



BY FACSIMILE AND ORDINARY MAIL

April 30, 2015

Manon Brassard
Assistant Deputy Minister
Compensation & Labour Relations
Treasury Board of Canada Secretariat
400 Cooper St
Ottawa, Ontario K1A 0R5

Dear Ms. Brassard:

Re: Policy Grievances in Relations to On-Call Duty

Please find enclosed three originals of six (6) policy grievances in relations to on-call duties presented by the Association of Justice Counsel (“Association”).

The Association would kindly ask that you acknowledge receipt and return two signed originals for our files.

If you have any questions with respect to the above, please do not hesitate to contact me.

Regards,

On behalf of

Sandra Guttmann
Corporate Secretary, General Counsel and Labour Relations Officer
Association of Justice Counsel

Encls.

c.c.: Len MacKay, AJC President



DEPARTMENT USE ONLY À L'USAGE DU MINISTÈRE
Référence No. N° de référence

POLICY GRIEVANCE PRESENTATION (PSLRA s. 220)
PRÉSENTATION D'UN GRIEF DE PRINCIPE (LRTFP a. 220)

Please note:

In accordance with PSLRA s. 207, all departments and agencies within the core public administration have an informal conflict management system (ICMS) in place. Its existence does not affect the right to file a grievance. However, the employer and bargaining agent representatives are encouraged to use the ICMS when appropriate, at any stage of the grievance process, in an attempt to informally address workplace differences.

Veillez noter :

Conformément à l'article 207 de la LRTFP, les ministères et agences de l'administration publique centrale ont établi un système de gestion informelle des conflits (SGIC). L'existence d'un tel système n'affecte pas le droit à soumettre un grief. Toutefois l'employeur et les représentants des agents négociateurs sont encouragés à se servir du SGIC, à n'importe quelle étape du processus de grief, afin de tenter de régler de façon informelle les problèmes en milieu de travail.

SECTION 1

This grievance is filed by Ce grief est soumis par	
<input checked="" type="checkbox"/> Bargaining agent Agent négociateur	<input type="checkbox"/> Employer Employeur

SECTION 2

BARGAINING AGENT INFORMATION INFORMATION DE L'AGENT NÉGOCIATEUR

Bargaining agent Agent négociateur	Bargaining unit/component Unité de négociation/élément	
Association of Justice Counsel	Law Practitioner Group (LP)	
Name and title of authorized bargaining agent representative Nom et titre du représentant autorisé de l'agent négociateur	Telephone No. N° de téléphone	Facsimile No. N° de télécopieur
Sandra Guttman	613-798-9900 ext. 112	613-564-0606
Address for contact Adresse pour fins de communication	E-mail address Adresse électronique	
300-2725 Queensview Drive, Ottawa ON K2B 0A1	sguttman@ajc-ajj.ca	

SECTION 3

EMPLOYER INFORMATION INFORMATION DE L'EMPLOYEUR

Name and title of authorized employer representative Nom et titre du représentant autorisé de l'employeur	Telephone No. N° de téléphone	Facsimile No. N° de télécopieur
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SECTION 4

GRIEVANCE DETAILS DÉTAILS DU GRIEF

Statement of the nature of each act or omission or other matter giving rise to the grievance Exposé de la nature de chaque action, omission ou situation ayant donné lieu au grief	
See Appendix "A" attached	
Date on which each act, omission or other matter giving rise to the grievance occurred Date de chaque action, omission ou situation ayant donné lieu au grief	Department or agency involved (if applicable) Ministère ou organisme (s'il y a lieu)
April 17, 2015	Department of Justice - Toronto ILD group
Collective agreement Convention collective	Expiry date Date d'expiration
Law Practitioner Group (LP)	May 9, 2014
Corrective action requested Mesures correctives demandées	
See Appendix "A" attached	

SECTION 5

SIGNATURES *On behalf of Sandra Guttman*

 Signature of Bargaining Agent Representative Signature du représentant de l'agent négociateur	<i>Apr 30/15</i> Date	_____ Signature of Employer Representative Signature du représentant de l'employeur	_____ Date
Date received Date de réception			

APPENDIX A - POLICY GRIEVANCE – ON-CALL DUTY – TORONTO - APRIL 30, 2015

Background

On October 23, 2009, an arbitral award established the working conditions of lawyers forming part of the bargaining unit. The working conditions resulting therefrom came into effect on November 1, 2009, subject to certain other provisions which came into effect on February 20, 2010.

Since April 1, 2010, the Employer has imposed a directive on ORO lawyers in the Immigration Law Division obliging them to be on call evenings and weekends, outside their normal hours of work.

On April 30, 2010, the Association of Justice Counsel filed a policy grievance for the Toronto Immigration Law Division.

On May 18, 2010, the Association of Justice Counsel filed a policy grievance for the Immigration Law Division in Montreal contesting the aforementioned directive.

The Employer agreed to be bound by the Montreal policy grievance outcome.

On April 2, 2015, Stephan J. Bertrand, the PSLREB adjudicator, rendered a decision in the Montreal policy grievance in which he declared that the directive was neither reasonable nor fair, contrary to the provisions of clause 5.02 of the collective agreement. He also ruled that the mandatory on-call duty directive violates a right protected under section 7 of the *Canadian Charter of Rights and Freedoms*, namely, the right to privacy, contrary to the provisions of clause 6.01 of the collective agreement. Lastly, he ordered the Employer to cease applying said directive as of April 2, 2015.

The Employer refuses to comply with the order, maintaining the position that the mandatory nature of on-call duty obligations is permitted under the current collective agreement which was signed on March 12, 2013 and expires in May 2014. Consequently, it continues to apply the same directive.

The Association of Justice Counsel maintains that the arbitral award, as well as the interpretation of the arbitral award dated October 23, 2009 (which came into effect on November 7, 2009), also applies to the current collective agreement, of which clauses 5.02 and 6.01 have not been modified, and that nothing in the current agreement has the effect of waiving lawyers' privacy rights or permitting the Employer to force such lawyers to be on after-hours on-call duty.

Nature of the Grievance

The Association alleges that, when imposing after-hours on-call duty, the Employer failed to act reasonably, fairly and in good faith, both as regards the exercise of its management rights and as regards of its administration of the collective agreement, the whole in violation of clause 5.02 of the collective agreement. The Association is of the opinion that imposing the obligation to be on call after normal working hours is inconsistent with the terms of the collective agreement.

Through its directive, the Employer is also violating lawyers' constitutional rights by interfering with their privacy rights, notwithstanding that nothing in the collective agreement or in the Employer's management rights allows this or constitutes a waiver of lawyers' privacy rights, the whole contrary to clause 6.01 of the collective agreement.

Corrective Action

- Declare that the Employer's continued application of its after-hours on-call duty directive, even during the term of a new collective agreement, is unreasonable, unfair and in bad faith;
- Declare that the Employer's imposition of its after-hours on-call duty directive constitutes interference with lawyers' privacy rights, in violation of section 7 of the *Canadian Charter of Rights and Freedoms* and clause 6.01 of the collective agreement;
- Order the Employer to cease applying its after-hours on-call duty directive and cease requiring lawyers to be on call after normal working hours;
- Order the Employer to pay to the lawyers harmed by the application of the directive an indemnity for the harm, both material and moral, suffered by them;
- Order the Employer to pay punitive damages to the aggrieved lawyers, by reason of the obvious, known, intentional and deliberate violation of their fundamental rights;
- Grant such other relief as the tribunal considers appropriate.



DEPARTMENT USE ONLY À L'USAGE DU MINISTÈRE	
Reference No.	N° de référence

POLICY GRIEVANCE PRESENTATION (PSLRA s. 220)
PRÉSENTATION D'UN GRIEF DE PRINCIPE (LRTFP a. 220)

Please note:

In accordance with PSLRA s. 207, all departments and agencies within the core public administration have an informal conflict management system (ICMS) in place. Its existence does not affect the right to file a grievance. However, the employer and bargaining agent representatives are encouraged to use the ICMS when appropriate, at any stage of the grievance process, in an attempt to informally address workplace differences.

Veillez noter :

Conformément à l'article 207 de la LRTFP, les ministères et agences de l'administration publique centrale ont établi un système de gestion informelle des conflits (SGIC). L'existence d'un tel système n'affecte pas le droit à soumettre un grief. Toutefois l'employeur et les représentants des agents négociateurs sont encouragés à se servir du SGIC, à n'importe quelle étape du processus de grief, afin de tenter de régler de façon informelle les problèmes en milieu de travail.

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<input checked="" type="checkbox"/> Bargaining agent Agent négociateur	<input type="checkbox"/> Employer Employeur

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BARGAINING AGENT INFORMATION INFORMATION DE L'AGENT NÉGOCIATEUR

Bargaining agent Agent négociateur	Bargaining unit/component Unité de négociation/élément	
Association des juristes de Justice	Groupe Praticien du droit (LP)	
Name and title of authorized bargaining agent representative Nom et titre du représentant autorisé de l'agent négociateur	Telephone No. N° de téléphone	Facsimile No. N° de télécopieur
Sandra Guttman	613-798-9900 poste112	613-564-0606
Address for contact Adresse pour fins de communication	E-mail address Adresse électronique	
300-2725 prom. Queensview, Ottawa (ON) K2B0A1	sguttman@ajc-ajj.ca	

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Voir à l'Annexe "A"	
Date on which each act, omission or other matter giving rise to the grievance occurred Date de chaque action, omission ou situation ayant donné lieu au grief	Department or agency involved (if applicable) Ministère ou organisme (s'il y a lieu)
17 avril 2015	Ministère de la Justice - Groupe SDI Montreal
Collective agreement Convention collective	Expiry date Date d'expiration
Groupe Praticien du droit (LP)	9 mai 2014
Corrective action requested Mesures correctives demandées	
Voir à l'Annexe "A"	

SECTION 5

SIGNATURES *On behalf of Sandra Guttman*

	<i>Apr 30/15</i>	Signature of Employer Representative	Date
Signature of Bargaining Agent Representative Signature du représentant de l'agent négociateur	Date	Signature du représentant de l'employeur	Date
Date received Date de réception			

ANNEXE A - GRIEF DE PRINCIPE – SERVICES DE GARDE – MONTRÉAL - 30 AVRIL 2015

Contexte

Le 23 octobre 2009, une sentence arbitrale a établi les conditions de travail des juristes faisant partie de l'unité de négociation. Les conditions de travail en découlant sont entrées en vigueur le 1^{er} novembre 2009, sous réserve de certaines autres dispositions qui sont entrées en vigueur le 20 février 2010.

Depuis le 1^{er} avril 2010, l'employeur impose aux juristes de la Direction du droit de l'immigration une directive les obligeant à être de garde les soirs et les fins de semaine, hors des heures normales de travail.

Le 18 mai 2010, l'Association des juristes de Justice a déposé un grief de principe contestant la directive précitée.

Le 2 avril 2015, l'arbitre Stephan J. Bertrand, de la CRTEFP, a rendu une décision par laquelle il a déclaré que cette directive n'est ni raisonnable, ni équitable, contrairement à ce que prévoit la clause 5.02 de la convention collective. Il a également décidé que la directive sur la garde obligatoire porte atteinte à un droit protégé par l'article 7 de la *Charte canadienne des droits et libertés*, en l'occurrence le droit à la vie privée, contrairement à ce que prévoit la clause 6.01 de la convention collective. Enfin, il a ordonné à l'employeur de cesser d'appliquer ladite directive à compter du 2 avril 2015.

L'employeur refuse de s'y conformer, en maintenant la position que la nature obligatoire des services de garde est permise en fonction de la convention collective actuellement en vigueur, signée le 12 mars 2013 et expirant en mai 2014. En conséquence, il continue d'appliquer la même directive.

L'Association des juristes de Justice maintient que la décision arbitrale ainsi que l'interprétation de la sentence arbitrale du 23 octobre 2009 (entrée en vigueur le 7 novembre 2009) s'applique également à la convention collective actuelle, dont les articles 5.02 et 6.01 sont inchangés et qu'elle ne contient aucune renonciation aux droits à la vie privée des juristes et ne permet pas à l'employeur de forcer ces derniers d'être de garde après les heures de travail.

Nature du grief

L'Association a un grief contre le fait que l'Employeur a, dans le contexte de l'imposition de services de garde en dehors des heures normales de travail, manqué d'agir raisonnablement, équitablement et de bonne foi, tant en ce qui a trait à l'exercice de ses droits de direction qu'en ce qui concerne l'administration de la convention collective, le tout notamment en contravention de l'article 5.02 de la convention collective. L'Association est d'avis que l'imposition obligatoire d'être de garde en dehors des heures normales de travail est incompatible avec les termes de la convention collective.

Par sa directive, l'Employeur viole également les droits constitutionnels des juristes en s'immisçant dans leur vie privée alors que rien dans la convention collective ni dans les droits de direction ne le permet, ni ne constitue une renonciation à leur droit à la vie privée, le tout contrairement à l'article 6.01 de la convention collective.

Mesure corrective

- Qu'il soit déclaré que le fait par l'Employeur de continuer à appliquer sa directive sur les gardes obligatoires en dehors des heures normales de travail, même dans le courant d'une nouvelle convention collective, est déraisonnable, inéquitable et de mauvaise foi;
- Qu'il soit déclaré que l'imposition par l'Employeur de sa directive sur les gardes obligatoires en dehors des heures normales de travail constitue une intrusion dans la vie privée des juristes, contrairement à l'article 7 de la *Charte canadienne des droits et libertés de la personne* et de l'article 6.01 de la convention collective;
- Qu'il soit ordonné à l'Employeur de cesser d'appliquer la directive sur les gardes obligatoires en dehors des heures normales de travail et de cesser d'exiger des juristes qu'ils soient de garde en dehors des heures normales de travail;
- Condamner l'Employeur à verser aux juristes lésés par l'application de la directive une indemnité pour les dommages subis, tant matériels que moraux;
- Condamner l'Employeur à verser aux juristes lésés des dommages punitifs en raison de la violation évidente, connue, volontaire et délibérée de leurs droits fondamentaux;
- Octroyer tout autre redressement que le tribunal jugera bon d'accorder.



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Please note:

In accordance with PSLRA s. 207, all departments and agencies within the core public administration have an informal conflict management system (ICMS) in place. Its existence does not affect the right to file a grievance. However, the employer and bargaining agent representatives are encouraged to use the ICMS when appropriate, at any stage of the grievance process, in an attempt to informally address workplace differences.

Veillez noter :

Conformément à l'article 207 de la LRTFP, les ministères et agences de l'administration publique centrale ont établi un système de gestion informelle des conflits (SGIC). L'existence d'un tel système n'affecte pas le droit à soumettre un grief. Toutefois l'employeur et les représentants des agents négociateurs sont encouragés à se servir du SGIC, à n'importe quelle étape du processus de grief, afin de tenter de régler de façon informelle les problèmes en milieu de travail.

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<input checked="" type="checkbox"/> Bargaining agent Agent négociateur	<input type="checkbox"/> Employer Employeur

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Association of Justice Counsel	Law Practitioner Group (LP)	
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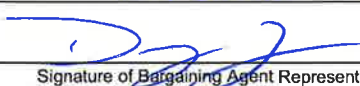
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Date on which each act, omission or other matter giving rise to the grievance occurred Date de chaque action, omission ou situation ayant donné lieu au grief	Department or agency involved (if applicable) Ministère ou organisme (s'il y a lieu)
April 17, 2015	All departments/agencies, excluding PPSC/DOJ
Collective agreement Convention collective	Expiry date Date d'expiration
Law Practitioner Group (LP)	May 9, 2014
Corrective action requested Mesures correctives demandées	
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	<i>Apr 30/15</i>	Signature of Employer Representative	Date
Signature of Bargaining Agent Representative Signature du représentant de l'agent négociateur	Date	Signature du représentant de l'employeur	Date
Date received Date de réception			

APPENDIX A - POLICY GRIEVANCE – ON-CALL DUTY – ALL DEPARTMENTS AND AGENCIES EXCLUDING DOJ AND PPSC –APRIL 30, 2015

Background

On October 23, 2009, an arbitral award established the working conditions of lawyers forming part of the bargaining unit. The working conditions resulting therefrom came into effect on November 1, 2009, subject to certain other provisions which came into effect on February 20, 2010.

Since April 1, 2010, the Employer has imposed a directive on lawyers in the Immigration Law Division obliging them to be on call evenings and weekends, outside their normal hours of work.

On April 30, 2010, the Association of Justice Counsel filed a policy grievance for the Toronto DOJ Immigration Law Division.

On May 18, 2010, the Association of Justice Counsel filed a policy grievance for the DOJ Immigration Law Division in Montreal contesting the aforementioned directive.

The Employer agreed to be bound by the Montreal policy grievance outcome.

On April 2, 2015, Stephan J. Bertrand, the PSLREB adjudicator, rendered a decision in the Montreal policy grievance in which he declared that the directive was neither reasonable nor fair, contrary to the provisions of clause 5.02 of the collective agreement. He also ruled that the mandatory on-call duty directive violates a right protected under section 7 of the *Canadian Charter of Rights and Freedoms*, namely, the right to privacy, contrary to the provisions of clause 6.01 of the collective agreement. Lastly, he ordered the Employer to cease applying said directive as of April 2, 2015.

The Employer refuses to comply with the order, maintaining the position that the mandatory nature of on-call duty obligations is permitted under the current collective agreement which was signed on March 12, 2013 and expires in May 2014. Consequently, it continues to apply the same directive.

The Association of Justice Counsel maintains that the principles in the arbitral award, as well as the interpretation of the arbitral award dated October 23, 2009 (which came into effect on November 7, 2009), are relevant to all mandatory after-hours call duty requirements within any department or agency and maintains that any such mandatory directive to be on call after-hours would be in violation of clauses 5.02 and 6.01 of the current collective agreement. Nothing in the current agreement has the effect of waiving lawyers' privacy rights or permitting the Employer to force such lawyers to be on after-hours on-call duty.

Nature of the Grievance

The Association alleges that, when imposing any after-hours on-call duty, the Employer failed to act reasonably, fairly and in good faith, both as regards the exercise of its management rights and as regards of its administration of the collective agreement, the whole in violation of clause 5.02 of the collective

agreement. The Association is of the opinion that imposing the obligation to be on call after normal working hours is inconsistent with the terms of the collective agreement.

Through its directive, the Employer is also violating lawyers' constitutional rights by interfering with their privacy rights, notwithstanding that nothing in the collective agreement or in the Employer's management rights allows this or constitutes a waiver of lawyers' privacy rights, the whole contrary to clause 6.01 of the collective agreement.

Corrective Action

- Declare that the Employer's continued application of its after-hours on-call duty directive, even during the term of a new collective agreement, is unreasonable, unfair and in bad faith;
- Declare that the Employer's imposition of its after-hours on-call duty directive constitutes interference with lawyers' privacy rights, in violation of section 7 of the *Canadian Charter of Rights and Freedoms* and clause 6.01 of the collective agreement;
- Order the Employer to cease applying its after-hours on-call duty directive and cease requiring lawyers to be on call after normal working hours;
- Order the Employer to pay to the lawyers harmed by the application of the directive an indemnity for the harm, both material and moral, suffered by them;
- Order the Employer to pay punitive damages to the aggrieved lawyers, by reason of the obvious, known, intentional and deliberate violation of their fundamental rights;
- Grant such other relief as the tribunal considers appropriate.



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Veillez noter :

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Date on which each act, omission or other matter giving rise to the grievance occurred Date de chaque action, omission ou situation ayant donné lieu au grief	Department or agency involved (if applicable) Ministère ou organisme (s'il y a lieu)	
April 17, 2015	Public Prosecution Service of Canada	
Collective agreement Convention collective	Expiry date Date d'expiration	
Law Practitioner Group (LP)	May 9, 2014	
Corrective action requested Mesures correctives demandées		
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Date received Date de réception			

APPENDIX A - POLICY GRIEVANCE – ON-CALL DUTY – PPSC –APRIL 30, 2015

Background

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Since April 1, 2010, the Employer has imposed a directive on lawyers in the Immigration Law Division obliging them to be on call evenings and weekends, outside their normal hours of work.

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The Employer refuses to comply with the order, maintaining the position that the mandatory nature of on-call duty obligations is permitted under the current collective agreement which was signed on March 12, 2013 and expires in May 2014. Consequently, it continues to apply the same directive.

The Association of Justice Counsel maintains that the principles in the arbitral award, as well as the interpretation of the arbitral award dated October 23, 2009 (which came into effect on November 7, 2009), are relevant to all mandatory after-hours call duty requirements within the Public Prosecutions Services Canada and maintains that PPSC's mandatory directive to be on call after-hours also violates clauses 5.02 and 6.01 of the current collective agreement. Nothing in the current agreement has the effect of waiving lawyers' privacy rights or permitting the Employer to force such lawyers to be on after-hours on-call duty.

Nature of the Grievance

The Association alleges that, when imposing any after-hours on-call duty, the Employer failed to act reasonably, fairly and in good faith, both as regards the exercise of its management rights and as regards of its administration of the collective agreement, the whole in violation of clause 5.02 of the collective agreement. The Association is of the opinion that imposing the obligation to be on call after normal working hours is inconsistent with the terms of the collective agreement.

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Corrective Action

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PRÉSENTATION D'UN GRIEF DE PRINCIPE (LRTFP a. 220)

Please note:

In accordance with PSLRA s. 207, all departments and agencies within the core public administration have an informal conflict management system (ICMS) in place. Its existence does not affect the right to file a grievance. However, the employer and bargaining agent representatives are encouraged to use the ICMS when appropriate, at any stage of the grievance process, in an attempt to informally address workplace differences.

Veillez noter :

Conformément à l'article 207 de la LRTFP, les ministères et agences de l'administration publique centrale ont établi un système de gestion informelle des conflits (SGIC). L'existence d'un tel système n'affecte pas le droit à soumettre un grief. Toutefois l'employeur et les représentants des agents négociateurs sont encouragés à se servir du SGIC, à n'importe quelle étape du processus de grief, afin de tenter de régler de façon informelle les problèmes en milieu de travail.

SECTION 1

This grievance is filed by Ce grief est soumis par	
<input checked="" type="checkbox"/> Bargaining agent Agent négociateur	<input type="checkbox"/> Employer Employeur

SECTION 2

BARGAINING AGENT INFORMATION INFORMATION DE L'AGENT NÉGOCIATEUR

Bargaining agent Agent négociateur	Bargaining unit/component Unité de négociation/élément	
Association of Justice Counsel	Law Practitioner Group (LP)	
Name and title of authorized bargaining agent representative Nom et titre du représentant autorisé de l'agent négociateur	Telephone No. N° de téléphone	Facsimile No. N° de télécopieur
Sandra Guttman	613-798-9900 ext. 112	613-564-0606
Address for contact Adresse pour fins de communication	E-mail address Adresse électronique	
300-2725 Queensview Drive, Ottawa ON K2B 0A1	sguttman@ajc-ajj.ca	

SECTION 3

EMPLOYER INFORMATION INFORMATION DE L'EMPLOYEUR

Name and title of authorized employer representative Nom et titre du représentant autorisé de l'employeur	Telephone No. N° de téléphone	Facsimile No. N° de télécopieur
Address for contact Adresse pour fins de communication	E-mail address Adresse électronique	

SECTION 4

GRIEVANCE DETAILS DÉTAILS DU GRIEF

Statement of the nature of each act or omission or other matter giving rise to the grievance Exposé de la nature de chaque action, omission ou situation ayant donné lieu au grief	
See Appendix "A" attached	
Date on which each act, omission or other matter giving rise to the grievance occurred Date de chaque action, omission ou situation ayant donné lieu au grief	Department or agency involved (if applicable) Ministère ou organisme (s'il y a lieu)
April 17, 2015	DOJ-excluding Mtl & Tor offices in ILD group
Collective agreement Convention collective	Expiry date Date d'expiration
Law Practitioner Group (LP)	May 9, 2014
Corrective action requested Mesures correctives demandées	
See Appendix "A" attached	

SECTION 5

SIGNATURES *On behalf of Sandra Guttman*

 Signature of Bargaining Agent Representative Signature du représentant de l'agent négociateur	<i>Apr 30/15</i> Date	Signature of Employer Representative Signature du représentant de l'employeur	Date
Date received Date de réception			

**APPENDIX A - POLICY GRIEVANCE – ON-CALL DUTY – IMMIGRATION LAW DIVISION
EXCLUDING ORO AND QRO - APRIL 30, 2015**

Background

On October 23, 2009, an arbitral award established the working conditions of lawyers forming part of the bargaining unit. The working conditions resulting therefrom came into effect on November 1, 2009, subject to certain other provisions which came into effect on February 20, 2010.

Since April 1, 2010, the Employer has imposed a directive on lawyers in the Immigration Law Division obliging them to be on call evenings and weekends, outside their normal hours of work.

On April 30, 2010, the Association of Justice Counsel filed a policy grievance for the Toronto Immigration Law Division.

On May 18, 2010, the Association of Justice Counsel filed a policy grievance for the Immigration Law Division in Montreal contesting the aforementioned directive.

The Employer agreed to be bound by the Montreal policy grievance outcome.

On April 2, 2015, Stephan J. Bertrand, the PSLREB adjudicator, rendered a decision in the Montreal policy grievance in which he declared that the directive was neither reasonable nor fair, contrary to the provisions of clause 5.02 of the collective agreement. He also ruled that the mandatory on-call duty directive violates a right protected under section 7 of the *Canadian Charter of Rights and Freedoms*, namely, the right to privacy, contrary to the provisions of clause 6.01 of the collective agreement. Lastly, he ordered the Employer to cease applying said directive as of April 2, 2015.

The Employer refuses to comply with the order, maintaining the position that the mandatory nature of on-call duty obligations is permitted under the current collective agreement which was signed on March 12, 2013 and expires in May 2014. Consequently, it continues to apply the same directive.

The Association of Justice Counsel maintains that the principles in the arbitral award, as well as the interpretation of the arbitral award dated October 23, 2009 (which came into effect on November 7, 2009), are relevant to additional locations within Immigration Law Division within DOJ and maintains that DOJ's mandatory directive to be on call after-hours also violate clauses 5.02 and 6.01 of the current collective agreement. Nothing in the current agreement has the effect of waiving lawyers' privacy rights or permitting the Employer to force such lawyers to be on after-hours on-call duty.

Nature of the Grievance

The Association alleges that, when imposing after-hours on-call duty, the Employer failed to act reasonably, fairly and in good faith, both as regards the exercise of its management rights and as regards of its administration of the collective agreement, the whole in violation of clause 5.02 of the collective agreement. The Association is of the opinion that imposing the obligation to be on call after normal working hours is inconsistent with the terms of the collective agreement.

Through its directive, the Employer is also violating lawyers' constitutional rights by interfering with their privacy rights, notwithstanding that nothing in the collective agreement or in the Employer's management rights allows this or constitutes a waiver of lawyers' privacy rights, the whole contrary to clause 6.01 of the collective agreement.

Corrective Action

- Declare that the Employer's continued application of its after-hours on-call duty directive, even during the term of a new collective agreement, is unreasonable, unfair and in bad faith;
- Declare that the Employer's imposition of its after-hours on-call duty directive constitutes interference with lawyers' privacy rights, in violation of section 7 of the *Canadian Charter of Rights and Freedoms* and clause 6.01 of the collective agreement;
- Order the Employer to cease applying its after-hours on-call duty directive and cease requiring lawyers to be on call after normal working hours;
- Order the Employer to pay to the lawyers harmed by the application of the directive an indemnity for the harm, both material and moral, suffered by them;
- Order the Employer to pay punitive damages to the aggrieved lawyers, by reason of the obvious, known, intentional and deliberate violation of their fundamental rights;
- Grant such other relief as the tribunal considers appropriate.



DEPARTMENT USE ONLY À L'USAGE DU MINISTÈRE
Reference No. N° de référence

POLICY GRIEVANCE PRESENTATION (PSLRA s. 220)
PRÉSENTATION D'UN GRIEF DE PRINCIPE (LRTFP a. 220)

Please note:

In accordance with PSLRA s. 207, all departments and agencies within the core public administration have an informal conflict management system (ICMS) in place. Its existence does not affect the right to file a grievance. However, the employer and bargaining agent representatives are encouraged to use the ICMS when appropriate, at any stage of the grievance process, in an attempt to informally address workplace differences.

Veillez noter :

Conformément à l'article 207 de la LRTFP, les ministères et agences de l'administration publique centrale ont établi un système de gestion informelle des conflits (SGIC). L'existence d'un tel système n'affecte pas le droit à soumettre un grief. Toutefois l'employeur et les représentants des agents négociateurs sont encouragés à se servir du SGIC, à n'importe quelle étape du processus de grief, afin de tenter de régler de façon informelle les problèmes en milieu de travail.

SECTION 1

This grievance is filed by Ce grief est soumis par	
<input checked="" type="checkbox"/> Bargaining agent Agent négociateur	<input type="checkbox"/> Employer Employeur

SECTION 2

BARGAINING AGENT INFORMATION INFORMATION DE L'AGENT NÉGOCIATEUR

Bargaining agent Agent négociateur	Bargaining unit/component Unité de négociation/élément	
Association of Justice Counsel	Law Practitioner Group (LP)	
Name and title of authorized bargaining agent representative Nom et titre du représentant autorisé de l'agent négociateur	Telephone No. N° de téléphone	Facsimile No. N° de télécopieur
Sandra Guttman	613-798-9900 ext. 112	613-564-0606
Address for contact Adresse pour fins de communication	E-mail address Adresse électronique	
300-2725 Queensview Drive, Ottawa ON K2B 0A1	sguttman@ajc-ajj.ca	

SECTION 3

EMPLOYER INFORMATION INFORMATION DE L'EMPLOYEUR

Name and title of authorized employer representative Nom et titre du représentant autorisé de l'employeur	Telephone No. N° de téléphone	Facsimile No. N° de télécopieur
Address for contact Adresse pour fins de communication	E-mail address Adresse électronique	

SECTION 4


GRIEVANCE DETAILS DÉTAILS DU GRIEF

Statement of the nature of each act or omission or other matter giving rise to the grievance Exposé de la nature de chaque action, omission ou situation ayant donné lieu au grief	
See Appendix "A" attached	
Date on which each act, omission or other matter giving rise to the grievance occurred Date de chaque action, omission ou situation ayant donné lieu au grief	Department or agency involved (if applicable) Ministère ou organisme (s'il y a lieu)
April 17, 2015	All of DOJ operations excluding ILD group
Collective agreement Convention collective	Expiry date Date d'expiration
Law Practitioner Group (LP)	May 9, 2014
Corrective action requested Mesures correctives demandées	
See Appendix "A" attached	

SECTION 5

SIGNATURES

On behalf of Sandra Guttman

 Signature of Bargaining Agent Representative Signature du représentant de l'agent négociateur	<i>Apr 30/15</i> Date	_____ Signature of Employer Representative Signature du représentant de l'employeur	_____ Date
Date received Date de réception			

APPENDIX A - POLICY GRIEVANCE – ON-CALL DUTY – ALL LOCATIONS AND LEGAL SERVICES UNITS WITHIN DOJ EXCLUDING IMMIGRATION LAW DIVISION APRIL 30, 2015

Background

On October 23, 2009, an arbitral award established the working conditions of lawyers forming part of the bargaining unit. The working conditions resulting therefrom came into effect on November 1, 2009, subject to certain other provisions which came into effect on February 20, 2010.

Since April 1, 2010, the Employer has imposed a directive on lawyers in the Immigration Law Division obliging them to be on call evenings and weekends, outside their normal hours of work.

On April 30, 2010, the Association of Justice Counsel filed a policy grievance for the Toronto Immigration Law Division.

On May 18, 2010, the Association of Justice Counsel filed a policy grievance for the Immigration Law Division in Montreal contesting the aforementioned directive.

The Employer agreed to be bound by the Montreal policy grievance outcome.

On April 2, 2015, Stephan J. Bertrand, the PSLREB adjudicator, rendered a decision in the Montreal policy grievance in which he declared that the directive was neither reasonable nor fair, contrary to the provisions of clause 5.02 of the collective agreement. He also ruled that the mandatory on-call duty directive violates a right protected under section 7 of the *Canadian Charter of Rights and Freedoms*, namely, the right to privacy, contrary to the provisions of clause 6.01 of the collective agreement. Lastly, he ordered the Employer to cease applying said directive as of April 2, 2015.

The Employer refuses to comply with the order, maintaining the position that the mandatory nature of on-call duty obligations is permitted under the current collective agreement which was signed on March 12, 2013 and expires in May 2014. Consequently, it continues to apply the same directive.

The Association of Justice Counsel maintains that the principles in the arbitral award, as well as the interpretation of the arbitral award dated October 23, 2009 (which came into effect on November 7, 2009), are relevant to all mandatory after-hours call duty requirements within the Department of Justice and maintains that DOJ's mandatory directive to be on call after-hours also violates clauses 5.02 and 6.01 of the current collective agreement. Nothing in the current agreement has the effect of waiving lawyers' privacy rights or permitting the Employer to force such lawyers to be on after-hours on-call duty.

In addition to the Immigration Law Division, the Department of Justice requires mandatory after-hours call duty in other legal services units across the country.

Nature of the Grievance

The Association alleges that, when imposing any after-hours on-call duty, the Employer failed to act reasonably, fairly and in good faith, both as regards the exercise of its management rights and as regards

of its administration of the collective agreement, the whole in violation of clause 5.02 of the collective agreement. The Association is of the opinion that imposing the obligation to be on call after normal working hours is inconsistent with the terms of the collective agreement.

Through its directive, the Employer is also violating lawyers' constitutional rights by interfering with their privacy rights, notwithstanding that nothing in the collective agreement or in the Employer's management rights allows this or constitutes a waiver of lawyers' privacy rights, the whole contrary to clause 6.01 of the collective agreement.

Corrective Action

- Declare that the Employer's continued application of its after-hours on-call duty directive, even during the term of a new collective agreement, is unreasonable, unfair and in bad faith;
- Declare that the Employer's imposition of its after-hours on-call duty directive constitutes interference with lawyers' privacy rights, in violation of section 7 of the *Canadian Charter of Rights and Freedoms* and clause 6.01 of the collective agreement;
- Order the Employer to cease applying its after-hours on-call duty directive and cease requiring lawyers to be on call after normal working hours;
- Order the Employer to pay to the lawyers harmed by the application of the directive an indemnity for the harm, both material and moral, suffered by them;
- Order the Employer to pay punitive damages to the aggrieved lawyers, by reason of the obvious, known, intentional and deliberate violation of their fundamental rights;
- Grant such other relief as the tribunal considers appropriate.