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IN THE MATTER OF
THE *FEDERAL PUBLIC SECTOR LABOUR RELATIONS ACT*
and a Request for Establishment of a Public Interest Commission affecting
the Professional Institute of the Public Service of Canada, as Bargaining Agent,
and the Treasury Board, as Employer,
in respect of the employees of the Employer in the
Computer Systems (CS) Group

Indexed as
Professional Institute of the Public Service of Canada v. Treasury Board

Public Interest Commission: Allen Ponak, Chairperson;
Michael Wright and Lynn Harnden, members

For the Bargaining Agent: Denise Doherty Delorme

For the Employer: Kevin Marchand

Hearing by Zoom June 22 and 23 and July 31, 2020

Public Interest Commission Report

I. INTRODUCTION

[1] This is the Report of a Public Interest Commission (PIC or Commission) established under the *Federal Public Sector Labour Relations Act (FPSLRA)* relating to the renewal of the collective agreement between the Professional Institute of the Public Service of Canada (PIPSC or the Institute) and the Treasury Board (the Employer) for the bargaining unit referred to as Computer Systems (CS). This group consists of more than 17,000 employees who provide information technology (IT) services throughout the Public Service of Canada.

[2] The previous collective agreement between the Institute and the Employer expired December 21, 2018, and the parties engaged in collective bargaining, including mediation, through much of 2019. While agreement was reached on a number of issues, the parties were unable to conclude a final settlement and they agreed to refer the outstanding issues to a Public Interest Commission. The current chair and nominees were appointed on February 21, 2020, by the Honourable Anita Anand, Minister of Public Services and Procurement.

[3] A PIC hearing was scheduled for Ottawa on June 22 & 23, 2020, and the parties submitted comprehensive written briefs in advance. Because of the COVID-19 pandemic, a video conference hearing was substituted for an in-person hearing. Following the June hearing, the parties agreed to a third day, conducted by video conference on July 31, 2020, devoted to mediation. Regrettably, the parties were unable to achieve a final settlement.

[4] This report is based on the written briefs and the presentations made on June 22, 23 and July 31, 2020. As well, the PIC has considered negotiated settlements elsewhere in the federal public service in July and August 2020 brought to our attention by the parties and the Federal Public Sector Labour Relations and Employment Board (FPSLREB).

II. STATUTORY CRITERIA

[5] In considering the matters at issue, the Commission has had regard to the factors listed in section 175 of the *FPSLRA*, which reads as follows:

175. In the conduct of its proceedings and in making a report to the Chairperson, the public interest commission must take into account the following factors, in addition to any other factors that it considers relevant:

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

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

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

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

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

[6] In considering these criteria, the Commission is cognizant that the parties had conducted their bargaining and had agreed to the PIC in the pre-COVID period. Many of the comparator settlements to which both parties referred in their submissions were achieved pre- pandemic. We now inhabit a parallel universe where work, social interaction, and the economic landscape bear little resemblance to our pre-COVID world. However much we all yearn for a return to our pre-COVID lives, there is little consensus on how soon that might be or even what our re-emergence from the pandemic will look like. This PIC report is being prepared based on the current economic and social realities and accepts that the future is unpredictable.

III. CONTRACT DURATION AND WAGE INCREASE

[7] Prior to the PIC, the parties were discussing a four-year collective agreement beginning December 21, 2018, and expiring December 21, 2022. The Institute proposed a seven percent increase over four years, allocated as follows:

Year 1 (December 21/18 - December 21/19)	2.0%
Year 2 (December 21/19 - December 21/20)	2.0%
Year 3 (December 21/20 - December 21/21)	1.5%
Year 4 (December 21/21 - December 21/22)	1.5%

[8] In addition, the Institute requested a 3% market wage adjustment to reflect the tight labour market for computer systems workers and a further one time across the board adjustment of 1.5% to achieve parity with IT workers at Canada Revenue Agency (CRA). The Commission will address the market adjustment and CRA proposal separately in the next sections.

[9] The Institute's position was based on a pattern of four year agreements it had negotiated as bargaining agent for other federal public employees as well as settlements achieved by the Public Service Alliance of Canada, the rate of inflation, salary surveys of IT workers in the public and private sectors, and the high demand for IT workers. In particular, the Institute pointed to what it viewed as a substantial amount of IT subcontracting by the federal government, arguing that this subcontracting was necessitated by a recruitment and retention problem and reflected a general shortage of skilled IT workers. The Institute also commented on what it saw as the heroic effort of the CS group to re-program payment methods for individuals and businesses after the pandemic paralyzed Canada's economy. It was the efforts of the CS group, according to the Institute, that enabled most Canadians to receive the money they needed to survive the pandemic.

[10] In its submissions, the Treasury Board acknowledged that the CS group had played a critical role during the pandemic for which all Canadians could be grateful. However, it disagreed that the current federal CS wages were out of alignment with IT wages in the general economy. It pointed out that federal government employees were employed full time and received substantial benefits, including a pension. Unlike many IT workers, federal government employees were not subject to the vagaries of the "GIG economy". With respect to contracting out, the Treasury Board disagreed that

contracting out was driven by a tight labour market. Work was contracted out for a variety of legitimate purposes, such as short-term projects or the need for extremely specialized expertise for a specific period. Overall, it viewed current federal CS wages as fair and comparable.

[11] With respect to the overall wage increase, the Employer proposed a three-year term expiring December 21, 2021, based on the devastating economic impact of the pandemic, recently negotiated three-year contracts elsewhere in the federal public service, and the unpredictability of the future. As well, the Treasury Board offered a one percent market adjustment for the first two contract years to bargaining units across the public service. This adjustment, which had already been included in a number of negotiated settlements, reflected the relatively buoyant economy in 2018 and 2019. Incorporating this additional one percent, the Employer offered the following wage increases:

Year 1 (December 21/18 – December 21/19)	2.8%
Year 2 (December 21/18 – December 21/20)	2.2%
Year 3 (December 21/20 – December 21/21)	0.6%

[12] Having reviewed the submissions and presentations, it is the Commission’s recommendation that a three-year collective agreement is most appropriate given the highly unpredictable economic environment. Tying the parties to a lengthy contract in these uncertain economic times would be unduly restrictive. The parties should have the opportunity to negotiate again in the light of the economic environment, whether better or worse, 18 months from now. We note as well, that settlements negotiated since the pandemic have been for three-year terms, rather than four-year contracts. In particular, new three-year agreements have been concluded in July and August 2020 between the Treasury Board and the PSAC’s 67,000 member Program and Administrative Services (PA) and 10,000 member Operational Services (SV) groups.

[13] In the Commission’s view, the PSAC agreements have also established the new wage pattern for pandemic era contracts. Both contracts provided three-year agreements that provided wage increases of 2.8% and 2.2% in the first two years of the contract. For the third year, both contracts specified increases of 1.35% but a detailed analysis showed that internal adjustments actually resulted in a real wage increase of 1.5%. A third-year wage increase of 1.5% also mirrors earlier pre-COVID third year wage

increases negotiated for a number of other PIPSC units. Reflecting the principle that interest arbitration boards (even those like the PIC which are advisory) should replicate as nearly as possible what would have happened in collective bargaining, the Commission recommends the following wage increase for the CS group :

Year 1 (December 21/18 - December 21/19)	2.8%
Year 2 (December 21/18 - December 21/20)	2.2%
Year 3 (December 21/20 - December 21/21)	1.5%

IV. MARKET ADJUSTMENT PROPOSAL

[14] The Institute requested a 3% market wage adjustment which, in its submission, was justified by a tight labour market for IT professionals. The pandemic had only exacerbated the situation. In the Institute's submission demand for IT, employees had increased because of the massive switch to remote work, video conferencing, internet banking, and on-line shopping, all of which relied on IT employees for the support. The federal government's own payment support response to Canadians, which required re-programming of payment systems, was emblematic of the intensified role of IT workers. In its brief, the Institute pointed out unemployment rates for IT workers was less than 2% during the pandemic. In comparison, unemployment rates exceeded well over 10% in the rest of the economy. The Institute reiterated that the amount of contracting out was evidence that the federal government was unable to hire and retain sufficient IT workers.

[15] The Treasury Board accepted that there is a tight labour market for IT workers and did not disagree that the pandemic may well have increased demand for IT workers. It disagreed that the government's contracting out was driven by a shortage, that it was experiencing retention and recruitment problems, or that its IT compensation, including benefits, was deficient compared to other public and private sector employers. It denied that a market adjustment was warranted at this time.

[16] The Commission does not recommend a market adjustment in the current collective agreement. We do recommend that the Treasury Board and Institute review the overall compensation of the CS group, with external advice if necessary, for future negotiations focusing on the following questions: 1) has market demand for IT employees permanently shifted as a result of the pandemic; 2) to what extent, if any, is contracting out being driven by a shortage of workers versus factors such as short-term

projects and the need for very specialized expertise; and 3) is there evidence of a general recruitment and retention problem within the CS group versus a problem related to very specific types of CS personnel.

V. WAGE PARITY WITH CANADA REVENUE AGENCY EMPLOYEES

[17] The Institute has proposed a one-time wage adjustment of 1.5% to bring the wages of IT employees in the CS group to the same level as IT employees working in the Canada Revenue Agency. The Institute claimed that IT employees in the CS and IT employees in the CRA do the same work and at times work side by side. In the Institute's view, there was no valid reason why CS employees should be paid less for the same work as CRA employees.

[18] Based on a review of the parties' submissions, the Commission is satisfied that the Institute's claim of a wage gap is credible. This gap arose in the last CRA collective agreement and appears to have been driven by factors such as the need to adjust the wages of CRA auditors. Whatever the reasons, IT employees working in the CRA are being paid more than CS employees performing the same work in the core federal public service.

[19] The Commission believes that these circumstances lend strong support for granting the wage parity that the Institute is seeking. It is justified under section 175(c) of the FPSLRA. If this was any other year, the Commission would unhesitatingly recommend CS parity with the CRA. But this is not any year. This is a year in which we are in the midst of a pandemic with unprecedented economic consequences. Section 175(e) requires the Commission to consider current economic circumstances. Accordingly, we have concluded that the current round of collective bargaining is not the appropriate time to provide a catch-up wage increase. We do not recommend that the wage gap be closed in this contract. Instead we recommend that the wage gap be closed in a future round of bargaining as soon as the economic situation allows.

VI. OTHER ISSUES

[20] The monetary issues reviewed in the previous sections were the major issues in dispute.

[21] There were a number of other outstanding issues, but we do not intend to address each and every one of them. Only those issues where we are recommending

changes to the existing collective agreement or issues that are of higher importance to the parties, even if no changes are recommended, are addressed. For the other issues, the Commission recommends renewal of the existing collective agreement language without alteration.

A. Article 17.12: Leave With Pay for Family Related Responsibilities

[22] Currently, employees are entitled up to 37.5 hours paid leave per fiscal year to attend to family related responsibilities for such things as appointments, school functions, day care issues, birth and adoption, and illness. The Institute proposed that the eligible amount be increased to 45 hours per year, noting that CS members currently used an average of 20 hours per year. However, the Institute suggested that those employees with young families tended to be high users and further suggested that working from home during the pandemic added another layer of challenge to employees with young families. In terms of comparators, the Institute submitted that the PIPSC-CRA collective agreement already provides 45 hours of paid family leave.

[23] The Employer opposed the proposed increase at this time, arguing that almost all public service contracts provide 37.5 hours and that an Employee Wellness Support Program “currently being developed in consultation with unions” (Employer brief) would add an additional day of paid leave. The Employer submitted that a Memorandum of Agreement would result in the Wellness Program, with its additional day of paid leave, being incorporated into the CS collective agreement.

[24] Based on the submissions, the Commission concludes that the Employer has recognized that it is appropriate to add an additional day (7.5 hours) of paid leave for family responsibilities. The Employer has proposed that this additional day be added through a Wellness Support Program and Memorandum of Agreement that are currently being negotiated across the federal public service. It is unclear when these negotiations will be completed.

[25] Indeed, there is no guarantee that the negotiations will eventually lead to a Memorandum of Agreement that provides an additional day of paid family leave. Accordingly, the Commission makes the following recommendation:

"If, by April 1, 2021, the Treasury Board and PIPSC have not implemented a Memorandum of Agreement for a Wellness Support Program that provides 7.5 hours of paid leave for family-

related responsibilities, articles 17.12(b) and 17.12(c)(iv), shall be amended to replace 37.5 hours with 45 hours."

B. Teleworking

[26] The Institute proposed a new collective agreement provision to address telework. The provision, a draft of which was set out in the PIPSC brief, would "clarify rights and responsibility for telework including approval, termination, costs, resources, security, equipment, and health and safety" (Institute Power Point presentation). It was argued that CS employees had been working remotely for years but that the pandemic, where everyone was now working from home, highlighted the deficiencies in current policies. Specific contract provisions were needed, according to the Institute, to ensure consistency of practices and ensure recourse for employees if problems arose. It drew attention to the provisions on telework in the NAV CANADA collective agreement.

[27] The Employer recognized the importance of consistent policies and procedures with respect to telework but opposed the Institute's proposal. Instead, it submitted that a consistent public service-wide approach was required since telework was an issue that affected all federal public service employees, especially since the pandemic. Including specific provisions in this or other collective agreements ran the risk of balkanizing telework policies. Instead, the Treasury Board pointed to the federal government's Directive on Telework which had been implemented on April 1, 2020 following consultation with unions across the federal public service, including PIPSC. The Employer acknowledged that the Directive had been developed prior to the pandemic outbreak and was open to continuing discussions with public service bargaining agents to ensure the Directive's continued relevance.

[28] The Commission agrees with the Employer that telework is a service-wide issue impacting all federal public service employees and does not recommend a specific telework provision in the CS collective agreement. That said, however, the Commission wishes to emphasize the importance of ensuring that the rights and obligations of employees engaged in telework are clearly set out. Toward that end, the Commission recommends that the parties meet at the earliest opportunity to ensure that the Directive on Telework is capable of meeting the unique circumstances of the pandemic.

C. Article 38.02: Action Plan Representation

[29] Employees are subject to periodic performance reviews and from time to time to an “action plan” that provides remedial assistance. The Institute proposed enhanced representation rights for employees during any part of the review process and in the event an action plan is created. Its rationale was to ensure fairness and to protect employees against intentional or unintentional biases.

[30] The Treasury Board opposed this proposal arguing that it is contrary to section 177(1) of the *FPSLRA*. This section precludes a PIC from recommending “the alteration of any existing condition of employment.... if the condition relates to processes governingappraisal....”. On the merits of the proposal, the Employer submitted that there are currently no collective agreements in the federal public service providing the representation rights being sought. There was good reason for this, according to the Employer. It viewed performance management as a critical managerial function that unfolded through multiple interactions.

[31] Frequent union involvement would be cumbersome and negatively impact the ability of managers to review, coach, and mentor employees.

[32] The Commission agrees that it is important for managers to be able to review their subordinates and provide appropriate feedback. Sometimes such feedback is frank and may be greeted unenthusiastically by the employee on the receiving end. Nevertheless, the ability to provide such feedback without constant union monitoring is, in the opinion of the Commission, a necessary element of the day to day management of staff. We do not recommend that the Institute have the right to represent employees during any part of the performance review process that the employee may wish.

[33] The creation of an action plan is a different matter. It is a formal step in managing an employee that says “something in the way you do your job needs to be fixed”. It may be a precursor to further steps should the action plan fail to meet its objectives; it is an inflection point in which employees may need the advice and protection of their bargaining agent. An Institute representative, by providing a fresh perspective, may in fact assist in the action plan meetings and implementation. The Commission recommends that employees have the right to Institute representation,

should they so choose, when an action plan is created. The Commission recommends that the following language, subsection “d”, be added to article 38.02:

“The employee shall have the right to Institute representation during the creation of an action plan.”

[34] In making this recommendation, the Commission rejects the position of the Employer that section 177(1) of the *FPSLRA* prohibits such a recommendation. We do not see this recommendation as altering an existing condition of employment. Performance reviews and action plans are already part of the current collective agreement. The PIC recommendation does not alter the appraisal process - it addresses union representation rights and does not limit the rights of the Employer to engage in performance management, including the creation and implementation of an action plan.

VII. SUMMARY OF RECOMMENDATIONS

[35] The Commission makes the following recommendations:

1. A three-year collective agreement with the following wage increases:

Year 1 (December 21/18 - December 21/19)	2.8%
Year 2 (December 21/19 - December 21/20)	2.2%
Year 3 (December 21/20 - December 21/21)	1.5%

2. No additional market adjustments in the current contract.
 3. The parties jointly undertake an examination of the labour market for CS employees that addresses the following questions: 1) has market demand for IT employees permanently shifted as a result of the pandemic; 2) to what extent, if any, is contracting out being driven by a shortage of workers versus factors such as short term projects and the need for very specialized expertise; and 3) is there evidence of a general recruitment and retention problem within the CS group versus a problem related to very specific types of CS personnel.
 4. We do not recommend that the CRA wage gap be closed in this contract. Instead we recommend that the wage gap be closed in a future round of bargaining as soon as the economic situation allows.
 5. With respect to Article 17.12, the Commission recommends that if, by April 1, 2021, the Treasury Board and PIPSC have not implemented a Memorandum of Agreement for a Wellness Support Program that provides 7.5 hours of paid leave for family-related responsibilities, articles 17.12(b) and 17.12(c)(iv) be amended to replace 37.5 hours with 45 hours.
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6. The Commission does not recommend the Institute's proposed telework collective agreement provision.
7. The Commission recommends that the parties meet at the earliest opportunity to ensure that the Directive on Telework is capable of meeting the unique circumstances of the pandemic.
8. The Commission recommends that the following language, subsection "d", be added to article 38.02:

"The employee shall have the right to Institute representation during the creation of an action plan."

[36] Both Mr. Lynn Harnden, nominee of the Employer, and Mr. Michael Wright, nominee of the Institute, concur with these recommendations.

September 10, 2020.



**Allen Ponak, Chairperson,
on behalf of the Public Interest
Commission**