

### ***What is interest arbitration?***

Interest arbitration is a process to which parties may resort when they are unable to negotiate a collective agreement. It is often used as an alternative to a strike or lock-out and is meant to duplicate, to the extent possible, the results the parties would have achieved had they freely negotiated the terms of their collective agreement and had they been able to exercise their rights to strike or lockout.

In an interest arbitration, a board of arbitration rules on the terms and conditions of work that could not be negotiated by the parties. In this way, the arbitral panel determines the outstanding terms of the collective agreement. Generally speaking, items which have been agreed to between the parties during the bargaining process are not submitted to the board of interest arbitration. The board's decision is binding on all parties.

The *Public Service Labour Relations Act* directs arbitration boards to consider the following factors in making their determinations:

(a) the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians;

(b) the necessity of offering compensation and other terms and conditions of employment in the public service that are comparable to those of employees in similar occupations in the private and public sectors, including any geographic, industrial or other variations that the arbitration board considers relevant;

(c) the need to maintain appropriate relationships with respect to compensation and other terms and conditions of employment as between different classification levels within an occupation and as between occupations in the public service;

(d) the need to establish compensation and other terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered; and

(e) the state of the Canadian economy and the Government of Canada's fiscal circumstances.

The board may also consider any other factor it considers relevant.

***What terms and conditions will be determined by the arbitration board?***

In our case, the employer's intransigence at the bargaining table has meant that a large number of issues remain outstanding and will be determined by way of binding arbitration before a board. Currently, these outstanding items include *all monetary items* and a number of non-monetary items, including (but not limited to) the following:

--preservation of any superior terms or benefits (for example, subsidized parking, rate of life insurance coverage, non-repayable advance sick leave bridging, for LA2Bs and above);

--requirement on the employer to exercise its discretionary powers fairly, reasonably and in good faith;

--rules with respect to collective agreement coverage and dues payments where members are seconded or transferred into or out of the bargaining unit;

--manner of designating AJC workplace representatives and rights afforded to representatives;

--protections for AJC bargaining representatives and officials against prejudice to their earnings arising from their involvement in the Association;

--timekeeping;

--disclosure during the grievance procedure;

--closed door offices;

--health and safety protections;

--access to education and training;

--indemnification and professional representation for LAs;

--access to alternate working arrangements; and

--scheduling of parental leave.

### **What is the AJC's position at the interest arbitration?**

The following excerpt from the 1998 award of Arbitrator William Kaplan, dealing with salaries for lawyers employed by the government of Ontario, illustrates the AJC's position as well as the importance of comparing federal government lawyer salaries to external comparators:

*"The compensation earned by external comparators, including Ontario lawyers employed in the private bar - lawyers with the identical training and qualifications of the government lawyers - leads one to the conclusion that a substantial wage increase following a long period of no increases, is justified. While the evidence persuades us that there is a compensation relationship or parity between the most senior, most highly classified crown attorneys and provincial court judges, we cannot conclude that there has ever been parity between crown lawyers and lawyers practicing in the private sector. **Nevertheless, given the identical training and qualifications - the same duties and responsibilities - we are of the view that Ontario private sector lawyers' salaries are a relevant consideration and are useful to the determination of the salaries of Ontario public sector lawyers' salaries. Whether working for the people of the province or for private sector clients, the professional profile for both groups is the same, as are the governing professional obligations.** While often adverse in interest, government lawyers and private sector lawyers work side-by-side before the same courts, tribunals and agencies.*

*Although we do not expect to achieve parity with private sector lawyer incomes, we are looking to significantly redress the existing salary disparity."*

### **Next Steps: The Importance of selecting a person to chair the board of arbitration**

An interest arbitration is a complex proceeding. The first order of business is to strike the arbitration panel, and set hearing dates.

It is absolutely critical that the chair of the board of arbitration be and be perceived to be truly independent. The process for selecting the chair is complex, in and of itself. In the legislative context under which we operate, each party may appoint a nominee to the arbitration board. The two nominees will then attempt to select a mutually-acceptable third person, who will act as the chair of the arbitration board. The chair functions as an independent neutral and that person is critical to achieving a fair and equitable result in the interest arbitration.

However, *if the parties cannot agree as to the chair of the board, then the chair of the arbitration board is appointed by the federal government.* We have emphasized to our bargaining counterpart the importance of reaching agreement on an independent neutral and avoiding the appointment of an arbitrator by the government. We have also raised this issue with the Minister of Justice Rob Nicholson and the President of Treasury Board Vic Toews, and have asked for their support in encouraging the

employer to avoid having a Federal Government appointee determine the terms and conditions of LAs who are employed by the Federal Government. This is why the AJC is working hard to reach an agreement with Treasury Board on the choice of the Chair of the Arbitration Board.

In terms of the actual arbitration, much of the work the AJC has done in preparation for negotiations will be useful for the purposes of the arbitration. We will need to present detailed evidence regarding incomes of comparator lawyers in both the private and public sector, on the relative incomes of LAs at various levels of experience relative to our comparators, on the nature and importance of work performed by LAs, on the terms and conditions of employment elsewhere along with evidence supporting the rationale for our proposals. This document will be communicated to you once it will be finalized

Finally, we have submitted to Treasury Board a list of agreed items in principle we have obtained in the course of the negotiation and mediation. Treasury Board has not yet approved the content of the list and once we obtain their approval, we will provide you with the content of the agreed items.