seek reimbursement for that individual's eligible medical expenses under the HCSA.

411. The administrative changes being proposed under the Employer's SHH plan would fund the cost of the HCSA on an ongoing basis and ensure the affordability and sustainability of the plan. The administrative changes are as follows:

***(a) Implementation of a standard Prior Authorization program***

412. Prior Authorization (PA) is a program that helps manage drug costs while continuing to provide employees with access to appropriate drug therapy. Application ensures certain drugs are covered following validation that the treatment plan meets standard clinical guidelines and that the drugs were prescribed for the intended/approved purpose.
413. Standard PA would help to better ensure that prescribed medications are the most cost-effective choice for the patient's condition. For employees and their dependents, it simply means that for specific drugs, the insurance carrier (Manulife) requires some additional medical information before determining if the expense is eligible for coverage under the drug plan. Ensuring cost effective medications could ultimately help reduce out of pocket costs for employees and their dependents. It would also help ensure that clinical practice guidelines are followed, that drugs are medically necessary and in line with Health Canada's approved use.
414. Standard PA is a standard feature of drug programs in the Canadian marketplace; 98% of Manulife clients have standard PA in place. It targets high-cost drugs to prevent against experimental usage and ensures appropriate integration with provincial and hospital programs.
415. The OPSEU Correctional benefits plan currently includes PA covering three drugs. Implementing a standard PA program would expand the current OPSEU plan scope to align with the standard Manulife program model, which covers over 250 drugs and is updated monthly as new drugs enter the market.
416. The impact of standard PA would be limited to new patients and/or claims for new conditions (e.g., following a change in medication). If an employee/their dependent is

currently on a treatment that involves use of a drug and already claiming the drug under the SHH plan that would otherwise require PA, their coverage for that drug would not be impacted. This means that future claims for such drug(s) would not be subject to the PA process unless the drug were prescribed to treat a new/different medical condition. The impact would be limited to claims for new patients and/or treatment plans that involve alternate drugs. For example, if the patient's medication changes.

***(b) Enhanced (mandatory) generic substitution prescribed drug program***

417. Enhanced mandatory generic substitution (lowest cost alternative) would help to manage plan costs by reimbursing the cost of prescription drugs based on the price of the lowest-priced alternative medication, which is typically a "generic" drug. In addition, all prescription drugs would be subject to limits on allowable pharmacy "mark-ups" which are representative of the market and are considered reasonable in the province where the medication is dispensed.
418. However, if the physician prescribed a brand-name drug for a new medical condition, for which there is no alternative, as part of the employee's/dependent's treatment or due to the employee's/dependent's intolerance to the generic drug, the member would be reimbursed based on the cost of the brand-name drug, subject to limits on pharmacy mark-ups.
419. The OPSEU Correctional SHH plan currently has mandatory generic substitution, which means that prescriptions are reimbursed at 90% of the cost of the generic equivalent (subject to a deductible per Drug Identification Number (DIN)), where a generic equivalent exists, unless the drug is medically necessary (i.e., the employee/dependent requires it as part of their treatment due to an intolerance to the generic drug) or where the prescription from the medical practitioner indicates "no substitution." Under the proposed enhanced mandatory generic substitution program, prescription drugs would continue to be reimbursed based on the cost of the brand-name drug where no generic equivalent exists and where deemed medically necessary. However, drugs would be reimbursed based on the lowest cost alternative in situations where the medical practitioner indicates "no substitution," where a generic equivalent exists unless it has not been determined that the brand-name drug is medically necessary. If the employee/dependent required a brand-name drug because of intolerance to the generic equivalent, their medical practitioner



could complete a “Request for Approval of a Brand-Name Drug Form,” and submit to Manulife. If approved, reimbursement would be based on the brand-name product cost (subject to the limits set out above). In cases where the medical practitioner has indicated “no substitution,” the employee/dependent could ask their pharmacist to dispense the lowest cost generic alternative, or they could accept the brand-name drug and pay the difference between the brand-name price and the lowest cost alternative.

420. According to Health Canada, generic drugs have the same active (medicinal) ingredients as brand-name drugs and are equally safe and effective. Many generic drugs are legislated to cost no more than 10% of the price of the brand name drug. Therefore, implementation of an enhanced mandatory generic substitution program could result in significant plan savings, without compromising employees’ and their dependents’ ability to access the prescription drugs they require. Further, as the employee/dependent is responsible for covering 10% of the cost of the drug (the co-insurance) using lower cost generic drugs in situations where a brand name drug is not medically necessary can help reduce costs for employees and their dependents.

**(c) *Dispensing fee cap of \$11.99***

421. The proposed dispensing fee cap would mean that a maximum of \$11.99 would be reimbursed per DIN per visit; currently there is no dispensing fee cap for the OPSEU Correctional plan. Between November 2022 and January 2023, the average dispensing fee claimed by OPSEU Correctional Bargaining Unit plan members was \$9.67 per DIN. Between February 2023 and April 2023, the average dispensing fee claimed was \$9.68 per DIN.
422. Employees and their dependents would still be able to choose to access a higher cost provider with dispensing fee costs that are above the cap, however they would only be eligible for reimbursement up to the cap of \$11.99. For example, if an employee purchased prescription drugs at a pharmacy which charges a dispensing fee of \$12.99, the employee would be covered for \$11.99 of the total \$12.99. In such cases, employees could elect to use their HCSA to cover the balance of the dispensing fee cap so long as there were funds in the HCSA available or opt to pay the difference.

423. A dispensing fee cap would encourage smart consumerism and claimants to purchase their drugs at pharmacies with competitive fee charges, while protecting the SHH plan from the cost of high dispensing fees helping to support plan sustainability.

***(d) Dispensing Fee Frequency Cap***

424. Currently, there is no dispensing fee frequency cap for any drugs for the OPSEU Correctional SHH plan. The proposed dispensing fee frequency cap would limit the number of dispensing fees that will be reimbursed to five (5) dispensing fees per DIN per 12-month period, and would apply only to eligible maintenance drugs.
425. Maintenance drugs are defined as drugs that are used to treat chronic, long-term conditions and are taken on a regular, recurring basis that can reasonably be dispensed over a longer term. For example, drugs prescribed for high blood pressure, cholesterol, or diabetes.
426. Under the Employer's proposal, employees/their dependents would be reimbursed for the cost of dispensing fees incurred (up to the \$11.99 cap) for up to five purchases per maintenance drug, in a 12-month period. For clarity, the 12-month period is a rolling period, not tied to calendar year. Therefore, the employee/their dependent would be reimbursed for a given DIN (subject to the \$11.99 cap) up to five times within any consecutive 12-month period.
427. All drugs to which the cap would apply (i.e., maintenance drugs) are eligible to be filled/dispensed in a 90-day supply. Therefore, employees/dependents would be able to stay within the dispensing fee frequency limit and avoid related out-of-pocket expenses by purchasing a 90-day supply of maintenance drugs at the pharmacy. Employees and their dependents would still be able to purchase their prescription drugs more frequently if they chose to do so, however they would be responsible for dispensing frequency fees in excess of the limit of five per DIN per year.
428. Introducing a dispensing fee frequency cap would help to encourage employees and their dependents to obtain a greater supply per pharmacy visit, which would help to manage plan costs as a result of dispensing fees due to claims being submitted less frequently. Employees and their dependents could also benefit from this proposed change by

reducing trips to the pharmacy and having a more long-term personal supply of their maintenance drugs readily available at home.

**(e) Manulife DrugWatch Program**

429. *Manulife DrugWatch* is a standard Manulife plan feature that applies across 99% of plans; the OPSEU Correctional Bargaining Unit SHH plan does not currently have *Manulife DrugWatch*. The Employer is proposing to add *Manulife DrugWatch* as a mandatory part of the SHH plan.
430. *Manulife DrugWatch* is a program that brings together pharmacy and industry experts to monitor a small group of high-cost drugs. The *Manulife DrugWatch* Program would help to ensure that drugs that are screened and ultimately approved for coverage under the plan would have the potential to deliver optimal health outcomes, at the best possible price which would help to achieve plan sustainability while supporting employee health.
431. Under this proposal, each year, about seven to 12 new high-cost drugs, which include newly developed drugs and newly approved uses for existing drugs, would be critically examined to determine if the products:
- a) Deliver results that match or exceed those of existing drugs or treatments.
  - b) Deliver the health outcomes to justify their cost.
  - c) Pass evaluation by The Canadian Agency for Drugs and Technologies in Health (CADTH), an independent, third-party organization of experts in clinical research and health economics.
432. Once Manulife has enough information on the drug, it would make a coverage decision based in part on third-party evidence – the same evidence informing federal and many provincial drug plans. Manulife may decide that it is able to cover the drug, or it may require the establishment of a drug-specific program. A drug-specific program could be programs such as an adherence plan to ensure patients administer the drug correctly, or an exclusive distribution arrangement to better manage the cost.
433. *Manulife DrugWatch* would be beneficial for both the Employer as the plan sponsor, as well as employees and their dependents. Most drugs would be listed but only after

Manulife negotiates with the manufacturer to help reduce the final cost of the drug and patient support programs are established to ensure out of pocket costs to members are minimized.

**(f) Specialty Drug Care**

434. Specialty Drug Care (SDC) is not currently a part of the OPSEU Correctional Bargaining Unit plan; the Employer's proposal would implement the SDC program on a mandatory basis.
435. SDC is a standard feature in Manulife pay-direct drug plans. The program would feature both a preferred pharmacy network and nurse case management services.
436. The SDC program is designed to help plan members dealing with complex, chronic or life-threatening conditions such as cancer, Crohn's Disease, Hepatitis C and Multiple Sclerosis. Under the program, employees and their dependents would have access to a designated nurse case manager who could help them to better understand their health condition and the drugs they are taking and could offer assistance with drug treatment requirements and management of side effects, as well as would provide support with navigating access to complementary services and resources members could trust.
437. For example, an employee who has Crohn's Disease would receive personalized support from a nurse case manager who could help the employee to ensure they are taking their drugs as prescribed and to manage any potential side effects. In addition, the nurse case manager can also offer the employee coaching on diet, exercise and stress management to assist with managing their condition.
438. All drugs in the SDC program would be subject to PA. The nurse case manager would provide employees/dependents support with this process, including access to preferred pricing for the specialty drugs through a network of partner vendors. However, if the employee/dependent was already on a treatment that involves use of a specialty drug and was already claiming the drug under the SHH plan that would otherwise require PA, their coverage for that drug would not be impacted. This means that future claims for such drug(s) would not have to go through one of Manulife's partner vendors under the SDC program nor would they be subject to the PA process unless the specialty drug was prescribed to treat a new medical condition. The nurse case manager would assist the

employee/dependent by ensuring the drug is easily accessible by arranging for delivery, accessing an infusion clinic, if needed, contacting the physician for renewals, and following up with the employee/dependent to discuss treatment progress.

439. Implementation of the SDC program on a mandatory basis would mean that the employee/dependent would be contacted by a nurse case manager to set up the dispensing of specialty drugs (as well as to offer other supports), but once this has been set up, the employee/dependent would not be obligated to continue to work with the case manager. However, patient satisfaction surveys conducted by Manulife in organizations who do have the SDC program on a mandatory basis show high levels of member satisfaction with the SDC program. For example, since launching the program in 2014, 98% of plan members surveyed by Manulife who used the SDC program had a positive rating of their case management experience (as of August 2022).
440. From a cost perspective, the SDC program would be mutually beneficial to employees/their dependents and the Employer as the plan sponsor. In addition to providing savings on specialty drugs through preferred pricing, nurse case managers would help the employee/their dependents to access patient support programs where possible to reduce or eliminate out of pocket expense from co-pays, as well as other sources of funding like provincial programs, which would help to reduce costs for both plan members and sponsors.

***(g) Vitamin B6/B12 Injections***

441. The OPSEU Correctional Bargaining Unit plan terms currently cover employee's/dependent's claims for Vitamin B6/B12 injections administered as part of a weight loss program, as well as Vitamin B6/B12 injections obtained via a pharmacy with a valid doctor's prescription. The proposed changes would align the coverage and administration of claims with standard industry practices.
442. Accordingly, coverage would apply to injectable vitamin B6/B12 drugs prescribed by a physician practicing within the scope of their license and dispensed through a licensed pharmacist or provider, per the terms described in the collective agreement. Injections administered as part of a weight loss program would no longer be covered. Aligning coverage of claims with standard industry practices would help to manage drug plan costs

while ensuring employees/dependents continue to be covered for medically necessary B6/B12 products by limiting coverage of claims to those prescribed/dispensed in accordance with Health Canada approved use.

443. Coverage for injectable Vitamin B6/B12 prescribed for treatment of an employee's/dependent's medical condition would be limited to the cost of the drug, subject to the existing 90% reimbursement and \$3 per prescription deductible terms, if prescribed/dispensed for Health Canada approved use. For clarity, future claims for injectable Vitamin B6/B12 purchases would be adjudicated on the same terms as other eligible prescription drugs, which means that coverage would be limited to drug expenses incurred in relation to treatment considered reasonable and customary for a patient's medical condition. Accordingly, the SHH plan would not reimburse non-drug expenses, e.g., injection administration service charges, that a patient may incur as part of a Vitamin B6/B12 treatment plan.

## **12.6 Pregnancy and Parental Leave**

### *(v) Employer's Proposal*

444. The Employer proposes to amend the collective agreement to address the legislative amendments to the *Employment Insurance (EI) Act* and *Employment Standards Act, 2000 (ESA)*, which were implemented in 2017.
445. The Employer proposes to amend the collective agreement as necessary to reflect:
- For regular employees 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 Supplemental Unemployment Benefits (SUB) 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 EI benefit payments, and prior to the employee returning to the workplace; and
  - For regular employees whose extended parental leave begins on or after 90 days of ratification/or date of interest arbitration decision, SUB 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.

446. The Employer also proposes to update the language of pregnancy and parental leave provisions to align with the following changes which have been made to the ESA:
- Effective December 3, 2017, employees 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).
  - Effective January 1, 2018, employees who are not entitled to parental leave can now end their pregnancy leave twelve (12) weeks after stillbirth or miscarriage (previously six (6) weeks).
  - 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).
447. Finally, the Employer proposes that in the event of any subsequent amendments to the EI Act and/or ESA 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.

(vi) *Rationale for the Employer's Proposal*

448. The Employer's proposal aims to align with changes to the EI Act and the ESA and clarify SUB payment entitlements in the OPSEU/SEFPO Correctional bargaining unit collective agreement.
449. These provisions were recently freely negotiated and agreed to between the Employer and the OPSEU/SEFPO Unified bargaining unit as part of the 2022-2024 collective agreement. Under the principle of replication, this is compelling evidence that the Parties would have agreed to these provisions in a free collective bargaining environment.
450. With respect to other OPS bargaining agents, similar provisions were awarded to the OPPA Uniform and Civilian collective agreements through an interest arbitration award in 2019. In addition, these provisions have been freely negotiated and reached with the

Association of Management, Administrative and Professional Crown Employees of Ontario (AMAPCEO) in their 2022-2025 collective agreement, the Ontario Crown Attorneys' Association (OCAA) / Association of Law Officers of the Crown (ALOC) 2021-2025 collective agreement, and have also been implemented for the Professional Engineers Government of Ontario (PEGO) bargaining unit through a freely negotiated agreement.

451. There was a four year transitional period that ended on January 3, 2021, during which current SUB plans may be maintained, without adverse impact on employees. As this transitional period has ended over two years ago, it is important that changes be made to align with the current EI and ESA provisions.
452. In the absence of amendments to current collective agreement provisions, employees initiating pregnancy or parental leave may be in an overpayment situation in the second week of their leave of absence. This has been the case since the transitional period ended on January 3, 2021.
453. The Employer is proposing a reasonable solution in which the Employer would move the second week waiting period SUB payment to a later point in the period of leave. This approach would ensure that the employee receives the same amount of money in their pocket as prior to the EI changes.
454. Effective December 3, 2017, both the EI Act and ESA, extended parental leave and benefits to provide new parents with two (2) options:
  - a) The existing 35 weeks of ESA leave and access to 35 weeks of EI benefits paid in a 52-week period at 55% of insurable earnings, up to a maximum of \$595 per week; or
  - b) The new 61 weeks of ESA leave and access to 61 weeks of EI benefits paid in a 78-week period at 33% of insurance earnings, up to a maximum of \$344 per week.
455. The second part of the Employer's proposal would allow parents to elect to receive the equivalent amount of parental EI benefits but over a longer period of time. The Employer is again proposing a reasonable solution.



456. Between December 2017 and July 2023, there were 301 instances in which employees represented by the OPSEU/SEFPO Correctional bargaining unit elected to take an extended parental leave compared to 829 instances in which employees elected to take the standard parental leave.
457. The third part of the Employer's proposal would set out that in the event of any subsequent amendments to the EI Act and/or ESA which would impact provisions for pregnancy and parent leave, the parties would meet in a timely manner to review any changes and negotiate applicable cost-neutral changes to the current pregnancy and parent leave provisions. This would ensure that the collective agreement is in compliance with the relevant legislation and would ensure timely resolution of any differences between the EI Act and/or ESA and the collective agreement.
458. Therefore, the Employer proposes that the above-noted changes to the pregnancy and parental leave provisions be implemented.

## **12.7 Use of Lieu Days/Holiday Payment**

### *(i) Employer's Proposal*

459. The Employer proposes, effective ninety (90) days from the date of ratification or interest arbitration decision, to amend Article COR13.6 to remove the obligation of the Employer to grant lieu time, accumulated under Articles COR13.2 and COR13.5, if requested one month in advance and taken in conjunction with vacation leave or regular day(s). The Employer proposes that Article COR13 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) Rationale for Employer's Proposal*

460. If a regular employee works on a statutory holiday, in accordance with Article 47, they receive double time for the hours they worked on the holiday and they receive a day in the bank as lieu time to be used to take another day off, in accordance with Article 13.2.

461. In accordance with Article 47, if a statutory holiday coincides with a regular employee's scheduled day off and the employee does not work that day, they receive a day in the bank as lieu time to use on another day, in accordance with Article COR13.5.
462. Currently, in accordance with Article COR13.6 if a regular employee requests to use lieu time to take days off that are in conjunction with their scheduled vacation or regular day(s) off and that request is submitted one (1) month in advance, then the Employer shall approve the requested time off, irrespective of operational requirements. The current provision is problematic for the Employer as it may cause staffing pressures as it does not provide the Employer with discretion to limit time off if there are too many employee requests for lieu time for the same time period. This may have impacts on the safety, security and well-being of individuals under the care, custody and control of the SOLGEN and MCCSS if the Employer is obligated to allow numerous employees lieu time for the same time period.
463. The current collective agreement requirement for scheduling lieu time can often result in difficulty for the Employer meeting operational requirements and can lead to increased overtime costs. The current provision does not provide the Employer with any ability to consider operational requirements when assessing employee requests to use lieu time in the same time period in conjunction with their vacation or regular day(s) off.
464. SOLGEN has indicated that this requirement has caused many instances of serious difficulty meeting operational requirements. Often during peak holiday periods such as March Break, the summer months and the December holiday period, there are occurrences where multiple employees seek to use their lieu time entitlements during the same time period leaving the Employer unable to fill all required positions which then necessitates adjustments to operations. Such adjustments to operations can range from measures such as cancelling programs, like inmate visits, up to and including institutional lockdowns. During March Break, the summer months and the December holiday period, the number of Article COR13 lieu time hours used can be up to sixteen (16) times an institution's average daily lieu time usage.
465. For example, on December 24, 2022, several institutions were required to partially or fully lock down and/or disrupt programming as a result of staffing shortages due to the high usage of lieu time, vacation, and STSP absences.

466. In addition to operational disruptions, consequential overtime costs can be significant when employees use lieu time with one (1) months' notice, and the subsequent absences results in overtime directly to replace the particular employees on leave or indirect overtime occurring at another time in the same week due to the exhaustion of fixed-term resources.
467. The Employer's proposal would allow the Employer the discretion to consider operational requirements prior to granting or denying an employee's request to use lieu time entitlements. This proposal would result in reduced overtime costs and fewer operational adjustments or disruptions. Therefore, Article COR13 should be changed to allow lieu time to only be taken upon mutual agreement and failing agreement the Employer shall determine the scheduling of the lieu time.

## **12.8 Overtime for Regular Part-Time Employees**

### *(iii) Employer's Proposal*

468. Effective 90 days from the date of ratification or interest arbitration decision, the Employer proposes amendments to Article COR15 – Overtime to revise the overtime provision for Regular Part-Time (RPT) employees so that the premium rate (i.e., 1.5 times the hourly rate) is earned only when the corresponding full-time hours per week (36.25 or 40 hours, as applicable) are exceeded. The Employer's proposal would mean that extra hours worked between a RPT employee's regularly scheduled hours of work and the weekly full-time normal hours of work for the position, as set out under Article COR2 – Hours of Work, would be compensated at the straight time rate of pay.

### *(iv) Rationale for Employer's Proposal*

469. The current overtime provisions for RPT employees can result in unnecessary costs for the Employer as premium pay is triggered for any hours an employee works outside their regular schedule, even if the employee's regular schedule is considerably less than full-time hours for the respective position.
470. For example, a RPT employee whose regular schedule is only two days per week (16 hours) and who works an additional day (8 hours) within the same week would receive premium pay for all 8 hours worked on the non-scheduled day, despite only working a total

of 3 days (24 hours) that week. The employee would be entitled to 12 hours of pay for the additional day (8 hours) worked. In contrast, the RPT employee is working side-by-side with full-time employees who must work 36.25 or 40 hour per week to be eligible for the premium rate, while the RPT is earning the premium rate after they have worked their regular schedule (e.g., 2 days per week).

471. It is estimated that approximately three quarters of overtime worked by RPT employees between 2020 to 2022 (8,507 hours out of 11,154 hours across 46 employees) was worked within the respective weekly threshold for the positions. This cost the Employer approximately \$156,965 more than if the hours had been paid at straight time.
472. The Employer's proposal would avoid these situations through the implementation of a weekly threshold based on the usual full-time hours for the position in order to determine the payment of overtime rates for RPT employees.
473. Under the Employer's proposal, when a RPT employee works on a scheduled day off or in excess of their scheduled hours on a regular workday, they would be paid for the additional hours at straight time until they meet the relevant weekly threshold (i.e., 36.25 or 40 hours, as applicable).

## **12.9 Compensating Time Off**

### *(i) Employer's Proposal*

474. The Employer proposes to amend Appendix COR44, effective date of ratification or interest arbitration decision, 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. This will mean once an employee has earned and banked 60 hours of CTO in a calendar year, any further overtime worked cannot be banked and will be paid out in accordance with Article COR8.

### *(ii) Rationale for the Employer's Proposal*

475. The current practice of allowing employees' CTO banks to be repeatedly utilized and replenished throughout the year results in excessive amounts of compensating time being

accumulated and used leading to staffing and operational issues, and increased overtime. The current practice is costly and unsustainable.

476. Currently, when an employee works overtime, they can either bank the hours they worked as CTO in accordance with Appendix COR44 or be paid at the overtime rate in accordance with Article COR8. During the term of the current collective agreement, an employee's CTO bank can accumulate up to 100 hours. For clarity, 60 hours can be accumulated in accordance with Appendix COR44 and 40 hours could be accumulated in accordance with the Letter of Understanding outside the collective agreement (note: the Employer issued notice at the start of collective bargaining, confirming the 40 hours would not continue in the next collective agreement, however the Employer has maintained the 40 hours while the Parties are in collective bargaining in the interest of labour relations stability). Any CTO that is not used by March 31 of the following year is paid out at the overtime rate.
477. When overtime is paid out, the effective cost to the Employer is one and a half times the applicable regular rate of pay per hour of overtime worked. The cost of overtime to the ministry is significantly increased when an employee with CTO takes time off, and the backfill, either directly or indirectly, results in overtime.
478. The scheduling of COs at Ontario correctional institutions is such that the exact number of COs needed to run a shift are scheduled to ensure operational requirements are met. Accordingly, when a CO is unavailable for a scheduled shift due to a leave of absence (e.g., sick, vacation, stat leave, compensating time off for overtime, WSIB leave), training, acting assignment or vacancy, then the CO must, in almost all cases, be backfilled by a fixed term CO at straight time or a CO (either regular or fixed-term) on overtime paid at time and a half.
479. Where there are available fixed-term resources, the Employer could backfill an employee using CTO with straight-time fixed term resources. Taking pay-in-lieu entitlements into account and the fact that many fixed-term COs have progressed upwards in the merit system there is basically a dollar-for-dollar cost to replace the absent CO when a **fixed-term CO replaces a regular CO at the straight time rate**. In other words, if a CO needs to be replaced for 12 hours the cost of replacement by a fixed-term CO is roughly **12 hours pay** at the straight time rate.

480. In each institution there are a finite number of fixed-term employees available to replace regular COs who are unavailable for shifts. For example, at an institution where there are 10 fixed-term COs each with 40 straight time hours available each week there would be a total of 400 straight time hours available per week for backfill purposes. When the fixed-term available hours are exhausted and backfill for an absence is required, the Employer must utilize overtime resources to backfill COs who are scheduled but not available.
481. If the CO absence results in **overtime replacement costs** due to no fixed-term resources being available or having been exhausted, and backfill for an absence is required, then there is an additional fifty (50) percent cost for the Employer to replace the CO who is unavailable for the shift. Therefore, the cost of replacement for 12 hours, increases to 12 hours at time and a half which is equivalent to **18 hours of pay**. The current reality of correctional institutions is that straight-time fixed-term resources are often exhausted and backfill for an absence is required, necessitating the Employer to utilize overtime resources to backfill leaves of absence.
482. However, costs and CTO accumulation can compound and exponentially increase if the CO that worked overtime chooses to bank hours rather than be paid. For example, if a CO who worked overtime to replace a 12-hour CTO absence chooses to bank time rather than be paid, it results in 18 hours being banked. If those 18 banked hours used as CTO and the Employer is required to backfill 18 hours leave of absence with overtime, then the cost to the Employer increases to 27 hours being paid to employees who backfill the 18 hours.
483. It is important to note that straight time fixed-term resources may also be utilized to backfill a particular regular employee's CTO leave of absence. Nevertheless, overtime resources may be needed later in the work week when the total available fixed-term hours are exhausted, in part, because those resources were used to backfill the CTO absence earlier in the week.
484. For example, consider the scenario where a CO is granted 12 hours of CTO for a shift on Monday and Tuesday with backfill for the 24 hours of absence being accomplished through use of available fixed-term straight time hours. In the same work week, on the following Sunday, two unanticipated absences occur, one 12-hour sick day and one 12-hour WSIB leave. At this time in the week fixed-term hours have been exhausted. As a result, overtime resources are required to backfill both Sunday absences. Had the CTO

not been granted on the Monday and Tuesday, 24 hours of fixed-term coverage could have been available to cover the absences on the Sunday instead of the overtime.

485. Furthermore, the current provisions can allow for an opportunity for some COs to manipulate the system such that they book off CTO for regularly scheduled shifts and then put themselves on the overtime availability list for the opposite shifts on those booked off CTO days. Due to the large number of absences on any day COs are almost always hired for overtime on the shifts opposite to what had been their regularly scheduled shifts. Accordingly, these COs are receiving much greater income for working on days they should have worked anyway with these greater costs being placed on the Employer.
486. A significant amount of overtime is used each day to ensure that correctional institutions are able to meet operational requirements. On average in 2022, the Employer hired approximately 3,500 hours of overtime for COs across all correctional institutions on a daily basis. This represents approximately 1.27 million hours of overtime annually. The Employer's proposal would reduce the number of overtime hours used and paid, thereby reducing costs to the Employer.
487. The chart below outlines an example to demonstrate the additional costs associated with the accumulation and use of CTO versus simply paying out cash for overtime worked. As is demonstrated, the ability to replenish a CTO bank throughout the year can lead to significant additional cost whereas a cap on the number of CTO hours that can be banked annually limits additional costs.

<b>Circumstance</b>	<b>Hours of Overtime</b>	<b>Result</b>	<b>Potential Cost to the Employer (ER)/ Comments</b>
Cash only payout for overtime worked	40 hours worked compensated at time and a half	40 hrs X 1.5 = <b>60 hours cash pay.</b>	Cost to the ER is <b>60 hours pay.</b>
Current situation – being able to	40 hours worked compensated at time and a half	40 hrs X 1.5 = <b>60 hours</b>	Employee (EE) takes 60 hours off and is replaced (either directly or indirectly)

Circumstance	Hours of Overtime	Result	Potential Cost to the Employer (ER)/ Comments
repeatedly bank and utilize		<b>compensating time off (CTO).</b>	by another EE on overtime. Cost to the ER is 90 hours pay so this is an <b>additional cost of 30 hours pay</b> . The EE utilizes and replenishes their CTO bank four times throughout the year so the additional cost for this EE is 4 occasions X 30 hours which equals an <b>additional cost of 120 hours pay for the year.</b>
Ability to Utilize and Bank only 60 hours total annually (Employer proposal)	40 hours worked compensated at time and a half	40 hrs X 1.5 = <b>60 hours compensating time off (CTO).</b>	EE takes 60 hours off and is replaced (either directly or indirectly) by another EE on overtime. Cost to the ER is 90 hours pay so this is an <b>additional cost of 30 hours pay</b> . The EE is not permitted to replenish the CTO bank so <b>the annual additional</b>



Circumstance	Hours of Overtime	Result	Potential Cost to the Employer (ER)/ Comments
			<b>cost is limited to 30 hours annually.</b>

488. The Employer's proposal would allow employees to continue to enjoy the benefit of accumulating and using CTO, in addition to other paid time off benefits, but would place a reasonable and practical limit on the number of CTO hours employees can accumulate and use thereby limiting operational issues and overtime costs. Therefore, a hard cap of 60 hours CTO per employee, per calendar year should be implemented.

**12.10 FXT Shift Schedules – Article COR5.6**

*(i) Employer's Proposal*

489. The Employer proposes, effective ninety (90) days after date of ratification or interest arbitration decision, that Article COR5.6 be amended to ensure greater certainty with respect to staffing when schedule changes are required due to operational reasons. Accordingly, the Employer proposes that any additional shifts or changes to the pre-scheduled shifts must be verbally confirmed within 48 hours of the commencement of the applicable shift. Where any such changes or additions are made more than 48 hours from the commencement of the shift in question, they will be communicated through an operationally practical method.

*(ii) Rationale for Employer's Proposal*

490. Currently, fixed-term COs/YSOs are pre-scheduled for their shifts two (2) weeks in advance, with all known shifts being scheduled. Any change to the pre-scheduled shifts or additional shifts added for fixed-term employees that occur within that two-week period must be verbally confirmed with the employee.

491. The current practice of requiring verbal confirmation with the employee has caused challenges for the Employer sometimes resulting in serious difficulty meeting operational

requirements when vacant shifts cannot be filled or causing increased overtime replacement costs when fixed-term resources are unavailable to cover shifts.

492. When a regular CO/YSO is unavailable for a scheduled shift due to a leave of absence (e.g., sick, vacation, CTO), training, acting assignment or there is a vacancy (e.g., a retirement), then the shift must, in most situations, be backfilled by a fixed-term CO/YSO at straight time hourly rate of pay or a CO/YSO (either regular or fixed-term) on overtime at one and a half times the hourly rate of pay.
493. When changes to employee pre-scheduled shifts or additional shifts are necessary, fixed-term employees may not always be reachable by phone and in that circumstance, there is often limited success of employees calling back when voicemails are left. Therefore, verbal confirmation can be very difficult to obtain.
494. Under Article COR8.2.2 overtime opportunities will only be offered once the non-overtime regular and non-overtime fixed-term resources have been exhausted. Fixed-term resources in adult correctional institutions are considered exhausted if all fixed-term employees with less than 40 straight-time hours in a week have been called twice in a calendar day for available shifts, as per an addendum to the Provincial Overtime Protocol. If the Employer is not able to reach any fixed-term employees with straight time hours available, then it is required to backfill with a CO/YSO, either regular or fixed-term, at overtime rate of pay. Therefore, being able to reach a fixed-term employee without having to verbally confirm helps to avoid unnecessary overtime costs and/or running shifts short-staffed.
495. The Employer proposes to amend the collective agreement such that where notice regarding additional shifts or changes to pre-scheduled shifts is given within 48 hours of the commencement of the applicable shift, the Employer would continue to obtain verbal confirmation from the employee. Outside of 48 hours of the commencement of the applicable shift, employees would be notified through the means of various technologies available (e.g., voicemail, text messages, apps, etc.) of additional shifts or changes to pre-scheduled shifts, but verbal confirmation from the employee would no longer be required.
496. For example, during the week of June 21-25, 2023, over 8,000 calls were made to fixed-term employees for straight time shifts and over 8,800 calls were made for overtime shifts

across adult correctional institutions. In total, nearly 17,000 calls were made during the week of June 21-25 by scheduling departments at adult correctional institutions across the province.

497. Eliminating the need for verbal confirmation where the Employer provides more than 48 hours notice can help to reduce time consuming and administrative difficulties for the Employer in filling shifts. This would also allow the Employer to minimize the number of unused fixed-term straight time hours which can result from not filling shifts after being unable to obtain verbal confirmation from employees.
498. The Employer's proposal would balance modern ways of communicating with employees while providing the Employer with the ability to have more certainty in the scheduling of fixed-term employees, reducing operational challenges and reducing overtime costs. Therefore, Article COR5.6 should be amended to only require verbal confirmation on the part of the Employer for additional shifts or changes to pre-scheduled shifts only within the period of 48 hours of the commencement of the applicable shift.

#### **12.11 Short Term Sickness Leave Plan**

(i) *Employer's Proposal*

499. As a mechanism to lower the number of Correctional Bargaining Unit employees who may call in sick for a full block of shifts over peak absenteeism periods (such as weekends), the Employer proposes, effective thirty (30) days from the date of ratification or interest arbitration decision, changing the requirement from providing a medical certificate after five (5) days of absence caused by sickness or injury to providing a medical certificate after three (3) days of absence caused by sickness or injury.

(ii) *Rationale for Employer's Proposal*

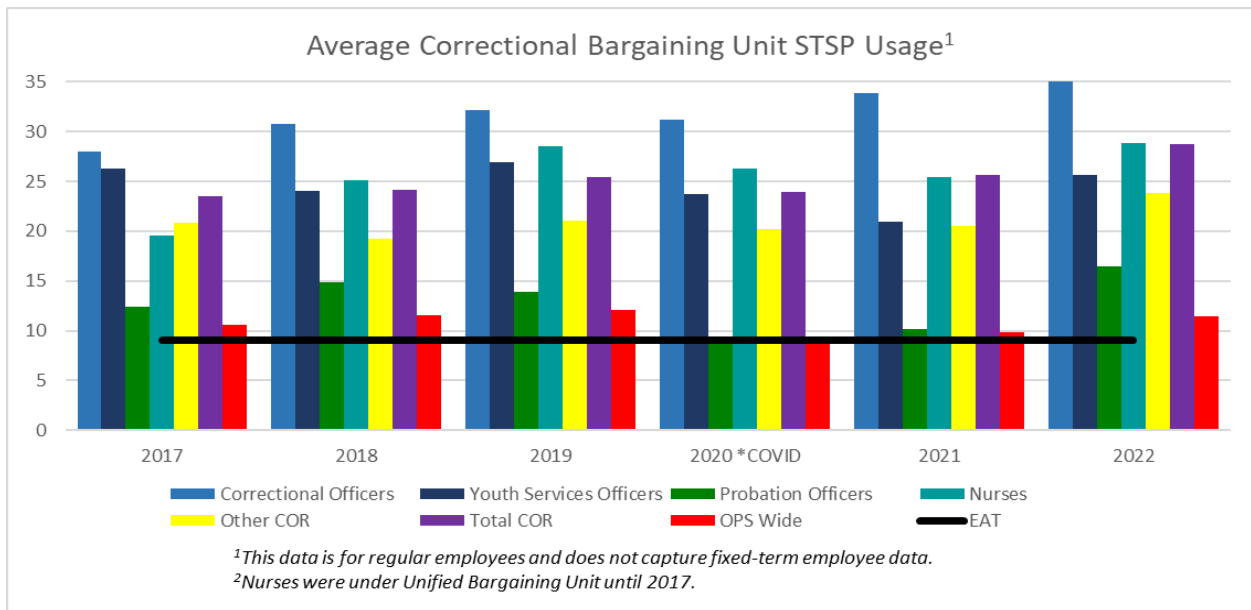
500. The Employer recognizes that employees who work in correctional workplaces (i.e., adult correctional institutions, youth justice facilities and probation and parole offices), and the Corrections Centre for Professional Advancement and Training have demanding and challenging jobs. The Employer also recognizes that employees who work in these workplaces play a vital role in the criminal justice system.

501. Every day, these employees provide care and supervision either directly or indirectly for thousands of individuals being held in institutions and facilities across the province or individuals on court ordered supervision. The regular attendance of these employees is vital to service delivery and meeting operational requirements.
502. However, on average, employees in these workplaces experience high STSP usage. In 2022, the average annual STSP usage for these groups was approximately:
- a) 36 days for COs
  - b) 30 days for Nurses
  - c) 26 days for YSOs
  - d) 17 days for POs
  - e) 24 days for the balance of the Correctional Bargaining Unit (excluding COs, Nurses, YSOs, and POs)
503. The issue of high sick leave usage in the correctional institutional services part of the Correctional Bargaining Unit was reviewed extensively in the 2019 AG report which found the following:
- In 2018, the average number of STSP days used by permanent Correctional Officers was 31. In comparison, the average number of sick days for correctional staff in other jurisdictions was only 14.6 in British Columbia, 21.9 in Alberta, and 15.5 in federal institutions.
  - 4% to 11% of all permanent staff employed at Central East Correctional Centre (CECC), Thunder Bay Correctional Centre (TBCC) and Toronto South Detention Centre (TSDC) did not take any STSP days in 2018. However, 26% to 40% of all permanent staff and 37% to 48% of all permanent COs employed at CECC, TBCC and TSDC took more than 30 STSP days in the same period.
  - Too many staff calling in sick for a particular shift result in staffing shortages that have a direct impact on the security of the institution.

- 56% of lockdowns at CECC and 71% at TSDC were due to staffing shortages in last 5 years.

504. High STSP usage in the Correctional Bargaining Unit continues to persist. In 2022, more than 10% of regular COs in the Correctional Bargaining Unit did not use any STSP days but more than 40% of regular COs in the Correctional Bargaining Unit used more than 30 STSP days.

505. The chart below shows STSP usage since 2017 has been significantly higher among employees in the Correctional Bargaining Unit as compared to the OPS wide average. Further, COs, YSOs, nurses, and the group called the Other Correctional Bargaining Unit Members are the Correctional Bargaining Unit positions that have the highest STSP usage.



506. Regular full time COs, YSOs and nurses work on a compressed work week schedule with 12-hour shifts that rotate over several weeks. The chart below demonstrates a typical rotating shift schedule for COs, YSOs and nurses, where the green cells indicate regular days off. The chart below is a shift schedule for a complement of six employees and each employee will begin on a different line and rotate through the shift schedule each week. For example, an employee assigned to line two would work the assigned shifts from Monday to Sunday, then the following week they will work the shifts assigned in line three and so on.

EMPLOYEE WORK SCHEDULE OVER 6 WEEKS	MON	TUE	WED	THU	FRI	SAT	SUN	WEEKLY HOURS SCHEDULED
1	9:00-21:00	9:00-21:00			9:00-21:00	9:00-21:00	9:00-21:00	60
2			9:00-21:00	9:00-21:00				24 (i.e. equivalent to 3 days of 8 hour shifts)
3	9:00-21:00	9:00-21:00	9:00-21:00	9:00-21:00				48
4						9:00-21:00	9:00-21:00	24
5	9:00-21:00	9:00-21:00			9:00-21:00	9:00-21:00	9:00-21:00	60
6			9:00-21:00	9:00-21:00				24
<b>TOTAL:</b>								<b>240</b>

507. As demonstrated in the chart above, it is infrequent for employees to be scheduled for the equivalent of five (5) consecutive regularly scheduled days in one block of shifts. Usually COs, YSOs and nurses are scheduled a maximum of three (3) consecutive 12-hour shifts which is equal to 4.5 days for the purposes of sick leave under Article 44, just under the threshold of five (5) days absence requiring a sick note under the collective agreement. By using sick leave for a block of consecutive shifts, an employee can have lengthy periods of time off work since the employee's regular days off fall before and after the block of shifts.

508. Additionally, the chart above shows that during week two and week six of the schedule, the employee is scheduled to work a block of two (2) consecutive 12-hour shifts (Wednesday and Thursday) in each of those weeks. If the employee calls in sick for the Wednesday and Thursday in week two or week six, (two 12-hour shifts= 24 hours), the employee then has a full week off since the two days before and three days after the block are the employee's regular days off. The Employer's proposal will allow for the Employer to require a sick note in circumstances where this occurs.
509. Furthermore, SOLGEN has indicated that some employees call in sick for weekends (Friday, Saturday, Sunday) when they are scheduled to work three (3) 12-hour shifts, which falls just under the threshold of the five days of absence requiring a sick note under the collective agreement.
510. Accordingly, changing the requirement to provide a medical certificate after three (3) days of absence due to sickness/injury will discourage employees from full weekend or consecutive shift book-offs of sick leave.
511. In response to recommendations from the Auditor General report, on April 1, 2021, SOLGEN launched the Corrections Attendance Support and Management Office (CASMO) which has been introduced to manage employee attendance while balancing the organization's need to maximize workforce productivity with an employee's need for support when absent due to illness, injury, or disability.
512. CASMO becomes involved when an employee surpasses the Enterprise Attendance Threshold (EAT) by accumulating 9 days of non-culpable (i.e., innocent) absences that are either paid STSP absences and unpaid sick leave absences for regular employees or attendance credit absences and unpaid leave absences related to illness or injury for fixed-term employees. Although CASMO was introduced to manage employee attendance, it was not introduced to address the attendance related concerns raised in the Auditor General report. The work of CASMO does not address general absenteeism, including sick leave usage that is attributed to behaviour that may or may not be culpable behaviour.
513. Accordingly, the Employer's proposal provides the Employer with a supplementary tool to augment existing strategies currently in place to address high STSP usage among

Correctional Bargaining Unit employees, primarily COs, YSOs, and nurses, thereby minimizing scheduling challenges and reducing overtime costs.

514. It is not the Employer's intention to bring employees back to work when they remain sick. Rather, the Employer's proposal is intended to require a medical note from the employee after three (3) days of sick related absences as opposed to the current five (5) day threshold. The Employer remains committed to meeting its accommodation obligations.
515. Therefore, the requirement to provide a medical certificate after five (5) days of absence caused by sickness should be changed to require a medical certificate after three (3) days of absence caused by sickness/injury.

#### **12.12 Employee Portfolio**

*(i) Employer's Proposal*

516. The Employer proposes to add collective agreement language to reflect updated process requirements as the Employer gradually implements an electronic system to access and store digital employee portfolios.
517. For clarity, the only aspect of the current employee portfolio process that would change under the Employer's proposal is that it would enable a digital format of the employee portfolio.

*(ii) Rationale for Employer's Proposal*

518. These provisions were recently freely negotiated and agreed to between the Employer and OPSEU Unified as part of the Parties' ratified 2022-2024 collective agreement. Under the principle of replication, this is compelling evidence that the Parties would have agreed to these provisions in a free collective bargaining environment.
519. In alignment with the Employer's ongoing efforts to simplify and create user-centred processes and platforms and to enhance the employee experience within the OPS, the Employer is seeking to implement an electronic system to access and store digital employee portfolios. The Employer's proposal aims to reflect updated process requirements for the storage and access of employee portfolios. The Employer is



proposing to add language to the collective agreement which would clarify new process requirements once the electronic system is gradually implemented.

520. Per the collective agreement, all new employees are required to complete an employee portfolio and the onus is on the employee to keep it updated to reflect the acquisition of new or improved skills, knowledge, abilities, and/or changes to geographic parameters. Under the current process, employees must advise the Employer in writing to update the employee portion of the employee portfolio. Under the Employer's proposal, an electronic system would increase the efficiency of the current employee portfolio process and make it easier for employees to complete and update their portfolios by giving them the ability to directly access, edit and update their employee portfolios electronically.
521. Where an electronic system is not yet available, employees will continue to have the ability to advise the Employer in writing at any time of their desire to update the employee portion of their Employee Portfolio.

### **12.13 Employee Transition and Reskilling – New Appendix**

#### *(i) Employer's Proposal*

522. Effective the date of ratification or interest arbitration decision, the Employer proposes to renew the Parties' 2019 Employee Transition and Reskilling Memorandum of Agreement (MOA) and to incorporate it into the collective agreement as a new Appendix. It is proposed that the new Appendix would also incorporate minor housekeeping changes to the original MOA, as well as add a provision that confirms the Parties' intention to continue the current practice with respect to utilizing Appendix COR24 (Staffing Realignments and Cross Ministry Transfers). Further, the new Appendix would add a provision to develop processes for identifying employment transition opportunities for employees impacted by organizational transformation.

#### *(ii) Rationale for Employer's Proposal*

523. The proposal is similar to what was recently freely negotiated and agreed to between the Employer and OPSEU/SEFPO Unified and AMAPCEO which has a similar Reskilling Appendix with modifications. With respect to OPSEU Unified, during collective bargaining, the Parties had updated and then renewed a similar Employee Transition and Reskilling

MOA which was subsequently incorporated into the 2022-2024 OPSEU/SEFPO Unified collective agreement. Under the principle of replication, this is compelling evidence that the Parties would have agreed to these provisions in a free collective bargaining environment.

524. The Employer's proposal which is very similar to the reskilling MOA reached with OPSEU Unified, is also consistent with the intent of the Parties' permeability agreement under Appendix 64 of the collective agreement with respect to employment mobility between the OPSEU/SEFPO Correctional and Unified Bargaining Units. Per paragraph 2 of Appendix 64, in both the Unified and Correctional Bargaining Unit collective agreements, employment mobility between Unified and Correctional Bargaining Units shall be maintained for employment stability. The Employee Transition and Reskilling MOA that was negotiated with OPSEU/SEFPO Unified provides a process to support the transition of employees in the Unified Bargaining Unit who are impacted by organizational transformation to other OPSEU/SEFPO-represented positions across the OPS, which may include positions within the OPSEU/SEFPO Correctional Bargaining Unit. The Employer's proposal aims to achieve the same outcome for employees in the Correctional Bargaining Unit in keeping with the intent of the Parties' agreement on permeability between the bargaining units.
525. This proposal would reinforce the Parties' mutual interest in minimizing impacts to OPSEU/SEFPO-represented employees during any organizational transformation and working cooperatively to implement a process that supports reskilling and increased internal mobility within and across ministries before triggering any job security provisions for OPSEU/SEFPO-represented employees. The terms and application of the original MOA have resulted in employees maintaining their employment in the OPS without the necessity of having to go through the surplussing process (Article 20), where failure to find a match during the surplussing process could result in an involuntary layoff from OPS employment.
526. The proposed Appendix under this proposal would complement the existing Appendix COR24. Appendix COR24 requires the Parties to work together to minimize the impact on staff during staffing realignments (downsizing) by negotiating cross-Ministry agreements between SOLGEN and MCCSS that enable staff to move between the two ministries. The

proposed Appendix extends additional opportunities for internal mobility and retention of any job-threatened employees, when compared to Appendix COR24. Appendix COR24 is limited to cross-ministry transfer of employees between SOLGEN and MCCSS and does not provide any obligation on the Employer to offer employment opportunities to employees who are not currently trained and qualified. In contrast, the proposed Appendix would provide additional opportunities for internal mobility and skills development as employees can be matched to OPSEU/SEFPO-represented positions throughout the OPS (rather than limiting movement to the two ministries where Correctional bargaining unit employees work). For example, under the proposed Appendix, it would be possible for a job-threatened CO to be offered and reskilled to a position in OPSEU Unified as a Transportation Enforcement Officer in the Ministry of Transportation, or for an Administrative Assistant to be matched to a similar role in any ministry within the OPS, in addition to or in the absence of opportunities available within SOLGEN and MCCSS as provided for under Appendix COR24.

527. The Parties have effectively used Appendix COR24 and the provisions of the proposed Appendix under the original MOA to develop processes for identifying employment transition opportunities and election options for job-threatened employees in the OPSEU/SEFPO Correctional Bargaining Unit. As such, the Employer proposes to incorporate as a new Appendix the Parties' agreement to continue the current practice of using both Appendix COR24 and the Employee Transition and Reskilling MOA.

**12.14 Recruitment and Staffing – Article 6, 56, New Appendix on Reach-back and Appendix 39**

528. In recognition of the need for a modern and flexible workplace to address evolving operational needs, the Employer is proposing to amend certain posting and filling provisions as follows:

(i) *Employer's Proposal – Article 6 – Posting and Filling of Vacancies or New Positions and Article 56 – Posting and Filling of Regular Part-Time Positions*

529. Effective the date of ratification or interest arbitration decision, the Employer proposes 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. Under the Employer's proposal, the Employer would be able to hire qualified candidates in rank order who previously applied for the same vacancy or new position provided that a competition was held within 14 months following the conclusion of the previous competition.

530. Secondly, effective 90 days from the date of ratification or interest arbitration decision, the Employer also proposes to permit employees to apply to competitions when an employee resides or works outside of the 125-kilometre geographic area of search provided they waive entitlement to relocation expenses. Currently, where a job posting has an area of search which requires that an employee lives or works within 125 kilometres of the work location, employees who do not live or work within 125 kilometres of the work location are not eligible to apply.

(ii) Rationale for Employer's Proposal – Article 6 – Posting and Filling of Vacancies or New Positions and Article 56 – Posting and Filling of Regular Part-Time Positions

531. The Employer's proposal replicates changes that were freely negotiated with OPSEU Unified in the recent round of bargaining for the 2022-2024 OPSEU Unified collective agreement. Under the principle of replication, this is compelling evidence that the Parties would have agreed to these provisions in a free collective bargaining environment. The Employer's proposals, with respect to the starting point for the "reach-back" period and permitting employees to apply to a competition for which they are outside the geographical area of search provided that they waive relocation expenses, also align with similar existing provisions for AMAPCEO and PEGO.
532. Permitting reach-backs following the conclusion of previous competitions would enable the hiring of a candidate from a past competition for a longer period to fill a new vacancy. This is an effective strategy that would save time and recruitment costs for hiring managers and reduces the frequency that applicants have to go through the application and interview process.
533. Given the various steps that are required following the closing of a job posting before a job offer can be made (e.g., screening applications, interviews, reference checks, security screening), it often takes several months to conclude a competition following the close of

a job posting. Based on available information from the OPS Careers database as of June 2023 in respect of competitions that closed in fiscal years 2021-2022 and 2022-23, the median time to hire from the closing date of a job posting for positions within the OPSEU Correctional Bargaining Unit was 85 business days for a competition with less than four vacancies and/or 100 applications. Since the reach-back provision cannot be utilized until the competition concludes, the time required for recruitment activities that follow the closing of the job posting cuts into the period permitted for utilizing the results of the competition to fill future vacancies. The Employer's proposal to change the time from which the reach-back period begins to the conclusion of the competition would allow for the results of the competition to be used for a longer period of time which may potentially reduce the number of competitions required and allow for additional vacancies to be filled in a timely manner.

- 534. Allowing additional time to use the results of a competition could also be beneficial to employees who would continue to be considered for vacancies or new positions based on the results of their competition for a longer period of time. This could reduce the need for employees to re-apply and re-interview for competitions for the same positions and help place employees in positions in a more timely manner.
  
- 535. The Employer's proposal to permit employees to apply to competitions when an employee resides or works outside of the 125-kilometre geographic area of search could help increase the Employer's ability to attract new and diverse talent from across the organization. This could also provide employees with more opportunities to apply to positions which they are interested in, provided they voluntarily waive entitlement to relocation expenses.

(iii) Employer's Proposal – New Letter of Understanding – Reach-back Classification Series

- 536. The Employer proposes a new letter of understanding regarding reach-back classification series.
  
- 537. Under the Employer's proposal, for vacancies that are posted greater than ninety (90) days after date of ratification or interest arbitration decision, the Employer may 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 Office Administration classification series.

(iv) Rationale for Employer's Proposal – New Letter of Understanding – Reach-back Classification Series

538. The Employer's proposal is consistent with changes that were freely negotiated with OPSEU Unified in the recent round of bargaining for the 2022-2024 OPSEU Unified collective agreement. The Employer and OPSEU Unified agreed to a similar letter of understanding that allowed for reach-backs to be used to fill vacancies within a range of two classifications below the original posting for the Office Administration series, as well as other classification series not applicable to the OPSEU Correctional Bargaining Unit. Under the principle of replication, this is compelling evidence that the Parties would have agreed to these provisions in a free collective bargaining environment.
539. The Employer's proposal would allow the Employer to consider reaching back to fill vacancies in the same classification series within a range of two classifications below the original posting for the Office Administration classification series. This would provide the Employer with increased flexibility to fill vacancies in a timely and efficient manner by enabling more opportunities to tap into talent pools of pre-qualified candidates to fill similar positions, which may also reduce the number of competitions required. In 2022-2023, there were 126 postings within the Office Administration series to fill 153 vacancies. Many of these positions have similar core competencies, and thus, a competition for a higher-level position could yield candidates who are qualified for a position at a lower classification level in the same classification series. For example, a competition for a Program/Admin Support Clerk vacancy posted at the 08OAD level could potentially be used to fill a Program Clerk position at the 07OAD level.
540. This proposal could also provide employees who apply for positions within the Office Administration classification series the opportunity to be considered for additional vacancies that they are qualified for, within a range of two classifications below the original posting and in the same functional group, without having to do multiple applications, therefore saving them time in completing their application and preparing for and participating in interviews. It would also facilitate greater mobility within the organization for employees who wish to explore other opportunities in other areas or ministries, where

they can use or expand their work experience into similar roles. For hiring managers, this would mean attracting and pulling from a similar candidate pool, without having to post every time a vacancy arises.

541. As per the Employer's proposal, the Parties may also in the future agree to amend the list of classification series which could be reached back to in this manner, which could also potentially provide more employees with the opportunity to be considered for positions within a range of two classifications below the original posting for other classification series.

(v) Employer's Proposal – Appendix 39: Mass Centralized Recruitment Process

542. Currently, under Appendix 39 of the collective agreement, the Employer may post potential opportunities for permanent positions or temporary assignments that may arise during the next 18-month time period. The posting may be used to fill positions that occur during the 18-month time period following the closing date of the posting.

543. Effective the date of ratification or interest arbitration decision, the Employer proposes to amend the mass recruitment period to allow the Employer to fill positions that occur during the 18-month time period following the conclusion of the competition rather than following the closing date of the posting.

544. Effective the date of ratification or interest arbitration decision, the Employer also proposes to remove the requirement to provide individual ranking to all candidates. OPSEU would continue to receive the ranking list. Further, effective date of ratification or interest arbitration decision, the reference to "article" is replaced by reference to "Appendix" for greater clarity.

(vi) Rationale for Employer's Proposal – Appendix 39: Mass Centralized Recruitment Process

545. The Employer's proposal replicates changes that were freely negotiated with OPSEU Unified in the recent round of bargaining for the 2022-2024 OPSEU Unified collective agreement. Under the principle of replication, this is compelling evidence that the Parties would have agreed to these provisions in a free collective bargaining environment.

546. Similar to the Employer's proposal regarding Article 6 and 56, the Employer's proposal to amend the mass recruitment period to allow the Employer to fill positions that occur during the 18-month time period following the conclusion of the competition could provide the Employer with additional time to utilize the results of a competition to fill vacancies and/or new positions. Further, it would help the Employer fill positions in a timely and efficient manner and reduce the need to hold multiple competitions for the same position.
547. Mass centralized recruitment processes are onerous for the Employer and often require more time to conclude than a standard competition given that postings are used to fill multiple vacancies that are often across a number of locations and also draw in a high volume of applicants. This results in additional time spent screening applications and conducting interviews among other activities, which further cuts into the period permitted for reaching back into the competition to fill vacancies. Based on competitions that closed in fiscal years 2021-2022 and 2022-2023, the median time to hire from the closing date of a job posting for positions within the OPSEU Correctional Bargaining Unit was 118 business days for a competition with four or more vacancies or more than 100 applications.
548. Employees who apply to these postings could also benefit from having their results in the competition considered for positions for a longer period of time. This could reduce the need for employees to re-apply and re-interview for competitions for the same positions and help place employees in positions in a more timely manner.
549. The Employer's proposal to remove the requirement to provide individual ranking to all candidates could help streamline the mass centralized recruitment process. While the Employer would continue to pull from the list in order of ranking, there are concerns that sharing of information among the candidates could lead to discord amongst employees in the workplace. This could result in morale issues amongst employees and tension when there are certain employees who do not wish to have their ranking shared with others. As OPSEU will continue to receive the ranking list, the Union will be kept apprised of employees' rankings.

(vii) Employer's Proposal – Housekeeping

550. Effective the date of ratification or interest arbitration decision, the following housekeeping changes are also being proposed:



- a) Align the language in Article 6.1.1 and Article 56.1.1 with respect to the posting of vacancies to remove the reference to “effective date of March 16, 1987” and clarify that positions shall be advertised for at least ten “working” days instead of “calendar” days.
- b) With respect to Appendix 39, revise the reference to the Employer having to obtain a valid surplus clearance “number” prior to filling a position, to an acknowledgment that it is understood that positions would have cleared surplus prior to filling.

(viii) Rationale for Employer’s Proposal – Housekeeping

- 551. The Employer’s proposal replicates changes that were freely negotiated with OPSEU Unified in the recent round of bargaining for the 2022-2024 OPSEU Unified collective agreement.
- 552. The housekeeping changes proposed by the Employer seek to align the language for Article 6.1.1 which applies to regular positions and Article 56.1.1 which applies to regular part-time positions. The reference in Article 56.1.1 to an “effective date of March 16, 1987” is outdated and is not referenced in Article 6.1.1 which applies to regular positions.
- 553. In addition, the Employer’s proposal to change the reference from 10 calendar days to 10 working days in Article 56.1.1 would indicate that vacancies would be advertised for at least 10 working days and would be aligned with the language in Article 6.1.1. This aligns with the current practice and also benefits employees, as 10 working days provides for a longer posting period than 10 calendar days. This means that employees have more time to complete and submit their application for a posting.
- 554. The Employer’s proposed housekeeping edits to Appendix 39 with respect to revising the language on surplus clearance aims to reduce unnecessary administrative burden and increase efficiency in the recruitment process. Revising the requirement so that surplus clearance, rather than a surplus clearance number, is required prior to filling a position under the Mass Centralized Recruitment Process, will help to streamline the process while continuing to ensure that surplus clearance requirements continue to be met. The term “clearance number” is an outdated reference which can cause confusion among managers who wish to use the mass centralized recruitment process. The proposed changes are aligned with the language in Article 6.1.2.1 of the Collective Agreement, which also

indicates that the Employer may hire qualified candidates provided that the position has "cleared surplus."

### 13 CONCLUSION

555. The Employer respects and values the critical services performed by Correctional Bargaining Unit employees, who work hard every day to keep our communities safe. The Employer's objective is to reach a collective agreement that is both fair and reasonable to members of the Correctional Bargaining Unit, and fiscally responsible to the public and taxpayers of Ontario.
556. The Employer also recognizes that the outcome reached for the Correctional Bargaining Unit can impact settlement trends within the OPS, and therefore seeks measured and justifiable compensation outcomes.
557. The government's economic strategy is predicated on controlled spending as the province continues to face uncertainty as a result of ongoing geopolitical instability, high interest rates and inflation. After record investments during the pandemic, the government continues to take a balanced approach to managing compensation to ensure public services continue to remain affordable and to invest responsibly to build a strong province.
558. The replication principle strongly suggests that the Parties would have provided the same across-the-board wage increases for Correctional Bargaining Unit members as for members of the Unified Bargaining Unit. The bargaining history between the Parties demonstrates a clear and well-established pattern of modest wage outcomes that are consistent with OPSEU/SEFPO Unified, as well as the AMAPCEO Bargaining Unit. The Employer urges the Arbitrator to reach the same result and award across-the-board wage increases that are consistent with those reached with the Unified Bargaining Unit, including any additional across-the-board wage increases resulting from the Unified wage re-opener.
559. The Employer reserves the right to raise and rely on supplementary submissions in the event a resolution is reached in the OPSEU/SEFPO Unified Bargaining Unit wage re-opener negotiations prior to the OPSEU/SEFPO Correctional Bargaining Unit interest arbitration.
560. The Employer respectfully submits that its proposals set out above, including monetary wage terms, are consistent with the statutory interest arbitration criteria and the principles

of replication and total compensation, while fairly compensating bargaining unit members. We therefore request that the Arbitrator accept the Employer's proposals as the basis for this renewal collective agreement for the Correctional Bargaining Unit.

561. Lastly, as mentioned above, the Ontario Superior Court of Justice struck down the PSPSFGA on November 29th, 2022. The Government has appealed that decision to the Ontario Court of Appeal, and the parties are currently awaiting a decision. The proposals in this brief are without precedent or prejudice to any future positions the Employer may take generally or as a result of the outcome of the appeal.

**APPENDIX A:**  
**Corresponding Proposed Collective Agreement Language**

As you know, the Ontario Superior Court of Justice struck down the *Protecting a Sustainable Public Sector for Future Generations Act* on November 29<sup>th</sup>, 2022. The Government is currently appealing that decision to the Ontario Court of Appeal. Regardless of these circumstances, the Employer recognizes that it has a legal obligation to meet and engage in good faith collective bargaining. Below are the Employer's interest arbitration proposals which are without precedent or prejudice to any future positions the Employer may take generally or as a result of the outcome of any appeal.

Note: Changes that have been made to the proposed collective agreement language subsequent to the previously proposed language changes tabled by the Employer are **highlighted** in yellow below.

**ARTICLE 39.2.6 AND 67.2.6**  
Insured Benefits – Psychological Services

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**CORRESPONDING 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 Ppsychologist (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 Ppsychologist (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).

...

## ARTICLES COR8, COR15, AND ARTICLE 32

### Absenteeism/Overtime

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#### **CORRESPONDING 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], 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.**

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], “Overtime” 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], in 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**

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.

## ARTICLE COR17

### Salary

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#### **CORRESPONDING PROPOSED COLLECTIVE AGREEMENT LANGUAGE:**

COR17.1 All salary rates to be increased across the board as follows:

~~January 1, 2018 — 1.5%~~  
~~January 1, 2019 — 1%~~  
~~July 1, 2019 — 1%~~  
~~January 1, 2020 — 1%~~  
~~July 1, 2020 — 1%~~  
~~January 1, 2021 — 1%~~  
~~July 1, 2021 — 1%~~

**January 1, 2022 1.0%**

**January 1, 2023 1.0%**

**January 1, 2024 1.0%**

The salary rates in effect are contained in the Salary Schedule attached.

**[This proposal includes any additional ATBs agreed upon with OPSEU Unified through wage re-opener negotiations.]**

## ARTICLE COR18

### Term of Agreement

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#### **CORRESPONDING PROPOSED COLLECTIVE AGREEMENT LANGUAGE**

ARTICLE COR 18 – TERM OF AGREEMENT

COR 18.1 This covers the period from January 1, ~~2018~~**2022**, to December 31, ~~2021~~**2024**. The effective date of any changes to the terms of this Agreement from the previous Agreement, unless otherwise indicated, shall be ~~April 1, 2019~~ **[insert date of ratification/or date of interest arbitration decision]**. This Agreement shall continue automatically thereafter for annual periods of one (1) year each unless either party notifies the other in writing that it wishes to bargain for a new Collective Agreement in accordance with the *Labour Relations Act, 1995*, and the *Crown Employees Collective Bargaining Act, 1993*.

## NEW LETTERS OF UNDERSTANDING

### Health Care Spending Account

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**CORRESPONDING PROPOSED COLLECTIVE AGREEMENT LANGUAGE**

**NEW LETTER OF UNDERSTANDING**

**APPENDIX XX  
EFFECTIVE [90 DAYS FROM DATE OF RATIFICATION/OR 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**

**EFFECTIVE [90 DAYS FROM DATE OF RATIFICATION/OR DATE OF INTEREST ARBITRATION  
DECISION]**

**ADMINISTRATIVE CHANGES**

**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 life-threatening 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

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

**ARTICLE 31, 32, 50, 51, 76, AND 77 AND NEW LETTER OF UNDERSTANDING  
(OUTSIDE THE COLLECTIVE AGREEMENT)  
Pregnancy & Parental Leave**

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**CORRESPONDING 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 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.

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, 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 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 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.
- 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 In accordance with Articles 50.3.2.1, ~~(a) and (b)~~ and **50.3.2.2**, and 50.3.3, 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.
- 50.8 ~~Where the pregnancy leave of a person who is not entitled to take parental leave~~ **Where ~~the~~ 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,~~ **parental 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 an ~~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 Articles 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**

- (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 76.3.2.2(b) have terminated and prior to returning to the workplace.**
- (d) **where an employee takes parental leave in conjunction with pregnancy leave, Article 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,** 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 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 An ~~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~~ **the 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, Pparental 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 an ~~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,** 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.

...

ARTICLE 32 – SEASONAL EMPLOYEES (SE)

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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,**  
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

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

Dear Glenna:

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  
Employee Relations and Negotiations Division  
Centre for Public Sector Labour Relations and Compensation

Treasury Board Secretariat

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

**ARTICLE COR13.6**  
Use of Lieu Days/ Holiday Payment

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**CORRESPONDING PROPOSED COLLECTIVE AGREEMENT LANGUAGE**

...

COR13.6 **Up to [day before 90 days of 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, 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.**

...

**ARTICLE COR15**  
Overtime (RPT)

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**CORRESPONDING PROPOSED COLLECTIVE AGREEMENT LANGUAGE**

**ARTICLE COR15 – OVERTIME**

COR15.1.1 **Up to [day before 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 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.

**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.**

**APPENDIX COR44**  
Compensating Time Off

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**CORRESPONDING PROPOSED COLLECTIVE AGREEMENT LANGUAGE**

**APPENDIX COR44**

**~~April 1, 2019~~ [REVISED DATE OF RATIFICATION/OR INTERST 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 31<sup>st</sup> 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.

Yours truly,

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

**ARTICLE COR5.6  
FXT SHIFT SCHEDULES**

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**CORRESPONDING PROPOSED COLLECTIVE AGREEMENT LANGUAGE**

ARTICLE COR5 – SHIFT SCHEDULES

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COR5.6 **Up to [day before 90 days of ratification/or interest arbitration decision], Fixed-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.**

## ARTICLE 44

### Short Term Sickness Plan

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#### Proposed Collective Agreement Language:

#### ARTICLE 44- SHORT TERM SICKNESS PLAN

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44.10 **Up to [day before 30 days of ratification/or interest arbitration decision], 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.

**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]

## ARTICLE 20.1.4

### Employee Portfolio

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#### **CORRESPONDING 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~~an 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.

**NEW MEMORANDUM OF AGREEMENT**  
Reskilling

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**CORRESPONDING 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 Agreements;

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 Agreements 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 provision confirms the parties' intention to continue the practice of utilizing 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 Reskilling and Transition

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Article 1 – DEFINITIONS:

Day refers to business days.

Collective Agreement shall mean the **Correctional Bargaining Unit** collective agreements ~~(Unified or Corrections)~~ between OPSEU and the Crown in Right of Ontario dated January 1, 2022~~18~~ to December 31, 202~~24~~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 Agreements.
- 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 agreements, 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 issued 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.

## ARTICLE 6, 56, NEW APPENDIX ON REACHBACK, AND APPENDIX 39 Recruitment and Staffing

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### 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 FILLING OF REGULAR PART-TIME POSITIONS

- 56.1.1 ~~Effective March 16, 1987, w~~When 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**

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:

- a) 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

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.**

...

- i) The parties can agree at any time to review the Mass Centralized Recruitment process and mutually agree on amendments.

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.**