

MEMORANDUM OF SETTLEMENT

(“MOS”)

of all outstanding matters in respect of Bill 124 remedy negotiations

BETWEEN:

The Crown in Right of Ontario
(as represented by Treasury Board Secretariat)
“Crown”

AND

**Ontario Public Service Employees Union/Syndicat des employés de la fonction
publique de l'Ontario**
“OPSEU/SEFPO”

WHEREAS OPSEU/SEFPO is the bargaining agent for collective bargaining under the *Crown Employees Collective Bargaining Act, 1993* (“**CECBA**”) in respect of the OPSEU/SEFPO Unified Bargaining Unit;

AND WHEREAS OPSEU/SEFPO and the Crown, as per the CECBA, negotiated and subsequently ratified the collective agreement for the Unified Bargaining Unit for the period of January 1, 2022 to December 31, 2024 (the “**Moderated Collective Agreement**”);

AND WHEREAS the *Protecting a Sustainable Public Sector for Future Generations Act, 2019* (“**PSPSFGA**” or “**Bill 124**”) was previously in effect and OPSEU/SEFPO and the Crown were subject to the terms and conditions of the PSPSFGA during their round of collective bargaining negotiations for the Moderated Collective Agreement;

AND WHEREAS OPSEU/SEFPO and the Crown agreed during their recent round of bargaining that “should the PSPSFGA be found unconstitutional by a court of competent jurisdiction or the legislation is either repealed or amended in such a way as to shorten the moderation period or increase the one (1) percent restraint measures prior to the expiry of the Collective Agreement, the Parties shall meet within 60 days to negotiate a remedy, if any, for the bargaining unit employees impacted by the legislated restraint.”;

AND WHEREAS OPSEU/SEFPO and the Crown (the “**Parties**”) are among the parties to an application (Court File No. CV-20-00638156-0000) in which OPSEU/SEFPO, among others, challenged the constitutional validity of the PSPSFGA (the “OPSEU/ SEFPO Application”);

AND WHEREAS the Ontario Superior Court of Justice heard the OPSEU/ SEFPO Application, together with nine other applications (collectively the “Applications”), and issued a joint decision dated November 29, 2022 on the issues of liability in the OPSEU/SEFPO Application and the nine other applications (*Ontario English Catholic Teachers Association et al. v His Majesty the King in right of Ontario et al*, 2022 ONSC 6658) in which it held the PSPSFGA to be contrary to section 2(d) of the *Canadian Charter of Rights and Freedoms* and not justified under section 1 of the *Charter* (the “**SCJ Decision**”);

Without Prejudice

AND WHEREAS by Order dated November 29, 2022, the PSPSFGA was declared, pursuant to s. 52(1) of the *Constitution Act, 1982*, to be of no force and effect, and consideration of any remedy as a result of the PSPSFGA having been in effect since June of 2019 was deferred to a further hearing before the Honourable Justice Koehnen (the “**SCJ Order**”);

AND WHEREAS the Crown has appealed the SCJ Order and the reasons of the SCJ Decision to the Court of Appeal for Ontario (Court of Appeal File No: COA-23-CV-0010) (the “**Appeal**”), with such Appeal having been heard orally by the Court of Appeal for Ontario on June 21, 22 and 23, 2023 and the Court’s decision being reserved and pending release as of the date of this MOS;

AND WHEREAS as agreed upon during bargaining, pursuant to the Reopener Clause, OPSEU/SEFPO and the Crown met and engaged in mediation on June 10 and September 23, 2023 to discuss remedy for the OPSEU/SEFPO Unified bargaining unit employees and no agreement was reached;

AND WHEREAS, the Parties wish to settle in a full and final settlement any and all issues and claims arising from the OPSEU/SEFPO Application, the liability findings in the SCJ Decision, and in respect of the PSPSFGA and its impact on the Moderated Collective Agreement, for the OPSEU/SEFPO Unified Bargaining Unit employees only, without the necessity of further litigation between the Parties;

NOW THEREFORE, the Parties agree to the following:

1. OPSEU/SEFPO and the Crown agree that the terms of the Moderated Collective Agreement, as ratified/approved by OPSEU/SEFPO and the Crown, remain in place and are unaltered, save and except Article UN 16.1 – Salary.
2. OPSEU/SEFPO and the Crown will refer the matter pertaining to across-the-board (“**ATB**”) compensation increases under Article UN 16.1 and quantum of remedy and issues related to the application of the remedy for years 1, 2 and 3 of the Moderated Collective Agreement to interest arbitration, in light of the fact that this interest arbitration is being agreed to pursuant to the terms of the Re-opener Clause, OPSEU/SEFPO and the Crown agree that this interest arbitration will be conducted in accordance with section 4 of CECBA, and that neither party will contest the applicability of section 4 of CECBA to this interest arbitration. This agreement is subject to the following terms (the “Reopener Interest Arbitration”):
 - a) Referral to Interest Arbitration shall occur within 30 days of the fulfillment of all terms of this MOS.
 - b) OPSEU/SEFPO and the Crown jointly agree to the appointment of Mediator/Arbitrator Gerry Lee.
 - c) The Mediator/Arbitrator shall determine, following consultation between the Crown and OPSEU/SEFPO, the process for the arbitration hearing including the dates for exchanging briefs and reply briefs, if any, the scheduling of the hearing and any other procedural issues.

- d) With respect to the jurisdiction of the Mediator/Arbitrator:
- i) OPSEU/SEFPO and the Crown agree that, notwithstanding the referral to Reopener Interest Arbitration, the increase in any year of the collective agreement will not be below 1.5% or above 2.5%. OPSEU/SEFPO and the Crown shall be limited in their arguments on the quantum of the Year 1 Increase (January 1, 2022-December 31, 2022), Year 2 Increase (January 1, 2023-December 31, 2023) and Year 3 Increase (January 1, 2024-December 31, 2024) to the same range.
 - ii) The Arbitrator may take into consideration all factors it considers relevant, including the criteria set out in s. 29.7(2) of the CECBA.
 - iii) The Board may only engage in mediation with the consent of the OPSEU/SEFPO and the Crown.
- e) A decision by the Mediator/Arbitrator shall be in writing. Such decision will be final and binding and not subject to review or appeal. The decision will be released as expeditiously as possible and implemented as soon as practicable but in any case, no later than 120 days after the release date.
- f) The Mediator/Arbitrator will remain seized of any matters related to the implementation of its decision. The decision may be filed in court and enforced in accordance section 48 (19) of the *Labour Relations Act, 1995* as incorporated into section 4 of CECBA.
3. Notwithstanding paragraph 2(d)(i) of this MOS, the Mediator/Arbitrator shall have jurisdiction to award a special adjustment(s) in addition to the across-the-board increases awarded in paragraph 2(d)(i) (the “**Special Adjustment**”). OPSEU/SEFPO and the Crown agree that a Special Adjustment shall only be warranted where the Mediator/Arbitrator accepts that material recruitment and/ or retention issues currently exist in respect of the classification, and shall be limited in quantum to the lowest increase that the Mediator/Arbitrator finds would likely ameliorate those material recruitment and/ or retention issues.
4. The Compensation Increases determined in accordance with the Reopener Interest Arbitration decision, including any Special Adjustment, (collectively, the “Compensation Increases”) are in addition to the 1% annual ATB increases previously agreed to and implemented under the Moderated Collective Agreement.
- a) The Compensation Increases will be compounded and included in the OPSEU/SEFPO Unified Bargaining Unit salary schedules and applicable premiums and allowances in effect on January 1, 2022, January 1, 2023 and January 1, 2024, and will form the basis for the current negotiations. For clarity, these Compensation Increases will only apply as a flow-through to applicable premiums and allowances that were increased with 1% ATB increases in the Moderated Collective Agreement.
 - b) Compensation Increases will apply only to those persons employed in each of the years covered by the scope of the Moderated Collective Agreement.

- c) Where a compensatory amount under the Moderated Collective Agreement is already pensionable, these Compensation Increases will also be pensionable.
5. If the Court of Appeal for Ontario has not rendered its decision in the Appeal on all matters before it, the Parties agree that they will notify the Court of their respective withdrawal from further participation in the Appeal with respect to that portion of the appeal solely concerned with the OPSEU/SEFPO Unified Bargaining Unit.

For greater certainty, no submissions made by OPSEU/SEFPO on behalf of all the applicants to the Appeal in respect of the agreed upon division of arguments shall be retracted, nor those of the Crown in response, and the Court may continue to rely upon those submissions, and the Parties hereto will notify the Court of same. Notification to the Court will occur, in the form and content agreed between OPSEU/SEFPO and the Crown, within 5 business days from the date of the issuance of the award.

For further clarity, the Parties agree that the Crown does not waive its right to continue its appeal of the SCJ Order and SCJ Decision's reasons in so far as it relates to the remaining applicants in the OPSEU/SEFPO Application and in Court File Nos. CV-20-636421-0000 and CV-20-00637314-0000, and the applicants in Court File Nos. CV-20-00-636089-0000, CV-20-00636529-0000, CV-20-0084683-0000, CV-20-00653134-0000, CV-20-00653130-0000 and CV-20-00646385-0000, or the constitutional validity of the PSPSFGA or to seek leave to appeal to the Supreme Court of Canada from the Court of Appeal for Ontario's decision if the Crown so chooses. It is also agreed that this MOS is without prejudice to the Crown's right to exhaust all available avenues of appeal in respect of the validity of the PSPSFGA, including but not limited to any court-ordered remedies in other applications.

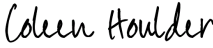
6. OPSEU/SEFPO agrees that if it participates as a party or intervener in any motion for leave to appeal or appeal to the Supreme Court of Canada from any decision of the Court of Appeal of Ontario in File No. COA-23-CV-0010, or participates in any remedy hearing before the Honourable Justice Koehnen in respect of any of the other Applications, it shall not take any positions, raise any arguments, or seek any relief whatsoever specifically in respect of the OPSEU/SEFPO Unified Bargaining Unit or any employees in that bargaining unit.
7. The Parties agree that the outcome of any remedy determinations that may be made by the Superior Court of Justice in the applications listed in paragraph 5 above and the outcome of the Court of Appeal for Ontario's decision in file no. COA-23-CV-0010 in the Appeal or any further appeal to the Supreme Court of Canada shall have no bearing or effect upon the Parties to this MOS as it relates to the OPSEU/SEFPO Unified Bargaining Unit.
8. This MOS and the Arbitration decision made hereunder shall remain final and binding upon the applicable Parties hereto and shall form the exclusive remedy in respect of any and all issues and claims, including claims that could have been asserted, arising from and within the OPSEU/SEFPO application as it relates to the OPSEU/SEFPO Unified Bargaining Unit, the liability findings in the SCJ Decision as they relate to the OPSEU/SEFPO Unified Bargaining Unit, and in respect of the PSPSFGA and its impact on the Moderated Collective Agreement.

9. All other monetary and non-monetary issues in dispute related to the PSPSFGA and the Moderated Collective Agreement are hereby withdrawn without prejudice to the positions of the Parties.
10. The Parties agree that nothing in this MOS is an admission or concession of liability or wrongdoing on the part of any of the Parties to this MOS, or their employees, agents, officials and servants.
11. The Parties agree that this signed MOS constitutes the entire agreement between the Parties with respect to the subject matter herein and supersedes any and all prior oral or written agreements, arrangements or understandings between them.
12. The Parties agree that this MOS may be executed electronically and in counterpart.

Signed in Toronto this 21st day of January, 2024


For OPSEU/SEFPO:


For the Employer:

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 Coleen Houlder (Chair)

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 Steven MacKay

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 Amanda Usher (Vice-Chair)

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 Minerva Papasin

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 Michele Morrison

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 Shenouka Dissanayake

Without Prejudice

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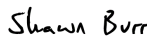
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Joe Labaki

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Holly Sullivan

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Shawn Burr

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Kevin Sprague

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Len Elliott

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Glenna Caldwell