

PROPOSED MEMORANDUM OF UNDERSTANDING FOR THE LAW PRACTITIONER JOINT COMPENSATION COMPARABILITY STUDIES

1. Objective

The purpose of this Memorandum is to outline the governance and associated processes related to the conduct of two joint compensation comparability studies and subsequent binding dispute resolution mechanism in accordance with section 182 of the *Federal Public Sector Labour Relations Act* (FPSLRA) for determining the need and potential value of a market adjustment for the Law Practitioner (LP) group.

2. Governance and timelines

The AJC and the Employer will oversee the study together (henceforth the working group). Both parties will have equal decision-making authority over the study's direction and will work collaboratively to address any divergent opinions throughout the study's duration. The working group shall meet every second month, or as required in order to meet the timelines in this memorandum of understanding.

Each party shall appoint a delegate and alternate to make decisions between meetings, to ensure the timely progress of work. The working group shall determine the appropriate delegation of decision-making authority to the delegate and alternate. Both parties will ensure adequate staffing resources are made available to meet those timelines.

One of the first objectives of the working group shall be to establish a work plan identifying the actions required to complete all work within 15 months from the time the project plan is submitted to the working group by the contractors. The parties will make every reasonable effort to establish the work plan within sixty days of ratification of the collective agreement. The third-party decision-making process should be organized toward rendering a decision within three months of the completion of compensation comparability work.

3. The contracting process

The contractors will assess LP compensation in comparison a) to provincial and territorial government lawyers, Judge Advocate General's lawyers, and federal Separate Agencies (an external comparability study) and b) other professional occupations in the Core Public Administration (an internal relativity study), in accordance with the Statement of Work for each study.

The Employer agrees to use its existing contracting vehicle for the two studies. The vehicle remains effective until March 31, 2020, and then must be renewed. Contracts in excess of \$300,000 including taxes would require a new contracting vehicle, and so are out of scope for the purposes of this MoU.

The Employer agrees to provide up to \$300,000, including taxes, for the internal relativity study and up to \$150,000 for the external comparability studies.

All contracting processes related to the studies must respect federal government and departmental contracting policy directives and guidelines.

Unless otherwise agreed, any communication related to the conduct and substance with the Contractor outside of scheduled meetings or conference calls will be conducted via e-mail, with all parties being copied on those communications. The parties agree to make best efforts to be available for any needed communication to facilitate the progress of work.

It is recognised that the Employer may communicate bilaterally with the contractor from time to time regarding contract management and the financial administration of the contracts. The Employer will endeavour to inform the AJC of these instances.

Contractors shall be expected to conduct their work in a neutral, transparent and professional manner that avoids any perception or occurrence of bias toward one of the participating parties. For the internal relativity study, the working group will determine the process to select job descriptions that are representative of the different work streams and job group levels (20 to 25 groups and levels) for the following occupational groups: Auditing (AU), Economics and Social Sciences Services (EC) levels EC-05 to EC-08 (Economists and Economic Policy Researchers and Analysts job stream), Engineering and Land Survey (EN), Executive (EX) levels EX-01 to EX-04, and Medical Specialist level MD-MSP-01 as part of Medicine (MD).

Job group levels will be selected from these occupational groups to provide comparators along the full range of salaries in the LP group, to cover a broad range of work while giving greater weight to the LP working levels. The selection process, which may include random selection, will be agreed to in advance by the working group. Lawyers earning the Toronto rate will be excluded for the purpose of this comparison.

For the external comparability study, the working group will provide the contractor with job descriptions that are representative of the different streams of LP work, and the different job group levels.

The appended Draft Statements of Work form part of this MOU, shall be the basis on which the work will be contracted, subject to modifications required to conform to government contracting policy directives and guidelines.

4. Dispute resolution

In the spirit of the joint nature of this work, parties will endeavour to develop a consensus on the methodology and conduct of the studies.

An expert in the conduct of comparability studies will be hired on retainer, by joint agreement, at the commencement of this process (the Expert). In the event that agreement cannot be reached in a timely manner on the methodology and conduct of the studies, either party may request that the contractor of the study provide a recommendation on the appropriate approach.

If there is not agreement to accept the Contractor's recommendation, either party may request the Expert review the recommendation to determine whether to accept it, or identify an alternate approach. The Expert shall render a decision in a timely manner, generally within one week, subject to the following considerations. The study shall be conducted in accordance with the Expert's decision.

- The Expert's decision shall not require a change to the Statements of Work for the studies, or to the terms of this MoU.

- The Expert's principal considerations should be:
 - o the reasonableness of the contractor's recommendation, in the context of best practices for the conduct of comparability studies; and
 - o If best practices allow for different methodologies, whether the contractor's recommendation could significantly influence the outcome of the study to the advantage of one party, and whether an alternate methodology would yield more balanced results.

In exceptional circumstances, either party may request the FPSLREB appoint a mediator to assist in the resolution of methodological issues. In case of fundamental concerns with the reliability of one of the studies, the mediator may decide to terminate the studies and the parties will directly go to arbitration subject to the limitations on the nature of the Arbitrator's decision indicated in section 5. In such a case:

- The arbitrator's decision shall be based on all factors identified in section 148 of the FPSLRA;
- Except by joint agreement, the parties may not present any draft or final results from either of the studies.

5. The binding third-party decision making processes

If the value of the market adjustment, if any, cannot be determined by joint agreement, the parties shall appoint an Arbitrator by mutual agreement. In the event an individual cannot be identified in a timely manner, either party may request the FPSLREB appoint an arbitrator. Such person must have the required competence to evaluate and interpret the joint studies.

Upon completion of all studies (internal relativity and external comparability), the results shall be presented as a package to the Arbitrator. Both parties may make submissions, including supplementary information in support of their recommendations, and their interpretation of the studies. The parties shall endeavour to be brief in these submissions. The Arbitrator may also seek supplementary information from the parties, the Expert or the contractors as required to assist in rendering a decision. This may entail an assessment of the accuracy or potential bias of the results.

The Arbitrator's decision shall be limited to the following:

- No adjustment;
- A percentage economic adjustment uniformly applicable to all LP levels, effective May 10, 2018, based on the methodology outlined in the MOU on Collective Agreement Implementation; and / or
- A percentage economic adjustment differentiated by LP level, on a date determined by the PSPC, but not later than 180 days following the date of the decision.

The implementation timelines shall follow the MOU on Collective Agreement Implementation, using the Arbitrator's decision date in place of the collective agreement signature date.

The Arbitrator's decision shall be based on the results of the studies, in accordance with Sections 148 (b) and (c) of the FPSLRA. The parties' submissions shall be used to provide context and interpretation of the results of the studies.

The Arbitrator shall endeavour to render his or her decision in a timely manner – ideally within one month after receipt of the studies, and at most within two months. The Arbitrator shall provide written reasons for his or her decision. The decision shall be final, and not subject to appeal.

The study shall be used for no other purpose than determining compensation increases for LPs. The AJC shall advise TBS before disclosing the contents of the study to its members. The AJC agrees to withdraw all legal action related to the 2014 arbitral decision on a without costs basis.

Any agreement regarding choice of comparators does not bind the parties in future negotiations.