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Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Sector Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

JENNIFER MYLES AND ERIN ALCOCK

Grievors

and

CANADA REVENUE AGENCY

Employer

Indexed as
Myles v. Canada Revenue Agency

In the matter of individual grievances referred to adjudication

Before: John G. Jaworski, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievors: Tony Micallef-Jones and Sara Guillaumant-Fitzgerald, Professional Institute of the Public Service of Canada

For the Employer: Kevin Dulude, counsel

Heard at Toronto, Ontario,
October 2 to 5, 2018,
(Written submissions filed November 13 and December 27, 2018, and February 1, 2019.)

REASONS FOR DECISION

I. Individual grievances referred to adjudication

[1] Jennifer Myles is employed with the Canada Revenue Agency (CRA or "the employer") as an auditor classified at the AU-03 group and level. She works in the audit section of the CRA's Toronto West Tax Services Office (TSO) in Toronto, Ontario.

[2] Erin Alcock is employed with the CRA as a team leader in the Management group (classified MG-05) in the Compliance Programs branch of the section of the CRA's Kitchener-Waterloo TSO in Kitchener, Ontario, dealing with the goods and services tax (GST) and harmonized sales tax (HST).

[3] Both Ms. Myles and Ms. Alcock ("the grievors") are members of the Audit, Financial and Scientific (AFS) bargaining unit represented by the Professional Institute of the Public Service of Canada (PIPSC) and their terms and conditions of employment are governed, in part, by collective agreements (defined specifically later in this decision) that PIPSC entered into with the CRA.

[4] Before March of 2012, both grievors were employed by the Government of Ontario at the Ministry of Revenue (OMoR). In March of 2012, both grievors were appointed to positions at the CRA.

[5] On February 22, 2013, Ms. Myles filed a grievance, which stated as follows:

> . . .
>
> *I grieve that Canada Revenue Agency has wrongly stated my employment start date as of March 1, 2012.*
>
> . . .
>
> *Corrective action requested . . .*
>
> *I request Canada Revenue Agency to correct this error and change my employment start date to be May 01, 2000 to reflect and include the years of services [sic] with Ontario Ministry of Revenue. I request any and all remedies that are necessary.*
>
> . . .

[6] On March 13, 2013, Ms. Alcock filed a grievance, which stated as follows:

> *On January 16, 2013, I received a payment of 0.36 weeks of severance pay pursuant to Article 19.01 of the Agreement between the Canada Revenue Agency and the Professional Institute of the Public Service of Canada (hereafter CRA/AFS Collective*

> *Agreement). In correspondence received from Doug Mason dated March 5th, 2013, I was made aware that my years of service with the Ontario government should have been included in the calculation of the weeks of severance to be paid by the Canada Revenue Agency. In section 8.2 of the Ontario Sales Tax Administration Reform (OSTAR) Project Human Resources Agreement (HRA) between the Canada Revenue Agency and The Crown Right in Ontario signed in March 3, 2010, it was agreed the years of service with the Ontario Ministry of Revenue for all employees transferring from the Ontario Ministry of Revenue to the federal government would be recognized for the calculation of severance pay as per Article 19.01 of the CRA/AFS Collective agreement in force at the date of signing. Section 2.1.5 of the OSTAR Project HRA signed in June 7, 2010 amended (Amendment) section 8.1 of the original agreement. Employees who accept a position in the CRA shall thereafter have their continuous service date with the Ontario Ministry of Revenue recognized by the CRA in accordance with the provisions of the PSCA-CRA collective agreement or in accordance with the Memorandum of Understanding between CRA and PIPSC signed on April 23, 2010.*
>
> *I am aggrieved with the refusal of the Canada Revenue Agency to recognize my Ontario years of service for the purposes of Article 19.01 of the CRA/AFS Collective Agreement.*
>
> . . .
>
> *Corrective action requested . . .*
>
> *My years of service (12.83 from April 1999 to February 2013) with the Ontario Ministry of Revenue be recognized by the Canada Revenue Agency for the purposes of my severance pay entitlement as determined under Article 19.01 of the CRA/AFS Collective Agreement. To be made whole in every way.*
>
> . . .
>
> [*Sic* throughout]

[7] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; *PSLREBA*) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace the former Public Service Labour Relations Board (PSLRB) as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to s. 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*) before November 1, 2014, is to be taken up and continued under and in conformity with the *PSLRA* as it is amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[8] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the PSLREB and the titles of the *PSLREBA*, the *PSLRA*, and the *Public Service Labour Relations Regulations* to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board"), the *Federal Public Sector Labour Relations and Employment Board Act*, the *Federal Public Sector Labour Relations Act* ("the *Act*"), and the *Federal Public Sector Labour Relations Regulations* ("the *Regulations*").

II. Summary of the evidence

[9] The parties filed an agreed statement of facts (ASOF) and documents on consent.

A. The grievors' employment background

[10] Ms. Myles started her career at the OMoR in May of 2000. Just before she started her CRA employment, she was employed at the OMoR's Mississauga, Ontario, office as a provincial sales tax (PST) auditor. She was a member of a bargaining unit for OMoR tax auditors that was represented by the Ontario Public Service Employees Union (OPSEU). The terms and conditions of her employment were covered in part by a collective agreement entered into between OPSEU and the Crown in Right of Ontario, as represented by the Management Board of Cabinet, for January 1, 2009, to December 31, 2012 ("the OPSEU collective agreement").

[11] Ms. Alcock started her career at the OMoR in April of 1999. Just before she started her CRA employment, she was a manager in a Kitchener OMoR office, working with PST. She was not a member of any bargaining unit and was not represented by a bargaining agent. The terms and conditions of her employment were covered in part by a "Management Compensation Directive" (MCD).

[12] On November 9, 2009, the federal government and the Government of Ontario executed an agreement with respect to the harmonization of the PST and the GST, known as the "Comprehensive Integrated Tax Co-ordination Agreement" (CITCA). The CITCA provided for the negotiation of a human resources agreement (HRA) to appoint OMoR employees to the CRA and to outline the terms by which it would be done.

[13] On March 3, 2010, the CRA and the OMoR executed the Ontario Sales Tax Administration Reform (known as OSTAR, although some documents refer to it as PSTAR) Project HRA ("HRA No. 1").

[14] HRA No. 1 set out in more specific terms the agreement for the transfer of certain employees from the OMoR to the CRA. The agreement contemplated two waves of employee transfers, the first ("Wave 1") on November 25, 2010, and the second ("Wave 2") on March 1, 2012. Wave 1 anticipated a move of 183 individuals out of positions at the OMoR to the CRA, while Wave 2 anticipated a move of 1070. The individuals who would be transferred were identified by position, rather than by name, and were listed in Appendix 1 of HRA No. 1. Everyone covered by HRA No. 1 was to be transferred into positions at the CRA that were part of a bargaining unit represented by the Public Service Alliance of Canada (PSAC).

[15] The HRA No. 1 states, in part, as follows:

> . . .
>
> ***1.0 Purpose of Agreement***
>
> . . .
>
> *1.2 The CITCA provides for the negotiation of a Human Resources Agreement (HRA) based on the following:*
>
> . . .
>
> *1.2.3 The CRA and the OMoR acknowledge that each must consider relevant legislation and policies and their collective agreement obligations with their respective bargaining agents. Within this context, the CRA and the OMoR agreed to negotiate the best possible arrangements, to be contained within a Human Resources Agreement, for the employment of Ontario employees with the CRA.*
>
> . . .
>
> ***8.0 Recognition of Prior Service***
>
> *8.1 Employees who accept a position in the CRA shall have their continuous service date with the OMoR recognized by the CRA for the purposes of service in accordance with the provisions of the CRA-PSAC collective agreement or the applicable CRA policy.*
>
> *8.2 This service recognition will apply to the following entitlements, as well as any future entitlements related to continuous service:*
>
> . . .
>
> *v. Severance Pay as it pertains to the qualifying period to receive such pay . . . .*

. . .

[Emphasis in the original]

[16] Neither grievor's position was part of HRA No. 1.

[17] Ms. Alcock identified an email dated March 8, 2010, which she received as an OMoR manager from Carol Layton, the OMoR's deputy minister, which had attached a memo of the same date ("the March 8 memo"). She identified the memo as an advance brief for managers who had staff likely to be impacted by the CITCA and HRA No. 1.

[18] Entered into evidence was a copy of a document dated March 9, 2010, and entitled "Human Resources Agreement Questions and Answers". Ms. Alcock identified that it was forwarded to her as a manager, together with the March 8 memo. Question-and-answer 20, states the following:

> **Seniority/Service Recognition**
>
> ***20. Will my years of service transfer to a position at the CRA if I accept an offer?***
>
> *Employees' OPS continuous service dates will be used for service-based entitlements under the CRA's collective agreement entitlements, including:*
>
> - *Vacation leave*
> - *Maternity leave without pay and special maternity allowance for totally disabled employees*
> - *Parental leave without pay and special parental allowance for totally disabled employees*
> - *Pre-retirement leave*
> - *Severance pay*
> - *Transition support measures in the workforce adjustment appendix of the PSAC collective agreement*
> - *Any other service-based entitlement negotiated in future PSAC collective agreements.*
>
> [Emphasis in the original]

[19] Entered into evidence was a copy of a document entitled "Information Sessions on the Human Resources Agreement". It set out the times and places at which information sessions would be held for potentially impacted OMoR employees on March 10 and 11, 2010. OPSEU representatives and OMoR managers gave the sessions.

[20] Ms. Alcock stated that she attended an information session on March 11, 2010, in Kitchener. When she was asked who had staged the session, she stated that she believed it was by representatives of both the OMoR and the CRA.

[21] As of the hearing, Stephen Huff was retired from the CRA. Like the grievors, he had worked for the OMoR, and on March 1, 2012, he transferred to the CRA, where he worked until his retirement in April of 2018. Like Ms. Alcock, he was a manager at the OMoR and was not represented by OPSEU. He attended the information session as did Ms. Alcock. When he was asked which organizations gave the presentation, he answered that he thought it was both of them; however, he also said that he could not recall the names of those who presented.

[22] Also entered into evidence was a copy of a PowerPoint presentation that Ms. Alcock stated was presented at the Kitchener information session; copies of it were handed out. Slide 15 on page 8 of the presentation states as follows:

> ***HRA Terms of Employment***
>
> ***Service Recognition***
>
> • *CRA recognizes OPS continuous service for purposes of:*
>
> • *Vacation leave*
>
> • *Maternity/parental leave*
>
> • *Severance pay*
>
> • *Workforce Adjustment measure (as applicable)*
>
> • *Other leaves as applicable*
>
> • *CRA will not recognize OPS seniority for staffing purposes – federal collective agreements and staffing policy do not contain seniority-based provisions*
>
> [Emphasis in the original]

[23] Ms. Myles testified that she recalled going to a type of town-hall meeting that she said was mandatory. But she could not specify its date, time, or place. She said that she recalled viewing a presentation that provided that transferees to the CRA would have their jobs protected for 24 months and that their OMoR start dates would be used to calculate their vacation, severance, maternity, and other leave.

[24] On April 23, 2010, the CRA and PIPSC executed a memorandum of understanding (MOU) with respect to the AFS group ("the PIPSC-CRA MOU").

[25] The portions of the PIPSC-CRA MOU relevant to these grievances are as follows:

> ***Preamble***
>
> *This agreement is based on the premise of the creation of a GST/HST organizational structure to better manage the responsibilities associated with the administration of GST/HST in the Canada Revenue Agency (CRA). As stated by the Commissioner in a message to all staff dated January 4, 2010, which advised employees of the CRA that:*
>
> > *"With the move to HST in Ontario and British Columbia, a number of core business programs will need to be supplemented and enhanced in order to respond to the increased demands placed on the CRA as a result of harmonization."*
>
> *The Commissioner also reassured employees in this message that:*
>
> > *"There will be no job losses at the CRA as a result of this initiative, and there will be new opportunities for some employees over the long term."*
>
> . . .
>
> *The Parties agree to the following:*
>
> 1. *CRA commits to joint collaboration and consultation with the PIPSC-AFS on the following issues:*
>
> a. *To determine a definition of what constitutes auditing work. This work is to be completed no later than May 31, 2010.*
>
> b. *The complexity formula to be used in determining the levels of work for the GST/HST business line. This work is to be completed no later than May 31, 2010.*
>
> c. *The structure of the new GST/HST business line.*
>
> . . .
>
> 4. *PIPSC-AFS agrees to recognize the service of provincial employees accepting employment at CRA as a result of offers made pursuant to any Human Resources Agreement.*
>
> . . .
>
> 6. *All provincial employees accepting positions at CRA, including MGs, who meet the educational requirements for AU positions, will be offered positions to the PIPSC-AFS Group, to the extent that these appointments meet the business needs of the CRA as defined by the new GST/HST business line, on the condition that the provinces agree to this match.*
>
> . . .
>
> 11. *The CRA commits to creating a distinct business line for GST/HST work. This business line will have distinct experience and complexity factors.*
>
> . . .

> *13. CRA and PIPSC-AFS will jointly organize town hall meetings to inform the PIPSC-AFS group of this agreement, and to make every reasonable effort to obtain their support regarding the new business line.*
>
> . . .
>
> *19. The parties agree that should any disputes arise concerning the application of this agreement they will be brought immediately to the Assistant Commissioner of Human Resources at the CRA. In the event of failure to reach an acceptable resolution to disputes either party may refer the matter to the PSLRB for mediation.*
>
> . . .
>
> [Emphasis in the original]

[26] At the time of the hearing, Ann Warren (who formerly was Ann Ross and was identified as such in the documents entered as exhibits at the hearing) was retired from the CRA. Her last position with the CRA before retirement was as the director of workforce adjustment and strategic analysis. She was involved on the CRA side of the negotiating table with respect to the transfer of the former OMoR employees to the CRA.

[27] With respect to HRA No. 1, Ms. Warren stated that the OMoR employees who transferred to the CRA moved either to a portion of the CRA that fell within the bargaining unit represented by a PSAC component bargaining agent or to a category of unrepresented employees.

[28] Ms. Warren testified that the bargaining agents (the PSAC and PIPSC) were not involved in negotiating the HRAs with the OMoR. When she was asked why, she stated it had not been up to them to determine the transfer of employees from Ontario to the CRA. She stated that the HRAs were the means by which the province and the CRA moved the employees.

[29] Ms. Warren testified that the PIPSC-CRA MOU addressed a number of PIPSC's concerns with respect to the change of combining the PST and GST into the HST, including with job security.

[30] As of the hearing, David Gray was retired from the CRA. He had been an AU-03. In January of 2008, he became PIPSC's national vice-president, and he held that position until December 31, 2012. He testified that he participated in the negotiation

of the PIPSC-CRA MOU. He stated that what led to the negotiation of the MOU was a concern that the new HST business line that would come online would result in an increase in work for employees in the PSAC-represented bargaining unit, which in turn could have led to a reduction in the work of the employees in the AFS bargaining unit. That could have led to the layoff of employees holding positions in the AFS bargaining unit who were PIPSC members. Mr. Gray said that at that time, about 2500 AUs (PIPSC members) worked in the GST area.

[31] Mr. Gray testified that after the PIPSC-CRA MOU was signed, CRA and PIPSC representatives agreed to give presentations to the AFS members in the TSOs. Mr. Gray stated that Ms. Warren was one of the CRA representatives. In cross-examination, he confirmed that the CRA and PIPSC representatives did not give any presentations to OMoR employees. When he was asked why, he said, "We don't represent the Province of Ontario employees."

[32] Ms. Warren stated that the PIPSC-CRA MOU led to the amended OSTAR Project HRA ("the amended HRA") dated June 7, 2010. The portions of it that are relevant to these grievances state as follows:

> . . .
>
> ***2.1.5 Section 8.1 of the original agreement is replaced by the following:***
>
> 8.1 Employees who accept a position in the CRA shall thereafter have their continuous service date with the OMoR recognized by the CRA in accordance with the provisions of the PSAC-CRA collective agreement or in accordance with the Memorandum of Understanding between CRA and PIPSC signed on April 23, 2010. The continuous service date with the OMoR will continue to be recognized should the employee accept a position in the other bargaining unit, or an unrepresented/excluded position following their initial appointment to the CRA.
>
> . . .
>
> [Emphasis in the original]

[33] The amended HRA also amended Appendix 4 of HRA No. 1 by adding a schedule that listed PIPSC bargaining unit positions for which offers of employment would be made to those OMoR employees who met the prerequisite qualifications required for the positions, which were in the AFS bargaining unit.

[34] Mr. Huff stated that he recalled seeing a copy of the amended HRA in mid-June of 2010 when it came with a letter from the OMoR's deputy minister.

[35] Entered into evidence as part of the ASOF was a memo dated June 15, 2010, from Ms. Layton with respect to the amended HRA ("the Layton memo"). Mr. Huff identified it as the document attached to the amended HRA that he saw. The portions of it relevant to these grievances are as follows:

> . . .
>
> *Under the amendment, impacted staff in the classifications outlined in Schedule 2 of Appendix 4 will be offered positions in the Professional Institute of the Public Service of Canada (PIPSC) bargaining group. Originally, all impacted staff were to be offered positions in the Public Service Alliance of Canada (PSAC) bargaining group.*
>
> . . .
>
> *Those in the classifications who will receive an offer in the PIPSC bargaining unit must meet the educational qualifications for the PIPSC positions. Where an employee does not have those qualifications, the employee will receive their job offer to the classification in the Public Service Alliance of Canada originally identified in Schedule 1 of Appendix 4.*
>
> . . .
>
> *Some key highlights of the amendment include:*
>
> - *Ontario service will be recognized for employees placed into the PIPSC bargaining unit. Additionally, this service recognition continues to apply where staff move between PSAC and PIPSC bargaining unit positions.*
> - *Wave One job offers and acceptance deadlines have been deferred. Offers will now be delivered to staff on June 25, with responses due by July 26. For all staff who accept a job offer, start dates will remain the same.*
> - *Deadlines for Wave Two staff will remain the same.*
>
> . . .
>
> *More details, including a copy of the amendment, FAQs and information on the PIPSC bargaining group are available on the Sales Tax Reform intranet page.*
>
> . . .
>
> [Emphasis in the original]

[36] Attached to the Layton memo was a questions-and-answers document dated that same day. The questions and answers included:

> ***Q1. What has changed?***
>
> *A1. The Canada Revenue Agency (CRA) put forth a proposal to the Ministry of Revenue (MOR) to offer impacted staff in the classifications outlined in Schedule 2 of Appendix 4 positions in the Professional Institute of the Public Service of Canada (PIPSC) bargaining group. . . .*
>
> . . .
>
> ***Q4. Who will be offered positions in the Professional Institute of the Public Service of Canada (PIPSC) bargaining unit?***
>
> *A4. The table below (Schedule 2 of Appendix 4 of the amending document) identifies the classifications that will be offered positions in the Professional Institute of the Public Service of Canada (PIPSC) bargaining unit.*
>
> . . .
>
> ***Q10. Will my years of service transfer if I accept a CRA job offer for a Professional Institute of the Public Service of Canada (PIPSC) position?***
>
> *A10. Yes, Ontario years of service will be recognized if you accept a CRA job offer for a position in the PIPSC bargaining unit. In addition, Ontario service is now portable for staff who move between Canada Revenue Agency's (CRA) two bargaining units after transferring to CRA.*
>
> . . .
>
> ***Q14. Does this agreement impact severance provisions?***
>
> *A14. No. If you move to the CRA you are entitled to legislated severance (termination) pay in accordance with your respective collective agreement, legislation or policies.*
>
> [Emphasis in the original]

[37] Also attached to the Layton memo was a copy of an email sent on Friday, April 30, 2010. The email stated as follows:

> ***UPDATE - Canada Revenue Agency reaches agreement with PIPSC/AFS***
>
> *The Canada Revenue Agency (CRA) and the Professional Institute of the Public Service of Canada, Audit, Financial and Scientific Group, (PIPSC/AFS) have reached an agreement that puts the CRA in a position to offer certain Ministry of Revenue staff (already identified as impacted by the wind-down of Retail Sales Tax), positions in the PIPSC/AFS group rather than the Public Service Alliance of Canada (PSAC) bargaining group as originally outlined in the Human Resources Agreement.*

> *The agreement with the CRA and PIPSC is a result of their own internal negotiations between employer and bargaining agent. The Ministry of Revenue is now considering this new matching proposal and what is in the best interests of MoR employees impacted by the wind-down of Retail Sales Tax. OPSEU and AMAPCEO will be consulted on the CRA's proposal. The Ministry of Revenue will advise the CRA as to our position shortly.*
>
> . . .
>
> [Emphasis in the original]

[38] Set out at paragraph 12 of the ASOF was a reference to a further questions-and-answers document that was produced by the OMoR on December 16, 2010, and was made available to OMoR employees. The portions of it relevant to these grievances state as follows:

> . . .
>
> *The following is an excerpt of questions and answers from the Sales Tax Reform website which have been updated and may be of interest for those employees who will be receiving a job offer from the Canada Revenue Agency in December 2010.*
>
> . . .
>
> ***Service Recognition***
>
> ***Will my years of service transfer to a position at the CRA if I accept an offer?***
>
> *Employees' OPS continuous service dates will be used for service-based entitlements under the CRA's collective agreement, including:*
>
> - *Vacation leave*
> - *Maternity leave without pay and special maternity allowance for totally disabled employees*
> - *Parental leave without pay and special parental allowance for totally disabled employees*
> - *Pre-retirement leave*
> - *Severance pay*
> - *Transition support measures in the workforce adjustment appendix of the PSAC collective agreement*
> - *Any other service-based entitlement negotiated in future PSAC collective agreements.*
>
> ***Will my years of service transfer if I accept a CRA job offer for a Professional Institute of the Public Service of Canada (PIPSC) position?***

> *Yes, Ontario years of service will be recognized if you accept a CRA job offer for a position in the PIPSC bargaining unit. In addition, Ontario service is now portable for staff who move between Canada Revenue Agency's (CRA) two bargaining units after transferring to CRA.*
>
> ***How do I know what my continuous service date is?***
>
> *You can review your continuous service date in WIN under the Employee Self Service, Personal Information, Job Information section. Click the 'Employment Data' link at the bottom of the Job Record Information page.*
>
> . . .
>
> ***Severance***
>
> ***Am I entitled to legislated severance pay if I transfer to the CRA?***
>
> *If you move to the CRA, you are entitled to legislated severance (termination) pay in accordance with your respective collective agreement, legislation or policies. Your Ontario service will be paid out upon your transfer to CRA. You will start to accrue new service for future severance payout at CRA.*
>
> . . .
>
> [Emphasis in the original]

B. Collective Agreements

[39] Entered into evidence on consent were copies of the following three collective agreements entered into between the CRA and PIPSC with respect to the AFS bargaining unit (collectively, "the CRA and PIPSC collective agreements"):

- signed on August 22, 2005, and expired on December 21, 2007 ("the 2005 collective agreement");
- signed on November 6, 2009, and expired on December 21, 2011 ("the 2009 collective agreement"); and
- signed on July 10, 2012, and expired on December 21, 2014 ("the 2012 collective agreement").

[40] Article 2 of the CRA and PIPSC collective agreements is entitled "Interpretation and Definitions". The following definitions found in the 2009 and 2012 collective agreements are relevant to the grievances:

> *****ARTICLE 2***
>
> ***INTERPRETATION AND DEFINITIONS***
>
> ***2.01*** *For the purpose of this Agreement:*
>
> . . .

> *(e)* ***"continuous employment"*** *has the same meaning as specified in the* Employer's Terms and Conditions of Employment Policy *on the date of signing of this agreement . . . .*
>
> . . .
>
> ***2.02*** *Except as otherwise provided in this Agreement, expressions used in this Agreement,*
>
> *(a)* *if defined in the* Public Service Labour Relations Act, *have the same meaning as given to them in the* Public Service Labour Relations Act,
>
> *and*
>
> *(b)* *if defined in the* Interpretation Act, *but not defined in the* Public Service Labour Relations Act , *have the same meaning as given to them in the* Interpretation Act.
>
> . . .

[41] Article 19 of the CRA and PIPSC collective agreements deals with severance pay and so is entitled "Severance Pay". Articles 19 in the 2005 and 2009 collective agreements are almost identical, (the minute differences between them not having any bearing on the issues) and the relevant portions of them state as follows:

> ***ARTICLE 19***
>
> ***SEVERANCE PAY***
>
> . . .
>
> ***19.01*** *Under the following circumstances and subject to clause 19.02, an employee shall receive severance benefits calculated on the basis of his weekly rate of pay:*
>
> *(a)* ***Lay-Off***
>
> *(i) On the first lay-off, two (2) weeks' pay for the first complete year of continuous employment and one (1) week's pay for each additional complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by three hundred and sixty-five (365).*
>
> *(ii) On second or subsequent lay-off, one (1) week's pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by three hundred and sixty-five (365), less any period in respect of which he was granted severance pay under clause 19.01(a)(i).*
>
> *(b)* ***Resignation***

On resignation, subject to clause 19.01(d) and with ten (10) or more years of continuous employment, one-half (1/2) week's pay for each complete year of continuous employment up to a maximum of twenty-six (26) years with a maximum benefit of thirteen (13) weeks' pay.

(c) ***Rejection on Probation***

On rejection on probation, when an employee has completed more than one (1) year of continuous employment and ceases to be employed by reason of rejection during a probationary period, one (1) week's pay for each complete year of continuous employment with a maximum benefit of twenty-seven (27) weeks' pay.

(d) ***Retirement***

On retirement, when an employee is entitled to an immediate annuity or to an immediate annual allowance under the Public Service Superannuation Act, *a severance payment in respect of the employee's complete period of continuous employment, comprised of one (1) week's pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by 365, to a maximum of thirty (30) weeks' pay.*

(e) ***Death***

If an employee dies, there shall be paid to the employee's estate a severance payment in respect of the employee's complete period of continuous employment, comprised of one (1) week's pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) week's pay multiplied by the number of days of continuous employment divided by 365, to a maximum of thirty (30) weeks' pay, regardless of any other benefit payable.

(f) ***Termination for Cause for Reasons of Incapacity or Incompetence***

(i) When an employee has completed more than one (1) year of continuous employment and ceases to be employed by reason of termination for cause for reasons of incapacity, pursuant to section 51(1)(g) of the Canada Customs and Revenue Agency Act, *one (1) week's pay for each complete year of continuous employment to a maximum of twenty-eight (28) weeks.*

(ii) When an employee has completed more than ten (10) years of continuous employment and ceases to be employed by reason of termination for cause for reasons of incompetence, pursuant to the provisions of section 51(1)(g) of the Canada Customs and Revenue Agency Act, *one (1) week's pay for each complete year of*

> *continuous employment with a maximum benefit of twenty-eight (28) weeks.*
>
> ***19.02*** *Severance benefits payable to an employee under this Article shall be reduced by any period of continuous employment in respect of which the employee was already granted any type of termination benefit by the Public Service, a Federal Crown Corporation, the Canadian Forces or the Royal Canadian Mounted Police. Under no circumstances shall the maximum severance pay provided under clause 19.01 be pyramided.*
>
> . . .
>
> [Emphasis in the original]

[42] Article 34 of all the CRA and PIPSC collective agreements is entitled "Grievance Procedure". The 2009 and 2012 collective agreements state as follows:

> . . .
>
> ***34.02*** *In determining the time within which any action is to be taken as prescribed in this procedure, Saturdays, Sundays and designated holidays shall be excluded.*
>
> ***34.03*** *The time limits stipulated in this procedure may be extended by mutual agreement between the Employer and the employee and, where appropriate, the Institute Representative.*
>
> . . .
>
> ***34.08*** *There shall be no more than a maximum of four (4) levels in the grievance procedure. These levels shall be as follows:*
>
> *(a) Level 1 – first (1st) level of management;*
>
> *(b) Levels 2 and 3 – intermediate level(s), where such level or levels are established in the Agency;*
>
> *(c) Final level – the Commissioner or his authorized representative.*
>
> *Whenever there are four (4) levels in the grievance procedure, the grievor may elect to waive either Level 2 or 3.*
>
> . . .
>
> ***34.11*** *An employee may present a grievance to the first (1st) level of the procedure in the manner prescribed in clause 34.06, not later than the twenty-fifth (25th) day after the date on which he is notified orally or in writing or on which he first becomes aware of the action or circumstances giving rise to the grievance.*
>
> ***34.12*** *An employee may present a grievance at each succeeding level in the grievance procedure beyond the first (1st) level either:*

> *(a) where the decision or offer for settlement is not satisfactory to the employee, within ten (10) days after that decision or offer for settlement has been conveyed in writing to the employee by the Employer,*
>
> *or*
>
> *(b) where the Employer has not conveyed a decision to the employee within the time prescribed in clause 34.13, within twenty-five (25) days after he presented the grievance at the previous level.*
>
> ***34.13*** *The Employer shall normally reply to an employee's grievance at any level of the grievance procedure, except the final level, within twenty (20) days after the grievance is presented, and within thirty (30) days when the grievance is presented at the final level.*
>
> . . .

[43] On December 17, 2010, Ms. Myles received an offer from the CRA for a full-time permanent position as an excise tax auditor classified at the AU-03 group and level. It was in the AFS bargaining unit, which was represented by PIPSC and governed in part by the 2009 collective agreement. If she accepted the appointment, it was to be effective March 1, 2012. The portion of the letter that is relevant to these grievances states as follows:

> . . .
>
> *As a represented employee, the Terms and Conditions of Employment are determined in large part by the provisions of the applicable collective agreement. . . .*
>
> . . .
>
> *Please indicate your acceptance or refusal of this offer by signing below and returning this original letter to the below address no later than January 17, 2011.*
>
> . . .
>
> *Attached is the Appendix detailing additional terms and conditions of employment that apply to this job offer. Should you accept this offer you must also read, sign, and return the original Appendix along with your letter of offer. In accepting this job offer, you are acknowledging that you have read and understood the applicable Human Resources Agreement, which includes additional terms and conditions of employment, that is available to view on your internal intranet web site [sic].*
>
> . . .

[44] Ms. Myles accepted the offer on January 10, 2011, although the date she wrote on her acceptance was 2010.

[45] On December 17, 2010, Ms. Alcock received an offer from the CRA for a full-time, permanent team-leader position classified at the MG-05 group and level in the AFS bargaining unit represented by PIPSC and governed in part by the 2009 collective agreement. The appointment, if accepted, was to be effective March 1, 2012. The portion of the letter relevant to these grievances was identical to that referred to earlier with respect to the offer sent to Ms. Myles and bore the same date. Ms. Alcock accepted the offer on January 3, 2011.

[46] In cross-examination, she confirmed that when she received her employment offer from the CRA and accepted it, she had not reviewed either the 2009 collective agreement or the relevant PSAC collective agreement.

[47] Both grievors confirmed that when they left the employ of the OMoR, they received severance pay as negotiated in either the OPSEU collective agreement or the MCD.

[48] On July 10, 2012, PIPSC and the CRA signed the 2012 collective agreement. As a result of the negotiations, effective July 10, 2012, the accumulation of severance benefits for resignation or retirement ceased. The changes to the 2009 collective agreement found in the 2012 collective agreement that are relevant to these grievances are as follows:

> *****ARTICLE 19***
>
> ***SEVERANCE PAY***
>
> . . .
>
> ***Effective on the date of signing this Collective Agreement, paragraphs 19.01(b) and (d) are no longer in effect in this Collective Agreement; as a result, the accrual of continuous employment for severance pay on resignation and retirement will cease.***
>
> . . .
>
> ***19.02*** *Severance benefits payable to an employee under this Article shall be reduced by any period of continuous employment in respect of which the employee was already granted any type of termination benefit by the public service, a Federal Crown Corporation, the Canadian Forces or the Royal Canadian Mounted*

> *Police. Under no circumstances shall the maximum severance pay provided under clauses 19.01 and 19.05 be pyramided.*
>
> ***For greater certainty, payments made pursuant to 19.05 to 19.08 or similar provisions in other collective agreements shall be considered as a termination benefit for the administration of this clause.***
>
> . . .
>
> ***19.05 Severance Termination***
>
> *(a) Subject to 19.02 above, indeterminate employees on the date of signing of this Collective Agreement, shall be entitled to a severance payment equal to one (1) weeks' pay for each complete year of continuous employment and, in the case of a partial year of continuous employment, one (1) weeks' pay multiplied by the number of days of continuous employment divided by three hundred and sixty-five (365), to a maximum of thirty (30) weeks.*
>
> . . .
>
> [Emphasis in the original]

[49] The amendments set out in clauses 19.02 and 19.05 of the 2012 collective agreement reflected a federal-government-wide initiative by which employees in the core public administration as well as the CRA negotiated away severance-pay provisions in collective agreements. What it meant for employees was that they could no longer accrue severance benefits on a going-forward basis after a certain date. With respect to the AFS group, the date was July 10, 2012.

[50] Clause 15.02 of all three CRA and PIPSC collective agreements, except for 15.02(d) added in 2009, contained the same language that dealt with the accumulation of vacation leave credits, as follows:

> ***15.02 Accumulation of Vacation Leave Credits***
>
> ****
>
> *An employee shall earn vacation leave credits for each calendar month during which he receives pay on at least ten (10) days or seventy-five (75) hours at the following rate:*
>
> *(a) nine decimal three seven five (9.375) hours until the month in which the anniversary of the employee's seventh (7th) year of service occurs;*
>
> ***For employees classified as PS only:***
>
> *(i) nine decimal three seven five (9.375) hours until the month in which the anniversary of the employee's first (1st) year of service occurs;*

> *(ii) twelve decimal five (12.5) hours commencing with the month in which the employee's first (1st) anniversary of service occurs;*
>
> ***For employees classified as SE only:***
>
> *(iii) twelve decimal five (12.5) hours until the month in which the employee's seventeenth (17th) anniversary of service occurs;*
>
> *(b) ten decimal six two five (10.625) hours commencing with the month in which the employee's seventh (7th) anniversary of service occurs;*
>
> ***For employees classified as LS only:***
>
> *(i) twelve decimal five (12.5) hours commencing with the month in which the employee's seventh (7th) anniversary of service occurs;*
>
> *(c) twelve decimal five (12.5) hours commencing with the month in which the employee's eighth (8th) anniversary of service occurs;*
>
> *(d) thirteen decimal seven five (13.75) hours commencing with the month in which the employee's sixteenth (16th) anniversary of service occurs;*
>
> *(e) fourteen decimal four (14.4) hours commencing with the month in which the employee's seventeenth (17th) anniversary of service occurs;*
>
> *(f) fifteen decimal six seven five (15.675) hours commencing with the month in which the employee's eighteenth (18th) anniversary of service occurs;*
>
> *(g) seventeen decimal five (17.5) hours commencing with the month in which the employee's twenty-seventh (27th) anniversary of service occurs;*
>
> *(h) eighteen decimal seven five (18.75) hours commencing with the month in which the employee's twenty-eighth (28th) anniversary of service occurs.*
>
> [Emphasis in the original]

[51] Neither the word "service" nor the phrase "anniversary of service" is defined in any of the CRA and PIPSC collective agreements.

C. CRA Terms and Conditions of Employment Policy

[52] In addition to the collective agreements that the CRA enters into with bargaining agents for certain employees, specifically with PIPSC with respect to the AFS group, the CRA governs its employees pursuant to its *Terms and Conditions of Employment Policy*. Its portions that are relevant to the matters in these grievances are as follows:

1. Effective date

The Canada Revenue Agency (CRA) Terms and Conditions of Employment Policy was approved by the Board of Management on September 21, 2009 (Board Resolution #2009/10-12), to be applied effective April 1, 2009.

2. Application

This policy applies to employees throughout the CRA — regardless of the date of their appointment at the CRA — with the exception of those in the Executive Cadre (EC).

The terms and conditions of employment for employees — including terms, part-time workers and excluded employees — are as set out in the relevant collective agreement or in the Policy on the Terms and Conditions of Employment for the Human Resources/Ressources humaines (HR/RH) Occupational group and as supplement in Appendix A, and other relevant policies.

. . .

Compliance with CRA corporate polices is mandatory. To assist with the interpretation and implementation of the Terms and Conditions of Employment Policy, a number of key terms are defined in the ***Definitions*** *section.*

. . .

Appendix A – Terms and Conditions of Employment

Continuous employment

- *1. For the purpose of these terms and conditions of employment the following periods count as* **continuous employment***:*
  - *a. In respect of a person appointed to the Canada Revenue Agency as a permanent employee:*
    - *i. immediately prior Federal government service or Public Service on an indeterminate basis, or on a specified term basis for three months or more;*
    - *ii. a combination of prior Federal government service and Public Service on an indeterminate basis, or on a specified term basis for three months or more;*
    - *iii. immediately prior service in the Canadian Forces or the Royal Canadian Mounted Police, provided that the person was honourably released and has made or makes a valid election to contribute for that service under the* Public Service Superannuation Act *(the effective date will be the date the election is completed).*

      provided that these periods of service are not separated by more than three months;
    - *iv. service other than as a person appointed for a term less than three months or a casual employee in the office of a minister or the leader of the opposition in the House of Commons, and Federal government service immediately*

> *prior to such service provided that such person ceased to be employed in such office because the person holding such position ceased to hold it; and*
>
> *v. immediately prior Federal government service as a person appointed for a term less than three months or a casual employee, provided that such service is not separated by more than five working days.*
>
> . . .
>
> - *2. For the purpose of Section 1, any period of Federal government service or Public Service prior to a termination by reason of dismissal, discharge, release or declaration of abandonment of position does not constitute continuous employment.*
>
> . . .
>
> ***Remuneration – General***
>
> . . .
>
> ***Federal government service*** (service du gouvernement fédéral) — *means employment in the departments and organizations listed in Schedule I, IV and V of the* Financial Administration Act.
>
> . . .
>
> ***Public Service*** (fonction publique) — *has the meaning given to that expression in the Public Service Superannuation Act.*
>
> . . .
>
> [Emphasis in the original]

[53] "Service" is not defined in that policy.

D. The severance benefit

[54] The CRA adopted procedures for the elimination of the accrual of severance benefits. As a result, on October 5, 2012, it sent a personalized estimate of their accumulated severance to all employees covered by the 2012 collective agreement. The personalized estimate included the number of weeks of severance pay and the amount of the payment in lieu of severance.

[55] On October 4, 2012, both grievors were provided with a personalized estimate of the accumulated severance, which included the number of days of severance pay and the amount of pay in lieu of service. The estimate provided to Ms. Myles disclosed 132 days, which amounted to a value of $1702.41. The estimate provided to Ms. Alcock also disclosed 132 days, which amounted to a value of $1884.91.

[56] The personalized estimate of the accumulated severance was sent to the grievors on a boilerplate form entitled, "Payment In Lieu of Severance Options - Estimate Only" ("the Payment-in-Lieu form"). The information set out in the form contained a box entitled "Payment Options and Employee Signature". It had the following three options listed and requested that the employee choose one of them by checking the square box next to the option and then signing, dating, and returning it to the appropriate authority within the CRA. The three options were as follows:

> . . .
>
> *a) Immediately opt for a single payment in lieu of severance at the rate of pay of my substantive position as of July 10, 2012.*
>
> *b) A single payment at the time of my termination of employment from the Canada Revenue Agency based on the rate of pay of my substantive position at the date of termination of employment from the Agency. Please note that you may be able to carry over your accumulated severance should you terminate your employment with the CRA for employment within the public service provided the new employer accepts this liability.*
>
> *c) A combination of the two options noted above. Cash out ___ complete weeks of my Payment in Lieu of Severance Pay with the balance to be paid on termination of employment.*

[57] Also, under Payment Options and Employee Signature were two options to be chosen by the employee for either a tax waiver or a letter of intent, with the following statement:

> . . .
>
> *Note: The waiver letter or the letter of intent must be attached to your option form. If there is no waiver letter or letter of intent, your payment will be processed with tax deducted at source. All payments will be processed and paid in the 2013 taxation year.*
>
> . . .

[58] The Payment-in Lieu-form had a second page, which contained the following relevant information:

> ***ANNEX A***
>
> *This annex serves to provide you with important information as well as to help you understand your options and responsibilities concerning the Payment in Lieu of Severance Pay.*

> ***Cash-Out - Payment in Lieu of Severance Pay***
>
> *The years of service for severance pay entitlement will be calculated up to and including the relevant voluntary severance termination date of July 10, 2012.*
>
> ***Options for Voluntary Cash-Out Payment in Lieu of Severance Pay***
>
> *Your option regarding the Payment in Lieu of Severance Pay must be made by January 10, 2013. If the deadline is not met, it will be deemed that you have chosen the Payment in Lieu of Severance Pay entitlement at termination of employment.*
>
> *Payment in Lieu of Severance Pay option must be returned to the Compensation Client Service Centre or to Executive Compensation, for employees in the MD MDG Group (levels 1-6) no later than January 10, 2013.*
>
> . . .
>
> [Emphasis in the original]

[59] Ms. Alcock checked off option "a" in the Payment Options and Employee Signature box of the Payment-in-Lieu form, requesting an immediate single payment. She signed in the spot designated for her signature and dated the form October 22, 2012. In her testimony before me, she confirmed that she signed and dated the form and that she returned it. Entered into evidence was a fax cover sheet dated October 23, 2012, which was sent to one of the designated places to return the form. She had signed it. She confirmed that she received payment of the severance, in accordance with the form.

[60] In examination-in-chief, Ms. Alcock was asked about the significance she gave to the title of the Payment-in-Lieu form, notably the use of the word "Estimate" at the top. She replied, "I didn't give it much thought, to tell you the truth." When she was asked why, she said that it was such a small amount, it did not require any tax planning, and she had forgotten what she had been told.

[61] When she was asked what was happening in her life at that time, she stated that she had just transferred to a new job, which she was struggling with, and that in September, her mother had been diagnosed with Stage 4 cancer. Ms. Alcock also stated that only when she was notified by a bargaining agent representative and alerted to a potential issue with her severance did she retrieve all her old information from three years before, read it, and agree that the severance was wrong. When she was asked

how she reached that conclusion, she stated that all the information she read stated that her start date from the province would be recognized for severance.

[62] Ms. Myles did not check off any box in the Payment Options and Employee Signature box of the Payment-in-Lieu form. Instead, on December 24, 2012, she faxed a letter dated December 20, 2012, to one of the designated compensation centres listed on the form, stating that she disagreed with the number of days (132) as the service count for the calculation of her severance pay. Her letter stated as follows:

> . . .
>
> *I wish to bring it to your attention that I do not agree with the service count of 132 days for severance pay. In my view, the service period that qualifies for severance should include <u>past provincial service</u> (Re. paragraph 8.1 and 8.2 of the Human Resources Agreement recognizes the past provincial services for severance pay).*
>
> *The severance paid out by the Province of Ontario at the divestment date, was done in accordance with the collective agreements between OPSEU and the Province of Ontario. In my view, the Provincial payments should not have any bearing on the severance periods that qualifies under HR agreement (between Province of Ontario and CRA).*
>
> *I hope you will reconsider your position and re-instate the past provincial service periods for the severance computation.*
>
> . . .
>
> [*Sic* throughout]
>
> [Emphasis in the original]

[63] On January 23, 2013, Ms. Myles received an email response from the Compensation Client Service Centre in Winnipeg. A portion of it states as follows:

> . . .
>
> *Effective July 10, 2012, a collective agreement was signed between the Professional Institute of the Public Service of Canada (PIPSC) and the Canada Revenue Agency that terminated the accrual of continuous employment for severance pay on resignation and retirement. The PIPSC collective agreement provided the option to cash out accrued severance up to and including July 10, 2012, referred to as a payment in lieu of severance, using an individual's continuous employment date to calculate the weeks and partial weeks they would be entitled to.*
>
> *Prior to this new provision, at the termination of employment, there was a qualifier to determine whether an individual would be entitled to a severance payment based on their continuous*

employment date. For example, the language for severance due to a resignation, Article 19.01(b), stated:

> On resignation, subject to paragraph 19.01(d) and with ten (10) or more years of continuous employment, one-half (1/2) week's pay for each complete year of continuous employment up to a maximum of twenty-six (26) years with a maximum of twenty-six (26) years with a maximum benefit of thirteen (13) weeks' pay

According to the CTAO/CTAR Human Resources Agreement between the Canada Revenue Agency and the Ontario Ministry of Revenue, Article 8.2 dealing with recognition of prior service and how it is to be applied to the PIPSC collective agreement, it states:

> This service recognition will apply to the following AFS collective agreement entitlements, as well as future AFS collective agreement provisions, which may be negotiated:
>
> . . .
>
> vi. Severance Pay as it pertains to the qualifying period to receive such pay
>
> . . .

Article 8.2 (vi), limits prior service with the province to count only with respect to the qualifying period for severance. In order for an individual to have received a severance payment under Article 19.01(b), for example, the individual would have needed to meet the ten or more years of continuous employment. Compensation would therefore take into consideration the years spent with the province in order to determine eligibility for the payment but that service would be excluded for determining the number of weeks or partial weeks to be paid as the language used in 8.2 is clearly limits prior service to the "qualifying period to receive such pay".

. . .

[*Sic* throughout]

[64] In cross-examination, Ms. Myles stated that her understanding with respect to the start date as to when her severance would be calculated from was that a promise was made in March of 2010 at the town-hall meeting. When she was asked who made the promise, she stated that it was management. When she was asked to clarify her answer, she stated that she believed it was both the CRA and the OMoR.

[65] Ms. Myles acknowledged signing her employment offer from the CRA dated December 17, 2010. In cross-examination, she was brought to the second page of the offer, which referenced the relevant collective agreement, and was asked if she read the agreement at that time. She said that she did not read it then. She stated that she recalled knowing about it but not reviewing it. She stated that it was a large document.

She also stated that town-hall meetings were held after she accepted the offer, although she could provide no details of them.

[66] There is no reference in the ASOF or any other document that points to any town-hall meeting or briefing after the grievors received their CRA employment offers.

[67] The reference to adjudication of Ms. Alcock's grievance states that it was presented at the final level of the grievance procedure on January 9, 2014, and that the employer rendered its decision at that level on April 25, 2014. The grievance was referred to the Board's predecessor, the PSLRB, for adjudication under s. 209(1)(a) of the *Act* on June 3, 2014. The PSLRB forwarded a copy of the reference to adjudication to the CRA on June 16, 2014. On July 16, 2014, the CRA objected to the timeliness of the grievance, stating that the grievor Alcock was aware on October 5, 2012, of the date the employer used for the starting point of the calculation of her severance pay. As such, her grievance, presented on March 13, 2013, was untimely.

[68] The reference to adjudication of Ms. Myles' grievance states that it was presented at the final level of the grievance procedure on January 8, 2014, and that the employer rendered its decision at that level on April 28, 2014. The grievance was referred to the PSLRB for adjudication under s. 209(1)(a) of the *Act* on June 3, 2014. The PSLRB forwarded a copy of the reference to adjudication to the CRA on June 16, 2014. On July 16, 2014, the CRA objected to the timeliness of the grievance, stating that the grievor Myles was aware on October 5, 2012, of the date the employer used for the starting point of the calculation of her severance pay. As such, her grievance, presented on February 22, 2013, was untimely.

[69] The final-level grievance replies for both grievances are signed and are dated in handwriting as March 24, 2014. In addressing the timeliness of the grievances, both final-level replies state that they were untimely for the same reasons that were set out in the July 16, 2014, letter to the PSLRB objecting to jurisdiction on the basis of timeliness.

E. Letters of understanding dated May 23, 2014

[70] In addition to these grievances, the employer and PIPSC have identified 255 other AFS bargaining unit members with similar grievances. They entered into two almost identical letters of understanding (LOU) dated May 23, 2014, with respect to the

other grievances. One LOU refers to the grievance of Ms. Myles ("the Myles LOU"), while the other refers to the grievance of Ms. Alcock ("the Alcock LOU"). The relevant portions of each LOU state as follows:

> [The grievor Myles' LOU:]
>
> *WHEREAS for the purposes of this Letter of Understanding, the "grievors" are:* ***see APPENDIX "A";***
>
> *AND WHEREAS the grievors identified above are all employees of the Canada Revenue Agency ("Agency") who filed individual grievances regarding the calculation of severance payment;*
>
> *AND WHEREAS the grievors' grievances were denied by the Agency;*
>
> *The PARTIES AGREE that grievance number 2013-1262-70107710 (Jennifer Myles) will be referred to the Public Service Labour Relations Board ("PSLRB") for adjudication;*
>
> *The PARTIES AGREE that the decision rendered by the PSLRB with respect to the grievance noted above will be binding on the Agency and all grievors identified in Appendix "A";*
>
> *THE PARTIES FURTHER AGREE that this Letter of Understanding in no way precludes the Agency's ability to raise jurisdictional issues before the PSLRB;*
>
> *THE PARTIES FURTHER AGREE that the Agency will consent, if required, to an extension of time to refer the single grievance referred to above to the PSLRB, and that the grievance will not be referred later than June 23, 2014;*
>
> *THE PARTIES FURTHER AGREE that the PSLRB may be advised of this Letter of Understanding in the course of referring the grievance referred to [sic] above.*
>
> . . .
>
> [The grievor Alcock's LOU:]
>
> *WHEREAS for the purposes of this Letter of Understanding, the "grievors" are: see* ***APPENDIX "A"*** *and* ***APPENDIX "B";***
>
> *AND WHEREAS the grievors identified above are all employees of the Canada Revenue Agency ("Agency") who filed individual grievances regarding the calculation of severance payment;*
>
> *AND WHEREAS the grievors' grievances were denied by the Agency;*
>
> *The PARTIES AGREE that grievance number 12-1215-70104550 (Erin Alcock) will be referred to the Public Service Labour Relations Board ("PSLRB") for adjudication;*
>
> *The PARTIES AGREE that the decision rendered by the PSLRB with respect to the grievance noted above will be binding on the Agency and all grievors identified in Appendix "A" and "B";*

> *THE PARTIES FURTHER AGREE that this Letter of Understanding in no way precludes the Agency's ability to raise jurisdictional issues before the PSLRB;*
>
> *THE PARTIES FURTHER AGREE that the Agency will consent, if required, to an extension of time to refer the single grievance referred to above to the PSLRB, and that the grievance will not be referred later than June 23, 2014;*
>
> *THE PARTIES FURTHER AGREE that the PSLRB may be advised of this Letter of Understanding in the course of referring the grievance referred to [sic] above.*
>
> . . .
>
> [Emphasis in the original]

[71] Appendix "A" to the Myles LOU lists 36 grievors in addition to Ms. Myles from what appears to be the Toronto West TSO. They are set out in Appendix 1 to this decision. Appendix "A" to the Alcock LOU lists 174 grievors in addition to Ms. Alcock, who appear to be in 8 locations in either Toronto or southern Ontario. They are set out in Appendix 2 to this decision. Appendix "B" to the Alcock LOU lists 45 grievors who appear to be located in Toronto North TSO. They are set out in Appendix 3 to this decision.

III. Summary of the arguments

[72] Both parties provided extensive written submissions, totaling over 300 paragraphs.

[73] In addition to the *Act*, the *Regulations*, and the *Public Service Superannuation Act* (R.S.C., 1985, c. P-36; *PSSA*), the grievors referred me to *British Columbia Nurses Union v. Health Employers' Association of British Columbia* (2008), 180 L.A.C. (4th) 266, *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1, *Professional Institute of the Public Service of Canada v. Treasury Board*, 2014 PSLREB 4, *Thompson v. Treasury Board (Canada Border Services Agency)*, 2007 PSLRB 59, *Clough v. Canada Revenue Agency*, 2015 PSLREB 48 ("*Clough* PSLREB"), *Canada Revenue Agency v. Clough*, 2016 FCA 148 ("*Clough* FCA"), Brown and Beatty, *Canadian Labour Arbitration*, 2:3128, 3:4401, and 4:1210, *Algonquin College of Applied Arts and Technology v. Ontario Public Service Employees Union, Local 415* (2015), 250 L.A.C. (4th) 304, *Milk and Bread Drivers Local 647 v. Standard Bread Co. Ltd.* (1963), 13 L.A.C. 327, *Ontario Public Service Employees Union v. Sault College*, 2006 O.L.A.A. 568 (QL), *Black's Law Dictionary*, *Sunar Division of Hauserman Ltd. v. United Steel Workers of America,*

Local 3292 (1979), 23 L.A.C. (2d) 1, *British Columbia (Workers Compensation Board) v. Figliola*, [2011] 3 S.C.R. 422, *Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 S.C.R. 460, *United Grain Growers Ltd. v. Grain Growers Union, Local 333* (1986), 24 L.A.C. (3d) 226, and *United Brotherhood of Carpenters and Joiners of America, Local 579 v. Bradco Construction Ltd.*, [1993] 2 S.C.R. 316.

[74] Like the grievors, the employer referred me to the *Act*, the *Regulations*, and the *PSSA*, as well as *Schenkman, Clough* PSLREB, and *Clough* FCA. It also referred me to the *Financial Administration Act* (R.S.C., 1985, c. F-11), *Association of Justice Counsel v. Treasury Board*, 2015 PSLREB 78, *Campbell v. Treasury Board (Correctional Service of Canada)*, 2012 PSLRB 57, *Canada (Attorney General) v. Lamothe*, 2009 FCA 2, *Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112, *Ducey v. Treasury Board (Department of National Defence)*, 2016 PSLREB 114, *Federal Government Dockyard Trades and Labour Council East v. Treasury Board (Department of National Defence)*, 2012 PSLRB 118, *Professional Institute of the Public Service of Canada v. National Research Council of Canada*, 2013 PSLRB 88, *Toronto (City) v. Canadian Union of Public Employees (C.U.P.E.), Local 79*, 2003 SCC 63, *Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN v. Treasury Board*, 2010 PSLRB 85, *Wyborn v. Parks Canada Agency*, 2001 PSSRB 113, Brown and Beatty, at 1:3100, 4:1230, 4:2100 to 4:2120, and 4:2250, Palmer and Synder, *Collective Agreement Arbitration in Canada*, at paragraph 2.24. In addition, the employer referred me to the Ontario Legislative Assembly Throne Speech Debate, 39th Session (March 11, 2010), and the 2009 Ontario Budget.

[75] The grievors submitted that the grievances are timely and that if not, the test to extend the time to file a grievance under the *Regulations* has been met, and the time should be extended. In addition, the grievors maintained that the grievances should be allowed.

[76] The employer submitted that the grievances are untimely and that the test to extend the time to file a grievance under the *Regulations* has not been met; as such, they should be dismissed as untimely. In addition, the employer submitted that the grievances should be dismissed on their merits.

IV. Reasons

A. Timeliness objection and request to extend time

[77] Both grievors received the Payment-in-Lieu form on October 5, 2012. The form was based on a printed template into which information particular to an individual employee was placed. Nowhere on the form does it set out the date the employer used to make the calculation with respect to the severance payment. However, for both grievors, the line that indicated the length of the period that qualified stated that each of them had only 132 days of service.

[78] Both grievors came before me stating that they understood from either documents provided to them or presentations that simply put, for the purpose of calculating severance pay, the start dates would be their individual start dates with the OMoR. For Ms. Alcock, this was April of 1999, and for Ms. Myles, it was May 1, 2000.

[79] Given that the document was dated October 4, 2012, and that there are 365 days in a year, a simple subtraction of 132 days from October 4, 2012, would have brought both grievors to their CRA start dates of March 1, 2012. More simply stated, a mere glance at the number of days noted, 132, would be enough to know that the time being calculated was grossly wrong, based on the grievors' stated understanding. According to Ms. Alcock, she would have had approximately 13½ years (roughly 4902 days counting from May 1, 1999, forward), and Ms. Myles would have had roughly 12½ years (roughly 4537 days, counting from May 1, 2000, forward).

[80] I have no doubt that both grievors either knew or ought to have known of the error with respect to the date being used for the calculation of their severance benefits when they looked at the form. As the evidence indicates that they received the form on October 5, 2012, it is at that time that the time frame within which to present a grievance at the first level began to run. Therefore, the time to file a grievance in both cases would have expired on November 13, 2012, meaning that filing a grievance after that date would have made it untimely.

[81] Ms. Myles' grievance was presented on February 22, 2013, and Ms. Alcock's grievance, on March 13, 2013, both of which are clearly outside the period within which they were able to file a grievance under clause 34.11 of the 2012 collective agreement.

[82] However, this does not end the matter. Section 63 of the *Regulations* is found under the heading "Grievances", the subheading "General Provisions", and the marginal note "Rejection for failure to meet a deadline", and it states as follows:

> ***Grievances***
>
> ***General Provisions***
>
> . . .
>
> ***Rejection for failure to meet a deadline***
>
> ***63*** *A grievance may be rejected for the reason that the time limit prescribed in this Part for the presentation of the grievance at a lower level has not been met, only if the grievance was rejected at the lower level for that reason.*
>
> [Emphasis in the original]

[83] As stated, the evidence before me indicates that Ms. Myles presented her grievance at the first level of the grievance procedure on February 22, 2013, and that Ms. Alcock presented hers there on March 13, 2013. Clause 34.08 provides that there are a maximum of four levels in the grievance procedure and that if there are four levels, a grievor may elect to waive either the second or third levels. I was provided no evidence that the employer replied at the first level of the grievance procedure; nor was I provided any evidence that there was any agreement between the grievors, a bargaining agent, and the employer to waive the time frames for either replying to the respective grievances or referring them to the next level of the grievance procedure.

[84] As there is no evidence of a reply at the first level of the grievance procedure for either grievor and there is no evidence that either they or PIPSC waived the first level, by default, the evidence discloses that no objection was made for failing to present a grievance within the appropriate time limit. Therefore, by operation of s. 63 of the *Regulations*, both grievances are deemed timely.

[85] The only other evidence I have is a reply to both grievances at the final level of the grievance procedure. Ms. Myles referred hers on January 8, 2014, and Ms. Alcock on January 9, 2014. The date on both final-level replies is March 28, 2014; however, on both references to adjudication, the grievors stated that they received the final-level replies on April 28, 2014. I heard no evidence to explain which date was correct. Both grievances were received at the PSLRB on June 3, 2014.

[86] The 2012 collective agreement does not set out a time frame within which a grievance denied at the final level of the grievance procedure may be referred to the Board (or its predecessors) for adjudication. Section 90 of the *Regulations* sets out the procedure for referring a grievance to the Board for adjudication and states as follows:

> ***Deadline for reference to adjudication***
>
> ***90(1)*** *Subject to subsection (2), a grievance may be referred to adjudication no later than 40 days after the day on which the person who presented the grievance received a decision at the final level of the applicable grievance process.*
>
> ***Exception***
>
> ***(2)*** *If no decision at the final level of the applicable grievance process was received, a grievance may be referred to adjudication no later than 40 days after the expiry of the period within which the decision was required under this Part or, if there is another period set out in a collective agreement, under the collective agreement.*
>
> [Emphasis in the original]

[87] If the grievors received the final-level reply on April 25 or 28, 2014, then the referrals of their grievances to adjudication would have fallen within the time frame set in s. 90 of the *Regulations*. If they received the final-level reply on March 24, 2014, the date on the final-level reply, it would be outside the time frame set out in s. 90. The final-level reply has a pre-printed spot on it for a grievor to sign and date it, to acknowledge receiving it. In both cases, neither grievor's signature nor a date is on the document.

[88] Two other pieces of evidence before me may assist in the determination of when the final-level reply was received: the ASOF, which states that it was issued on March 3, 2014, and the two LOUs, which were signed on May 23, 2014. The ASOF does not help as it states that the final-level response was issued on March 3, 2014. This is a third and different date, and it is not helpful as the final-level replies themselves state March 24, 2014. The LOUs are somewhat more helpful as they were both signed on May 23, 2014, and state as follows:

> . . .
>
> *THE PARTIES FURTHER AGREE that the Agency will consent, if required, to an extension of time to refer the single grievance referred to above to the PSLRB, and the grievance will not be referred later than June 23, 2014 . . . .*

. . .

[89] Based on the LOUs, even if the references to adjudication to the Board of both grievances were untimely with respect to the final level of the grievance procedure, the employer, by the two LOUs, waived the time limit, as long as the grievances were referred to adjudication before June 23, 2014, which both were. As such the time limits were extended by mutual consent as set out in s. 61(a) of the *Regulations*, which permits the parties to do so.

[90] As the employer alleged that the grievances and the references to adjudication were untimely, it was incumbent upon the employer to prove that the references were untimely. As it did not, the objections to jurisdiction based on the grievances being untimely are dismissed, and I need not address the grievors' applications to extend the time.

B. The merits of the grievances

[91] Despite being worded slightly differently, in essence, both grievances are about the same thing: the amount of severance pay the grievors are entitled to receive under the relevant collective agreement, based on when their tenures with the employer are recognized to have started.

[92] The employer maintained that the start dates for the severance pay calculation under article 19 of the relevant collective agreement were the dates on which each grievor started with the CRA, which for both was March 1, 2012. The grievors maintained that their start dates were the dates on which they started their OMoR employment, which was April 1999 for Ms. Alcock and May 1, 2000, for Ms. Myles.

[93] The grievors maintained that the PIPSC-CRA MOU was a part of the collective agreement, and in the alternative, if not, that it and other extrinsic evidence be permitted to assist in interpreting the 2012 collective agreement.

1. Is the PIPSC- CRA MOU a part of the collective agreement

[94] The grievors have submitted that the PIPSC-CRA MOU was a part of the collective agreement. I disagree.

[95] As set out in *Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN v. Treasury Board* at paragraph 57, the Board stated as follows:

> ***57.*** *The bargaining agent also argued that those local agreements or policies are ancillary documents that should be considered part of the collective agreement. On that question Brown and Beatty wrote the following at paragraph 4:1230:*
>
> > For an ancillary document to be part of the collective agreement, it must be intended by the parties to be part of the collective agreement and either meet the formal requirements of a collective agreement, or be incorporated by reference into it… Conversely, an ancillary document will be part of the collective agreement if it explicitly states that it is to be part of the agreement or if the main contract does so …

[96] In Palmer and Snyder, *Collective Agreement Arbitration in Canada*, *Sixth Edition* (QL), the authors discuss incorporation by reference, at 1.13 to 1.16, as follows:

> *1.13 A provision set out in one collective agreement may also apply to another collective agreement if that latter agreement incorporates by reference that provision.*
>
> *1.14 The most common way in which several documents come to form a collective agreement is through the "incorporation by reference" into the collective agreement of letters of understanding, and other documents spelling out legal rights and obligations such as insurance plans. A collective agreement can also be based on referential incorporation by an exchange of letters signed by authorized representatives. As has been explained:*
>
> > *The only formality is writing, and implicit is the requirement of a signed writing. There is no compelling policy, and certainly no explicit direction that there can be only one document at any one time to which the agreeing employer and trade union must be signatories. So long as the terms of agreement are themselves in writing, they may be identified by other signed documents which do not themselves spell them out.*
>
> *1.15 The determination of whether a document has been incorporated by reference will turn on an appreciation of the parties' intentions.*
>
> *1.16 It should be noted that where the document sought to be incorporated contains language inconsistent with the basic collective agreement, there can be no incorporation.*
>
> *. . .*

[97] The employer and the PIPSC are large and sophisticated organizations, who employ professional negotiators and legal counsel. It is well known that the PIPSC has been representing employees and negotiating collective agreements in the federal public sector for decades and with respect to the CRA, and its predecessor the CCRA, since that organization's inception.

[98] Division 7 (Sections 105 through 118) of the *Act*, is entitled Collective Bargaining and Collective Agreements and sets out specific provisions with respect to the collective bargaining process and the entering into of collective agreements. Section 114, 115 and 118 of the *Act*, state as follows:

> ***Agreement is binding***
>
> ***114*** *Subject to and for the purposes of this Part and Division 1 of Part 2.1, a collective agreement is binding on the employer, the bargaining agent and every employee in the bargaining unit on and after the day on which it has effect. To the extent that the collective agreement deals with matters referred to in section 12 of the* Financial Administration Act*, the collective agreement is also binding , on and after that day, on every deputy head responsible for any portion of the federal public administration that employs employees in the bargaining unit.*
>
> ***When agreement has effect***
>
> ***115*** *A collective agreement has effect in respect of a bargaining unit as of*
>
> ***(a)*** *The effective date specified in it; or*
>
> ***(b)*** *If no effective date is specified, the first day of the month after the month in which the agreement is signed.*
>
> . . .
>
> ***Parties may amend***
>
> ***118*** *Nothing in this Part prohibits parties from amending any provision of a collective agreement, other than a provision relating to its term.*
>
> . . .

[99] Entered into evidence were 3 collective agreements. At the time the PIPSC-CRA MOU was entered into, the 2009 collective agreement was in effect, and, governed in part, the relationship between those employees of the CRA who were in the PIPSC bargaining unit and the employer.

[100] In March of 2012, the grievors had been offered and accepted positions with the CRA, at which point, the collective agreement that governed their employment relationship with the CRA was still the 2009 collective agreement.

[101] Article 47 of the 2009 collective agreement is entitled Agreement Re-opener and clause 47.01 states as follows:

> *This Agreement may be amended by mutual consent. If either party wishes to amend or vary this agreement, it shall give to the other party notice of any amendment proposed and the parties shall meet and discuss such proposal not later than one calendar month after receipt of such notice.*

[102] There was no evidence that the provisions in clause 47.01 of the 2009 collective agreement were ever taken by either party.

[103] There was no evidence that the PIPSC-CRA MOU was incorporated by reference into the 2009 collective agreement. The 2009 collective agreement is 153 pages long, the main body of which ends at pages 69-70, where the representatives signed. The following 83 pages are appendices, which include amongst other things, rates of pay and pay notes for various groups, as well as four separate MOUs about various matters. It is clear that the parties when they saw fit, incorporated MOUs into the collective agreement, and that they did not see fit to do so with the PIPSC-CRA MOU.

[104] Nor did the parties, by the wording contained in the PIPSC-CRA MOU, state that they were incorporating it into the 2009 collective agreement, or, for that matter, any future collective agreement.

[105] At a date that was not disclosed to the hearing, PIPSC and CRA entered into bargaining and negotiated and agreed upon the terms of the 2012 collective agreement, which was signed by the parties on July 10, 2012. There was no evidence that the PIPSC-CRA MOU was incorporated by reference into the 2012 collective agreement. The 2012 collective agreement is 156 pages long, the main body of which ends at pages 73-74 where the representatives signed. The following 82 pages are appendices, which include amongst other things, rates of pay and pay notes for various groups, as well as seven separate MOUs about various matters. Again, not only is it clear that the parties when they saw fit, incorporated MOUs into the collective agreement, and that they did not see fit to do so with the PIPSC-CRA MOU, but that in negotiating and signing the 2012 collective agreement, the collective agreement that

replaced the 2009 collective agreement, they incorporated MOUs into it that were not in the 2009 collective agreement.

[106] Like the 2009 collective agreement, the 2012 collective agreement has an Agreement Re-opener clause; Article 46. Clause 46.01 is identical to clause 47.01 in the 2009 collective agreement. There is no evidence that the 2012 collective agreement was re-opened to incorporate the terms of the PIPSC-CRA MOU.

[107] Article 5 of all three of the collective agreements is entitled Management Rights and the wording is as follows: "All the functions, rights, powers and authority which the Employer has not specifically abridged, delegated or modified by this Agreement are recognized by the Institute as being retained by the Employer."

[108] It is clear that the PIPSC-CRA-MOU was not incorporated by reference into the collective agreement or itself formed part of the collective agreement. The PIPSC and CRA had any number of opportunities through many mechanisms to do so and did not.

[109] If there was any doubt about this, it is erased by the signing of the 2012 collective agreement which was negotiated and signed not only after the PIPSC-CRA MOU, which was entered into in March of 2010, but after former employees of OMoR, and specifically the grievors, had already joined the CRA.

2. Extrinsic Evidence

[110] In the alternative, the grievors' state that extrinsic evidence should be allowed to assist in interpreting the 2012 collective agreement and to help the panel of the Board understand the parties' intention with respect to article 19 of that collective agreement. This extrinsic evidence includes the HRA No. 1, the amended HRA, the PIPSC-CRA MOU and also the evidence about town-hall meetings and information that was put forward about the coming arrangement for transferring OMoR employees.

[111] In collective agreement interpretation cases, the academic authorities and jurisprudence have consistently held that adjudicators and labour boards should first look at the words used in the agreement not only in the context of a particular clause but also in the agreement as a whole.

[112] *Canadian Labour Arbitration*, at paragraph 3:4400 on "Extrinsic Evidence", states as follows:

> *Parol or extrinsic evidence, in the form of either oral testimony or documents, is evidence which lies outside, or is separate from, the written document subject to interpretation and application by an adjudicative body. Although there are numerous exceptions, the general rule at common law is that extrinsic evidence is not admissible to contradict, vary, add to or subtract from the terms of an agreement reduced to writing. If the written agreement is ambiguous, however, such evidence is admissible as an aid to the interpretation of the agreement to explain the ambiguity but not to vary the terms of the agreement. The two most common forms of such evidence in labour arbitrations are the negotiating history of the parties leading up to the making of a collective agreement, and their practices before and after the making of the agreement. And in addition to its use as an aid to interpretation of a collective agreement or a settlement agreement, or to establish an estoppel, it may be adduced in support of a claim for rectification. However, for such evidence to be relied upon it must be "consensual". That is, it must not represent the "unilateral hopes" of one party. Nor can it be equally vague or as unclear as the written agreement itself.*
>
> . . .

[113] The Supreme Court of Canada in *Eli Lilly & Co. v. Novopharm Ltd.*, [1998] 2 S.C.R. 129, stated at paragraphs 54 through 56 as follows:

> ***54*** *The trial judge appeared to take* Consolidated-Bathurst *to stand for the proposition that the ultimate goal of contractual interpretation should be to ascertain the true intent of the parties at the time of entry into the contract, and that, in undertaking this inquiry, it is open to the trier of fact to admit extrinsic evidence as to the subjective intentions of the parties at that time. In my view, this approach is not quite accurate. The contractual intent of the parties is to be determined by reference to the words they used in drafting the document, possibly read in light of the surrounding circumstances which were prevalent at the time. Evidence of one party's subjective intention has no independent place in this determination.*
>
> ***55*** *Indeed, it is unnecessary to consider any extrinsic evidence at all when the document is clear and unambiguous on its face. In the words of Lord Atkinson in* Lampson v. City of Quebec *(1920), 54 D.L.R. 344 (P.C.), at p. 350:*
>
> > . . . the intention by which the deed is to be construed is that of the parties as revealed by the language they have chosen to use in the deed itself . . . . [I]f the meaning of the deed, reading its words in their ordinary sense, be plain and unambiguous it is not permissible for the parties to it, while

> it stands unreformed, to come into a Court of justice and say: "Our intention was wholly different from that which the language of our deed expresses. . . ."
>
> ***56*** *When there is no ambiguity in the wording of the document, the notion in* Consolidated-Bathurst *that the interpretation which produces a "fair result" or a "sensible commercial result" should be adopted is not determinative. Admittedly, it would be absurd to adopt an interpretation which is clearly inconsistent with the commercial interests of the parties, if the goal is to ascertain their true contractual intent. However, to interpret a plainly worded document in accordance with the true contractual intent of the parties is not difficult, if it is presumed that the parties intended the legal consequences of their words. This is consistent with the following dictum of this Court, in* Joy Oil Co. v. The King*, [1951] S.C.R. 624, at p. 641:*
>
> > . . . in construing a written document, the question is not as to the meaning of the words alone, nor the meaning of the writer alone, but the meaning of the words as used by the writer.

[114] At paragraphs 57 and 58, the Supreme Court of Canada went on to find that there was no ambiguity in the contract between the parties in that case and that the intent was clear, based on the plain wording of the contract. As such, the Court did not resort to any of the extrinsic evidence submitted as to the parties' subjective intentions at the time of drafting the contract.

[115] The difficulty with the grievors' position is that article 19 of the 2012 collective agreement is not in any way ambiguous or unclear.

[116] Clause 19.05 provides that on the date of signing the 2012 collective agreement, indeterminate employees were entitled to a severance payment equal to one week's pay for each complete year of continuous employment. Article 2 of the 2012 collective agreement is entitled "Interpretation and Definitions", and in clause 2.01, "continuous employment" is defined as having the same meaning as specified in the Employer's (the CRA's) *Terms and Conditions of Employment Policy*.

[117] Appendix A of that policy defines "continuous employment" as follows:

. . .

- *1. For the purpose of these terms and conditions of employment the following periods count as* **continuous employment***;*
  - *a. In respect of a person appointed to the Canada Revenue Agency as a permanent employee:*

> i. *immediately prior Federal government service or Public Service on an indeterminate basis, or on a specified term basis for three months or more;*
>
> ii. *a combination of prior Federal government service and Public Service on an indeterminate basis, or on a specified term basis for three months or more;*
>
> iii. *immediately prior service in the Canadian Forces or the Royal Canadian Mounted Police, provided that the person was honourably released and has made or makes a valid election to contribute for that service under the* Public Service Superannuation Act *(the effective date will be the date the election is completed).*
>
> *provided that these periods of service are not separated by more than three months;*
>
> iv. *service other than as a person appointed for a term less than three months or a casual employee in the office of a minister or the leader of the opposition in the House of Commons, and Federal government service immediately prior to such service provided that such person ceased to be employed in such office because the person holding such position ceased to hold it; and*
>
> v. *immediately prior Federal government service as a person appointed for a term less than three months or a casual employee, provided that such service is not separated by more than five working days.*
>
> . . .
>
> - *2. For the purpose of Section 1, any period of Federal government service or Public Service prior to a termination by reason of dismissal, discharge, release or declaration of abandonment of position does not constitute continuous employment.*
>
> . . .
>
> [Emphasis in the original]

[118] While "public service" is not defined in the 2012 collective agreement, its clause 2.02 provides that except as otherwise provided for in the agreement, expressions used in it have the same meaning as given to them in the *Act*, and if the expression is not found in the *Act*, the meaning given to them in the *Interpretation Act* (R.S.C., 1985, c. I-21). "Public service" is defined in the *Act* as follows:

> . . .
>
> **public service**, *except in Part 3, means the several positions in or under*

> ***(a)*** *the departments named in Schedule I to the* Financial Administration Act;
>
> ***(b)*** *the other portions of the federal public administration named in Schedule IV to that Act; and*
>
> ***(c)*** *the separate agencies named in Schedule V to that Act . . . .*
>
> . . .
>
> [Emphasis in the original]

[119] "Public service" is defined in the CRA *Terms and Conditions of Employment Policy* as having the meaning set out in the *PSSA*, which defines it as follows at the relevant times:

> . . .
>
> **public service** *means the several positions in or under any department or portion of the executive government of Canada, except those portions of departments or portions of the executive government of Canada prescribed by the regulations and, for the purposes of this Part, of the Senate, House of Commons, Library of Parliament, office of the Senate Ethics Officer and office of the Conflict of Interest and Ethics Commissioner and any board, commission, corporation or portion of the federal public administration specified in Schedule I;* (fonction publique) . . . .
>
> . . .

[120] It is abundantly clear that the period that is to count toward calculating severance pay under clause 19.05 of the 2012 collective agreement is defined as continuous employment, as that term is defined in the CRA *Terms and Conditions of Employment Policy*. The policy defines "public service" in a manner that can be described only as in the employ of the federal government (in one form or another). In no way does it incorporate the duration of employment at other levels of government, such as provincial or municipal.

[121] As there is no ambiguity in the 2012 collective agreement, there is no need to consider extrinsic evidence.

V. *Clough* PSLREB and *Clough* FCA

[122] Both parties referred me to *Clough* PSLREB and *Clough* FCA. The grievors argued that the Board should apply the principle of *res judicata* to prevent the employer from re-litigating the same issue that was determined in those decisions. They submit that in *Clough* PSLREB, involving the same parties, the Board found that the term "continuous employment" for the purpose of calculating severance entitlements in the

AFS collective agreement included years of prior service with the province. That decision was subsequently upheld by the Federal Court of Appeal in *Clough* FCA.

[123] *Clough* PSLREB arose from almost the exact circumstances as experienced the grievors in this case, albeit the grievors in *Clough* PSLREB were AFS bargaining unit employees situated in British Columbia who had transferred from the B.C. provincial government to the CRA as part of the PST and GST harmonization into the HST in that province. While much of the facts are similar, some are different, most importantly being that the panel of the board in *Clough* PSLREB based her decision on the facts in evidence before her. In *Clough* PSLREB, the definition of "continuous employment" provided in evidence and set out at paragraphs 9 and 10 is referred to as follows:

> *9 In the definitions section of the collective agreement, clause 2.01, the definition for the term "continuous employment" states only that it ". . . has the same meaning as specified in the Employer's Terms and Conditions of Employment Policy on the date of signing of this Agreement."*
>
> *10 Counsel for the employer referred me to an undated draft version of the CRA "Policy on Terms and Conditions of Employment," version 4.0 (Exhibit E-3). The bargaining agent did not dispute that it was the relevant policy document. The term "continuous employment" was defined in that document as ". . . one or more periods of service in the public service, as defined in the* Public Service Superannuation Act*, with allowable breaks only as provided for in the terms and conditions of employment applicable to the person." . . . .*

[124] The definition of "continuous employment" referred to at paragraph 10 of *Clough* PSLREB as being set out in the CRA *Terms and Conditions of Employment Policy* is not what is set out in the copy of that policy entered into evidence before me and agreed to by the parties in the ASOF.

[125] Whatever the reason, the facts before me on this crucial piece of evidence, which goes to the very heart of the issue, are different. As such, the grievances before me are not *res judicata*.

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

(The Order appears on the next page)

VI. Order

[127] The objections to jurisdiction on the basis of the grievances being untimely are dismissed.

[128] As those objections have been dismissed, the applications to extend the time to file the grievances are moot.

[129] The grievances are dismissed.

May 7, 2020.

John G. Jaworski,
a panel of the Federal Public Sector
Labour Relations and Employment Board

Appendix 1

1. Akkineni, Sitaram
2. Baksh, Dawud
3. Cheong, Mercedes
4. Doshi, Jyoti
5. Engida, Tadele
6. Fouad, Nlvin
7. Gabreselassie, Fekre
8. Gu, Jun
9. Klamrowski, Jacek
10. Kruger, Loretta
11. Liang, Jun
12. Madej, Peter (Piotr)
13. Mahadeo, Yuri
14. Maharaj, Lutchman
15. Mendes, Debbie
16. Mohammed, Hanipha
17. Niemczyk, John
18. Offenbacher, Gary Anthony
19. Parmeshwar, Sam (Bheesham)
20. Rai, Rajinder
21. Robinson, Doug
22. Sahdra, Rapinder
23. Seenath, Annie
24. Soudah, Nawal
25. Sun, Rulzhuo
26. Turki, Slafa
27. Woronecki, Susan
28. Zachariah, John K.
29. Boni, Frank
30. Jassal, William
31. Pinto, Albert
32. Masci, Robert
33. Parmeswaran, Thuraisamy
34. Shanmugaretnam, Ranjit
35. Sharda, Sharda
36. Trentadue, Vito

Appendix 2

Azab, Tim
1. Brown, Noreen
2. Burrows, Margaret Elaine
3. Cappuccitti, Daniele
4. Chan, Sau Fan, Dilys
5. Chan, Shirley
6. Chau, Philip
7. Chau, Phoebe
8. Cheng, Ida Man Fung
9. Cheung, Edward
10. Cheung, Philip S.B.
11. Choyah, Nalini
12. Chu, Teresa
13. Davis, Aziz
14. Dissanayake, Vijith Anton
15. Fahmy, Magda
16. Finkle, Kim
17. Fong, Andrew
18. Gangadin, Jai
19. Gujarati, Jatin
20. Haran, Prabha
21. Homoki, Katalina
22. Hon, Peter
23. Ip, Flora
24. lqbal, Roxana (Rukhsana)
25. James, Stephanie, Maureen
26. Jeyanathan, Pathmini
27. Kam, Virginia
28. Kanagaratnam, Kanagasabesan
29. Kulaseharan, Singharentnam ,
30. Kumar, Atul
31. Kumaresan, Sinnathamby
32. Lall, Dharam
33. Ling, Simeon
34. Mar Kuck, Eden
35. McDonald, Debbie Ann
36. McKellar, Annette
37. Michel, Teresa
38. Morphy, Robert Ivan
39. Mountney, Judy
40. Nair, Chandradasan
41. Nandakumar, Sivaganga
42. Ng, Maggie
43. Nirmalen, Markandu
44. Olsen, Leslie Adele
45. Oxley, Kenneth
46. Pangalilingan, Lolito
47. Pow, Elaine
48. Prasad-Sharma, Nisha
49. Printer, Amin

50. Ramachandran, Prem
51. Ross, John James David
52. Sackville, Elaine Ann
53. Selvaratnam, Gnanaganeshan\
54. Shah, Zafar
55. Shama, Arun
56. Sharma, Rajesh Sharma
57. Sridharan, Paramanathan
58. Sithamparanathan, Pathmanathan
59. Tong, Wen
60. Tracy, Glen Carl
61. Velupillai, Thiageswaran
62. Veluppillai, Lily
63. Vivekananthavel, Kandiah
64. Welch, Eon
65. Wong, Raymond
66. Wong, Winnie
67. Woo-Mul-Wing, Bernard
68. Yang, Yanrong (Rita)
69. Yantsis, Dina K.
70. Yee, Wilson
71. Yu, Lai Yuen
72. Andrew Rajasingham
73. Chu, George
74. Ahmed, Naeem
75. Beaudin, David
76. Bebinski, Robert
77. Bourak, Lucy Lisa
78. Budzynski, Anne
79. Caltagirone, Orazio
80. Davis, Charlena Marie
81. Downie, John
82. Fennema, Hugo
83. Fletcher, Jack Ward
84. Hassey, Mark
85. Heagney, Cindy
86. Kovac, Sandra Rose
87. Kozel, Victor
88. Manojiovich, Anke Dragovich
89. Nisbet, Alicia
90. Palazzese, Christine Ann
91. Perry, Gillian
92. Porteous, George
93. Porteous, Jennifer
94. Ripa, Amber Jane
95. Schneider, Lisa-Nicollo
96. Stasiuk, Dorothy
97. Tomic, Lidija
98. Trapp, Emmerich Arthur
99. Veerman, Jean Grace
100. Bakhru, Vinesh
101. Bogias, Diane

102. Brennerman, Boyd
103. Brown, Kenneth
104. Dogra, Mukta
105. Ferguson, Sasan J.
106. Gay, Craig-Stephen
107. Grant, Nadia
108. Gubitz, George
109. Huff, Stephen
110. Laws, Denae
111. Mandl, Eda-Liza
112. McDonald, Todd
113. McLeod, Cindi
114. More, Harl Ram
115. Nutter, Susan
116. Patel, Parind V.
117. Purl, Anil
118. Salam, M. Barmak
119. Yeung, Patrick
120. Bosley, David John
121. Bosley, Pamela Anne
122. Castles, Kimberley Anne
123. Cochrane, Catherine
124. Cruz, Claudia
125. Davis, Karen
126. De Melo, Delia
127. Edwards, Brian
128. Hall, James
129. Hill, Susan
130. Langelaan, Lee Francis
131. Longe, Frederick
132. MacDonald, Deborah
133. Mazenberg, Anthony
134. Parenuik, Steven
135. Pelletier, Janet
136. Persaud, Sheena
137. Phillips, Lisa
138. Robinson, Katheren
139. Ross, Brenda Lynn
140. Ryckman, Daniel
141. Smith, Hyo
142. Wilkins, Mary
143. Ahmed, Mahmood
144. Chan, Wai Ngor, Denise
145. Ho, Julie
146. Karamath, Glenda
147. Kwong, Tuhg Choi (Richard)
148. Latchana, Marlon
149. Maharatnam, Thayanithy
150. McDonald, Jill
151. Mustafa, Masood
152. Nazareth, Cheryl
153. Nichol, David Robert

154. Onsiong, Elizabeth
155. Patel, Sirajuddin
156. Patel, Zubair
157. Sivalingam, Siva
158. Kim, Soun-Heul (Theresa)
159. Lau, Kwong-Wai (Joseph)
160. Louie, Clarence Lap-Shun
161. Poon, Norman
162. Bungera, Karen
163. Copeland, Dennis
164. Dennis, Eleanor Joy
165. Grousopoulos, Lambros
166. Krystia, Tammy
167. Mastronianni, Theresa
168. McConnell, Jacqueline
169. Meloche, Lorrie
170. Strong, Leanne
171. Syvestre, Janice
172. Watson, Mary
173. Winzinger, John

Appendix 3

1. Arya, Shashi
2. Au, David
3. Banouvong, Nisa
4. Bhaskaran, Ramesha
5. Chan, Irene
6. Chang, Catherine
7. Chapuj, Robert (Chaput, Robert)
8. Cheung, Rosemary
9. Chin-Sam, Graham
10. Egbert, Dunstan
11. Falzone, Sandra
12. Feldberg, Michael
13. Goodram, Paul
14. Gunapalan, Indrani
15. Gupta, Aditi
16. Kallasapillai, Sira
17. Kanji, Munira
18. Kruger, Lorne
19. Kwok, Gary
20. Lalui, Sabrina
21. Lam Tim Woo, Suzanne
22. Lau, Aileen
23. Lau, William
24. Li, Chris
25. Maligec, Frank
26. Martin, Edward
27. Massaro, Dan
28. Nikdel, Jafar
29. Nurmohamed, Nasir
30. Ormeno, Jessica
31. Ricci, Maddalena
32. Sakthitharan, Thavamany
33. Sammeroff, Ava
34. Scheel, Dianne
35. Servilla, Kathleen
36. Shi, Catherine
37. Smith, Bonnie
38. Srikukenthiran, Rajadurai
39. Suri, Yogesh
40. Tse, Sarah
41. Tsz Ting Wan, Queenie
42. Tziretas, Michael
43. Williams, Dawnette
44. Yim, Grace
45. Young, Kathleen