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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

AARON MYRSKY AND OTHERS

Grievors

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as
Myrsky v. Treasury Board (Correctional Service of Canada)

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: Corinne Blanchette, Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN)

For the Employer: Emily Rahn, counsel

Heard at Abbotsford, British Columbia,
October 27 to 31, November 27, and December 2, 2023, and July 29 to 31, 2024.

REASONS FOR DECISION

I. Individual grievances referred to adjudication, and process issues

[1] Each of the grievors, Aaron Myrsky, Ryan Ginnish, Ken Balas, Jeffrey Smith, Cory Guliker, Levi Epp, Iqjot Brar, Dakota Cross, and Allan D. Griffin were all, at the time of the filing of their grievances, employed by the Treasury Board (TB or "the employer") and worked for the Correctional Service of Canada (CSC) as correctional officers (CX) classified at the CX-1 group and level at the CSC's Kent Institution ("Kent" or "the institution") in Agassiz, British Columbia.

[2] All the grievances alleged a breach of the collective agreement entered into between the employer and the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN or "the union") that was signed on January 5, 2021, and that expired on May 31, 2022 ("the collective agreement"). The specific breach alleged in all the grievances was the requirement by the employer of each individual grievor to work overtime when they had not volunteered to ("involuntary overtime").

[3] All the grievances were worded exactly the same, with the exception being the date that followed the word "On" in the first paragraph. In the grievances of Messrs. Balas, Ginnish, and Smith ("Group 1"), the date is March 13, 2021 ("March 13"); in the grievance of Mr. Guliker, it is May 9, 2021 ("May 9"); and in all the others ("Group 2"), it is May 8, 2021 ("May 8"). As an example, the following is the wording in the grievance of Mr. Myrsky:

> …
>
> *DETAILS OF GRIEVANCE …*
>
> *On 2021-05-08 I was ordered to stay for Involuntary Overtime, this was done in violation of the collective agreement and without consideration for alternatives to staff shortages. Attempts were made to address this situation prior to it being an issue but the employer decided to continue to Violate the collective agreement.*
>
> *CORRECTIVE ACTION REQUIRED …*
>
> *I request that the Employer pay all real, moral and exemplary damages, retroactively with Interest for choosing to actively violate the collective agreement after being notified of the violation and the reasonable and recommended alternatives available to them;*
>
> *I request other paid leave for a number of hours equal to the shift worked to compensate for my rest and/or loss of personal time;*

> *I request a written apology from the Warden for the change in policy and practice at Kent, and the continued decision to Violate the collective agreement.*
>
> …
>
> [*Sic* throughout]

[4] All the grievances were part of an original larger group of 69 grievances assigned to me for adjudication by the chairperson of the Board in early 2022 and scheduled for adjudication from March 29 to 31, 2022; all are from the CSC's Pacific Region and involve grievances from Kent and Mountain Institutions ("Mountain", which is in also in Agassiz). The hearing of the original 69 grievances was postponed by me after a joint request by the parties for a settlement conference to be held over those days instead. The settlement conference was held; however, the matters did not settle. The matters were placed back into the hearing scheduling queue and were scheduled for a hearing from October 24 to 28, 2022.

[5] As the hearing date approached, it was determined that the first grievances to be heard that week were 8 of the original 69 grievances, which were the earliest of the grievances referred to the Board for adjudication. At the outset of the hearing, the parties advised the Board that they were in settlement negotiations, and the Board agreed to postpone the hearing on a day-by-day basis to allow for these negotiations to continue. The parties successfully settled the first 8 grievances, and the total number of grievances was reduced from 69 to 61. Of the 61 grievances that remained, all but 3 were from Kent.

[6] My review of the remaining 61 grievances disclosed, in part, a pattern. The pattern was that a significant number of the grievances related to involuntary overtime, which would have in common a particular day or combination of contiguous days. Therefore, I placed a little more than half of these 61 grievances into groups based on the patterns that appeared, and I ordered that in hearing the grievances, they would be done such that they would proceed by their groupings and in the chronological order of the dates of the involuntary overtime that was worked. In the end, there were 8 specific groups over the period between March 13 (Group 1) and July 10, 2021, which accounted for 37 of the 61. The remaining 24 grievances were identified as outliers, disclosing no pattern.

[7] My review also disclosed that some of the evidence with respect to all the grievances was likely going to be identical, and rather than have the parties recall the witnesses with respect to each grouping and repeat their evidence, the hearing would proceed in a manner such that the parties were required, at the outset of their evidence with respect to the first group, to provide the general evidence that they would be relying upon that pertained to all the remaining 61 grievances, after that having to lead evidence only with respect to the specifics of the individual grievances or grouping.

[8] These matters were scheduled to be heard from October 30 to November 2, November 27 to December 1, and December 11 to 15, 2023. The hearing proceeded from October 30 to November 2 and November 27 to December 1; however, the hearing days for the week of December 11 had to be postponed due to an unexpected illness of one of the main participants. The next scheduled hearing dates were July 29 to August 1, 2024.

[9] In the intervening weeks between December 1, 2023, and the scheduled July 29, 2024, hearing date, my review of the evidence disclosed a further pattern of how the situation involving the involuntary overtime was occurring and the repetitive nature of the type of evidence that was being led by the parties with respect to each individual grievance. I will set this out in more detail in my summary of the evidence. Given this assessment, I instructed the parties that during the hearing days of July 29 to August 1, 2024, once the evidence with respect to Group 2 and Mr. Guliker was complete, I would hear the parties' submissions on all nine of the grievances.

[10] When referring to "the Board" in this decision, I am using that term to include the current iteration of the Board, the Federal Public Sector Labour Relations and Employment Board, as well as its predecessor boards, the Public Service Labour Relations and Employment Board (2014 to 2017), the Public Service Labour Relations Board (2005 to 2014), and the Public Service Staff Relations Board.

II. Summary of the evidence

A. Background facts relevant to all the grievances

[11] Kent is a maximum-security men's institution located on a federal reserve in the CSC's Pacific Region just outside Agassiz, about 100 km east of Vancouver in the Fraser Valley. It is the only maximum-security men's institution in the Pacific Region

and is co-located with Mountain, which is a medium-security men's institution. At the time of the grievances, it housed about 334 inmates.

[12] At the time of the hearing, and since April of 2022, Bradley Raven was the assistant warden operations (AWO) at Kent. Before that, he had been at Mission Institution, which is a men's medium-security institution in the CSC's Pacific Region. In his career with the CSC, he has held CX-2 and correctional manager (CM) positions. The CM position is classified at the CX-4 group and level and is a management position. He described the duties of the AWO as being broad-ranging, including finance, staffing, and the development of policies for the operation of the institution. All CXs report to him indirectly, and 17 CMs and 1 administrative assistant report to him directly.

[13] At the time of the hearing, Henry Shea was the deputy warden (DW) at William Head Institution, which is a men's minimum-security institution on Vancouver Island, British Columbia, in the CSC's Pacific Region. He started his career in 2006 as a CX-1 and rose through the ranks in the positions of a CX-2 security intelligence officer, a CM, an AWO, and an assistant warden management services (AWMS). In 2017, he was at Kent as the AWMS and after six months was deployed to the AWO position there. He remained at Kent as the AWO until November of 2021, when he moved to William Head as the DW.

[14] At the time of the hearing and since July of 2022, Mitchell Hammond was an acting CM at Kent; his substantive position, since 2016, is as a CX-2. He started with the CSC in December of 2011 as a CX-1 and joined the union in 2013. In 2018, he was a vice-president of the union at Kent and the union's grievance coordinator, which he was still at the time of the grievances filed with respect to Group 1.

[15] At the time of the hearing, Helinant (Eli) Raymond was a CX-1 at Kent and since 2019 was the union's local president. In 2008, he joined the CSC and has been at Kent his entire career.

[16] Inmates live in a secure, closed, and highly regulated environment. Kent, like other CSC institutions, operates 24 hours per day, 7 days per week, every day of the year ("24/7"). CXs provide the security services for the institutions. There are several different locations in or around each institution that must be staffed with a CX. The Board was provided with a clear picture of what the staffing situation was at Kent at the times relevant to the grievances. The specifics of this is not relevant for the

reasons that are set out later in this decision. In addition to the security services provided by the CXs, there are also other services (i.e., food, health, educational, or administrative) that are required to keep the institution running, are not required on a 24/7 basis, and are largely carried out on a regular 5-days-per-week (Monday through Friday) 7.5- or 8-hour workday (a 37.5- or 40-hour workweek). The provision of these services affects the staffing levels and locations of the CXs.

[17] Given the way institutions run and given that a certain level of security is always required, CXs work variable hours on a rotating or an irregular basis pursuant to what is known as a "variable-shift schedule arrangement" (VSSA). The process for establishing VSSAs is set out in Appendix K of the collective agreement. Once the VSSA is agreed to between the employer and the union, the actual scheduling of the CXs is done through a computer program called the "Scheduling and Deployment System", which is commonly referred to as the "SDS".

[18] Without getting into the intricate details of scheduling, institutions have a variety of security-related posts that have to be filled by CXs. The filling of the security posts is dependent on several different factors. The SDS allows doing not only scheduling but also tracking and managing leave.

[19] CXs, be they classified CX-1 or CX-2, report directly to a CM, who is the first level in the management structure of the institution. The CMs report to the AWO, who reports to the warden, or in their absence, the DW. Kent has three different types of CM positions: the SDS CM, the operations CM, and the desk CM.

[20] *Commissioner's Directive 004 (CD-004)* is the *National Standards for the Deployment of Correctional Officers* ("the deployment standards"). The purpose of this document is to have a national standard for the efficient deployment of CXs at each level of security and facility. It aims to have consistent levels of safety and security while ensuring effective dynamic interaction and interventions with inmates.

[21] The deployment standards set out what the security posts are at an institution and how (by a CX-1 or a CX-2) and when (during what shifts) they are to be staffed. In short, at any time of any day, if the institution is operating normally, there would be "x" number of CXs filling "y" number of security posts; the number of CXs filling posts may fluctuate depending on the post, the day, the time of day, and the situation in the institution at any given time, or all of these.

[22] For example, inmates live in what is called a living unit. Kent has several self-contained living units, which contain cells. Each living unit may require "x" number of CX-1s and "y" number of CX-2s to be working there during different periods of the day. During some hours, inmates may not necessarily be locked in their individual cells, and there may be movement out onto the range. However, overnight, the number of CXs that are required to be on staff would be less, since the inmates are locked in their cells and should be sleeping.

[23] The term "post" was often used by the witnesses in their testimonies and in the documents entered in evidence. For example, at each inmates' living unit location, there are work posts for CXs that have different names or name-and-number designations, which would coincide with certain tasks related to that location. When the term "post" is used in this manner, I will refer to it as a "post-location".

[24] It was clear as the hearing progressed that the term "post", in addition to referring to a physical location in the institution (a post-location), has another meaning. It is also used in scheduling parlance to describe a series of different tasks or assignments in different locations with respect to CX-1 work over the course of a shift. The CX-1 shifts often have one CX assigned to more than one post-location over the course of the shift, albeit not all at the same time.

[25] An example of this is a CX-1 working a 12-hour shift. Over the course of that shift, the CX-1 can be assigned to work 3 different post-locations over the 12-hour shift, moving from one post-location to another roughly every four hours. On the daily roster schedule that sets out where each CX is assigned to work, over the course of the shift, their assignment is designated by an alphanumeric. An example is "010A". If this is a post to be staffed by a CX-1, the CX-1 assigned to this would work at "x" location for the first (roughly) 1/3 of his or her shift, then move to "y" location for the next 1/3, and finally move to "z" location for the balance of the shift. These alphanumeric designations appear on scheduling documents, such as roll calls and shift rosters, as a "post". In this respect, they are often called "shift-posts", and I will refer to them as such to differentiate with the physical location, or post-location, as I have described.

[26] The SDS CM creates the schedules for the CXs. The evidence disclosed that CXs receive their schedules at least a year in advance. At Kent, there are 3 shifts for the

CXs, morning, day, and evening. Shifts also vary in length, being either 8, 12, or 16 hours.

[27] At Kent, 8 CMs rotationally fill the desk CM position. It is a position that is filled 24/7. The desk CM is responsible for the deployment of CXs daily and for dealing with any CX staffing shortages during the day. They also are the institutional head when the warden and DW are not onsite and as such are responsible for the safety and security of the institution overall.

[28] Paragraph 6 of the deployment standards states that "[i]nstitutional practices will comply with operational adjustment policies identified in the Standards" and that "[e]ach site must have a documented Operational Adjustment Plan, which is to be reviewed on an annual basis, or sooner, if changes are required."

[29] The "Operational Adjustment Plan" for an institution will identify which security activities can be "operationally adjusted" in accordance with the deployment standards. "Operationally adjusted" simply means that the person in charge of the institution can decide to not deploy a CX to a particular post during a shift or part of a shift.

[30] The shifts for the CXs and the shift times for the posts do not necessarily coincide; nor are they the same length. The desk CM, during their shift, is responsible for CX staffing on the day.

[31] The morning shift starts at 18:00 in the evening of one day and ends either at 06:45 (for the CX-1s) or 06:30 (for the CX-2s) the next morning. In reality, the morning shift is the overnight shift. The CX-2s are assigned to one post-location over the course of the morning shift, while each of the CX-1s who are scheduled could be rotated through three different post-locations.

[32] There are 4 different day shift categories, 2 for each of the CX-1 and CX-2 groups. There is both a 12- and an 8-hour shift for each, albeit the CX-1 12-hour shift runs over a period of 12 hours and 45 minutes, while the CX-2 shift runs over a period of 12 hours and 30 minutes. The major difference between them is that the CX-2s on a 12-hour shift during the day appear to each be assigned to a single post-location, while each of the CX-1s is potentially rotated through 3 post-locations for over their shift. With respect to the 8-hour shifts, the CX-2s appear to be posted to a single post-

location for their posts, while each CX-1 is rotated through 2 post-locations of roughly 4 hours each.

[33] There are two evening shift categories, one each for CX-1s and CX-2s. Both are 8-hour shifts starting at 14:30 and ending at 22:30. The CX-2s are assigned to one post-location each, while again, the CX-1s can be rotated through two different post-locations of roughly four hours each.

[34] CXs schedules are supposed to consider that not every CX scheduled will work on the days that they are scheduled for (more CXs are scheduled than would be necessary to have a full staff complement on shift). This is because life has a way of getting in the way. Despite the best efforts of scheduling sufficient CXs for each shift, it is not uncommon for there to be less CXs on shift and at work than were scheduled, including the extra CXs. When this happens, the desk CM has to address the gaps created by not having sufficient CXs to fill all the post-locations. The options available to that person are as follows:

- offer overtime to a CX not scheduled to work the shift;
- operationally adjust certain post-locations during the shift; and
- a combination of overtime offerings and operational adjustments.

[35] In addition to the usual reasons that a CX may miss work despite being on the schedule (i.e., taking vacation, experiencing an illness, or having to deal with a family matter, to name a few), the period in issue in the grievances that were the subjects of the hearing was March and May of 2021, which was while the COVID-19 pandemic was still in full swing. During the pandemic, if an employee had been in contact with someone who had COVID-19, or it was suspected might have had COVID-19, they had to remain off work or isolate. This meant that otherwise healthy CXs who were scheduled to work, or could potentially work, were not allowed to work, due to the requirement to isolate.

[36] All the grievances that are the subject of this decision involve shifts of work over the course of a weekend after 16:00 on a Friday and before 08:00 on a Monday.

[37] The schedule for each grievor was entered into evidence. All the grievors worked what is known as a "six-four/six-five" (6-4/6-5) schedule. It is a VSSA combination of shifts in which a CX works 6 days in a row followed by 4 days off and

then works a further 6 days followed by 5 days off; hence, 6-4/6-5. The actual shift lengths during the working days can vary from 7.25 up to 16 hours.

[38] At the time of the hearing, and since March of 2021, Kevin Cote was a desk CM at Kent.

[39] At the time of the hearing, and since approximately 2018, David Mardell was a CM at Kent, and beginning in 2020, he was a desk CM.

[40] A copy of the Operational Adjustment Plan for Kent was produced into evidence. It is the responsibility of the desk CM on duty at any given time to determine if an operational adjustment can be done in the institution; safely and cost effectively.

[41] Mr. Raymond created a document based on Kent's deployment standard for shift schedules and the Operational Adjustment Plan. It was organized in such a manner that it showed the different shifts and different shift-posts and post-locations, breaking them down between CX-1s and CX-2s. It was colour coded: each post-location was marked with one of three colours, red, yellow, or green, which designated a level of potential operational adjustment, as follows:

- red: designated a post that could be operationally adjusted only in the case of an emergency;
- yellow: designated a post that could be operationally adjusted only with a routine change; and
- green: designated a post that could be operationally adjusted without a routine change.

[42] "Routine change" means a change in the routine of the inmates within the institution.

B. The collective agreement

[43] The articles of the collective agreement that are relevant to these grievances and this decision are the following:

…	[…]
***Article 2: interpretation and definitions**	***Article 2: interprétation et définitions**

***2.01** For the purpose of this agreement:*	***2.01** Aux fins de l'application de la présente convention :*
…	[…]
n. "overtime"	***n. « heures supplémentaires »***
means (heures supplémentaires):	*(overtime) désigne :*
i. in the case of a full-time employee, authorized work in excess of the employee's scheduled hours of work;	*i. dans le cas d'un-e employé-e à temps plein, les heures de travail qu'il est autorisé à effectuer en sus de son horaire normal de travail;*
or	*ou*
ii. in the case of a part-time employee, authorized work in excess of the normal daily or weekly hours of work of a full-time employee specified by this collective agreement but does not include time worked on a holiday;	*ii. dans le cas d'un-e employé-e à temps partiel, les heures de travail qu'il est autorisé à effectuer en sus de la durée normale journalière ou hebdomadaire de travail d'un-e employé-e à temps plein prévue dans la présente convention collective, mais ne comprend pas les heures effectuées un jour férié;*
…	[…]
p. "shift"	***p. « quart »***
means the employee's regularly scheduled continuous hours of work, not the post to which the employee is assigned (quart);	*désigne les heures de travail continues normalement prévues à l'horaire de l'employé-e, ne désigne pas le poste auquel l'employé-e est affecté (shift);*
q. "shift schedule"	***q. « horaire de quarts »***
means the arrangement of shifts over a given period of time (horaire de quarts);	*désigne la répartition des quarts pendant une période donnée (shift schedule);*
r. "shift cycle"	***r. « cycle de quarts »***
means the regularly scheduled shifts between two (2) periods of at least two (2) consecutive days of rest (cycle de quarts) ….	*désigne les heures de travail continues normalement prévues à l'horaire entre deux (2) périodes d'au moins deux (2) jours de repos consécutifs (shift cycle);*

…	[…]
***Article 6**: managerial responsibilities*	***Article 6** : responsabilités de la direction*
***6.01** Except to the extent provided herein, this agreement in no way restricts the authority of those charged with managerial responsibilities in the public service.*	***6.01** Sauf dans les limites indiquées, la présente convention ne restreint aucunement l'autorité des personnes chargées d'exercer des fonctions de direction dans la fonction publique.*
…	[…]
*****Article 21: hours of work and overtime***	*****Article 21 : durée du travail et heures supplémentaires***
…	[…]
Shift work	***Travail par quarts***
***21.02** When a shift is scheduled for an employee on a rotating or irregular basis:*	***21.02** Lorsque le quart d'un-e employé-e est établi suivant un horaire irrégulier ou par roulement :*
a. it shall be scheduled so that an employee:	*a. il doit être établi de façon à ce que l'employé-e :*
i. over the length of the shift schedule, works an average of forty (40) hours per week,	*i. travaille une moyenne de quarante (40) heures par semaine pendant la durée de l'horaire de quarts,*
and,	*et*
ii. on a daily basis, works eight decimal five (8.5) hours per day.	*ii. travaille huit virgule cinq (8,5) heures par jour.*
b. every reasonable effort shall be made by the Employer:	*b. l'employeur prendra toutes les mesures raisonnables possibles :*
i. not to schedule the commencement of an employee's shift within eight (8) hours of the completion of the employee's previous shift,	*i. pour ne pas fixer le début du quart de travail dans les huit (8) heures qui suivent la fin du quart de travail précédent de l'employé-e,*
ii. to ensure an employee assigned to a regular shift cycle shall not be required to change his or her	*ii. pour veiller à ce qu'un-e employé-e affecté à un cycle de quarts réguliers ne doive pas*

shift more than once during that shift cycle without his or her consent except as otherwise required by a penitentiary emergency. A change of shift followed by a return to the original shift is considered as one change;

changer de quart plus d'une fois au cours de ce cycle de quarts sans son consentement, sauf en situation d'urgence survenant dans un pénitencier. Un changement de quart suivi du retour au quart d'origine ne constitue qu'un seul changement,

and,

et

iii. to avoid excessive fluctuations in hours of work;

iii. pour éviter toute variation excessive de la durée du travail.

c. they shall, except as otherwise required by a penitentiary emergency, be scheduled so that each shift ends not later than nine decimal five (9.5) hours after its commencement,

c. sauf en situation d'urgence survenant dans un pénitencier, l'horaire de travail doit être fixé de telle façon que chaque quart puisse se terminer au plus tard neuf virgule cinq (9,5) heures après qu'il a commencé,

d. they shall be scheduled so that an employee will not be regularly scheduled to work more than eight (8) consecutive calendar days. Exceptions may be scheduled at the request of an employee and with the approval of the Employer, or after consultation between the Employer and the Union.

d. l'horaire de travail doit être fixé de telle façon que l'employé-e ne soit pas normalement tenu de travailler plus de huit (8) jours civils consécutifs. Des exceptions peuvent être permises, à la demande de l'employé-e et avec l'approbation de l'employeur, ou après consultation entre l'employeur et le syndicat,

e. the shift schedule shall be a maximum of fifty-two (52) weeks,

e. l'horaire de quarts est d'un maximum de cinquante-deux (52) semaines.

f. an employee shall obtain at least two (2) consecutive days of rest at any one time,

f. l'employé-e doit bénéficier d'au moins deux (2) jours de repos consécutifs à la fois.

g. a period of twenty-four (24) hours or less between shifts and within a shift cycle shall not be considered a day of rest.

g. une période de vingt-quatre (24) heures ou moins entre deux (2) quarts et à l'intérieur d'un cycle de quarts n'est pas considérée comme un (1) jour de repos.

21.03

21.03

a. Shift schedules shall be posted at least twenty-eight (28) calendar days in advance of the staring date of the new schedule in order

a. Les horaires de quarts doivent être affichés au moins vingt-huit (28) jours civils avant la date du début du nouvel horaire afin de

to provide an employee with reasonable notice as to the shift he or she will be working. The shift as indicated in this schedule shall be the employee's regularly scheduled shift.	*permettre à un-e employé-e d'obtenir un avis raisonnable pour connaître le quart qui lui est affecté. Le quart, comme il est indiqué dans l'horaire, doit correspondre au quart normalement prévu à l'horaire de l'employé-e.*
b. The Employer agrees that, before an employee's shift schedule is changed, the change shall be agreed upon in accordance with Appendix "K."	*b. L'employeur convient qu'avant que soit modifié l'horaire de quarts de travail d'un-e employé-e, la modification doit faire l'objet d'une entente conformément à l'annexe « K ».*
c. Within five (5) days of request for modification served by either party, the Union shall notify the Employer in writing of the authorized representative to act on behalf of the Union.	*c. Dans les cinq (5) jours qui suivent la demande de modification présentée par l'une ou l'autre partie, le syndicat communique par écrit à l'employeur le nom du représentant autorisé à agir en son nom.*
d. An employee whose regularly scheduled shift is changed, pursuant to subparagraph 21.02(b)(ii), without ninety-six (96) hours prior notice shall be compensated at the rate of time and three quarters (1 ¾) for the first (1st) full shift worked on the new schedule. Subsequent shifts worked on the new schedule shall be paid for at straight time.	*d. Un-e employé-e dont le quart normalement prévu est modifié, tel que prévu au sous-alinéa 21.02 b) (ii), sans un avis préalable de quatre-vingt-seize (96) heures est compensé à tarif et trois-quarts (1 3/4) pour le premier (1er) quart de travail complet travaillé dans le cadre du nouvel horaire. Les quarts ultérieurs dans le cadre du nouvel horaire doivent être rémunérés à tarif normal.*
…	[…]
21.06 *After meaningful consultation with the appropriate local Union representative, the Employer will arrange equitable rotation of employees through shifts and post/work assignments. The special needs of employees and the operational requirements of the service shall be considered in the decision-making process.*	***21.06*** *Après une consultation significative avec le représentant local approprié du syndicat, l'employeur prévoira une rotation du personnel équitable au moyen de quarts de travail et d'attribution des tâches. Les besoins spéciaux des employé-e-s et les exigences opérationnelles du service doivent être envisagés dans le processus de prise de décisions.*

…	[…]
21.10 Assignment of overtime work	***21.10 Répartition des heures supplémentaires***
The Employer shall make every reasonable effort:	*L'employeur fait tout effort raisonnable pour :*
a. to allocate overtime work on an equitable basis among readily available qualified employees,	*a. répartir les heures supplémentaires de travail sur une base équitable parmi les employé-e-s qualifiés facilement disponibles,*
b. to allocate overtime work to employees at the same group and level as the position to be filled, that is, Correctional Officer 1 (CX-1) to Correctional Officer 1 (CX-1), Correctional Officer 2 (CX-2) to Correctional Officer 2 (CX-2), Correctional Staff Training Officer (CX-3) to Correctional Staff Training Officer (CX-3); *However, it is possible for a local Union to agree in writing with the institutional warden on another method to allocate overtime*	*b. attribuer du travail en temps supplémentaire aux employé-e-s faisant partie du même groupe et niveau par rapport au poste à combler, par exemple, agent correctionnel 1 (CX-1) à agent correctionnel 1 (CX-1), agent correctionnel 2 (CX-2) à agent correctionnel 2 (CX-2), agent de formation du personnel (CX-3) à agent de formation du personnel (CX-3).* *Cependant, il est possible pour une section locale de convenir par entente écrite avec le directeur de l'établissement d'une méthode différente en ce qui a trait à l'attribution du temps supplémentaire*
and	*et*
c. to give employees who are required to work overtime adequate advance notice of this requirement.	*c. donner aux employé-e-s, qui sont obligés de travailler des heures supplémentaires, un préavis suffisant de cette obligation.*
21.11 *The Union is entitled to consult the Commissioner or the commissioner's representative whenever it is alleged that employees are required to work unreasonable amounts of overtime.*	***21.11*** *Le syndicat a le droit de consulter le commissaire ou son représentant chaque fois qu'il est allégué que les employé-e-s sont tenus de faire un nombre d'heures supplémentaires qui n'est pas raisonnable.*
21.12 Overtime compensation	***21.12 Rémunération du travail supplémentaire***

An employee is entitled to time and three quarters (1 ¾) compensation subject to clause 21.13 for each hour of overtime worked by the employee.	*L'employé-e a droit à une rémunération à tarif et trois-quarts (1 3/4) sous réserve du paragraphe 21.13 pour chaque heure supplémentaire de travail supplémentaire exécutée par lui.*
For greater certainty, any reference to compensation for each hour of overtime worked elsewhere in this collective agreement is at time and three quarters (1 ¾).	*Pour plus de précision, toute référence à la rémunération du travail supplémentaire ailleurs dans la présente convention collective est à tarif et trois-quarts (1 3/4).*
…	[…]
21.16 Emergency situation	***21.16 Situation d'urgence***
In the case of an emergency, as determined by the Employer, an employee who works a regularly scheduled shift and is required to work continuously during the entire period between the end of the said regularly scheduled shift and the start of the next regularly scheduled shift is entitled to time and three quarter (1 ¾) compensation for all hours worked continuously worked after the end of the said regularly scheduled shift.	*Dans le cas d'une situation d'urgence, tel que déterminé par l'employeur, un-e employé-e qui travaille un quart de travail normalement prévu à son horaire et qui est tenu de travailler en continu durant toute la période entre la fin dudit quart et le début du prochain quart de travail normalement prévu à son horaire a droit à une rémunération à tarif et trois-quarts (1 3/4) pour toutes les heures de travail effectuées en continu après la fin dudit premier quart normalement prévu à son horaire.*
…	[…]
*****Article 34: modified hours of work***	*****Article 34 : horaire de travail modifié***
…	[…]
The Employer and the Union agree that the following conditions shall apply to employees for whom hours of work are scheduled, in accordance with clause 21.02. The agreement is modified by these provisions to the extent provided herein.	*L'employeur et le syndicat conviennent que les conditions suivantes s'appliquent aux employé-e-s dont l'horaire de travail est établi conformément aux dispositions du paragraphe 21.02. La convention est modifiée par les présentes dispositions dans la mesure indiquée.*

1. General terms	***1. Conditions générales***
The scheduled hours of work of any day as set forth in a work schedule, may exceed or be less than the regular workday hours specified by this agreement; starting and finishing times of shifts, meal breaks and rest breaks shall be established by agreement between the Employer and the Union at the local level, and approved according to Appendix "K." The daily hours of work are consecutive.	*Les heures de travail figurant à l'horaire d'une journée quelconque peuvent être supérieures ou inférieures à l'horaire de travail de la journée normale de travail qu'indique la présente convention; les heures du début et de la fin du travail, des pauses-repas et des pauses-repos sont fixées par entente entre le syndicat et l'employeur au niveau local et approuvées conformément à l'annexe « K ». Les heures de travail journalières sont consécutives.*
For shift workers, such schedules shall provide that an employee's normal workweek shall average the weekly hours per week specified in this agreement over the life of the schedule.	*Dans le cas des employé-e-s travaillant par quarts, ces horaires doivent prévoir que leur semaine normale de travail correspond, en moyenne, au nombre d'heures hebdomadaires de travail prévues dans la présente convention pendant toute la durée de l'horaire.*
Whenever an employee changes his or her modified hours or no longer works modified hours, all appropriate adjustments are made.	*Lorsqu'un-e employé-e modifie son horaire modifié ou qu'il ne travaille plus selon un tel horaire, tous les rajustements voulus sont faits.*
…	[…]
Overtime	***Heures supplémentaires***
Overtime shall be compensated for all work performed on regular working days or on days of rest at the rate set in Article 21 of the collective agreement.	*Des heures supplémentaires sont payées pour tout travail exécuté par l'employé-e en sus des heures de travail prévues à son horaire un jour de travail normal ou les jours de repos sont payés au tarif prévu à l'article 21 de la convention collective.*
…	[…]
Appendix "K"	***Annexe « K »***
Letter of Understanding Between the Treasury Board and the Union of Canadian Correctional Officers – Syndicat des agents	***Lettre d'entente entre le Conseil du Trésor et Union of Canadian Correctional Officers - Syndicat des agents correctionnels du***

correctionnels du Canada – CSN (UCCO-SACC-CSN) with Respect to the Effective Scheduling for the Correctional Service of Canada (CSC)

Canada - CSN (UCCO-SACC-CSN) concernant l'établissement efficace des horaires pour le service correctionnel du Canada

…

[…]

Rules for effective scheduling

Règles pour l'établissement efficace des horaires

The following rules have been established to maintain sustainable solutions for all stakeholders and to ensure effective scheduling that will address the business need of the organization and the quality of life for employees working in a correctional environment.

Les règles suivantes ont été établies pour offrir des solutions durables à tous les intervenants et permettre l'établissement d'horaires qui tiennent compte des besoins opérationnels de l'organisation et de la qualité de vie des employé-e-s qui travaillent en milieu correctionnel.

(A) Eight decimal five (8.5) hour shift schedules (Article 21.02)

A) Horaires de quarts de huit virgule cinq (8,5) heures (paragraphe 21.02)

Ensure shift schedules deploy employees for the correct hours of work in accordance with the collective agreement.

Établir des horaires de quarts de travail permettant d'affecter des employé-e-s selon les heures de travail prévues dans la convention collective.

Built shift schedules to reflect the operational need of the institution. The current business need is eight (8), sixteen (16) and twenty-four (24) hour security activity coverage and shift schedules shall be developed based on the identified business need.

Établir des horaires de quarts de travail qui répondent aux besoins opérationnels de l'établissement. Les besoins opérationnels actuels nécessitent des activités correctionnelles de huit (8), seize (16) et vingt-quatre (24) heures et les horaires de quarts de travail doivent être établis en conséquence.

Deploy employees to the identified business need. For eight decimal five (8.5) hour shift schedules there shall only be eight decimal five (8.5) hour shifts for eight (8) hour correctional activities.

Affecter les employé-e-s aux besoins opérationnels connus, c'est-à-dire, pour les horaires de quarts de travail de huit virgule cinq (8,5) heures, il devrait y avoir uniquement des quarts de travail de huit virgule cinq (8,5) heures pour les activités correctionnelles de huit (8) heures.

To maximize substitute relief positions there shall not be any overlap in the shift schedules. There shall be an equitable distribution of substitute relief positions for each day of the week, that is eight decimal five (8.5) hour substitute relief positions for eight (8) hour correctional activities.

Pour maximiser l'utilisation des postes de remplacement, il ne devrait pas y avoir de chevauchement dans les horaires de quarts de travail. Il devrait y avoir une répartition équitable des postes de remplacement pour chaque jour de la semaine, c'est-à-dire des postes de remplacement de huit virgule cinq (8,5) heures pour des activités correctionnelles de huit (8) heures.

The process to determine how employees are assigned to an eight decimal five (8.5) hour shift schedule is determined by mutual agreement at the local Labour Management Committee level. In cases where mutual agreement cannot be reached on a priority rating system, the institution shall assign among all the employees who have expressed interest and meet the requirements of the position, the employee with the most years of service as a correctional officer.

Le processus d'affectation des employé-e-s à des horaires de quarts de travail de huit virgule cinq (8,5) heures doit être établi d'un commun accord au niveau du comité local patronal/syndical. Si les parties n'arrivent pas à s'entendre sur un système de classement des priorités, les responsables de l'établissement devront désigner, parmi tous les employé-e-s intéressés par le poste qui satisfont aux exigences établies, celui qui a accumulé le plus grand nombre d'années de service à titre d'agent correctionnel.

(B) Modified shift schedules (Article 34)

B) Horaire de quarts de travail modifié (article 34)

Ensure shift schedules deploy employees for the correct hours of work in accordance with the collective agreement.

Établir des horaires de quarts de travail permettant d'affecter des employé-e-s selon les heures de travail prévues dans la convention collective.

Build shift schedules to reflect the operational need of the institution. The current business need is eight (8), sixteen (16) and twenty-four (24) hour correctional activity coverage and shift schedules shall be developed based on the identified business need.

Établir des horaires de quarts de travail qui permettent de répondre aux besoins opérationnels de l'établissement. Les besoins opérationnels actuels nécessitent des activités correctionnelles de huit (8), seize (16) et vingt-quatre (24) heures et les horaires de quarts de travail doivent être établis en conséquence.

Deploy employees to the identified business need, that is, for twelve

Affecter les employé-e-s aux besoins opérationnels connus, c'est-

decimal seven five (12.5) hour shift schedules the majority of shifts shall be twelve decimal seven five (12.5) hour shifts for twelve (12) hour correctional activities.	*à-dire, pour les horaires de de quarts de travail de douze virgule cinq (12,5) heures, la majorité des quarts doivent compter douze virgule cinq (12,5) heures pour les activités correctionnelles de douze (12) heures.*
To maximize substitute relief positions there shall not be any overlap in the shift schedules. There shall be an equitable distribution of substitute relief positions for each day of the week, that is twelve decimal seven five (12.75) hour substitute relief positions twelve (12) hour correctional activities.	*Pour maximiser l'utilisation des postes de remplacement, il ne devrait pas y avoir de chevauchement dans les horaires de quarts de travail. Il devrait y avoir une répartition équitable des postes de remplacement pour chaque jour de la semaine, c'est-à-dire des postes de remplacement de douze virgule cinq (12,5) heures pour des activités correctionnelles de douze (12) heures.*
…	[…]
Employees working a modified shift schedule that contains a sixteen (16) hour shift shall normally be scheduled to only one sixteen (16) hour shift in a shift cycle.	*Les employé-e-s qui ont un horaire de quarts de travail modifié comportant un quart de travail de seize (16) heures devraient normalement être affectés à un seul quart de travail de seize (16) heures par cycle.*
The process to determine how employees are assigned to a modified shift schedule is determined by mutual agreement at the local Labour Management Committee level. In cases where mutual agreement cannot be reached on a priority rating system, the institution shall assign among all the employees who have expressed interest and meet the requirements of the position, the employee with the most years of service as a correctional officer.	*Le processus d'affectation des employé-e-s à un horaire de quarts de travail modifié doit être établi d'un commun accord au niveau du comité local patronal/syndical. Si les parties n'arrivent pas à s'entendre sur un système de classement des priorités, les responsables de l'établissement devront désigner, parmi tous les employé-e-s intéressés par le poste qui satisfont aux exigences établies, celui qui a accumulé le plus grand nombre d'années de service à titre d'agent correctionnel.*
Process for approving schedule and schedule changes	***Processus d'approbation et de modification des horaires***
Prior to any shift schedules being approved for implementation at	*Les horaires de quarts de travail devront être examinés et*

any institution, they shall be reviewed and certified by the national committee identified for the purpose of overseeing the shift schedules. The national committee will confirm that the above principles have been adhered to and reflected in the shift schedules. If the shift schedules do not reflect the principles then the schedule submitted shall not be certified for implementation and shall be referred back to the local for further changes/amendments.	*approuvés par le comité national chargé de surveiller les horaires de quarts de travail avant d'être mis en application dans un établissement. Le comité national vérifiera si les principes susmentionnés ont été respectés et pris en considération dans les horaires de quarts de travail. Si les horaires de quarts de travail ne respectent pas les principes, leur mise en application ne sera pas approuvée et ils seront renvoyés à l'échelon local pour que des modifications y soient apportées.*
Once a shift schedule has been approved and implemented, it shall only be altered by the mutual consent of the local Union and management and after the subsequent review and certification by the national committee. However, in cases where a change in the security level of the institution or organizational change (for example, number of approved posts, hours of operations for posts, classification or type of posts for deployment purposes), the shift schedule shall be re-submitted to the national committee to review the compliance with the above principles. The national committee shall on an annual basis, review shift schedules in effect in an institution to ensure continued compliance with the above principles.	*Après avoir été approuvé et mis en application, un horaire de quarts de travail pourra uniquement être modifié d'un commun accord des parties patronale et syndicale locales et après avoir été examiné et approuvé par le comité national. Toutefois, lorsque le niveau de sécurité de l'établissement change ou qu'un changement organisationnel est apporté (par exemple, nombre de postes approuvés, heures d'ouverture des postes, classification ou type de postes aux fins du déploiement), l'horaire de quarts de travail sera soumis à nouveau au comité national, qui déterminera s'il est conforme aux principes qui précèdent. Le comité national examinera chaque année les horaires de quarts de travail en vigueur dans un établissement afin de veiller à ce qu'ils soient toujours conformes aux principes qui précèdent.*
…	[…]

[Emphasis in the original]

[44] Appendix K is the collective agreement section that is the basis for the VSSA that was agreed to by the employer and the union. In simple terms, the VSSA provides that the CXs are paid straight time for each hour of work that is scheduled in the

normal course for their 6-4/6-5 schedules. This means that they are paid straight time for each hour of the shift worked during the regularly scheduled shift, and it does not matter whether they work an 8-, 12-, or 16-hour shift. However, if they are scheduled to work an 8-hour shift, and they work 10 hours instead, the final 2 hours are paid at the overtime rate. This is true for the 12- and 16-hour shifts as well. So, if they are scheduled to work a 12-hour shift and end up working 14 hours, they are paid 12 hours at the straight-time rate and 2 hours at the overtime rate.

C. The Global Agreement

[45] It is well known that for over a decade, there has been a written agreement between the union and the CSC (not the TB as the employer) called the "Global Agreement". The version entered in evidence was signed on January 5, 2021 ("the 2021 Global Agreement"). It is not a collective agreement; nor does it form part of the collective agreement and is not enforceable by the Board.

[46] Part II of the 2021 Global Agreement is titled "Working Conditions", and subsections II-J and II-K are respectively titled "Overtime Hiring" and "Overtime for New Recruits". They state as follows:

> **II-J-OVERTIME HIRING**
>
> **(REFERENCE: ARTICLE 21.10)**
>
> *For the purpose of provision 21.10 a), the available and qualified employee who has worked or been offered the least overtime hours in the fiscal year will normally be offered the overtime opportunity of more than 3 hours duration. When another employee is hired, the hiring manager shall record the rationale for the decision at the time of hiring.*
>
> *CSC shall make available the daily overtime reports which will include employees' quantum of overtime hours offered or worked, the cumulative hours worked and offered and the time of day of the overtime periods worked. If a person other than the person with the least number of hours is hired, the reason for that decision will be included in the daily report.*
>
> *The parties shall review the hiring activities monthly. In cases where a concern is raised and the parties determine that the concern is founded, the employee shall be given priority for the next overtime opportunity for which they are qualified and available.*
>
> **II-K-OVERTIME FOR NEW RECRUITS**
>
> *A CX recruit who beings working at a site during the fiscal year, shall have the current average hours of overtime offered to CX-*

> *01's* [*sic*]*, at that site, or at womens'* [*sic*] *sites and healing lodges for CX-02 recruits, attributed to their cumulative overtime hours in SDS. Such situations shall be flagged in the OT Hours Report, to ensure such changes are considered during reviews of overtime equitability.*
>
> [Emphasis in the original]

D. The policy grievance decision, 2021 FPSLREB 22

[47] On August 30, 2018, the union filed a policy grievance ("the policy grievance") against the employer on behalf of the CXs working at Kent. It was referred to the Board on October 22, 2018. The policy grievance filed in file no. 569-02-39393 stated as follows:

> …
>
> *DETAILS OF GRIEVANCE…*
>
> *I grieve the decision of CSC, and Kent management to order compulsory overtime in absence of any operational requirements (emergencies) as defined and understood by the parties. This is contrary to the collective agreement.*
>
> *CORRECTIVE ACTION REQUIRED…*
>
> *I request a declaration that the employer breached the collective agreement.*
>
> *I request that the employer ceases to order compulsory overtime in the absence of any operational requirements (emergenices)*
>
> *I request that employees who have been or will be affected by the employer's new actions be made whole;*
>
> *And all other rights under the Collective Agreement, as well as all real, moral or exemplary damages, to be applied retroactively with legal interest without prejudice to other acquired rights.*
>
> …
>
> [*Sic* throughout]

[48] The policy grievance was heard by another panel of the Board, and the decision was rendered on March 4, 2021, as *Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN v. Treasury Board (Correctional Service of Canada)*, 2021 FPSLREB 22 ("2021 FPSLREB 22").

[49] The grievors' position in this hearing was largely defined by what was set out in 2021 FPSLREB 22 at paragraphs 170 and 210, which state as follows:

> *[170] … Clearly, the agreement* [the collective agreement] *allows for involuntary overtime to be ordered in emergency situations or to ensure the completion of security duties, such as securing evidence. It may also legitimately be used to address short-term or unforeseen staff shortages when other alternatives for filling mandatory posts do not exist, which was in fact reflected in the employer's reply to this policy grievance.…*
>
> …
>
> *[210] The grievance is allowed in part. The Board declares that the sustained and chronic ordering of involuntary overtime is a violation of the collective agreement.*

[50] To understand the grievors' position and the evidence that they led relative to these grievances, the following relevant paragraphs are contained in the recitation of the evidence in 2021 FPSLREB 22:

> …
>
> *[9] At the hearing, the parties provided two different theories of the case. The union led with argument that under the collective agreement, all overtime is voluntary, and the employer does not have the authority to order it. The employer argued that the collective agreement is silent about voluntary overtime and that therefore, management has the right to order it in the way it sees fit.*
>
> *[10] For the reasons that follow below, I find both positions unsupported by the collective agreement language. Therefore, I will consider the union's alternative argument, which is that the way involuntary overtime has been ordered at Kent is inconsistent with the collective agreement and an unreasonable exercise of management rights.*
>
> *[11] This is a rather complicated analysis, but my finding is that the sustained and chronic reliance on involuntary overtime to address what is in effect a shortage of staff is not consistent with the collective agreement.…*
>
> …
>
> *[17] … The union's witnesses testified to the local situation at Kent and to how vacant shifts were filled both before and after the policy change in the summer of 2018. This reflects the union's basic position that the practice of ordering involuntary overtime at Kent is not warranted, not operationally required, and not in accordance with the collective agreement or national policy. The employer did not call local managers to testify; instead, its witnesses focused on the national policies within which local manager operate. This reflected its basic position that ordering overtime is allowed under the collective agreement and under national policy and that the decisions of local management at Kent cannot be addressed through this policy grievance.*

> *[18] Consequently, very little of the evidence is actually in dispute.…*
>
> ***B. Correctional operations and shift schedules***
>
> …
>
> *[21] Both the union and employer witnesses testified about the importance of the process set out at Appendix K and how it relates to the deployment of CXs and the CSC's requirements. Appendix K requires management and the union to agree at a local level on how employees are to be assigned to a shift schedule. Once a local schedule is developed, Appendix K requires that a national committee review it, which is to certify that it meets the principles outlined in the appendix. The appendix also states that "[o]nce a shift schedule has been approved and implemented, it shall only be altered by the mutual consent of the local Union and management and after the subsequent review and certification by the national committee."*
>
> *[22] Mr. Raymond testified that the shift schedule at Kent has CXs working 6 days in a row, followed by some days of rest, then 6 more days in a row, followed by more days of rest. The schedule normally starts with 2- or 3-day shifts starting at 6:30 a.m., followed by one 16-hour shift, then 2- or 3-evening shifts. The joint committee works to find shift patters that work in terms of both total average hours of work and other provisions of the collective agreement. For example, Appendix K provides that officers not be scheduled for more than one 16-hour shift per 6 days.*
>
> *[23] Mr. Raymond also testified that the schedule needs to respect the rule in the collective agreement (at clause 21.02(b)) not to schedule the start of an employee's next shift within eight hours of the end of the employee's previous shift. However, in building schedules, attempts are often made to try to provide for more than eight hours. For example, "You would not have a 10:30 p.m. end time followed by a 6:30 a.m. start time the next day," he said.*
>
> …
>
> [Emphasis in the original]

[51] In setting out its reasons in 2021 FPSLREB 22, the Board addressed the parties' arguments under six headings (in a question format), of which two are relevant to the matters in this case. They are as follows:

- Does the collective agreement prevent the employer from ordering involuntary overtime?
- Is the ordering of overtime at Kent in violation of the collective agreement?

[52] The following paragraphs in the reasons portion of 2021 FPSLREB 22, which answer, "Does the collective agreement prevent the employer from ordering involuntary overtime?", are relevant to my assessment of these grievances:

> …
>
> *[98] Let me now turn to the union's first argument, which is that the collective agreement prevents the employer from ordering employees to work overtime.*
>
> *[99] The parts of the collective agreement most pertinent to this matter are clauses 21.10 and 21.11, which read as follows:*
>
> …
>
> *[102] The employer argued that clause 21.10 does not state that all overtime shall be voluntary. It noted the language in clause 21.10(c), which speaks to employees being "required to work overtime". Further, clause 21.11 sets out a process for addressing situations when employees "… are required to work unreasonable amounts of overtime." The use of the word "required" in both clauses indicates that overtime can be involuntary.*
>
> *[103] Otherwise, the collective agreement is silent on ordering overtime, argued the employer. Therefore, management retains the right to establish rules for its ordering, which it has done through its national policy, and job descriptions, and in its orientation material and in this case, through the Warden's July 2018 directive.*
>
> *[104] Clause 21.10 does not explicitly state that all overtime shall be voluntary. Neither does it explicitly state that the employer may order compulsory overtime, although I do find that the use of the phrase "required to work overtime" indicates that overtime may be ordered. I will consider that while referencing the jurisprudence cited by the parties.*
>
> …
>
> *[110] The collective agreement in* Canada Post Corporation v. Canadian Union of Postal Workers, *2012 CanLII 51069 (CALA) ("*Canada Post*"), contained specific language that allowed the Canada Post Corporation to compel overtime.…*
>
> *[111] In C*anadian Paperworkers Union Local 101 v. Quebec and Ontario Paper Company, Thorold Division *1992 CarswellOnt 1167 24 LAC (4th) 163 ("*Canadian Paperworkers Union*") … The collective agreement in that case contained mandatory overtime language ….*
>
> *[112] The difficulty of relying too closely on* Canada Post *and* Canadian Paperworkers Union *is that the arbitrator's rulings depended significantly on the precise working of very distinct collective agreements.…*

> *[113] The parties put before me only one Board decision that addressed the issue of involuntary overtime.* Baldasaro v. Treasury Board (Correctional Service of Canada)*, 2012 PSLRB 54, involved the same parties and the same language at clause 21.10 that is at issue in this case, albeit from a previous collective agreement.* Baldasaro *was adjudicated as a test case for some 500 individual grievances concerning access to overtime offerings.…*
>
> *[114] In* Baldasaro*, at para. 55, the Board concluded that "[h]ad the parties wanted to make a distinction between the mandatory and voluntary allocation of overtime, they would have written it into the collective agreement …".…*
>
> *…*
>
> *[116] The Board's conclusion in* Baldasaro *indicates that both types of overtime are covered by clause 21.10.…*
>
> *…*
>
> *[118] In conclusion, I find no basis to conclude that clause 21.10* ***prevents*** *the employer from ordering involuntary overtime.…*
>
> *…*
>
> [Emphasis in the original]

[53] The following paragraphs in the reasons portion of 2021 FPSLREB 22, which answer, "Is the ordering of overtime at Kent in violation of the collective agreement?", are relevant to my assessment of these grievances:

> *…*
>
> *[119] What then of the union's alternative argument that even if the collective agreement allows for ordering involuntary overtime, the way it is being done at Kent is inconsistent with that agreement or is an unreasonable exercise of management rights?*
>
> *[120] This is a far more complex question. Examining it means looking not just at clause 21.10 but at the language of the collective agreement as a whole, in particular the provisions on hours of work and shift scheduling.*
>
> *…*
>
> *[132] As a policy grievance, the analysis must flow from the collective agreement. The question that must be examined is whether the employer's sustained and chronic use of involuntary overtime is consistent with the collective agreement or alternatively is an unreasonable exercise of management rights.*
>
> *[133] I will start by returning to clause 21.10. while I have concluded that it does not prevent the employer from ordering involuntary overtime, I also note that it states that the employer "… shall make every reasonable effort to allocate overtime work on an equitable basis among readily available qualified employees …". The words "readily available" have to be given meaning. While*

> *in my analysis, they do not provide a right to refuse a particular request, they do convey a requirement that employees be "readily available". The union's case indicates that the level of involuntary overtime being worked is causing serious problems for employees.…*
>
> *[134] The words "on an equitable basis" in clause 21.10 also have to be given meaning. The data from the tracking sheets presented indicated that some CXs have been ordered several times, whereas the majority have not been ordered or were only ordered once. The testimony of the union's witnesses was that some correctional managers make an effort to avoid ordering, whereas others do not. Equity requires both transparency and fairness.*
>
> *[135] The words "every reasonable effort" in clause 21.10 also must be given meaning. They provide a basis for the Board to consider whether management is properly considering alternatives to ordering overtime — in other words, whether the new policy at Kent is in fact reasonable.*
>
> …

[54] Entered in evidence was a copy of the CSC's *Bulletin # 2013-06*, titled "National Direction - Policy on the Management of Overtime for Correctional Officers" and dated November 5, 2013 ("the overtime policy"). Section 1 of the overtime policy is titled "Voluntary Overtime (Offered)", and section 2 is titled "Involuntary Overtime (Ordered)". In section 2, paragraphs 9 and 10 state as follows:

> ***9 Ordering of Employees on Shift***
>
> *Once the voluntary overtime offering procedures have been exhausted, employees on shift may be orders to work involuntary overtime.*
>
> *The determination of who will work such circumstances is subject to operational requirements and the discretion of the manager on site.*
>
> *Some employees may be ordered to work an overtime shift contiguous to their regular shift - in order to complete a specific task required from that employee (i.e. completion of an incident report, etc.).*
>
> ***10 Emergency/Crisis Situations***
>
> *If additional employees need to be called to the site during an emergency, the qualified employees living the shortest distance away from the site should be ordered first to work overtime.*
>
> *During an emergency, management reserves the right to decide how to order overtime.*
>
> [Emphasis in the original]

[55] The parties provided me with all the documents that were entered as exhibits in the hearing of the policy grievance that led to 2021 FPSLREB 22.

[56] The employer called several witnesses, who testified to the steps that have been taken since the policy grievance was filed on August 30, 2018, to deal with the staffing issues at Kent.

[57] In the union's book of documents specific to Group 2, a list of CXs at Kent was produced. This list stops as of February 7, 2022. Included in this list is a date for the hiring of each CX. The list contains the names of 300 CXs, of which 12 are identified as CMs, and 11 are identified as CXs in acting CM positions. Of the remaining 277 names on the list, 170 (61.4 %) were hired since August 30, 2018. Based on this information, in 3.5 years, the CSC hired trained, equipped, and deployed to Kent approximately 48 or 49 CXs per year.

[58] The evidence of several of the employer's witnesses spoke to the responsibilities of the CSC under the *Corrections and Conditional Release Act* (S.C. 1992, c. 20; "the *CCRA*") and the *Correctional and Conditional Release Regulations* (SOR/92-620; "the *CCRA Regulations*") with respect to inmates under its care and control. It included not only their health and safety but also the responsibility for them to have meaningful human contact.

E. Facts specific to individual grievances

[59] The case for the grievors was advanced similarly. Seven of the nine grievors testified. Their examinations-in-chief and cross-examinations generally followed the same pattern. The grievors that testified all stated the following with respect to the shifts that they were ordered to work on overtime:

- none of them volunteered to work overtime;
- none of them wanted to work overtime;
- as far as they were aware, no emergency was occurring in the institution;
- there was no task that they had not finished such that they had to stay on overtime to complete it;
- none were aware of a situation that existed that would have been a short-term or unforeseen staff shortage for which there were no other alternatives for filling mandatory posts;

- they were ordered to work overtime that day;
- they were paid for working overtime that day, at the rate specified in the collective agreement;
- none of them were responsible for implementing the overtime policy at the institution; and
- none of them were responsible for staffing on that day; nor were they responsible for which posts were to be staffed.

[60] Entered into evidence were copies of the offers of employment made to each of the grievors. All the offers, which were signed as accepted by the grievors, contained a paragraph worded (with some differences in punctuation) as follows:

> …
>
> ***Operational Requirements***
>
> *By accepting this offer, you agree to accept the following operational requirements: …*
>
> *Employees may be required to work overtime.*
>
> …
>
> [Emphasis in the original]

[61] With respect to the two grievors who did not testify, there is no evidence that would suggest that they were not paid for working the overtime shift.

[62] A common theme in the testimonies of the grievors, with the exception of Officer Guliker, about why they did not want to work overtime on the day that they were ordered to was that they were all scheduled to work 16-hour shifts starting at very early the next day (a Sunday), and working overtime on the Saturday would in essence have had them work back-to-back extended shifts with very little rest time in between. These grievors would have had to commute back home, sleep, get up and get ready, and be at roll call for the next morning. The end of their overtime shifts on the Saturday could have been quite late, which would have left them only 8 hours between the end of the overtime shift and the start of the 16-hour shift.

[63] Officer Guliker, who filed a grievance against involuntary overtime on May 9, 2021, was not scheduled to work a 16-hour shift the next day.

[64] Each grievor's individual schedule for the period from December 28, 2020, through December 31, 2021, was entered into evidence. These reflect what was scheduled and if the grievor worked overtime or was on leave. Both days of involuntary overtime for Group 1 and Group 2, March 13 and May 8, were Saturdays. The schedules for all the grievors who worked those days disclosed that they were all scheduled to work an 8-hour shift on the day in question, followed by a 16-hour shift the next day, then followed by 3 consecutive days, each with an 8-hour evening shift.

[65] The involuntary overtime shift for Officer Guliker was on May 9, 2021, the day after all the involuntary overtime shifts for Officers Myrsky, Epp, Brar, Cross, and Griffin. His schedule disclosed that on the day he worked the involuntary overtime, he was scheduled to work an 8-hour day shift followed by 8-hour day shifts on each of the next Monday and Tuesday and then a 16-hour shift on the Wednesday followed by 8-hour evening shifts on the Thursday and Friday.

[66] With respect to the overtime in issue for both Groups 1 and 2, Mr. Raymond testified about what operational adjustments could have been made by the desk CM for the shifts that the grievors worked. Mr. Raymond's analysis was that the desk CM on duty on those days could have operationally adjusted enough post-locations within the institution, such that the grievors would not have had to work overtime.

[67] Entered into evidence were 2 charts respectively for both Group 1 and Group 2. For each date, each of the 2 charts listed the names of all the CX-1s and CX-2s who were on strength at Kent as of those dates. The charts disclosed 246 CX-1s and 87 CX-2s, for a total of 333 CXs on strength. The charts were further subdivided into 5 potential overtime shift periods. However, 3 of those shift periods were for time frames that would not have been covered by the overtime ordered that is in issue in these grievances.

[68] The information on these charts further disclosed which of these 333 CXs stated that they were available over any of the 2 potential overtime shift periods. In reviewing the potential CXs available for Group 1 (March 13), only 1 CX said that they were available for overtime in 1 of the available shift periods. In reviewing the potential CXs available for Group 2, only 3 CXs said that they were available for overtime.

[69] "Ordered overtime" was a term used during the hearing to identify involuntary overtime; however, the evidence disclosed that the terms "involuntary overtime" and "ordered overtime" are not synonymous.

[70] When the desk CM, when evaluating whether there are sufficient CXs to cover an upcoming shift, exhausts the list of CXs who said that they were available for overtime, or if there are no names on the list, he or she will take steps to find someone to fill the post. In doing so, they may find a CX (or CXs) willing to take on an overtime shift voluntarily. When that happens, since that CX, or those CXs, had not previously signed up for overtime ahead of time in the SDS, even though they are agreeing to work overtime voluntarily, it shows up in the employer's system as "ordered overtime". In these circumstances, although it is shown in the employer's system as "ordered overtime", it is not involuntary but voluntary overtime.

[71] Entered in evidence was a chart in the "Union's Book of Documents - Specific to Group # 2" identified in the index as "2021-2022 Overtime Ordering" ("the 2021-2022 OT chart"). It comprises 8 columns. It also sets out a list of 300 CXs; their names appear in the second column. The first column is the date each CX was hired, and the names are ordered on the list by the date of hire, the most recent first, the rest in descending order, such that the most senior or longest-serving CXs appear at the end of the chart.

[72] Of note with respect to the 2021-2022 OT chart, Mr. Myrsky is not listed, and while it states that it is for the year 2021-2022, the start and end dates of the information were not provided. It is clear that it encompasses more than fiscal year 2021-2022, as some of the dates provided are after March 31, 2022, which would have been the last day of the employer's fiscal year of 2021-2022.

[73] Also on the 2021-2022 OT chart, after the column containing the CXs' names is a column that states how many times each specific CX was ordered to work overtime. That column is followed by one titled "Comments", which is followed by eight further columns; the first is a spot to list the date that each specific CX worked their first ordered overtime, and the seven subsequent columns are there to enter dates for the second, third, fourth, fifth, sixth, seventh, and eighth time each specific CX worked ordered overtime, if they did.

[74] Of the 300 CXs on the chart, the following information was disclosed:

- 66 had not been hired as of the days of involuntary overtime in issue in the hearing (March 13 and May 8 or 9), which hence reduces the number of CXs from 300 to 244;

- in the "Comments" column, listed next to 30 names was the acronym "LTL", which I have inferred to mean long-term leave. Of these, 19 listed CXs had no recorded ordered overtime, while 11 had instances of ordered overtime;

- by inferring that "LTL" means long-term leave, none of the time frames of the long-term leave were set out in the chart;

- in the "Comments" column, next to 23 CXs was the reference to "CX-4" or "Acting CX-4";

- none of the time frames for the acting CX-4s were set out in the chart;

- in the "Comments" column, next to 15 names were the symbols "***", of which 9 CXs had no recorded ordered overtime, and 6 had instances of ordered overtime;

- the meaning of "***" was not set out;

- in the "Comments" column, there were 2 CXs with the comment "on assignment", of which 1 had no ordered overtime and 1 had 1 instance of ordered overtime;

- the time frames for the CXs who were on assignment were not set out;

- in the "Comments" column, 1 CX was recorded as being on maternity leave; however, no time frame or details or any restrictions on that CX's postings were detailed; and

- the evidence did not distinguish whether the overtime recorded in the chart was involuntary or voluntary.

[75] The date of hire for each of the grievors (with the exception of Mr. Myrsky) is listed on the 2021-2022 OT chart. With respect to those dates, what is notable is that Officers Brar and Epp were relatively new on strength, their date of hire being listed as late in February of 2021, and that Officer Griffin was hired in late December of 2020.

[76] Entered in evidence were three more charts created by the union representative but identified by Mr. Raymond. These were marked as Exhibits G-3, G-3A, and G-3B. Exhibit G-3 is a summary document ostensibly setting out, on separate pages, the overtime hours worked collectively by each group (CX-1 or CX-2) for each of the following years: 2017-2018, 2018-2019, 2019-2020, 2020-2021, and 2021-2022. Exhibits G-3A and G-3B show overtime hours offered and worked in the year 2020-2021 for each specific CX. Exhibit G-3A sets out the CX-1s, while Exhibit G-3B sets out

the CX-2s. Considering that the fiscal year for the Government of Canada is from April 1 of one year to March 31 of the next, I have concluded that both Exhibits G-3A and G-3B are based on the employer's fiscal year, given the indication on the documents of each document being for 2020-2021.

[77] In Exhibit G-3A, Officers Brar and Epp are listed, while in Exhibit G-3B, Officers Ginnish, Griffin, and Guliker are listed. The information for Officers Barr and Epp discloses that they did not work any overtime in fiscal year 2020-2021. None of Officers Balas, Cross, Myrsky, or Smith are listed in either Exhibit G-3A or G-3B.

[78] Mr. Cote was the desk CM responsible for the institution on March 13. As the desk CM, he testified about the duties that he had; however I will not go into them, unless they are germane to the issue that I must decide. He testified that he arrived onsite that day at 04:45 and was briefed by the CM who was in charge on the night shift. He stated that he would have reviewed the roster to ensure that it was complete and would have also looked at the afternoon shift, to see if there were any vacancies. Finally, he would have looked at the graveyard shift and set the day shift for the following day.

[79] In his evidence before me, Mr. Cote went through the roster for March 13 and told me what sort of steps he would have taken before considering whether to hire staff on overtime to work. He stated that there are CXs on the roster who are spares or substitutes, are not assigned to a particular shift-post, and are on the roster in case a scheduled employee is on leave. He then stated that he looks and sees what posts he can operationally adjust. After he exhausts those processes, if he feels that he needs CXs to fill posts, he looks to those who have put their names down for the day or shift in the SDS as volunteering to work overtime. Once he exhausts that process, he makes calls, first to CXs who are working and then to those who are not but who he thinks may want to pick up an overtime shift. He testified about the process he uses to call. He stated that he does everything he can before he orders a CX to work overtime.

[80] Mr. Cote testified that on March 13, there was unrest in two of the living units, and that a few days before, there had been a drug drop involving a high-profile inmate.

[81] Mr. Cote confirmed that he worked overtime on that day.

[82] Mr. Mardell testified that he was the desk CM responsible for the institution on May 8. As the desk CM, he testified about the duties he had; however, like Mr. Cote's testimony, I will not go into them, unless they are germane to the issue that I must decide. He testified that at the time, things were very busy, and that Kent had the most security incidents in the CSC's Pacific Region. He also commented about the fact of the COVID-19 pandemic and contact tracing as well as the amount of drone activity that was happening. Like Mr. Cote, Mr. Mardell testified about what he would do during the day and how he would go about dealing with any shortages in CX personnel.

[83] Like Mr. Cote, in describing the process by which he went through the roster for March 13, Mr. Mardell did the same for May 8 and told me what sort of steps he would have taken before considering whether to hire staff on overtime to work. He stated that there are CXs on the roster who are spares or substitutes, are not assigned to a particular shift-post, and are on the roster in case a scheduled employee is on leave. He then stated that he looks and sees what posts he can operationally adjust. After he exhausts those processes, if he feels that he needs CXs to fill posts, he looks to those who have put their names down for the day or shift in the SDS as volunteering to work overtime. Once he exhausts that process, he makes calls, first to CXs who are working and then to those who are not but who he thinks may want to pick up an overtime shift. He testified about the process he uses to call. He stated that he does everything he can before he orders a CX to work overtime.

[84] The details of the steps taken by both Messrs. Cote and Mardell were canvassed in examination-in-chief, cross-examination, and re-examination.

III. Summary of the arguments

A. For the grievors

[85] The grievors referred me to 2021 FPSLREB 22, *Bernard v. Canada Revenue Agency*, 2017 PSLREB 46, *Bazinet v. Treasury Board (Department of Public Works and Government Services)*, 2011 PSLRB 111, *CSSS de la Côte-de-Gaspé v. Syndicat des infirmières, infirmières auxiliaires et inhalothérapeutes de l'Est du Québec (CSQ),* 2009-5026 (July 3, 2009) (SOQUIJ AZ-50571687), *Syndicat interprofessionnel de Lanaudière - FIQ v. Centre intégré de santé et de services sociaux de Lanaudière*, 2020 CanLII 19359 (QC SAT), *Syndicat des infirmiers, infirmières auxiliaires et inhalothérapeutes de l'Est du Québec (SIIIEQ) v. CISSS de la Gaspésie*, 2022 QCTA 205 (SOQUIJ AZ-51848943),

Syndicat interprofessionnel du CHU de Québec (FIQ) v. CHU de Québec - Université Laval, 2022 CanLII 100812 (QC SAT), *CHU de Québec - Université Laval v. Racine*, 2023 QCCS 1834, *Syndicat des infirmières, inhalothérapeutes et infirmières auxiliaires de Laval (CSQ) v. Centre intégré de santé et de services sociaux de Laval (CISSS de Laval)*, 2022 QCTA 328 (SOQUIJ AZ-51870209), *Centre intégré de santé et de services sociaux de Laval v. Blouin*, 2024 QCCS 528, *FIQ - Syndicat des professionnelles en soins des Laurentides v. Centre intégré de santé et de services sociaux des Laurentides* (April 29, 2024), *Canadian Association of Professional Employees v. Treasury Board (Department of Public Works and Government Services)*, 2016 PSLREB 68, and *Ianson v. Treasury Board (Department of National Defence*, 2020 FPSLREB 60.

[86] The collective agreement in force at issue in 2021 FPSLREB 22 and with respect to the grievances in this matter is worded the same except for a minor change at clause 21.03(d). In issue are articles 21, and 34 and Appendix K.

[87] The grievors' position is based on the decision in 2021 FPSLREB 22 and is that the Board should follow the reasoning set out in that decision. It hinges on their position that the collective agreement clauses with respect to overtime must be interpreted in conjunction with paragraph 170 of 2021 FPSLREB 22, which states that the "… [collective] agreement allows for involuntary overtime to be ordered in emergency situations or to ensure the completion of security duties … It may also legitimately be used to address short-term or unforeseen staff shortages when other alternatives for filling mandatory posts do not exist …". The grievors submit that their position is that it is only in those circumstances that involuntary overtime can be ordered in the context of the collective agreement and if it is outside of those circumstances, it is a breach of the collective agreement.

[88] The grievors then reviewed the facts as they stood on the days in question and went through Mr. Raymond's assessment of which posts could have been operationally adjusted such that none of the grievors would have been required to work overtime. They submitted that since on the days in question, the posts that they worked could have been operationally adjusted, and since there was no emergency on the days in question, there were no security duties that they needed to complete on the days in question, and there were no short-term or unforeseen staffing issues on the days in question, the ordering of the overtime breached the collective agreement.

[89] The grievors submitted that the appropriate remedy for the breach is moral damages. They submitted that the appropriate amount for each grievor would be $300.00.

[90] In addition, the grievors submitted that the Board could order one hour's pay for each hour of overtime worked. The grievors also submitted that as requested in *Ianson*, it is an option for the Board to grant leave for the length of time each grievor worked overtime. The grievors submitted that clause 30.17 of the collective agreement, which permits the employer to grant leave with or without pay for other reasons, supports this submission.

[91] The grievors made no request for out-of-pocket expenses, as there is no evidence that there were any.

B. For the employer

[92] In addition to the *Act*, the employer referred me to the *CCRA*, the *CCRA Regulations*, 2021 FPSLREB 22, *Baldasaro v. Treasury Board (Correctional Service of Canada)*, 2012 PSLRB 54, *Basra v. Deputy Head (Correctional Service of Canada)*, 2014 PSLRB 28, *Brescia v. Canada (Treasury Board)*, 2005 FCA 236, *Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112, *International Brotherhood of Electrical Workers, Local 2067 v. Prairie Mines & Royalty ULC*, [2022] S.L.A.A. No. 25 (QL), *Legere v. Deputy Head (Correctional Service of Canada)*, 2014 PSLRB 65, *Lemoire v. Treasury Board (Correctional Service of Canada)*, 2016 PSLREB 45, *Miracle Food Mart Canada v. U.F.C.W., Loc. 175 & 633*, [1994] O.L.A.A. No. 137 (QL), *Purchase v. Treasury Board (Correctional Service of Canada)*, 2005 PSLRB 67, *Shandera v. Deputy Head (Correctional Service of Canada)*, 2017 PSLREB 26, and *Vanegas v. Treasury Board (Correctional Service of Canada)*, 2018 FPSLREB 60.

[93] Most of the evidence is not in dispute. The issue comes down to whether there was a violation of the collective agreement in each of the nine instances of the employer ordering a grievor to work overtime.

[94] The employer's theory of the case is different from the grievors'. The employer submitted that the grievors' argument is premised on an assertion that 2021 FPSLREB 22 asserts a test or threshold and that only certain limited factors must exist for involuntary overtime to be applied without a breach of the collective agreement. Their

theory then requires the Board to walk through each of the grievances and apply the test or threshold set out in that decision and if it is not met, then the Board must find that the collective agreement was breached. In short, the grievors' case rests on 2021 FPSLREB 22 being binding and that it should be followed and not departed from.

[95] The grievors argue that 2021 FPSLREB 22 means that overtime can be ordered in only three situations: first, to finish an outstanding task; second, if there is an unforeseen staff shortage; and third, in the case of an emergency.

[96] It is the employer's position that the evidence led in the policy grievance decision was limited and that in this hearing, there was much more specific evidence.

[97] The employer submitted that the Board is not bound by 2021 FPSLREB 22 and that that decision is limited to the finding that the employer cannot use a level of sustained and chronic involuntary overtime to do what it cannot do in accordance with the collective agreement.

[98] The employer submitted that one of the challenges in hearing the policy grievance that led to 2021 FPSLREB 22 was that there was insufficient evidence; there were opinions and submissions, but not evidence on which to make findings of fact. Similar submissions and opinions were made to this panel of the Board; the difference was that there was significant evidence on what actually happened on the days in question.

[99] The employer made specific submissions, as the grievors did, with respect to the facts involved as to the amount of overtime ordered over shifts and periods. The employer also responded to the grievors' submissions about the operational adjustments that Mr. Raymond brought the hearing through that the CMs on duty during the days in question could have carried out. This assessment by Mr. Raymond was done after the fact and was not carried out in the actual context of the actual days in question.

[100] What happened in real time in the context of the actual days in question was what the CMs had to assess and determine at the time, including what was happening in the moment of the day, the week that led to the day, and the hours that led to the decision to fill a position rather than operationally adjust it. Without all that context, in the moment, it is easy after the fact to make an assessment, as Mr. Raymond did.

[101] His assessment is not the reality of the situation as it stood on the days in question. The reality is the full context of everything that was going on at Kent on the day and in the hours and days before the determination was made to order the overtime. That is why it is critical that management has the ability and discretion to make decisions, to keep the institution running smoothly within the norms. Sometimes, it will require managers, who are the institutional heads, to make decisions to staff posts and order overtime.

[102] The management rights are set out in the *Financial Administration Act* (R.S.C., 1985, c. F-11; "the *FAA*") and they are recognized as being retained by the employer in article 6 of the collective agreement. These management rights are circumscribed only by what is in the collective agreement that modifies them.

[103] These are individual grievances, and the burden was on the grievors to establish that each specific ordering of overtime was inconsistent with the collective agreement and the employer's exercise of its ability to manage the workforce, to ensure that it met its obligations. The question to be answered in these grievances is whether ordering the overtime violated the collective agreement. The employer submitted that it did not.

[104] At the time of the instances of the ordered involuntary overtime, the COVID-19 pandemic was still in full swing; the CSC and institution had safety protocols in place. There was testing for COVID-19, and there were medical isolation units. There were rules about people working when they had been in contact with someone with COVID-19 and about working while the pandemic was prevalent, along with how to manage the situation within the institution's walls. None of these facts existed at the time of the policy grievance that led to 2021 FPSLREB 22.

[105] The evidence disclosed that staffing levels in the CSC's Pacific Region, and in particular with respect to Kent, had increased significantly since the time related to the policy grievance. Low staffing levels were a key factor set out in the reasons in 2021 FPSLREB 22. The employer submitted that that is what the decision in 2021 FPSLREB 22 was built on and that the reality in these grievances is not the same as it was in the policy grievance.

[106] What happened during the days in question were absences, not staffing shortages.

[107] The employer's witnesses described the framework of the obligations required of the CSC within the institutional setting, in terms of both the larger picture and on a daily basis. All of Messrs. Raven, Shea, Mardell, and Cote referenced the context of the decisions they made with respect to the conditions within the institution and their legal obligations to the inmates. Messrs. Mardell and Cote described their thinking and the context of their decision making on the days in question and why they required the CXs to work overtime.

[108] The Board should assess the individual ordering of overtime and look at it in the context of management making decisions in accordance with the *CCRA* and the *CCRA Regulations*. Messrs. Raven, Shea, Mardell, and Cote all spoke about keeping people safe and managing risk. This was the framework and their obligation. The evidence that the grievors brought forward was based on the benefit of knowing exactly what happened, after the fact and many years later. Mr. Raymond's assessment was done based on a static printout, knowing after the fact that nothing happened.

[109] Important to all this is that the desk CM must adapt on the fly and make decisions with limited information. While there are national deployment standards and an Operational Adjustment Plan, the desk CM on each day must manage the roster based on his or her knowledge of what is happening in the moment or could happen based on the information available at the time. They had to do all that within the context of the continuing constrictions imposed by the pandemic and the impact that it had on both inmates and staff.

[110] There was evidence about the discussions that the union and management had about trying to deal with scheduling, but an agreement could not be reached. Despite some options being put forward, nothing was agreed upon.

[111] Despite how long a roster has been fixed, there is vacation leave that is booked as well as other types of leave, such as family related or sick leave or lieu days that cannot be predicted. The schedule is in a constant state of flux; the realities are constantly changing.

[112] One of the difficulties in these ordered overtime situations is that almost all the grievors who were ordered to work were to go off shift and then the next day work a 16-hour shift. Sixteen-hour shifts are part of the collective agreement in Schedule K. The common complaint heard from the grievors who testified was about how difficult

it was having to work overtime and then a 16-hour shift; however, the union agreed to the 16-hour shift — it is part of the collective agreement. The problem is not the overtime; nor is it about where the CX works — it is the 16-hour shift.

[113] All the grievors worked the overtime when they were ordered to. They all had other things to do with their time if they were not working. They all were paid per the collective agreement for working overtime. There were no monetary losses caused by the ordering and working of the overtime. There are no damages.

[114] There is no such thing as moral damages contemplated in the collective agreement; there is no basis to award them. In this respect, the employer referred to *Miracle Food Mart Canada*.

[115] The Board should draw an adverse inference with respect to the grievors who did not testify. In this respect, the employer referred me to *Shandera*.

[116] The employer acted reasonably in all the relevant circumstances and in exercising its judgement in meeting its obligations under the legislation, and ordering the overtime was reasonable in the circumstances.

C. The grievors' reply

[117] The grievors reply submissions were about the interpretation of the facts set out in the employer's submissions.

IV. Reasons

A. Request to seal documents

[118] Entered in evidence were documents produced by both parties that contained information relating to the security systems and staffing levels at Kent. The employer requested a list of exhibits to be sealed on the basis of the safety and security of the institution. The union agreed to some of the exhibits being sealed.

[119] The test for any discretionary limit on court openness was reformulated in *Sherman Estate v. Donovan*, 2021 SCC 25. At paragraph 38, the Supreme Court of Canada set out the test as follows:

> *[38] … In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:*

> *(1) court openness poses a serious risk to an important public interest;*
>
> *(2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,*
>
> *(3) as a matter of proportionality, the benefits of the order outweigh its negative effects.*
>
> …

[120] Documents that set out the security arrangements for a maximum-security institution, as well as the way the employer carries out the staffing of the institution and in what circumstances it may reduce staffing and where, are vital to maintaining the safety and security of the institution, including for inmates, staff, and visitors and in general, the public at large. The safety and security of the institution is an important public interest. If this information were in the public domain, it could be used for inappropriate purposes that could lead to situations that could be dangerous or harmful, and thus, pose a serious risk, to people both inside and outside the institution.

[121] I am satisfied that test articulated in *Sherman Estate* has been met in that the release of the information in the documents identified by the employer with respect to security measures and staffing levels is a serious risk that cannot be alleviated by reasonable alternative measures. And the benefits of not allowing this information into the public domain outweigh the negative effects of doing so.

[122] As such, I order sealed the following documents:

1. Exhibit G-1, Tab 5: *National Standards for the Deployment of Correctional Officers.*
2. Exhibit G-1, Tab 6: *Standards on Deployment of CX*, April 2019.
3. Exhibit G-1, Tab 22: Kent Institution human resource (HR) plan.
4. Exhibit G-1, Tab 7: *Operational Adjustment Plan.*
5. Exhibit G-4, Tab 7: *Operational Adjustments for Low Staffing.*
6. Exhibit G-6: telephone records.
7. Exhibit G-8: roll call/roster, May 8, 2021.

8. Exhibit G-9: roll call/roster, May 9, 2021.

9. Exhibit G-10: roll call/roster, May 10, 2021.

10. Exhibit G-12: *Operational Adjustments for Low Staffing: Best Practices Guide August 2022*.

11. Exhibit E-1, Tab 9: *CX I and CX II Leave Report*, March 13, 2021.

12. Exhibit E-1, Tab 13: roll call, March 13, 2021.

13. Exhibit E-1, Tab 14: *Operational Adjusted Posts*, March 13, 2021.

14. Exhibit E-1, Tab 17: roll call, March 14, 2021.

15. Exhibit E-1, Tab 18: *Operational Adjusted Posts, March 14, 2021*.

16. Exhibit E-1, Tab 36: *2017-2023 HR Dashboard*.

17. Exhibit E-1, Tab 39: *Standards on Deployment*.

18. Exhibit E-1, Tab 42: *PD004 - Kent Institution - Operational Adjustment Plan*.

19. Exhibit E-3, Tab 15: *Integrated Risk Management Framework*.

20. Exhibit E-3, Tab 24: *CX I and CX II Leave Report*, May 8, 2021.

21. Exhibit E-3, Tab 25: *Operational Adjustments – Comments*.

22. Exhibit E-3, Tab 31: roll call, May 8, 2021.

23. Exhibit E-3, Tab 32: *Operational Adjustment Threat Risk Assessment*.

24. Exhibit E-3, Tab 38: *Daily Briefing Reports, May 9, 2021* (unredacted).

25. Exhibit E-3, Tab 40: *Operational Adjustments – Comments*.

26. Exhibit E-3, Tab 45: roll call, May 9, 2021.

B. The merits of the grievances

[123] Terms and conditions ("Ts & Cs") of employment in the federal public service are an amalgam of legislation, regulations, employer policies and rules, and collective agreements. While a large portion of them is the same for all public servants across the broader federal public service, the specific department or organization a person is employed with may dictate Ts & Cs that are specific to that organization or even to a particular job.

[124] By virtue of legislation, the employer manages the workplace. Sections 7(1)(b) and (e) and 11.1(1)(a), (c), and (j) of the *FAA* grant the TB broad powers to organize and manage the federal public service and set out the Ts & Cs of employment. These sections state as follows:

> ***7 (1)*** *The Treasury Board may act for the Queen's Privy Council for Canada on all matters relating to*
>
> …
>
> ***(b)*** *the organization of the federal public administration or any portion thereof, and the determination and control of establishments therein;*
>
> …
>
> ***(e)*** *human resources management in the federal public administration, including the determination of the terms and conditions of employment of persons employed in it ….*
>
> …
>
> ***11.1 (1)*** *In the exercise of its human resources management responsibilities under paragraph 7(1)(e), the Treasury Board may*
>
> ***(a)*** *determine the human resources requirements of the public service and provide for the allocation and effective utilization of human resources in the public service;*
>
> …
>
> ***(c)*** *determine and regulate the pay to which persons employed in the public service are entitled for services rendered, the hours of work and leave of those persons and any related matters;*
>
> …
>
> ***(j)*** *provide for any other matters, including terms and conditions of employment not otherwise specifically provided for in this section, that it considers necessary for effective human resource management in the public service.*

[125] Simply put, unless the employer negotiates Ts & Cs of employment with a bargaining agent (like the UCCO-SACC-CSN) that apply to bargaining unit employees and are encompassed in a collective agreement, the employer can set the Ts & Cs. Not only is this set out in the *FAA*, but also, the union specifically recognizes this at clause 6.01 of the collective agreement, known colloquially as the "management rights" clause, which states that the union confirms that the "… [collective] agreement in no way restricts the authority of those charged with managerial responsibilities …".

[126] As I set out in *Pellerin-Fowlie v. Treasury Board (Canada Border Services Agency)*, 2022 FPSLREB 98, in grievances such as this one, where it is alleged that there

is a breach of the collective agreement, the burden of proof is on the grievor(s) and the union that is supporting them, and they must prove that the breach that has been alleged, on a balance of probabilities, has taken place.

[127] It is trite to state that for there to be a breach of the collective agreement, there must be a clause in the collective agreement that has been breached. The law in collective agreement interpretation is well settled. It is summarized as follows in Brown and Beatty, *Canadian Labour Arbitration*, at paragraph 4:2100: "… in determining the intention of the parties, the cardinal presumption is that the parties are assumed to have intended what they have said, and that the meaning of the collective agreement is to be sought in its express provisions."

[128] At paragraph 84 of *Cruceru v. Treasury Board (Department of Justice)*, 2021 FPSLREB 30, the Board stated as follows:

> *[84] As outlined in authoritative sources such as* Brown and Beatty, *at paragraph 4:2100, and as recognized throughout the Board's case law, canons of interpretation such as the following guide this analysis: (1) the parties are assumed to have meant what they said, (2) the meaning and intent of the collective agreement is to be sought in its express provisions, (3) the words of a collective agreement must be given their grammatical and ordinary sense, (4) they must* [*sic*] *read in their entire context, in harmony with the scheme of the collective agreement, and (5) when the same words reappear, they are to be given the same interpretation.*

[129] At paragraph 109 of *Association of Justice Counsel v. Treasury Board*, 2016 PSLREB 48, the Board stated as follows:

> ***109*** *A number of the rules of construction in my view are of assistance in determining the parties' intentions in interpreting the language used in this collective agreement. Firstly, words of* [*sic*] *collective agreement are to be given their ordinary and plain meaning. Secondly, a collective agreement is to be construed as a whole, and identical or similar terms used in different parts of the collective agreement should be given the same or similar meanings. Thirdly, the* expressio unius alterius *rule provides that the express mention of one thing implies the exclusion of another; see* Collective Agreement Arbitration in Canada, *at 27-32.*

[130] These nine grievances all allege the same thing, using the same language: the employer breached the collective agreement when each individual grievor was ordered

to work overtime. The only difference in their wording is the date on which the alleged breach took place.

[131] The grievors' position is grounded in the findings made by the Board in 2021 FPSLREB 22 and particularly at paragraph 170, which states the following:

> *[170] … Clearly, the agreement* [the collective agreement] *allows for involuntary overtime to be ordered in emergency situations or to ensure the completion of security duties, such as securing evidence. It may also legitimately be used to address short-term or unforeseen staff shortages when other alternatives for filling mandatory posts do not exist, which was in fact reflected in the employer's reply to this policy grievance.…*

[132] The grievors' and union's position is that on none of the three days at issue in the grievances that make up Groups 1 and 2 and that of Mr. Guliker was there any of an emergency, a requirement that any of the grievors complete a security duty or task, or a short-term or unforeseen staff shortage. Therefore, it follows that the employer breached the collective agreement, and as such, each individual grievor is entitled, in addition to having already been paid compensation at an overtime rate, to "moral" damages.

[133] I disagree.

C. What the collective agreement actually says

[134] I have reviewed the collective agreement in detail. When the parties wanted to be specific with respect to something, they were.

[135] Article 2 is the definition section and covers three pages. Clause 2(n) contains a definition of "overtime". The parties clearly put their minds to what that term means, as they differentiated what it means by defining it two ways: one for full-time employees, and one for part-time employees. If they wanted to further define its meaning, they could have done so, as they put their minds clearly to what this term means and determined that its meaning required explanation to distinguish between full-time and part-time employees. Further, in defining "overtime", the parties used the term "authorized work" and the phrase "in excess of the employee's scheduled hours of work"; again, disclosing that they put their minds to defining what "overtime" means.

[136] Additionally, the parties went into specific detail addressing what the terms "shift", "shift schedule" and "shift cycle" all mean.

[137] The other portions of the collective agreement that refer to overtime, that are relevant to this case are articles 21 and 34. Article 21 has sixteen (16) sub-clauses and takes up four (4) single spaced pages of the collective agreement, dealing in with hours of work and overtime. It is exceedingly detailed in defining hours of work, shifts and overtime.

[138] Specifically, the clause that has relevance to the issues that I have to decide is clause 21.10. It states that the employer shall make every reasonable effort to allocate overtime on an equitable basis among readily available qualified employees and do so in a manner that if the work is CX-1 work, to allocate it to CX-1s; if it is CX-2 work, to allocate it to CX-2s; and if it is CX-3 work, to allocate it to CX-3s. And it is to provide the employees who are required to work overtime adequate advance notice.

[139] The Board has, over decades, dealt with overtime grievances and particularly grievances from CXs about them not receiving a fair amount of overtime. It is well known within the greater federal public sector labour relations community and the Board that overtime within the CX ranks is a regular occurrence. One need not look further than several exhibits entered in evidence at the hearing with respect to overtime at Kent.

[140] In 2021 FPSLREB 22, when addressing clause 21.10 of the collective agreement, the panel of the Board stated as follows:

- at paragraph 133: in interpreting the collective agreement and addressing the issue of voluntary versus involuntary overtime, the words "'readily available' have to be given meaning";
- at paragraph 134:"The words 'on an equitable basis' in clause 21.10 also have to be given meaning";it then goes on to talk about evidence involving data from tracking sheets, about which it states, "… indicated that some CXs have been ordered several times, whereas the majority have not been ordered or were ordered only once", and,"Equity requires both transparency and fairness"; and
- at paragraph 135: "The words 'every reasonable effort' in clause 21.10 also must be given meaning."

[141] After making these statements at paragraphs 133 through 135, the panel concludes paragraph 135 by stating that these phrases (contained in clause 21.10 of the collective agreement) "… provide a basis for the Board to consider whether management is properly considering alternatives to ordering overtime …".

[142] I disagree with the comments and findings made by the panel at paragraphs 133 through 135 of 2021 FPSLREB 22, particularly the final one, which suggests that it means that the employer is to consider alternatives to ordering overtime. The panel is ascribing a meaning to those words that they do not mean. The panel is suggesting that the term "readily available", which is not defined in the collective agreement, is synonymous with volunteering to work. The term "readily" is defined in the Oxford Advanced Lerner's Dictionary as meaning "quickly and without difficulty" and available is defined in that same dictionary as "that you can get".

[143] While there is no doubt that in reality, there is a difference between someone volunteering to work overtime and being ordered to when they do not wish to work overtime (involuntary), had the parties wanted to differentiate between volunteering for overtime and being ordered to work overtime involuntarily, they could have written that into the collective agreement. They did not.

[144] In addition, nowhere in the collective agreement does the term "operational adjustment" appear. Again, had the parties wanted to in some way define "operational adjustment" and how it intersects with the assignment of overtime, they could have written that into the collective agreement. They did not.

[145] While it is not part of the collective agreement and not enforceable by the Board, the union and the CSC entered into the 2021 Global Agreement.

[146] Part II of the 2021 Global Agreement is titled "Working Conditions", and subsections II-J and II-K are respectively titled "Overtime Hiring" and "Overtime for New Recruits". Nothing in these two sections differentiates between overtime that is voluntary versus that which is involuntary. If the CSC and the union had wanted in some way to differentiate between voluntary and involuntary overtime, they could have written it into the 2021 Global Agreement. They did not.

[147] Indeed, had the CSC and the union wanted to elaborate in the 2021 Global Agreement how operational adjustments and voluntary or involuntary overtime

intersect and how they should be treated, they could have done so. Again, they could have written it into the 2021 Global Agreement. Again, they did not.

[148] Clause 21.10 of the collective agreement has been dealt with by the Board in the past, most importantly in *Baldasaro*. Indeed, in *Baldasaro*, the Board discusses the exact issue that was before the Board in 2021 FPSLREB 22 as well in as these grievances: mandatory (aka involuntary) versus voluntary overtime and whether the collective agreement defined a difference.

[149] In that decision, the Board talked about overtime distribution and the meaning of clause 21.10. Not only was that decision with respect to overtime involving CXs but also, it was in the CSC's Pacific Region, the same region that Kent is located in. The collective agreement in question was between the same union and employer as in this case, which they signed in 2006, and the clause is worded virtually the same as the one in question in this case. The only difference is in clause 21.10(b), where in the wording related to CX-1s filling CX-1 posts and CX-2s filling CX-2 posts, a semicolon followed by the acronym "i.e." is replaced with the words "that is".

[150] In *Baldasaro*, at paras. 54 through 57, under the subheading "**D. The distinction between voluntary and mandatory overtime"** [emphasis in the original], the panel of the Board stated as follows:

> *[54] … Mandatory overtime can also be worked in emergencies by officers who are not members of the IERT* [Institution Emergency Response Team]*. The grievors disagreed with this distinction between mandatory and voluntary overtime, which distinction, they argued, is nowhere to be found in the collective agreement.*
>
> *[55] On that point, I agree with the grievors. Had the parties wanted to make a distinction between the mandatory and voluntary allocation of overtime, they would have written it into the collective agreement and would have excluded mandatory overtime from the equitable distribution of overtime. However, they did not.*
>
> *[56] When the employer calls officers who are qualified to work on the IERT, it is normal that it does not consider other officers with less overtime hours but who are not qualified to work on the IERT. However, it should compute those hours as overtime offered to those qualified employees. By not doing so, the employer puts a systemic bias into the equitable distribution of overtime. It should instead include mandatory hours. This would increase the overtime of those employees and give more overtime opportunities to employees who do not work mandatory hours. At the end of the*

> *year, the final figures between employees from both groups would be equitable. Otherwise, there is a strong possibility that the opposite would occur.*
>
> *[57] … Based on the wording of clause 21.10 of the collective agreement and the absence of any distinction between mandatory or voluntary overtime, I conclude that the employer must include the mandatory hours of overtime when assessing equitability in offering overtime. If the employer wants to exclude mandatory overtime from clause 21.10(a), it must obtain the union's agreement to amend that clause.*

[151] Clause 21.10 is found in that part of the collective identified as "Part 3: working conditions" and "Article 21: hours of work and overtime". Clauses 21.01 through 21.09 speak to different things involving hours of work and shift work and schedules as well as work assignments and meal breaks, to mention a few. Clause 21.10 is identified as "Assignment of overtime work". It provides that overtime is to be assigned in a manner that is to be fair, such that CXs are granted equal opportunities to work overtime, if they want to work overtime. It is not about whether overtime should be used by the employer; it is how it is to be assigned after that determination is made.

[152] When interpreting a collective agreement, s. 229 of the *Act* provides that the Board's decision may not have the effect of requiring the amendment of a collective agreement. I addressed this in *Pellerin-Fowlie*, at para. 38, where I cited paragraph 67 of *Forbes v. Treasury Board (Correctional Service of Canada)*, 2021 FPSLREB 110, which states as follows:

> *[67] The Board should be extremely cautious to not add benefits to agreements that the parties to those agreements have not bargained for. Parliament enacted such a restraint upon creative advocacy by parties in s. 229 of the* FPSLRA [the *Act*]*, which prohibits adjudicators from rendering decisions that would alter the terms of a collective agreement.*

[153] This principle was thoroughly canvassed and set out in *Attorney General of Canada v. Rushwan*, 2023 FCA 118, a decision on the judicial review of the Board's decision in *Rushwan v. Treasury Board (Department of Transport)*, 2020 FPSLREB 66. The issue in that matter dealt with the interpretation of a collective agreement and the standby clauses in it. In overturning the Board's decision, the Federal Court of Appeal stated, at paragraphs 26 through 31, as follows:

[26] This grievance was referred to adjudication under paragraph 209(1)(a) *of the Act for the interpretation or application of a provision of the collective agreement. The Board's role in this case was therefore limited to considering the terms of the collective agreement and their application. Specifically, the Board was required to determine whether the employer's refusal to add the respondent to the Port Warden Standby List constituted a violation of the collective agreement.*

[27] The Board misconstrued the collective agreement by failing to consider, interpret and apply the whole of clause 30.02, which applies to employees designated "by letter or by list" for standby duty. The Board improperly based its reasoning on the last sentence in the clause, which states that when designating employees for standby, the employer must endeavour to provide for an equitable distribution of standby duties.

[28] In so doing, the Board omitted the first step of the legal analysis, which required it to determine whether the respondent had been designated "by letter or by list" for the Port Warden Standby List. The Board's failure to examine the first part of the clause led to an unreasonable interpretation of the latter portion of the clause. Again, it is uncontested that the respondent could not have been placed on the Port Warden Standby List at the time of his request.

[29] During the period of time for which the respondent sought retroactive pay due to his allegedly wrongful exclusion from the Port Warden Standby List, the respondent was not qualified for port warden standby periods. As a result, the employer cannot have been required to equitably distribute standby duties to him pursuant to clause 30.02. Under the Board's interpretation of the clause, management's discretion to designate employees by letter or by list becomes redundant, because the employer would have no choice but to "endeavour" to distribute standby duties equitably to all employees, qualified or not.

[30] Consequently, the Board rendered a decision that effectively amended the collective agreement. The Board imposed an obligation on the employer to provide training to qualify the respondent for duties that he was not otherwise required to perform in his position.

[31] We reiterate that paragraph 209(1)(a) *of the Act limits the Board's jurisdiction to the interpretation or application of a provision of the collective agreement. The Act does not authorize the Board to create new terms and obligations when interpreting or applying a collective agreement. Here, nothing in the collective agreement can be read as imposing an obligation on the employer to train employees to qualify them for duties that they are not required to perform in the position they hold. The Board nevertheless introduced such an obligation into the agreement.*

[154] I do not agree or accept that the Board's statement (at paragraph 170 of 2021 FPSLREB 22), which states, "Clearly, the [collective] agreement allows for involuntary overtime to be ordered in emergency situations or to ensure the completion of security duties, such as securing evidence. It may also legitimately be used to address short-term or unforeseen staff shortages when other alternatives for filling mandatory posts do not exist …", is to be interpreted as declaring that this is what the collective agreement means as to when involuntary overtime can be ordered. The collective agreement does not state any of those things.

[155] If I accepted the union's submission that this is what the collective agreement means, it would be tantamount to having the Board amend the collective agreement, to state something that it clearly does not. I do not accept that this is what the panel of the Board stated that the collective agreement means, as it would be both a breach of s. 229 of the *Act*, which states that the Board's decision may not have the effect of requiring an amendment of a collective agreement, and would run counter to what the Board has stated in the past (see *Forbes* and *Pellerin-Fowlie*) and what the Federal Court of Appeal stated in *Rushwan*, and it would create new terms and obligations.

[156] As set out earlier in these reasons, the collective agreement does not define whether overtime is voluntary or involuntary; nor does it provide for any distinction between how overtime that is voluntary or involuntary is to be paid. It also does not state that involuntary overtime can be ordered only in emergency situations, to ensure the completion of security duties such as securing evidence, or to cover unforeseen staff shortages when other alternatives for filling mandatory posts do not exist. To do so would created terms and obligations on the employer that do not exist and have not been bargained for.

[157] As stated, the relevant provisions of the collective agreement, at the time of the grievances in *Baldasaro*, at the time of the policy grievance in 2021 FPSLREB 22, and at the time of the grievances that I have heard, are the same and have not changed.

[158] Also notable in addition to the fact that *Baldasaro* is between the same union and employer is that the same union representative argued all of that matter, this matter, and the policy decision in 2021 FPSLREB 22. In *Baldasaro*, according to the decision, the union's submission was that if there was to be a distinction made

between mandatory overtime and voluntary overtime, it would be in the collective agreement.

[159] Additionally, the matter that was the subject of the decision 2021 FPSLREB 22, was a policy grievance, which the decision held that the "**sustained and chronic ordering of involuntary overtime** is a violation of the collective agreement." The grievances in issue before me are individual grievances, alleging that each of the grievors, at those specific points in time, were ordered to work overtime in breach of the collective agreement.

[160] As I have already stated, 2021 FPSLREB 22 cannot have the effect of requiring an amendment to the collective agreement and interpreting that decision in the manner that the grievor's are asking me to do would do just that. Also, as I have already set out, there is no use of the words or phrases regarding operational adjustment, which are included in the determination of when or whether overtime can be ordered. To do so by me would also be a violation of s. 229 of the *Act*.

[161] I am satisfied that the ordering of the overtime was well within the parameters of ss. 7(1)(b) and (e) as well as ss. 11.1(1)(a), (c), and (j) of the *FAA* and the management rights retained by the employer as recognized in the collective agreement at clause 6.01 and as set out by the Federal Court of Appeal at paragraph 50 of *Brescia*, which states as follows:

> *[50] I find that the wide powers conferred on the Treasury Board and its delegates under paragraphs 7(1)*(e)*) and 11(2)*(a)*) and (*d*) of the FAA and clauses 6.01 and 25.01 of the applicable collective agreement are grants of authority which allowed the Commission to place the appellants on an off-duty status without pay. Specifically, the Treasury Board under paragraph 7(1)*(e)*) is given authority over "personnel management in the public service of Canada, including the determination of the terms and conditions of employment of persons employed"; under paragraph 11(2)*(a)*), it may provide for their effective utilization; under paragraph 11(2)*(d)*), it may determine and regulate the pay, the hours of work and leave, and any matters related thereto. These last words would cover the procedure followed for the release and the recall of employees. Moreover, under the Agreement, the managerial responsibilities remain unrestricted, unless provided to the contrary. The employee is given no guarantee with regard to his minimum or maximum hours of work.*

[162] Therefore, the ordering of the overtime was not a breach of the collective agreement, and the grievances are denied.

D. Miscellaneous

[163] As I have determined that the ordering of involuntary overtime was not a breach of the collective agreement, I am not going to address the evidence led and arguments made about the following:

- the staffing levels and the steps made by the employer to increase staffing;
- whether the specific operational adjustments made by the CMs on the days in question were appropriate or that other adjustments could have been done; and
- whether the situations within the institution on the days in question required overtime.

[164] What became patently obvious during the hearing of this matter was that what appeared to be a common complaint about working overtime on the days in question for both March 21 and May 8 was the shift schedule that the grievors were working. The shift schedule for the Saturday was a shift that would be followed on the Sunday by a 16-hour shift.

[165] The difficulty appeared to be that if a CX worked the Saturday day shift and then overtime, they would in some circumstances have had barely 8 hours between the end of the overtime shift and the start of the 16-hour shift. Clearly, this is a problem when a person is working long hours to start and then has overtime assigned on top of it. However, this is not an employer-created problem; it is a problem caused by the VSSA and the agreement entered between the union and the employer. The parties agreed to this schedule, and it appeared from the way evidence was presented that it was a clear contributing factor to the reluctance by the CXs to want to work the overtime on the Saturday.

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

(The Order appears on the next page)

V. Order

[167] The grievances are denied.

[168] The following documents are ordered sealed:

1. Exhibit G-1, Tab 5: *National Standards for the Deployment of Correctional Officers*.
2. Exhibit G-1, Tab 6: *Standards on Deployment of CX*, April 2019.
3. Exhibit G-1, Tab 22: Kent Institution human -1 (HR) plan.
4. Exhibit G-1, Tab 7: *Operational Adjustment Plan*.
5. Exhibit G-4, Tab 7: *Operational Adjustments for Low Staffing*.
6. Exhibit G-6: telephone records.
7. Exhibit G-8: roll call/roster, May 8, 2021.
8. Exhibit G-9: roll call/roster, May 9, 2021.
9. Exhibit G-10: roll call/roster, May 10, 2021.
10. Exhibit G-12: *Operational Adjustments for Low Staffing: Best Practices Guide August 2022*.
11. Exhibit E-1, Tab 9: *CX I and CX II Leave Report*, March 13, 2021.
12. Exhibit E-1, Tab 13: roll call, March 13, 2021.
13. Exhibit E-1, Tab 14: *Operational Adjusted Posts*, March 13, 2021.
14. Exhibit E-1, Tab 17: roll call, March 14, 2021.
15. Exhibit E-1, Tab 18: *Operational Adjusted Posts*, March 14, 2021.
16. Exhibit E-1, Tab 36: *2017-2023 HR Dashboard*.
17. Exhibit E-1, Tab 39: *Standards on Deployment*.
18. Exhibit E-1, Tab 42: *PD004 - Kent Institution - Operational Adjustment Plan*.
19. Exhibit E-3, Tab 15: *Integrated Risk Management Framework*.
20. Exhibit E-3, Tab 24: *CX I and CX II Leave Report*, May 8, 2021.

21. Exhibit E-3, Tab 25: *Operational Adjustments – Comments.*

22. Exhibit E-3, Tab 31: roll call, May 8, 2021.

23. Exhibit E-3, Tab 32: *Operational Adjustment Threat Risk Assessment.*

24. Exhibit E-3, Tab 38: *Daily Briefing Reports, May 9, 2021* (unredacted).

25. Exhibit E-3, Tab 40: *Operational Adjustments – Comments.*

26. Exhibit E-3, Tab 45: roll call, May 9, 2021.

October 16, 2025.

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