Date: 20090223

File: 425-HC-5

Citation: 2009 PSLRB 23

Parliamentary Employment and Staff Relations Act

Before the Public Service Labour Relations Board

BETWEEN

HOUSE OF COMMONS

Applicant

and

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA, PUBLIC SERVICE ALLIANCE OF CANADA, COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, HOUSE OF COMMONS SECURITY SERVICES EMPLOYEES ASSOCIATION

Respondents

Indexed as
House of Commons v. Professional Institute of the Public Service of Canada et al.

In the matter of an application to review bargaining unit certification under section 17 of the *Parliamentary Employment and Staff Relations Act*

REASONS FOR DECISION

Before: Georges Nadeau, Vice-Chairperson

For the Applicant: Stephen Bird, counsel

For the Respondents: Dougald E. Brown (for the Professional Institute of the Public Service of Canada), Andrew Raven (for the Public Service Alliance of Canada), David Migicovsky (for the Communications, Energy and Paperworkers Union of Canada), Finn Makela and Claude Melançon (for the House of Commons Security Services Employees Association)

Heard at Ottawa, Ontario,
November 1, 20-22, 2006
January 9-11, 16; May 28-30; June 4-7; September 24-26; December 3, 11-12, 17-20, 2007
January 21-22; February 26-28, 2008

I. Application before the Board

[1] On November 14, 2005, the House of Commons ("the employer" or "the House of Commons") applied under section 17 of the *Parliamentary Employment and Staff Relations Act* ("the *PESRA*") to review the orders of the Public Service Labour Relations Board ("the Board") in relation to bargaining unit certification and asked the Board to determine that a single bargaining unit composed of all represented employees would be appropriate.

[2] The current bargaining unit structure is composed of seven bargaining units: the Protective Services Group represented by the House of Commons Security Services Employees Association ("the SSEA"), which was certified on March 24, 1987; the Technical Group represented by the Communications, Energy and Paperworkers Union of Canada ("the CEP"), which was certified on March 24, 1987; the Procedural Sub-Group and the Analysis/Reference Sub-Group ("the Procedural Group") represented by the Professional Institute of the Public Service of Canada ("the PIPSC"), which was certified on April 15, 1987; the Operational Group, represented by the Public Service Alliance of Canada ("the PSAC"), which was certified on May 8, 1987; the Postal Services Sub-Group ("the Postal Group") represented by the PSAC, which was certified on September 13, 1987; the Reporting Sub-Group and the Text Processing Sub-Group ("the RPG Group"), represented by the PSAC, which was certified on September 13, 1987; and the scanners working in the Security Services Directorate ("the Scanner Group") represented by the PSAC, which was certified on December 11, 2003.

[3] The employer alleged that the bargaining unit structure was obsolete, that the multiplicity of negotiations and arbitrations would inevitably affect the integrity of the system of classification and pay line, that the existing units hampered labour relations, that the interests of the various bargaining units were no longer diverging and that the bargaining unit structure resulted in unnecessary duplication and costs.

[4] The bargaining agents representing the seven bargaining units opposed the application. In essence, the bargaining agents denied that the structure was obsolete and argued that the inevitable harm to the classification system and the pay line was purely speculative, premature and unsupported by the evidence, that there was no evidence to the effect that the existing structure hampered labour relations, that the distinct community of interest of the various bargaining units continued to exist, as

demonstrated by the content of the collective agreements, and that the costs were necessary to preserve the labour relations stability the House of Commons had enjoyed for a number of years.

[5] On December 16, 2005, the Board directed the employer to provide a more complete or specific description of the proposed bargaining unit. The employer complied and forwarded to the Board on January 30, 2006, a four-page description of the proposed single bargaining unit aimed at ensuring that only those employees currently represented would be included in the unit. The bargaining agents' response, in essence, was that the proposed description excluded positions currently represented and that it was not a proper bargaining unit description was too complex and was virtually incomprehensible. The employer submitted that the bargaining agents' refusal to assist in developing a better description invalidated their reply.

[6] At the beginning of the hearing on September 24, 2006, I was asked by the parties whether the Board felt compelled to accept or reject the employer's description of the proposed unit. I indicated that the Board could, if it judged appropriate to do so, modify the bargaining units as it deemed fit and was not bound by the employer's description of the proposed unit. As a result of that decision, the parties requested that notice be given to the unrepresented employees of the House of Commons that their interests might be affected by the decision regarding this application. The Board provided such notice to the employees on November 6, 2006, giving them until November 17, 2006, to request in writing to be heard by the Board. One unrepresented employee requested to be heard and made a statement on November 20, 2006, at the resumption of the hearing. She expressed her opposition to being included in a bargaining unit and accepted that the employer would represent her interests in the proceedings.

II. Summary of the evidence

[7] The employer presented the testimony of 12 witnesses and a considerable amount of documentary evidence over the course of this lengthy hearing. Much of the evidence covered the organizational structure of the House of Commons, the job descriptions of represented and unrepresented positions, the interactions of incumbents of those positions, some of their terms and conditions of employment and a description of their respective work environments and career paths.

[8] As I will discuss further in my reasons for decision, the first and the fundamental question to be addressed in this application is whether significant changes have occurred to an extent that would render the existing bargaining unit structure at the House of Commons unsatisfactory and warrant a review. Although I have retained for the purpose of communicating my decision only the evidence and arguments relevant to that determination, this makes for a very long decision, as I believe it necessary to present the evidence, or lack of evidence, that led to my conclusion.

[9] During the proceedings, the witnesses and counsel used the terms "new classification system," "new classification plan," "classification renewal program," "new evaluation plan", "new job evaluation plan", "universal job evaluation plan" and "universal plan of classification" to describe or identify the same mechanism put in place by the employer and developed with the assistance of the Hay Group.

A. <u>For the employer</u>

1. <u>Art St-Louis</u>

[10] Mr. St-Louis has been Director General of Building Services since August 1998 and he is responsible for facilities management and institutional support for the House of Commons.

[11] Mr. St-Louis introduced in evidence the seven collective agreements (Exhibit E-2, tabs 1 to 7) for each of the respective bargaining units, which expired between March 31 and June 30, 2006, and a document dated April 1, 1986, from the Board of Internal Economy providing the approved official definitions of occupational groups and sub-groups at the House of Commons (Exhibit E-2, tab 8).

[12] Mr. St-Louis produced a chart providing an overview of the occupational group structure at the House of Commons (Exhibit E-2, tab 9) and a chart providing the breakdown of the number of employees at the House of Commons in the various represented groups and the number of unrepresented employees (Exhibit E-2, tab 10). He also provided the terms and conditions of employment applicable to unrepresented employees (Exhibit E-2, tab 13) and the terms and conditions of employment applicable to the unrepresented employees of the Cleaning Services Group (Exhibit E-2, tab 14).

[13] Mr. St-Louis presented an organization chart showing the five service areas under the direction of the Clerk (Exhibit E-1, tab 2). Those service areas are as follows:

1) Parliamentary Precinct Services, under the Sergeant-at-Arms, which encompasses Security Services, the National Press Gallery, Parking Operations, the Long Term Architectural Planning Office and the Construction Engineering Office and the Construction Engineering Office;
2) the Office of the Law Clerk and Parliamentary Counsel;
3) Procedural Services, under the Deputy Clerk, which encompasses the Committees and Legislative Services, House Proceedings Services and International and Interparliamentary Affairs Services;
4) Corporate Services, under a Director General, which encompasses the Finance and Human Resources Directorate which include Food Services, Occupational Health, Safety and Environment Services, Financial Operations Management, Policy and Financial Planning Services, Human Resources and Resource Information Management and the Planning Communication and Review Office.
5) Information Services, under the Chief Information Officer and Executive Director, which encompasses Parliamentary Publications, Information Technology Operations, Finance, Administration and Planning, Multi-Media, Systems Integration and Development and Printing Operations.

[14] Mr. St-Louis presented the *Strategic Outlook* document (Exhibit E-1, tab 3). Among the major initiatives (Exhibit E-1, tab 3, page 5) outlined in that document, he underlined the initiative to ensure a flexible technology infrastructure, which will have an impact on the services provided by the Chief, Information Officer and the Sergeant-at-Arms. He also noted that improving Members' of Parliament access to parliamentary information would affect employees.

[15] Mr. St-Louis turned to the chart representing the House of Commons' environment and describing its mandate (Exhibit E-1, tab 3, page 10). He indicated that the House of Commons is structured to support four lines of businesses according to the work carried out by Members of Parliament: caucuses, the House, committees and constituencies.

[16] The bulk of the employees, both represented and unrepresented, work in support of those lines of business. Several types of employees are found working for the House of Commons: indeterminate employees; long-term employees employed for

more than six months; short-term employees employed for less than six months; seasonal certified indeterminate employees (SCI) working more than 700 hours; and seasonal uncertified employees working fewer than 700 hours. A significant population consists of seasonal employees. The work is greatly influenced by the number of days the House of Commons sits. Unrepresented employees are predominantly found in the Administration Group and in managerial and specialist positions in all working groups. All positions are evaluated using a modified Hay System.

[17] Mr. St-Louis submitted a document (Exhibit E-1, tab 4) illustrating the parts of Building Services under his responsibility. Among the environmental challenges (Exhibit E-1, tab 4, page 4) facing Building Services, the major renovations and the enhanced security affected many employees. He described the Building Services framework and the functional relationships that exist within the Services (Exhibit E-1, tab 4, pages 5 and 6).

[18] Mr. St-Louis presented organizational charts for Accommodation Services, Maintenance and Material Handling Services, and Postal Distribution, Messenger and Transportation Services. He presented the job descriptions and commented on the interactions among employees, the work environment, the differences between represented and unrepresented employees and the organizational units within Parliamentary Precinct Services (Exhibit E-1). Represented employees occupy blue-collar trade positions and are members of the Operational Group, with the exception of Postal Distribution employees, who are part of the Postal Group. Within those areas, supervisory, coordinator and administrative and administrative support positions are unrepresented. Most career mobility is limited, although some maintenance employees have become security officers, drivers or project managers. He noted that accommodations have been made for medical reasons.

[19] Mr. St-Louis pointed to the definition of the Board of Internal Economy found in the *Strategic Outlook* document (Exhibit E-1, tab 3, page 4) and indicated that the Board of Internal Economy was the decision-making body of the employer.

[20] Mr. St-Louis provided an example of integration of the various services. The movement of an item from one point to another involves members of different bargaining units depending on where they work.

[21] Mr. St-Louis submitted a chart of similar technical activities performed by various bargaining units (Exhibit 1, tab 40). He pointed to the persons performing scanning duties and noted that the scanners (the equipment) used were comparable to those used in airports and indicated that the same training was provided to all three groups of individuals performing scanning functions. He also noted that shipping and inventory functions were carried out by a number of groups. He discussed the merging of the Stationary Clerk and the Counter Clerk positions into a position of Postal Counter Clerk in the Postal Group.

[22] Mr. St-Louis testified that the technical team responsible for computer installation had initially been part of Security Services and that the employees in question had initially been unrepresented; they became represented while still in Security Services. They were recently moved to the Information Services Directorate and are represented by the CEP.

[23] Mr. St-Louis testified that management is in the process of moving the processing of inbound mail from the Belfast Plant to Security Services. The Security Services Scanner Group will be called upon to work jointly with Senate scanners. Mr. St-Louis also testified that they were reviewing the delivery of printing products to find more efficient ways to deliver the service.

[24] Mr. St-Louis testified that, to the best of his recollection, it was in 1982 that the process of developing a staff relations framework began under the direction of Art Silverman. The legislative framework was passed by the House of Commons. One part of the legislation has yet to be proclaimed. The bargaining unit definitions were borrowed from the group definitions used by the Treasury Board and were adapted to the needs of the House of Commons.

[25] Mr. St-Louis indicated that service heads are equivalent to deputy ministers and that over the years the House of Commons' structure has evolved. The introduction of classification renewal was an effort to reflect pay equity. Remuneration was to be based on competencies as opposed to tasks. All positions are assessed according to the new system, up to the EX-4 level.

[26] Mr. St-Louis indicated that he did not use the group and sub-group definitions found in the *Group Definitions* document (Exhibit2, tab 8) but that the document remained valid since the Board of Internal Economy had left it as is.

[27] Mr. St-Louis presented the *Classification Renewal Program Charter* (Exhibit 1, tab 39), which had been provided to managers to explain the Classification Renewal Program.

[28] Mr. St-Louis testified that he represented all Parliamentary Precinct Services on the Union-Management Consultation Committee (UMCC). The UMCC had included representatives from all bargaining agents and all services since 1998. However, it has not been functional in the last two years. Union-management discussions are occurring at the local UMCCs and at Health and Safety Committee meetings. He testified that the issues from his area were dealt with at the local UMCC.

[29] In cross-examination by counsel for the PIPSC, Mr. St-Louis confirmed that the House of Commons employs 1700 employees in a wide variety of duties and those positions are classified in a number of different occupational groups. He was not aware of a plan to get rid of occupational groupings. The Board of Internal Economy has the authority to set groupings and did so in 1986. He reiterated that the document outlining those groupings (Exhibit 2, tab 8) is still in force today.

[30] Mr. St-Louis was questioned on the Analysis/Reference Sub-Group definition. He confirmed that the group definition had not been amended and that they had been modeled from what existed in the public service. He conceded that he was not aware of the existence of any comparable group to the Procedural Sub-Group in the public service.

[31] Mr. St-Louis confirmed that the bargaining unit certificate issued by the Board in September 1987 for the Reporting Sub-Group and the Text and Processing Sub-Group had referred to the group definitions found in the *Group Definition* document (Exhibit 1, tab 8). The group definitions are consulted to determine which group an employee belongs to. Mr. St-Louis testified that the document entitled *HOC – Occupational Group Structure* (Exhibit 1, tab 9) had been issued in connection with the Classification Renewal Program. It had been explained to him that the document referenced the bargaining units covered by the certificates. The new abbreviation "RPG" had been given to the bargaining unit composed of the Reporting Sub-Group and the Text and Processing Sub-Group.

[32] Mr. St-Louis confirmed that each of the five service areas as defined in the *Strategic Outlook* (Exhibit E-1, tab 3) is functionally distinct and is headed by a senior

manager reporting to the Clerk of the House of Commons. Procedural Services primarily provides advice to Members of Parliament.

[33] In cross-examination by counsel for the CEP, Mr. St-Louis agreed on the importance of involving the bargaining agents in the classification renewal process. He indicated that at no time when he was present had the employer stated its intention to bring forward an application to consolidate bargaining units. Mr. St-Louis also confirmed that Louis Bard had sent letters (Exhibit CEP-1) to at least two of the bargaining units on the question of bargaining unit structure. Mr. Bard was the co-chair of the Ad-Hoc Committee overseeing the Classification Renewal Program.

[34] Mr. St-Louis confirmed that the definition of the Technical Group found in the group definitions (Exhibit 2, tab 8) was used to decide whether a position belonged to that group. Job evaluation was conducted using the modified Hay Classification Plan. The classification plan notwithstanding, the House of Commons continued to apply the group definitions.

[35] Mr. St-Louis indicated that he had participated in the employer's Operational Group bargaining team. He confirmed that the bargaining agents had voluntarily agreed to the same economic increase and that the integrity of the pay line had not been affected. He did not recall that a pay equity issue had been raised at the bargaining table.

[36] Mr. St-Louis confirmed that the provisions found under the heading *Training* in the Technical Group collective agreement (Exhibit E-2, tab 5, clause 14.3) are not found in the Operational Group collective agreement. Comparing the job descriptions of a Procedural Clerk and of an Event Coordinator, Mr. St-Louis acknowledged that, although the knowledge level of both jobs had been rated at the same level, the individuals were not interchangeable as the skill sets required by the respective positions were different.

[37] Mr. St-Louis confirmed that 50 percent of House of Commons employees were unrepresented and that their positions were evaluated using the same evaluation plan. The unrepresented employees were told that they would receive the economic increase after the negotiations with the bargaining agents had been completed. Specific terms and conditions of employment applied to the unrepresented employees.

[38] Mr. St-Louis confirmed that all Technical Group members worked under two directors – Marc Bourgeois and Elaine Digger – who reported to Mr. Bard, Executive Director of Information Services (Exhibit E-1, tab 2). All the unrepresented employees were part of the Administrative Group, the Administrative Support Group or the Management Group. He added that the cleaning staff were also unrepresented.

[39] Mr. St-Louis confirmed that there was little movement of personnel to or from the Technical Group. The skill set and the certificate requirement limited movement. Movement to the group had occurred as a result of an application filed under the legislation by a bargaining agent when a group of four employees had been treated as unrepresented by the employer. Mr. St-Louis agreed that this was not an example of mobility.

[40] In cross-examination by counsel for the SSEA, Mr. St-Louis indicated that liaison between Parliamentary Precinct Services and Security Services occurs mainly at the Watch Commander level. Coordination with regard to transport is done at the operational level through contacts with the Security Services Operations Centre. None of the persons from his service area give orders to the Security Forces on site.

[41] Mr. St-Louis confirmed that the Constables have the mandate to protect the Hill. Their sole authority is within the confines of the House of Commons and at other buildings when committees of the House of Commons use other premises. Only Security Services has the power to detain a person or to carry arms.

[42] Questioned on the list of similar technical activities (Exhibit E-1, tab 40), Mr. St-Louis indicated that he had prepared the list from his personal observation, his opinion and his experience. He corrected the information appearing on the first line and recognized that the PSAC was the bargaining agent for the scanner positions. When told that the quartermaster position was not in the Protective Services Group, Mr. St-Louis acknowledged that he had not verified and was not knowledgeable regarding the internal operations of Security Services. He indicated that the list he had prepared did not list identical positions but similar ones. He also acknowledged that the information on which he had based his document might have been outdated.

[43] During cross-examination by counsel for the PSAC, Mr. St-Louis confirmed that the occupational groups structure (Exhibit 2, tab 8) adopted in 1986 had not been negotiated with the bargaining agents. The classification system in place prior to the

new universal plan had been in effect since 1991 and had 13 different classification standards.

[44] Mr. St-Louis indicated that, when a position is vacated and a new incumbent is to be appointed, the job description is reviewed and the classification may be re-evaluated by an expert. When a merger of positions occurs, the new position is evaluated and Staff Relations determines which group it is to be assigned to. Staff Relations would be the liaison with the bargaining agents, and managers would be consulted. As new jobs are created a similar process occurs. He also explained why some of the positions within his area are unrepresented and are part of the Administration Group.

[45] Questioned on the assurance given to the bargaining agents that the introduction of the new classification plan would not impact on the bargaining unit structure, Mr. St-Louis indicated that at the UMCC meeting he had attended he had understood that the intention had not been to make any changes to the bargaining unit structure. He added that something had been mentioned to the effect that we would have to see what would happen in the future.

[46] In re-examination, Mr. St-Louis confirmed that the UMCC meeting he was referring to had occurred on January 19, 2001, and the minutes of that meeting were introduced in evidence (Exhibit E-3).

2. <u>Lynn Guindon</u>

[47] Before her retirement, Ms. Guindon was Chief, Information Technology (IT) Service Desk. She was responsible for the planning, implementation and development of IT training and for hardware and software support. She served in that position for 10 years. She participated in the last two rounds of negotiations for the Technical Group.

[48] Ms. Guindon presented the organization chart for Information Services Directorate (Exhibit E-4, tab 2, page 3) under the responsibility of the Chief Information Officer. She presented a document outlining the mission of the various components of this directorate (Exhibit E-4, tab 55).

[49] Information Services is divided into: Systems Integration and Application Development (SIAD), Information Technologies (IT) Operations, Multimedia Services

and ISD Business Planning, Printing Services, Finance Administration and Planning, and Parliamentary Publications. Ms. Guindon presented organization charts and job descriptions, the interactions of employees, the work environment, the differences between represented and unrepresented employees, and made further comments with regard to the various units within Information Services (Exhibit E-4).

[50] The Systems Integration and Application Development (SIAD) Section is responsible for the maintenance and development of information systems. To that end, it establishes a policy for information management and assisted management in IT strategic planning and management. Employees in that area are all unrepresented.

[51] IT Operations include the IT Project Management, Network Management and Operations and the IT Services Desk. Represented positions are found in the IT Services Desk and are part of the Technical Group. All other IT Operations positions are unrepresented.

[52] Multimedia Services provides support and development for the parliamentary Website, support for the intranet and support for television for the House of Commons and the Senate. While some of the employees in that area are unrepresented, most are represented by the CEP.

[53] The represented employees within the IT Services Desk Section are the IT Support Specialist and members of the Technical Group who are part of Desktop Consulting and Field Services (DCFS).

[54] Ms. Guindon testified that the Electronic Sub-Group definition (Exhibit 2, tab 8, page 11) no longer applies to the DCFS as they no longer design and build computers. This sub-group definition was still valid for the Event Services and the Radio and TV Services units. The Broadcasting Sub-Group definition was also still valid.

[55] In cross-examination by counsel for the CEP, Ms. Guindon confirmed that the employer had attempted to move the DCFS employees to an unrepresented group but that the CEP had successfully complained to the Board. The employer had not challenged the Board's decision. All employees who were members of the CEP held technical positions in the Information Services Directorate.

[56] Ms. Guindon confirmed that the Information Services Directorate was divided into branches and that one of those branches was the IT Operations Branch. The CEP

was the only group with members in the IT Operations Branch. All were located in the DCFS and were in the Electronic Sub-Group.

[57] Ms. Guindon confirmed that Multimedia Services was divided into different sections: Television and Radio Services, INET and Parliamentary Telephone Network Services, and Event Support Services. In all three services there were members of the CEP and no other bargaining agent was present. All employees in Television and Radio Services are members of the Broadcasting Sub-Group. There were no CEP members in the SIAD Branch or in the Network Management and Operations Services area.

[58] Ms. Guindon confirmed that in the IT Service Desk unit there were unrepresented employees and employees represented by the CEP and that the unit operated with two sets of terms and conditions of employment.

[59] Questioned on collective bargaining, Ms. Guindon confirmed that she had served on the employer's collective bargaining team. The team had different representatives from the different service areas as it was important to obtain the viewpoint from each area.

[60] Both she and Ms. Digger were needed on the bargaining team. Ms. Guindon was not aware that the employer had expressed concerns that too much time was being spent on negotiations.

[61] Ms. Guindon was questioned on her description of the interactions of employees in Broadcasting, who were members of the Technical Group. She recognized that, although they interacted with represented and unrepresented employees in doing their work, this did not mean that there was integration of the work. Nor did it suggest that the positions had similar skill or education requirements.

[62] With regard to career mobility, Ms. Guindon confirmed that career progression was to unrepresented positions and not to other bargaining units.

[63] Questioned with respect to the group definitions (Exhibit E-4, tab 17), Ms. Guindon indicated that the job evaluation system was distinct from the group definitions. All positions were evaluated using the new job evaluation plan. The evaluation system had nothing to do with group definitions.

[64] Questioned on the last rounds of collective bargaining that she participated in, Ms. Guindon confirmed that settlements had been reached voluntarily. A significant amount of discussion had taken place with regard to continuous employment and days of rest. The employer had wanted to amend the provisions to reflect provisions in other collective agreements but the CEP had resisted. Seniority is taken into account in the training program.

[65] Ms. Guindon confirmed that under the new job evaluation system all jobs are evaluated using the same neutral factors, although the job attributes may be different. The fact that jobs are evaluated at the same level does not make them interchangeable. Managers do not classify positions or determine to which bargaining unit they belong. Job descriptions are sent to the Classification Section, which applies the group definitions.

[66] Ms. Guindon confirmed that during bargaining the CEP did not make any demands with respect to job rotation, client relations, pay relativity, maternity leave, clothing allowance or telework.

[67] In response to questions from counsel for the PIPSC, Ms. Guindon confirmed that there had been considerable changes at Information Services in the last 20 years. She indicated that the House of Commons had been successful in putting in place an effective work environment and had been able to achieve this success with the current bargaining unit structure. She also agreed that there were 500 employees in the Information Services Directorate and that over the last 20 years the employer had put in place a mechanism to recruit and retain high-tech employees. The competitors are the public service and the high-tech industry. The House of Commons had implemented a career development path, opened development opportunities and tried to ensure that the work was attractive.

[68] Ms. Guindon confirmed that, in IT, sector issues were resolved at the local level. This was a sensible approach, as management knew both the people and the issues. Having a knowledgeable person from the area brought a useful dimension to the bargaining process. She had spent less than 15 days in each round of collective bargaining she was involved in and had been able to accommodate that demand on her time.

[69] Cross-examined by counsel for the PSAC, Ms. Guindon confirmed that she had not participated in negotiations with the PSAC. Someone in Corporate Services had been tasked to do the analysis and research on rates of pay and the resulting data had been made available to the employer team in each round. The employer normally assembled a team of five persons for the purpose of negotiations.

[70] With regard to Security Services and IT Services, Ms. Guindon confirmed that no movement of persons between bargaining units had occurred in her 10 years in IT.

[71] In re-examination, Ms. Guindon was asked to indicate the type of issues the CEP had brought to the local level. She recalled that she had been approached regarding the lack of teamwork within the group.

3. Brent William Schwieg

[72] The employer's next witness was the Acting Director of Security Services, Mr. Schwieg. The employer asked that the material evidence relative to Security Services that had been put forward in this case be sealed as it may include information that could be used to compromise House of Commons security. I have asked the Board to comply with this request.

[73] Mr. Schwieg testified that his substantive position was Deputy Director of Security Services and that he had been in that position for five years. As Deputy Director, he was the second-in-command working in conjunction with the Director to set the overall strategic direction for Security Services. In his acting position of Director, he reports directly to the Sergeant-at-Arms and has a greater role in setting security directives. He oversees the 300 employees who work in Security Services

[74] Mr. Schwieg presented the Security Services organization chart (Exhibit E-5, tab 2). The Service is divided into two main areas: one reporting to the Deputy Director, encompassing essentially administrative and support functions and one reporting to the Chief, Security Operations involved in the day-to-day operations of the security services. Employees in the Sergeant, Corporal and Constable positions are represented and work in Security Operations area and in the Communication Centre under the Deputy Director. All other positions including Watch Commander and the administrative and support positions are unrepresented.

[75] The responsibility of Security Services is to provide a safe and secure environment at the House of Commons for MPs, VIPs, employees and the 1.3-million visitors who go there each year. Security Services is dedicated to three areas: facilitating and controlling access; protecting life and property; and performing a ceremonial role for the House of Commons as an institution.

[76] With regard to facilitating and controlling access, Mr. Schwieg indicated that strategic posts have been established throughout the Parliamentary buildings to ensure that persons are assessed and access provided. Security personnel are found predominantly where MPs are doing business. In some of the satellites facilities, service providers are used rather than security staff. Mr. Schwieg indicated that at a typical access control point there are one or more constables and a scanning facility. In some cases, access points are open 24 hours a day and 7 days a week. There are also freight access points where constables are on duty as well.

[77] With regard to protecting life and property, Mr. Schwieg indicated that constables are responsible for performing a variety of tasks, such as providing first aid, CPR and defibrillation, responding in the event of a health issue, and monitoring suspicious behaviour such as unauthorized access and theft. They are called upon to use force techniques to deter or subdue a person when necessary. There is a specialized unit with firearm training. Constables patrol to monitor and identify potential hazards, ensure the movement of persons and facilitate persons reaching their destination.

[78] With regard to ceremonial duties, Mr. Schwieg indicated that constables are in uniform and have a responsibility to uphold the traditions of the House of Commons. Constables are required to use fundamental drill movements, saluting the Prime Minister and participating in ceremonies such as the Changing of the Page and the Speaker's Parade.

[79] Mr. Schwieg presented the Watch Commander positions on the organization chart (Exhibit E-5, tab 2a) reporting to the Director of Operations. These are unrepresented positions overseeing the work of the uniformed employees. They each represent a security function. He described the various responsibilities associated with each Watch Commander and their respective uniformed staff, which include providing protection to the Prime Minister, controlling access to specific buildings and investigating employees. When the situation involves a labour relations concern, the

matter is escalated to the Watch Commander level. Mr. Schwieg added that employees may be targeted during covert intelligence gathering.

[80] Mr. Schwieg testified that a Watch Commander was in charge of the access scanning function performed by scanners who are members of the Scanner Group and who work in the seven buildings of the Parliamentary Precinct. Scanning of goods at the Belfast facilities did not involve the Security Services other than a Watch Commander providing guidance and support on occasion. The employees who scan goods are not members of the Scanner Group.

[81] Mr. Schwieg testified that the job description for constables (Exhibit E-5, tab 3) is accurate. He described the responsibilities of constables. With regard to the scanning of persons entering a building, he indicated that ordinarily constables do not perform scanning, although they are backups and are trained to do the scanning when circumstances require. Constables are public officers under the *Criminal Code* and are allowed to carry weapons and use force. They arrest as citizens and not as peace officers.

[82] Mr. Schwieg testified that the job description for corporals (Exhibit E-5, tab 5) was accurate and indicated that the incumbents were represented by the SSEA. They supervise the delivery of security services by leading small teams of constables. They also have functional supervision of scanner operators. Corporals come from the ranks of constables, where they have acquired the necessary experience.

[83] Mr. Schwieg indicated that the job description for sergeants (Exhibit E-5, tab 6) was accurate. He indicated that all sergeant positions were represented by the SSEA. Sergeants supervise corporals and the Scanner Supervisor in the delivery of security services.

[84] Mr. Schwieg presented the organization chart for Parking Enforcement (Exhibit E-5, tab 18). He indicated that Parking Enforcement does not report through the Director of Security but reports directly to the Sergeant-at-Arms. This service is separate from Security Services. He presented the job descriptions for corporals and that of Constable in Parking Operations (Exhibit E-5). They are all members of the SSEA.

[85] Mr. Schwieg testified that there were two categories of skills expected of constables and sergeants: core competencies and technical competencies. He indicated that core competencies included people skills, analytical thinking skills, writing skills, and change management learning capacity. He also indicated that the technical competencies required to perform the duties of the position were described in three technical themes. He presented a document entitled *House of Commons, Security Services Competencies* (Exhibit E-5, tab 25) and explained the headings appearing on each page. He indicated that they were standards used in the hiring, promotion, training and performance measurements of employees in Security Services and added that they applied to all positions falling under the Deputy Director and to all positions on the right-hand side of the organization chart (Exhibit E-5 tab 2a), including the Scanner Group. He presented an additional page entitled *Scanning for Detection and Prevention* (Exhibit E-5, tab 26), which was added to the Security Services competencies document. He also indicated that a new competency introducing a document entitled *Evaluating Employees* (Exhibit E-5, tab 25, page 17) replaced three competencies described in the same document (Exhibit E-5, tab 25, pages 7, 8 and 9).

[86] Mr. Schwieg presented a document entitled *House of Commons, Security Services Competency Matrix* (Exhibit E-5, tab 27), which shows how the various competencies apply to the specific positions in Security Services. The core competencies identified in the *Matrix* apply to the scanner positions and this fact should be noted in the *Matrix* but it is not. He indicated that the scanners are not part of the uniform unit or the protection unit but that a medical examination and a pre-employment security clearance are prerequisites to employment in the scanner positions. Constables are required to obtain their CPR and first aid certification and this is outlined in the competencies under *Protecting Lives and Property* (Exhibit E-5, tab 25, page 12). He presented an advertisement notice (Exhibit E-5, tab 10) for a job opportunity as a scanner operator. The core competencies are the same for a scanner and a constable position. Some prerequisites are different, and he submitted a document outlining the prerequisites for both positions (Exhibit E-5, tab 12).

[87] Mr. Schwieg presented personnel data (Exhibit E-5, tab 8) gathered through the PeopleSoft System and a manual system. Asked why the scanners had fewer than 15 years of service, Mr. Schwieg indicated that students and contractors had carried out scanning functions but because of September 11 a decision had been made to have the service delivered by House of Commons employees.

[88] Mr. Schwieg testified that constables are on duty 24 hours a day, 7 days a week. They work a variety of shifts that are predominantly 7- and 11-hour shifts. They work overtime and are subject to call-back only infrequently. Scanners are shift workers and are on duty from 07:00 to 20:00. He indicated that they perform overtime but he did not know if they are subject to call-back.

[89] Mr. Schwieg indicated that, other than the mandatory training, constables receive on average four days of technical training a year related to first aid, CPR, use-of-force techniques, oxygen therapy and defibrillation. Some training is delivered by House of Commons personnel while some is outsourced. Scanners receive an initial three-day course on operating the scanning equipment. Their abilities are maintained through on-the-job training and simulations.

[90] Mr. Schwieg testified that scanners are regularly considered for promotion to the constabulary. Currently, of the 20 places in the constable training program, scanners occupy 9. There are currently 44 scanner positions in the establishment. Persons from other areas also participate in this training program.

[91] Mr. Schwieg indicated that from time to time Security Services accommodates employees from other areas. Typically, accommodations are made for staff who are unable to work shifts or who cannot meet other standards, such as fitness requirements. The administrative side of the organization devises solutions for accommodation. Isolated arrangements have been made to accommodate constables into scanning.

[92] Mr. Schwieg testified that he participates in consultations with the SSEA. The issues that are typically discussed are new program initiatives, employee issues, potential grievances, potential discipline and interpretation of the collective agreement. He added that issues of importance to the Protective Services Group as a whole are also discussed. Consultation also occurs with the PSAC, which represents the Scanner Group, but not to the same extent. This consultation has been delegated to the Watch Commander, who is responsible for the scanning unit. He added that not many outstanding issues have been brought to his attention.

[93] Questioned on the interactions and integration between scanners and constables, Mr. Schwieg testified that scanner operators and constables work in close proximity. Constables are at their post to facilitate and control access to buildings. The

scanner operators support that function by conducting the necessary scanning to ensure access. Asked if they did the same thing, Mr. Schwieg indicated that scanner operators scan and constables facilitate access. Occasionally, when a shortage of scanner operators occurs, the constables will perform hand scanning.

[94] Questioned on interactions with other groups, Mr. Schwieg testified that the constables interact with maintenance staff at freight entrance points and with employees who coordinate the arrival of goods at those entrances. They also interact with technical staff that diagnose problems with systems and equipment and with restaurant staff to provide access to premises.

[95] Mr. Schwieg testified that he had participated in collective bargaining with both the SSEA and the PSAC. He indicated that he had completed two rounds with the Scanner Group. During the first round in 2004, the focus was on hours of work, working conditions and equipment requirements. At the time, the SSEA collective agreement as well as a master template from the PSAC were used as models to arrive at the first agreement. The second round occurred in 2006-2007. The key issues in the second round were leave entitlements, hours of work, overtime meal allowance and clothing allowance.

[96] Mr. Schwieg indicated that covert surveillance activities require the authorization of the Director of Security. The purpose of such activities is to gather security information and evidence with a view to resolving security issues. Such activity is very rare, and the last experience he was aware of involved property theft. High-profile politically sensitive matters are the responsibility of the Watch Commander in charge of the investigation unit.

[97] Mr. Schwieg testified that the Blue Bag Desk at the exit of the Centre Block is used to keep items that cannot be brought on to the premises and return them to visitors when they leave. This post is staffed by scanner operators, although at times a constable may assist. It also has been used for short-term accommodation purposes for constables and sergeants.

[98] Mr. Schwieg testified that an annual health and safety workplace inspection is conducted separately with each of the bargaining agents.

[99] Mr. Schwieg testified that while working with two collective agreements presented some challenges, the direct impact on operations was not significant. The challenges were administrative in nature. Some articles of the collective agreements call for the administration of leave and benefits in a different manner. Consultation on long-term strategic work with both union executives may result in delays. Seniority is different in each unit and it is used significantly in the granting of leave. It is also used in merit-based staffing decisions for members of the SSEA.

[100] Referring to the left of the Security Services organization chart (Exhibit E-5, tab 2a), Mr. Schwieg indicated that unrepresented positions under the Deputy Director provided support in order that operations could be delivered effectively.

[101] Mr. Schwieg presented the scanning supervisor job description (Exhibit E-5, tab 4) and indicated that this was an unrepresented position that reports to the Scanning Sergeant, a member of the SSEA bargaining unit. The work schedules of scanning supervisors are similar to those of scanner operators.

[102] Mr. Schwieg indicated that the Program Officer Business Applications unit liaised with the Information Services Directorate on security technology and with the CEP bargaining unit position in the Technical Division.

[103] With regard to the movement of staff within Security Services, Mr. Schwieg testified that there was very little movement of staff from the positions under the Deputy Director to positions under the Chief, Security Operations. However, 70 to 80 percent of the persons occupying unrepresented positions under the Deputy Director have come from the SSEA bargaining unit.

[104] Mr. Schwieg testified that the unrepresented positions are generally also used to accommodate represented employees. He indicated that the same core competencies applied to both represented and unrepresented positions and added that there were very few technical competencies for the unrepresented group. The unrepresented employees work in distinct locations and are generally long-service employees.

[105] In cross-examination by counsel for the SSEA, Mr. Schwieg confirmed that he had participated in the development of the Security Services competencies (Exhibit E-5, tabs 25 and 26) and that they had been introduced in 2000. The core competencies identified in the *Matrix* (Exhibit E-5, tab 27) applied to all positions, both represented

and unrepresented. The required level of competencies was different for constables and sergeants and corporals. The core competencies established the minimum requirements for both the constable and the scanner operator positions. Core competencies are used for recruitment, promotion, planning of training and performance management.

[106] Mr. Schwieg indicated that scanner operators are not required to meet any of the technical competencies appearing on the *Matrix* (Exhibit E-5, tab 27). The technical competency required of scanner operators is scanning for detection and prevention. Obtaining Scanning Operations Certification is a prerequisite to the measurement of the Scanning for Detection and Prevention competency (Exhibit E-5, tab 26). Such certification is not required of constables. Certification is obtained by attending a three-day classroom course on the operation of x-ray machines and handheld metal detectors and the searching of individuals' personal effects.

[107] Mr. Schwieg confirmed that constables are required to undergo a seven-week training program. This training is built around three technical competencies required of constables: facilitating and controlling access, protecting lives and property, and maintaining dress and ceremonial standards. He also confirmed that there is an *Emergency Response Plan* (Exhibit SSEA-1) and that emergency response personnel are almost exclusively constables and sergeants. In certain emergencies, scanner operators are expected to report incidents and assist in evacuations. Scanner operators do not attempt to immobilize a person and do not receive training on responding to explosions or medical emergencies.

[108] Mr. Schwieg confirmed a number of other differences between the constable and the scanner operator positions. He indicated that the impact weapon instructions given to constables dealt with the use of the baton. Constables also conduct counter-technical intrusion to ensure, for instance, that premises used by political party caucuses are not bugged. Between 50 and 55 percent of constables are trained by the Royal Canadian Mounted Police (RCMP) in the use of firearms, and those assigned to work in Protection and Investigation wear bulletproof vests. At the time of hiring, constables must also pass a fitness test. Scanner operators are not subject to that test and do not use a baton or firearms or conduct counter-technical intrusion. They do not wear bulletproof vests.

[109] Mr. Schwieg indicated that all constables could be involved in the preliminary investigations of House of Commons employees, gathering information and preparing preliminary reports.

[110] Mr. Schwieg confirmed that constables interact with the media and receive training to that effect. Such training is not given to scanner operators. The competency with respect to protecting life and property was exclusive to members of the SSEA bargaining unit.

[111] Mr. Schwieg confirmed that, other than movement through the ranks, the career paths of constables in Security Operations would bring them to the Security Administration area. Other than the nine scanner operators currently undergoing the constable training, Mr. Schwieg could not identify any scanner operator who had become a constable. The nine scanner operators had applied through an open competition to become constables. There is no internal process in place to move scanners to constable positions.

[112] With regard to pre-employment screening, Mr. Schwieg confirmed that all employees of the House of Commons must meet the enhanced reliability standard and that constables must also obtain a security clearance, which he believed came from the RCMP.

[113] In response to a question from counsel for the PSAC, Mr. Schwieg confirmed that constables are trained in crime scene note-taking techniques, cardiac intervention, escorts and arrests. They wear a special belt and a protection vest. Constables are trained in the use of hand-scanning equipment but not x-ray equipment.

[114] Mr. Schwieg confirmed that constables may be involved in covert investigations. Some constables may be trained in surveillance techniques and undercover work. This type of work is not part of the regular training plan but may take place when required. Constables are called to investigate the behaviour of other House of Commons employees. Such investigations may or may not entail undercover work, covert operations or the use of side arms. There are no limitations as to which employees, either represented or unrepresented, constables may investigate.

[115] Mr. Schwieg confirmed that scanner operators receive a four-day orientation session (Exhibit SSEA-6) and a three-day x-ray training session (Exhibit PSAC-2).

[116] Mr. Schwieg confirmed that his participation in three or four bargaining sessions in the current round of collective bargaining had no bearing on the delivery of services. He indicated that it was more difficult to deal with two bargaining units and that the administration of benefits caused some inconvenience.

[117] In response to questions from counsel for the CEP, Mr. Schwieg confirmed that the universal classification system was almost complete at the time that the Scanner Group was certified in 2003. He indicated that interaction with the Technical Group occurred in diagnostic work done by this group on pieces of equipment. This work required specific skills sets.

[118] Mr. Schwieg confirmed that the competencies documents (Exhibit E-5, tabs 25 and 26) required for Security Services were not used for the Technical Group. He also indicated that there was no movement of employees between Security Services and the Technical Group.

4. <u>André Gagnon</u>

[119] Mr. Gagnon, Clerk Assistant, House Proceedings, was called to testify. Mr. Gagnon has been in that position since May 2005. He submitted his curriculum vitae (Exhibit E-7, tab 1) outlining his experience at the House of Commons since 1990.

[120] Mr. Gagnon presented the organization chart of the Procedural Services headed by the Deputy Clerk (Exhibit E-7, tab 2). The mandate of that organization was to assist Members and officers of the House of Commons, committees and parliamentary associations (Exhibit E-7, tab 46). It is divided into the International Affairs and Inter-Parliamentary Directorate that included the Parliamentary Associations, Parliamentary Exchanges and Protocols and Events, the Committees Directorate composed of Committees and Legislative Services, and the House Proceedings Directorate composed of the Journals Branch and the Table Research Branch. Within Procedural Services, all Procedural Clerks positions are represented positions within the Procedural Group.

[121] Mr. Gagnon presented the organization chart and the job descriptions for positions within the International Affairs and Inter-Parliamentary Directorate (Exhibit E-7, tab 8). The Procedural Clerks (Exhibit E-7, tab 5) working in that directorate planned and organized exchanges involving members of Parliament in Canada and abroad. Most of their interactions are with unrepresented employees

across the organization. Mr. Gagnon presented the job descriptions for the unrepresented positions in the directorate (Exhibit E-7, tabs 9 to 11, 13 to 15 and 36) that carry out administrative or support functions.

[122] Mr. Gagnon presented the organization chart for the Committees Directorate (Exhibit E-7, tab 16) and explained the directorate's mandate and the various responsibilities carried out under each Deputy Principal Clerk respectively in charge of Liaison, Accommodation/Support to Liaison, Information Management and Legislative Services. Each Deputy Principal Clerk has Procedural Clerks and administrative assistants reporting to him or her. The positions of administrative assistant and of committee assistant are unrepresented. The messengers assigned to the Committees are part of the Postal bargaining unit and work closely with the Procedural Clerks.

[123] Mr. Gagnon presented the organization chart for the House Proceedings unit (Exhibit E-7, tab 22) and described the responsibilities of the Journals Section. He described the Page Program and presented the job description for the position of Page Supervisor, an unrepresented position that reports to a Procedural Clerk.

[124] Mr. Gagnon described the Information Management Section, the Private Member's Business Section and the Table Research Branch and presented the job descriptions for the unrepresented positions within those sections.

[125] Mr. Gagnon reviewed the represented positions within the organization under the Deputy Clerk. The two junior procedural assistant positions and the six senior procedural assistant positions in the Journals Secretariat are included in the Reporting and Text Processing bargaining unit. The procedural clerks accompany committees during their travels. Their hours of work are in line with the workings of the committees and may extend beyond. Many of the indexers have become procedural clerks. The procedural clerks have a variety of interactions with a number of different services, including Security Services, Accommodations Services and Restaurant Services. He added that since the introduction of the *Prism Computerized Information Management System* the flow of information among employees had allowed for better coordination of the work.

[126] Mr. Gagnon testified that continuous training had been very important for a good number of years. Training is based on the competencies profile. He presented a document entitled *Principles of the Career Management Structure for Procedural Clerks*

at the House of Commons (Exhibit E-8). The initial training session provided upon entry into the position lasted two weeks. It was followed by many other training sessions in a context of continuous learning. He noted that the educational requirement for procedural clerks is quite different from the one for administrative positions.

[127] Mr. Gagnon testified that training for the unrepresented employees was also based on the competencies profile. Individuals are assessed based on the competencies requirement, and training is offered accordingly. Training has taken place on project management, email management, teamwork, communications and text revision.

[128] Mr. Gagnon testified that he had participated in two rounds of collective bargaining for the Procedural Group in 2003-2004 and in 2006. He outlined the various issues and noted that the first round had coincided with the renewal of the classification system and had dealt with the transition to the new classification system, the training program, the administration of leave banks, the duration of the collective agreement, the provision of a clothing allowance and the question of difficult situations faced by the procedural clerks. The second round dealt with the administration of leave banks, the definition of continuous employment, the modifications required by the Quebec parental leave benefits, health and safety, duration of the collective agreement and the difficult situations faced by the procedural clerks. Regarding the latter, a letter of agreement was signed to task a joint union-management committee with finding ways to support the procedural clerks in managing difficulties in tense committee situations and to provide them with tools for resolving such situations positively. The parties discussed the possibility of including a "trailer" clause to the remunerations provisions.

[129] Mr. Gagnon testified that he had also participated in two other forums of discussion. He co-chaired the Committee on Difficult Situations and served on the Joint Consultation Committee, which meets between negotiations to discuss matters of interest. The latter include training for the procedural clerks, performance evaluations, the policy on the locking of doors, development positions, evaluations of the procedural clerks conducted by the Manager of Internal Affairs of the Senate, and the assignment of procedural clerks to dangerous locations.

[130] Questioned on the use of the definitions for the Analysis/Reference and Procedural Sub-Groups (Exhibit E-7, tab 7), Mr. Gagnon indicated that he had used the definitions when the renewal of the classification system was being implemented and

more recently when a proposed new group definition was filed. He also indicated that when they created a new support position they had consulted the sub-group definitions.

[131] Mr. Gagnon testified that the definitions do not adequately reflect all the positions within the bargaining unit. For instance, the coordinator of the Page position, the procedural clerks assigned to international relations and the procedural clerk position assigned to training are not reflected in the sub-group definition.

[132] Mr. Gagnon testified that when difficulties had arisen in applying the sub-group definitions the matter had been raised at the Joint Consultation Committee. In the case of procedural clerks assigned to International Affairs, a tacit agreement was reached to place them in the bargaining unit even though they are not mentioned in the sub-group definition. On other occasions, research officers, the Chief of Protocol and the Director of Events were included in the unit as a result of discussions at the Joint Consultation Committee.

[133] In response to questions from counsel for the PIPSC, Mr. Gagnon confirmed that to his knowledge no grievances had been filed on the question of whether or not a position should be included in the bargaining unit. When such situations arose, they were resolved through discussions. He added that, of the 67 positions within the bargaining unit, for 55 of them there was no issue as to whether or not they belonged in the bargaining unit. Four different types of positions held by 12 individuals were the subject of the discussions.

[134] Mr. Gagnon testified that the bargaining agent had submitted a draft definition for the Procedural Group (Exhibit E-11) to the employer. He became aware of this proposal either around the time of the classification renewal or at negotiations. He did not know whether the employer had responded to the proposal.

[135] Questioned as to whether his input had been sought prior to the filing of the application for a single bargaining unit, Mr. Gagnon recalled being asked about the work of the procedural clerks but stated that he had not been asked his opinion as to whether there should be only one bargaining unit.

[136] Mr. Gagnon confirmed that the work of the procedural clerks requires highly specialized knowledge and that the rules and procedures of the House of Commons are far more complex than they would appear to be on the surface.

[137] Mr. Gagnon confirmed that the Career Management Structure for the procedural clerks (Exhibit E-8) had been in place prior to June 2006 and had been in existence for many years. He agreed with the description in the Career Management Structure, which refers to the work of the procedural clerks as a profession. The objective of the Career Management Structure is to develop a core of highly professional clerks. He confirmed that two of the House of Commons' senior management members came from Procedural Services. He also confirmed the importance of procedural clerks to the efficient operations of the House of Commons. He recognized that the high Procedural Group's level of expertise had been achieved under the existing structure at the House of Commons.

[138] Mr. Gagnon confirmed that a great majority of procedural clerks spend their careers within that profession and there is not a great deal of mobility to other services. The procedural clerks form a small (65 to 70), cohesive group that has worked together in a highly specialized area for many years. The knowledge the profession requires makes it unique. Individuals rotate through the various job functions. They share their professional interest and expertise.

[139] Mr. Gagnon confirmed that the procedural clerks are appointed to a level rather than to a position, a procedure that is distinct from the appointment mechanism in other groups. Employees are appointed to an entry level and remain there for four years. Probation on initial appointment is one year in length. The entry level allows the individual to learn the profession. There is a combination of formal and on-the-job training. Much of the parliamentary procedures entail knowledge of parliamentary practices. The position also requires adaptability and the ability to work in a team. The procedural clerk position requires a combination of those personal abilities with the specialized knowledge of the rules of procedure.

[140] Mr. Gagnon confirmed that, to his knowledge, no other group has a Career Management Review Board. The Board is composed of the Clerk of the House of Commons and three Clerk Assistants. He confirmed that he had served on the Board since May 2005. The Board decides on rotational assignments in consultation with managers and employees and decides whether the procedural clerks should be

promoted. Promotions are reviewed once a year, while rotations occur twice a year. The Board does not deal with unrepresented employees. There is a training committee for unrepresented employees. The competency profile is consulted to determine the appropriate training for unrepresented employees and procedural clerks.

[141] Mr. Gagnon confirmed that the Procedural Group used interest-based negotiations for part of the 2003-2004 round of collective bargaining. He indicated that it was possible for the Procedural Group to bargain with other groups. He confirmed that during the rounds he had participated in the Procedural Group had been able to articulate the demands it put forward and that the settlements achieved at the table had been ratified by the membership. The 2006 round was not yet complete.

[142] Mr. Gagnon confirmed that the parties had been able to establish a good rapport. Except for the labour relations representatives, management team members were former procedural clerks. It is an advantage to have representatives who are fully aware of the work.

[143] Mr. Gagnon confirmed that the procedural clerks would represent less than 10 percent of a single bargaining unit and that he was well aware that the procedural clerks do not support such an amalgamation. He confirmed that rotation of procedural clerks to different assignments is a significant concern to the employees in the current round of collective bargaining. Despite not having dealt with any other bargaining unit, Mr. Gagnon expressed confidence in the ability of union representatives of a single bargaining unit to represent the interests of the procedural clerks.

[144] Mr. Gagnon confirmed that the list of topics (Exhibit PIPSC-5) sent on January 10, 2003, during the collective bargaining process was an accurate list of the issues. He added that the clothing issue may have come at a later date. He confirmed that such matters were specific to the Procedural Group bargaining unit. He confirmed that the Procedural Group had negotiated a special work schedule with long and short weeks. He could not comment on whether such a schedule would continue under a single bargaining unit. He assumed that bargaining agents operate in a manner that represents the interests of all employees in a bargaining unit.

[145] Mr. Gagnon confirmed that the Procedural Group has specific provisions in its collective agreement with regard to overtime and that overtime is compensated after 20:00 only. He acknowledged that this arrangement was tailored to the needs of that

group but again reiterated that a larger bargaining unit would still be able to negotiate tailored provisions for procedural clerks. He acknowledged that the bargaining agents make their decisions based on majority rule.

[146] Mr. Gagnon confirmed that maintaining the Journals of the House of Commons is a very important function and that a very good understanding of the procedural rules is required to maintain and publish the notice papers and order papers of the House of Commons. Information management officers (indexers) require procedural knowledge and many have moved to procedural clerk positions.

[147] Mr. Gagnon was questioned on the interactions between the IT workers and the procedural clerks. He indicated that it was important for those employees liaise on the different projects they may be involved in. He added that it was not the same work and the IT support officer had to be able to understand the work of the procedural clerks.

[148] A job description for the procedural clerk position with an effective date of January 2007 (Exhibit PIPSC-7) was introduced in evidence.

[149] Mr. Gagnon indicated that he is responsible for the employer's negotiating team that bargains with the Procedural Group. He also represents Procedural Services on a special project involving the implementation of an Integrated Conflict Management System. The system would apply to all House of Commons employees.

[150] Mr. Gagnon confirmed that there were three bargaining units within Procedural Services. He acknowledged that the messengers could be part of the Operational Group rather than the Postal Group as he had previously testified. He indicated that messengers work from 08:00 to 18:00 and that the hours of work of the editors, who are members of the RPG Group, are in line with the work of the House of Commons. He acknowledged the calendar of short and long weeks (Exhibit PIPSC-6) that was agreed to with the Procedural Group bargaining unit.

[151] Mr. Gagnon indicated that there are no seasonal employees within the Procedural Group and confirmed that this was not an issue since Procedural Clerks are employed 12 months per year. There are no lay-offs in Procedural Services. To his knowledge, lay-offs have occurred only in Restaurant Services and among editors.

[152] Mr. Gagnon indicated that a number of editors had become indexers but he did not have any examples of an editor becoming a procedural clerk. He indicated that the

House of Commons' training program is developed using its competencies profile for all employees. Within the career structure for procedural clerks, the rotation assignments constitute one element of training.

[153] Questioned by the CEP representative on the interactions between procedural clerks and IT, Mr. Gagnon confirmed that application support specialists are part of the unrepresented group and that even if a single bargaining unit were created their interactions would not change in any ways as the application support specialists would remain outside the unit.

[154] Mr. Gagnon confirmed that a certain number of job descriptions in Procedural Services had been completed after the introduction of the new job evaluation system and that the introduction of the new system had not hindered that process.

[155] Questioned on the list of issues for the Procedural Group bargaining unit (Exhibit CEP-4), Mr. Gagnon was not aware of whether the issue of rotation, pay relativity and client relations had been present in other sets of negotiations. Jobs in Broadcasting require a different skill set than those in Procedural Services and there were issues unique to each bargaining group. He was confident that those issues would be dealt with even in a larger unit. A larger unit would require the participation of managers from the different units. He also confirmed that even with one unit there would still be a requirement to look at definitions of groups to determine whether or not a new position was in the bargaining unit. The same process would have to be used to make that determination.

[156] Questioned by the SSEA representative, Mr. Gagnon confirmed that the interaction between the Procedural Group and Security Services entailed the transmittal of the list of witnesses to appear before a committee and the use of a distress button in the case of a problem situation.

5. <u>Michel Roy</u>

[157] The following witness was Mr. Roy, Director of Publications since September 2005. He indicated that he was currently a member of the employer's negotiating team for the Reporting Sub-Group and Text Processing Sub-Group negotiations (the RPG Group). This group is represented by PSAC. He participated in the 2001-2002 Operational Group negotiations.

[158] He presented the organization chart for Parliamentary Publications Directorate (Exhibit E-12, tab 2) and adduced a document entitled *Parliamentary Publications* (Exhibit E-12, tab 4) outlining the complete process for the production of Parliamentary publications. The Directorate is divided in two main services areas: Publishing Services and Reporting Services.

[159] Mr. Roy described the responsibilities and interactions of the incumbents of the positions within Parliamentary Publications and presented the job description for those positions (Exhibit E-12, tabs 5 to 8, 11, 12, and 16 to 25). Publication and quality assurance positions and the proof reader positions reporting to the Manager, Publishing, were included in the RPG Group bargaining unit along with all senior editors, editors and trans-editors. The positions in Publishing Services of Senior Information Management Officer, Information Management Officer and Authority List Specialist were included in the PIPSC bargaining unit. All other positions administrative and administrative support positions in Parliamentary Publications were unrepresented.

[160] Mr. Roy described the interactions between the PIPSC and the PSAC members. He indicated that information management officers may identify errors and bring them to the attention of the editors. The editors then decide whether or not to accept the recommendation.

[161] With regard to the interactions between the information management officers and the Publishing and Quality Assurance Officer, it is more a question of teamwork. The index must be printed so that it can be included in the volumes. Exchanges occur mostly on questions of format, not content. Functionally speaking, the roles are clear.

[162] Mr. Roy identified some examples of interactions. He indicated that, during evenings when no managers are present, interactions may occur between the procedural clerk in charge of journals and the senior editor to ensure that what is reported in the journals is presented in the same fashion as in the Hansard. On other occasions, when committee reports are being prepared, consultations may occur between the procedural clerk and the Publishing and Quality Assurance Officer to determine the formatting of the document. Mr. Roy also indicated that interactions occur with CEP members when the Proceedings and Verification Officer detects a problem with a microphone. Consultation also occurs when there are proposed upgrades to the equipment.

[163] Mr. Roy testified that represented employees work in an office setting. Their hours of work are governed by House of Commons sittings, which may extend late into the evening when urgent debates occur. Depending on the volume of work, employees may be asked to work overtime. Some work on a 40/20 schedule, working 40 hours a week when the House is sitting and 20 hours when it is in recess. The 40/20 schedule is voluntary and is set out in both the PSAC and the PIPSC collective agreements. Unrepresented employees may also work on such a schedule. He indicated that many types of training are offered to represented employees and he cited information management training, language training and courses on *PRISM* as examples. There is also a course offered on House of Commons procedures to employees who are not procedural clerks. Procedural clerks received more in-depth training on procedures.

[164] Mr. Roy testified that unrepresented employees also work in an office environment. Proceedings and Verification Officers may have to travel within Canada with committees of the House of Commons. Their hours of work are also very flexible and are in line with the House and committee sittings. Business Application Officers have a regular schedule that is not subject to such variations. Overtime occurs in much the same circumstances as with represented employees but they work less overtime than the PSAC members. They may also work on a 40/20 schedule.

[165] Mr. Roy indicated that unrepresented employees receive training in similar fashion to represented employees. Application Support Officers receive more specialized training in informatics. Introductory training on procedures is also offered.

[166] Mr. Roy testified that the Chief, Publishing Services, has employees in two bargaining units and some that are unrepresented. The Chief, Publishing Services, is at the table with the PIPSC representatives but does not attend negotiations with the PSAC representatives; the Manager, Publishing, attends those negotiations. Commenting on the problems of having to administer two collective agreements, Mr. Roy indicated that it was necessary to refer to both collective agreements. Although clauses are similar, there is some specificity that requires verification in order to respect both collective agreements.

[167] Mr. Roy testified that there are four persons representing the employer at negotiations with the PSAC representatives. They are the Chief, Reporting Services, the Manager, Reporting Services, the Manager, Publishing, and the Director, Parliamentary

Publications. He indicated that the major issues were job security for seasonal employees, a health and safety policy and hours of work for seasonal employees.

[168] Mr. Roy testified that he serves on the Joint Classification Review Committee, where there are two representatives from both sides. He indicated that the Committee is dealing with two grievances from the PSAC and one from the PIPSC. He also serves on the Health and Safety Committee with the PSAC. There is also a Joint Consultation Committee for Parliamentary Publications Services. It met last year and dealt with issues around the new competency profile (Exhibit E-13). The profile applies to both represented and unrepresented employees. He submitted a document providing demographic data on employees in Parliamentary Publishing Services (Exhibit E-14). He indicated that some editors have become information management officers and that some information management officers have become senior editors. He also indicated that one of the publishing and quality assurance officers came from Security Services and that a support officer came from an unrepresented position.

[169] Mr. Roy testified that the group definitions (Exhibit E-12, tab 15) were used. He indicated that technological changes that have occurred are not reflected in the wording of those definitions. Definitions have to be interpreted to reflect the current times.

[170] In response to questions from the PIPSC representative, Mr. Roy indicated that the new job description for the Information Management Officer position reflected the new indexing methods using the new information technology tools. He confirmed that the Prism System provides a database used across the organization and is somewhat the equivalent of a central library. The system is used by a number of different work units. The system has modules adapted for each work unit; more specifically, the procedural clerks have a module designated for their own needs and persons working in Journals and information management officers also have their own modules.

[171] Mr. Roy reviewed the timeline outlined in the *Breakdown of Business Processes* (Exhibit E-12, tab 4, page 12). He confirmed that an index is included in the Hansard. This is an automated index that is not produced by the information management officers; they contribute to the automated system by adding information to the system. The index the information management officers produce is completed in two days. The information management officers advise the editors of any spelling or translation mistakes they notice in reviewing the Hansard while preparing the index and that is

the extent of the interactions between these two groups of employees. Information management officers also produce an index of committee proceedings. No other employee of the House of Commons produces these analytical indexes, which are created to facilitate research at Parliamentary Publications. A university degree is required at the entry level because the reference function requires a high degree of analysis and a broad understanding of current events to be able to index.

[172] Mr. Roy confirmed that information management officers work regular hours. He indicated that some are on a 40/20 schedule. Their terms and conditions are governed by the Procedural Group collective agreement and there have been no operational problems. He confirmed that there have been no jurisdictional issues. He has not received any reports to the effect that the current arrangement is unworkable or causes problems that are unsolvable. He did indicate that the time required was a problem.

[173] Mr. Roy confirmed that he had not been consulted before the House of Commons brought the application to consolidate all bargaining units into one unit, although he had participated in the collective bargaining for the Operational Group.

[174] In response to questions from the PSAC representative, Mr. Roy confirmed that the editors and the trans-editors prepare records of House of Commons proceedings, while the information management officers make those records accessible by producing an index.

[175] Questioned on the workload scheduling clauses (Exhibit E-2, tab 7, article 24.17) found in the RPG Group collective agreement, Mr. Roy confirmed that the employer had reserved the right to deviate from the regular schedule. He indicated such an article was not found in the collective agreement applying to the information management officers as there was no need for such flexibility in their case.

[176] Mr. Roy indicated that 50 percent of the members of the RPG Group are seasonal employees. They follow the House of Commons' calendar and are laid off at the end of June. They return when the House of Commons resumes in the fall. They are also off during the Christmas recess. All the information management officers are full-time employees.

[177] Mr. Roy recognized that the matter of health and safety was important to the PSAC and he was aware of the litigation before the Federal Court on this matter, as the health and safety provisions of the *Parliamentary Employment and Staff Relations Act* (*PESRA*) passed in 1986 had not been proclaimed.

[178] Questioned by the SSEA representative, Mr. Roy confirmed that, within Parliamentary Services, all employees other than those represented by PIPSC and PSAC were unrepresented. He also confirmed that the competency profile for Information Services (Exhibit E-13) does not apply to Security Services. He did not see any advantage to integrating the Security Services into Parliamentary Services.

[179] Questioned by the CEP representative, Mr. Roy confirmed that the Classification Review Committee had been created after the classification review process had been completed. The Committee dealt with objections to the number of points allotted to a position. The process is outside the collective agreement and not subject to a grievance under the *PESRA*.

6. <u>Audette Drouin</u>

[180] The next witness was Ms. Drouin, Director, Food Services Branch. She testified that there are two lines of businesses under her responsibility: fine dining restaurant and catering services, and cafeteria and canteen services. The services are found in the 7 parliamentary buildings and include 4 cafeterias and 3 canteens and employ 146 employees. There are various categories of employees: indeterminate unrepresented employees, seasonal uncertified employees (unrepresented), and seasonal certified indeterminate (SCI) employees and indeterminate employees in the Operational Group. The seasonally uncertified employees occupy the same positions as SCI but are unrepresented as they do not meet the required number of hours to be included within the bargaining unit. Services are provided to the House of Commons, the Senate and the Library of Parliament.

[181] Ms. Drouin submitted an organization chart for Food Services Branch. The Chart is divided in three areas: Parliamentary Restaurant and Catering Service encompassing Catering Services, the organization under the Executive Chef encompassing the Sous-Chefs and the West and Centre Block Storerooms, and the Finance and Cafeteria Operations.

[182] Ms. Drouin presented the job descriptions for the positions in Catering Services (Exhibit E-15, tabs 5, 17 and 27). The positions include the Catering Supervisor and Catering Services Attendants. She added that 6 catering service attendants were unionized while 17 others were unrepresented. The hours of work are organized in three shifts from 06:00 to 02:00. Employees rotate on shifts and frequently work overtime. Part-time employees are often students who work four to five hours a day, and extra hours are available to part-time employees. The majority of employees in Catering Services have fewer than 10 years of service. Training on food handling, food safety and alcohol serving is provided.

[183] Ms. Drouin testified that the Parliamentary Restaurant is open for lunch and dinner from Monday to Friday when the House of Commons is sitting. This represents 20 to 27 weeks per year. She presented the job descriptions for positions in Restaurant Services (Exhibit E-15, tabs 11, 12, 14 and 16) that include the Host, Cashiers, Waiters and Bartenders. She indicated that there was a mix of represented and unrepresented employees because of the numbers of hours worked. The employees have no interactions with other employees.

[184] Ms. Drouin presented the job descriptions for the positions under the Executive Chef (Exhibit E-15, tabs 4, 6, 9, 10, 15, 18 and 23) that include the Sous-Chefs, Station Chefs, Cooks and Dishwashers. The majority of employees are seasonal and represented. Ms. Drouin indicated that partnerships had been developed with the private and public sectors to attempt to resolve some of the problems faced by employees during the off-season.

[185] Ms. Drouin presented job descriptions for a number of administrative positions in Food Services, all of them unrepresented.

[186] Ms. Drouin testified that the 2nd Brigade (Cafeteria Operations) prepared food in bulk. She presented the job descriptions for the represented and unrepresented positions within the 2nd Brigade that include the cooks, dishwashers and kitchen helpers.

[187] Ms. Drouin indicated that she had been involved in the 2003 round of collective bargaining for the Operational Group as a member of the management team. She is also participating in the current round of collective bargaining. During the first round, the major issue for the PSAC was shift premiums. This issue applied to all members of

the Operational Group. There were issues around clothing. In the second round, job security for seasonal employees was the main issue. The Operational Group is composed of 400 employees, of whom 50 are seasonal. The other issues for the PSAC were maternity leave, parental leave, volunteer day and shift premium.

[188] Ms. Drouin testified that she participated in union-management meetings specific to the Food Services Branch. Meetings occurred twice a year or as required. She gave some examples of the issues discussed at the meetings.

[189] Ms. Drouin presented a document outlining the mobility of staff in the Food Services Branch (Exhibit E15, tab 28). She indicated that there was movement from represented positions to unrepresented ones, and she gave as an example a waiter who eventually moved up to a manager position.

[190] Ms. Drouin indicated that competencies had been developed with the Human Resources Branch. She also indicated that planning for the purpose of moving Food Services into Parliamentary Precinct Services had started. Foss Services is currently under the responsibility of the Director General of Corporate Services.

[191] In response to a question from the CEP representative, Ms. Drouin indicated that the Food Services Branch dealt with only one collective agreement. She indicated that there were no problems in having two sets of terms and conditions of employment (one for represented employees and one for unrepresented employees). She indicated that she had not been consulted on the proposal to merge the bargaining units and was not aware of any complaints that would lead to such a proposal. Provisions of the Operational Group collective agreement require that an employee work 700 hours in two years in order to be covered by the collective agreement.

[192] In response to questions from the SSEA representative, Ms. Drouin confirmed that no employees who were members of the SSEA had moved to positions in the Food Services Branch. She was not aware of any reason to put Security Services personnel in the same bargaining unit as some of the employees in the Food Services Branch.

[193] In response to questions from the PSAC representative, Ms. Drouin indicated that ever since she has been there the unavailability of work for employees during the recess period had been an issue between the parties. Represented employees account

for 50 of the 146 employees in the Branch. Around 70 seasonal employees do not have the number of required hours to be included in the collective agreement.

7. Benoit Giroux

[194] The following witness was Mr. Giroux, Director, Printing Services. Mr. Giroux has been in this position since October 2005. Printing Services provides conventional printing functions to the House of Commons, the Senate and the Library of Parliament. The functions encompass all phases of the process, from electronic design to preparation for shipping.

[195] Mr. Giroux was previously Manager, Occupational Health, Safety and Environment, at the House of Commons between April 2001 and October 2005. In that position, he was responsible for Health and Medical Services, the Employee Assistance Program, Health and Safety, and the Environmental Program. He was also responsible for Workers Compensation claims, liaising with the Workers Compensation Board and ensuring representation on appeals.

[196] Mr. Giroux presented an overview of Printing Services (Exhibit E-16, tab 11). He divided the services into six groups and submitted the job descriptions for the positions in each group (Exhibit E-16, tab 12). Client Services and Planning (Group 1) is responsible for planning and liaison with clients. The Document Preparation Section (Group 2) prepares “print-ready proofs”. Printing Operations on Belfast Road (Group 3) provides such services as offset printing and bindery operations. Electronic Printing Services (Group 4) provides high-end digital printing from its facility at 180 Wellington Street. The IT Section (Group 5) is responsible for web operations and the information technologies systems for printing. Mr. Giroux presented the sixth group as composed of persons on assignment in Printing Services. The assignments have been made because of duty to accommodate or for developmental purposes. He indicated that there were four assignments taking place.

[197] Mr. Giroux testified that the overall complement of staff in Printing Services was 98 employees: 61 indeterminate, 34 part-time and 3 term employees. All the represented employees involved in printing or bindery operations were part of the Operational Group represented by the PSAC. IT Section and administrative positions were unrepresented.

[198] Mr. Giroux testified that, typically, training in the printing area was job — or equipment-specific or related to health and safety. In the document preparation area, training on the specialized software used in the area was provided.

[199] With regard to employee mobility, Mr. Giroux testified that printing employees had careers in the printing area and most had long-standing service. The typical progression would see an employee start in the Service Centres and move to the Digital facility and then to a supervisory function. Most of the managers started on the floor, operating equipment.

[200] At the Belfast Plant, the typical progression in bindery is from junior to senior, from small press to large press, and then to a supervisory position. Bindery is a recognized trade and mobility is within the trade.

[201] In the Information System Group, mobility typically applies to IT employees coming in from colleges and from other IT functions within the House of Commons or outside.

[202] The documentation preparation area has evolved into a very specialized field, and employee mobility takes place within Printing Services. Movement to unrepresented positions has occasionally occurred for accommodation purposes.

[203] Mr. Giroux testified that there was functional integration at the Belfast Plant with Postal Services and with Material Management Shipping and Receiving. He indicated that there is also some functional integration with employees in the stationary stores who are members of the Postal Group and with employees in the Parliamentary Publications Group represented by the PSAC and by the PIPSC. There is considerable coordination required to ensure seamless operations between reporting and text processing employees and information management officers with Printing Operations. Everyone has to be on the same page and changes to the format have to be tested to make sure they run well. There is also coordination with the postal outlets as Members go to these outlets with their printing requests. He also indicated that the documentation preparation area was involved when there were changes to the templates.

[204] Mr. Giroux indicated that the Digital Area must coordinate with the Stationery and Material Management Group. Applying just-in-time delivery of supplies requires

coordination with the inventory of supplies at the Belfast Plant and at different stationary stores.

[205] Mr. Giroux testified that the main concern was in dealing with the Belfast Plant, where Printing Operations have to be in sync with Postal Operations, noting that the two operations do not work on the same shift system. Printing operates three shifts, while Postal has two. This poses coordination challenges at Christmas time and during peak periods. It would be easier if both operated on the same shifts.

[206] Mr. Giroux provided a floor layout of the Belfast Plant (Exhibit E-16, tab 20). He indicated that Material Management and Printing was part of the PSAC's Operational Group and that Postal was part of the PSAC's Postal Group. He added that Material Management looked after paper and consumable supplies such as ink and parts. They operated a day shift, and Printing had access to the area at night in case of additional needs. Printing Services prints documents from files or films and plates on large or small printers depending on the requirements. Once the work has been printed, it is transferred to Postal. Describing the working relationship between Printing Services and Postal Services, Mr. Giroux indicated: "We print, we fold. They insert and they ship."

[207] Mr. Giroux testified that over the last three to four years printing operations had grown substantially, citing as an example one regular project that had gone from 30 million to 155 million copies. He indicated that the Members of Parliament want turnaround times to be shortened; they want to reach their constituents as early as possible. There is increased congestion in both Printing and Postal Services. He indicated that a study was to be presented to senior management in the coming weeks to streamline operations to eliminate inefficiencies. He indicated that most of the "work organization opportunities" were between Printing, Postal and Systems.

[208] Mr. Giroux testified that in his past capacity as Manager of Health and Safety he interacted with all bargaining agents. The interactions entailed mainly the development of new programs or policies and the governance of a Joint Occupational Health and Safety Committee (JOHS Committee). He also dealt with incidents and Workers Compensation claims. He indicated that the House of Commons was not subject to the *Canada Labour Code* as Part 3 of the *PESRA* had never been proclaimed. He added that this lack of legislation was of great importance.

[209] Mr. Giroux testified that the key issues discussed with the bargaining agents were asbestos control, monitoring and documenting. These issues affected all occupants but not all bargaining agents had the same level of interest. Consensus was not achieved because of the views of the different bargaining agents. Attendance by the bargaining agents at the sub-committee meetings was in line with their interest. The CEP and the PSAC were always present, the PIPSC attended on an irregular basis and the SSEA was absent despite attempts to interest the SSEA's President. A considerable amount of time was spent with the CEP and a little less with the PSAC. Concerns raised by the CEP and the PSAC would have been of consequence to the PIPSC and to the SSEA and it would have been impossible to finalize an agreement on a policy with one bargaining agent as it would affect all of them. Most of the issues raised during the JOHS Committee meetings, such as air quality issues and ergonomic issues that had been resolved at the local committee meetings affected everybody. There were numerous instances where local issues specific to local operations had been brought forward. The PSAC had four seats on the Committee but did not express divergent views.

[210] Mr. Giroux indicated that, as the manager responsible for Workers Compensation claims, he was responsible for coordinating the accommodation process to find suitable accommodations for persons who had suffered injuries. He indicated that accommodation rarely took place between different bargaining units. The work area would be looked at first for accommodation purposes. Most accommodations occurred from represented to unrepresented positions. He estimated that such accommodation had taken place 20 times and indicated that it was not always possible to find accommodation.

[211] In cross-examination by counsel for the PSAC, Mr. Giroux confirmed that Printing Operations deals with Material Management when it obtains paper from the latter and with Postal Operations when Printing Operations turn over the finished product to Postal Operations. He confirmed that Postal Operations falls under the Sergeant-at-Arms, while Printing Services and Material Management fall under the Executive Director of Information Services. These are three distinct sections. A study on harmonizing certain functions was being conducted. Asked if there were a proposal to merge these services into one unit under one manager, Mr. Giroux replied that the proposal was not that specific. He did not know whether the Postal collective agreement provided for two or three shifts. He indicated that shift harmonization was

a bigger issue, as the volume of printed material was increasing, particularly during peak periods. He did not have a written report, as the harmonization study was to look at the issue.

[212] Mr. Giroux confirmed that two incumbents of the Activity Coordinator position had been moved to other positions for accommodation purposes. He indicated that a new policy had been in place for six months. He recognized that, in his experience as Manager of Health and Safety, he had not limited searches for accommodation to within the bargaining unit. He confirmed that there were no boundaries mentioned in the *Work Place Accommodation Policy* (Exhibit E-17, tab h-1) and that the bargaining agents had collaborated confidentially irrespective of their collective agreement during his tenure as Manager of Health and Safety, in keeping with the requirement set out at article 4.2 of the new *Workplace Accommodation Policy*.

[213] Mr. Giroux indicated that the two pieces of scanning equipment shown on the Belfast Plant floor plan (Exhibit E-16, tab 20) were used to scan equipment coming into Material Management and mail coming into Postal Services. Neither of the positions operating this equipment reported to Printing Services. He confirmed that there were no security personnel working in proximity to these scanners.

[214] Cross-examined by counsel for the CEP, Mr. Giroux indicated that he was not aware of whether the employer had submitted proposals to change the shift provisions during the negotiations of the Postal collective agreement that had recently been concluded. He was aware that no change had occurred since the conclusion of the negotiations. Shifts were one concern but there were also concerns about the workflow. He indicated that the employer did not yet have the results of the harmonization study and he could not indicate if the operating structure was a problem. Certain functions that were part of the workflow had to be harmonized and regardless of the outcome of the current effort to restructure the bargaining units, the employer might still undertake harmonization.

[215] Mr. Giroux confirmed that the CEP was adamant about its concerns regarding asbestos because of the cabling work its members perform in basements and attics, and this might explain its views on the matter. He stated that it was important to obtain the views and involvement of employees actually doing the work on issues of health and safety and that, even if there were one bargaining agent, there would still be a need for representatives from the different areas within the House of Commons. He

added that the CEP had made unreasonable demands and that an agreement could have been reached with the other three bargaining agents. He also confirmed that the employer had attempted to change the provisions on health and safety during previous negotiations with the CEP but that the demand had been dropped. There is a proposal to alter the CEP provisions in the current round.

[216] Cross-examined by counsel for the SSEA, Mr. Giroux confirmed that over 50 percent of employees within Printing Services were represented by the PSAC. None are represented by SSEA. There were no Security Services personnel at the Belfast Plant. Printing Services is not part of the normal career path of Security Services employees.

[217] Mr. Giroux confirmed that the SSEA had showed little interest in the JOSH Committee and that it had its own way of addressing health and safety issues within its area.

[218] In re-examination by counsel for the employer, Mr. Giroux, referring to the minutes of the JOSH meeting of May 2, 2003, indicated that it was clear that the CEP felt that its members were better protected by the provisions of their collective agreement.

[219] Later in the proceedings Mr. Giroux was called back to the witness stand to answer some questions regarding the harmonization project. He testified that since the last time he had testified Senior Management had approved a direction to harmonize the electronic printing facility, the offset and bindery operations and all related postal operations at the Belfast Plant. He indicated that there would be one production line involving ordering, processing, printing, finishing and shipping. He indicated that currently some of those operations are located at the Wellington Street building, while the bulk of the operations are located at 747 Belfast Road. The intent is also to consolidate and harmonize the operations at 760 and 768 Belfast Road, which are situated on the other side of the street. Once the printing and related postal services have moved to the other side, the incoming mail will be received at 747 Belfast Road. The intent is to build a secure area for the incoming mail. The related sorting functions carried out by Postal will be performed there and the remaining space will be allocated to Material Management for storage. This will have an impact on workflows, systems processes and resources.

[220] Mr. Giroux indicated that this proposal had been presented to a joint UMCC meeting in mid-November 2007 and that all employees in Postal and in Printing are represented by the PSAC. This new direction was well received by the Joint Committee.

[221] Mr. Giroux indicated that at 747 Belfast Road, the Operational Group would have members involved in Material Management, that mail sorting will be handled by Postal group members and that no determination had yet been made with regard to scanning. The role of Security Services has yet to be determined. With respect to the supervision and management of employees, the matter is still being discussed. Material Management will have the bulk of the facility, while there will also be postal functions. The organizational structure will be assessed as the transition progresses.

[222] Mr. Giroux indicated that the most significant impact would occur at 760 and 768 Belfast Road. All printing and outgoing mail operations will be located there. Material Management Services will perform inventory control for all paper, chemicals and inks involved in the operation line. Mr. Giroux indicated that as the employer moves into the transition there would still be the same cross-functioning between bindery-related functions that are part of the Operational Group and the inserting and mail operations that are part of the Postal Group.

[223] Asked to give specific examples of cross-functioning between units, Mr. Giroux indicated that currently all documents are folded by the Printing Group, while envelope inserting and mail preparation are done by the Postal Group. What is envisaged is that the operations will be changed to a model based on shipping dates as opposed to printing dates. As clients order documents to be printed and want them inserted in an envelope for shipping, the operation will align according to shipping requirements. This would mean that a bindery operations person, a member of the Operational Group, could be on the same line inserting mail, which is a Postal Operation function, or vice versa.

[224] Mr. Giroux indicated that Printing and Postal have already started to work on the development of an integrated ordering system that will allow clients to order their printing and shipping all at once and to track their requests as they move through the operations line and within the Canada Post system to ultimate delivery. The tracking system will be an overall management information system that allows for tracking of inventory and scheduling for both Printing and Postal and that will incorporate operational flags. This project will have a major impact on the operational workflow on

the floor and will also require adjustments to standards and communications with clients.

[225] Mr. Giroux testified that Senior Management had given the direction to have the functional program ready by March 2008. By "functional program," he meant the building requirements, the floor layout, the building systems for both facilities (747 and 760-768 Belfast Road) and the transition plan that would identify the activities that needed to take place to address the system work flow and resources component. The priority is to get electronic printing out of the Wellington Street building and then to move the printing and related postal operations to the 760-768 facility. Doing so will create the space required for the remaining activities at 748 Belfast Road.

[226] Cross-examined by counsel for the PSAC, Mr Giroux testified that Management is also conducting studies on the various options before making a decision. He indicated that employees would be affected, as all sorting of mail would be moved from 747 Belfast Road to 760-768 Belfast. It has yet to be determined if the scanning of incoming mail will continue to be conducted by members of the Postal Group. He confirmed that members of the Postal Group and the employees in Printing Services work for separate branches of the House of Commons. He indicated that no decision had been made on the supervision and management of these employees and it was possible that they would remain in separate branches.

8. Claire Kennedy

[227] The following witness was Ms. Kennedy, Chief Financial Officer since September 2007. She came to the position on an acting basis in October 2006. She is responsible for providing strategic advice on all financial matters as they pertain to financial management, including the planning, controlling and reporting of financial resources. Prior to that, she was Director of Financial Planning and Policy from March 1999 to October 2006. In that position she oversaw the development of policies on such matters as human resources, finance, material management, and health and safety.

[228] Ms. Kennedy testified that the first step with regard to policies at the House of Commons was the adoption by the Clerk's Management Group of the Multiyear Policy Plan. The Plan outlines the proposed policies that are to be developed by the House Administration. A protocol is followed when developing a policy and includes research

on best practices, an environmental scan to determine the factors that may impact on the policy and external consultations with stakeholders, including management, bargaining agents and unrepresented employees. A stakeholder working group is created to develop a proposal that is forwarded to a steering committee for review and to the Clerk's Management Group (or to the Board of Internal Economy where applicable) for approval.

[229] Ms. Kennedy described her involvement in most policy development as reviewing every step of the process, participating in the consultation process, directing the steering committee and making presentations to the Clerk's Management Group or the Board of Internal Economy. Once approved, the policy would be communicated to the employees via a website and through information sessions.

[230] Ms. Kennedy, referring to the organization chart (Exhibit E-17, tab b), described the work conducted under her responsibility, which encompasses Financial Planning Services, Policy Services and Corporate Policy Services. She indicated that none of the thirty employees under her responsibility were represented.

[231] Ms. Kennedy presented the *Classification Policy* (Exhibit E-17, tab c-1) developed by the Corporate Policy Group in consultation with stakeholders. The Policy applies to House Administration employees, both represented and unrepresented, with the exception of lawyers and Governor-in-Council appointments. Not all bargaining agents commented on the draft policy, and the comments received (some late) were generic in nature and applicable to all employees. The policy has been approved by the Clerk's Management Group and communicated to employees.

[232] Ms. Kennedy testified that she had been involved in development and consultation with regard to the *Conflict of Interest Policy* (Exhibit E-17, tab d-1) applicable to all employees. In September 2005 a memorandum was sent to the bargaining agents for the purpose of consultation. The PIPSC argued that more than one policy was needed. The PSAC had issues around political activities and with the recourse mechanism. Both unions requested that examples be added to the policy. The CEP and the SSEA did not have any comments. The *Conflict of Interest Policy* was finalized, approved and communicated to employees.

[233] Ms. Kennedy testified that she was familiar with the *Health and Safety in the Workplace Policy*. Her team was asked by the Board of Internal Economy to develop a

policy with the purpose of providing governance and a process for health and safety issues in the workplace. The consultation process was started in 2003 within the JOSH Committee and a number of meetings were held from February to May of that year. In May 2003, the CEP withdrew from consultations and asked that the *Canada Labour Code* be implemented. The bargaining agent representatives that remained on the Committee caucused and indicated that they were not prepared to comment on individual elements of the policy and would await a complete draft before providing further comments. The draft policy was circulated in November 2003 and a JOSH Committee meeting was held in January 2004 to discuss the draft. During the meeting bargaining agents informed the employer that they were no longer prepared to continue consultation on this policy. In February 2004, the PIPSC informed the employer that the bargaining agents had continued discussions on the issue and would be developing a framework prior to discussing the policy further. In November 2004, the PIPSC advised the employer that the status quo would remain and that the health and safety issues would be discussed at the bargaining table.

[234] Ms. Kennedy indicated that the Director General of Finance and co-chair of the JOSH Committee had written to the bargaining agents to propose the development of separate Memoranda of Understanding (MOU). In May 2005, all bargaining agents met to discuss this approach and in October 2005, the employer contacted the PSAC to initiate discussions on the MOU. The MOU was to contain the policy. A number of meetings were held with local representatives of the bargaining agent and in February 2006 it was felt that common ground had been reached on the policy. The PSAC's local representatives referred the matter to the PSAC's National Component representatives, leading to further talks and suggestions for changes. Finally, a meeting was being set for the formal signature of the MOU in the presence of the Speaker of the House of Commons when the employer received a letter from the PSAC requesting the proclamation of Part 3 of the *PESRA*. The MOU was never signed.

[235] Ms. Kennedy indicated that the PIPSC and the CEP had presented the employer with a proposal containing revised *Labour Code* provisions. The employer had issues with the proposal as it contained special provisions for Parliamentary Services, did not offer a clear process to deal with the complaints and did not set out clear governance structure. The employer indicated to the bargaining agents that there had been a change in thinking with regard to the policy and that all employees should be equally covered in the policy with no privileges. Given the time spent on consultation and the

need to have a policy in place, the employer decided to seek the approval of the Board of Internal Economy. The Board of Internal Economy approved the policy in June 2006.

[236] Ms. Kennedy testified that she was familiar with the *Prevention and Resolution of Harassment Policy* in force since June 2001. The policy outlines roles, responsibilities and the process to be followed should there be a complaint. She presented a document summarizing the process leading to the adoption of the policy by the Board of Internal Economy (Exhibit E-17, tab f-2). The comments received from the bargaining agents entailed focusing on prevention, clarifying roles and responsibilities, setting out the formal and informal resolution process, establishing time lines and clarifying the role of the bargaining agents and were applicable to all employees. A draft policy was circulated to the bargaining agents on May 17, 2001. Scheduling issues and insufficient preparation by some of the bargaining agents hampered further discussions. The employer decided to proceed and the Board of Internal Economy adopted the policy in June 2001. In December 2001, the CEP requested a review of the policy.

[237] Ms. Kennedy indicated that one objective of the review of the *Staffing Policy* (Exhibit E-17, tab G-1) was to modernize the policy to reflect an up-to-date staffing process. The policy was also intended to ensure consistency and transparency in the staffing process by specifying the approach and clarifying roles and responsibilities. The policy was to cover all employees, both represented and unrepresented. Ninety-five percent of all competitions are held for unrepresented positions.

[238] Starting in November 2002, a series of meetings was held with the bargaining agent representatives. Comments received were applicable to all employees. The CEP initially expressed concerns on accommodation issues and wanted to look at staffing processes used elsewhere (Exhibit E-17, tab G-2) but ultimately decided not to participate in the process any further.

[239] Ms. Kennedy presented the *Workplace Accommodation Policy* (Exhibit E-17, tab H-1), which had been approved by the Clerk's Management Group in June 2006. The purpose of the policy is to enable employees who are incapacitated to contribute to the workplace. The policy recognizes that there can be temporary and long-term accommodations. It sets out a process for ensuring that responsibilities are met over the long term. The policy is applicable to all employees. The bargaining agents were contacted in October 2005 and a meeting was set for the initial consultation on

October 28, 2005. Not all bargaining agents were present. The PSAC commented that the roles and responsibilities should be clear and that the process should be documented. The draft policy was issued in March 2006. The PIPSC expressed the view that the policy could not be imposed on the bargaining agents. Two meetings followed, with the PSAC and the PIPSC in attendance. The PSAC provided general comments applicable to all employees. The other bargaining agents provided no input and demonstrated no interest.

[240] Ms. Kennedy presented the organization charts and the job descriptions for the Office of the Chief Financial Officer, the Policy and Financial Planning Group, the Financial Management Operations Group, the Corporate Accounts Payable Group, the Material and Contract Management Section, the Communication Section, the Audit and Review Section, the Resource Information Management Section, and the job descriptions for the positions within those groups (Exhibit E-17). Other then five shipper receiver positions within Material and Contract Management, all positions within those areas are unrepresented.

[241] Ms. Kennedy testified that, within the Material Management Section, the Warehouse Manager, an unrepresented position, was responsible for the effective management of the warehouse operations. He liaises with other services, such as Transportations Services, Printing Services and Postal Services, to meet operational requirements and schedules. She also indicated that the Shipper-Receiver positions are PSAC represented positions. They review documents, verify content and record information on merchandise coming in and out of the warehouse. They also scan the goods that are received to ensure that there are no issues with them. They are trained to recognize problems and to report them to the supervisor immediately. The Supervisor Manager contacts Security Services to deal with the matter should there be an issue. Security Services has a protocol for dealing with issues depending on the nature of the concern and they provide training to the Shipper-Receivers. She also indicated that the Warehouse Manager, the Warehouse Operations Coordinator and the Shipper-Receivers work closely together to ensure prompt receiving and delivery and there are close interactions between them to resolve issues. The work is done in an industrial setting.

[242] Ms. Kennedy testified that the unrepresented employees typically work in an office environment. Interactions occur with Members of Parliament, with other

employees and managers of the various units and with outside contractors. The interactions occur with both represented and unrepresented employees to coordinate the delivery of services.

[243] Ms. Kennedy testified that at the Belfast Plant the Shipper-Receivers work from 07:00 to 17:00. Some start early, others stay late. There is no shift work involved, and overtime is cyclical during inventory time at year-end and after elections when new Members come in. The unrepresented employees at the Belfast Plant follow a similar pattern of work. She indicated that it was a team that worked closely together because of the sequencing of the work. Interactions with the Postal Group and Printing Group are mostly handled by the unrepresented employees.

[244] In cross-examination by counsel for the CEP, Ms. Kennedy confirmed that the definition of the classification system found in the Classification Policy (Exhibit E-17, tab 4) included a reference to the occupational groups.

9. <u>Muriel Droessler</u>

[245] The following witness called by counsel for the employer was Ms. Drossler. Ms. Droessler has occupied the position of Senior Advisor to the Director General of Human Resources and Corporate Planning Services since 2006. She provides advice and recommendations to the Director General on human resources and financial matters. Prior to that, from 2000 to 2006, she was the Collective Bargaining Advisor in the Finance and Human Resources Directorate and was involved in all aspects of negotiations, conciliation and arbitration. She participated in all rounds of collective bargaining that occurred during that time period. Prior to that, she held the positions of executive assistant and assistant. She provided her curriculum vitae (Exhibit E-18, tab 1).

[246] Ms. Droessler provided the organization charts and the job descriptions for the following units within Human Resources and Corporate Planning Services: Corporate Planning Services (Exhibit E-18, vol. 4, tab 38), Training and Organizational Development Services (Exhibit E-18, vol. 4, tab 42), Corporate Planning Services (Exhibit E-18, vol. 4, tab 49), Employee Engagement Section (Exhibit E-18, vol. 4, tab 52), and Human Resource Operations and Program (Exhibit E-18, vol. 4, tab 65). She indicated that all the employees working within these services were unrepresented.

[247] Ms. Droessler indicated that she had prepared charts on various aspects of labour relations using data that she compiled from the PeopleSoft data system that she had received from Resource Information Management. She presented the *Year of Service Comparison Chart* (Exhibit E-18, tab 2) indicating that 58 percent of bargaining unit members had between 0 and 15 years of service. According to the *Age Comparison Chart* (Exhibit E-18, tab 3), the average age is 47.7 years. The *Gender Comparison Chart* (Exhibit E-18, tab 4) shows that, except for Reporting and Text Processing, all groups are male dominated. She introduced the *Leave Without Pay – Usage Charts* (Exhibit E-18, tabs 5 and 6) and indicated that there was limited use of such leave and that it was the Operations Group that used the most. The *Annual Leave Charts* (Exhibit E-18, tabs 7 and 8) and the *Sick Leave Charts* (Exhibit E-18, tabs 9 and 10) show that usage is proportional to the size of the groups. She presented the *Bereavement Leave Charts* (Exhibit E-18, tabs 11 and 12) and noted that in 2004 usage was proportional to the size of the group; in 2005 the Postal Group had used a larger percentage of this type of leave. She presented the *Marriage Leave Charts* (Exhibit E-18, tabs 13 and 14) and noted that in 2004 this type of leave was used only by the Operational Group and that in 2005 the Technical Group was the major user. She presented the *Family-Related Responsibilities Leave Charts* (Exhibit E-18, tabs 15 and 16) and indicated that usage was proportional to size. She presented the *Overtime Usage Charts* (Exhibit 18, tabs 17 to 20) and indicated that usage was proportionate to the size of the unit. She also indicated that the Security Group was the greater user as it was a 24-hour, 7-day-a-week operation. She presented the *Call-Back Chart*s (Exhibit E-18, tabs 21 and 22) and indicated that the Technical Group had the greatest number of call-backs. She presented the *Travel Chart*s (Exhibit E-18, tabs 23 and 24) and indicated that the Procedural Group and the RPG Group spent time in travel.

[248] Ms. Droessler testified that she had been involved in the fourth and fifth rounds of collective bargaining at the House of Commons from July 2000. She was the advisor and assistant to the negotiator at the bargaining table. As she did not actually attend all meetings, information for those she did not attend was obtained from notes in the office.

[249] Ms. Droessler testified that she and the negotiator met with the six management bargaining teams to prepare the employer's proposals. Negotiations are conducted simultaneously using the same negotiator.

[250] For all sets of negotiations with the various bargaining agents, Ms. Droessler submitted documents outlining the time spent in negotiations (Exhibit E-18, tabs 25-A and D, 26-A and D, 27-A and D, 28 A, 29-A and D, 30-A and D, and 31-A and D). She noted that in each of the negotiations in the fourth round the employer was seeking cost-effectiveness, harmonization of contractual language and flexibility (Exhibit E-18, tabs 25-B and E, 26-B and E, 27-B and E, 28-B, 29-B and E, 30-B and E, and 31-B and E). In the fifth round, the issue of the implementation of the classification renewal program was added. Other than for the first set of negotiations for the Scanner Group, which occurred during the fifth round, Ms. Droessler characterized the bargaining agents' proposals as requesting leave and money (Exhibits E-18, tabs 25-C and F, 26-C and F, 27-C and F, 28-C, 29-C and F, 30-C and F, and 31-C and F). She testified that the four PSAC groups negotiated at separate tables in each of these two rounds.

[251] Ms. Droessler testified that the work was laborious because "you were in continuous bargaining." It was really costly because the employer's teams included about 40 employees taken away from their positions to participate in negotiations. On the union side, except for the negotiator, the other persons were House of Commons employees. The printing and production of the collective agreements is also costly and the results are the same at the end of the process. This was inefficient considering that the end result is the same.

[252] Ms. Droessler indicated that, with respect to the four PSAC collective agreements, the demands are often the same. It is almost a cut-and-paste exercise.

[253] Ms. Droessler testified that the employer's strategy when negotiating the new pay scale during the fifth round was to offer the same global package to each of the bargaining units. Under the new system, employees in different bargaining units are on the same pay line. There was one set of conversion rules that was part of the global package. The proposal was a "take it or leave it" deal. The Protective Services Group and the Operational Group settled first, followed by the Technical Group and then the Procedural Group. She could not remember when the Scanner Group settled. The Technical Group, the RPG Group and the Procedural Group referred the pay line to arbitration but settled before the actual arbitration hearing. She provided a listing of the bargaining units that applied for arbitration in the fourth and fifth rounds (Exhibit E-18, tab 34).

[254] Ms. Droessler presented a comparative analysis of the seven collective agreements that she had prepared (Exhibit E-18, tab 32). She observed that 80 to 90 percent of the language is identical or materially similar.

[255] Ms. Droessler presented a chart of the various wage demands by bargaining units (Exhibit E-18, tab 33) for each round of collective bargaining. The PIPSC was off-cycle at the beginning of the fourth round. During the second round, the PIPSC did not formulate wage demands as they were in interest-based negotiations. The SSEA and the CEP asked for two-year agreements. Ms. Droessler testified that it took 22 months to complete the fifth round of collective bargaining with all of the bargaining agents.

[256] Ms. Droessler testified that she had been asked to contact other agencies that had already gone through a bargaining unit review and had received replies from them (Exhibit E-18, tabs 35 to 37).

[257] Asked by counsel for the employer if the varying durations of collective agreements and the implementation of the classification renewal program would have an effect on collective bargaining, Ms. Droessler replied that it would. As an example she indicated that if an agreement was achieved with one unit, it would render negotiations with the other units meaningless as the wage increase and duration would already be set.

[258] Cross-examined by counsel for the CEP, Ms. Drossler indicated that the source document for the *Wage Demand Charts* (Exhibit E-18, tab 33) had been the bargaining agents' proposals. Asked if there was any mention of percentage wage demands in the CEP's wage proposals (Exhibit E-18, tab 27-C and F), Ms. Droessler conceded that the information was incorrect. She confirmed that the wage proposals had been received later in negotiations when the CEP had submitted comprehensive wage packages.

[259] Questioned on her conclusion that there were inefficiencies in collective bargaining, Ms. Droessler indicated that prior to her participation in the fourth round of collective bargaining she had had no experience, education or training in collective bargaining. Her only experience was with the House of Commons and she had no experience outside to compare it to. After the fifth round, she moved to a different position. During negotiations she did not speak but took notes. She was not consulted before decisions were made. She was asked to prepare documentation in support of the employer's positions.

[260] Questioned on her conclusion that overtime usage was proportionate to the bargaining unit size, Ms. Droessler conceded that counsel was better at mathematics than she was and agreed that it was not proportionate. She had come to this conclusion by looking at the chart. She did not actually compare the numbers.

[261] Questioned on the mandate given to harmonize the collective agreements, Ms. Droessler confirmed that the employer wanted the same language put in every collective agreement. She could not remember if the employer had been successful in obtaining 24-hour-7-day operation for the CEP Group in the fifth round and conceded that such a provision did not appear in the collective agreement. Despite the many hours she had attended negotiations, she could not recall the rationale advanced by the employer to harmonize the collective agreements.

[262] Questioned on the delays in negotiations and the timing of the employer's wage offer in the fifth round of collective bargaining, Ms. Droessler confirmed that a global package, including the universal pay scale, had been submitted late in negotiations. Although her curriculum vitae (Exhibit E-18, tab 1) indicates that she has been involved in responding to bad faith bargaining complaints, she could not recall that a bad faith bargaining complaint had been filed by the CEP and that one of the issues had been the employer's refusal to put a wage offer on the table. She confirmed that dates for negotiations had been cancelled but could not recall why they had been cancelled. She indicated that both parties were not available on certain dates.

[263] She acknowledged that she had not been involved in determining how many persons were assigned to the employer's negotiation teams. Referring to the names of the persons on the employer's negotiating team appearing on the document she had prepared on the time spent in negotiations during the fourth round with the CEP (Exhibit E-18, tab 27-A), Mrs. Droessler conceded that Mr. Bard had not attended negotiations and that she had not verified the names appearing on the lists of documents that she had prepared. She could not confirm if Ms. Enright had been present prior to July 2000.

[264] Ms. Droessler conceded that the CEP's proposals on page 2 of the document pertaining to the fifth round of collective bargaining (Exhibit E-18, tab 27-F) involved neither money nor leave but indicated that she stood by her answer that the bargaining demands were for money and leave. In her view, a change to a benefit virtually

translates to money. She acknowledged that there could be different demands with regard to benefits from one bargaining unit to another.

[265] She conceded that the CEP had made no proposals related to rotations of duties or pay relativity as the PIPSC had. She conceded as well that the CEP did not request military leave, shift premiums on weekends, clothing allowances, or demands related to travel time. She acknowledged that during the fifth round all the bargaining units voluntarily agreed to the proposed settlement.

[266] Mr. Droessler confirmed that the RPG Group was female dominated but she was unable to say if the employer had a concern with regard to pay equity.

[267] Questioned as to whether the employer had approached the bargaining agents with a request for joint bargaining, Ms. Droessler responded that she had not made such a suggestion and had not heard the employer's negotiator make such a suggestion.

[268] Ms. Droessler indicated that she could not recall one way or another whether considerable time had been spent in negotiations on issues other than pay. However, she did recall the time spent during the fifth round with the CEP on the employer's proposals to change the definition of continuous employment (Exhibit E-18, tab 32, page 2) and to incorporate a clause with regard to seasonal certified employees (Exhibit E-18, tab 32, page 5). She acknowledged that the CEP had rejected both proposals. She confirmed that time in negotiations was spent on discussing the provisions for term employees (Exhibit E-18, tab 32, page 10) and that this was unique to the CEP. She maintained that this was a monetary issue. She confirmed that the CEP collective agreement does not contain a provision with regard to the union agreeing to indemnify the employer (Exhibit E-18, tab 32, page 15). Her role was to assist the negotiator, take notes, put language together, and assist in the drafting of the language. It was her responsibility to put the collective agreement together. She also prepared briefs and provided data. Her resources were the other collective agreements and she contacted others to obtain data.

[269] Questioned on her document comparing collective agreements, Ms. Droessler conceded that there was certain language in the CEP collective agreement that was not found elsewhere and that her comment that 80 to 90 percent of the collective

agreements were materially the same was an estimate on her part and was not based on a statistical analysis.

[270] Referring to the provisions in the CEP collective agreements for contract negotiations meetings, for a variable work week, for the inclusion of seniority in the scheduling of annual leave, and for leave for the birth of a child and bereavement, Ms. Droessler confirmed that the rights afforded to employees under the CEP collective agreement were different from those in the other collective agreements. When asked if those differences were significant, Ms. Droessler indicated that in some cases they were, in others not. It was a matter of interpretation.

[271] Ms. Droessler also confirmed that the call-back provisions were unique to the CEP. She agreed that the health and safety provisions were not a monetary issue and that a significant amount of time had been spent in negotiations on health and safety issues.

[272] Ms. Droessler confirmed that the CEP did not have any employees paid in the C level pay range or any employees at the K or L level. She confirmed that the research she did was exclusively what was found in the books of documents that she presented in evidence (Exhibit E-18). She also admitted that she did not provide advice on interpretation of the collective agreements, contrary to what was stated in her curriculum vitae (Exhibit E-18, tab 1). She was not involved in the implementation of the new classification plan and was involved only peripherally on certification of bargaining units. She agreed that the certification of the Scanner Group had occurred even though the new classification plan had been agreed to. Ms. Droessler was not aware that the employer had ever suggested joint bargaining of wages. She conceded that her concerns with regard to negotiation of wages were speculative as she had no experience in labour relations other than at the House of Commons.

[273] Questioned further by counsel for the PSAC on her expertise in labour relations, Ms. Droessler confirmed that she had no expertise in the area of statistics, classification, pay equity, or application of the provisions of the *Canadian Human Rights Act* and no experience in collective agreement interpretation.

[274] Asked what involvement, if any, she had had in the request to consolidate bargaining units, Ms. Droessler indicated that she had been asked to do research. She compiled data and found that the largest bargaining unit was the largest user of

benefits. She had no other involvement. She had been contacted in the summer of 2005, when she was working as a Staff Relations Advisor. She followed a format that had been used before and cut and pasted the provisions of the collective agreements (Exhibit E-18, tab 32). As for the use of benefits, she obtained the data from the PeopleSoft database. Contrary to what she had affirmed in examination-in-chief, the gender and age charts had not been prepared by her but by Alain Vallée. She conceded that her work was essentially an assembly of the data.

[275] Ms. Droessler maintained again that the majority of the bargaining agent demands were for leave or for some benefit that had a cost. She indicated that she was not saying that the issues of anti-discrimination and job security and the demand on statement of duties were not important. Asked if she had looked at the proposals from the PSAC at all, she indicated that her comment was with regard to the overall global demands. She conceded that the demand related to the grievance procedure (Exhibit E-18, tab 29-C, page 14) was for neither leave nor money. She acknowledged that the PSAC had formulated a demand with regard to health and safety (Exhibit E-18, tab 29-C, page 16) and that it was an important issue in the workplace.

[276] Questioned on the first Scanner Group collective agreement, Ms. Droessler confirmed that it had been reached during the fifth round of negotiations and that the parties had drawn from the collective agreements for the Operational Group and the Protective Services Group.

[277] Questioned on the alleged inefficiencies of collective bargaining, Ms. Droessler conceded that she did not have expertise in collective bargaining and was not aware of any initiatives by the employer to address any such inefficiencies.

[278] Questioned on why there were eight persons on the employer's negotiating team for the Scanner Group (Exhibit E-18, tab 28-A), Ms. Droessler could not answer. She confirmed that each bargaining unit had its own team and indicated that she had not been involved in the discussions as to who would participate. She agreed that the relatively large numbers in each team were intended to reflect the specificities of each group.

[279] With regard to the length of time spent in negotiations, Ms. Droessler agreed that the negotiations for the Procedural Group had been completed in 36 hours over a period of four months (Exhibit E-18, tab 25-A) during the fourth round. She

acknowledged that this was the only unit using interest-based negotiations and could not comment on the issue of orderly succession planning raised by the employer (Exhibit E-18, tab 25-B). Reviewing the list of issues submitted by the employer in the fifth round (Exhibit E-18, tab 25-E), she was not able to comment on the age range in the Procedural Group or whether there was still a concern with regard to retirements. She acknowledged that the concerns with regard to travel and rotation were specific to the Procedural Group. She confirmed that this was the only group dealing directly with Members of Parliament and that this led to the creation of a subcommittee.

[280] In response to questions from counsel for the SSEA, Ms. Droessler confirmed that prior to July 2000 she had not been a member of the employer's negotiating teams. With regard to Security Services, she did not perform labour relations functions. There was always one spokesperson for the employer at the bargaining table and the same person played that role in all teams. Other than for the negotiator and herself, the composition of the employer's negotiating teams varied from unit to unit. The employer's negotiating team for the Protective Services Group included the negotiator and herself and, at a later date, the Director of Security Services, the Deputy Director of Security Services and four other members of Security Services (Exhibit E-18, tab 26-A). Except for her and the negotiator, all other persons involved in negotiations for this group were employees of Security Services.

[281] Ms. Droessler confirmed that the fourth round of negotiations for the Protective Services Group had occurred between September 2000 and October 2001. During that period, there were six days of negotiations and three days of mediation/arbitration (Exhibit E-18, tab 26-A). The subjects of discussions were money, flexibility and leave. She could not remember the issues on which the parties had spent the most time in the fifth round.

[282] Reviewing her notes taken during the SSEA negotiations in September 2000 (Exhibit SSEA-7a, pages 1 to 10), Ms. Droessler confirmed that the first page of her notes indicates that the parties were looking at correcting language in the collective agreement. On page 2 of her notes (Exhibit SSEA-7a), she noted discussions related to shift change. Asked if there were other groups working shifts, she indicated that she did not know. On page 3, there are notes of a discussion on the need to clarify an article. On page 5, the notes indicate that the parties discussed clause 17.14 relating to injury on duty. Asked if such a discussion had occurred at other tables, she could not

recall. On page 6, the notes indicate that the parties discussed scheduling changes. She added that she did not understand what was going on. On page 7, the notes indicate a discussion on overtime. She acknowledged that this was specific to the Protective Services Group. On page 8, the notes indicate discussions on premiums. She stated that the discussions with regard to the premium for carrying a firearm were specific to the Protective Services Group. Asked if the premium for weekend work was specific to the Protective Services Group, she indicated that she would have to refer to her other notes. She confirmed that the clothing allowance was specific to the Protective Services Group. She also confirmed that the demand with regard to staffing (article 43) and the demand with regard to Appendix "A" were specific to the Protective Services Group.

[283] Questioned with regard to her notes on the negotiating meeting that occurred in October 2000 (Exhibit SSEA-7a, pages 11 to 17), she confirmed that the discussions on clauses 3.04 and 18.01 were specific to the Protective Services Group. She could not recall whether the discussions on clauses 2.01(i), 19.01(b), 20.10, 30.01(b), 40.01 and 43.04 were specific to the Protective Services Group. She confirmed that the discussions with regard to clauses 15.10 and 15.12 pertained to language dealing with classification. She could not recall if the demands with regard to overtime clause 21.01, Appendix "B" for an additional holiday for the Protective Services Group and clause 19.01 related to part-time employees were specific to the Protective Services Group. With regard to shift work, Ms. Droessler indicated that the Technical Group might also work some shifts. She confirmed that the Senate had its Security Services and that there was reference to that service during discussions (Exhibit SSEA-7a, page 16).

[284] When questioned on her document outlining the dates of negotiations for the fifth round of collective bargaining for the Protective Services Group (Exhibit E-18, tab 26-D), Ms. Droessler confirmed that actual negotiations spanned two-and-a-half months and took five days. With the exception of Mr. Dubé and herself, all other participants were members of Security Services. Reviewing her notes on that round of negotiations, Ms. Droessler confirmed that the employer had not made a monetary offer during the initial discussions. With regard to her notes taken during negotiations that occurred on November 3, 2003 (Exhibit SSEA-8), she confirmed that discussions took place on uniforms and holes in shoes and those clauses 29.04, 28.05 and 30.01(c) were specific to the Protective Services Group. She confirmed that clause 31.01 (on career management), article 33 (on health and safety) and clause 41.04 (on career

management) are specific to the Protective Services Group. With regard to article 44, her notes reflect that the employer had a strategy in place whereby the classification review would be implemented in the same way for all bargaining units. She confirmed that clause 17.14 dealt with health and safety. She acknowledged that the discussions concerning the 10-week versus the 8-week schedule spanned over 2 days of negotiations and that such scheduling is specific to the Protective Services Group.

[285] Questioned on the notes on the discussions that took place on December 3, 2003 (Exhibit SSEA-8) and the following day, Ms. Droessler confirmed that the parties had dealt with a global offer that had been presented to the SSEA negotiating team as a "take it or leave it" offer and that there had been discussions on a particular problem related to salary protection for sergeants and corporals.

[286] Ms. Droessler acknowledged that this round of negotiations could be broken down as follows: one day to exchange proposals, two days to clarify issues, one day to complete the monetary issues and one day to finalize the complete agreement. She also acknowledged that the majority of the discussions had taken place on issues specific to the Protective Services Group.

[287] Questioned on the decision to seek the amalgamation of all bargaining units, Ms. Droessler could not recall it ever being a subject of discussions during the two rounds of negotiations that she had attended. She first heard about this matter at the end of 2004 and did not participate in any discussions related to this proposal.

[288] Ms. Droessler confirmed that the largest unit was the Operational Group, with 303 members, while the Protective Services Group had 224. Both the Technical Group and the Protective Services Group are over 90 percent male. She confirmed that the Operational Group, the Technical Group and the Protective Services Group use the most leave without pay (Exhibit E-18, tab 5). She confirmed that the Protective Security Group, which represents 27 percent of the represented employees, used more then 50 percent of the overtime in 2004 (Exhibit E-18, tab 17). Asked if she knew the reason, she indicated that she believed it was the result of September 11 and the fact that it was a 24-hour operation. She could not recall whether it had been during negotiations with the Protective Services Group that overtime had mostly been discussed. She did not know why the Protective Services Group had used 41 percent of the overtime (at time-and-a-half) in 2005 (Exhibit E-18, tab 18) and 80 percent of the overtime (at double time) in 2004 (Exhibit E-18, tab 19). She could not recall whether double time

had been discussed during negotiations with other groups. She acknowledged that the Technical Group had accounted for 71 percent of the call-backs, compared with 11 percent for the Protective Services Group (Exhibit E-18, tab 21). She believed that this was because of their functions and the fact that overtime was not planned for the Technical Group. She confirmed that there were more discussions on call-backs during negotiations for the Technical Group and that this was not an issue at the other tables. Referring to travel time (Exhibit E-18, tab 23), she confirmed that this was part of the work and was specific to the Procedural Group.

[289] Questioned by counsel for the CEP as to the accuracy of her documents outlining the time spent in negotiations with the CEP during the fourth and fifth rounds of negotiations (Exhibit E-18, tabs 27-A and D) as compared with the notes taken during negotiations (Exhibits CEP-5 and 6), Ms. Droessler indicated that the notes for the fourth round had been prepared by Ms. Enright. She conceded that there were a good number of discrepancies between the negotiations notes and the documents that she had prepared.

[290] The documents on the time spent in negotiations were prepared after the fact from her recollection, notes from negotiations and the negotiators' notes. She agreed that the Board had not received any documents regarding the amount of time spent at arbitration during the fifth round that would support her estimate of the time spent in June 2004 (Exhibit E-18, tab 27-D).

[291] Questioned on a discussion that took place at negotiations on April 23, 2003, Ms. Droessler confirmed that there had been lengthy discussion on the bargaining agent's proposal under clause 16.4.4 (Exhibit E-18, tab 27-F, page 8) dealing with project schedules and that this was an important issue for the union. She could not recall that similar discussions had taken place with other bargaining agents. She acknowledged that from March to July 2003 considerable time had been spent in negotiations on matters other than wages.

[292] Questioned on the delay that had occurred between the end of July 2003 and employer's presentation of its "global offer," Ms. Droessler recalled that there had been a delay with the classification renewal program. Her understanding was that the employer had been putting forward a global offer to all units as a "take it or leave it" proposal at the end of negotiations.

[293] Questioned by counsel for the PSAC, Ms. Droessler confirmed that she had been the note taker for the 2004 round of negotiations with the Scanner Group (Exhibit PSAC-4). She indicated that she had not reviewed her notes for that group against time spent in negotiations (Exhibit E-18, tab 28-A). She acknowledged that she had raised the figures to round the numbers and confirmed that she had proceeded in the same fashion with the Operational Group and the RPG Group. She acknowledged that there was a tendency to enlarge the time estimates.

[294] Questioned on the issue of the professional obligation to record what was said in committees (Exhibit E-18, tab 31-F), she recalled a discussion during negotiations but could not recall the details of the discussion beyond what appears in her notes (Exhibit PSAC-6).

[295] Questioned by counsel for the SSEA on the time spent in negotiations in relation to her notes (Exhibits SSEA-7A and 8), Ms. Droessler confirmed that the fourth round of negotiations with the SSEA had taken took a total of 22 hours, while the fifth round had been completed in 18 hours.

[296] In re-examination by counsel for the employer, Ms. Droessler indicated that other groups also have clothing and uniform allowances. She indicated that she was not aware that the bargaining agents had ever suggested joint bargaining or that the PSAC had requested joint bargaining for the four units it represents. She indicated that call-backs were not unique to the CEP. She reiterated that she had been making a general statement about the bargaining agents' demands when she had said their demands were for leave and money. As for her statement that 80 to 90 percent of the collective agreements were similar or the same, she indicated that this had become clear when she had prepared the collective agreement comparison document.

[297] With regard to harmonization, Ms. Droessler denied that the employer had been seeking to roll back benefits to the lowest level. She indicated that the Senate has its own security force. Asked if any groups other than the Procedural Group had interactions with Members of Parliament, Ms. Droessler indicated that the Protective Services Group has regular contacts with Members of Parliament. Asked if in general more than one bargaining agent had concerns with regard to clothing, part-time work, staffing, grievances, overtime premiums and career programs, Ms. Droessler responded in the affirmative.

10. Phil Johnson

[298] The employer's next witness was Mr. Johnson, Director of Consultation Operations for Eastern Canada for the Hay Group. His particular area of practice is reward consulting, which includes job evaluation and compensation matters related to job evaluation. Counsel for the employer clarified that he was not presenting Mr. Johnson as an expert witness. Mr. Johnson joined the Hay Group in 1987.

[299] Mr. Johnson testified that the project he led on behalf of the Hay Group started in 2001 with the objective of implementing a common job evaluation methodology across the organization. He was advised that the House of Commons was using a variety of job evaluation plans for different groups of employees. Many of those plans were old and used outdated language to describe the work. They were no longer effective in helping persons make decisions on the relative value of jobs. The House of Commons had considered the possibility of implementing the Universal Classification Standard that had been under development by the federal government. However, the project had failed to produce the desired results and as a consequence the House of Commons was seeking an alternative.

[300] Mr. Johnson described in detail the various phases of the project involving the development of a new job evaluation plan. Those phases included the initial pilot project to demonstrate the viability of the tool and allow for customization, the benchmarking to identify reference job descriptions, and the evaluation of positions to establish relative value based on four factors. The four factors are know-how (knowledge, skills and ability), problem-solving, accountability and working conditions. A guide (Exhibit E-19, tab 3) was developed throughout the phases to provide guidance to the members of the Evaluation Committee responsible to evaluate each position. The guide also contains a description of the process by which evaluations are converted into the point scale. The language, phraseology and vocabulary of the evaluation guide were adapted to reflect language commonly used at the House of Commons.

[301] Mr. Johnson indicated that page 8 of the guide (Exhibit E-19, tab-3) shows a table that is used to explain to the members of the Evaluation Committee how the factors and elements of the Hay methodology relate to the factors that are used to establish pay equity under the *Canadian Human Rights Act*.

[302] Mr. Johnson indicated that the project team carried out in-house the evaluation process for all remaining jobs at the House of Commons. The project team obtained new job descriptions and evaluated the jobs using the guide and the benchmarks and determined the appropriate score. All positions were evaluated except for positions in Human Resources (because of the conflict of interest) and lawyers. He presented the evaluation results as of June 1, 2005 (Exhibit E-19, tab 5).

[303] Mr. Johnson indicated that the grade structure is only determined after evaluation has taken place. The grade structure needs to have reasonably consistent sizes of grade as one moves through the structure. It is based on percentages, and jobs are allocated to grades. The House of Commons chose a medium-sized grade with levels from A to K and communicated the results of the evaluation to employees.

[304] A feedback mechanism was established for employees. Some of the evaluations were modified as a result of that feedback but most remained unchanged. At the end of the process, employees could raise a formal appeal. Joint appeal panels were struck. The panels included management, the bargaining agent and a neutral chair. Mr. Johnson served as a management representative on the panels.

[305] Mr. Johnson testified that once the grade structure had been established the salary scale for each grade was identified. The Hay Group provided the market data and did cost modeling and presented the results to the House of Commons. The modeling covered the impact of the scales over a five-year period. A five-year period was chosen because it is the period required for most persons to reach the highest level. The resulting single pay line applies to all positions with the exception of lawyers.

[306] Mr. Johnson indicated that the Hay methodology was designed to measure the work of all positions. It is a universal classification system established to answer the question “what is the value of this work?”. It allows comparisons to be made between jobs so that organizations can deliver equal pay for work of equal value. The system provided has been tried and tested. The tailoring for individual clients does not alter the design principles. It is a matter of both the process and the tool. Committee members are trained to avoid potential sources of bias.

[307] In cross-examination by counsel for the PSAC, Mr. Johnson indicated that the project team had been established by the House of Commons prior to his involvement in the project.

[308] Mr. Johnson indicated that it was the project team that had identified the jobs that served as benchmarks. There were 12 persons on the Evaluation Committee, 6 from management and 6 employees. He did not know how the employees were chosen. His role was to facilitate the work of the Evaluation Committee. Once the benchmark jobs had been evaluated, the other evaluations were completed by the project team. No union member participated in the evaluations. The House of Commons decided to use Human Resources professionals to carry out the evaluation process. Their own job descriptions were evaluated by the Hay Group.

[309] Regarding the formal appeal process, Mr. Johnson confirmed that the point ratings for other positions had not been made available, as the comparisons were to be made with the benchmark positions.

[310] At the request of counsel for the PSAC, Mr. Johnson produced a number of proposal documents issued by the Hay Group (Exhibit PSAC-7). He indicated that he could not locate any document providing instructions from the House of Commons and added that the instructions had been verbal. He did not know if any of the job descriptions had been prepared under the proposal to deliver job descriptions in writing submitted in September 2002 (Exhibit PSAC-7.6).

[311] Mr. Johnson confirmed that, in providing lead consultant advice to the House of Commons, he had reported on the pay equity situation prior to the implementation of the new classification plan and had indicated in his report: “Overall, female benchmark jobs are slightly higher paid than the male benchmark jobs.” (Exhibit PSAC-8, page 2). He found no evidence of systemic discrimination. Although the Hay methodology could have been used to evaluate the lawyers’ positions, they were ultimately excluded from the evaluation process under the new classification plan at the request of the House of Commons.

[312] In cross-examination by counsel for the PIPSC, Mr. Johnson confirmed that there were lawyers’ positions among the 60 job descriptions reviewed by the Committee. The evaluation revealed that, with regard to internal equity, the lawyers had higher compensation levels. Mr. Johnson indicated that the fact that the Department of

Justice is present in Ottawa and employs lawyers was a significant factor in those higher compensation levels. The latter was the result of market pressure. He confirmed that the House of Commons lawyers could have been included in the Hay evaluation by assigning a market premium to their remuneration. Some jobs can command a market premium and the market is a factor in determining the appropriate rate of pay. However, market premiums are separate from the Hay System, as the system is blind to market forces. Factors that may justify a market premium may emerge through collective bargaining.

11. Pierre Parent

[313] The employer's next witness was Mr. Parent, Director of Human Resources at the Office of the Auditor General since August 2005. Prior to holding that position, in June 1993 he was hired by the House of Commons, where he held the positions of Analyst, Staff Relations from 1993 to 1997, Staff Relations Advisor from 1997 to 2001, and Manager of Human Resources from 2001 to 2005.

[314] As Manager of Staff Relations, he was in charge of a unit of six employees responsible for collective bargaining, labour relations and grievances. He confirmed that in 2001 the previous classification system was in place.

[315] Mr. Parent indicated that the occupational groups' definitions describe the duties and responsibilities specific to that group. There is a direct reference to the group definitions in the bargaining unit certificates. The new classification system does not contain occupational group definitions. At some point in time the group definitions caused some difficulties as they were written in the mid-80s at a time when technology was less present. For instance, the group definition for the Technical Group did not reflect the evolution of the duties and this resulted in the CEP filing a section 70 complaint.

[316] Mr. Parent testified that a team outside of Human Resources had carried out the classification renewal project. The intent was to modernize the standard and definitions and to comply with pay equity legislation. He indicated that having 13 different classification standards exposed the employer to pay equity complaints because jobs are not evaluated using the same standard. He was not involved in the day-to-day classification review process. He indicated that the current application was

not a part or a goal of the classification renewal process. The classification renewal process was finalized during his term as Manager of Human Resources.

[317] Mr. Parent testified that the new classification system had given rise to concerns about the bargaining unit structure. He was concerned that having a single pay line shared by several bargaining units in a regime with binding arbitration could lead to different pay rates for positions at the same level. The bargaining units had a history of going to interest arbitration. The negotiation of seven different collective agreements with the same pay line posed quite a challenge. He was also concerned about being exposed to bad faith bargaining complaints once a settlement had been reached with one group determining the pay line.

[318] Mr. Parent prepared a discussion paper on the impact of the Classification Review Project in mid-2003 (Exhibit E-23). He prepared this paper to use as notes in discussing labour relations and the impact on collective bargaining of the Classification Review Project with the Director of Human Resources, Suzanne Paradis, the Director General of Finance and Human Resources, Michel Dupéré and the Director General Corporate Secretariat, Luc Desrochers. The paper dealt with how to approach negotiations with the bargaining units with a single pay line in mind. Three options were identified: amalgamation of the bargaining units; negotiation at a common table; and a phased-in approach. However, none of those options was applied in the negotiations that followed. The employer waited for the first group to sign and applied the results to the other groups and to the unrepresented employees.

[319] Mr. Parent testified that in December 2004 he made a presentation (Exhibit E-24) to the Senior Oversight Committee for the Classification Renewal Project and the Ad Hoc Committee on Group Definitions and Bargaining Unit Structure. He commented on the various options for restructuring the bargaining units contained in his presentation. The one-unit model would make it difficult to recognize professional employees. He considered such an approach as unrealistic because he believed it would be difficult to obtain the approval of the Board of Internal Economy. Discussions also took place with the Ad Hoc Committee on the two-unit model put in place at the OSFI and on a three-unit model. As for the four-unit model, he indicated that at one point the PSAC had approached the employer regarding the possibility of consolidating the PSAC bargaining units. The employer believed there was an openness to proceeding in that fashion.

[320] Mr. Parent testified that he had had the same full-time negotiator and assistant assigned to all negotiations. The employer's teams would be composed of between 7 and 23 managers depending on the unit. The fifth round lasted two years.

[321] Mr. Parent testified that records of the UMCC meetings were kept and that generally a staff relations analyst would take notes during meetings and would prepare a draft of the minutes. Staff Relations was not always involved in local consultation.

[322] Mr. Parent testified that, at the corporate level, there had been one UMCC involving all the bargaining agents. The intent was to address issues that could not be resolved at the local level and that had a corporate impact. In reality, this did not occur very often. He indicated that the parties had difficulties in having such items. In some instances, the items presented by the bargaining agents were anecdotal accounts of things that had occurred during the past week. The items discussed ranged from the classification review to the width of parking spaces. Typically, the more significant items were management driven. The multiplicity of bargaining agents tended to fragment the union side because of the four different philosophies present. The PSAC usually spoke with one voice.

[323] Mr. Parent indicated that the multiplicity of bargaining agents had an impact on mobility. Because of the 15 pay scales it was difficult to identify an equivalent position in a lateral move. When an employee was declared surplus from one bargaining unit and was moved temporarily to another position, there was a question as to who would get the dues until such time as the employer found a permanent solution He recalled a situation involving an OPG-03 employee, a member of the PSAC, working in the Technical Group bargaining unit position.

[324] Questioned on jurisdictional issues, Mr. Parent recalled that the matter had come up when several network administrator positions went from the Electronic Sub-Group to the Administrative Group as a result of the implementation of the computer network. He was also aware of a conflict between the PSAC and the SSEA at the time when the scanners were certified. He indicated that Security Management did not want to become involved in that debate and there had not been an extensive debate.

[325] In cross-examination by counsel for the SSEA, Mr. Parent indicated that, aside from the scanning at the Public Gallery which was already taking place and the

scanning of parcels at the Belfast Plant, it was following September 11 that security measures were increased and scanning generalized. He confirmed that the PSAC had filed an application to certify the Scanner Group on July 26, 2002 (Exhibit SSEA-9). This was followed by an application from the SSEA (Exhibit SSEA-10). The employer's position in response to those applications was expressed in the letter to the Board from Mary J. Gleason of Ogilvy Renault (Exhibit SSEA-11). Prior to the certification, the scanners had been included in the ADS Group composed of unrepresented employees. One of his colleagues was responsible for determining to which group positions would be assigned.

[326] Mr. Parent confirmed that the scanners did not have any ranks, had their own supervisor and were not subject to the training program applicable to constables. He recognized that it was a small unit of 12 employees but considered it was viable. When the options were presented to the Ad Hoc Committee in December 2004, there were no changes to the training, absence of rank or absence of investigation functions of the Scanner Group.

[327] Mr. Parent indicated that, should a one-unit structure be put in place, the collective agreement would have to take into account the existing differences in terms and conditions of employment. With regard to the Protective Services Group, the employer had received legal opinions to the effect that this group should be excluded from the unit. The most important consideration in qualifying the one-unit option as unrealistic was the political impact and the ability to sell this option to the Board of Internal Economy.

[328] Mr. Parent confirmed that, with regard to Security Services, the vast majority of the issues had been resolved at the local consultation. This may explain why there had been little intervention from the SSEA at the corporate level consultation.

[329] In response to a question from counsel for the PIPSC, Mr. Parent confirmed that he had written his master's thesis in Public Administration at l'Université du Québec on the attitude of the Procedural Clerk Sub-Group with regard to job satisfaction. He stated that the Procedural Group is a unique group of employees with very specific interests and concerns. It has a more collaborative approach to labour relations and there are few, if any, grievances. It was one of two groups that used an interest-based approach in negotiations.

[330] Mr. Parent agreed that a single bargaining unit would pose considerable difficulties and that the advantages outlined at the time in his presentation were from a theoretical point of view. He estimated that a single bargaining unit would have an impact on labour relations for a period of 10 years. It was also his sense that, although not impossible, it would be difficult to recognize the differences of the Procedural Group within a single unit.

[331] Mr. Parent also confirmed that by the middle of December 2003 the House of Commons had reached an agreement with three bargaining units. By the time the presentation had been made to the Ad Hoc Committee he had been able to conclude collective agreements with most if not all of the bargaining agents. One of the factors of this success was the good relationship with the bargaining agents; the other was the fact that the envelope was generous as compared with the public service.

[332] Mr. Parent agreed that the group definitions could be modernized without adopting a single bargaining unit structure.

[333] In response to a question from counsel for the PSAC, Mr. Parent confirmed that the bargaining unit structure in existence at the House of Commons had been modeled from what existed in the public service and that this structure was a product of the employer.

[334] Mr. Parent confirmed that Mr. Bard headed the Ad Hoc Committee and that he had sent a letter to the bargaining agents (Exhibit PSAC-10) to reassure them. He indicated this Senior Oversight Committee for the Classification Renewal Project was called the Ad Hoc Committee because it was temporary. The Ad Hoc Committee provided guidance to the project team. The project team was led by Noël Parent (not related). It had been established to work with the Hay Group and ensure the implementation of the plan.

[335] Mr. Parent confirmed that the first time he had made a presentation (Exhibit E-24) where a single bargaining unit was discussed was in December 2004. The subject may have been discussed earlier. At the meeting it was decided to retain counsel in order to explore further options with regard to the bargaining unit structure. The final decision was taken after Mr. Parent had left employment with the House of Commons in June 2005.

[336] Mr. Parent testified that the Classification Renewal Project had been initiated for two reasons: to deal with the outdated group definitions and to comply with the pay equity legislation. He indicated that he did not have expertise in pay equity but did have a general knowledge of the subject. He did not recall that Hay had concluded that there was no pay equity problem. He indicated that he may have seen the report (Exhibit PSAC-8) when he prepared the discussion notes (Exhibit E-23). He indicated that there were issues related to the fact that the Classification Renewal Project had been conducted outside of the Human Resources Section with no significant involvement of the Labour Relations Branch. No attempts had been made to update the group definitions.

[337] Mr. Parent indicated that, to his recollection, most of the Classification Renewal Project had been completed in 2003 but that all aspects of the work, such as the grievance procedure, may not have been completed until 2004. He confirmed that the House of Commons had completed the fifth round of collective bargaining. Most groups settled while two, the Technical Group and the RPG Group, went to arbitration. He acknowledged that implementation of a new classification standard was a challenge but noted that it went relatively well as there was a substantial amount of money on the table. Negotiations were concluded relatively expeditiously. After negotiations, no formal process to update group definitions was instituted and no effort was made to negotiate at one table.

[338] With regard to the dues situation, Mr. Parent indicated that he could not recall each case specifically but he indicated that they had developed a policy that provided that, until such time as a permanent solution was found for an employee, the dues would go to the employee's former bargaining agent. The CEP resisted this approach.

[339] Mr. Parent indicated that after the fifth round of collective bargaining he had had a telephone conversation with Denis McCarthy, National Component PSAC representative, regarding the appropriateness of consolidating the four PSAC bargaining units. He had been informed by Mr. Dubé that the PSAC had expressed openness to discussing consolidation. He could not recall if Mr. McCarthy had expressed interest in collapsing the bargaining units.

[340] In response to questions from counsel for the CEP with regard to his comment that negotiations had taken 20 months to complete, Mr. Parent acknowledged that wages and economic increase are an important aspect of negotiations and that the

employer's strategy had been to present a global offer to all the bargaining units. He indicated that the employees had received the point ratings for individual positions in November 2003, but at that point the pay bands had not been established. The employer's first global offer was presented to the CEP negotiating team on January 26, 2004.

[341] Mr. Parent was aware of the concerns expressed with regard to the Classification Review Project by the local union representative, Elizabeth Dickie for CEP Local 102-0 (Exhibits CEP-8 and CEP-9) and by the local president, Dave Batho (Exhibit CEP-10). The letters expressing those concerns followed a meeting in January 2001 between CEP representatives and the former Classification Manager, Anne Berry, and the Classification Renewal Project Director, Noël Parent.

[342] Questioned on the notes from the Board of Internal Economy dated February 6, 2001 (Exhibit CEP-12) and on the comments to the effect that simplification of the occupational group structure and the collective bargaining process would be conducted while still respecting bargaining agents, Mr. Parent indicated that he was aware there was no plan to do otherwise. He acknowledged it was desirable to modernize the group definitions.

[343] Mr. Parent acknowledged that it was important to have consultation with the bargaining agents with regard to the Classification Renewal Project and noted that there were various phases in the consultation process. He did not recall the *Consultation Framework* document (Exhibit CEP-14) presented at a UMCC meeting in December 2000 as he was in the position of Executive Assistant to the Director of Corporate Services at the time. He indicated he knew that Noël Parent, the Project Director, had met with all of the bargaining agents.

[344] Mr. Parent acknowledged that, although some bargaining agents had referred matters to interest arbitration during the fifth round of collective bargaining, in the end all voluntarily agreed to the same economic increase. The round of negotiations was completed without problems or impact on the single pay line.

[345] Mr. Parent confirmed that he had been involved in collective bargaining since 1998 and had held overall responsibility from March 2001. He acknowledged that he had participated in drafting the *Collective Bargaining Strategy Document* (Exhibit CEP-15) of April 2002 for the fifth round of collective bargaining and that one

of the strategies was to negotiate a one-year collective agreement with the PIPSC so that all group collective agreements would expire during the same year. He confirmed that the common pay line was seen as feasible since the groups had negotiated the same salary increase in the previous negotiations.

[346] Questioned on the CEP certificate, Mr. Parent confirmed that it does not identify the sub-groups within the Technical Group. He indicated that the group definition in the classification standard was more commonly used. When positions are being classified the group definitions passed by the Board of Internal Economy are looked at to determine where an existing job description fits. In order to determine how much a position would be paid under the previous classification plan, the classification standard would have to be looked at; in the case of the CEP, that would be the Technical Group Classification Standard (Exhibit CEP-16). Mr. Parent confirmed that the decision of former Deputy Chairperson Joseph Potter dealt with the situation that he had referred to in examination-in-chief with regard to the difficulties in applying the group definition for the CEP. He acknowledged that the PSSRB had disagreed with the House of Commons' positions and found that the jobs fell within the group definition. He recognized that the *PESRA* provided a mechanism for resolving such issues at section 24. He indicated that the PSAC may have used it in the past but that it had not been used very often. He conceded that even with a single unit there could be section 24 applications. With regard to his comment in his presentation to the Ad Hoc Committee that the House of Commons would be vulnerable to a section 24 complaint, Mr. Parent indicated that he was not aware of the group definitions adopted by the Board of Internal Economy in 1986 and that his understanding was that the group definitions were contained solely in the classifications standards.

[347] With regard to the Network Administrator positions, Mr. Parent indicated that they had not been included in the Technical Group as such but that there had been discussions with regard to where they would go.

[348] In response to questions on the UMCC, Mr. Parent indicated that there were two levels of UMCC: one with all the bargaining agents present and one for each bargaining unit. He acknowledged that there were long discussions on gratuities, dry cleaning of uniforms and seasonal employees, at the Operational Group UMCC meetings, subjects not discussed at UMCC meetings with the Technical Group. He also confirmed that the PIPSC's rotational and training programs for new Procedural Clerks and the career

management structure were concerns only for the PIPSC and not for the Technical Group. He also confirmed that the UMCC are set with managers from the area.

[349] In re-examination, Mr. Parent indicated that, in addition to the Procedural Group, the Protective Services Group had also used interest-based negotiations. He also indicated that the first settlement had been reached in a matter of weeks after the Classification Renewal Project team had disclosed the results of the classification review.

12. Monique Enright

[350] Counsel for the employer called on Ms. Enright to testify. She has been employed at the House of Commons since 1989 and has held the position of Labour Relations Advisor since June 2000. She indicated that her role was to provide advice to managers on labour relations matters, manage the grievance procedure, provide training on labour relations principles and interpret the seven collective agreements. Within the labour relations team, services are divided by portfolio. Her current portfolio as of July 2007 has been Restaurant Services. In the past, she was responsible for the Parliamentary Preccint, which included Security Services and Building Services. She has been asked by Marie-Josée Lacroix to work as a negotiation advisor and has retained responsibility for Restaurant Services.

[351] Ms. Enright testified that she participates in negotiation sessions to assist the negotiator and as a support person for the negotiating team. Once negotiations have been completed, she is responsible for ensuring that the arbitral award or the negotiated settlement is applied. For the next round she will assist in formulating the mandate. She will also be responsible for analysis and research in preparation for the next round.

[352] During the current round (the sixth round), she initially participated at the tables that were part of her portfolio. After being assigned as the negotiation advisor during the summer of 2007, she participated at the other tables. She indicated that at first she had participated in the Scanner Group, the Postal Group and the Operational Group negotiations. She was not at the table for the Protective Services Group but worked closely with the Labour Relations Advisor, who was new to the House of Commons. She participated in one employer-side team meeting for the Procedural Group just before arbitration. As for the Technical Group, she indicated that the

parties returned to the table in November 2007 to attempt a settlement prior to the arbitration, which had been set for January 2008.

[353] Ms. Enright indicated that she had become aware of the discussions at the various tables because during meetings of the labour relations services team information is shared and demands are discussed.

[354] Referring to the document entitled *Collective Bargaining Dates* for the different bargaining units (sixth round) (Exhibit E-21, tab 4), Ms. Enright indicated that she had prepared that document. The Operational Group had seven days of negotiations. She prepared the document in November 2007. Dates were taken from a document that was submitted to the Ad Hoc Negotiation Committee. The Committee is now called the Human Resource Committee.

[355] Turning to the bargaining agent proposals for the Operations Group (Exhibit E-21, tab 30), Ms. Enright indicated that most of the demands pertained to improvements to the various leave provisions, premiums and the working conditions of SCI employees. There was also a request whereby the granting of union leave would no longer be subject to operational requirements. She indicated that the information on economic demands had been taken in November 2007 from the demands presented by each group. She also submitted the employer demands for the Operational Group (Exhibit E-22, tab 31).

[356] Ms. Enright indicated that the employer's mandate was the same for all groups. It was to maintain the salary scale and the duration of the collective agreements, to include new language reflecting the new Health and Safety Policy and to harmonize the language used in the agreements. An agreement was not reached with the Operational Group and arbitration was scheduled for January 20, 2008.

[357] Ms. Enright indicated that the Scanner Group's demands included improvements to the leave provisions and the premiums. The fabric used for socks was the subject of much discussion (Exhibit E-22, tab 34). The employer's mandate was the same as with all other tables (Exhibit E-22, tab 35). She submitted a summary of all the settlements arrived at by the parties (Exhibit E-22, tab 5) prepared late in October or early November 2007. The Scanner Group settled in early April 2007 and the agreement was ratified at the end of that month.

[358] Ms. Enright indicated that the RPG Group demands were for improvements to the leave provisions, improvements for the SCI and removal of the operational requirement condition for the granting of union leave (Exhibit E-22, tab 36).

[359] Ms. Enright indicated that the demands of the Postal Group (Exhibit E-22, tab 41) were similar to those of the RPG Group other than the demand for improvement to the working conditions of the SCI employees. The Postal group does not have any SCIs.

[360] At this point in the proceedings, counsel for the CEP indicated that he wanted the record to show that he did not agree with the relevancy of post-application evidence.

[361] Ms. Enright submitted the document from the employer in response to the bargaining agent's demands on behalf of the Postal Group (Exhibit E-22, tab 41). A settlement reached in June 2007 between the House of Commons and the Postal Group was quasi similar to the Scanner Group settlement. The agreement was ratified on July 17, 2007.

[362] Ms. Enright submitted the demands for the Technical Group (Exhibit E-22, tabs 42 and 42b). She indicated that the demands involved improvements to the leave provisions and to the dental and healthcare plan and a specific request regarding the posting of staffing notices.

[363] Ms. Enright submitted the bargaining agent's demands for the Procedural Group, which included improvements to the maternity and parental leave provisions to align them with Quebec's parental leave provisions.

[364] Ms. Enright submitted the bargaining agent's demands for the Protective Services Group, which included improvements to the leave provisions and demands with regard to overtime worked on a designated holiday (Exhibit E-22, tab 51). The employer's demands were in accordance with the mandate (Exhibit E-22, tab 52). A settlement was reached on June 28, 2007, and was ratified on October 4, 2007. It is identical to the other settlements except for the changes to provisions dealing with work on a designated holiday.

[365] Ms. Enright indicated that neither the employer nor the bargaining agents had presented a demand relating to a market allowance during the sixth round of collective bargaining. The PIPSC and the SSEA agreed to include a reference to the new *Health*

and Safety Policy in their respective collective agreements. The four units represented by the PSAC agreed to provisions to hold joint negotiations on that item. There was an initial meeting in mid-July 2007 but a follow-up meeting scheduled for October was delayed. The employer submitted a proposal identical to the provision set out in the Protective Services Group collective agreement (Exhibit E-25). If not identical to the Procedural Group wording, it is similar.

[366] Asked what were the advantages and disadvantages of negotiating seven collective agreements, Ms. Enright indicated that, in her experience, the employer had from three to seven managers on every negotiating team. This lengthens the process. The employer finds itself in continual negotiations to end up with nearly identical working conditions. From an administrative point of view, it is more difficult for persons within the different units who have to refer to four or five different collective agreements. She pointed out that in Information Services the person administering the leave provisions has to refer to the RPG collective agreement, the Operational Group collective agreement, the Technical Group collective agreement and the terms and conditions for unrepresented employees.

[367] Ms. Enright submitted the *Statistical Report on Grievances, Overview of 2004-2005–2006* (Exhibit E-21, tab 7). The report was prepared from a databank that has been in place for a number of years. This report indicates that the career management program within the Protective Services Group has generated many grievances. It also indicates that a great number of grievances relate to application of the collective agreements and that the majority of the grievances are filed in sectors where there are more represented employees. The other statistical information document, entitled *House of Commons Grievances 2004, 2005 and 2006* (Exhibit E-21, tab 6), was prepared by Robin Daigle. Again, it indicates that the majority of grievances relate to the application of the collective agreements and to the career management system. Procedural clerks do not file grievances. She also submitted the arbitral award for the Procedural Group (Exhibit E-26) dated December 4, 2007.

[368] Cross-examined by counsel for the CEP, Ms. Enright indicated that she held a 10-course certificate in labour relations from l'Université du Québec en Ouatouais, which she took part time from 1997 to 2002. She has no outside experience in labour relations, as she has spent 19 years employed at the House of Commons. In 1998 she was not at the bargaining table, although she indicated that she had worked closely

with someone who was. The current round is the first round she ever participated in. Although she is not the spokesperson, she has spoken on occasion such as on the lateral move registry during negotiations with the Technical Group.

[369] Questioned on the wage demand chart she had prepared, Ms. Enright confirmed that it was important that this chart be accurate and conceded that there was an inaccuracy with regard to the wage demand of the Technical Group. She indicated that when the document was prepared she had not been involved in negotiations with the Technical Group and she may not have seen the letter to the Board.

[370] Questioned on the document that she had prepared as a compilation of the number of days at the negotiating tables, Ms. Enright conceded that negotiations for the Technical Group may not have proceeded on the days indicated in November, as the document had been prepared prior to the actual dates.

[371] Questioned on the number of managers present on the employer's negotiating teams, Ms. Enright indicated that this was a decision made by upper management. When notice to bargain is served, Labour Relations contacts Directors General to obtain the names of the managers who will participate in the negotiations. In the case of the Technical Group, the request went to Mr. Bard. There was a need to get managers from the areas.

[372] Ms. Enright confirmed that the fabric used in socks was not an issue for the Technical Group.

[373] Questioned on the *Statistical Report* (Exhibit E-21, tab 7) Ms. Enright agreed that there was no reason to believe that there would be any fewer grievances or adjudications of grievances with a decrease in the number of bargaining units.

[374] With regard to the issue of overtime worked on a designated holiday, Ms. Enright confirmed that the Protective Services Group works 24 hours a day, 7 days a week, but was unable to confirm whether the Technical Group had such hours of work. She agreed that most groups work normal hours from Monday to Friday and do not work on designated holidays.

[375] Ms. Enright confirmed that many grievances are resolved without proceeding to adjudication and that this was a sign of a good relationship.

[376] Cross-examined by counsel for the PIPSC, Ms. Enright indicated that most labour relations issues are dealt with through Labour Relations and that collective bargaining negotiations are handled there as well. She had no idea what the budget was or how it might have changed from previous rounds. Although she did not know the amount of money spent on negotiations, that did not prevent her from having the opinion that the current system was too expensive. She indicated that when she saw three to seven managers being involved at each of the seven negotiating tables and compared this figure with the number of employees, she concluded that it would be less expensive to have one table and one unit. There would be fewer managers involved and fewer collective agreements. She agreed that the House of Commons would still have to engage in negotiations and pay the cost of collective bargaining.

[377] Ms. Enright confirmed that her report indicates that negotiations with the Procedural Group had taken five days (Exhibit E-21, tab 4) and that it would be more accurate to indicate five dates rather than five days as she did not know if the negotiations had taken one hour or seven hours. She conceded the current round of negotiations had taken place on fewer dates than the previous rounds (Exhibit E-21, tab 4).

[378] Ms. Enright indicated that she was not familiar with the Procedural Group collective agreement as it was not within her portfolio. She confirmed that there were differences between this collective agreement and the others. She agreed that the employer had attempted to change the language with regard to the payment of compensatory time and that the bargaining agent had resisted the change. She also agreed that the Group had more flexibility with regard to scheduled working hours, as the normal hours at straight time rate were from 06:00 to 20:00. She confirmed that the Procedural Group is the only group to have a provision dealing with difficult situations. She agreed there was no requirement to produce a medical certificate in order to obtain sick leave. She also agreed that other collective agreements have provisions for shift work and that the Procedural Group does not. When asked whether the working conditions of the Procedural Group were in fact not identical to those of other groups, she indicated that what she had said was that the working conditions were quasi-identical. She indicated that she did not work regularly with the Procedural Group and conceded that she was not familiar with what they do on a day-to-day basis.

[379] Cross-examined by counsel for the SSEA, Ms. Enright indicated that she had never attended the Protective Services Group negotiations and had no personal knowledge of the impact of the single pay line, or the actual time spent in negotiations or the Group's problems. With regard to her account that four days had been spent in negotiations, she confirmed that she did not know how many hours the discussion had lasted or if there had been any discussions between the parties outside of those dates. She confirmed that there had been a settlement.

[380] Questioned on the Ad Hoc Committee for the renewal of the classification system, Ms. Enright confirmed that it was composed of the Chief Information Officer, Louis Bard, the Sergeant-At-Arms, Kevin Vickers, the Director General, Finance and Human Resources, Michel Dupéré, and the Interim Director of Labour Relations, Marie-Josée Lacroix. The Committee is now known as the Human Resource Committee. With regard to negotiations, the Human Resource Committee reviews the mandate before it is submitted to the Board of Internal Economy for approval.

[381] Ms. Enright confirmed that overtime worked on a designated holiday had been a major subject of discussion, both formally and informally, and that there was a substantial cost associated with the provisions in question for the Protective Services Group. The parties spent little time on discussions to harmonize the language in the collective agreements. Discussions on the economic increases were also quite short as the Group generally obtains what others have obtained. She agreed that there were discussions at other tables on clothing but that the issue of an allowance for not wearing a uniform was specific to the Protective Services Group. Allowances are adjusted at every round but the time spent in discussion is short.

[382] Ms. Enright confirmed that the Protective Services Group participated in a Joint Association Management Committee. The Labour Relations Branch is not involved. One of the reasons is that they like to resolve problems amongst themselves. She also confirmed that they bring very few problems to the UMCC and that in fact the UMCC had not met for a number of years.

[383] Questioned on statistical reports (Exhibits E-21 tabs 6 and 7), Ms. Enright confirmed that 119 grievances had been filed in 2004, 2005 and 2006 by members of the Protective Services Group and that 80 percent of all grievances from groups pertained to conversion, classification and collective agreements. She also confirmed that members of the Protective Services Group had not filed any grievances pertaining

to conversion and classification and that of the 119 grievances filed by the Group, 82 pertained to the Career Management Program that had been put in place in 1999. There had been three grievances dealing with discipline for the Group. She also confirmed that here had been no arbitration decisions and that grievances are settled through discussions. Since November 2006 there have been very few grievances.

[384] Ms. Enright confirmed that the persons on the employer's negotiating team for the Protective Services Group were persons in uniform. She indicated that a negotiating team for a single bargaining unit would require persons from all services.

[385] Questioned on whether the Protective Services Group was the only group with shift work, Ms. Enright indicated that it was not, as Information Services and Scanner Services also work shifts. She recognized that most of the employees working shifts are found in the Protective Services Group. She agreed that it the Protective Services Group had a unique training program because the work required specific skills and that a level 6 Constable under the Hay Plan could not be replaced by another employee at the same level.

[386] Ms. Enright confirmed that in the current round of negotiations three groups had settled and one had gone to arbitration and that this had not put an end to the single pay line. She indicated with regard to the issue of dues allocation that surplus situations had occurred many years ago but she could not recall exactly when.

[387] When asked whether the continued existence of the Protective Services Group would create major problems, Ms. Enright responded that it would not.

[388] Questioned on the Comparative Analysis of Economic and Step Increases attached to the Information Notes to the Employee Relations Steering Committee (Exhibit PSAC-11, Appendix C), she confirmed that from 1998 to 2002, other than for a catch-up by the Procedural Group, economic increases had been the same and that after 2002, following the introduction of the new classification system, the economic increases had also been identical.

[389] Cross-examined by counsel for the PSAC, Ms. Enright initially indicated that the source document for the collective bargaining dates for the sixth round had been taken from the Information Note to the employer's Steering Committee. Presented with the document entitled *Information Note to the Employee Relations Steering Committee*

(Exhibit PSAC-11), she indicated that she had updated this document from a previous document. She confirmed that, strictly speaking, the document was not the source of the bargaining dates and that the dates had come from her calendar, from a calendar on the billboard within Labour Relations and also from her memory.

[390] Ms. Enright confirmed that, for the Operational Group, no agreement had been reached on the shift rotation issue during the sixth round and that it was one of the issues going to arbitration (Exhibit E-21, tab 30, page 50). She did not recall any discussions on shifts and indicated that the parties had not gone into details regarding shifts. She indicated that some of the members worked shifts in order to complete set-ups of committee rooms and to print documents. She recalled that the bargaining agent had proposed that the employees concerned be selected on the basis of seniority and had proposed a definition of seniority but that the employer disagreed with the proposal. She agreed that this was an important issue.

[391] Ms. Enright confirmed that the employer had opposed the demand from the Operational Group for a change to the shift premium provisions that would remove the four-hour vestibule period. She was not sure if the vestibule period applied to other collective agreements.

[392] Ms. Enright confirmed that the Operational Group had SCI employees and that this was another major issue between the parties. The issue related to how the employer chose the employees it calls back to work. The bargaining agent wanted rules to apply and wanted the call back system tied to seniority (Exhibit E-21, tab 30, page 52). She confirmed that the employer opposed this demand. This was not an issue for the Procedural Group as they do not have SCI employees. Ms. Enright confirmed that the SCI was also an important issue for the RPG Group and that the employer had opposed the demands.

[393] Ms. Enright indicated that she was not aware of the issue for the RPG Group involving the integrity of records. She indicated that the subject had not been discussed since she had been involved after taking over from a person who had left. She acknowledged there was a proposal on the subject.

[394] Ms. Enright confirmed that the RPG Group worked considerable overtime and that overtime had come up as an issue. The bargaining agent had proposed that

seniority be used to allocate overtime. She was also aware that there was a request to change the provisions of the collective agreement related to taxi chits.

[395] Ms. Enright confirmed that she had served on the employer's negotiating team for the Postal Group negotiations and that a collective agreement had been concluded with that group. She also confirmed that the SCI issue was not an issue at that table since the Group does not have SCI employees. She indicated that the employer had withdrawn the proposal to implement a 24-hour, 7-day-a-week operation. She also confirmed that a collective agreement had been signed with the Scanner Group. At this point in the proceedings, counsel for the employer indicated that the evidence-in-chief was complete.

B, Ruling on process with regard to a possible motion of non-suit

[396] Counsel for the SSEA indicated that he intended to file a motion of non-suit. After considering the submissions of the parties with regard to the process, I advised the parties in a letter that I was not prepared to deal with the motion of non-suit at this point in the proceedings. I indicated that the SSEA would retain its ability to argue in due course that the employer had not made a *prima facie* case and to apply for costs if it so intended. I also indicated to the parties that I intended to remain seized of the matter to deal with the evidentiary basis and arguments, as the case may be, in relation to costs after I had rendered a decision on the substance of the employer's application.

C. For the PSAC

1. Morgan Guay

[397] Mr. Guay is the negotiator assigned to the House of Commons-PSAC bargaining units. He holds a Bachelor of Arts degree from York University and a Masters degree from Trent University in Canadian Studies with a focus on Labour. After being active in his union and becoming a union organizer, in November 2006 he accepted a position of Negotiator with the PSAC. He was initially assigned three of the four units and has recently been assigned the fourth.

[398] Mr. Guay indicated that the Postal Group had settled contract negotiations in the late spring and early summer of 2007. The Operations arbitration is set for January 22, 2008. The RPG Group has requested arbitration but dates have yet to be

set for a hearing. He was assigned the Scanner Group three months ago. The group has a collective agreement in effect that will expire later in 2008.

[399] Asked to convey his experience and insight into the nature of the work in each of the PSAC bargaining units, Mr. Guay indicated that the Postal Group is a small blue-collar unit. It is composed of day workers (who work from 06:00 to 20:00). It is predominantly Francophone, although most workers are bilingual. He indicated it was a "flat" unit as there was not a lot of hierarchy and not a huge difference in what the workers do in the unit. The members of the unit handle and sort mail. Half of the unit works at the Belfast Plant and at various locations on the Hill. The Centre Block location works past 20:00. They interact with staff of Members of Parliament who work in the House of Commons. There are between 40 and 50 employees within the bargaining unit and to his knowledge all are full-time employees.

[400] The Operational Group is much more diverse and much larger, with over 300 members. The bargaining unit is broken down into three sub-groups: Restaurant Services, Operations and Printing Services. Restaurant Services employees work in the Parliamentary Restaurant performing functions such as cooking, working at the cash, bartending, waiting and preparation of food. Operations is the largest sub-group; it includes drivers, maintenance workers, cleaners, tradespersons, messengers, material handlers, shippers-receivers and printing employees. The printing employees work at the Belfast Plant. There are many shift workers in this sub-group. The drivers and maintenance workers work rotating shifts. Maintenance has a night shift, while the drivers end their work at 23:00. In Restaurant Services it is common to work late into the evening. The same is true of the employees who work in printing but this tends to be cyclical. Seventy-five percent of the employees in Restaurant Services are SCI employees. There are two SCI employees in Printing. The Operational Group is predominantly Francophone and is a blue-collar workforce. With the exception of Restaurant Services, it is predominantly male. The rate of pay for employees within the unit varies from the lowest paid workers on the Hill (kitchen employees) to much higher-paid employees, such as chefs. There is a large disparity in wage rates as compared with the Postal Group.

[401] Mr. Guay testified that the RPG Group is a white-collar and predominantly female workforce. They are unilingual English or French, in contrast with the other groups. They work as transcribers or editors. The work is divided by Committees,

Debates and Publishing. Forty percent of the workers are SCI employees. The collective agreement provides for a 24-hour, 7-day workweek and it is not unusual for employees to work in the evening, although he had never heard of a night shift. The work entails recording the House of Commons proceedings and requires knowledge of grammar and sentence structure.

[402] Mr. Guay indicated that a settlement had been reached for the Postal Group after four meetings. At the third session, the employer tabled a final offer. A counter-offer was submitted and a settlement was reached. A number of improvements were reached at the table. Once such improvement entailed making the bargaining unit the basis for seniority in contrast with the RPG and the Operational Groups, where seniority is House of Commons-wide. The employer withdrew its request to be able to schedule work until 22:00. An agreement was reached on economic increase.

[403] Mr. Guay testified that with the Operational Group it was a different kind of negotiation. After seven sessions of negotiations, the employer declared an impasse and the bargaining agent sought conciliation. After conciliation failed, the group filed for arbitration. The employer is refusing to agree to basic fundamental protection for SCI employees and wants to maintain the right to decide unilaterally who returns to work and when. The Group wants hours of work to be based on seniority. The Group is also seeking to abolish the rotational shift regime, to remove the four-hour vestibule period for receiving the shift premium and to change the shift selection process, which is at the employer's will. The Group has also formulated a demand with regard to overtime based on what is found in the Senate contract. There is also a demand to allow SCI employees to bank overtime, which would assist in meeting Employment Insurance requirements. As many employees work outdoors, they are asking for the employer to provide for boots and winter hats. Mr. Guay submitted the Arbitration Board Brief ("the Brief") presented to the arbitration board (Exhibit PSAC-12). He indicated that the more critical issues are towards the front of the Brief and reviewed the demands found in the Brief.

[404] Mr. Guay indicated that the RPG Group also had not settled. As with the Operational Group, the SCI issue is present, including their hours of work. Because the work is structured differently in this group, the bargaining agent proposed different solutions to various problems. The Group is asking that overtime be allocated on the

basis of seniority to employees who perform the work. For instance, committee work should be given on a priority basis to employees assigned to committees before being offered on the basis of seniority to other employees in the unit. This approach differs from the demand put forward by the Operational Group. The Group has also formulated a unique demand regarding the integrity of records, as employees have been asked by managers to amend those records. The language proposal is intended to protect the members of the bargaining unit, similar to whistle-blower protection. The Group has presented a demand for taxi chits for employees who work after 22:00.

[405] Mr. Guay indicated that it would be difficult to collapse the bargaining units into one for a number of reasons. With the exception of the Scanner group, the groups have 20 years of unique and specific bargaining history. This has allowed the development of specific language in the context of different cultures and different leadership. There are fundamental differences in the contracts and this approach would be very unpopular with the employees concerned.

[406] Mr. Guay indicated that some of the proposals in the arbitration brief are similar to those found in other union demands, such as injury-on-duty leave. However, the more contentious issues are grounded in the day-to-day operations, such as shift work, income security for SCI employees and seniority as it applies to overtime and hours of work. He indicated that, after spending time in the workplace, he had determined that the differences between the units are very real.

[407] Cross-examined by counsel for the employer, he indicated that he had met with the members of the bargaining unit at the worksite. He had also looked at past contracts and had met previous negotiators. He confirmed that input from the membership regarding the negotiations was important and that the union had sought and received input. He was responsible for preparing the rationale for the bargaining demands because the bargaining agent was dealing with one employer and it was important to know the interests of all four groups. He agreed that the bargaining agent would not want to negotiate a clause that would have an impact on the other bargaining units. He had heard of the consolidation of bargaining units at Parks Canada but was not aware of the particulars. He indicated that he was aware that the bargaining unit at Canada Post incorporated different functions.

[408] Mr. Guay indicated that shift rotation was in effect in only one of the three units he had negotiated for. He confirmed that the SCI demand was important. It affected between 25 and 30 employees, approximately 10 percent of the unit.

[409] Mr. Guay was aware of the settlement with the Postal Group when he crafted the arbitration brief. He acknowledged that maintaining the integrity of the pay line was one of the employer's concerns. He confirmed that the unit had not proposed the same pay increase as the Postal and the Scanner units and that he was aware of the overlap between classification levels of the Postal, Scanner and Operational units. The text contained in the arbitration brief is the rationale for different pay levels.

2. Joanne Phillips

[410] The next witness called by counsel for the PSAC was Ms. Phillips, who has been employed at the House of Commons as an editor since 1991. She is employed as a SCI. She holds a B.A. in English from Carleton University and a professional designation in general insurance from the Insurance Institute of Canada.

[411] After starting in the spring of 1991 Ms. Phillips worked as an editor of the Hansard until 1996. In the fall of 1996, as the demand for English editing decreased following the election of members of the Bloc Québécois, she was assigned to Committees, where she has been working ever since. As a Hansard editor, she worked in an open room in the Wellington Building with six other editors. She worked with a headset and a computer and would receive five-minute segments of text prepared by transeditors with the audio recording. Her task was to listen to the audio and make sure that what had been typed was accurate. This included doing research on spelling of names and verifying terminology and correcting sentence structure and grammar. The end product would be referred to as the "blues" and would be sent to a senior editor for final verification. The finished product would be available half-an-hour later or more after she had received it. Once a segment had been completed she would receive another five-minute segment. The segments would not be consecutive, as there were other editors working on the debates.

[412] Ms. Phillips indicated that the work for committees is similar. There are more editors, as on any given day there may be up to six committee meetings or even more. Transeditors do the initial typing in five-minute segments. The segments editors receive may not be in sequence and may not be from the same committee. The work is

performed in cubicles with computers and headphones. The work is sent to a senior editor for final read-through. Employees are entitled to two 15-minute breaks and one half-hour unpaid lunch period during the workday.

[413] Ms. Phillips indicated that the job requires a great deal of concentration and involves staring at the computer screen, looking for errors, putting comas where they should be, checking spelling, making sure grammar is correct and doing research on technical names or words. Some of the people who testify have heavy accents and sometimes what they say needs to be interpreted. When the spoken word is incorrect, the text is sometimes changed. In such instances, editors generally try to make the spoken word more easily understood, but without being heavy handed.

[414] Ms. Phillips indicated that research is conducted online through House of Commons research documents and access to the Internet. Five-minute segments are sometimes delayed because of research. At times she may have to read French, as the question may be asked in French.

[415] Ms. Phillips indicated that she has been an SCI employee since 2001. As an SCI employee, she is called to work within three or four days when Parliament returns. She can check the website to see which committee is scheduled. At times she may be called at 16:00 the day before she is supposed to work. At work, the scheduling clerk for committees comes by at around 15:00 and asks if she is available for work the next day or informs her that that she is not required for the next day. She can guess if she is going to work from one day to the next but she is never sure. From week to week, whether or not she works depends on the members of the committees. When work begins she frees up her schedule to be available. If there is work available everyone is called in, regardless of whether they were hired the previous week or in 1991. When there is less work there are no rules as to who works and who is sent home. When the work runs out they are sent home without any notice. At times they are told they are to work a full day but are sent home after half a day. Ms. Phillips indicated that it was difficult to arrange her personal life. The SCI status provides for medical and dental benefits, a small amount of pension accumulation and union membership.

[416] Ms. Phillips testified that she had fewer work hours, as the House of Commons is hiring more persons and everyone is called in at the same time. The work is being completed more quickly. In 2006 she did not work the 700 hours required to be an SCI employee even though she came into work every time she was asked. In that year

Parliament did not resume until November and there were fewer committees. She indicated that she believed that there were 6 SCI employees, 10 part-time employees and 10 employees who were not members of the bargaining unit. All have the same opportunity to work. As for working late, she indicated that it was often the Hansard editors and transeditors that have to work late. She indicated that she has no interaction with the Procedural Clerks.

[417] In cross-examination by counsel for the employer, Ms. Phillips confirmed that there was a minimum of four hours pay if she was called into work. She indicated that she was concerned about the fact that work was given to non-SCI employees and confirmed that a form of job security might alleviate that concern. She was aware that the union had made a proposal. She confirmed that the taxi chits were not a concern to her and she was not aware of the current provisions or of the union proposal with regard to taxi chits.

[418] Ms. Phillips confirmed that she had not applied for a full-time editor position. She indicated that it did not fit with her life and that she had been through a selection process. She did not perceive the process to be fair and did not want to go through it again.

III. Summary of the arguments

A. For the employer

[419] Counsel for the employer began his arguments by submitting a document containing excerpts from the job descriptions submitted in evidence along with a revised proposal of a definition of a single bargaining unit. The revised proposal (Annex 1) is attached to this decision. He indicated that the request before the Board was for reconsideration of the bargaining units. He asked the Board to look at the original certificates and amend, rescind and/or vary the seven bargaining unit certificates in force at the House of Commons.

[420] Counsel indicated that the source of the power to make such an enquiry and to issue an order resided in section 17 of the *PESRA*, which gives the Board the power to review orders of the Board. He added that he had not been able to locate a section 17 application or decision. However, there was a similar provision under section 27 of the *PSSRA* and on numerous occasions the Board had exercised its power and authority to review bargaining unit certificates.

[421] Counsel indicated that after reviewing the Board decisions he had drawn the following observations. The Board applies a different set of parameters when reviewing a certificate as opposed to issuing an original certificate. This was understandable, as the Board was looking at changing something it had deemed appropriate some years before. He noted that bargaining unit reconsiderations are few and far between, that the Board does not take such enquiries lightly and that the onus is on the applicant. He referred to paragraphs 57 and 58 of the decision rendered by J.W. Potter in *Communications Security Establishment, Department of National Defence v. Public Service Alliance of Canada and Professional Institute of the Public Service of Canada*, 2001 PSSRB 14. The latter cites another Board decision rendered by former Chairperson Yvon Tarte (*Canadian Forces, Staff of the Non-Public Funds v. United Food and Commercial Workers Union, Local 864*, PSSRB File No. 125-18-78 (19981104)) in which it is mentioned that applications for the consolidation of long-standing bargaining units must be approached with caution and that strong and cogent evidence is required to justify altering an existing bargaining unit structure. The House of Commons adopts this same view and accepts the onus that, as the applicant, it must demonstrate a justification for altering the bargaining unit structure.

[422] Counsel noted Mr. Tarte's comments to the effect that "[t]he test for review of bargaining unit certificates requiring evidence of real and demonstrable adverse labour relations proposed by the PSAC is too strict. The threshold for review, rather, must be significant change rendering an existing structure unsatisfactory. To hold otherwise would render impossible any change that is required as a result of evolution in any given labour relations situation." Counsel indicated that an applicant is not required to demonstrate that the present structure is unworkable but only that it is not conducive to sound labour relations. He added that a review application will be granted when the applicant demonstrates that the current structure no longer meets the needs of employees and the employer.

[423] The House of Commons submits that there is substantial justification for its application and that it is warranted in the interests of sound labour relations. The organization of the House of Commons has changed as a result of the implementation of a new job evaluation plan and a new pay scale. The development of a core competencies profile is demonstrating the closer link between core competencies of House of Commons employees. Counsel suggested that the present bargaining unit structure configuration places the parties at risk of violating section 11 of the

Canadian Human Rights Act (*CHRA*), which prohibits wage differences based on gender. He added that even if there were no such violation the sound labour relations principle of equal pay for work of equal value would be in jeopardy. He further argued that the bargaining unit certificates the Board had issued are based on outdated classification standards and outdated definitions of groups and sub-groups. They are anachronistic throwbacks and not relevant to the House of Commons as it exists today. Counsel argued that the evidence demonstrated that the multiplicity of bargaining units is not conducive to sound labour relations now or into the future for employees and the employer.

[424] Counsel reviewed two Board decisions involving the implementation of a new job evaluation system. He noted that in *Communications Security Establishment, Department of National*, the Board concluded that the introduction of a new job evaluation system developed in part as a response to the provisions of the *CHRA* was a strong and cogent reason for a review of the present bargaining unit structure. He added that in *National Energy Board v. Public Service Alliance of Canada and Professional Institute of the Public Service of Canada,* 2003 PSSRB 79, the Board had held that there had been a significant change as the National Energy Board (NEB) had modified it structure focusing on the delivery of services along business lines and that a new job competency framework was being used to evaluate all positions.

[425] Counsel argued that the House of Commons is, in many respects, in a similar position to that of the Communications Security Establishment (CSE) and the NEB. He noted that the House of Commons had developed a competency framework and profile in the Security and Information Services areas. He pointed to the testimony of Mr. Schwieg with respect to the shared competencies of the Scanners and Security Services. He referred to the testimony of Mr. Roy that showed the use of the same competency profile in the Printing Services, Multimedia Technicians and Reporting and Text Processing sub-groups. He pointed to the Procedural Services learning guide (Exhibit E-9), which includes similar competencies.

[426] With regard to the universal classification plan, counsel reviewed the testimony of Mr. Johnson and noted that alls jobs, both represented and unrepresented, had been evaluated in 2004. The evaluation was done using four factors, identified as know-how, problem solving, accountability and working conditions. Each job was assigned points for each factor and as a result fell into a universal pay scale based on points within

levels identified from B to K. He further noted that Ms. Droessler had indicated that the levels cut across bargaining units and that the House of Commons had been successful in negotiating a single pay line.

[427] Counsel argued that this pay line was at risk through the present bargaining unit structure. Once a group has settled on a particular wage increase the pay levels it entails are subject to attack through collective bargaining with other groups. Although the structure of the *PESRA* does not permit strike or lockout and requires arbitration as the dispute resolution method, counsel noted that the evidence was that bargaining agents had never agreed to or considered negotiating at one table.

[428] Counsel argued that this meant that seven different arbitrators had the right to determine the pay scale within the framework common to all. Four bargaining units had applied for interest arbitration in the current round of negotiations and three had yet to agree on the economic increase. He noted that the House of Commons had granted a 2.5 percent increase for two years to the Scanner, Postal and Protective Services groups. He also noted that the Procedural Group had agreed to the same increase in the course of interest arbitration. However, he noted that the Operational Group was seeking a 3 percent increase (Exhibit E-21, tab 32), the Reporting Group was also seeking a 3 percent increase over three years (Exhibit E-21, tab 38) and the Technical Group was seeking 5 percent for every year of a four-year collective agreement (Exhibit CEP-17). Counsel noted that because most of the levels cut across different bargaining units, a difference in one economic increase would inevitably compromise the single pay line system. He pointed to the *Bargaining Units and Job Levels* chart (Exhibit E-2, tab 11), which, he argued, showed the overlap of classification levels. Furthermore, there are implications for the other groups if one group is successful in obtaining a longer-term arbitral award. From a labour relations point of view, it would not be sound labour relations for a small unit such as the Technical Group to be able to affect the negotiations of the other units. He noted that Ms. Droessler had testified that bargaining agents do not propose the same duration.

[429] Counsel pointed to subsection 58(2) of the *PESRA*, which requires an arbitral award of not less then one year in duration. This provision would lock in the future of everyone every time the parties went to arbitration. Bargaining agents would not have any incentive to arrive at an agreement at the table since in any event they could do no

worse. This would have a serious impact on the single pay line as it relates to the human rights issue of equal pay.

[430] Counsel noted the comments from Mr. Potter in the *Communications Security Establishment, Department of National Defence* decision to the effect that, when there is one pay line for all positions, it would be inappropriate to have anything but a single bargaining unit structure. Counsel argued that the Board should not permit a bargaining unit structure that would violate section 11 of the *CHRA*. The Board is implicitly precluded from fostering a situation where this might occur. In the alternative, should the Board not agree with this argument, counsel asked why the Board should maintain a bargaining unit configuration where there is evidence that bargaining agents routinely seek not to have equal pay for work of equal value.

[431] Counsel noted that section 11 of the CHRA requires the House of Commons to look at potential violations of the *Act*. He noted that Ms. Drossler had testified that the RPG Group was female-dominated. From the evidence of Mr. Johnson, it would appear that the new universal classification plan is gender neutral, as jobs are evaluated on the basis of four factors. This plan is applicable to all represented and unrepresented employees aside from lawyers and executives. Currently, all positions of equal value are on the same pay line. He noted the exceptions allowed under section 17 of the *Equal Wage Guidelines* and argued that there was no evidence that any of these exceptions were applicable the situation at the House of Commons.

[432] Counsel argued that the only conclusion to draw was that the present bargaining unit structure was not conducive to pay equity for work of equal value. Counsel noted that bargaining agents had taken positions opposed to maintaining the integrity of a single pay line at interest arbitration hearings, as was their right.

[433] Counsel anticipated that the bargaining agents would argue that there was no issue with respect to pay equity given that Mr. Johnson had testified that there were no pay equity concerns arising from his analysis of the pay structure. Counsel noted that the House of Commons was very fortunate that there was no mechanism prior to the universal plan to measure the relative worth of positions. He indicated that relative worth is now measured under the new plan and that the relative value of jobs is now known. He indicated that there was also a female-dominated group, the RPG Group, and also that classification grades overlap three bargaining units. With bargaining agents seeking different wage increases, counsel argued that this was a perfect

situation for a pay equity situation to arise outside of the control of the House of Commons. Counsel argued that this, as was the case of the CSE, should be of grave concern to the Board.

[434] Counsel submitted that Mr. Parent had testified that the occupational group and sub-group definitions used in the bargaining certificates are no longer used for classification at the House of Commons. On the question as to why the bargaining certificates mirrored the old occupational group definitions, counsel referred to *National Association of Broadcast Employees and Technicians and House of Commons; Public Service Alliance of Canada and House of Commons,* PSSRB File Nos 442-H-1, 442-H-5 (19870522) rendered by former Chairperson Ian Deans. At that time the Board was required to certify bargaining units in accordance with the employer's classification plan, which was based on occupational groups at that point. Counsel argued that, 20 years later, we are now in the reverse situation. The *raison d'être* for the bargaining unit structure has disappeared.

[435] Counsel suggested that the bargaining unit description based on occupational groups is anachronistic. He indicated that the Technical Group description is based on technology and activities from 20 years ago. Much of what is done today is difficult to fit into the group definition. The old group definitions are maintained for the sole purpose of determining in which bargaining unit a position belongs. This is an artificial reason.

[436] Counsel argued that there was evidence of job overlap on a number of positions potentially classified in a number of bargaining units. He referred to a document submitted by Mr. St-Louis entitled *Similar Technical Activities* (Exhibit E-1, tab 40) as evidence of job overlap. He referred to the testimony of Mr. Giroux about the harmonization project at the Belfast Plant, which envisaged the integration of the postal and printing functions. He noted that, currently, if employees print a document they are printers and if they print an envelope they are part of the Postal Group. He suggested this did not make sense from a labour relations perspective. He indicated that scanners are in a somewhat similar situation. The scanning equipment used at the Belfast Plant and on Parliament Hill is similar. Three different bargaining units are involved in scanning and, it seems, the difference is based on what the person scans. Employees who scan material goods are Material Handlers and are part of the Operations Group, those who scan incoming mail are members of the Postal Group,

while those who scan persons are part of the Scanner Group. Counsel argued that this was not helpful.

[437] Counsel argued that the present bargaining unit certificates do not deal adequately with line supervisors. He submitted that the proposed new group definition illustrated the difficulties in dealing with the current status of line supervisors.

[438] Counsel argued that the current bargaining groups are based on an outdated classification plan that does not reflect the reality of the current workplace. On that basis alone the test has been met. The present structure is not conducive to labour relations. There are roughly 800 employees in 7 different bargaining units. That is a considerable number of unions for a relatively small number of represented employees. Bargaining agents all negotiate separately and for the last three rounds of bargaining, the House of Commons has had similar proposals for all seven units. The issues that have come from the bargaining agents are the same. Both Ms. Droessler and Ms. Enright testified that those issues are money and leave. More often than not the seven rounds do not happen simultaneously.

[439] Counsel argued that there was evidence that the time and resources spent on collective bargaining showed this to be a time consuming and inefficient way to proceed. He noted that Ms. Droessler had testified that 80 to 90 percent of the collective agreements are the same or similar and that the bargaining agents demands are materially the same or similar.

[440] Counsel noted that there were perfect examples, in microcosm, of the problems in labour relations in the *Arbitration Board Brief* (Exhibit PSAC-12) for the Operational Group in the current round of collective bargaining. Counsel argued that one of the big problems is the ability to whipsaw. He pointed to arguments put forward on page 5 of the *Brief* to the effect that the employer had agreed to the requested changes with other bargaining units and concluded that the PSAC's evidence was to the effect that employees' interested are frustrated by the structure of the bargaining units. Counsel pointed to the first paragraph of the rationales for seeking an amendment to the shift premiums (page 44), seeking amendments to the hours of work and overtime article (pages 53, 55 and 58), seeking changes to the use of employer facilities article (page 63), leave with or without pay for PSAC business (pages 68 and 69), other leave (pages 100, 101, 102) and the bilingual bonus (page 108). He noted in all these

rationales the demand to obtain what other units had obtained. Counsel questioned whether this was conducive to sound bargaining and labour relations.

[441] Pointing to the demand to amend the seniority article (page 60), counsel argued that the *Brief* also showed that the bargaining unit structure fostered demands that are impediments to mobility and accommodation.

[442] Counsel submitted that the rationale for the demand on rates of pay (page 115) is instructive on the PSAC's approach to wages. The comparator groups are outside of the House of Commons, and maintaining the pay line is not even an after-thought. There is no mention of any concern for internal relativity. He indicated that the bargaining agent did not seem to care what the employer was putting on the table as the public service was getting better benefits (page 117). With regard to the retention and recruitment issues, counsel noted that no supporting documentation had been provided. He suggested that it would be the employer that would submit this kind of demand.

[443] Counsel submitted that the bargaining unit structure fosters unsound labour relations as it relates to consultation. He pointed to the testimonies of Ms. Enright and Ms. Kennedy and of Messrs. Giroux, St-Louis and Parent. He first focused on the evidence of Ms. Kennedy with respect to the introduction of draft policies applicable to all employees, both represented and unrepresented. He noted that the PSAC spoke with one voice. He also noted that all bargaining agents were invited to attend but that the level of participation varied greatly depending on the nature of the policy. On human resources policies, bargaining agents would usually raise issues that were general in nature and that impacted on all bargaining units. On the *Health and Safety Policy*, the PSAC and the CEP withdrew from consultation. Together they represent 50 percent of represented employees. Counsel noted that the evidence indicated varying degrees of preparedness. On the *Harassment Policy*, the PSAC did not appear to have read the draft policy before the consultation meeting. Counsel noted the testimony of Mr. Giroux on health and safety consultation, where they were trying to deal with new programs, policies and governance of the JOSH Committee, and how the views of the different bargaining agents made this consultation dysfunctional. He recalled the evidence on asbestos control, an issue on which the CEP was very involved, the PSAC somewhat less so, the PIPSC followed the discussions from the sidelines and the SSEA was not involved at all.

[444] Counsel argued that the multiplicity of bargaining units leads to several serious problems. He noted the difficulty in getting everyone together at the same time and of achieving a consensus on important issues, and the differing levels of interest on health and safety issues that affect all employees. Recalling the evidence on problems with the workplace inspections, counsel noted that the PSAC speaks with one voice and participates in the yearly inspections while the SSEA and the PIPSC do not. Counsel argued that the present system is dysfunctional. He suggested that a single bargaining unit would remove many of the impediments and make the process more productive. This factor alone is significant enough to lead to a review of the bargaining unit structure.

[445] Counsel argued that the test put forward by Mr. Tarte had been met and that there was strong and cogent evidence to justify changing the bargaining unit structure.

[446] Counsel pursued his argument by proposing to explore the various bargaining unit configurations that would best meet the present and future needs of the House of Commons and to see how the classification plan comes into the analysis and the community of interest of employees. Because of the conclusion I have reached with regard to the existence of strong and cogent reasons not to change the bargaining unit structure, there is no need to report on the analysis of the various bargaining unit structure options proposed by counsel for the employer.

[447] I have noted, however, the following comments from counsel. He indicated that the House of Commons was not seeking the inclusion of unrepresented employees in the bargaining unit. Nonetheless, he did acknowledge that it was difficult to draw the distinction. The terms and conditions of employment of unrepresented employees are materially similar to those of represented employees. He noted that the hours of work of unrepresented employees are similar to those of represented employees. Only shift work, a 40/20 work schedule, overtime, call-back and shift and weekend premiums are missing. There are no uniform provisions and no seasonal employees. He also noted that the unrepresented group is the prime destination for accommodation and the prime direction for career advancement. Counsel noted that the bargaining unit certificate for the Protective Services Group does not provide a rationale for the exclusion of unrepresented employees within Protection Services. He indicated that the distinction seems to be based on rank and uniform, and is nowhere to be found in the certificate. Counsel added that the last thing to consider was the difficulty in

describing the unrepresented employees and referred the Board to the proposed unit description he submitted at the beginning of his argument. However, he concluded that the House of Commons was not seeking the inclusion of the unrepresented.

[448] Counsel concluded by saying that the House of Commons is requesting that the Board rescind the existing bargaining certificates and certify a single bargaining unit because it would be co-extensive with the classification plan, would facilitate sound and efficient labour relations, would reduce administrative costs and inefficiencies for all parties, would address present and future pay equity concerns, would ensure equal pay for work of equal value and would permit satisfactory representation of the labour relations concerns of all employees affected. The House of Commons is not seeking to extend or take away representation.

B. <u>For the PSAC</u>

[449] Counsel for the PSAC began by stating that the current application was an application for a review of a Board decision. Counsel noted that the overwhelming majority of the cases submitted by counsel for the employer are initial applications for certification. While it is tempting to use the USARCO criteria, they are not an appropriate criterion to use on a review. For a review of an application, the applicant must come to the Board with evidence of significant changes to the work environment. The evidence should have shown that the bargaining unit structure needed to be reviewed and collapsed to the prejudice of the four bargaining agents. Instead, many weeks were spent on evidence appropriate for an initial certification only. This had introduced uncertainty in the workforce, as it had been in a state of turmoil since the application had been filed. There are no changes of circumstances, except for one. If the focus had been on this sole change of circumstances to justify collapsing the bargaining units, the hearing could have been much shorter.

[450] Counsel argued that, not only was there limited evidence of change, but there was also an attempt at reversing the onus and requiring the bargaining agents to justify why one unit was not the most appropriate. Counsel noted that every single case in the book of authority submitted by counsel for the House of Commons involved a change in the structure or a major change in the manner in which the work was performed that rendered the bargaining unit structure in place unviable.

[451] Counsel indicated that there was no doubt that the work had changed in the last 20 years but that in itself does not justify a bargaining unit review. Bargaining agents must deal with such changes at the bargaining table. Counsel noted that there was no evidence of any jurisdictional disputes between unions. The only change that has occurred since the original certifications was the introduction of the universal job evaluation system.

[452] Counsel for the PSAC argued that counsel for the House of Commons had come to the Board, as he had done for Parks Canada and the CSE, with a mistaken understanding of the Canadian human rights legislation and the faulty argument that, because the House of Commons had introduced a universal system, one bargaining unit was needed. Counsel indicated that this was nonsense.

[453] Counsel argued that a universal job evaluation system does not change the work but only how the work is evaluated. The only change of circumstances the employer can point to is the introduction of the new job evaluation plan.

[454] Counsel noted that the House of Commons had given assurances in a letter signed by Mr. Bard to the bargaining agents (Exhibit PSAC-10) that it did not have the intention of adversely affecting the existing bargaining units. He argued that the Board should keep an eye on the legal standard and ask itself where the evidence of significant change of circumstances is.

[455] Counsel noted that Parliament had included in the *PSLRA* a clause (subsection 57(3)) that made it mandatory to establish bargaining units that were co-extensive with the occupational group or subgroups. He pointed to subsection 23(2) of the *PESRA* and indicated that this was a "pay attention" clause. Co-extensiveness is not a feature of the *PESRA*.

[456] Counsel indicated that the Canada Post situation was different because the legislation creating the corporation required a review of the bargaining unit structure. He indicated that the situations at Parks Canada and at the Canada Customs and Revenue Agency (*Canada Customs and Revenue Agency v. Association of Public Service Financial Administrators*, 2001 PSSERB 127) were also different because both had occurred after subsection 48.1 of the *PSSRA* had come into force and provided for rationalization of bargaining units. Those were not traditional bargaining unit reviews.

[457] The Board policy on review of decisions dates back to 1985, when the Board in *Public Service Alliance of Canada v. Treasury Board*, PSSRB File No. 125-02-41 (19851218) indicated that section 25 of the *PSSRA* was not designed to enable an unsuccessful party to reargue the merits of a case. Counsel noted that the House of Commons is complaining of having to negotiate seven collective agreements when they did nothing at the time the Scanner Group was certified. He referred to *Ontario Labour Relations Board Information Bulletin No. 19 - Requests for Reconsideration*, and *International Brotherhood of Electrical Workers, Local 353, v. Volta Electrical Contractors Ltd. et al.*, [2000] O.L.R.D. No. 3165, which concluded that all boards have adopted a similar approach. Labour boards across Canada have consistently ruled that there is a heavy onus on an applicant seeking review of an earlier board decision to establish with clear and compelling evidence that changed circumstances since the original board decision require alteration or revision.

[458] Counsel turned to the decisions rendered by the Board. He argued that all the cases involved significant changes. In *National Energy Board v. Public Service Alliance of Canada*, 2003 PSSRB 79, there was a significant change in the employer's structure that led to the extensive use of multi-disciplinary teams. In *Council of Graphic Arts Unions of the Public Service of Canada v. Association of Public Service Financial Administrators et al.*, PSSRB File Nos. 142-28-302 to 310 and 161-28-702 and 705 ((19940329), the applications for certification were the result of a new employer having been created. Turning to *Staff of the Non-Public Funds v. United Food and Commercial Workers Union, Local 864, and Public Service Alliance of Canada*, PSSRB File No. 125-18-78 (19981104), counsel noted that the employer in that case had attempted to convince the Board to amend certificates on the basis of the introduction of a new gender-neutral classification plan introduced as a result of a complaint to the CHRC. The Board had rejected that application on the grounds it was premature, as the employer had not made the necessary *bona fide* attempts to resolve the difficulties that appeared to lie in its path. Counsel noted that *Parks Canada Agency v. Professional Institute of the Public Service of Canada et al.*, 2000 PSSRB 109, was a review conducted as a result of the creation of a new employer and the application of subsection 48(1) of the *PSSRA*. He also noted that in that situation, contrary to the present case, the bargaining units had a right to strike and the legislative provisions required the Board to certify bargaining units that were co-extensive with the classification plan. Counsel indicated that the *Canadian Security Establishment* was the

only case where the introduction of a new universal job evaluation plan resulted in a reconfiguration to a single bargaining unit structure. Counsel noted that the basis for that decision was the legislative requirement to have bargaining units co-extensive with the classification plan. He also noted that evidence had been tendered on the integration of work done by different employees in different job classifications into self-directed work teams. He also indicated that while Mr. Potter, the Board member who rendered the decision, may have been of the opinion that the *CHRA* dictated the results of the application, that was not the case.

[459] Counsel indicated that the Canada Labour Relations Board (CLRB) had essentially the same approach. As noted in the mentioned in *Syndicat national des employés du Port de Montreal (CNTU). V. National Harbours Board et al. (1983)*, CLRB Decision No. 414, it required sound and compelling reasons from a labour relations standpoint to drastically alter bargaining units. In *Canada Post Corporation v. Canadian Union of Postal Workers (1988)*, CLRB Decision No. 675, it engaged in a review as a result of the creation of the Crown Corporation. He noted that in *Atomic Energy of Canada v. International Association of Machinists and Aerospace Workers et al.* (1995), CLRB Decision No. 1135, the CLRB stated that it had consistently required that some substantial justification for a change in existing bargaining unit structures be established where a change in those structures is sought. Counsel referred to *MacMillan Bloedel Limited (Alberni Pulp and Paper Division) v. Canadian Paperworkers Union, Local No. 592 et al.,* BCLRB No 393/84, (1985) 8 CLRBR (NS) 42, where it is mentioned that consolidation of existing rights is an extraordinary measure which the Board will resort to only in situations where there is a serious labour relations problem. Referring to page 65 of that decision, he added that the kind of jeopardy which an employer or other applicant relies on in support of such an application must be of a real and profoundly serious nature. Counsel noted that the only argument the House of Commons put forward was that they were at risk of violating pay equity when their own expert report indicated that there had never been a pay equity problem.

[460] Counsel reviewed the events that led to employees acquiring collective bargaining rights under the *PESRA*. He indicated that the employer had opposed certification and he submitted the initial CLRB decision accepting jurisdiction to hear an application certification by the PSAC rendered by Brian Keller (*Public Service Alliance of Canada v. House of Commons* (1984), 6 CLRBR (NS) 354 and the subsequent

Federal Court of Appeal decision (*House of Commons v. Canada (Labour Relations Board)*, [1986] 2 F.C. 372) concluding that the CLRB did not have jurisdiction. He indicated that after the PSAC had referred the matter to the Supreme Court, the House of Common passed special legislation granting the employees the right to bargain collectively. He indicated that the legislative regime was the direct result of the actions of the bargaining agents present in those proceedings and that the employer was attempting to extinguish those rights via the introduction of the universal classification plan.

[461] Counsel indicated that a universal job evaluation plan is not necessarily a plan of classification for bargaining unit purposes. At the time of the initial certification the classification groupings were deemed to be appropriate bargaining units. The universal job evaluation plan does not group employees into occupational groups. The Equal Wage Guidelines require occupational groups. The *Council of Graphic Arts Unions of the Public Service of Canada* decision is right on point; the Board must pay attention to the groupings of employees by the type of work they perform and not to a single method of evaluating jobs.

[462] Referring to page 11 of *Public Service Alliance of Canada et al. v. National Energy Board*, PSSRB File Nos. 142-26-297 to 301 (19931108) (1993 *National Energy Board*), counsel noted that the history of certification is also a relevant factor to consider. He added that, while the wishes of employees are not determinative, they are also a relevant consideration, particularly in the absence of prejudice to the employer. They are more important on a review application than on an initial certification. The wishes of the employees are presumed to be reflected in the position of the bargaining agents. If the PSAC indicates that the employees do not want to merge the Postal and the Operations Groups, then that is relevant.

[463] Counsel indicated that the principle of equal pay for work of equal value has application only in the context of the *CHRA*. This is a human rights provision. There is no other legal basis for saying that you cannot pay employees differently for other reasons. Counsel noted that the legal obligation relevant to this case flows from section 11 of the *CHRA*. Section 11 indicates that, in assessing the value of work performed the criterion to be applied is the composite of skills, effort and responsibility required within an establishment and that an establishment cannot be created for the sole purpose of maintaining differences in pay levels between male and

female employees. Section 11 also allows for differences in pay when they are based on factors prescribed in the guidelines. The guidelines stipulate that an establishment includes, irrespective of the collective agreement, all employees subject to a common wage policy and provide for two types of complaints: individual and group.

[464] Counsel argued that a pay equity complaint has to be based on a systemic problem identified in the context of work done traditionally by women. It requires an identifiable occupational group. What constitutes a group is not necessarily a bargaining unit, and as the population of the group diminishes the percentage requirement according to sex in the composition of the group increases. In groups of fewer than 100 employees, the requirement is 70 percent of the occupational group. Counsel indicated that, when a comparison is made between occupational groups, all groups are deemed to be part of one larger group. He also noted that section 15 of the Guidelines allows the use of indirect comparisons and wage curve analysis (regression analysis) when groups are being compared. He noted that, when the Hay Group looked at the wages paid at the House of Commons to determine if there was a pay equity problem, it used the wage curve analysis applied to all positions at the House.

[465] Counsel noted that under section 16 of the *Equal Wage Guidelines* there are a host of reasons that justify a departure from the pay line. Performance, seniority, red circling, rehabilitation assignments, temporary training positions, labour shortages in a job classification and regional rates are all reasons specifically mentioned. Counsel noted that nothing in the *CHRA* requires a universal job evaluation system or one bargaining unit.

[466] Having regard to the Supreme Court of Canada decision in *Canada (Human Rights Commission) v. Canadian Airlines International Ltd.,* 2006 SCC 1, counsel noted that the decision made it clear that pay equity is not something examined solely within a bargaining unit or a collective agreement. He argued that the *CHRA* does not dictate one bargaining unit and neither does the existence of a pay line. Counsel indicated that not one single case supports the proposal that in order to respect pay equity an employer is obliged to put in place one pay evaluation system or one unit. In every single case there have been multiple collective agreements and multiple bargaining units and no court or tribunal has ever suggested collapsing bargaining units.

[467] Counsel turned to *Communications Security Establishment, Department of National Defence*, and noted that the *PSSRA* and the mandatory language were at play

there. He noted that in that case the evidence demonstrated that the nature of the work had changed as the organization had moved to self-directed teams. While agreeing that the evidence with regard to the introduction of a new job evaluation system was relevant, counsel argued that the dictates with regard to the *CHRA* identified by Mr. Potter on behalf of the Board do not flow from the *CHRA* and in effect had been rejected in the past by the Board in *Staff of the Non-Public Funds* (19981104).

[468] Counsel submitted that the bargaining unit structure had come about because the employer wanted bargaining units to equate to occupational groups. The first time the employer was given the opportunity to suggest otherwise was during the certification of the Scanner Group in 2002-2003. The House of Commons took the position that the Scanner Group should have its own bargaining unit. The House of Commons could have taken the position to include the Scanner Group in the Operations Group, but it did not. He noted the House of Commons' response to the request to include the Scanner Group in the Protective Services Group and observed that the employer was adamant that there was no community of interest between those two groups. When the House of Commons had the opportunity to maintain the number of units, it chose to increase it.

[469] What, then, are the actual labour relations problems? Counsel noted that there was no evidence of serious jurisdictional problems. The evidence, if any, suggested that unrepresented employees should be in the units. There are no conflicts of jurisdiction even between Printing and Postal, although it would appear that the employer is harmonizing the process. He noted that no decision had been made to integrate the two and that Postal reported to a different manager than Printing. Counsel noted that there were no issues with the SSEA.

[470] Counsel further argued that there was no evidence that the employer had identified a problem, proposed a solution and been turned down. Different witnesses have confirmed that the bargaining units are not a problem when accommodation issues need to be resolved, contrary to the situation at Canada Post, where this was a significant factor. There are no impediments to movement, and many employees carry their seniority from unit to unit. There is no evidence that the House of Commons has requested a common table to negotiate common benefits. On the question of health and safety, counsel noted that there were large differences between unions because of

community of interest. For instance, asbestos is significant for the CEP but not for the SSEA, while the Operations Group will be more concerned with ink fumes as they incorporate printers. He noted that in his evidence Mr. Parent had confirmed that some updates to the group definitions could be accomplished without modifying the bargaining unit structure. Counsel also noted that there had been no issue on the question of which unit gets the dues when there is a temporary assignment to another unit.

[471] With regard to the cost of negotiations, counsel argued that it is not enough to point to cost in the abstract. At best, the evidence provided on cost was unsupported anecdotal evidence, which is clearly insufficient. Counsel asked how it could be that the House of Commons had 9 persons on their negotiating team for a unit that encompasses 23 employees and noted that in any event the contract had been negotiated efficiently. Counsel argued that not only was there no evidence that the House of Common had proposed anything to make the negotiations more efficient, there was no evidence that the time and cost of negotiations between 1986 and 2007 had increased. Counsel added that, even if there were, administrative efficiency is not the test.

[472] Counsel argued there had not been any substantial change in labour relations, and the fact that there may be several provisions in the agreements with similar or identical wording is not a change of circumstances that would warrant a restructuring of the bargaining units. Counsel also noted that no evidence had been tendered with regard to the budget allocated to cover the cost of negotiations.

[473] Counsel noted that Mr. Perron had said that negotiating seven collective agreements was quite a challenge with one pay line. However, counsel noted that the witness acknowledged that in any negotiations there would be managers from the same areas. There is no evidence to support the contention that there would be any less time spent at negotiations with only one or two bargaining units. Counsel noted that in the current round of negotiations, out of the four PSAC bargaining units, two had settled without arbitration. The two that had not settled, Operations and RPG, were facing two significant issues: shifts and seasonal certified employees (SCI). Both these issues were not present in the other sets of negotiations. There is no evidence to support the proposal that there would be any less time spent at the table.

[474] As for the number of grievances, counsel noted that tracking the number of grievances by bargaining unit is not helpful, as there is no reason to believe that there would any fewer grievances if there were one unit. He discounted Ms. Enright's testimony that there were reasons to believe there would be fewer grievances as speculation.

[475] Counsel argued that there had been compelling evidence that there was a climate of smooth labour relations even with the new job evaluation system in place. Bargaining is smooth in an environment where there is no right to strike. He added that placing the value of jobs into bands created challenges but there was no evidence of conflict or delays, usually the case when a new classification system is introduced.

[476] Counsel submitted that there were no legal obligations to pay employees the same other than to eliminate discrimination based on gender. He indicated that priorities at the bargaining table may affect remuneration. There is no legal principle that would support a legal action because employees are paid differently.

[477] Counsel turned to the 2002 and 2003 reports by Mr. Noel Parent (Exhibits PSAC-8 and PSAC-9) and commented that the House of Commons' Hay consultant, Mr Phil Johnson, had concluded that, after almost 17 years of bargaining with no common job evaluation tool, free collective bargaining and access to binding arbitration, there was no pay equity problem, no systemic pay equity bias against female jobs; in fact, overall the female benchmark jobs were slightly higher paid than the male benchmark jobs. Furthermore, counsel noted that interest arbitration boards in Canada under federal jurisdiction are obliged to apply the *CHRA*. Counsel pointed to the *Comparative Analysis – Economic and Step Increases* (Exhibit PSAC-11) and observed that over the past 10 years wage increases had been remarkably similar. If at any time the House of Commons had been of the view that bargaining agents' requests violated the *CHRA* they would have said so. He added that there is nothing preventing the bargaining agents from claiming that a market shortage exists.

[478] Counsel noted that the implementation of the new job evaluation plan was a management-driven exercise. The appeal process had limited employee participation and employees were not entitled to know the scores of other employees. The pay line that emerged from this plan may be challenged in the future by bargaining agents on the basis that it may not value the jobs properly or that market shortages exist. The evidence does not support using the plan as a change in circumstance that requires a

change in the bargaining unit structure because of the risk of violating the *CHRA*. Speculative evidence has no place in a bargaining unit review.

[479] Counsel turned to the *Presentation to the Ad Hoc Committee* (Exhibit E-24). He noted the reasons given for a single bargaining unit were that the negotiations were cumbersome, long and costly, required a full time negotiator, concluded in eight sets of terms and conditions, and were subject to a third-party review and to the *CHRA*. For all intents and purposes those are all factual issues that existed in 1986. There is no suggestion of an increase in cost and no reported problems with regard to the behaviour of the bargaining agents. These issues are really administrative convenience issues and are no basis for a change in bargaining unit structure. Counsel noted that it seemed there was no evidence as to what exactly had happened between the presentation to the Ad Hoc Committee and the decision to come forward and seek to extinguish the bargaining rights of three of the four bargaining agents. Mr. Parent had left before the decision was taken. The employer did not fill the gap, and the only evidence is that Mr. Parent thought that this was not a viable proposition. It would make it difficult to recognize the differences in the workforce. On the other hand, Mr. Parent indicated that the current structure should continue to maintain sound labour relations and that there were no problems other than the employer having to deal with seven bargaining units.

[480] Counsel argued that the evidence established that there were distinct communities of interest because of the nature of the work performed and that those communities of interest had fostered good relations for 20 years. The bargaining unit structure has really had no issues with accommodations, transfers or promotions. Bargaining units have addressed health and safety issues in different ways and it had been a challenge to arrive at a consensus, but counsel blamed the situation on the failure of the government to proclaim the legislation that had been passed.

[481] Counsel noted that Ms. Droessler had attempted to convince the Board that there were no differences in the collective agreements. He countered that she had no expertise in job evaluation, the application of section 11 of the *CHRA*, interpretation of collective agreements, or data analysis or statistics. Counsel argued that she was hardly an expert in labour relations and that in fact prior to 2000 she had no experience in labour relations at all. Counsel noted that Ms. Droessler concluded that all the bargaining agents' demands were for money and leave. Counsel noted that this

is not surprising since roughly 40 percent of the collective agreements deal with leave provisions and that, while there may be a number of boilerplate clauses that do not have huge differences, there are differences in other clauses. It is also to be expected that widely varying provisions will not be found within one employer. There will inevitably be homogeneity but that does not mean there should be one unit. Counsel noted that Ms. Droessler had not been tasked to highlight the differences but the things that were similar. Counsel suggested that the Board should examine the actual proposals presented by the bargaining agents and should conclude that there are several quite different proposals for each unit.

[482] Referring to the testimony of Ms. Kennedy, counsel noted that on the *Conflict of Interest Policy* there were differences of opinion among the bargaining agents.

[483] Counsel argued that the wishes of the employees are reflected by their bargaining agents and that those employees want to remain within their respective bargaining units. He noted the evidence from Mr. Guay that it would be extremely problematic to include the Postal unit within the Operational Group. Postal had settled while the Operational Group had not. There is a very important SCI issue that has profound implications for the Operational unit. Both Ms. Droessler and Ms. Enright confirmed this, and the minutes of the Food Services staff meetings also confirmed the importance of the issue. That issue is not present in the Postal Group.

[484] Counsel argued that there was no evidence of any reorganization of Printing and Postal; even if this were the case, the question remained as to why that was a significant change that warranted extinguishing the bargaining unit.

[485] Counsel noted that, for the Operations unit, shift premiums, layoffs, call back and seniority are issues for the employees. He observed that rotational shifts currently operate at the sole discretion of the employer and employees have no say. It is obvious that the employees attach significance to those issues. He commented that it was hard to see how negotiations on those issues would affect the integrity of the pay line.

[486] Counsel noted that the negotiations for the Postal Group had been conducted quickly, and that there were no shift issues for that group. Employees work from 06:00 to 18:00. The House of Commons had sought during negotiations to change the work schedule to a 24-hour/7-day operation. When the House of Commons withdrew this proposal the contract was settled. The employees in this group are day workers. It is a

unit with not much difference in work. It is composed equally of women and men and the majority of employees are Francophone.

[487] Commenting on the House of Commons' suggestion that the scanners could be included in the Operational Group or the Protective Services Group, counsel noted that the scanners do not wish to be with anybody else. He noted that the training module for scanners is provided by Transport Canada. The Protective Services Group is the only law enforcement presence on Parliament Hill. They are essentially the police on the Hill. Some are armed, while others are not. They are always in radio communication with their base. Because they are essentially a law enforcement unit, they are responsible for all aspects of security. They are trained in personal protection and specifically trained on the use of force, including the delivery of lethal force. Counsel also noted that security officers investigate co-workers on the Hill.

[488] Counsel argued that the history of collective bargaining indicated that there were no problems with the first contract and had been no labour relations problems since then other than the number of management representative on the employer's team.

[489] Counsel noted that the only employee who testified was Joanne Phillips. Ms. Phillips testified on the nature of the editors; work, the intense pressure of the job, the issues with working late, the allocation of overtime and the fact that she does not know when she comes into work if there will be work the next day. He noted that the SCI issue was a huge issue for this group composed essentially of women. He also noted the issue of editorial integrity, which had been identified by both Ms. Enright and Mr. Guay.

[490] Counsel emphasized that the Protective Services Group, the Procedural Group and the Technical Group are separate and distinct units that have nothing to do with any of the PSAC groups.

C. <u>For the CEP</u>

[491] Counsel for the CEP reiterated that substantial justification was required before a Board should consider altering the status quo. He noted that absolutely no evidence had been tendered with regard to the situation in 1986 and what changes had occurred since then. He indicated that the employees had made choices when selecting their bargaining agent and the Board had approved those choices. He added that in the

present case the determination for most groups had been made 20 years ago and that no evidence had been tendered by the House of Commons to show any substantial change since 1986. The same held true for the Scanner Group as of 2003.

[492] Counsel turned to the CLRB decision in *Atomic Energy of Canada Limited*, and indicated that that case had many similarities with the current situation, as it also involved a small employer with 6 bargaining units. He noted that the CLRB had found that consolidation was not appropriate because the employer had not established good grounds for consolidation and that administrative convenience was not sufficient. He also noted in the decision that the evidence of mobility problems had not been determinative, as the employer had never sought the cooperation of the unions. There was also no evidence that the employees were dissatisfied with the current structure or would be better served by a consolidation.

[493] Counsel indicated that in *Staff of Non-Public Funds* (19981104), the Board had indicated that there was a need to be cautious with the consolidation of bargaining units. He also noted that 20 years of history was in fact a significant reason in the *CNT* and *Bell* decisions not to disturb a mature labour relationship. He asked why one would want to create uncertainty unless there were sound and compelling reasons.

[494] Counsel submitted the CLRB decision in *Expertech Network Installations (Re),* [2002] CIRB No. 182, on a review application. The Board in that case was not prepared to intervene because no problems other then administrative inconvenience had been established. As with the House of Commons, there was little mobility between bargaining units.

[495] Counsel submitted the BC Labour Relations Board decision in *MacMillan Bloedel*, where it is noted that the consolidation of bargaining units is an extraordinary measure to be used only where there is a serious labour relations problem. He submitted that the House of Commons' entire argument is based on speculation on what may happen to the pay line. An application based on speculation cannot succeed. There must be real and demonstrated problems, which is not the case.

[496] Counsel described the current relationship as stable. He indicated there was nothing unusual about having multiple bargaining units. He noted that after weeks and weeks of testimony the House of Commons had not established a rationale for a change. He noted that the House of Commons had a good relationship with the

bargaining agents. Collective bargaining had proven painless and not terribly time consuming. He noted that some additional time had been spent in the Technical Group's fifth round of negotiations but that this had occurred because of the House of Commons' failure to present a monetary offer until the classification review had been completed. Counsel noted that during the fourth and fifth rounds none of the contracts had been settled at arbitration but that the parties had concluded the agreements voluntarily. Counsel argued that the universal pay line was not a significant change and pointed to the fact that during the five-year period since it had been implemented all of the parties had arrived at settlements. He noted that in the current round five of the seven units had concluded agreements and that the integrity of the pay line had been maintained.

[497] Counsel argued that there was no jurisdictional issue between bargaining units. There is clear delineation of duties and no evidence that the House of Commons is having difficulty in organizing work plans.

[498] Counsel noted that Ms. Guindon, the Chief, IT Service Desk, testified in cross-examination that the issues in her area were resolved at the local level because they know the people and the problems. This was a sign of a mature relationship that works. He added that the unions had cooperated on finding solutions to problems. He submitted that after 20 years of free collective bargaining there were no systemic problems of discrimination with regard to wages and referred to the evidence of Mr. Johnson and of the PSAC negotiator. The status quo should not be altered on the basis of speculation.

[499] Counsel indicated that the Technical Group consists of employees who design, repair, operate and inspect electronic systems or who provide broadcasting services. There are two types of employees: electronics employees and broadcasting employees. The unit is not certified by sub-groups. The unit is certified by reference to the Technical Group. The technical employees are not dispersed, as they all fall under a single directorate: Information Services. The directorate has two groups of employees: technical and unrepresented. There are no real concerns about dealing with multiple terms and conditions as there are only two groups of employees.

[500] Counsel indicated that employees in the Technical Group have skills sets not found in other groups. They possess a diploma in electronics or in broadcasting. They

perform work that is distinct and have limited interaction with other represented employees. Most interaction occurs with other technical employees.

[501] Counsel argued that the evidence on the career path indicates that the bargaining unit structure does not impose restrictions. The mobility is from the bargaining unit to positions outside the unit. There was no real evidence of persons coming into the unit from other units. Of the two examples cited by employer witnesses, one was the result of a section 34 application and the other was a situation where unrepresented employees were doing technical work.

[502] Counsel noted that the Technical Group was growing and that there were no surplus situations. He noted that the Technical Group had no SCI employees, a significant issue for other units. IT personnel are difficult to recruit and the competition in terms of wages comes from the private sector. Counsel added that the CEP has strong views on health and safety, because of concerns about asbestos for employees doing cabling work and has been very vocal within the JOSH Committee. Ultimately, the CEP removed itself from the discussions on the *Health and Safety Policy* that was being introduced by the House of Commons because it believed its collective agreement provisions were stronger. There are real concerns about consolidation and harmonization as it may be to the lowest denominator.

[503] Counsel noted that Ms. Droessler testified that call back was a significant issue for the Technical Group as they are subject to most of the call backs. Counsel also noted that the classification renewal process did not result in anyone moving to or from a Technical Group position.

[504] Counsel noted that Mr. Gagnon testified that negotiations with the PIPSC covered such issues as telework, shift rotations, client relations and pay relativity – all important issues for the PIPSC. Those issues were not the subject of discussions with the Technical Group. Similarly, job security, SCI employees and hours of work were important issues for the PSAC and not important for the CEP. The SSEA also has important issues that are not issues for the CEP, such as work schedules, shift premiums and clothing allowances. Counsel also noted that competency profiles were different for each group.

[505] Counsel argued that the evidence demonstrated that each group is unique with different issues, priorities and style. All those different styles had worked. The

existence of separate groups has permitted problems to be resolved at the lowest level, fostering harmonious relationships.

[506] Counsel argued that there was a significant gap in the evidence presented by the House of Commons. What exactly had led the House of Commons to file the application to consolidate the units had not been presented. There was no evidence of any problems caused by the structure. There was no evidence from the Chief Negotiator, Mr. Marcel Dubé, during the fourth and fifth rounds. The evidence we heard came from Ms. Droessler, who was in reality the note taker and was responsible for the administrative side and was not even present for the complete fourth round. In fact, she had never been asked for her opinion by the House of Commons prior to the application. In fact, none of the persons called by the House of Commons to testify in the current proceeding had been consulted prior to the application. No evidence had been tendered from anyone from the Steering Committee, the Ad Hoc Committee, the CMG or the Board of Internal Economy.

[507] Counsel noted that none of the managers who had testified on behalf of the House of Commons had given any evidence of any problems that had arisen because of more than one bargaining unit. Administrative inconvenience is not a factor to consider. Furthermore, the only evidence heard from a labour relations point of view was from Ms. Enright, Ms. Droessler and Mr. Parent. All other managers' testimony served only to explain the work. They had not been consulted and none of them identified any serious labour relations problems that would justify altering the current bargaining unit structure.

[508] Counsel argued that the bargaining unit structure was not obsolete. There is no evidence to support the contention that consolidation is the remedy to the problem, if there is a problem. The bargaining unit structure has not hindered the House of Commons from organizing the workplace.

[509] Counsel argued that when the House of Commons is saying the bargaining unit is obsolete it is really referring to the group definitions that were used to certify the bargaining units. The House of Commons is claiming that the definitions are out of date and no longer reflect work carried out by House of Commons employees. However, noted counsel, no evidence had been tendered as to why they are not relevant other than the general statement. Counsel argued that the definitions are not obsolete. They continue to be relevant and may at times be subject to interpretation as

their language is broad. In the CEP case (CEP-3), the Board had no difficulty in applying the definition to current circumstances. Counsel added that the management witnesses do not use the group definitions. The group definitions are used for one purpose only: to determine which group a position belongs to. They have no other use. It is the role of the classification section to determine to which group a position belongs.

[510] Counsel indicated that during her testimony Ms. Guindon acknowledged that the Technical Group definition had no application in DFS. He noted that Mr. Gagnon had testified that the group definitions are used to determine whether a position is unionized. He submitted that the definition of the classification system that appears in the Classification Policy presented by Ms. Kennedy includes a reference to the occupational groups. Counsel submitted that what the House of Commons really means is that the separate classification standards that applied to groups are no longer in use. In the case of the Technical Group, what is no longer in use is the classification standard (Exhibit CEP-16). The House of Commons is attempting to confuse two concepts: the group definitions and the method used to evaluate jobs. The group definitions were approved by the Board of Internal Economy. There has been no repeal of those definitions and they have not been amended.

[511] Counsel noted that in its original application the House of Commons argued that the current bargaining unit structure was not co-extensive with the classification system. That assertion is premised on the assumption that the Hay system of evaluating jobs is a new classification plan. Counsel submitted that the Hay system is not a classification plan. It is a system used to evaluate positions. That issue was dealt with in *Council of Graphic Arts Unions of the Public Service of Canada*. He added that, even if it were a classification plan, there is no provision in the *PESRA* that requires that bargaining units be co-extensive with the classification plan. The *PESRA* requires only that the classification plan be taken into account on initial certification.

[512] Counsel noted that one of the original rationales for the proposal that bargaining units be based on occupations stemmed from the application of section 53 of the *PESRA*. That section requires interest arbitrators to have due regard to maintaining comparability of conditions of employment with similar employment in the federal public administration. Counsel argued that this was one of the reasons the CEP had been certified and that the bargaining unit included positions in the Technical Group only.

[513] Counsel argued that if the group definitions need to be modernized, the Board of Internal Economy could seek the cooperation of the bargaining agents. He noted that both Mr. Parent and Mr. St-Louis had confirmed in their testimony that in 1998 the CEP had agreed to voluntarily assist with the new classification system. He indicated that the PIPSC had offered to cooperate in arriving at a new definition of the Procedural and Analysis and Reference sub-groups (Exhibit E-11) and asked why the employer had not pursued the offer.

[514] Counsel submitted that the bargaining unit structure and the group definitions had not hindered the House of Commons from changing the organization and from reviewing and rewriting job descriptions. Counsel added that the House of Commons was inconsistent, as it used the obsolete definitions to exclude unrepresented employees from its proposal to define the one bargaining unit.

[515] Counsel argued that the second rationale presented by the employer, that the multiplicity of negotiations would affect the pay line, was incorrect. The evidence indicates that this has not occurred, and even if it had this would be irrelevant. During the fifth round of collective bargaining, all seven collective agreements were settled on a voluntary basis. In the current sixth round, five of the seven units have settled for the exact same rate increase. In the last five years since the implementation of the new classification system there really has been no problem. He added that the House of Commons could have asked the bargaining agents to bargain jointly.

[516] Counsel argued that even if the pay line did not remain the same this is not a relevant factor. He noted that the new system does not include everyone, as it excludes lawyers and high-level managers. There is no gender-based pay equity problem at the House of Commons. Furthermore, the House of Commons had not presented any expert testimony to the effect that the new system is in fact gender neutral. Counsel also noted that the House of Commons had opposed the inclusion of a “me too” as requested by the PIPSC in the Procedural Group negotiation.

[517] Counsel submitted that the arguments put forward by the House of Commons had been rejected by the Board in *Staff of Non-Public Funds*. That decision dealt with a review application where there was no evidence of problems and no *bona fide* attempt to resolve the issue with the bargaining agents.

[518] Counsel submitted that the decision in *Communications Security Establishment, Department of National Defence* was distinguishable. It involved only two bargaining agents. There was evidence of integration of work with the implementation of self-directed work teams. There was a pay equity concern. There was evidence of reluctance by employees to move from one group to another. The PSAC represented more than 90 percent of the employees and there was a broad community of interest. In that decision the Board relied on subsection 33(2) of the *PSSRA*, which requires the Board to have regard to the plan of classification, and found that in that case the job evaluation plan was synonymous with a classification plan. Counsel argued that in the present case the group definitions are still in force and there is no evidence of changes to the pay line after two rounds of collective bargaining.

[519] Counsel indicated that the argument to the effect that the interests of the employees were no longer diverging was not valid. That argument is premised on the notion that bargaining agents negotiate money, benefits and leave. Counsel noted that this was true of all bargaining agents. He indicated that it was also an attempt by the House of Commons to reverse the onus. Counsel noted that the evidence was to the effect that there were different approaches to bargaining. The bargaining proposals demonstrated different interests, different demands and different priorities. He mentioned the job security provisions, the SCI issue, surplus employees, gratuities, equipment, split shifts, rotation and travelling time and the various priorities for each group. He indicated that the CEP also had demands that other groups did not present on discipline, performance, sick leave credits and the vision care and drug plan. He submitted that it appeared the House of Commons hoped that some of those demands would disappear with consolidation of bargaining units. Counsel indicated that, from the evidence of Ms. Droessler, it would appear that the CEP had training issues. He reiterated that the House of Commons was hoping that with one agreement they would achieve what they had been unable to achieve with the CEP.

[520] Counsel submitted that the evidence led by the House of Commons on duplication and cost of negotiations was vague, impressionistic and of no assistance whatsoever. There was no real attempt to quantify time or money spent and no way to determine whether they were increasing or decreasing. The evidence also revealed that it was necessary to have the managers present at negotiations. Counsel submitted that the evidence with regard to the time spent at negotiations entailed an attempt to harmonize the collective agreement just for the sake of it. Counsel noted that the

jurisprudence was clear and that administrative inconvenience is not enough to justify consolidation. He referred to the decision in *Atomic Energy of Canada Limited*. He added that it was surely incumbent on the House of Commons to ask the unions for help in fixing the problem if such a problem really existed.

[521] Turning to the *Canada Post Corporation* decision, counsel noted that the Board had been influenced in its decision by the need to guard against undue fragmentation because of the effects of strikes in the public sector. This was not an issue in the current case, as strikes are not permitted under the *PESRA*. He noted that Canada Post was operating under pressure to improve their operations. Other factors were the integration of the work and the increased flexibility required by Canada Post, factors not present at the House of Commons. Counsel added that the issues of job security and employee mobility also present at Canada Post were again not present at the House of Commons.

[522] Counsel indicated that in *National Association of Broadcast Employees & Technicians v. CFTO-TV* Limited (1981), CLRB Decision No. 345, the Board was influenced by the intermingling of duties and the picket line problems. Counsel noted that in the *National Energy Board* decision, the evidence showed multidisciplinary teams with employees performing similar duties. He added that the consolidation included all employees. He also noted at paragraph 13 of the decision that attempts to harmonize the pay line at the bargaining table had failed. None of those situations applies to the House of Commons.

[523] Speaking to the decision in *Pacific Press v. Graphic Communications International Union, Local 525-M, et al.,* [1996] B.C.L.R.B.D. No. 146, counsel distinguished it from the House of Commons situation on the basis of the jurisdictional issues and the strike history. Commenting on *Parks Canada Agency v. Professional Institute of the Public Service of Canada*, 2000 PSSRB 109, counsel noted that the requirements were different under subsection 48.1 of the *PSSRA* and under the *PESRA*. He also noted that in that case the Board was influenced by the mobility, multi-tasking and teamwork implemented at Parks Canada, as noted at paragraph 135 of the decision.

[524] Counsel submitted that the circumstances were more similar to cases where boards had denied the request to consolidate. He turned to *Canadian Museum of Civilization v. Public Service Alliance of Canada et al.* (1992), CLRB Decision No. 928,

where the Board looked at the nature of the interactions and found that the interrelationship and interdependence were insufficient to justify one unit. He turned to the *Expertech Network Installations* decision, where the CLRB did not agree with a single unit structure because there was little mobility between the units and no difficulty in identifying to which unit jobs should be allocated. In the 1993 *National Energy Board* decision, the Board was not prepared to establish a single bargaining unit on the sole ground that the employer had established a single classification plan. In the *Syndicat national des employés du Port de Montréal (CNTU)* decision, the CLRB refused to merge white- and blue-collar units and refused to disturb 20 years of collective bargaining.

[525] Counsel submitted that there would be a serious impact to accepting the House of Commons' application. He noted that the only basis on which to accept a single bargaining unit would have to be the new job evaluation plan. There would be a problem in certifying one unit on that basis, as it would not include all employees. More than half of House of Commons employees are not represented. Any new group of employees seeking certification would likely have to be included in the existing single bargaining unit. Employees would effectively be denied the right to choose their bargaining agent and this would likely close the door to collective bargaining to hundreds of employees. Counsel submitted that the object of the legislation is to facilitate collective bargaining, not to create barriers. He noted that in all cases in which consolidation to a single bargaining unit had occurred, all employees were represented.

[526] Counsel submitted that if one looked at the proposed single unit definition submitted by the House of Commons it was evident that there was no community of interest. He noted the factors to be considered in determining community of interest as set out in *Island Medical Laboratories Ltd. ("IML") and Dueck Chevrolet Oldsmobile Cadillac Limited ("Dueck") v. Teamster Local Union No 213 ("Teamster") and Health Sciences Association of British Columbia ("HSA"),* [1993] B.C.L.R.B.D. No. 329 (page 12).

[527] Counsel underlined the assurances given to the bargaining agents in response to the concerns they expressed at the time the new classification plan was being discussed. The bargaining agents had participated in the plan on the basis of those assurances. There had been no evidence that would justify the House of Commons

having reneged. Counsel submitted that the House of Commons was bordering on bad faith.

[528] Counsel noted that the House of Commons was also suggesting that under the present structure it was vulnerable to a section 24 complaint. Counsel submitted that there was nothing wrong in using the threat of a section 24 complaint and that it had been used to resolve issues between the parties in the past.

[529] Counsel submitted that there would be a clear conflict of interest if the Protective Services Group were included in the same bargaining unit as the employees currently in the Technical Group. He added that if the Protective Services Group were excluded from the consolidation then the entire foundation of the House of Commons case was gone.

[530] Counsel submitted that while initially, when the new classification plan was introduced, the House of Commons had not intended to alter the bargaining unit structure, it appears that it had changed its mind. Why the Board of Internal Economy changed its mind has not been explained. The application damages the relationship and creates uncertainty. The Board should dismiss the application.

D. <u>For the PIPSC</u>

[531] Counsel for the PIPSC submitted that at the time of certification it was the House of Commons that had sought the inclusion of the Analysis and Reference sub-Group within the same bargaining unit as the Procedural sub-group. The Board accepted the proposal at that time. The Board of Internal Economy approved the sub-group definitions in 1987 and, according to the testimony of Mr. St-Louis, they have remained valid without any amendments since that time. In cross-examination Mr. St-Louis confirmed that there was no plan to abolish or rescind those definitions. Mr. St-Louis also confirmed that the work of Procedural Clerks is unique to the House of Commons and to the Senate. In 20 years of collective bargaining there have never been any jurisdictional disputes with other bargaining units or with the House of Commons

[532] Counsel submitted that all the Procedural Clerks are found in three directorates within Procedural Services, while the Analysis and Reference Officers are all employed within the Parliamentary Publication Directorate of Information Services. There are 83 employees within the bargaining unit.

[533] He noted that as a result of the *Classification Renewal Project* (Exhibit E-20), the Procedural sub-group and the Analysis and Reference sub-group had been renamed the Procedural and Indexing Services Group.

[534] Counsel noted that none of the members of the Ad Hoc Committee or the project management team for the Classification Renewal Program had testified. According to the *Program Charter*, the objectives of the Program were to reduce the number of pay scales, introduce a consistent format for work descriptions and implement a single methodology for evaluating the value of jobs (Exhibit E-1, tab 39, pages 4 and 5). The Program was not generated by concerns about the collective bargaining structure. The bargaining agents all received written assurances from the House of Commons that the Program was not being undertaken to alter the existing bargaining unit structure (Exhibit SSEA-13). A modified point-based Hay system was used to evaluate jobs and that evaluation demonstrated that there was no systemic gender-based pay discrimination (Exhibit PSAC-9). The Program did not alter existing occupational groups at the House of Commons. After conversion, all positions continued to be assigned to existing occupational groups.

[535] Counsel submitted that Mr. Johnson had confirmed in cross-examination that a single pay line was not critical to maintaining the integrity of the new pay system and that the Hay methodology was blind to market forces.

[536] Counsel noted that we had learned that Staff Relations and Human Resources had been excluded from the Classification Renewal Project and that the options prepared by Mr. Parent for his immediate managers in 2003 (Exhibit E-23), which included amalgamating bargaining units, establishing a common table for salary negotiation and a phased-in approach, had not been discussed with the bargaining agents. Furthermore, Mr. Parent had not been informed of the assurances given to the bargaining agents to the effect that the Classification Renewal Project would not affect the integrity of bargaining units. In 2004, Mr. Parent was asked to make a presentation to the Ad Hoc Committee. He presented several options with regard to bargaining unit structure (Exhibit E-24) and characterized the one-unit model as “unrealistic” (Exhibit E-24). In the presentation Mr. Parent noted that the multi-unit approach “respects professional differences within the workforce” and that it would be “difficult to recognize differences in [the] workforce.” Counsel noted that Mr. Parent testified that a single unit would make it difficult to recognize a professional group and that no

decision had been made on how to proceed prior to Mr. Parent's departure from the House of Commons.

[537] Counsel submitted that no one from the Ad Hoc Committee or from senior management had testified to explain the labour relations considerations that had led the House of Commons to request the amalgamation of all existing bargaining units into a single unit. He also noted that Mr. Gagnon had indicated in cross-examination that managers within Procedural Services had not been consulted and had had no input in the decision to seek one unit.

[538] Counsel submitted that Mr. Gagnon had confirmed in cross-examination that Parliamentary procedure is a highly specialized body of knowledge. The job description (Exhibit E-7, tab 5) for Procedural Clerks reflects the complexity of the work, and the House of Commons regards the Procedural Clerks as a distinct professional group (Exhibit E-8). Procedural Clerks, unlike other employees of the House of Commons, are appointed to level and rotate through various positions in Procedural Services. Employees join Procedural Services at an entry level and it is only after several years that they are considered for promotion at the "working" level. Rotation is used to ensure professional development (Exhibit PIPSC-2).

[539] Counsel reviewed the work of Procedural Clerks in the Committees Directorate (Exhibit E-7, tab 5, and Exhibit E-8), the Journals Branch, the Table Research Branch and the International and Interparliamentary Affairs Directorate (Exhibit E-7, tab 5, and Exhibit E-8) and pointed to the specificities of the work in each area. He underlined that Mr. Gagnon had indicated during his testimony that there is very little mobility between the Procedural Services unit and other units. Most Procedural Clerks spend their entire career within Procedural Services. Over the years, several Information Management Officers have become Procedural Clerks.

[540] Counsel noted that, according to the testimony of Mr. Gagnon, Procedural Clerks in the Journals Branch and the Committees Directorate and to a lesser extent the Tables Research Branch work in accordance with the schedule of the House of Commons and its committees. Procedural Clerks who work in the International and Interparliamentary Affairs Directorate are required to follow the work schedule of delegations. There are no seasonal employees in the Procedural Services Group bargaining unit. He added that because of the intermittent sitting of the House of Commons the collective agreement provides for a system of long and short weeks

geared to the parliamentary calendar. This system is developed each year by the Joint Consultation Committee of the House of Commons and the Procedural Services Group (Exhibit PIPSC-6). He also noted that, because of the irregular work hours, the Procedural Services Group collective agreement provides for work up to 20:00 to be paid at straight time rates with no overtime, a group-specific provision.

[541] Counsel submitted that, according to the testimony of Mr. Gagnon, the career management process for Procedural Clerks is unique at the House of Commons and reflects a working environment of continuous training. The Career Management Review Board, chaired by the Deputy Clerk, assigns Procedural Clerks to various positions and deals with promotions from entry level to working level and is exclusive to the Procedural Clerk bargaining unit.

[542] Counsel submitted that Information Management Officers are involved in the analysis and preparation of indexes to parliamentary publications, which include the Hansard, committee reports and publications of the Journals Branch. Although they are located in the Parliamentary Publications section of Information Services, the Information Management Officers have virtually no contact with the employees in the RPG Group bargaining unit other than reporting the occasional spelling mistake. The work requires a good knowledge of parliamentary procedures.

[543] Counsel noted that there have never been any disputes over work jurisdiction between the Information Management Officers and members of the RPG Group. In cross-examination, Mr. Roy confirmed that the Information Management Officers could perform their current functions equally effectively in the Journals Branch of Procedural Services. Both the Procedural Clerks and the Information Management Officer positions require a university degree.

[544] With regard to collective bargaining, counsel noted that for several rounds of negotiations the Procedural Services Group had adopted an interest-based approach. Only twice has the unit requested interest arbitration of their dispute and on one of those occasions a settlement was reached at conciliation prior to arbitration. In the 2007 round, the arbitration involved a union proposal that would have guaranteed a single pay line. The House of Commons objected to that proposal and the Arbitration Board declined to award it (Exhibit E-18, tab 34).

[545] Counsel noted that the Procedural Services Group collective agreement differs significantly from other collective agreements at the House of Commons, as illustrated by the comparison of contractual provisions (Exhibit E-18, tab 32). Counsel pointed to 20 specific provisions, including vacation scheduling, career development, performance evaluation, attendance at conferences, professional development and hours of work. In addition, counsel submitted that Mr. Gagnon had testified that there was also a Joint Consultation Committee for the Procedural Services unit dealing with issues of specific concern for the bargaining unit, such as after-hours locking of premises, internal audit, assignment to dangerous locations and the handling of difficult situations in a sub-committee. Counsel also noted that formal grievances were extremely rare for that bargaining unit.

[546] Counsel submitted that the employer's application had not been triggered by a transition to separate employer status (as in the case of the CCRA and Parks Canada) or a change in the governing legislation (Canadian Museum of Civilization) or a sale of a business (*BCT.Telus (Re),* [2000] CIRB No. 73) or pursuant to a specific power authorizing review of the bargaining units (Canada Post). Rather, the House of Commons' application had been brought pursuant to subsection 17(1) of the *PESRA*, a general power permitting the Board to review its previous orders.

[547] Counsel submitted that the *PESRA* does not contain a specific provision expressly authorizing the review of bargaining unit structure. The Board should be cautious, as it is not dealing with a blank slate but with longstanding relationships and patterns of representation.

[548] Counsel noted that under subsection 23(1) of the *PESRA* the fundamental concern is to have bargaining units that are appropriate for collective bargaining. Since the Board has already determined bargaining units that are appropriate, it should exercise its discretion to alter the existing orders only if the current bargaining units are manifestly inappropriate for proper collective bargaining.

[549] Counsel submitted that the Board is not bound by the House of Commons' plan of classification on an application for initial certification. Subsection 23(2) of the *PESRA* requires only that the Board "take into account" the "duties and classification of the employees in the proposed bargaining unit in relation to any plan of classification. . . ." If the Board is not bound to establish bargaining units identical to the plan of classification on an initial certification, it is certainly not bound to follow a new

classification plan subsequently introduced by the House of Commons. Counsel noted that the Board's approach to applications for review of established bargaining unit structures reflected those principles and that strong and cogent evidence is required to justify altering an existing bargaining unit structure (*Canadian Forces Staff of Non-Public Funds*).

[550] Counsel submitted that the evidence presented by the House of Commons is neither strong nor cogent and does not justify the elimination of a separate Procedural Services bargaining unit. The only witness called by the House of Commons with substantive, in-depth involvement in labour relations over successive rounds of collective bargaining did not advocate eliminating the Procedural Services bargaining unit, a group he acknowledged to be unique.

[551] Counsel submitted that there were a number of factors that indicated that the Procedural Clerks have a distinct community of interest. He indicated that they have duties that are unique. They are employed within a single component of the House of Commons' organizational structure. They are highly educated in comparison with most other employees. They are recognized by the House of Commons as professionals. There is no mobility between Procedural Clerks and other bargaining units. They have unique career progression arrangements. It is essential that they be viewed as non-partisan and not included in a bargaining unit with employees who adopt partisan positions. Their working conditions differ from other employees.

[552] Counsel submitted that it was the House of Commons that originally requested that the Information Management Officers be included in the bargaining unit. While the duties of the Information Management Officers differ, and while they are located in another service, the nature of the work, which requires substantive knowledge of parliamentary procedures, has meant that over time a "good fit" has developed. Because the work draws on the same body of knowledge, there is a natural career progression from Information Management Officer to Procedural Clerk.

[553] Counsel submitted that since the original certification the Procedural Services bargaining unit had facilitated effective collective bargaining for the members of the bargaining unit. There is no evidence of dysfunctional bargaining. To the contrary, it is evident that the distinctive interests of the group have been taken into account in bargaining and that many provisions of the collective agreement reflect the specific concerns and distinct culture of the group. Bargaining for several rounds was

conducted using an interest-based approach. There is no evidence that the size of the bargaining unit has prevented it from being effective. In a labour relation regime where bargaining impasses are resolved by binding arbitration, smaller units are viable. Counsel noted that there was no evidence to support the contention that the time and resources devoted to negotiations were excessive or out of line with other employers.

[554] Counsel submitted that pay equity considerations do not require a single bargaining unit. There is no gender-based differential at the House of Commons and no reasonable prospect that such a differential will emerge. Mr. Johnson, the House of Commons consultant, acknowledged that the new job evaluation system would not be undermined if different market rates were negotiated for the same job level within different bargaining units. In light of the Supreme Court of Canada decision in *Canada (Human Rights Commission) v. Canadian Airlines International Ltd.*, the premise on which the Board decided the *Communications Security Establishment, Department of National Defence* case is no longer valid. The law is now clear that there is no requirement that all employees in a single "establishment" be subject to the same collective agreement. Moreover, the notion of a single pay line in a bargaining unit that is the result of an amalgamation of a number of units is illusory, as shown by the Parks Canada collective agreement, where substantial pay differentials are maintained through terminable allowances and non-salary devices for positions that are ostensibly at the same level.

[555] Counsel submitted that the existing bargaining unit structure has permitted effective collective bargaining and representation of employees. There is simply no basis for setting this existing structure aside in favour of a model that would inevitably create dysfunction and representation fights and that would leave a distinct professional group like the Procedural Group as a small minority in a unit dominated by blue-collar employees.

E. <u>For the SSEA</u>

[556] Counsel for SSEA indicated that the Association reiterates and supports the arguments put forward by the PSAC, the CEP and the PIPSC. Counsel noted that all of the bargaining agents do not wish to see the Protective Services bargaining unit integrated with the units they represent in any fashion and do not lay claim to any positions within the unit. This unanimity sets the stage for the position being put forward by the Association that it should not have been forced to participate in these

proceedings. On behalf of the Association, counsel requested that the employer's application be dismissed for lack of evidence.

[557] Counsel noted that in a situation in which bargaining units may either disappear or increase in size, it is rare to see bargaining agents express unanimously that they are satisfied with the units as they are. Despite the technological changes that have occurred over the last 20-year period since most of them were created, none of the bargaining agents has had difficulty in determining the jurisdiction of each unit. More importantly, all the bargaining agents have declared that they are satisfied with the state of labour relations with the employer. None of the bargaining agents has requested a change to its situation or a change to the units they represent.

[558] Counsel indicated that, in the case of the Association he represents, the efficiency of labour relations between the Association and the employer had been acknowledged by all of the employer's witnesses. He noted that during these lengthy proceedings he had been advised by counsel for the employer on a number of occasions that the evidence in support of the application was forthcoming. In the end, the only person who suggested during these proceedings that the Protective Services bargaining unit disappear was counsel for the employer. Counsel submitted that he had asked the same questions to all the witnesses who had made any comments at all related to the Protective Services Group bargaining unit. When asked whether they had had any specific work-related problems with the fact that the Protective Services Group constitutes a separate unit, all of the witnesses testified that there were no problems. When asked if they could foresee any problems in the future if the unit were to remain separate, all of the witnesses responded negatively. Counsel noted that not one of the members of the Ad Hoc Committee had testified as to why the application was being put forward. Counsel indicated that he had expected Mr. Bard to testify with regard to the letter of assurance he had sent to the bargaining agents, but he did not.

[559] Counsel submitted that even before the letter had been sent there had been a number of consultation committee meetings (Exhibit E-22). He indicated that it is not surprising that the Association was not very vocal during consultation meetings given that security forces tends to resolve their problems among themselves. That said, counsel indicated that the minutes of the consultation meetings indicate that at the March 10, 2000 meeting (Exhibit E-22, tab 17), the bargaining agents expressed concerns as to whether the new universal job evaluation plan would have an impact on

the existing bargaining units. The response was that the plan would not impact the bargaining units. When the CEP expressed their concerns (Exhibit E-22, tab 20) in the French version of the minutes, Mr. Bard indicated he did not understand the questions and Mr. Noël Parent indicated that there were no reasons to change anything. Counsel noted that he had expected Mr. N. Parent to testify but that it was another Mr. Parent who testified. In fact, the Mr. Parent who testified contradicted the employer's position on the issue. In the presentation before the Ad Hoc Committee (Exhibit E-24) Mr. Parent recognizes the need to differentiate the security staff and indicates that the proposal to amalgamate them into one unit is unrealistic. Counsel also noted that, with regard to the Scanner Group, the employer at the time had opposed their inclusion in the Protective Services Group.

[560] Counsel submitted that there was absolutely no evidence to support the employer's application to abolish the Protective Services Group and to remove the right to represent employees in the Group from the Association, which had been created and chosen by employees. Moreover, the Association, which represents employees in this bargaining unit alone, would find itself in the situation of having to dissolve itself. Counsel submitted that, without evidence of absolute necessity, it would be wrong to eliminate bargaining agents that have proven to be able to engage in fruitful negotiations simply on the basis that the employer wishes to engage in negotiations with a different bargaining agent. Counsel submitted that the employer's application should be dismissed for lack of evidence.

[561] Counsel requested that, if the employer's application were dismissed on that basis, the Board remained seized of the case to hear evidence with regard to the consequences of such a decision, including the possibility of compensating the Association for having been forced to participate in these proceedings.

[562] Should the Board reject his request to dismiss the application for the above-mentioned reason, counsel indicated that he joined his colleagues representing the other bargaining agents in stating that strong and compelling reasons are necessary to review an existing bargaining structure.

[563] Counsel submitted that the employer's central reason is the danger to the universal pay line. Maintaining the current structure, according to the employer, may dismantle the universal job evaluation plan and jeopardize pay equity. If that reason is not proven to be valid, then there is no need to proceed further.

[564] Counsel indicated that the Association had long understood that, in the context of negotiations at the House of Commons, when a trend in economic settlements is established there is no need to attempt to overturn it. Year after year, every bargaining unit at the House has settled for the same economic increases. What the bargaining units have concentrated on during negotiations are the various allowances paid in relation to the working conditions of their members. The evidence is that there is a place for negotiations to take place on allowances even if there is one pay line.

[565] Counsel noted that the employer suggested that because it had introduced a universal job evaluation plan the community of interest had changed. He indicated his disagreement with this proposal. Even if the employer had convinced the PSAC to merge its units that in itself does not mean that the PIPSC should disappear. The Association's community of interest has long been established, as it predates the introduction of collective bargaining on the Hill. A visit to the workplace revealed a display showing medallions and souvenir crests dating back to the 1920s. Counsel added that the bargaining unit had been recognized in 1987. At the time there was a debate as to whether the locksmiths should be included in the unit. The locksmiths were excluded.

[566] Mr. Schwieg testified that the situation had evolved, that security concerns had increased and that scanning had been introduced, but his testimony also indicated that the tasks performed by members of the Protective Services Group had not changed and were identical to the tasks that were described in the 1987 decision.

[567] Counsel noted that the application to include the scanners in the Protective Services Group had been opposed by the employer in 2002 on the basis that there was no community of interest between the scanners and those in the SSEA unit. Counsel further noted that there had been no changes since that time; no change in the community of interest, working conditions or employee mobility. The five scanners who joined the Protective Services Group did so after participating in a competition to enter the force. There is no mobility between bargaining units. The only mobility identified by Mr. Schwieg was from represented to unrepresented positions within the Protection Services. Such mobility occurs for reasons of accommodation or rotation or on a temporary basis. Counsel submitted that there is a total lack of any major or serious change that would justify a modification to the bargaining unit structure.

[568] Counsel submitted that the Group is composed of employees engaged in the provision of protective services and crime prevention. The employer is the House of Commons. The House is a parliamentary city where its citizens are Members of Parliament and Ministers. The service is there to protect its citizens. In a sense they are similar to a municipal police force that protects citizens and visitors. It participates in ceremonial parades. This service takes it roots in parliamentary privilege. Neither the Ottawa Police nor the RCMP can enter the premises without authorization and without being accompanied by members of the Protective Services Group. The Group also acts as first-line firefighters.

[569] Counsel indicated that the members of his client conduct investigations and surveillance. They perform arrests and are trained to use force. Training to become a member of the force is seven weeks long (Exhibit SSEA-5) while the training for scanners is centered on the use of scanning equipment and lasts four days.

[570] Counsel submitted that in cross-examination Ms. Droessler acknowledged that many of the bargaining demands, such as uniforms, leave and premiums (Exhibit SSEA-7) are specific to the unit.

[571] For all the above-mentioned reasons, counsel for the SSEA indicated that the evidence was without a doubt in support of maintaining a distinct bargaining unit for the Protective Services Group. No serious and convincing reasons that would justify amending the bargaining unit structure had been put forward.

IV. Employer's rebuttal

[572] In rebuttal, counsel for the employer asserted that counsels for the bargaining agents had stopped short of the actual text of the decisions, had ignored the evidence and had suggested certain conclusions that were not based on the case law.

[573] Counsel agreed with counsel for the PSAC that the USARCO criteria had no application until the threshold test had been met. However, he disagreed with the assertion that all previous decisions by the PSSRB involved a merger, a change of structure of the employer or a change in the manner in which work was performed. While it was true that some of the cases dealt with a change in structure because of a change in the employer's status, the *National Energy Board* and the *Communications Security Establishment, Department of National Defence* decisions did not. In the *National Energy Board* decision, the basis for the review was the use of outdated

bargaining certificates from a previous plan of classification no longer in existence, while in the *Communications Security Establishment, Department of National Defence* decision it was the introduction of a new classification plan with a single pay line.

[574] Counsel noted that counsel for the PSAC had submitted that the bargaining agents had to be cognizant of the changes in the workplace and deal with them at the bargaining table. Counsel submitted that the employer had attempted to deal with the issue of a single pay line at the negotiating table and that one should look at the responses from the four bargaining agents pointing to the *PSAC Arbitration Brief* (Exhibit PSAC-10).

[575] With regard to the letters dated June 14, 2001, that were sent to the bargaining agents, counsel for the employer suggested that the minutes of the January 19, 2001, Consultation Committee Meeting (Exhibit E-22, tab 20) should be referred to. The document also appears at page 5 of Exhibit E-3, dated January 19, 2001. The document is clear that there is no guarantee for the future. Assuming that there is an expressed intention not to change the structure, how long is the employer estopped from making an application to change the structure? There is no evidence of bad faith. Can the Board refuse to exercise its jurisdiction under section 17 if the threshold test is otherwise met? Counsel also asked, if there is a serious labour relations problem, how important can a promise made five years earlier be? Section 17 empowers the Board to exercise its jurisdiction for its own reasons. Counsel noted that the CLRB had gone down that road in the *Canada Post* decision. In that decision Canada Post had tried to withdraw its request but the Board proceeded on its own.

[576] Counsel noted that counsels for all of the bargaining agents had asked the Board to look at the legislation when reviewing other decisions and reminded the Board that section 17 of the *PESRA* is different from subsection 33(2) of the *PESRA* and section 70 of the *PSLRA*. Counsel indicated that Mr. Tarte had disposed of those differences in the *National Energy Board* decision (at paragraph 157). In response to the comments that the *PSSRA's* subsection 48.1 contemplates a review of the bargaining unit structure, counsel submitted that the *Parks Canada Agency* decision (at paragraph 126) opens the door to look at the evidence that has been placed before the Board.

[577] Counsel submitted in response to comments from counsel for the PSAC that the current set of circumstances is one of changes that occurred subsequent to the initial

decision and referred to the *Public Service Alliance of Canada v. Treasury Board* case (para 2) and to the *Volta Electrical* decision (at page 14).

[578] Counsel submitted that the Board should not follow the rationale in the *Non-Public Funds* decision, which had a unique set of facts that had led the Board to conclude the way it had (page 29, para 2). Counsel noted that in the current case bargaining agents had demonstrated no interest in maintaining the pay line and had made no attempt to resolve the problem.

[579] Counsel submitted that there is no indication in the *Communications Security Establishment, Department of National Defence* decision (para 13) that the teamwork approach was a change from the past. The only change that had occurred was the introduction of Unison classification plan.

[580] Counsel submitted that the *Atomic Energy of Canada Limited* decision stood for the proposal that there be good grounds for the Board's interference with established bargaining unit structures (page 4). In the *National Energy Board* decision, the Board rejected the stricter test requiring evidence of real and demonstrable adverse relations and established the threshold as significant change rendering an existing structure unsatisfactory.

[581] Counsel submitted that, although the history of collective bargaining is a factor to consider, it is not a significant factor. In the NEB case it had been 10 years since the Board had issued a decision.

[582] Counsel submitted that the employees' preferences as expressed by the bargaining agent were not a significant factor. Mr. Guay (who testified on behalf of the bargaining agent) is not an employee of the House of Commons, the bargaining agent cannot speak on behalf of all employees and there is a certain amount of self-interest in doing so. Counsel referred to the *Communications Security Establishment, Department of National Defence* decision (paras 12 and 30), in which a petition signed by 59 of the 64 employees within a unit was not a significant factor. He also referred to the *Parks Canada Agency* decision and the submission on behalf of maintaining a separate FI unit (para 59) and the *Syndicat national des employés du Port de Montréal (CNTU)* decision (page 7).

[583] Counsel expressed agreement with the submission that equal pay for work of equal value is not a legislative issue and the *CHRA* is concerned with gender discrimination. It is, however, a labour relations issue. Counsel asked whether collective bargaining should result in a situation of unequal pay. Counsel noted that the RPG Group met the threshold to be considered a female-dominated group and noted that there was no evidence to support that any of the exceptions under section 16 of the *CHRA* applied.

[584] Referring to the *Canada (Human Rights Commission) v. Canadian Airlines International Ltd.* decision, counsel noted that the analysis to be conducted by the Board should take into account the legislative requirement that prohibits discriminatory practices. The bargaining agents' position requires that the Board have faith that arbitrators will do the right thing every two years when the bargaining agents place proposals before them.

[585] Counsel acknowledged that at the time of initial certification, the employer was seeking bargaining units based on occupational groups. In 2003 the situation had not changed and the employer was aware that the Board was paying strict adherence to classification groups. However, since 2003 the circumstances have changed. Evidence has revealed that there is a new classification plan, there is a single pay line, consultation is dysfunctional, the group definitions are used only to determine affiliation to bargaining unit and there is a demonstrated indifference of the bargaining agents to the single pay line.

[586] Counsel noted that the bargaining agents' demands to establish seniority along bargaining unit lines are an impediment to accommodation.

[587] Counsel submitted that there was no evidence that the bargaining agents were receptive to efforts to harmonize collective agreements and no evidence of cooperation in policy discussions. He added that in the current round of negotiations three bargaining agents had agreed to the pay line while four went to arbitration.

[588] Counsel submitted that contrary to what the bargaining agents had put forward, the threshold test was the requirement to show that there had been a change of circumstances and that one could not ignore the new classification plan, the single pay or the fact that the new classification system no longer uses the group definitions for classification and pay.

[589] Counsel submitted that Mr. Parent had characterized a single bargaining unit as unrealistic on the basis that he believed it was unlikely that the Board of Internal Economy would approve such a bargaining unit structure because of the politics involved. There is no evidence to the effect that he considered the proposal unrealistic in itself. Contrary to what counsel for the CEP had advanced, Mr. Parent did not suggest that the intent was to limit section 24 applications. Certainly the employer was under no illusions and realized that the bargaining agents would be less than thrilled with the application. However, there is no evidence that the application resulted in bad labour relations at the House of Commons, contrary to the concern expressed at the time by Mr. Parent. Counsel added that, even if there were such evidence, he questioned the relevancy to the question of determining the threshold that has to be met.

[590] Counsel submitted that we should take cognizance of the fact that the Board has created single bargaining units out of multiple units at Parks Canada, the NCC, the CSE and the NEB and that no one has brought evidence of labour disruption as a result of those amalgamations.

[591] Counsel submitted that the suggestion that labour relations issues can be presented only by someone with expertise in labour relations is nonsense. The Board is the expert tribunal and is able to draw its own conclusion from the evidence. Mr. Parent provided options and the Board of Internal Economy made the decision.

[592] Counsel indicated that it was after being directed by the Board that he had provided a proposed single unit definition. The initial proposal was lengthy and rather unworkable. That proposal was amended but it may not be a model of clarity. Counsel submitted that the Board is not bound by the employer's proposal and may seek input from the parties if the application is granted.

[593] With regard to community of interest, counsel submitted that the views or the political motivations of the bargaining agents do not constitute a community of interest for the members in a unit. Twenty years of collective bargaining may show viability and internal community of interest but it does not show any external community of interest.

[594] In response to the submission that the bargaining units were unique, counsel noted that the SCI issue was present in the Operational Group and in the RPG Group.

Counsel added the Board was not told what difference it makes in collective bargaining in a bilingual institution that the Operational Group is blue-collar, male and Francophone. He also noted that the PSAC was attempting to abolish rotational shifts in the Operational Group collective agreement (Exhibit PSAC-12, page 35), one of the distinguishing clauses. With regard to the Scanner Group and to the Protective Services Group, counsel noted that Park Wardens were included in the single bargaining unit at Parks Canada and that there was no evidence to establish that members of the Protective Services Group investigated co-workers. Counsel submitted that the whistleblower demand had application to anyone at the House who had interactions with Members of the House.

[595] Counsel submitted that there was evidence of jurisdictional issues. He pointed to the Postal and Printing issue at the Belfast plant and to the several section 24 applications filed by the CEP. Counsel noted that uniqueness of the skill set and of the work had not prevented the Board from creating single bargaining units at the NEB, the NCC, the CSE or Parks Canada.

[596] With regard to health and safety, counsel asked if there should be different health and safety provisions applicable to different group of employees of the House when there is no overriding legislation.

[597] Counsel submitted that the notion that a number of issues did not apply to technicians was incorrect and pointed to article 16 of the Technical Group collective agreement on work schedules. He pointed to the weekend premiums paid to technicians and to the request for clothing allowances for non-uniformed security personnel. Counsel asked how those employees are different from other employees of the House.

[598] Counsel noted that the bargaining agents had attempted to focus attention on the fact that evidence was missing. Counsel submitted that the application was clear, that reasons had been put in evidence and that the Board of Internal Economy had approved the application.

[599] Counsel submitted that, contrary to the bargaining agents' assertion, the group definitions were obsolete, as they were not used within the new classification system. The same thing had occurred at the NEB, where the employer had continued to reference the old classification system for the purposes of bargaining unit allocation.

[600] Counsel submitted that the new classification system does not have classification groups and that it measures the relative worth of jobs. He added that section 53 of the *PESRA* does not require classification by group. Section 53 is identical to section 148 of the *PSLRA* and single bargaining units work just fine.

[601] Counsel added that modernizing the group definitions was not a solution as they are not used in the new classification system and such modernization would not address the pay line issue and other issues discussed. Counsel reiterated that the bargaining agents are going to arbitration with higher demands and added that, contrary to the position outlined by the bargaining agents, labour relations are affected by the multiplicity of bargaining agents.

[602] Counsel submitted that the Parks Canada collective agreement demonstrates that the voices of smaller group of employees may be heard within a larger unit and pointed to the provisions specific to the single electrician employed at Parks.

[603] Counsel submitted that the *Parks Canada Agency* decision was not based on overlap of duties and that in the *Expertech Network Installations* decision the CLRB looked for the more appropriate unit. Counsel noted that the House of Commons was not a hotbed for new units, as only 12 employees had been certified in the past 20 years. Employees wishing to join the union could easily be accommodated within the single unit as they would be in the same classification plan.

[604] Counsel submitted with regard to the Protective Services Group that there is no evidence that a clear conflict of interest exists and no jurisprudence to support such an assertion.

[605] Reviewing the argument put forward by counsel for the PIPSC, counsel for the employer indicated that there were no plans to abolish or rescind the current group definitions, as they are still necessary for current group allocation. However, those definitions form no part of the new classification system and, as such, are a relic of the past. The new system provides for a grouping by level that is required to apply the pay line.

[606] Counsel submitted with regard to the testimony of Mr. Parent that he had not advocated for a single unit as he had never been asked to make a recommendation. Counsel noted that the PIPSC had not commented on the case law with regard to the

importance of professional groups and questioned the importance of the labour relations considerations with regard to professionals. He further noted that the Career Management Plan for Procedural Clerks is not a negotiated plan but a management initiative. As for long and short weeks, he noted that the RPG Group had similar provisions in its collective agreement. The Parks Canada collective agreement deals with the unique working conditions of a number of employees within one collective agreement. Persons with degrees at the CSE and at Parks Canada are in the same unit as persons occupying positions that require less education. Counsel submitted that the "me too" clause is not a solution and questioned the impact of such an approach on collective bargaining.

[607] Reviewing the clauses identified by counsel as being significantly different, counsel commented that they really were a very good example of the lack of difference in collective agreements that Ms. Droessler had talked about.

[608] Counsel noted that the threshold test for reviewing current bargaining units is not that the structure be manifestly inappropriate for collective bargaining but that strong and cogent reasons exist to alter the structure.

[609] Counsel submitted that the good fit that had occurred over time with the integration of the Information Management Officers within the Procedural Services Group is likely to be observed with the integration into one single unit.

[610] Counsel submitted that there was no evidence to support the argument that a single unit would cause any dysfunction. Counsel distinguished the *Canada Customs and Revenue Agency*, indicating that in that case there was no single pay line and no universal classification plan.

[611] Commenting on the position put forward by the SSEA, counsel for the employer submitted that it was rare that bargaining agents did want a change to the bargaining unit structure.

[612] Counsel submitted that the comments contained in the document prepared by Ms. Gleeson (Exhibit SSEA-11) have to be taken in the context of the initial certification decision.

[613] Counsel acknowledged that there were issues in putting security guards within a single unit. However, there was no evidence of conflict of interest in the current

situation. Counsel commented that *International Association of Machinists and Aerospace Workers v. B A Banknote a divison of Quebecor Printing Inc.*, [1994] O.L.R.D. No. 4079, had somewhat of a tortured history and was a product of the time and of the legislation. Counsel noted that there were interesting commentaries in *Canadian Air Line Employees Association v. Eastern Provincial Airways (1963) Limited, et al.*, [1979] 1 Can LRBR 456, with regard to the nature of the authority of guards over other employees.

[614] Counsel completed his rebuttal by indicating that he had heard an interesting history of Parliamentary but could not understand how this was a factor to be considered in the decision to be rendered.

V. Reasons

[615] Although this is the first application under section 17 of the *PESRA* to review decisions of the Board that have established a bargaining unit structure, the Board had in previous decisions involving the *PSSRA* dealt with similar requests. The Board's jurisprudence is very similar to that of other labour boards. Referring to two decisions rendered by the Board, *Staff of the Non-Public Funds,* and *Communications Security Establishment, Department of National*, counsel for the employer accepted the view that such applications must be approached with caution and that strong and cogent evidence is required to justify altering an existing bargaining unit structure.

[616] Such a view has been expressed by Mr. Tarte in *National Energy Board*, in the following fashion:

. . .

> *[150] Each case, however, must be approached individually, keeping in mind that circumstances change over time. Such changes may in some cases justify a review of existing bargaining unit structures. Even in the world of labour relations, where stability is paramount, nothing is etched in stone.*
>
> *[151] The test for review of bargaining unit certificates requiring evidence of real and demonstrable adverse labour relations proposed by the PSAC is too strict. The threshold for review, rather, must be significant change rendering an existing structure unsatisfactory. To hold otherwise would render impossible any change that is required as a result of evolution in any given labour relations situation.*

. . .

[617] Therefore, the first task is to determine whether there have been significant changes rendering the existing bargaining unit structure at the House of Commons unsatisfactory. If significant changes have occurred, then the question becomes which bargaining unit structure, in light of those changes, will best serve labour relations.

[618] Counsel for the employer claimed that the organization of the House of Commons had changed through the implementation of the new classification plan and the new pay scale. After reviewing the extensive evidence adduced with regard to the organization of the House of Commons, I fail to find any evidence of actual change of the organization that can be attributed to the implementation of the new classification plan. Nor is there any evidence of any substantial structural change that would render the current bargaining unit structure unsatisfactory. The testimony of witnesses, the organization charts and the job description presented in evidence all point to a stable organization with well-defined specialized work areas, no overlap between bargaining units and most interactions occurring between represented and unrepresented employees. This is not surprising, as most unrepresented positions are found in the administration of services provided by represented employees. While the implementation of the new evaluation plan has allowed the employer to establish the relative value of jobs throughout the organization, this has not changed how the work is done or organized in any fashion.

[619] That is not to say that change has not occurred. The best example of change is what occurred after September 11, 2001, when the employer decided to extend the scanning of persons and to hire their own indeterminate employees to carry out that function, as Mr. Schwieg testified. This change eventually led to the certification of the Scanner Group in 2003. It is significant to note that at that time the employer took the position, as outlined in the correspondence from Ms. Gleason to the Board (Exhibit SSEA-11), that the Scanner Group had no community of interest with the Protective Services Group and opposed inclusion of the Scanner Group employees within the Protective Services Group. That change resulted in a change to the bargaining unit structure. However, since the certification of the Scanner Group there has been no evidence of change to the work or operation of the scanning services within the Protective Services that would justify a change of the bargaining unit structure.

[620] Mr. St-Louis did testify when presenting the *Strategic Outlook* document that one of the major initiatives was the one intended to ensure a flexible technology infrastructure that would have an impact on the services provided by the Chief, Information Services and the Sergeant-at-Arms. However, no evidence was presented on what those changes are or would be and what impact, if any, they have or would have on the organization of the work and the bargaining unit structure.

[621] Evidence was presented with regard to the Harmonization project and to contemplated changes to the printing and postal operations at the Belfast Plant. However, in its effort to harmonize the operations, the employer has yet to determine whether the postal operations will remain in a distinct directorate. No decision has been reached as to what will happen to the parcel scanning functions or to the warehousing functions occurring at that location. Merging the Postal Group and the Operational Group on the basis of what may happen at the Belfast Plant would be premature.

[622] The merging of the Stationery Clerk position and of the Counter Clerk position, which were in the Operational Group and the Postal Group respectively, into the Postal Counter Clerk position (alluded to in the *Similar Technical Activities* document (Exhibit E-2, tab 40) is hardly in itself a change significant enough to warrant a change of bargaining unit structure. Furthermore, there is no evidence of that event being a problem in determining to which bargaining unit the new Postal Counter Clerk position should belong.

[623] While some change has occurred, there is no evidence of significant organizational change or change in the delivery of work that would render the existing structure unsatisfactory.

[624] Counsel for the employer argued that the development of a core competencies profile showed, where they had been developed, a closer link of core competencies of House of Commons employees. I fail to see how this would impact on the bargaining unit structure or constitute change in support of a review. Core competencies are just that - core competencies - and can be found in all jobs throughout the organization. The mere fact that core competencies have been established does not necessarily signify that jobs have changed or that they have suddenly become similar in nature. It is really in comparing the specific skills, abilities and competencies for each position that one could show that the jobs have become similar. Such was the case at the NEB,

where, as reported by Mr. Tarte in *Communications Security Establishment, Department of National Defence*, "[t]he job competency framework is now used to evaluate all positions on the basis of set of criteria. The evaluation process has shown that many employees, regardless of bargaining unit affiliation, share similar skills, qualifications and competencies." This is not the case at the House of Commons, as the jobs have essentially remained the same. There is no evidence to support the contention that jobs have changed or that the new core competencies show that the positions really share anything in common other than the basic abilities to interact with respect, achieve results, accept and support direction, pursue learning, writing and reading and think things through (Exhibit E-5, tabs 25, 26 and 27), which in fact are competencies common to all jobs. The duties of the Scanner Group are very different from those of employees who are part of the Protective Services Group. Those differences are reflected in the technical competencies. The technical competency of scanning for detection and prevention (as set out in Exhibit E-5, tab 26) is applicable only to scanners, and the technical competencies of facilitating and controlling access, protecting lives and property, maintaining dress code and ceremonial standards and conducting investigations are applicable only to the Protective Services Group (as set out in Exhibit E-5, tab 27).

[625] Referring to the document entitled *Similar Technical Activities* (Exhibit E-1, tab 40) prepared by Mr. St-Louis, counsel argued that there was job overlap on a number of positions classified in a number of different bargaining units. The document does not show job overlap and neither did Mr. St-Louis' testimony. His evidence demonstrated that some tasks performed by employees in different work areas in different bargaining units were similar, but similarity and overlap are two distinct concepts. The evidence of all of the employer's witnesses dealing with organization charts and job descriptions indicating the various positions of bargaining unit members and unrepresented employees showed an organization in which the bargaining units are well circumscribed and in which most managers have one or two collective agreements to deal with. The jobs do not overlap, although in a few cases the tasks performed in certain areas may be similar to tasks performed in other areas.

[626] Counsel argued that there was a risk of violating section 11 of the *CHRA* if the current bargaining unit structure were to continue. I disagree. The evidence established that there had never been a problem with pay equity prior to the implementation of the new classification plan and there is no evidence that such a problem is looming.

The regression analysis conducted by Mr. Johnson prior to the implementation of the new job evaluation plan did not show any pay equity problem, and his report to the House of Commons is clear and unequivocal. For a long period of time the economic increases agreed to by the parties or imposed by arbitrators have always maintained an internal relativity free of any discrimination based on gender. Although bargaining agents have at times demanded more in negotiations and from interest arbitrators than what other groups have negotiated, negotiated settlements and arbitral awards have resulted in essentially the same economic increase for all groups since 1998, as outlined in the employer's confidential document entitled *Information Note to the Employee Relations Steering Committee* (Exhibit PSAC-11). Furthermore, arbitrators are bound by the provisions of the *CHRA* and cannot render decisions that would be in violation of the *CHRA*. That is not to say that an arbitrator may not promulgate rates of pay higher than the pay line would contemplate in certain circumstances. Section 11 of the *CHRA* allows for higher rates of pay if it can be shown that an internal labour shortage exists in one group of employees or for any of the other factors set out in section 16 of the *Pay Equity Guidelines*.

[627] In the *Communications Security Establishment* decision, the Board placed considerable weight on the fact that the employer was introducing a new classification plan and noted the requirement in subsection 33(2) that upon certification the bargaining unit be co-extensive with the plan of classification. Such is not the case under the *PESRA*, where upon certification the requirement is that the Board shall take into account the duties and classifications of employees in relation to any plan of classification as it may apply to employees in the proposed bargaining unit. In coming to my conclusion I have noted that the group definitions continue to allow the effective classification of employees into groups according to the duties they perform and thus I have taken into account the duties and the classification plan. While the employer's "new plan" ranks positions, it does not alter the existing groupings of both represented and unrepresented employees.

[628] As for the necessity of linking the bargaining unit structure to the classification plan because of pay equity, it is my view that the Supreme Court ruling in *Canada (Human Rights Commission) v. Canadian Airlines International Ltd.* has set aside the notion that there is a link between bargaining unit configuration and pay equity. The Supreme Court in essence ruled that, for the purpose of determining pay equity, the "establishment" is not to be equated with the bargaining unit (paras 39 to 41).

Similarly, to hold that one must amalgamate existing bargaining units to ensure pay equity is also wrong.

[629] Furthermore, provisions of the *Pay Equity Guidelines* allow for differences in remuneration and there is one specifically based on market shortage considerations. Results of negotiations with the seven bargaining units at the House of Commons prior to and after the introduction of the new classification plan have not resulted in any observable wage differential. That is not surprising, as arbitrators are bound by the provisions of the *CHRA*. It is interesting to note that the Board rejected as premature the argument put forward by the employer in the *Staff of the Non-Public Funds* decision that it would be difficult to negotiate a pay structure that respects the classification plan with two bargaining units. At the House of Commons, the impending threat to the pay line of the existence of a number of bargaining units has not materialized. There is no reason or evidence to believe it would do so in the future.

[630] Counsel for the employer argued that the Board should be concerned about the principle of equal pay for work of equal value. Although this may be a good labour relations approach, remuneration takes on many forms, and the parties in labour relations negotiations have traded off parts and parcels of remuneration for one consideration or another. While the principle may be used as an argument to support a wage demand, it has nothing to do with either the circumstances leading to a bargaining structure review or the determination of what constitutes an appropriate unit for negotiation or what the most appropriate unit may be.

[631] Counsel for the employer argued that the group definitions were outdated, as they were based on outdated classification standards. The evidence established that the group and sub-group definitions have essentially been in existence at the House of Commons since 1986, when, after they had been approved by the Board of Internal Economy, the House of Commons gazetted those definitions on April 1, 1986 (Exhibit 2, tab 8). The bargaining units were certified on the basis of those definitions. The definitions were largely inspired by the federal public service and were adapted to the specific needs of the House. They have been used by the Labour Relations section to determine to which group and sub-group and, if represented, to which bargaining unit a position should be assigned. The evidence is that there have been very few problems in applying the group definitions and that, when problems did arise, the parties were able to resolve them. One case involving the CEP resulted in an application

under section 24 of the *PESRA* and it arose when the employer refused to include positions it believed should be unrepresented in a bargaining unit. The Board was asked to intervene and resolved the issue without much problem (PSSRB File No. 447-HC-4 (20001204)).

[632] The employer's proposed single bargaining unit definition is as troublesome as the current definitions, if not more so, and will create, as counsel for the employer recognized in his arguments, issues around the inclusion in or exclusion a number of positions from the unit. There is no evidence to support the opinion that the group and sub-group definitions are irrelevant today. There is also no evidence of any serious overlap between bargaining units and the parties could, if the situation warranted it, take steps to amend those definitions without having to change the bargaining unit structure. Furthermore, I have not seen any evidence that the Board of Internal Economy has rescinded the group and sub-group definitions or that the House of Commons has published a new group definition in the Gazette. In effect, while the classification plan has changed, the employer will continue to have a need to classify positions in various groups (Exhibit E-2, tab 9) even within the unrepresented groups.

[633] The evidence of that continued need can also be found in the continued *de facto* existence of those groupings within competency profiles (Exhibit E-5, tab 25 and 26) and in the career management of Procedural Clerks (Exhibits E-8). The evidence with regard to local formal and informal consultation committees with the various bargaining agents further convince me that those groupings will be needed to apply the specific provisions, approaches and solutions required by the various services to function properly. Throughout the hearing, all of the employer witnesses who had managerial responsibilities for one part or another of the organization presented evidence with regard to consultation and negotiation that leads me to conclude that the groups continue to be meaningful entities from a labour relations point of view.

[634] Counsel for the employer argued that the multiplicity of bargaining units was not conducive to sound labour relations. He submitted that the difficulties experienced at the corporate-level labour-management consultation were illustrative of those problems. However, the evidence revealed that many of the problems were addressed and resolved at local consultations, rendering corporate-level consultation of little use. Corporate-level consultation was used mainly to introduce employer policies on a number of subjects. Although consultation tended to drag on, all the policies were

eventually adopted by the employer with or without the consent of the bargaining agents. The most litigious discussions took place on the Health and Safety Policy and I am convinced that those discussions would have been as difficult with one unit as they were with the four bargaining agents. The evidence presented was to the effect that many of the positions adopted by the bargaining agents who were faced with the employer's refusal to seek the proclamation of the *PESRA* dealing with health and safety were associated with concerns regarding the membership being exposed to health and safety risks in their work. Grouping employees in one unit would likely result in the most demanding position being adopted by the unit.

[635] Counsel argued that the degree of similarity of the collective agreements and the bargaining demands justified the amalgamation of the bargaining units. The evidence, however, revealed that although they may appear similar at first glance, there are a number of distinctions with regard to the specific provisions in each collective agreement. As for negotiations, generalizations such as "all the demands were for leave and money" were not helpful and did not withstand cross-examination. The actual notes taken during negotiations (Exhibit PSAC-4/-5/-6, CEP-5/-6 and SSEA-7/-8) and cross-examination confirmed that much time was spent discussing group-specific issues. Counsel submitted that all of those issues could be incorporated into one collective agreement and submitted the Parks Canada Agency collective agreement (Exhibit E-27) as an example of the inclusion of provisions addressing specific issues into one collective agreement. Having reviewed the document itself, and faced with its apparent complexity, I question the wisdom of producing a document that only experts can utilize. I am not convinced that the incorporation of a multiplicity of distinct provisions in a single collective agreement results in better labour relations.

[636] Furthermore, the employer and two of the bargaining agents (the PIPSC and the SSEA) have been able to enter into interest-based negotiations, jointly seeking solutions to the problems they face at negotiations. I doubt that such progressive approaches to negotiations would be viable or even possible in a single bargaining unit setting. In any event, the bargaining demands and the fact that a significant portion of collective agreements have similar clauses are not in themselves evidence of significant change rendering the existing structure unsatisfactory. The analysis provided by the employer's witnesses was unconvincing and lacking in depth. A 10 to 20 percent difference between collective agreements does not in itself tell us much with regard to

the nature of the differences and the importance of those differences for managers and employees in a specific area.

[637] Counsel for the employer argued that the House of Commons was in a situation similar to those in effect at the NEB and the CSE where the Board had proceeded with a restructuring into one bargaining unit. While this may appear to be the case at first glance, a careful review of the reasons leads to the conclusion that the situation with both of those separate employers was different from the situation at the House of Commons.

[638] In the *National Energy Board* decision, Mr. Tarte observed, that the NEB had modified its structure, a change that "in turn led to the extensive use of multi-disciplinary teams whose members come from both existing bargaining units, a practice which a PSAC witness described as revolutionary". He also noted that the evaluation process conducted in relation to the job competency framework had "shown that many employees, regardless of bargaining unit affiliation, share similar skills, qualifications and competencies". The Board was also of the view that it made eminent sense under the legislative framework that the bargaining unit structure should be co-extensive with the plan of classification. In the present case there is no evidence of structural change that would have impacted the organization of the work in a similar fashion or to a similar extent. Although they may share core competencies, employees do not share qualifications, skills or all competencies. The legislative requirement under the *PESRA* is to take into account the duties and classification of employees in relation to the plan of classification for the positions. It is not to establish bargaining units that are co-extensive with the plan.

[639] In *Communications Security Establishment*, *Department of National Defence,* former Deputy Chairperson Potter ruled that the requirements of the *CHRA* play a paramount role in assessing whether or not the bargaining unit should be reconfigured. However, he also indicated that self-directed teams comprising individuals from the various bargaining units were the norm. He added that this, coupled with the mobility issue that had been raised, indicated that amalgamation of the bargaining unit structure was appropriate. Contrary to the situation at the CSE, the evidence is that the House of Commons has not implemented self-directing teams and there is no evidence of mobility issues. In fact, the evidence with regard to mobility is that employees who needed accommodation had been accommodated, that the vast

majority of career progression outside of a unit was into unrepresented positions and that there was very little movement from one bargaining unit to another.

[640] The situation at the House of Commons is also distinguishable from all of the situations in which the Board has ordered the amalgamation of bargaining units into a single bargaining unit. In all those situations all of the employees were represented. Represented employees at the House of Commons account for less than 50 percent of all employees. Although counsel for the employer has only requested the inclusion of employees who are currently represented in the single bargaining unit, the logical conclusion of his argument did not escape him, as he recognized that it was difficult to make the distinction between the current represented and unrepresented employees on the basis of the case he has put forward. This is also evident in the proposed wording for the bargaining unit configuration, which suffers from attempting to draw a boundary with exceptions to exceptions. A true single bargaining unit configuration would result in a unit composed of a majority of employees who have never sought to be represented and would pose a serious threat to collective bargaining at the House of Commons.

[641] The House of Commons has enjoyed good labour relations for a number of years. For the most part, problems are addressed and resolved the local level, with few issues being placed before the Board for resolution. The price to pay for having such relations may be the cost of negotiating seven collective agreements. In any event, the evidence with regard to the cost of negotiations was not convincing, as much of the cost (i.e. the number of managers participating on the employer's negotiating team) was controlled by the employer and the actual time spent in negotiations was not that significant. The two-year period required to conclude the fifth round of collective bargaining from 2002 to 2004 was largely the result of he employer's decision to implement the new classification plan and to submit a global offer in relation to that plan.

[642] In light of my finding with regard to the non-existence of significant changes rendering the existing structure unsatisfactory, there is no need to rule on the bargaining agents' argument that the House of Commons was precluded from making the application on the grounds that it had promised not to change the bargaining unit structure.

[643] The House of Commons has enjoyed good labour relations for a number of years, and the evidence has not revealed any significant change that would render the bargaining unit structure unsatisfactory. Consequently, the application is dismissed.

[644] Counsel for SSEA requested that the employer's application be dismissed for lack of evidence and requested that the Board remain seized to hear evidence with regard to the consequence of such a decision, including the possibility of compensating the Association for having been forced to participate in the proceedings. In light of my decision to dismiss the application on the basis that the evidence has not revealed any significant change that would render the bargaining unit structure unsatisfactory, I am prepared to remain seized for 90 days to hear evidence and arguments with regard to the impact on the SSEA of having been forced to participate in these proceedings.

[645] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

VI. Order

[646] The employer's application is dismissed.

[647] I remain seized for 90 days to hear evidence and arguments with regard to the impact on the SSEA of having been forced to participate in these proceedings.

February 23, 2009.

Georges Nadeau,
Vice-Chairperson

Proposed definition of the represented group at the House of Commons

The represented group is comprised of all employees of the House of Commons, save and except:

1) persons employed in a managerial or confidential capacity as defined under Part 1, Staff Relations, Section 3 of the *Parliamentary Employment and Staff Relations Act;*

2) all employees in the Executive and Management Group which are positions that have significant executive managerial or executive policy roles and responsibilities or other significant influence on the direction of a service area. Positions in the Executive and Management Group are responsible and accountable for exercising executive managerial authority or providing recommendations and advice on the exercise of that authority;

3) all employees in the Law Group, who occupy positions that are primarily involved in the application of a comprehensive knowledge of law to the performance of legal functions, as well as those employees in positions confidential to employees in the Law Group;

4) all employees performing primarily supervisory functions, save and except those employees involved in the direct supervision of the following work functions:

   the provision of security services (other than scanning or communication centre functions) within the House of Commons;

   the performance of material handling tasks, cleaning and/or maintenance in the buildings and carpet repair;

   the set-up and maintenance of rooms, workstations and office moves;

   the provision of framing, painting and refinishing services;

   the provision of tailor services, seamstress and upholstery services;

   the installation, verification and replacement of electronic end-user equipment;

   the preparation, serving and provision of food and beverage services to clients, the operation of cash registers, and cleaning of dishes and pots; or,

   the performance of transcription, editing, publishing and revision of Parliamentary publications and documents, with primary responsibilities involving;

from audio recordings, transcribing, revising and/or editing text of proceedings of the House of Commons, parliamentary committees and other parliamentary meetings and events; or,

the provision of accurate technical preparation, data entry, formatting, quality assurance (including proofreading/concordance) and publishing of draft and final versions of translated parliamentary publications and documents in various media.

5) all employees occupying positions above that of supervisor;

6) all employees under the Administration Group (ADG Level B to K), and without restricting the generality, those positions whose primary responsibilities include the provision, development and implementation of the following services and programs:

administrative, information management and technology (IM/IT), logistics, or protocol, strategies, standards, support, policies, guidelines, and project management;

proceedings monitoring and information capture services to Chamber and Committees.

7) all part-time cleaning personnel as defined in *Public Service of Canada v. House of Commons*, PSSRB File No. 442-H-8 (19870324).

8) all employees providing services under the aegis of the employer's Page Programme.