



**SUBMISSION OF THE
TREASURY BOARD TO THE
ARBITRATION BOARD
IN RESPECT OF THE
LAW GROUP**

CHAIRPERSON: Mr. Michael Bendel

**MEMBERS: Mr. Jean-Francois Munn
Mr. James Hayes**

OTTAWA June 8, 9, 10, 24 and 25, 2009

**IN THE MATTER OF THE *PUBLIC SERVICE LABOUR RELATIONS ACT*
and a dispute affecting the ASSOCIATION OF JUSTICE COUNSEL and
HER MAJESTY IN RIGHT OF CANADA as represented by the
TREASURY BOARD, in respect of all of the employees of the Employer in
the Law bargaining unit as determined in the certificate issued by the
PUBLIC SERVICE LABOUR RELATIONS BOARD on
September 12, 2007.**

FOREWORD

This Brief is presented without prejudice to the Employer's right to present any additional facts or arguments it considers appropriate and relevant during the proceedings of the Board.

Executive Summary

Recent economic and compensation data suggest that the government's final offer would be appropriate for settlements concluded in the near to medium term for the LA group. This assessment is with the legislated factors provided in section 148 of the *Public Service Labour Relations Act*.

"the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians" (starting on page 34)

- Current levels of compensation for LAs are sufficient as evidenced by the healthy recruitment and retention levels. The LA group does not have recruitment and retention problems as it has overall attracted and retained a sufficient number of employees.
- The mobility analysis demonstrates that the Employer has consistently been able to recruit at a higher rate than the number of separations.
- The strong growth in the number of employees in the LA group from March 2000 to March 2009 further supports the notion that there are no recruitment and retention problems. For this period, the LA population has increased by 61.8%, averaging 5.5% per year.

"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" (starting on page 37)

- The LA employees enjoy a favourable position when compared to the provincial or territorial government comparators (public sector).
 - Moreover, in terms of total compensation, LA employees have generous pension and paid benefits compared to their private sector counterparts.
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- Current levels of compensation for the LA group are sufficient as evidenced by relatively healthy recruitment and retention levels. The LA group does not have any recruitment and retention problems as it has attracted and retained a sufficient number of employees.

“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” (starting on page 44)

- An analysis of total cumulative increases¹ shows that the LA group has been subject to slightly higher salary increases than those received by the Core Public Administration (CPA) over the same time period. Since 2000, total cumulative increases received by the LA group (16%) have outpaced those of the average CPA employee (15.7%).

“the state of the Canadian economy and the Government of Canada’s fiscal circumstances” (starting on page 45)

- Broad wage pressures remain muted. The economy is currently mired in a sharp recession, reflecting the worst world-wide economic slowdown since the Great Depression. The Canadian economy grew a meagre 0.5% in 2008 and is expected to contract by 2.5% in 2009, before resuming modest growth of 2.0% in 2010.
- Reflecting the weak economic conditions, the unemployment rate is expected to progressively increase from 6.2% in 2008, to 8.5% in 2009, and to 9.1% in 2010.
- Despite the weakening economy, public sector wage rates put in place in the *Expenditure Restraint Act* will provide for real wage gains for public sector employees.
- Expected deficits will reach a cumulative \$85 billion by 2012-13 and federal debt will climb to \$542 billion. This means the government has extremely limited fiscal flexibility in which to address emerging concerns and priorities of all Canadians especially during these uncertain times.

¹ Economic increases, restructures, terminable allowances and other pay adjustments.

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INTRODUCTION

This Arbitration Board has been established to deal with the items in dispute between the Employer and The Association of Justice Counsel with respect to the Law Group.

Part I of the Employer's Brief gives general background information with respect to this Group such as the definition and characteristics of this Bargaining Unit including its population and payroll distribution.

Part II of the brief deals with the history of the current negotiations.

Part III presents the Employer's position on rates of pay.

Part IV deals with the other remaining outstanding issues.

Prior to proceeding to examine the specific issues in dispute, the Employer wishes to submit several comments concerning what the Employer views as fundamental to its approach during the collective bargaining process; and, to the proceedings before this Board of Arbitration.

SECTION 148 of the *PUBLIC SERVICE LABOUR RELATIONS ACT*

Section 148 of the *Public service Labour Relations Act* (PSLRA) sets out the factors that an Arbitration Board must consider in arriving at an award. It is our intention that the information and arguments contained herein assist this Board in the performance of its duty as contemplated by Section 148 of the Act.

Accordingly, included below are the provisions of Section 148 for ease of reference:

In the conduct of its proceedings and in making an arbitral award, the arbitration board must take into account the following factors, in addition to any other factors that it considers relevant:

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

EMPLOYER'S POLICY ON COMPENSATION

The Treasury Board has approved the *Policy Framework for the Management of Compensation*, effective February 22, 2007. This framework is reproduced in Appendix A. This framework is consistent with previous articulation of the Employer's compensation policy. The Policy Framework establishes that compensation decisions should be guided by four overarching principles:

1. **External Comparability:** Compensation should be competitive with, but not lead compensation provided for similar work in relevant labour markets;
 2. **Internal Relativity:** Compensation should reflect the relative value to the employer of the work performed;
 3. **Individual/Group Performance:** Compensation should reward performance, where appropriate and practicable, based on individual or group contributions to business results; and,
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4. **Affordability:** The cost of compensation must be affordable within the context of the commitments to provide services to Canadians, the fiscal circumstances, and the state of the Canadian economy.

Furthermore, the Policy Framework notes that these guiding principles need to take into account relevant legislation and be balanced against other government responsibilities such as its economic policy objectives, social policy objectives and public expectations and pressures.

Finally, the Policy Framework for the Management of Compensation defines compensation as a “total compensation” concept. External comparability with relevant labour markets is therefore to be based on all the elements of compensation, including benefits.

FIRST COLLECTIVE AGREEMENT

The Association of Justice Counsel was certified as the bargaining agreement for all employees in the Law group in April 2006². Part of the new bargaining unit was however previously represented by the Professional Institute of the Public Service of Canada (PIPSC) since the late sixties. This bargaining unit included approximately 100 employees. The Employer and the PIPSC negotiated 17 collective agreements with PIPSC. Although the current round of negotiation may show characteristics of being a first one for this bargaining unit, for at least part of the bargaining unit, this is clearly not the case.

² 2006 PSLRB 45
