

SCHEDULE A

Background

1. According to its website, the Association of Justice Counsel (“the Employer” or “AJC”) is the bargaining agent for approximately 2,600 lawyers employed by the government of Canada, who work for the Department of Justice, the Public Prosecution Service of Canada, and provide in-house legal services to various federal agencies, tribunals and courts across the country.
2. AJC members are lawyers (Federal Crown Counsel), who prosecute criminal offences under federal statutes, and Criminal Code offences in the North and by provincial delegation; draft policy and legislation; litigate on behalf of Canada and defend Canada in litigation.
3. The Employer is headquartered in Ottawa.
4. The Employer has a 41-member Governing Council.
5. The Employer has a staff of nine regular full-time employees and employs three people under contract (financial officer, bookkeeper, and IT services professional).
6. By decision of the Board on February 14, 2020, the Union was certified as the bargaining agent of “all employees of the Association of Justice Counsel in the city of Ottawa save and except the General Counsel, and those ranked above General Counsel”.
7. A dispute regarding the status of two positions – Office Manager and Labour Relations Officer/Legal Counsel – was determined in a decision by the Board on September 21, 2020, which ruled that the former position should be included and the latter excluded

Bargaining and the events of May 10, 2021

8. Bargaining began shortly after the Board ruling on the status dispute and the parties have bargained for more than 130 hours since that time. Bargaining was conducted virtually.
9. The Union applied for conciliation of March 18, 2021 and met the Employer with the assistance of a conciliator on April 13, May 3 and May 10.

10. The conciliator issued a No Board report on April 23, 2021.
11. The final bargaining between the parties took place on May 10, 2021.
12. There were three remaining issues in dispute: The Employer's position that the Office Manager should be excluded from the bargaining unit (notwithstanding the decision of the Board of September 21, 2020 referred in paragraph 7 above), the salary level for the Assistant to the Corporate Secretary, and post-retirement benefits.
13. On May 10, 2021, there were two passes generated by the Employer, which are attached and identified as Pass 16 and Pass 16A. A member of the Union staff, Mary Stalteri ("Stalteri"), led discussions for the Union. Sandra Guttman (General Counsel / Corporate Secretary / Labour Relations Officer) was lead negotiator for the Employer.
14. In pass 16, sent by email by the Employer at approximately 12:30 pm, the language proposed for Article 2.01 (the scope clause) still provided that the Office Manager be excluded.
15. Stalteri raised this issue with Guttman in a telephone conversation. Guttman agreed to review a letter from the Union proposing Joint Job Evaluation as a means of resolving issues related to the salary of the Assistant to the Corporate Secretary.
16. Stalteri indicated that the Union would agree to the Office Manager being excluded from the bargaining unit in return for the following:
 - That the Labour Relations Officer/Legal Counsel excluded by the September 21 board decision be included in the bargaining unit after the current incumbent left the position;
 - The Employer agree to Joint Job Evaluation on all positions in the unit. Some wage adjustments had been proposed by the Employer to be upgraded as per market value assessment. In particular, the Assistant to the Corporate Secretary (ACS) position needed to be properly evaluated as some of the Corporate Secretary duties were done by the ACS.
 - That the Employer and the Union attempt to find a resolution for the Post Retirement Benefits that AJC had committed to review with a joint working

- group. The Union wanted a default provider identified in the event there were no agreement on a provider after six months.
17. Stalteri also advised Guttman that the Union also had an issue with the following new content included by the Employer in pass 16: “#NEW In the event the parties fail to agree on whether a new position shall be included or excluded either party may refer the case to the Ontario Labour Relations Board for decision.”
18. There was no contact between the parties for several hours. At 6:15 pm, the Employer emailed the Union a new pass (pass 16A).
19. Rather than bridge the gap between the two parties, it created new issues regarding the scope clause by including language that the Employer knew the Union could never agree to.
20. The Employer’s new demands were contained in a proposed side letter as follows:

For the purposes of article 2.01, it is understood that

- a) The position of Office Manager shall be a management position under the title of Director Administration Services;
- b) The position of Legal Counsel/Labour Relations Officer shall be repurposed to a combined legal counsel and management position under the title of Legal Counsel, Manager of Representation Services;
- c) The General Counsel position shall be continued as a management position under the title of Executive Director, Director of Representation Services;

When hiring Labour Relations Officers, these positions shall no longer be combined with the legal counsel function.

21. Guttman further advised Stalteri that the Employer would not agree to job evaluation and that it would not move on its position regarding post-retirement benefits.
22. Talks broke off at approximately 8 pm.
23. Members of the bargaining unit have been on strike since May 11.

Conclusions and remedy requested

24. In the submission of the Union, the Employer’s behaviour bargained to impasse issues that had already been determined by the Board and, as a result, violated section 17 of the Act.

25. The Board had already determined that the Office Manager should be included and the Labour Relations Officer/Legal Counsel excluded. Notwithstanding the Board decision, the Employer persisted until the very end in attempting to undo the Board's decision, such that bargaining collapsed.
26. But for the Employer's persistence, it is likely that the parties would have reached agreement on a collective agreement, since the status of those positions were the only substantive positions remaining, the Union having indicated to the Employer on the afternoon of May 10 that it was willing to move on the joint job evaluation and salary of the Assistant to the Corporate Secretary and post-retirement benefits.
27. Rather than respond to this opening, the Employer responded with a position on the recognition clause that was more unattractive to the Union than the previous and which the Employer must have known that the Union could not accept.
28. Not only did the Employer not agree to include the Labour Relations Officer/Legal Counsel in the bargaining unit in return for the exclusion of the Office Manager, it actually amended the nature of position such that it would be an extra layer of management over members of the bargaining unit.
29. The Union respectfully requests the following remedy for the Employers unlawful actions:
 - (a) A Declaration that the Employer has contravened section 17 of the Act;
 - (b) An Order that the Employer return to the bargaining table and negotiate in good faith with the Union for a first collective agreement.

ALL OF WHICH IS RESPECTFULLY SUBMITTED