Court File No.

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

ASSOCIATION OF JUSTICE COUNSEL

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

MEMORANDUM OF ARGUMENT
OF THE ASSOCIATION OF JUSTICE COUNSEL
(Application for Leave to Appeal)

PART I - OVERVIEW OF POSITION AND FACTS

A. Overview of Position

1. This is an application for leave to appeal from the Ontario Court of Appeal's decision holding that the *Expenditure Restraint Act*[1] ("*ERA*") had not substantially interfered with the *Charter*-protected collective bargaining rights of the Applicant and its members. The *ERA* is federal wage restraint legislation, which applies to 400,000 employees of the federal government, federal Crown corporations, members of the military, and others. Enacted early in 2009, it precluded these employees from bargaining freely over salaries for the period from April 1, 2006 to March 31, 2011.

2. Federal Crown counsel have long been concerned about the large and growing gap between their salaries and those of their relevant provincial counterparts. Most of the 2,700 federal Crown counsel represented by the Association of Justice Counsel ("AJC") were excluded from collective bargaining legislation until the *Public Service*

[1] S.C. 2009, c.2, s.393.

Labour Relations Act ("*PSLRA*") was introduced in 2005. In April 2006, the AJC became the certified bargaining agent for federal Crown counsel, and on May 10, 2006 the AJC delivered a notice to bargain to Treasury Board, the entity that bargains collectively on behalf of the federal government.

3. Prior to the enactment of the *ERA*, "negotiations" over salary had been minimal. The parties had simply exchanged proposals - the AJC provided its salary proposal in late November, 2006, seeking a 35% increase over 3 years from 2006 to 2009, and Treasury Board belatedly responded on March 29, 2008, offering increases of 1.5% per year for an unspecified term (below the rate of inflation). With this substantial gap between the parties, Treasury Board referred all unresolved matters, including the salary dispute, to arbitration under the *PSRLA* in September, 2008. If that process had proceeded to final resolution, the arbitration board would have considered all relevant factors, including salaries paid to comparable employees, and the economic and fiscal circumstances facing the federal government.[2] The parties would have remained free to bargain over salaries unless or until the board ruled, and in respect of any period that the arbitration award did not cover. Such bargaining is mandated under the *PSLRA*.[3]

4. When the *ERA* was enacted in early 2009, however, it reached back retroactively to the precise date of the AJC's notice to bargain on May 10, 2006, imposed a wage schedule on federal Crown counsel, and set annual wage increases at or below the rate

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[2] *Public Service Labour Relations Act*, s.148.

[3] Section 145 provides that "As soon as possible after being established, the arbitration board must endeavour to assist the parties to the dispute in entering into or revising a collective agreement." The arbitration board thus plays a mandatory mediation role. The arbitration board must also set the duration of an award, with a statutory presumption that the duration will be between one and two years (subject to the board's discretion), thereby encouraging the parties to return quickly to collective bargaining: s.156.

of inflation for a five-year period. It further provided that the parties could not in future compensate for any amounts lost as a result of the period of wage restraint.

5. Justice Grace of the Superior Court found that the *ERA* substantially interfered with the collective bargaining rights of federal Crown counsel as protected by s.2(d) of the *Charter*. He found that the infringement was justified with respect to the period from 2007 to 2011, but that the *ERA*'s retroactive reach back to May 2006 was essentially unexplained, and failed the minimal impairment and deleterious effects branches of s.1.

6. The Court of Appeal reversed. The Court did not consider the scope or effects of the impugned legislation, focusing instead on the very limited negotiations over salary that had occurred prior to the *ERA.* Those "negotiations" consisted, in their entirety, of the exchange of proposals described above, and discussions with AJC's counsel on November 25 and 26, 2008 (shortly before the intended introduction of the *ERA*) of Treasury Board's take-it-or-leave-it "final offer" in terms that mirrored the *ERA*. The Court of Appeal held that s.2(d) was not breached because Grace J. had not found that Treasury Board had acted in bad faith prior to the enactment of the *ERA*. In other words, in a challenge to the *ERA*, the Court never actually reached an examination of the terms of the *ERA* because, in its view, the AJC had not established an independent breach of s.2(d) by Treasury Board prior to the *ERA*'s introduction.

7. The Court of Appeal's holding eviscerates s.2(d). It is inconsistent with this Court's requirement in *Health Services*[4] and *Fraser*[5] that the impugned legislation

[4] *Health Services and Support - Facilities Subsector Bargaining Association v. British Columbia*, [2007] 2

preserve a meaningful process of consultations or negotiations. It is inconsistent with two rulings in other jurisdictions on the constitutionality of the *ERA*.[6] Finally, it is inconsistent with the meaning given to freedom of association in international law.

8. This case raises questions of profound public importance. This is the first of at least nine cases under the *ERA* to reach this Court. It has direct application to the 400,000 employees across Canada covered by the *ERA*, and applies indirectly to hundreds of thousands of other provincial government employees who are already, or likely soon will be, subject to wage restraint legislation. Governments are the largest employers in Canada, accounting for about 20% of all employment, and government employees are in a particularly vulnerable position because their employers enjoy legislative powers as well as their powers as employer. The Court of Appeal itself noted that that this case would likely proceed to this Court. For all of these reasons, leave to appeal ought to be granted.

B. FACTS

1. Background to the Application

9. The AJC represents approximately 2,700 Federal Crown counsel who work in the Public Prosecution Service of Canada ("PPSC"), the Department of Justice ("DOJ"), and other federal agencies, tribunals and courts across Canada.[7]

S.C.R. 391 (*"Health Services"*).

[5] *Ontario (Attorney General) v. Fraser*, [2011] 2 S.C.R. 3 ("*Fraser*").

[6] See para. 41, *infra*.

[7] Reasons for Judgment on the Merits of Justice Grace, dated November 1, 2011 ["Decision on the Merits of Grace J."], paras. 2-3, *Application Record*, Tab 4, p. 6-7.

10. Historically, all but a few Federal Crown counsel were excluded by statute from collective bargaining.[8] That changed in 2005 with the passage of the *PSLRA*. The AJC became certified as the bargaining agent for Federal Crown counsel in April 2006, and served a Notice to Bargain on May 10, 2006.[9]

11. The Law Group is the only bargaining unit among 27 groups in the core federal public service that has never had rates of pay determined by collective bargaining. Ontario, where almost two thirds of Federal Crown counsel work, has allowed Provincial Crown counsel to bargain collectively since 1989. For many years, Federal Crown counsel earned salaries that were roughly equivalent those earned by Ontario's Crown lawyers. However, that changed when Ontario's Crown lawyers received a 30% increase effective January 1, 2001.

12. Federal Crown counsel have remained far behind Ontario's lawyers since then, and have also fallen behind other provinces (and the private sector).[10] As of 2009 the gap between Federal and Ontario Crown counsel was 34 to 54 per cent for the LA 2A "intermediate" classification, which accounts for more than half the AJC bargaining unit.[11] The gap with private sector lawyers is even greater – the average income in private practice is almost twice the average salary of Federal Crown counsel.[12]

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[8] Approximately 100 of the 2700 lawyers had previously been represented by the Professional Institute of Public Servants Canada ("PIPSC"). These were lawyers working elsewhere than the Department of Justice: Submission of Treasury Board to the Arbitration Board in Respect of the Law Group: Exhibit C to Affidavit of Marc Thibodeau, sworn October 29, 2010 ["Thibodeau Affidavit"], *Application Record*, Tab 13-C, p. 191; Cross-Examination of M. Thibodeau, q. 74-75, *Application Record*, Tab 16, p. 216.

[9] Decision on the Merits of Grace J., paras. 4, 10, *Application Record*, Tab 4, p. 7.

[10] Decision on the Merits of Grace J, para. 9, *Application Record*, Tab 4, p. 7.

[11] Affidavit of Marco Mendicino, sworn June 8, 2010 ["First Mendicino Affidavit"], para. 27, *Application Record*, Tab 12, p. 104.

[12] As of December 31, 2006, the average salary of AJC bargaining unit members was $101,332 per year.

13. The government's own reports in recent years have noted the difficulties experienced by DOJ and PPSC in recruiting and retaining counsel. These include the DOJ's Human Resources Management Plan 2007-2010, the PPSC's Annual Report for 2007-2008, and the PPSC's Report on Plans and Priorities 2008-2009. In the first of these reports, the DOJ expressly acknowledges that "we are recruiting in a very competitive labour market, with private sector and other levels of government in some cases offering much more attractive compensation packages than we are".[13]

2. Minimal Bargaining Over Salary Prior to the *ERA*

14. The parties engaged in only minimal discussions or negotiations over salary prior to the *ERA*, and the discussions that they had took place in a very different context than the circumstances surrounding the introduction of the Act. On November 22 - 23, 2006, the parties met for their first face-to-face negotiation sessions. The AJC tabled its bargaining proposal, including a salary proposal seeking salary increases of approximately 35% over the first three years of the agreement.[14] This was a time when the federal government enjoyed a significant budgetary surplus.[15] Treasury Board tabled a proposal in which the rates of pay were left blank, to be filled in later.[16]

This compares to an average income of $192,500 for lawyers across Canada in tax year 2000, with an average of $214,900 in Ontario: Table 17, Report of the Second Judicial Compensation and Benefits Commission, Exhibit H to Thibodeau Affidavit, *Application Record*, Tab 13-H, p. 193. (Incomes below $60,000 are excluded, on the basis that many lawyers in this category are not working full time.).

[13] First Mendicino Affidavit, paras. 26-28, *Application Record*, Tab 12, p. 103-104.

[14] Thibodeau Affidavit, para. 33, *Application Record*, Tab 13, p. 176.

[15] Decision on the Merits of Grace J., para. 127, *Application Record*, Tab 4, p. 28.

[16] Cross-Examination of M. Thibodeau, q. 299, *Application Record*, Tab 17, p. 218.

15. The parties meet on a number of dates between November 2006 and September 2007, but Treasury Board did not make a salary proposal despite being repeatedly asked for one by the AJC.[17] During this time, the AJC repeatedly attempted to obtain meaningful data disclosure, but were met with continued stonewalling from Treasury Board.[18] In the absence of either a salary proposal or proper disclosure, the AJC and Treasury Board discussed non-monetary items, but the AJC never agreed that this was how the negotiations should proceed.

16. In late 2007, the parties requested the assistance of a mediator through the PSLRB. Mediator Kevin Burkett met with the parties on five occasions between November 2007 and March 2008.[19] Both the AJC and Mediator Burkett repeatedly requested Treasury Board's salary proposal, but Treasury Board only responded in the final session on March 29, 2008, after Mediator Burkett expressed his frustration.

17. When Treasury Board finally did present its salary proposal, it provided for annual increases of 1.5% (below the rate of inflation) in a collective agreement going back to 2006 – despite the fact that the federal government ran a record surplus of $13.2 billion in 2006 and was still in surplus in early 2008.[20] The proposal also noted that the employer was "not interested in amending the current pay structure".[21] Far from addressing the disparities with other comparable lawyers described above, this offer would have resulted in salary reductions in real terms. The AJC therefore rejected the

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[17] Cross-Examination of M. Thibodeau, q. 277-282, *Application Record*, Tab 18, p. 219-221.
[18] First Mendicino Affidavit, paras. 45, 46, *Application Record*, Tab 12, p. 109.
[19] First Mendicino Affidavit, paras. 49-52, *Application Record*, Tab 12, p. 109-110.
[20] First Mendicino Affidavit, para. 60, *Application Record*, Tab 12, p. 112.
[21] Law (LA) Group Negotiations - Employer's Response to the AJC Salary Proposal, Exhibit N to First Mendicino Affidavit, *Application Record*, Tab 12-N, p. 119-123.

proposal, and immediately advised that they would begin the process to move to arbitration under the *PSLRA*. Treasury Board's lead negotiator Marc Thibodeau admitted on cross-examination that he was not surprised at this reaction.[22]

18. From April to September 2008, the parties sought to agree on an arbitrator to head the arbitration panel.[23] In September 2008, in the absence of an agreement on the chair of the arbitration board, Treasury Board referred all unresolved issues, including the salary dispute, to the PSLRB for arbitration. The effect of this was that the PSLRB appointed the panel.

3. Enactment of the *ERA*

19. In or about late October 2008, in the context of a serious global economic downturn, the federal government announced its intention to impose wage restraints. A speech dated October 29, 2008 by the Minister of Finance referred to the need for "responsible public sector compensation". In mid-November 2008, Treasury Board senior negotiators contacted various bargaining agents, including the AJC, and referred to this speech and the fact that the Department of Finance was "looking for cost containment and predictability of expenditures for the period 2007/8 to 2010/11".[24] On November 18, 2008, the President of the Treasury Board issued a press release announcing that "final offers" had been made to the various bargaining agents, which provided for wage increases of 2.3% for 2007-08, and 1.5% for each of 2008-09, 2009-

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[22] Cross-Examination of M. Thibodeau, q. 251-255, *Application Record*, Tab 19, p. 222-223.

[23] Among the suggestions turned down by the employer were the Honourable Frank Iacobucci (formerly of this Court and former Deputy Minister of Justice) and the Honourable George Adams (former Superior Court Justice and former Chair of the Ontario Labour Relations Board): Affidavit of Marco Mendicino, sworn January 6, 2011 ["Second Mendicino Affidavit"], para. 13, *Application Record*, Tab 14, p. 200.

[24] Decision on the Merits of Grace J., para. 22, *Application Record*, Tab 4, p. 9.

10, and 2010-11. These same percentages, with projected cost savings, were included in the government's formal economic statement dated November 27, 2008.

20. There were no substantive negotiations, consultations or discussions between Treasury Board and the AJC during this period. The record indicates only that Treasury Board's "final offer" was discussed with counsel for the AJC on November 25 and 26, 2008. On cross-examination, the Respondent's witness confirmed that there was never any offer for anything other than the percentage increases that were ultimately reflected in legislation, and that they had no mandate to offer anything more.[25]

21. Initially, the *ERA* was to have been introduced in early December 2008. However, it was postponed when Parliament was prorogued, and reintroduced for first reading on February 6, 2009. Despite the fact that all public statements on the *ERA* had referred only to fiscal years 2007-08 and subsequent, including the budget which had been introduced as recently as January 26, 2009, the AJC was surprised to learn that the *ERA* reached back to April 2006. Indeed, it contained a provision preventing the adjustment of salaries any earlier than May 10, 2006 - the very date on which the AJC had delivered its notice to bargain.

22. The *ERA* was enacted on March 12, 2009.[26] The *ERA* sets a five-year period of wage restraint, reaching back retroactively almost three years to Fiscal Year ("FY") 2006-07. Although it incorporates a number of exceptions, the basic pattern of the *ERA*

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[25] Cross-Examination of H. Laurendeau, q. 558-559, *Application Record*, Tab 20, p. 224; Cross-Examination of H. Laurendeau, q. 423-430, *Application Record*, Tab 21, p. 225-227.

[26] Decision on the Merits of Grace J., paras. 1, 17-20, *Application Record*, Tab 4, p. 6, 8.

is that wage increases are limited to 2.5% for 2006-07, 2.3% for 2007-08, and 1.5% per year for 2008-11.[27] However, for the period prior to December 8, 2008, these limits do not apply for any group whose increases were established prior to that date.[28] Because most groups within the federal public service already had collective agreements applying to FY 2006-07,[29] wage restraints for that year applied to only three groups: the Law Group, the Ship Repair West Group, and the Research Group.[30]

23. As a general rule, the restraints in the *ERA* apply notwithstanding any collective agreement, arbitral award or contract of employment.[31] However, the *ERA* contained several significant exclusions and exemptions:

(a) Employees who had established increases for 2006-7, 2007-8, or 2008-9 up to December 8, 2008, were permitted to keep the increases even if they exceeded *ERA* limits.[32] This included major increases for executive classifications that were historically linked to Federal Crown counsel;[33]

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[27] *Expenditure Restraint Act*, S.C. 2009, c.2, s.393 ("*ERA*"), s.16.

[28] *ERA*, s.19, 38.

[29] Or, in the case of non-unionized employees, had increases for that year that the government had already implemented or accepted.

[30] Decision on the Merits of Grace J., para. 127, *Application Record*, Tab 4, p. 28-29. Section 34(1)(a)(ii) requires that any increase for the Law Group for FY 2006-07 be based on the rates of pay set out in a schedule to the *ERA*. This provision applies only to the Law Group.

[31] Decision on the Merits of Grace J., para. 29, *Application Record*, Tab 4, p. 10.

[32] For example, the Ship Repair East group was permitted to retain a 5.2% increase: PSLRB Arbitral Award Re Employees in the Ship Repair – East Group, May 9, 2008; see also PSLRB Arbitral Award Re Federal Government Dockyard Chargehands Association, February 7, 2007.

[33] Between January and May 2008, the "executive cadre" of the federal public service received significant increases – an average increase of 3.9% for the EX group, with the "maximum performance award" increasing from 16.1% of salary to 22.4% of salary for the EX4 and EX5 classifications for the 2007-08 fiscal year; and an across-the-board 4.1% increase with maximum increases ranging from 4.5% (EX1 to EX3) to 5.7% (EX4 and EX5) for the 2008-09 fiscal year: Second Mendicino Affidavit, para. 33, *Application Record*, Tab 14, p. 206.

(b) The Border Services Group, consisting of about 8,900 employees, received a new pay grid including a minimum 19.5% wage increase over the life of the agreement,[34] well above the limits of the *ERA*;

(c) The Occupational Services Group, consisting of about 11,000 employees, were restructured by the application of a national pay grid that provided average increases to affected employees of 6.8%, in addition to the maximum increases otherwise permitted by the *ERA*;[35] and

(d) The RCMP, with approximately 18,000 members, received a service adjustment that was above the limits set out in the *ERA*.[36]

4. Decision of Grace J. (Superior Court of Justice)

24. Justice Grace found that the *ERA*'s restrictions on bargaining rates of pay infringed the right to freedom of association in s.2(d) of the *Charter*. In applying the test set out in *Health Services*, he first found that in freezing salaries, the *ERA* related to something which was important to collective bargaining. Although the *ERA* affected only rates of pay, leaving other matters untouched, he noted that "it is difficult to regard salary as anything other than a very significant, if not pivotal, aspect of the employment relationship for most employees."[37] He further found that the *ERA*, in setting salaries for

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[34] First Mendicino Affidavit, para. 68, and Exhibit S, *Application Record*, Tab 12, p. 114-115, and Tab 12-S, p. 124; Cross-Examination of M. Thibodeau, q. 515-519, *Application Record*, Tab 22, p. 228-229. Ms. Laurendeau disputed the amount of the increases, but did not dispute that they were beyond the limits set by the *ERA*: Affidavit of Hélène Laurendeau, sworn February 23, 2011, para. 3, *Application Record*, Tab 15, p. 211.

[35] First Mendicino Affidavit, para. 68, and Exhibit T, *Application Record*, Tab 12, p. 114-115, and Tab 12-T, p. 133. These increases were specifically preserved by s.32 and s.52 of the *ERA*.

[36] First Mendicino Affidavit, para. 68, and Exhibit V, *Application Record*, Tab 12, p. 114-115, and Tab 12-V, p. 163.

[37] Decision on the Merits of Grace J., para. 61, *Application Record*, Tab 4, p. 16.

a five year period, had prevented meaningful discussion and consultation between the AJC and Treasury Board on this issue.

25. Further, the fact that the salary dispute had been referred to arbitration did not preclude the possibility of further discussion. Whether or not settlement was likely, "the possibility of compromise existed until eliminated by the *ERA*".[38] He was not persuaded that the "final offer" made by Treasury Board in November 2008, which mirrored the *ERA* and was presented on a take-it-or-leave-it basis, had respected the process of collective bargaining, as required by *Health Services*.[39] However, he stopped short of finding that Treasury Board had failed to negotiate in good faith in earlier negotiations.

26. Turning to s.1, he accepted that the government's stated objectives in the context of the economic crisis provided a justification for the Act as a whole, and for its retroactive reach back to the 2007-2008 fiscal year. However, he found that the ERA went too far by including the 2006-2007 fiscal year, for the following reasons:

> (a) The 2006-2007 fiscal year pre-dated the economic crisis. In fact, Canada's economy was then buoyant and the federal government enjoyed a significant budgetary surplus. None of the objectives that caused the *ERA* to be drafted and passed existed until later.
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> (b) The Attorney General bears the onus of satisfying every stage of the *Oakes* test. Demonstrating a clear and compelling rationale for the *ERA*'s retroactivity is particularly important, because there had been no reference to 2006-2007 until Bill C-10 received first reading in February, 2009. Prior public statements had consistently mentioned 2007-2008 as the starting point for budgetary restraint initiatives. E-mails sent by the Treasury Board's senior negotiators to the AJC and other bargaining agents in mid-November 2008 made no mention of the 2006-2007 fiscal year;
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> (c) The inclusion of 2006-2007 is even more puzzling when the provisions of the *ERA* are reviewed. While as a general rule, the specified increases set forth

[38] Decision on the Merits of Grace J., para. 62-63, *Application Record*, Tab 4, p. 16-17.

[39] Decision on the Merits of Grace J., para. 65, *Application Record*, Tab 4, p. 17; *Health Services*, paras. 87-94.

> in the *ERA* were to apply starting with that fiscal year, its inclusion had no effect on those who had concluded a collective agreement or were the subject of an arbitral award made before December 8, 2008. As a practical matter the pre-December 8, 2008 base salaries of only three groups of represented employees were affected by the *ERA*. Federal Crown counsel was one of them. Given the objectives and the extent of the crisis, why were so many exceptions made?
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> (d) A number of groups were allowed to continue efforts to restructure their base salaries even after December 8, 2008. If successful the annual increases mandated by the *ERA* were to apply to the new or "restructured" amount. Given the objectives and the extent of the crisis, why were further exceptions made? Why was the federal government able to rationalize allowing some federal employees to exercise their section 2 (d) rights during a period of "great economic uncertainty and contraction in the economy" and members of the AJC were not?[40]

27. He further noted that 2006-2007 "was not mentioned until late in the day and a satisfactory rationale for the change of position has not been articulated".[41]

5. Decision of the Court of Appeal

28. The Court of Appeal reversed, finding no violation of s.2(d) in the *ERA*. The Court did not focus on the *ERA* itself, but rather on the process of "negotiations" that preceded its introduction. Referring to *Fraser*, and its own decision in *Mounted Police Association of Ontario v. Canada (Attorney General)*,[42] the Court opined that the test for whether legislation infringes freedom of association is whether it renders the pursuit of collective goals "effectively impossible".[43]

29. In reviewing these decisions an applying this test, the Court concluded that the issue was whether the AJC had been permitted to make representations to the

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[40] Decision on the Merits of Grace J., para. 127, *Application Record*, Tab 4, p. 28-29.
[41] Decision on the Merits of Grace J., paras. 133-134, *Application Record*, Tab 4, p. 30.
[42] 2012 ONCA 363, application for leave to appeal pending, SCC Case No. 34948.
[43] Decision of the Court of Appeal for Ontario, dated August 7, 2012 ["Appeal Decision"], para. 32, *Application Record*, Tab 9, p. 61-62.

employer, and whether the employer had engaged in a process of consideration and discussion to have them considered prior to the passage of the *ERA*. While the Court acknowledged that the *ERA* had the effect of taking wages off the table and making the wage settlement "a foregone conclusion",[44] this was constitutionally irrelevant:

> [40] The application judge held, and the AJC contends before us, that even though the parties had reached an impasse and proceeded to arbitration, further negotiation was still possible before it was cut off by the *ERA*.
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> [41] I am unable to accept that submission. Further negotiation may be possible after the constitutionally protected phase of the process of bargaining has concluded but that possibility, a remote one on the facts of this case, does not expand the scope of the protected right. *Fraser* makes clear that s. 2(d) has limits: it does not guarantee any dispute resolution process after the parties have reached an impasse and it does not guarantee any particular outcome. In my view, the validity of the *ERA* must be assessed on the basis of whether, at the time it was enacted, the parties had had the opportunity for a meaningful process of collective bargaining. If they had, s. 2(d) is satisfied. The faint hope of further negotiations in the shadow of a dispute resolution mechanism not protected by s. 2(d) cannot expand or extend the reach of s. 2(d) beyond its core guarantee.

PART II - QUESTIONS IN ISSUE

30. The Applicant states that the questions in issue are as follows:

(a) Did the Court of Appeal err in narrowing the scope of protection for collective bargaining under s.2(d)?

(b) Does this case raise questions of law of sufficient importance that leave to appeal is warranted?

PART III - ARGUMENT

A. The Court of Appeal Erred by Reducing the Scope of Protection for Collective Bargaining

31. The Applicant submits that the Court of Appeal applied an analysis that diverges sharply from that set out by this Court in *Health Services*. On a *Charter* challenge to

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[44] Appeal Decision, para. 39, *Application Record*, Tab 9, p. 63-64.

legislation, the Court never actually considered the purpose or effect of the law itself. Rather, it focused entirely on whether the Applicant had demonstrated a breach of s.2(d) by Treasury Board, rather than Parliament, prior to the introduction of the *ERA*.

32. In *Health Services*, this Court established that the test for whether freedom of association is infringed in the collective bargaining context is whether legislation or other government action constituted "substantial interference" with associational activity. This involves the following two inquires:

> Generally speaking, determining whether a government measure affecting the protected process of collective bargaining amounts to substantial interference involves two inquires. The first inquiry is into the importance of the matter affected to the process of collective bargaining and, more specifically, to the capacity of the union members to come together and pursue collective goals in concert. The second inquiry is into the manner in which the measure impacts on the collective right to good faith negotiation and consultation.[45]

33. *Health Services* makes clear that laws or state action may substantially interfere with collective bargaining in two ways: by unilaterally nullifying significant negotiated terms in existing collective agreements,[46] or by preventing or denying meaningful discussion and consultation about working conditions. Although the language of *Health Services* is crafted in terms that cover both legislation and other forms of government action, it is clear that where legislation is in issue, the focus of the inquiry is first and foremost on the legislation itself. In *Health Services* itself, the applicant union challenged legislative restrictions on collective bargaining. The Court's inquiry centred upon the legislative provisions. As this Court held, the "bottom line" was whether "the provisions of the Act preserve the process of good faith consultation fundamental to

[45] *Health Services*, para. 93.
[46] *Health Services*, para. 96.

collective bargaining".[47] The Court did look at the circumstances in which the provisions were adopted, but nothing in that case or *Fraser* suggests that this obviates the need to inquire into the impact of the Act itself.

34. With respect, the Court of Appeal's approach stands the *Health Services* inquiry on its head. The Court of Appeal, on a record showing that there had been minimal discussions on salary before the *ERA* was introduced, and that these discussions had occurred in a very different context, failed even to consider the purpose or effect of the legislation. To the Court of Appeal, that would have been to "enlarge the scope" of the inquiry beyond the "constitutionally protected phase of negotiations".

35. In other words, under the Court of Appeal's approach, the Applicant was required to show an independent breach of the duty to negotiate in good faith by Treasury Board before the Applicant could even raise the purpose or effect of the legislation that it challenged. While the AJC maintains that the record certainly supports a finding that Treasury Board did not bargain in good faith – by delaying its salary proposal for 16 months and failing to devote sufficient resources to provide timely disclosure of data,[48] and by making a proposal that it knew was certain to be unacceptable, without "honestly striv[ing] to find a middle ground" between the parties' interests[49] - it should not be necessary to establish two independent breaches of s.2(d) by both the legislation and the conduct of the employer before it was introduced.

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[47] *Health Services*, para. 107.
[48] See *Health Services* at para. 100-101, *Professional Institute of the Public Service of Canada v. Canadian Food Inspection Agency*, 2008 PSLRB 78 at para. 71.
[49] *Health Services*, para. 100.

36. The corollary of the Court of Appeal's approach is that legislation that substantially interferes with collective bargaining by public servants - regardless of the extent of the interference, or its duration - may be immunized by the simple expedient of having the government hold one or more meetings with the affected employees or their union(s) prior to the introduction of the legislation. Unless the affected employees affirmatively show that the government employer acted in bad faith in those meetings, they will be unable to establish a breach of s.2(d).

37. On the Court of Appeal's approach, it is clear that very little is required in order to immunize legislation from review. On the central issue of salary, which the evidence clearly demonstrates was of paramount importance to the parties, the "negotiations" were minimal, as set out above – they were confined to a few brief interactions over a period of some 24 months from November 22-23, 2006 to November 24-25, 2008. The actual exchange of proposals took place long before the *ERA* was introduced, in a very different economic context, and the duration of the proposals did not match the five-year duration of the legislation.[50] In short, there was little to connect these to the *ERA*.

38. With respect, it is not obvious why these isolated discussions of salary, over a two year period prior to the imposition of wage restraint legislation, should exhaust the "constitutionally protected phase of negotiations". The duty to negotiate or discuss salary proposals as set out in *Health Services* and confirmed in *Fraser* did not end with the referral to arbitration. Negotiations and discussions continue even as parties avail themselves of dispute resolution mechanisms. The duty to bargain in good faith

[50] Appeal Decision, para. 43, *Application Record*, Tab 9, p. 65.

continues throughout a strike or lockout or after referral to arbitration.[51] The *PSLRA* provides that after referral, the arbitration board must "endeavour to assist the parties to the dispute in entering into or revising a collective agreement", and that the parties remain free to negotiate their own agreement on any matter.[52] Even if there was an arbitration award, it could have been for a much shorter duration than the five-year coverage of the *ERA*. Treasury Board's referral to arbitration came in the midst of a process of negotiation and discussion, not at its end. That process was cut short by the *ERA*, which rendered any further discussion of salaries pointless.

39. Further, the Court of Appeal's skepticism that the parties would have continued to engage in a meaningful process of negotiation or discussion absent the *ERA* is belied by the evidence in this case. Treasury Board's representatives clearly indicated that they believed negotiation was still possible in mid-November 2008, when the legislation was already planned but not introduced.[53]

40. The Court of Appeal's approach also stands in contrast to that of the Committee on Freedom of Association ("CFA") of the International Labour Organisation. In a series of cases, the CFA has held that Canada has breached its international obligations to respect freedom of association under ILO Convention No. 87 by imposing wage controls

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[51] See, e.g. *Royal Oak Mines Inc. v. Canada (Labour Relations Board)*, [1996] 1 S.C.R. 369, at paras. 37-40, where this Court upheld findings of a breach of the duty arising from the employer's bargaining positions during a lengthy and bitter strike.

[52] *PSLRA*, s. 145, 144(2).

[53] Decision on the Merits of Grace J., para. 63, *Application Record*, Tab 4, p. 17. Moreover, events in the current round of bargaining have demonstrated that negotiations and discussions can and do continue in parallel with the arbitration process. In 2012, the AJC and Treasury Board reached a tentative agreement (just prior to commencing formal arbitration proceedings) that would see federal Crown counsel's salaries increased by 15.25% over the three year term of the agreement, with a 12% increase coming in May 2013. Ratification of this agreement by the AJC's members is currently pending. "AJC and Treasury Board Reach Tentative Agreement", Announcement on AJC Website, June 27, 2012, http://ajc-ajj.net/news/article/102/AJC-and-Treasury-Board-Reach-Tentative-Agreement/

on federal public servants.[54] Since *Health Services* is based in part on the principle that the *Charter* should not provide any less protection than comparable international instruments),[55] the Court of Appeal's apparent disregard of these authorities (which were argued, but not considered by the Court below) represents a significant narrowing of the scope of protection under s.2(d).

B. The Importance of the Case Warrants Granting Leave

41. This case has far-reaching implications. The *ERA* itself applies to 400,000 federal employees, and has given rise to at least nine constitutional challenges.[56] Decisions under the *ERA* to date have not been consistent. In particular, *Meredith v. A.G. Canada* accepted that the *ERA*, in making it effectively impossible for Treasury Board to consider the recommendations of the RCMP pay council for the period covered by the *ERA*, substantially interfered with freedom of association and infringed s.2(d), and *Association des réalisateurs c. Canada (P.G.)* accepted that a prohibition on

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[54] See CFA Cases *Canada (Case No. 1616)*, Report No. 284, November 1992; *Canada (Case No. 1758*), Report No. 297, 10 February 1994; and *Canada (Case No. 1800)*, Report No. 299, 6 October 1994. These cases were reviewed in detail in the AJC's Respondents' Factum before the Court of Appeal.

[55] *Health Services*, at paras. 69-79.

[56] In addition to the present case, see *Meredith et al. v. Attorney General of Canada*, 2011 FC 735 ["*Meredith*"], in which the Federal Court ruled that provisions of the *ERA* that effectively prevented the Treasury Board from considering the submissions of the RCMP Pay Council in setting wages infringed RCMP officers' s.2(d) rights, and that this infringement was not justified under s.1; *Federal Government Dockyard Trades and Labour Council v. Canada (Attorney General)*, 2011 BCSC 1210, in which the British Columbia Supreme Court ruled that provisions of the *ERA* that overrode an arbitral award favourable to dockyard workers did not violate collective bargaining rights protected by s.2(d) because the provisions did not interfere with a freely negotiated term of a collective bargaining agreement; *Association des réalisateurs c. Canada (Procureur général),* [2012] J.Q. no 6770 ["*Association des réalisateurs*"], in which the Quebec Superior Court held that provisions of the *ERA* that overrode wage terms of pre-existing collective bargaining agreements between the CBC and two unions and prevented further negotiation on wages for the period of the legislation violated s.2(d). See also cross-examination of M. Thibodeau, q. 642-652, *Application Record*, Tab 23, p. 230, listing other pending challenges to the ERA by the Canadian Association of Professional Employees (CAPE), the Union of Canadian Correctional Officers (UCCO), the Professional Association of Foreign Service Officers (PAFSO), the Public Service Alliance of Canada (PSAC), and the Professional Institute of Public Servants Canada (PIPSC).

future bargaining over salary infringed s.2(d),[57] contrary to the Court of Appeal's reasoning in this case. The Court of Appeal itself noted the likelihood that this case would proceed to the Supreme Court of Canada.[58]

42. Moreover, wage restraint legislation affecting approximately 180,000 employees in the education sector has recently been enacted in Ontario,[59] and a wage restraint Bill affecting a further 480,000 employees in the broader public sector has been introduced in the legislature.[60] Constitutional challenges to these measures have already been announced, or are inevitable. The present case provides this Court with the opportunity to rule on the *Charter* issues that arise from legislated wage restraints for the government's direct and indirect employees – a matter not considered by this Court since the "labour trilogy", which was overruled in *Health Services*.[61] This would provide helpful guidance to the lower courts and to governments across the country.

PARTS IV AND V – COSTS AND ORDER REQUESTED

43. The Applicant respectfully requests that leave to appeal be granted, with costs.

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[57] *Meredith,* at paras. 85-86, 90-92 ; *Association des réalisateurs***,** at paras. 89-99, 120-125.

[58] Endorsement on Stay Motion of Juriansz J.A.**,** dated May 1, 2012, *Application Record*, Tab 7, p. 45a; Costs Endorsement of Grace J., dated May 31, 2012, para. 9, *Application Record*, Tab 8, p. 45e.

[59] *Putting Students First Act*, 2012, S.O. 2012, c. 11, http://www.ontla.on.ca/web/bills/bills_detail.do?BillID=2665.

[60] *Protecting Public Service Act*, 2012. The legislation is currently in draft form and has not yet been introduced. The draft bill is available at the Ontario Ministry of Finance website at <http://www.fin.gov.on.ca/en/savings/protecting.html>.

[61] *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313, and *PSAC v. Canada*, [1987] 1 S.C.R. 424, both involved wage restraint legislation.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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PART VI - TABLE OF AUTHORITIES

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PART VII - TABLE STATUTORY AUTHORITIES

Public Service Labour Relations Act (S.C. 2003, c. 22, s. 2)

Duty and Powers

Marginal note:Assistance to parties

145. As soon as possible after being established, the arbitration board must endeavour to assist the parties to the dispute in entering into or revising a collective agreement.

* * *

Marginal note:Factors to be considered

148. In the conduct of its proceedings and in making an arbitral award, the arbitration board must take into account the following factors, in addition to any other factors that it considers relevant:

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

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

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

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

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

* * *

Duration and Operation of Arbitral Award

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Term of arbitral award

156. (1) The arbitration board must determine the term of the arbitral award and set it out in the arbitral award.

Factors

(2) In determining the term of an arbitral award, the arbitration board must take the following into account:

(*a*) if a collective agreement applicable to the bargaining unit is in force or has been entered into but is not yet in force, the term of that collective agreement; or

(*b*) if no collective agreement applying to the bargaining unit has been entered into,

(i) the term of any previous collective agreement that applied to the bargaining unit, or

(ii) the term of any other collective agreement that it considers relevant.

Limitation on term

(3) An arbitral award may not be for a term of less than one year or more than two years from the day on which it becomes binding on the parties, unless the arbitration board determines otherwise in any case where paragraph (2)(*a*) or (*b*) applies.

Loi sur les relations de travail dans la fonction publique, L.C. 2003, ch. 22, art. 2

Pouvoirs et obligations

Assistance aux parties
145. Le conseil d'arbitrage met tout en oeuvre, dans les meilleurs délais, pour que les parties au différend parviennent à conclure ou à réviser la convention collective.

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Facteurs à prendre en considération
148. Dans la conduite de ses séances et dans la prise de ses décisions, le conseil d'arbitrage prend en considération les facteurs qui, à son avis, sont pertinents et notamment :

a) la nécessité d'attirer au sein de la fonction publique des personnes ayant les compétences voulues et de les y maintenir afin de répondre aux besoins des Canadiens;
b) la nécessité d'offrir au sein de la fonction publique une rémunération et d'autres conditions d'emploi comparables à celles des personnes qui occupent des postes analogues dans les secteurs privé et public, notamment les différences d'ordre géographique, industriel et autre qu'il juge importantes;
c) la nécessité de maintenir des rapports convenables, quant à la rémunération et aux autres conditions d'emploi, entre les divers échelons au sein d'une même profession et entre les diverses professions au sein de la fonction publique;
d) la nécessité d'établir une rémunération et d'autres conditions d'emploi justes et raisonnables compte tenu des qualifications requises, du travail accompli, de la responsabilité assumée et de la nature des services rendus;
e) l'état de l'économie canadienne et la situation fiscale du gouvernement du Canada.

Durée et application de la décision arbitrale

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Durée de la décision arbitrale
156. (1) Le conseil d'arbitrage établit la durée d'application de chaque décision arbitrale et l'indique dans le texte de celle-ci.

Facteurs
(2) Pour établir cette durée, il tient compte :

a) de la durée de la convention collective applicable à l'unité de négociation, qu'elle soit déjà en vigueur ou seulement conclue;
b) si aucune convention collective n'a été conclue :
(i) soit de la durée de toute convention collective antérieure qui s'appliquait à cette unité de négociation,
(ii) soit de la durée de toute autre convention collective qu'il estime pertinente.

Limitation de la durée d'une décision arbitrale
(3) La décision arbitrale ne peut avoir une durée inférieure à un an ou supérieure à deux ans à compter du moment où elle lie les parties, à moins que le conseil arbitral ne juge qu'une autre durée est appropriée dans les cas d'application des alinéas (2)*a*) et *b*).

Expenditure Restraint Act, S.C. 2009, c.2, s.393

Assented to 2009-03-12

An Act to restrain the Government of Canada's expenditures in relation to employment

[Enacted by section 393 of chapter 2 of the Statutes of Canada, 2009, in force on assent March 12, 2009.]

SHORT TITLE

Short title

1. This Act may be cited as the *Expenditure Restraint Act*.

INTERPRETATION

Definitions

2. The following definitions apply in this Act.

"additional remuneration"
« rémunération additionnelle »

"additional remuneration" means any allowance, bonus, differential or premium or any payment to employees that is similar to any of those payments.

"arbitral award"
« décision arbitrale »

"arbitral award" means an arbitral award governing employees to whom this Act applies.

"bargaining agent"
« agent négociateur »

"bargaining agent" has the same meaning

(*a*) as in subsection 3(1) of the *Canada Labour Code*, in relation to employees to whom Part I of that Act applies;

(*b*) as in section 3 of the *Parliamentary Employment and Staff Relations Act*, in relation to employees to whom that Act applies; and

(*c*) as in subsection 2(1) of the *Public Service Labour Relations Act*, in relation to employees to whom that Act applies.

"collective agreement"
« convention collective »

"collective agreement" means a collective agreement governing employees to whom this Act applies.

"Her Majesty"
« Sa Majesté »

"Her Majesty" means Her Majesty in right of Canada.

"National Joint Council"
« Conseil national mixte »

"National Joint Council" has the same meaning as in subsection 4(1) of the *Public Service Labour Relations Act*.

"rate of pay"
« taux de salaire »

"rate of pay" means a base rate of pay, whether expressed as a single rate of pay or a range of rates of pay — or, if no such rate or range exists, any fixed or ascertainable amount of base pay — but does not include any additional remuneration.

"restraint period"
« période de contrôle »

"restraint period" means the period that begins on April 1, 2006 and ends on March 31, 2011.

Deemed bonus

3. For the purpose of this Act, any lump sum that an employer is required by an arbitral award to pay to employees is deemed to be a bonus.

National Joint Council recommendations

4. Any reference in this Act to additional remuneration does not include any additional remuneration that is provided for by a directive, policy, regulation, agreement or other instrument issued or made

(*a*) on the recommendation of the National Joint Council and with the employer's approval; or

(*b*) unilaterally by an employer in respect of a subject matter that, in the opinion of the Treasury Board, is the same as or is related to the subject matter of any instrument made in accordance with paragraph (*a*).

When certain collective agreements are deemed to have been entered into

5. (1) For the purpose of this Act, a collective agreement is deemed to have been entered into before December 8, 2008 if it was actually entered into on or after that date but its parties had, before that date, agreed in writing to enter into it with effect on the expiry of a previous collective agreement and they entered into it without alteration.

When provisions of certain terms and conditions of employment are deemed to have been established

(2) If subsection (1) applies in respect of a collective agreement and terms and conditions of employment were established on or after December 8, 2008, the provisions of those terms and conditions of employment that are identical in all material respects to those of the collective agreement and that are applicable to non-represented and excluded employees that normally have terms and conditions of employment that are similar to those of the employees governed by the collective agreement are, for the purposes of this Act, deemed to have been made before December 8, 2008.

EFFECTS OF ACT

Right to bargain collectively

6. Subject to the other provisions of this Act, the right to bargain collectively under the *Canada Labour Code*, the *Parliamentary Employment and Staff Relations Act* and the *Public Service Labour Relations Act* is continued.

Right to strike

7. Nothing in this Act affects the right to strike under the *Canada Labour Code* or the *Public Service Labour Relations Act*.

Amendments permitted

8. Nothing in this Act precludes the bargaining agent for employees governed by a collective agreement or arbitral award and the employer of those employees from amending, by agreement in writing, any provision of the collective agreement or arbitral award, other than a provision relating to its term, so long as the amendment is not contrary to any provision of this Act.

Workplace improvements

9. Nothing in this Act precludes the co-development of workplace improvements by bargaining agents and employers under the auspices of the National Joint Council or any other body that they may agree on.

Incremental and merit increases

10. Nothing in this Act is to be construed as precluding the entitlement of any employee to incremental increases — including any based on the attainment of further qualifications or the acquisition of further skills — or to merit or performance increases, in-range increases, performance bonuses or similar forms of compensation.

Conflicts with other Acts

11. In the event of a conflict between a provision of this Act and a provision of any other Act of Parliament, including a provision in Part X of the *Financial Administration Act*, the provision of this Act prevails to the extent of the conflict, unless the other Act expressly declares that it or any of its provisions apply despite this Act.

APPLICATION

Members of Parliament

12. This Act applies to members of the Senate and the House of Commons.

Employees

13. (1) This Act applies to employees who are employed in or by

(*a*) the departments and other portions of the federal public administration named in Schedules I and IV, respectively, to the *Financial Administration Act* and the separate agencies named in Schedule V to that Act, other than the Financial Consumer Agency of Canada and the Staff of the Non-Public Funds, Canadian Forces;

(*b*) the Crown corporations and public bodies named in Schedule 1; and

(*c*) the Senate, the House of Commons, the Library of Parliament, the office of the Senate Ethics Officer and the office of the Conflict of Interest and Ethics Commissioner.

Members of the Royal Canadian Mounted Police

(2) For greater certainty, members of the Royal Canadian Mounted Police are employees.

Deemed employees

(3) This Act applies to the following persons, who are deemed to be employees for the purposes of this Act:

(*a*) the staff of members of the Senate and the House of Commons;

(*b*) directors of the Crown corporations and public bodies named in Schedule 1;

(*c*) officers and non-commissioned members of the Canadian Forces; and

(*d*) the Chief Electoral Officer.

Persons appointed by Governor in Council

(4) This Act applies to persons who are appointed by the Governor in Council, and those persons are deemed to be employees for the purposes of this Act. Despite this subsection, this Act does not apply to lieutenant governors, judges who are paid a salary under the *Judges Act*, military judges appointed under section 165.21 of the *National Defence Act* and prothonotaries appointed under section 12 of the *Federal Courts Act*.

Persons designated by Governor in Council

14. The Governor in Council may, by order, designate any person or class of persons as persons to whom this Act applies, and those persons are deemed to be employees for the purposes of this Act.

Locally engaged persons and independent contractors

15. This Act does not apply to a person who is locally engaged outside Canada or, for greater certainty, to a person who is engaged as an independent contractor.

RESTRAINT MEASURES

Increases to Rates of Pay

Increases to rates of pay

16. Despite any collective agreement, arbitral award or terms and conditions of employment to the contrary, but subject to the other provisions of this Act, the rates of pay for employees are to be increased, or are deemed to have been increased, as the case may be, by the following percentages for any 12-month period that begins during any of the following fiscal years:

(*a*) the 2006–2007 fiscal year, 2.5%;

(*b*) the 2007–2008 fiscal year, 2.3%;

(*c*) the 2008–2009 fiscal year, 1.5%;

(*d*) the 2009–2010 fiscal year, 1.5%; and

(*e*) the 2010–2011 fiscal year, 1.5%.

Employees Represented by a Bargaining Agent

Increases to rates of pay — collective agreements or arbitral awards after coming into force

17. (1) The provisions of any collective agreement that is entered into, or arbitral award that is made, after the day on which this Act comes into force may not provide for increases to rates of pay that are greater than those set out in section 16, but they may provide for increases that are lower.

12-month periods

(2) For greater certainty, any collective agreement that is entered into, or any arbitral award that is made, after the day on which this Act comes into force and that provides for increases to rates of pay for any period that begins during the restraint period must do so on the basis of a 12-month period.

Increases to rates of pay — collective agreements and arbitral awards — December 8, 2008 until coming into force

18. The provisions of any collective agreement that is entered into, or any arbitral award that is made, during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force that provide, for any particular period, for increases to rates of pay that are greater than those referred to in section 16 for that particular period are of no effect or are deemed never to have had effect, as the case may be, and are deemed to be provisions that provide for the increases referred to in section 16.

Increases to rates of pay — collective agreements and arbitral awards — before December 8, 2008

19. With respect to a collective agreement that is entered into, or an arbitral award that is made, before December 8, 2008,

(*a*) section 16 does not apply in respect of any period that began during the 2006–2007 or 2007–2008 fiscal year; and

(*b*) for any 12-month period that begins during any of the 2008–2009, 2009–2010 and 2010–2011 fiscal years, section 16 applies only in respect of periods that begin on or after December 8, 2008 and any provisions of those agreements or awards that provide, for any particular period, for increases to rates of pay that are greater than those referred to in section 16 for that particular period are of no effect or are deemed never to have had effect, as the case may be, and are deemed to be provisions that provide for the increases referred to in section 16.

Other than 12-month periods — section 18

20. If a collective agreement or arbitral award to which section 18 applies provides for an increase to rates of pay for a period of other than 12 months that begins during any particular fiscal year in the restraint period, that increase is of no effect or is deemed never to have had effect, as the case may be, and is deemed to be an increase for that period of other than 12 months, determined on an annualized basis to the nearest 1/100%, that provides for the increase referred to in section 16 for a period that begins during that particular fiscal year.

Other than 12-month periods — section 19

21. If a collective agreement or arbitral award to which section 19 applies provides for an increase to rates of pay for a period of other than 12 months that begins during any particular fiscal year that begins during the period that begins on December 8, 2008 and ends on March 31, 2011, that increase is of no effect or is deemed never to have had effect, as the case may be, and is deemed to be an increase for that period of other than 12 months, determined on an annualized basis to the nearest 1/100%, that provides for the increase referred to in section 16 for a period that begins during that particular fiscal year.

Lower percentages not affected

22. If a collective agreement or arbitral award to which section 18 or 19 applies provides for an increase to the rates of pay for any particular period that is lower than the increase referred to in section 16 for that period, section 16 does not apply in respect of that increase.

Restructuring prohibited

23. Subject to sections 31 to 34,

(*a*) no provision of a collective agreement that is entered into, or of an arbitral award that is made, after the day on which this Act comes into force may provide for the restructuring of rates of pay during any period that begins during the restraint period;

(*b*) any provision of a collective agreement that is entered into, or of an arbitral award that is made, during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force that provides for the restructuring of rates of pay during any period that begins during the restraint period is of no effect or is deemed never to have had effect, as the case may be; and

(*c*) any provision of a collective agreement that is entered into, or of an arbitral award that is made, before December 8, 2008 that provides for the restructuring of rates of pay during any period that begins during the period that begins on December 8, 2008 and ends on March 31, 2011 is of no effect or is deemed never to have had effect, as the case may be.

No increases to additional remuneration — after coming into force

24. No collective agreement that is entered into, or arbitral award that is made, after the day on which this Act comes into force may provide, for any period that begins during the restraint period, for any increase to the amount or rate of any additional remuneration that applied to the employees governed by the collective agreement or the arbitral award immediately before the collective agreement, or the arbitral award, as the case may be, becomes effective.

No increases to additional remuneration — December 8, 2008 until coming into force

25. If a collective agreement that is entered into, or arbitral award that is made, at any time during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force contains provisions that provide, for any period that begins during the restraint period, for an increase to the amount or rate of any additional remuneration that applied to the employees governed by the collective agreement or the arbitral award immediately before the collective agreement, or the arbitral award, as the case may be, became effective, those provisions are of no effect or are deemed never to have had effect, as the case may be.

No increases to additional remuneration — before December 8, 2008

26. If a collective agreement that is entered into, or an arbitral award that is made, before December 8, 2008 contains provisions that, for any period that begins in the period that begins on December 8, 2008 and ends on March 31, 2011, provide for an increase to the amount or rate of any additional remuneration that applied to the employees governed by the collective agreement or the arbitral award immediately before the first period that began on or after December 8, 2008, those provisions are of no effect or are deemed never to have had effect, as the case may be.

No new additional remuneration — after coming into force

27. No collective agreement that is entered into, or arbitral award that is made, after the day on which this Act comes into force may provide, for any period that begins during the restraint period, for any additional remuneration that is new in relation to the additional remuneration that applied to the employees governed by the collective agreement or the arbitral award immediately before the collective agreement or the arbitral award, as the case may be, becomes effective.

No new additional remuneration — December 8, 2008 to coming into force

28. If a collective agreement that is entered into, or an arbitral award that is made, at any time during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force contains a provision that provides, for any period that begins during the restraint period, for any additional remuneration to the employees governed by the collective agreement or the arbitral award that is new in relation to the additional remuneration that applied to the employees governed by the collective agreement or the arbitral award, as the case may be, immediately before it became effective, that provision is of no effect or is deemed never to have had effect, as the case may be.

No new additional remuneration — before December 8, 2008

29. If a collective agreement that is entered into, or an arbitral award that is made, before December 8, 2008 contains a provision that provides, for any period that begins in the period that begins on December 8, 2008 and ends on March 31, 2011, for any additional remuneration to the employees governed by the collective agreement or the arbitral award that is new in relation to the additional remuneration that applied to the employees governed by the collective agreement or arbitral award, as the case may be, immediately before the first period that began on or after December 8, 2008, that provision is of no effect or is deemed never to have had effect, as the case may be.

Canada Border Services Agency

30. Sections 24 to 26 do not apply in respect of pay notes applicable only to employees in the Canada Border Services Agency who were transferred to the Agency on its creation, but the rates of those pay notes may not be increased during any period that begins in any of the fiscal years referred to in section 16 by a percentage that is higher than the percentage set out in that section for that fiscal year.

Border Services Group

31. The following rules apply in respect of collective agreements that govern employees in the Border Services Group whose employer is Her Majesty as represented by the Treasury Board:

(*a*) paragraph 23(*a*) does not prevent any collective agreement that is entered into after the day on which this Act comes into force from restructuring, as a result of a classification conversion, the rates of pay during the 2007–2008 or 2009–2010 fiscal year, and the increases set out in section 16 apply in respect of the restructured rates of pay;

(*b*) if a collective agreement is entered into during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force and, as a result of a classification conversion, it contains provisions for the restructuring of rates of pay during the 2007–2008 or 2009–2010 fiscal year, paragraph 23(*b*) does not apply in respect of those provisions, and the increases set out in section 16 apply in respect of the restructured rates of pay; and

(*c*) if a collective agreement is entered into before December 8, 2008 and, as a result of a classification conversion, it contains provisions for the restructuring of rates of pay during the 2009–2010 fiscal year, paragraph 23(*c*) does not apply in respect of those provisions, and the increase set out in section 16 applies in respect of the restructured rates of pay.

Groups subject to national rates of pay

32. The following rules apply in respect of collective agreements that govern employees in the Operational Services Group whose employer is Her Majesty as represented by the Treasury Board and employees in the General Labour and Trades Group and the General Services Group whose employer is Her Majesty as represented by the Parks Canada Agency or Her Majesty as represented by the Canadian Food Inspection Agency:

(*a*) paragraph 23(*a*) does not prevent any collective agreement that is entered into after the day on which this Act comes into force from restructuring the rates of pay during the 2009–2010 fiscal year in order to create national rates of pay, and the increase set out in section 16 applies in respect of the restructured rates of pay;

(*b*) if a collective agreement is entered into during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force and, in order to create national rates of pay, it contains provisions for the restructuring of rates of pay during the 2009–2010 fiscal year, paragraph 23(*b*) does not apply in respect of those provisions, and the increase set out in section 16 applies in respect of the restructured rates of pay; and

(*c*) if a collective agreement is entered into before December 8, 2008 and, in order to create national rates of pay, it contains provisions for the restructuring of rates of pay during the 2009–2010 fiscal year, paragraph 23(*c*) does not apply in respect of those provisions, and the increase set out in section 16 applies in respect of the restructured rates of pay.

Ships' Officers Group

33. The following rules apply in respect of any arbitral award that is made before December 8, 2008 and that governs employees in the Ships' Officers Group whose employer is Her Majesty as represented by the Treasury Board:

(*a*) paragraph 23(*c*) does not apply in respect of the provisions of any arbitral award that provide for the restructuring of rates of pay during the 2010–2011 fiscal year, and the increase set out in section 16 applies in respect of the restructured rates of pay; and

(*b*) section 29 does not apply in respect of the provisions of any arbitral award that provide for the payment, during the 2010–2011 fiscal year, of a sum in lieu of vacation leave factors.

Law Group

34. (1) The following rules apply in respect of any collective agreement or arbitral award that governs employees in the Law Group whose employer is Her Majesty as represented by the Treasury Board, and in respect of any period that begins during the restraint period:

(*a*) in the case of a collective agreement entered into — or an arbitral award made — after the day on which this Act comes into force,

(i) it may not have retroactive effect in respect of a day that is earlier than May 10, 2006,

(ii) any increase to rates of pay that it provides for in respect of any period that begins during the 2006–2007 fiscal year must be based on the rates of pay set out in Schedule 2,

(iii) it must provide, for all employees in the Law Group, for the same performance pay plans that were in effect on May 9, 2006 for any employees in the Law Group and, in relation to any particular position level, those plans must be at the same amounts or rates that were in effect for that position level on that date, but those plans may not have retroactive effect,

(iv) it may provide for any additional remuneration — other than a performance bonus — that applied to any position level in the Law Group on May 9, 2006, but the amount or rate of that additional remuneration for a particular position level may not be greater than the highest amount or rate that applied to employees of that position level on that date, and

(v) it may not provide for additional remuneration if that additional remuneration applied to no employee in the Law Group on May 9, 2006; and

(*b*) in the case of a collective agreement entered into — or an arbitral award made — on or before the day on which this Act comes into force,

(i) if any of its provisions has retroactive effect in respect of a day that is earlier than May 10, 2006, that retroactive effect is deemed never to have had effect, the provision is deemed to have had retroactive effect as of May 10, 2006 and the first day of every other period that is related to that provision is deemed to be moved forward by the number of days that is equal to the number of days between the first day the provision was expressed to have retroactive effect and May 10, 2006,

(ii) if the increase provided to rates of pay for any period that begins during the 2006–2007 fiscal year is based on rates of pay that are greater than those set out in Schedule 2, those greater rates of pay are of no effect or are deemed never to have had effect, as the case may be, and the increase is deemed to be based on the rates of pay set out in Schedule 2,

(iii) if subparagraph (ii) applies, its provision that provides for the rates of pay for any other period that begins on or before March 31, 2011 is of no effect or is deemed never to have had effect, as the case may be, and the rates of pay in that provision are deemed to be the rates of pay that applied immediately before the beginning of that period as a result of this Act,

(iv) if it provides for performance pay plans and those plans are not the same as those that were in effect on May 9, 2006 for any employees in the Law Group or the amounts or rates provided for in those plans in relation to any particular position level are not the same as those of the performance pay plans that were in effect on that date — or the plans were expressed to be retroactive — the provisions that provide for those plans are of no effect or are deemed never to have had effect, as the case may be, and are deemed to be provisions that provide, for all employees in the Law Group, as of the day that the agreement was entered into or the award was made, for the same performance pay plans that were in effect on May 9, 2006 for any employees in the Law Group at the same amounts or rates, in relation to any particular position level, that were in effect on that date,

(v) if it does not provide for performance pay plans, it is deemed to provide, for all employees in the Law Group, as of the day that the agreement was entered into or the award was made, for the same performance pay plans that were in effect on May 9, 2006 for any employees in the Law Group at the same amounts or rates, in relation to any particular position level, that were in effect on that date,

(vi) if it provides for any additional remuneration — other than a performance bonus — that applied to any position level in the Law Group on May 9, 2006, and the amount or rate of that additional remuneration for a particular position level is greater than the highest amount or rate that applied to any employees of that position level on that date, the provision that provides for that payment is deemed to be of no effect or is deemed never to have had effect, as the case may be, and is deemed to provide for the highest amount or rate, as the case may be, that applied in respect of any of those employees on that date, and

(vii) if it provides for any additional remuneration, and that additional remuneration applied to no employee in the Law Group on May 9, 2006, the provision that provides for that payment is of no effect or is deemed never to have had effect, as the case may be.

Other provisions apply

(2) For greater certainty, the provisions of this Act that are not inconsistent with subsection (1) apply to collective agreements and arbitral awards that govern employees in the Law Group.

Non-represented and Excluded Employees

Definitions

35. (1) The following definitions apply in sections 36 to 54.

"employee"
« employé »

"employee" means an employee who is not represented by a bargaining agent or who is excluded from a bargaining unit.

"terms and conditions of employment"
« condition d'emploi »

"terms and conditions of employment" means terms and conditions of employment that apply to employees.

When terms and conditions of employment are considered to be established

(2) For the purposes of sections 36 to 54, terms and conditions of employment are considered to be established if they are established by an employer acting alone or agreed to by an employer and employees.

Increases to rates of pay — terms and conditions established after coming into force

36. (1) Terms and conditions of employment established after the day on which this Act comes into force may not provide for increases to rates of pay that are greater than those set out in section 16, but they may provide for increases that are lower.

12-month periods

(2) For greater certainty, terms and conditions of employment established after the day on which this Act comes into force that provide for increases to rates of pay for any period that begins during the restraint period must do so on the basis of a 12-month period.

Increases to rates of pay — terms and conditions of employment — December 8, 2008 until coming into force

37. The provisions of any terms and conditions of employment established during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force that provide, for any particular period, for an increase to rates of pay that are greater than those referred to in section 16 for that particular period are of no effect or are deemed never to have had effect, as the case may be, and are deemed to be provisions that provide for the increases referred to in section 16.

Increases to rates of pay — terms and conditions of employment — before December 8, 2008

38. With respect to any terms and conditions of employment established before December 8, 2008 that provide for increases to rates of pay

(*a*) section 16 does not apply in respect of any period that began during the 2006–2007 or 2007–2008 fiscal year; and

(*b*) for any 12-month period that begins during any of the 2008–2009, 2009–2010 and 2010–2011 fiscal years, section 16 applies only in respect of periods that begin on or after December 8, 2008 and any provisions of those terms and conditions of employment that provide, for any particular period, for increases to rates of pay that are greater than those referred to in section 16 for that particular period are of no effect or are deemed never to have had effect, as the case may be, and are deemed to be provisions that provide for the increases referred to in section 16.

Other than 12-month periods — section 37

39. If any terms and conditions of employment to which section 37 applies provide for an increase to rates of pay for a period of other than 12 months that begins during any particular fiscal year in the

restraint period, that increase is of no effect or is deemed never to have had effect, as the case may be, and the increase is deemed to be an increase for that period of other than 12 months, determined on an annualized basis to the nearest 1/100%, that provides for the increase referred to in section 16 for a period that begins during that particular fiscal year.

Other than 12-month periods — section 38

40. If any terms and conditions of employment to which section 38 applies provide for an increase to rates of pay for a period of other than 12 months that begins during any particular fiscal year that begins during the period that begins on December 8, 2008 and ends on March 31, 2011, that increase is of no effect or is deemed never to have had effect, as the case may be, and is deemed to be an increase for that period of other than 12 months, determined on an annualized basis to the nearest 1/100%, that provides for the increases referred to in section 16 in respect of a period that begins during that particular fiscal year.

Lower percentages not affected

41. If any terms and conditions of employment to which section 37 or 38 apply provide for an increase to the rates of pay for any particular period that is lower than the increase referred to in section 16 for that period, section 16 does not apply in respect of that increase.

Section 16 does not create authority to increase

42. If any terms and conditions of employment established before, on or after the day on which this Act comes into force do not provide for an increase to the rates of pay for any particular period that begins during the restraint period, section 16 is not to be construed as authorizing any increase to those rates of pay.

Restructuring prohibited

43. Subject to sections 51 to 54,

(*a*) no provision of terms and conditions of employment established after the day on which this Act comes into force may provide for the restructuring of rates of pay during any period that begins during the restraint period;

(*b*) any provision of terms and conditions of employment established during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force that provides for the restructuring of rates of pay during any period that begins during the restraint period is of no effect or is deemed never to have had effect, as the case may be; and

(*c*) any provision of terms and conditions of employment established before December 8, 2008 that provides for the restructuring of rates of pay during any period that begins during the period that begins on December 8, 2008 and ends on March 31, 2011 is of no effect or is deemed never to have had effect, as the case may be.

No increases to additional remuneration — after coming into force

44. No terms and conditions of employment established after the day on which this Act comes into force may provide, for any period that begins during the restraint period, for any increase to the amount or rate of any additional remuneration that applied to the employees governed by those terms and conditions of employment immediately before those terms and conditions of employment become effective.

No increases to additional remuneration — December 8, 2008 until coming into force

45. If any terms and conditions of employment established at any time during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force contain provisions that provide, for any period that begins during the restraint period, for an increase to the amount or rate of any additional remuneration that applied to the employees governed by those terms and conditions of employment immediately before those provisions became effective, those provisions are of no effect or are deemed never to have had effect, as the case may be.

No increases to additional remuneration — before December 8, 2008

46. If any terms and conditions of employment established before December 8, 2008 contain provisions that, for any period that begins in the period that begins on December 8, 2008 and ends on March 31, 2011, provide for an increase to the amount or rate of any additional remuneration that applied to the employees governed by those terms and conditions of employment immediately before the first period that began on or after December, 8, 2008, those provisions are of no effect or are deemed never to have had effect, as the case may be.

No new additional remuneration — after coming into force

47. No terms and conditions of employment established after the day on which this Act comes into force may provide, for any period that begins during the restraint period, for any additional remuneration that is new in relation to the additional remuneration that applied to the employees governed by those terms and conditions of employment immediately before the terms and conditions of employment become effective.

No new additional remuneration — December 8, 2008 until coming into force

48. If any terms and conditions of employment established at any time during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force contain, in relation to any employees, a provision that provides, for any period that begins during the restraint period, for any additional remuneration that is new in relation to the additional remuneration that applied to the employees governed by those terms and conditions of employment immediately before the effective date of the provisions, that provision is of no effect or is deemed never to have had effect, as the case may be.

No new additional remuneration — before December 8, 2008

49. If any terms and conditions of employment established before December 8, 2008 contain, in relation to any employees, a provision that provides, for any period that begins in the period that begins on December 8, 2008 and ends on March 31, 2011, for any additional remuneration that is new in relation to the additional remuneration that applied to the employees governed by those terms and conditions of employment immediately before the first period that began on or after December 8, 2008, that provision is of no effect or is deemed never to have had effect, as the case may be.

Canada Border Services Agency

50. Sections 44 to 46 do not apply in respect of pay notes applicable only to employees in the Canada Border Services Agency who were transferred to the Agency on its creation, but the rates of those pay notes may not be increased during any period that begins in any of the fiscal years referred to in section 16 by a percentage that is higher than the percentage set out in that section for that fiscal year.

Border Services Group

51. The following rules apply in respect of terms and conditions of employment governing employees in the Border Services Group whose employer is Her Majesty as represented by the Treasury Board:

(*a*) if the restructuring permitted by paragraph 31(*a*) occurs, paragraph 43(*a*) does not prevent terms and conditions of employment established after the day on which this Act comes into force from restructuring, as a result of a classification conversion, the rates of pay during the 2007–2008 or 2009–2010 fiscal year, and the increases set out in section 16 apply in respect of the restructured rates of pay;

(*b*) if any terms and conditions of employment were established during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force and, as a result of a classification conversion, they contain provisions for the restructuring of rates of pay during the 2007–2008 or 2009–2010 fiscal year and the restructuring permitted by paragraph 31(*b*) occurs, paragraph 43(*b*) does not apply in respect of those provisions, and the increases set out in section 16 apply in respect of the restructured rates of pay; and

(*c*) if any terms and conditions of employment were established before December 8, 2008 and, as a result of a classification conversion, they contain provisions for the restructuring of rates of pay during the 2009–2010 fiscal year and the restructuring permitted by paragraph 31(*c*) occurs, paragraph 43(*c*) does not apply in respect of those provisions, and the increase set out in section 16 applies in respect of the restructured rates of pay.

Groups subject to national rates of pay

52. The following rules apply in respect of terms and conditions of employment governing employees in the Operational Services Group whose employer is Her Majesty as represented by the Treasury Board and employees in the General Labour and Trades Group and the General Services Group whose employer is Her Majesty as represented by the Parks Canada Agency or Her Majesty as represented by the Canadian Food Inspection Agency:

(*a*) if the restructuring permitted by paragraph 32(*a*) occurs, paragraph 43(*a*) does not prevent terms and conditions of employment established after the day on which this Act comes into force from restructuring rates of pay during the 2009–2010 fiscal year in order to create national rates of pay, and the increase set out in section 16 applies in respect of the restructured rates of pay;

(*b*) if any terms and conditions of employment were established during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force and, in order to create national rates of pay, they contain provisions for the restructuring of rates of pay during the 2009–2010 fiscal year and the restructuring permitted by paragraph 32(*b*) occurs, paragraph 43(*b*) does not apply in respect of those provisions, and the increase set out in section 16 applies in respect of the restructured rates of pay; and

(*c*) if any terms and conditions of employment were established before December 8, 2008 and, in order to create national rates of pay, they contains provisions for the restructuring of rates of pay during the 2009–2010 fiscal year and the restructuring permitted by paragraph 32(*c*) occurs, paragraph 43(*c*) does not apply in respect of those provisions, and the increase set out in section 16 applies in respect of the restructured rates of pay.

Ships' Officers Group

53. The following rules apply in respect of terms and conditions of employment established before December 8, 2008 that govern employees in the Ships' Officers Group whose employer is Her Majesty as represented by the Treasury Board:

(*a*) paragraph 43(*c*) does not apply in respect of the provisions of those terms and conditions of employment that provide for the restructuring of rates of pay during the 2010–2011 fiscal year, and the increase set out in section 16 applies in respect of the restructured rates of pay; and

(*b*) section 49 does not apply in respect of the provisions of those terms and conditions of employment that provide for the payment, during the 2010–2011 fiscal year, of a sum in lieu of vacation leave factors.

Law Group

54. (1) The following rules apply in respect of terms and conditions of employment governing employees in the Law Group whose employer is Her Majesty as represented by the Treasury Board, and in respect of any period that begins during the restraint period:

(*a*) in the case where the terms and conditions of employment are established after the day on which this Act comes into force,

(i) the provisions of those terms and conditions of employment that provide for increases to rates of pay may not have retroactive effect in respect of a day that is earlier than May 10, 2006,

(ii) any increase to rates of pay that the terms and conditions of employment provide for in respect of any period that begins during the 2006–2007 fiscal year must be based on the rates of pay set out in Schedule 2,

(iii) the provisions of those terms and conditions of employment must provide, for all employees of the Law Group, for the same performance pay plans that were in effect on May 9, 2006 for any employees in the Law Group and, in relation to any particular position level, those plans must be at the same amounts or rates that were in effect for that position level on that date but those plans may not have retroactive effect, and

(iv) the provisions of those terms and conditions of employment may provide for any additional remuneration — other than a performance bonus — that applied to any position level in the Law Group on May 9, 2006, but the amount or rate of that additional remuneration for a particular position level may not be greater than the highest amount or rate that applied to employees of that position level on that date, and

(v) those terms and conditions of employment may not provide for additional remuneration if that additional remuneration applied to no employee in the Law Group on May 9, 2006; and

(*b*) in the case where the terms and conditions of employment were established on or before the day on which this Act comes into force,

(i) if any of their provisions have retroactive effect in respect of a day that is earlier than May 10, 2006, that retroactive effect is deemed never to have had effect, the provision is deemed to have had retroactive effect as of May 10, 2006 and the first day of every other period referred to in that provision is deemed to be moved forward by the number of days that is equal to the number of days between the first day the provision was expressed to have retroactive effect and May 10, 2006,

(ii) if the increase provided to rates of pay for any period that begins during the 2006–2007 fiscal year is based on rates of pay that are greater than those set out in Schedule 2, those greater rates of pay are of no effect or are deemed never to have had effect, as the case may be, and the increase is deemed to be based on the rates of pay set out in Schedule 2,

(iii) if subparagraph (ii) applies, the provisions of the terms and conditions of employment that provide for rates of pay for every other period that begins on or before March 31, 2011 are of no effect or are deemed never to have had effect, as the case may be, and the rates of pay in those provisions are deemed to be the rates of pay that applied immediately before the beginning of that period as a result of this Act,

(iv) if those terms and conditions of employment provide for performance pay plans and those plans are not the same as those that were in effect on May 9, 2006 for any employees in the Law Group or the amounts or rates provided for in those plans in relation to any particular position level are not the same as those of the performance pay plans that were in effect on that date — or the plans were expressed to be retroactive — the provisions that provide for those plans are of no effect or are deemed never to have had effect, as the case may be, and are deemed to be provisions that provide,

for all employees in the Law Group, as of the day that the terms and conditions of employment were established, for the same performance pay plans that were in effect on May 9, 2006 for any employees in the Law Group at the same amounts or rates, in relation to any particular position level, that were in effect on that date,

(v) if those terms and conditions of employment do not provide for performance pay plans, they are deemed to provide, for all employees in the Law Group, as of the day that they were established, for the same performance pay plans that were in effect on May 9, 2006 for any employees in the Law Group at the same amounts or rates, in relation to any particular position level, that were in effect on that date,

(vi) if those terms and conditions of employment provide for any additional remuneration — other than a performance bonus — that applied to any position level in the Law Group on May 9, 2006, and the amount or rate of that additional remuneration for a particular position level is greater than the highest amount or rate that applied to any employees of that position level on that date, the provisions that provide for that payment are deemed to be of no effect or are deemed never to have had effect, as the case may be, and are deemed to provide for the highest amount or rate, as the case may be, that applied in respect of any of those employees on that date, and

(vii) if those terms and conditions of employment provide for any additional remuneration, and that additional remuneration applied to no employee in the Law Group on May 9, 2006, the provision that provides for that payment is of no effect or is deemed never to have had effect, as the case may be.

Other provisions apply

(2) For greater certainty, the provisions of this Act that are not inconsistent with subsection (1) apply to terms and conditions of employment governing employees in the Law Group.

Members of Parliament

Increase

55. (1) Despite subsections 55.1(2), 62.1(2), 62.2(2) and 62.3(2) of the *Parliament of Canada Act* and subsections 4.1(2), (4) and (6) of the *Salaries Act*, the increase in respect of allowances and salaries to be paid to members of the Senate and the House of Commons for the 2009–2010 fiscal year is to be 1.5%.

No increase

(2) Despite the provisions referred to in subsection (1), there are to be no increases in respect of allowances and salaries to be paid to members of the Senate and the House of Commons for the 2010–2011, 2011–2012 and 2012–2013 fiscal years.

Transition — 2013–2014 fiscal year

(3) In calculating the allowances and salaries to be paid to members of the Senate and the House of Commons for the 2013–2014 fiscal year, the indexing mentioned in the provisions referred to in subsection (1) is to be applied to the allowances and salaries payable to the members for the 2009–2010 fiscal year.

2009, c. 2, s. 393 "55";
2010, c. 12, s. 1649.

General

Inconsistent provisions

56. Any provision of any collective agreement that is entered into — or of any arbitral award that is made, or of any terms and conditions of employment that are established — after the day on which this Act comes into force that is inconsistent with this Act is of no effect.

Compensating for restraint measures prohibited

57. No provision of any collective agreement that is entered into — or of any arbitral award that is made, or of any terms and conditions of employment that are established — after the day on which this Act comes into force may provide for compensation for amounts that employees did not receive as a result of the restraint measures in this Act.

Provisions compensating for restraint measures of no effect

58. If a provision of a collective agreement that is entered into — or of an arbitral award that is made, or of terms and conditions of employment that are established — on or before the day on which this Act comes into force provides for compensation for amounts that employees did not receive as a result of the restraint measures in this Act, that provision is of no effect or is deemed never to have had effect, as the case may be.

No changes to performance pay plans — new collective agreements, etc.

59. No provision of any collective agreement that is entered into — or of any arbitral award that is made, or of any terms and conditions of employment that are established — after the day on which this Act comes into force may, for any period that begins during the restraint period, change the performance pay plans, including the amounts or rates, that apply to any employees governed by the agreement, award or terms and conditions of employment.

No changes to performance pay plans — existing collective agreements, etc.

60. If a provision of a collective agreement that is entered into — or of an arbitral award that is made, or of terms and conditions of employment that are established — during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force changes, for any period that begins during the restraint period, the performance pay plans, including the amounts or rates, that apply to any employees governed by the agreement, award or terms and conditions of employment, the change is of no effect or is deemed never to have had effect, as the case may be.

No changes to performance pay plans — existing collective agreements, etc.

61. If a provision of a collective agreement that is entered into — or of an arbitral award that is made, or of terms and conditions of employment that are established — before December 8, 2008 changes, for any period that begins in the period that begins on December 8, 2008 and ends on March 31, 2011, the performance pay plans, including the amounts or rates, that apply to any employees governed by the agreement, award or terms and conditions of employment, the change is of no effect or is deemed never to have had effect, as the case may be.

Royal Canadian Mounted Police

62. Despite sections 44 to 49, the Treasury Board may change the amount or rate of any allowance, or make any new allowance, applicable to members of the Royal Canadian Mounted Police if the Treasury Board is of the opinion that the change or the new allowance, as the case may be, is critical to support transformation initiatives relating to the Royal Canadian Mounted Police.

ADMINISTRATION

Powers and duties of Treasury Board

63. (1) The Treasury Board may exercise the powers and shall perform the duties in relation to this Act that are necessary to enable it to determine whether an employer of employees, other than employees referred to in paragraph 13(1)(*c*) or (3)(*a*), is complying with this Act.

Information and documentation

(2) The Treasury Board may require from the employer any information and documentation that it considers necessary to enable it to determine whether the employer is complying with this Act.

Treasury Board directive

(3) If the Treasury Board determines under this section that the employer is not complying with this Act, it may issue any directives that it considers appropriate to ensure the compliance.

Debt due to Her Majesty

64. (1) Every amount paid — including amounts paid before the day on which this Act comes into force — to any person in excess of the amount that should have been paid as a result of this Act is a debt due to Her Majesty and may be recovered as such.

Overpayment

(2) Any amount that is a debt due to Her Majesty as a result of subsection (1) is deemed to be an overpayment to which subsection 155(3) of the *Financial Administration Act* applies.

Application

(3) For greater certainty, subsection (1) applies to, but is not limited to, the following amounts:

(*a*) amounts paid under a provision that by the operation of this Act is of no effect or is deemed never to have had effect; and

(*b*) amounts paid as a result of the payment of any amount referred to in paragraph (*a*).

Orders

65. The Governor in Council may, on the recommendation of the Treasury Board, by order, amend Schedule 1 by adding to or deleting from it the name of any Crown corporation or public body.

SCHEDULE 1

(Sections 13 and 65)

CROWN CORPORATIONS AND PUBLIC BODIES

Canada Council for the Arts
Conseil des Arts du Canada
Canadian Broadcasting Corporation
Société Radio-Canada
Canadian Centre for Occupational Health and Safety
Centre canadien d’hygiène et de sécurité au travail
Canadian Commercial Corporation
Corporation commerciale canadienne
Canadian Museum of Civilization
Musée canadien des civilisations
Canadian Museum of Immigration at Pier 21

Musée canadien de l’immigration du Quai 21
Canadian Museum of Nature
Musée canadien de la nature
Canadian Tourism Commission
Commission canadienne du tourisme
International Development Research Centre
Centre de recherches pour le développement international
National Arts Centre Corporation
Corporation du Centre national des Arts
National Battlefields Commission, The
Commission des champs de bataille nationaux
National Gallery of Canada
Musée des beaux-arts du Canada
National Museum of Science and Technology
Musée national des sciences et de la technologie
Office of the Communications Security Establishment Commissioner
Bureau du commissaire du Centre de la sécurité des télécommunications
Telefilm Canada
Téléfilm Canada

2009, c. 2, s. 393 "Sch. 1";
2010, c. 7, s. 7.

SCHEDULE 2

(Sections 34 and 54)

RATES OF PAY — EMPLOYEES IN THE LAW GROUP

All regions except Toronto	Minimum	Maximum
LA-DEV	$27,410	$62,155
LA-01	$54,580	$77,868
LA-02(A) or LA-02(I)	$75,622	$108,525
LA-02(B) or LA-02(II)	$94,097	$119,975
LA-03(A)	$107,300	$136,300
LA-03(B)	$124,400	$152,200
LA-03(C)	$141,700	$172,800

Toronto region	Minimum	Maximum
LA-DEV	$27,410	$62,155
LA-01	$54,585	$77,868
LA-02(A) or LA-02(I)	$75,630	$124,940
LA-02(B) or LA-02(II)	$98,840	$138,075
LA-03(A)	$113,600	$148,100
LA-03(B)	$124,400	$152,200
LA-03(C)	$141,700	$172,800

Loi sur le contrôle des dépenses, L.C. 2009, ch. 2, art. 393

Sanctionnée 2009-03-12

Loi visant à contrôler les dépenses du gouvernement du Canada à l'égard de l'emploi

[Édictée par l'article 393 du chapitre 2 des Lois du Canada (2009), en vigueur à la sanction le 12 mars 2009.]

TITRE ABRÉGÉ

Titre abrégé

1. *Loi sur le contrôle des dépenses*.

DÉFINITIONS ET INTERPRÉTATION

Définitions

2. Les définitions qui suivent s'appliquent à la présente loi.

« agent négociateur »
"bargaining agent"

« agent négociateur »

a) Dans le cas des employés régis par la partie I du *Code canadien du travail*, s'entend au sens du paragraphe 3(1) de cette loi;

b) dans le cas des employés régis par la *Loi sur les relations de travail au Parlement*, s'entend au sens de l'article 3 de cette loi;

c) dans le cas des employés régis par la *Loi sur les relations de travail dans la fonction publique*, s'entend au sens du paragraphe 2(1) de cette loi.

« Conseil national mixte »
"National Joint Council"

« Conseil national mixte » S'entend au sens du paragraphe 4(1) de la *Loi sur les relations de travail dans la fonction publique*.

« convention collective »
"collective agreement"

« convention collective » Convention collective régissant tout employé visé par la présente loi.

« décision arbitrale »
"arbitral award"

« décision arbitrale » Décision arbitrale régissant tout employé visé par la présente loi.

« période de contrôle »
"restraint period"

« période de contrôle » Période allant du 1er avril 2006 au 31 mars 2011.

« rémunération additionnelle »
"additional remuneration"

« rémunération additionnelle » Allocation, boni, prime ou autre paiement semblable à l'un ou l'autre de ceux-ci versés aux employés.

« Sa Majesté »
"Her Majesty"

« Sa Majesté » Sa Majesté du chef du Canada.

« taux de salaire »
"rate of pay"

« taux de salaire » Taux de salaire de base, qu'il soit unique ou sous forme d'une fourchette salariale, ou, à défaut de ce taux ou de cette fourchette, tout montant fixe ou vérifiable de salaire de base. Est exclue de la présente définition toute rémunération additionnelle.

Sommes forfaitaires réputées être des bonis

3. Pour l'application de la présente loi, toute somme forfaitaire que l'employeur est tenu de verser aux employés aux termes d'une décision arbitrale est réputée être un boni.

Exclusions

4. Aucun renvoi, dans la présente loi, à la rémunération additionnelle ne vaut mention de la rémunération additionnelle prévue dans les instructions, lignes directrices, règles, accords ou autres instruments qui sont établis :

a) sur la recommandation du Conseil national mixte et avec l'approbation de l'employeur;

b) par l'employeur seul, à l'égard d'une question qui, de l'avis du Conseil du Trésor, est déjà visée par tout instrument établi conformément à l'alinéa *a*) ou est liée à une telle question.

Entente antérieure au 8 décembre 2008

5. (1) Pour l'application de la présente loi, une convention collective est réputée conclue avant le 8 décembre 2008 si elle est conclue à cette date ou après celle-ci et que les parties sont, avant cette date, convenues par écrit de la conclure de façon qu'elle prenne effet à l'expiration de la convention collective précédente et l'ont conclue sans modification.

Conditions d'emploi réputées établies avant le 8 décembre 2008

(2) Dans le cas où le paragraphe (1) s'applique à une convention collective, les conditions d'emploi — régissant des employés non représentés ou exclus — qui sont normalement établies de façon à être semblables à cette convention et qui sont identiques à tous égards importants à celles de la convention sont, pour l'application de la présente loi, si elles ont été établies le 8 décembre 2008 ou après cette date, réputées établies avant cette date.

EFFETS DE LA PRÉSENTE LOI

Droit de négocier collectivement

6. Sous réserve des autres dispositions de la présente loi, est maintenu le droit de négocier collectivement sous le régime du *Code canadien du travail*, de la *Loi sur les relations de travail au Parlement* et de la *Loi sur les relations de travail dans la fonction publique*.

Droit de grève non touché

7. La présente loi ne porte pas atteinte au droit de grève qui s'exerce sous le régime du *Code canadien du travail* ou de la *Loi sur les relations de travail dans la fonction publique*.

Modification des conventions collectives et décisions arbitrales

8. La présente loi n'a pas pour effet d'empêcher les agents négociateurs représentant les employés régis par une convention collective ou une décision arbitrale et les employeurs de ces employés de modifier, par accord écrit, les dispositions de la convention ou de la décision — exception faite de celle qui en fixe la date d'expiration — dans la mesure où la modification n'est pas contraire à la présente loi.

Amélioration du milieu de travail

9. La présente loi n'a pas pour effet d'empêcher les agents négociateurs et les employeurs de travailler à l'amélioration conjointe du milieu de travail sous l'égide du Conseil national mixte ou de tout autre organisme dont ils conviennent.

Augmentations non touchées

10. La présente loi ne porte pas atteinte au droit des employés aux augmentations d'échelon — notamment celles qui résultent de l'acquisition d'un niveau de formation ou de compétence supérieur —, aux augmentations fondées sur le mérite ou le rendement, aux augmentations à l'intérieur des fourchettes salariales, aux primes de rendement ou à des formes de rémunération semblables.

Primauté de la présente loi

11. Les dispositions de la présente loi l'emportent sur les dispositions incompatibles de toute autre loi fédérale, y compris celles de la partie X de la *Loi sur la gestion des finances publiques*, sauf dérogation expresse des dispositions de l'autre loi.

CHAMP D'APPLICATION

Parlementaires

12. La présente loi s'applique aux sénateurs et aux députés.

Employés

13. (1) La présente loi s'applique aux employés :

a) des ministères et autres secteurs de l'administration publique fédérale figurant aux annexes I et IV de la *Loi sur la gestion des finances publiques* et des organismes distincts figurant à l'annexe V de cette loi, à l'exclusion de l'Agence de la consommation en matière financière du Canada et du Personnel des fonds non publics, Forces canadiennes;

b) des sociétés d'État et organismes publics figurant à l'annexe 1;

c) du Sénat, de la Chambre des communes, de la Bibliothèque du Parlement, du bureau du conseiller sénatorial en éthique et du bureau du commissaire aux conflits d'intérêts et à l'éthique.

Précision

(2) Il est entendu que les membres de la Gendarmerie royale du Canada sont des employés.

Personnes réputées être des employés

(3) La présente loi s'applique également aux personnes ci-après qui sont, pour son application, assimilées à des employés :

a) le personnel des sénateurs et députés;

b) les administrateurs des sociétés d'État et organismes publics figurant à l'annexe 1;

c) les officiers et militaires du rang des Forces canadiennes;

d) le directeur général des élections.

Personnes nommées par le gouverneur en conseil

(4) La présente loi s'applique en outre aux personnes nommées par le gouverneur en conseil, celles-ci étant, pour son application, assimilées à des employés. Elle ne s'applique toutefois pas aux lieutenants-gouverneurs, aux juges touchant un traitement sous le régime de la *Loi sur les juges*, aux juges militaires nommés en vertu de l'article 165.21 de la *Loi sur la défense nationale* et aux protonotaires nommés en vertu de l'article 12 de la *Loi sur les Cours fédérales*.

Désignation par le gouverneur en conseil

14. Le gouverneur en conseil peut, par décret, désigner toute autre personne ou catégorie de personnes comme étant visées par la présente loi. Les personnes ainsi désignées sont, pour l'application de la présente loi, assimilées à des employés.

Non-application

15. La présente loi ne s'applique pas aux personnes recrutées sur place à l'étranger. Il est entendu qu'elle ne s'applique pas non plus aux personnes engagées à titre d'entrepreneurs indépendants.

MESURES DE CONTRÔLE

Augmentation des taux de salaire

Augmentation des taux de salaire

16. Malgré toute convention collective, décision arbitrale ou condition d'emploi à l'effet contraire, mais sous réserve des autres dispositions de la présente loi, les taux de salaire des employés sont augmentés, ou sont réputés l'avoir été, selon le cas, selon les taux figurant ci-après à l'égard de toute période de douze mois commençant au cours d'un des exercices suivants :

a) l'exercice 2006-2007, un taux de deux et demi pour cent;

b) l'exercice 2007-2008, un taux de deux et trois dixièmes pour cent;

c) l'exercice 2008-2009, un taux de un et demi pour cent;

d) l'exercice 2009-2010, un taux de un et demi pour cent;

e) l'exercice 2010-2011, un taux de un et demi pour cent.

Employés représentés par un agent négociateur

Conventions collectives ou décisions arbitrales postérieures à l'entrée en vigueur

17. (1) Les dispositions de toute convention collective conclue — ou décision arbitrale rendue — après la date d'entrée en vigueur de la présente loi ne peuvent prévoir des augmentations des taux de salaire à des taux supérieurs à ceux prévus à l'article 16, mais elles peuvent en prévoir à des taux inférieurs.

Précision

(2) Il est entendu que toute augmentation prévue dans la convention ou la décision visée au paragraphe (1) à l'égard de toute période commençant au cours de la période de contrôle doit être fondée sur une période de douze mois.

Conventions collectives ou décisions arbitrales — du 8 décembre 2008 à l'entrée en vigueur

18. Toute disposition d'une convention collective conclue — ou d'une décision arbitrale rendue — au cours de la période allant du 8 décembre 2008 à la date d'entrée en vigueur de la présente loi prévoyant, pour une période donnée, une augmentation des taux de salaire supérieure à celle qui est prévue à l'article 16 pour cette période est inopérante ou réputée n'être jamais entrée en vigueur et est réputée prévoir l'augmentation prévue à cet article pour cette période.

Conventions collectives ou décisions arbitrales antérieures au 8 décembre 2008

19. S'agissant de toute convention collective conclue — ou de toute décision arbitrale rendue — avant le 8 décembre 2008, les règles suivantes s'appliquent :

a) l'article 16 ne s'applique pas à l'égard de toute période commençant au cours des exercices 2006-2007 ou 2007-2008;

b) en ce qui concerne toute période de douze mois commençant au cours de l'un ou l'autre des exercices 2008-2009, 2009-2010 et 2010-2011, l'article 16 s'applique uniquement à l'égard de toute période commençant le 8 décembre 2008 ou après cette date, et toute disposition de cette convention ou décision prévoyant, pour une période donnée, une augmentation des taux de salaire supérieure à celle qui est prévue à l'article 16 pour cette période est inopérante ou réputée n'être jamais entrée en vigueur et est réputée prévoir l'augmentation prévue à cet article pour cette période.

Périodes d'une autre durée : article 18

20. Dans le cas où une convention collective ou une décision arbitrale visée à l'article 18 prévoit une augmentation des taux de salaire pour toute période d'une durée autre que de douze mois commençant au cours d'un exercice de la période de contrôle, cette augmentation est inopérante ou réputée n'être jamais entrée en vigueur et est réputée être une augmentation — applicable à la période d'une durée autre que de douze mois — établie sur une base annuelle et arrondie au centième pour cent près, qui donne le taux prévu à l'article 16 pour toute période commençant au cours du même exercice.

Périodes d'une autre durée : article 19

21. Dans le cas où une convention collective ou une décision arbitrale visée à l'article 19 prévoit une augmentation des taux de salaire pour toute période d'une durée autre que de douze mois commençant au cours d'un exercice qui commence au cours de la période allant du 8 décembre 2008 au 31 mars 2011, cette augmentation est inopérante ou réputée n'être jamais entrée en vigueur et est réputée être une augmentation — applicable à la période d'une durée autre que de douze mois — établie sur une base annuelle et arrondie au centième pour cent près, qui donne le taux prévu à l'article 16 pour toute période commençant au cours du même exercice.

Taux inférieurs

22. Si une convention collective ou une décision arbitrale visée aux articles 18 ou 19 prévoit, pour une période donnée, une augmentation des taux de salaire inférieure à celle qui est prévue à l'article 16 pour cette période, l'article 16 est sans effet à l'égard de cette augmentation.

Aucune restructuration

23. Sous réserve des articles 31 à 34 :

a) aucune disposition d'une convention collective conclue — ou d'une décision arbitrale rendue — après la date d'entrée en vigueur de la présente loi ne peut prévoir de restructuration des taux de salaire au cours de toute période commençant au cours de la période de contrôle;

b) toute disposition d'une convention collective conclue — ou d'une décision arbitrale rendue — au cours de la période allant du 8 décembre 2008 à la date d'entrée en vigueur de la présente loi prévoyant une restructuration des taux de salaire au cours de toute période commençant au cours de la période de contrôle est inopérante ou réputée n'être jamais entrée en vigueur;

c) toute disposition d'une convention collective conclue — ou d'une décision arbitrale rendue — avant le 8 décembre 2008 prévoyant une restructuration des taux de salaire au cours de toute période commençant au cours de la période allant du 8 décembre 2008 au 31 mars 2011 est inopérante ou réputée n'être jamais entrée en vigueur.

Après l'entrée en vigueur — aucune augmentation de la rémunération additionnelle

24. Aucune convention collective conclue — ou décision arbitrale rendue — après la date d'entrée en vigueur de la présente loi ne peut, à l'égard de toute période commençant au cours de la période de contrôle, prévoir une augmentation des montants ou des taux de toute rémunération additionnelle applicable, avant la prise d'effet de la convention ou de la décision, aux employés régis par celle-ci.

Du 8 décembre 2008 à l'entrée en vigueur — aucune augmentation de la rémunération additionnelle

25. Est inopérante ou réputée n'être jamais entrée en vigueur la disposition de toute convention collective conclue — ou décision arbitrale rendue — au cours de la période allant du 8 décembre 2008 à la date d'entrée en vigueur de la présente loi prévoyant, à l'égard de toute période commençant au cours de la période de contrôle, une augmentation des montants ou des taux de toute rémunération additionnelle applicable, avant la prise d'effet de la convention ou de la décision, aux employés régis par celle-ci.

Avant le 8 décembre 2008 — aucune augmentation de la rémunération additionnelle

26. Est inopérante ou réputée n'être jamais entrée en vigueur la disposition de toute convention collective conclue — ou décision arbitrale rendue — avant le 8 décembre 2008 prévoyant, à l'égard de toute période commençant au cours de la période allant du 8 décembre 2008 au 31 mars 2011, une augmentation des montants ou des taux de toute rémunération additionnelle applicable, avant la première période qui commence le 8 décembre 2008 ou après cette date, aux employés régis par cette convention ou décision.

Après l'entrée en vigueur — aucune nouvelle rémunération additionnelle

27. Aucune convention collective conclue — ou décision arbitrale rendue — après la date d'entrée en vigueur de la présente loi ne peut, à l'égard de toute période commençant au cours de la période de contrôle, prévoir de rémunération additionnelle qui est nouvelle par rapport à celle applicable, avant la prise d'effet de la convention ou de la décision, aux employés régis par celle-ci.

Du 8 décembre 2008 à l'entrée en vigueur — aucune nouvelle rémunération additionnelle

28. Est inopérante ou réputée n'être jamais entrée en vigueur la disposition de toute convention collective conclue — ou décision arbitrale rendue — au cours de la période allant du 8 décembre 2008 à la date d'entrée en vigueur de la présente loi prévoyant, à l'égard de toute période commençant au cours de la période de contrôle, une rémunération additionnelle qui est nouvelle par rapport à celle applicable, avant la prise d'effet de la convention ou de la décision, aux employés régis par celle-ci.

Avant le 8 décembre 2008 — aucune nouvelle rémunération additionnelle

29. Est inopérante ou réputée n'être jamais entrée en vigueur la disposition de toute convention collective conclue — ou décision arbitrale rendue — avant le 8 décembre 2008 prévoyant, à l'égard de toute période commençant au cours de la période allant du 8 décembre 2008 au 31 mars 2011, une rémunération additionnelle qui est nouvelle par rapport à celle applicable, avant la première période qui commence le 8 décembre 2008 ou après cette date, aux employés régis par cette convention ou décision.

Agence des services frontaliers du Canada

30. Les articles 24 à 26 sont sans effet à l'égard des notes sur la rémunération visant uniquement les employés de l'Agence des services frontaliers du Canada qui ont été transférés à cet organisme au moment de sa création, mais les taux prévus à ces notes ne peuvent, à l'égard de toute période commençant au cours de tout exercice visé à l'article 16, être supérieurs à ceux prévus à cet article pour cet exercice.

Groupe des services frontaliers

31. Les règles ci-après s'appliquent à l'égard de toute convention collective régissant les employés du groupe des services frontaliers dont l'employeur est Sa Majesté, représentée par le Conseil du Trésor :

a) toute convention conclue après la date d'entrée en vigueur de la présente loi peut, malgré l'alinéa 23*a*), prévoir une restructuration des taux de salaire au cours des exercices 2007-2008 ou 2009-2010, suivant une transposition de classification, et les augmentations prévues à l'article 16 s'appliquent aux taux de salaire ainsi restructurés;

b) si une convention conclue au cours de la période allant du 8 décembre 2008 à la date d'entrée en vigueur de la présente loi contient des dispositions prévoyant une restructuration des taux de salaire au cours des exercices 2007-2008 ou 2009-2010, suivant une transposition de classification, l'alinéa 23*b*) est sans effet à l'égard de ces dispositions et les augmentations prévues à l'article 16 s'appliquent aux taux de salaire ainsi restructurés;

c) si une convention conclue avant le 8 décembre 2008 contient des dispositions prévoyant une restructuration des taux de salaire au cours de l'exercice 2009-2010, suivant une transposition de classification, l'alinéa 23*c*) est sans effet à l'égard de ces dispositions et l'augmentation prévue à l'article 16 s'applique aux taux de salaire ainsi restructurés.

Groupes visés par des taux de salaire nationaux

32. Les règles ci-après s'appliquent à l'égard de toute convention collective régissant les employés du groupe des services de l'exploitation dont l'employeur est Sa Majesté, représentée par le Conseil du Trésor, ainsi que les employés du groupe manoeuvres et hommes de métiers et du groupe des services divers dont l'employeur est Sa Majesté, représentée par soit l'Agence Parcs Canada, soit l'Agence canadienne d'inspection des aliments :

a) toute convention conclue après la date d'entrée en vigueur de la présente loi peut, malgré l'alinéa 23*a*), prévoir une restructuration des taux de salaire au cours de l'exercice 2009-2010 en vue d'établir des taux nationaux, et l'augmentation prévue à l'article 16 s'applique aux taux de salaire ainsi restructurés;

b) si une convention conclue au cours de la période allant du 8 décembre 2008 à la date d'entrée en vigueur de la présente loi contient des dispositions prévoyant une restructuration des taux de salaire au cours de l'exercice 2009-2010 en vue d'établir des taux nationaux, l'alinéa 23*b*) est sans effet à l'égard de ces dispositions et l'augmentation prévue à l'article 16 s'applique aux taux de salaire ainsi restructurés;

c) si une convention conclue avant le 8 décembre 2008 contient des dispositions prévoyant une restructuration des taux de salaire au cours de l'exercice 2009-2010 en vue d'établir des taux nationaux, l'alinéa 23*c*) est sans effet à l'égard de ces dispositions et l'augmentation prévue à l'article 16 s'applique aux taux de salaire ainsi restructurés.

Groupe des officiers de navire

33. Les règles ci-après s'appliquent à l'égard de toute décision arbitrale rendue avant le 8 décembre 2008 et régissant les employés du groupe des officiers de navire dont l'employeur est Sa Majesté, représentée par le Conseil du Trésor :

a) l'alinéa 23*c*) est sans effet à l'égard des dispositions d'une telle décision prévoyant une restructuration des taux de salaire au cours de l'exercice 2010-2011 et l'augmentation prévue à l'article 16 s'applique aux taux de salaire ainsi restructurés;

b) l'article 29 est sans effet à l'égard des dispositions d'une telle décision prévoyant le versement, au cours de l'exercice 2010-2011, d'une somme pour compenser l'élimination du facteur de congés annuels.

Groupe du droit

34. (1) Les règles ci-après s'appliquent à l'égard de toute convention collective ou décision arbitrale régissant les employés du groupe du droit dont l'employeur est Sa Majesté, représentée par le Conseil du Trésor, et de toute période commençant au cours de la période de contrôle :

a) dans le cas d'une convention conclue — ou d'une décision rendue — après la date d'entrée en vigueur de la présente loi :

(i) elle ne peut avoir un effet rétroactif au-delà du 10 mai 2006,

(ii) toute augmentation des taux de salaire qu'elle prévoit à l'égard de toute période commençant au cours de l'exercice 2006-2007 doit être fondée sur les taux de salaire figurant à l'annexe 2,

(iii) elle doit prévoir pour tous les employés du groupe les mêmes régimes de rémunération au rendement — et les mêmes montants ou taux pour un niveau de poste donné — que ceux en vigueur le 9 mai 2006 pour des employés de ce groupe, mais ces régimes ne peuvent avoir d'effet rétroactif,

(iv) elle peut prévoir toute rémunération additionnelle — autre qu'une prime de rendement — s'appliquant à tout niveau de poste de ce groupe le 9 mai 2006, mais le montant ou le taux de celle-ci ne peut, pour un niveau donné, être supérieur au plus élevé des montants ou taux de la rémunération additionnelle applicable à tout employé occupant un poste de ce niveau à cette date,

(v) elle ne peut prévoir de rémunération additionnelle dont aucun employé de ce groupe ne bénéficiait le 9 mai 2006;

b) dans le cas d'une convention conclue — ou d'une décision rendue — à la date d'entrée en vigueur de la présente loi ou avant cette date :

(i) si telle de ses dispositions a un effet rétroactif au-delà du 10 mai 2006, cette rétroactivité est réputée n'avoir jamais eu d'effet, la disposition est réputée avoir un effet rétroactif au 10 mai 2006 et

le premier jour de toutes les autres périodes prévues dans celle-ci est reporté d'un nombre de jours égal au nombre de jours écoulés entre la date originale de sa prise d'effet et le 10 mai 2006,

(ii) si les augmentations prévues à la convention ou à la décision pour toute période commençant au cours de l'exercice 2006-2007 sont fondées sur des taux de salaire supérieurs à ceux figurant à l'annexe 2, ces taux de salaire supérieurs sont inopérants ou réputés n'être jamais entrés en vigueur et les augmentations sont réputées être fondées sur les taux de salaire figurant à cette annexe,

(iii) si le sous-alinéa (ii) s'applique, les dispositions prévoyant les taux de salaire pour toute autre période commençant le 31 mars 2011 ou avant cette date sont inopérantes ou réputées n'être jamais entrées en vigueur et les taux de salaire qui y sont prévus sont réputés être les taux de salaire en vigueur avant cette période en application de la présente loi,

(iv) si elle prévoit un régime de rémunération au rendement différent — ou si les montants ou les taux pour un niveau de poste donné sont différents — de tout régime en vigueur le 9 mai 2006 pour des employés de ce groupe, ou si elle prévoit que le régime a un effet rétroactif, les dispositions qui le prévoient sont inopérantes ou réputées n'être jamais entrées en vigueur et sont réputées prévoir, à compter de la date de la convention ou de la décision, les mêmes régimes de rémunération au rendement — et les mêmes montants ou taux pour un niveau de poste donné — que ceux en vigueur le 9 mai 2006 pour des employés de ce groupe,

(v) si elle ne prévoit pas de régime de rémunération au rendement, elle est réputée prévoir, à compter de la date de la convention ou de la décision, pour tous les employés du groupe, les mêmes régimes de rémunération au rendement — et les mêmes montants ou taux pour un niveau de poste donné — que ceux en vigueur le 9 mai 2006 pour des employés de ce groupe,

(vi) si elle prévoit une rémunération additionnelle — autre qu'une prime de rendement — applicable aux employés de ce groupe le 9 mai 2006 et que le montant ou le taux de celle-ci est, à l'égard des employés d'un niveau de poste donné, supérieur au plus élevé des montants ou taux applicables aux employés de ce niveau à cette date, les dispositions qui la prévoient sont inopérantes ou réputées n'être jamais entrées en vigueur et sont réputées prévoir une rémunération additionnelle dont le montant ou le taux est équivalent au plus élevé des montants ou taux applicables à ces employés à cette date,

(vii) si elle prévoit une rémunération additionnelle dont aucun employé de ce groupe ne bénéficiait le 9 mai 2006, les dispositions qui la prévoient sont inopérantes ou réputées n'être jamais entrées en vigueur.

Précision

(2) Il est entendu que les autres dispositions de la présente loi qui ne sont pas incompatibles avec les règles prévues au paragraphe (1) s'appliquent à la convention collective ou à la décision arbitrale régissant les employés du groupe du droit.

Employés non représentés ou exclus

Définitions

35. (1) Les définitions qui suivent s'appliquent aux articles 36 à 54.

« condition d'emploi »
"terms and conditions of employment"

« condition d'emploi » Toute condition d'emploi s'appliquant aux employés.

« employé »
"employee"

« employé » Tout employé non représenté par un agent négociateur ou exclu d'une unité de négociation.

Établissement des conditions d'emploi

(2) Pour l'application des articles 36 à 54, sont des conditions d'emploi établies celles qui émanent unilatéralement de l'employeur ou celles convenues par celui-ci et les employés.

Augmentations établies après l'entrée en vigueur

36. (1) Les conditions d'emploi établies après l'entrée en vigueur de la présente loi ne peuvent prévoir des augmentations des taux de salaire à des taux supérieurs à ceux prévus à l'article 16, mais elles peuvent en prévoir à des taux inférieurs.

Précision

(2) Il est entendu que les conditions d'emploi visées au paragraphe (1) applicables à l'égard de toute période commençant au cours de la période de contrôle doivent être fondées sur une période de douze mois.

Conditions d'emploi — du 8 décembre 2008 à l'entrée en vigueur

37. Toute disposition de conditions d'emploi établies au cours de la période allant du 8 décembre 2008 à la date d'entrée en vigueur de la présente loi prévoyant, pour une période donnée, une augmentation des taux de salaire supérieure à celle qui est prévue à l'article 16 pour cette période est inopérante ou réputée n'être jamais entrée en vigueur et est réputée prévoir l'augmentation prévue à cet article pour cette période.

Conditions d'emploi antérieures au 8 décembre 2008

38. S'agissant de conditions d'emploi établies avant le 8 décembre 2008, les règles suivantes s'appliquent :

a) l'article 16 ne s'applique pas à l'égard de toute période commençant au cours des exercices 2006-2007 ou 2007-2008;

b) en ce qui concerne toute période de douze mois commençant au cours de l'un ou l'autre des exercices 2008-2009, 2009-2010 et 2010-2011, l'article 16 s'applique uniquement à l'égard de toute période commençant le 8 décembre 2008 ou après cette date, et toute disposition des conditions d'emploi prévoyant, pour une période donnée, une augmentation des taux de salaire supérieure à celle qui est prévue à cet article pour cette période est inopérante ou réputée n'être jamais entrée en vigueur, et est réputée prévoir l'augmentation prévue au même article pour cette période.

Périodes d'une autre durée : article 37

39. Dans le cas où des conditions d'emploi visées à l'article 37 prévoient une augmentation des taux de salaire pour toute période d'une durée autre que de douze mois commençant au cours d'un exercice de la période de contrôle, cette augmentation est inopérante ou réputée n'être jamais entrée en vigueur et est réputée être une augmentation — applicable à la période d'une durée autre que de douze mois — établie sur une base annuelle et arrondie au centième pour cent près, qui donne le taux prévu à l'article 16 pour toute période commençant au cours du même exercice.

Périodes d'une autre durée : article 38

40. Dans le cas où des conditions d'emploi visées à l'article 38 prévoient une augmentation des taux de salaire pour toute période d'une durée autre que de douze mois commençant au cours d'un

exercice qui commence au cours de la période allant du 8 décembre 2008 au 31 mars 2011, cette augmentation est inopérante ou réputée n'être jamais entrée en vigueur et est réputée être une augmentation — applicable à la période d'une durée autre que de douze mois — établie sur une base annuelle et arrondie au centième pour cent près, qui donne le taux prévu à l'article 16 pour toute période commençant au cours du même exercice.

Taux inférieurs

41. Si des conditions d'emploi visées aux articles 37 ou 38 prévoient, pour une période donnée, une augmentation des taux de salaire inférieure à celle qui est prévue à l'article 16 pour cette période, cet article est sans effet à l'égard de cette augmentation.

Aucune augmentation prévue

42. Si des conditions d'emploi — établies à l'entrée en vigueur de la présente loi, avant ou après cette date — ne prévoient aucune augmentation des taux de salaire à l'égard de toute période commençant au cours de la période de contrôle, l'article 16 n'a pas pour effet d'accorder une augmentation des taux de salaire.

Aucune restructuration

43. Sous réserve des articles 51 à 54 :

a) aucune condition d'emploi établie après la date d'entrée en vigueur de la présente loi ne peut prévoir de restructuration des taux de salaire au cours de toute période commençant au cours de la période de contrôle;

b) toute condition d'emploi établie au cours de la période allant du 8 décembre 2008 à la date d'entrée en vigueur de la présente loi et prévoyant une restructuration des taux de salaire au cours de toute période commençant au cours de la période de contrôle est inopérante ou réputée n'être jamais entrée en vigueur;

c) toute condition d'emploi établie avant le 8 décembre 2008 et prévoyant une restructuration des taux de salaire au cours de toute période commençant au cours de la période allant du 8 décembre 2008 au 31 mars 2011 est inopérante ou réputée n'être jamais entrée en vigueur.

Après l'entrée en vigueur — aucune augmentation de la rémunération additionnelle

44. Aucune condition d'emploi établie après la date d'entrée en vigueur de la présente loi ne peut, à l'égard de toute période commençant au cours de la période de contrôle, prévoir une augmentation des montants ou des taux de toute rémunération additionnelle applicable, avant la prise d'effet de la condition d'emploi, aux employés régis par celle-ci.

Du 8 décembre 2008 à l'entrée en vigueur — aucune augmentation de la rémunération additionnelle

45. Est inopérante ou réputée n'être jamais entrée en vigueur toute disposition de conditions d'emploi établies au cours de la période allant du 8 décembre 2008 à la date d'entrée en vigueur de la présente loi prévoyant, à l'égard de toute période commençant au cours de la période de contrôle, une augmentation des montants ou des taux de toute rémunération additionnelle applicable, avant la prise d'effet des conditions d'emploi, aux employés régis par celles-ci.

Avant le 8 décembre 2008 — aucune augmentation de la rémunération additionnelle

46. Est inopérante ou réputée n'être jamais entrée en vigueur toute disposition de conditions d'emploi établies avant le 8 décembre 2008 prévoyant, à l'égard de toute période commençant au cours de la période allant du 8 décembre 2008 au 31 mars 2011, une augmentation des montants ou des taux de

toute rémunération additionnelle applicable, avant la première période qui commence le 8 décembre 2008 ou après cette date, aux employés régis par ces conditions d'emploi.

Après l'entrée en vigueur — aucune nouvelle rémunération additionnelle

47. Aucune condition d'emploi établie après la date d'entrée en vigueur de la présente loi ne peut, à l'égard de toute période commençant au cours de la période de contrôle, prévoir de rémunération additionnelle qui est nouvelle par rapport à celle applicable, avant la prise d'effet de la condition d'emploi, aux employés régis par celle-ci.

Du 8 décembre 2008 à l'entrée en vigueur — aucune nouvelle rémunération additionnelle

48. Est inopérante ou réputée n'être jamais entrée en vigueur toute disposition de conditions d'emploi établies au cours de la période allant du 8 décembre 2008 à la date d'entrée en vigueur de la présente loi prévoyant, à l'égard de toute période commençant au cours de la période de contrôle, une rémunération additionnelle qui est nouvelle par rapport à celle applicable, avant la prise d'effet des conditions d'emploi, aux employés régis par celles-ci.

Avant le 8 décembre 2008 — aucune nouvelle rémunération additionnelle

49. Est inopérante ou réputée n'être jamais entrée en vigueur toute disposition de conditions d'emploi établies avant le 8 décembre 2008 prévoyant, à l'égard de toute période commençant au cours de la période allant du 8 décembre 2008 au 31 mars 2011, une rémunération additionnelle qui est nouvelle par rapport à celle applicable, avant la première période qui commence le 8 décembre 2008 ou après cette date, aux employés régis par ces conditions d'emploi.

Agence des services frontaliers du Canada

50. Les articles 44 à 46 sont sans effet à l'égard des notes sur la rémunération visant uniquement les employés de l'Agence des services frontaliers du Canada qui ont été transférés à cet organisme au moment de sa création, mais les taux prévus à ces notes ne peuvent, à l'égard de toute période commençant au cours de tout exercice visé à l'article 16, être supérieurs à ceux prévus à cet article pour cet exercice.

Groupe des services frontaliers

51. Les règles ci-après s'appliquent à l'égard des conditions d'emploi régissant les employés du groupe des services frontaliers dont l'employeur est Sa Majesté, représentée par le Conseil du Trésor :

a) si la restructuration visée à l'alinéa 31*a*) se produit, les conditions d'emploi établies après la date d'entrée en vigueur de la présente loi peuvent, malgré l'alinéa 43*a*), prévoir une restructuration des taux de salaire au cours des exercices 2007-2008 ou 2009-2010, suivant une transposition de classification, et les augmentations prévues à l'article 16 s'appliquent aux taux de salaire ainsi restructurés;

b) si des conditions d'emploi établies au cours de la période allant du 8 décembre 2008 à la date d'entrée en vigueur de la présente loi contiennent une disposition prévoyant une restructuration des taux de salaire au cours des exercices 2007-2008 ou 2009-2010, suivant une transposition de classification, et si la restructuration visée à l'alinéa 31*b*) se produit, l'alinéa 43*b*) est sans effet à l'égard de cette disposition et les augmentations prévues à l'article 16 s'appliquent aux taux de salaire ainsi restructurés;

c) si des conditions d'emploi établies avant le 8 décembre 2008 contiennent une disposition prévoyant une restructuration des taux de salaire au cours de l'exercice 2009-2010, suivant une transposition de classification, et si la restructuration visée à l'alinéa 31*c*) se produit, l'alinéa 43*c*) est sans effet à l'égard de cette disposition et l'augmentation prévue à l'article 16 s'applique aux taux de salaire ainsi restructurés.

Groupes visés par des taux de salaire nationaux

52. Les règles ci-après s'appliquent à l'égard des conditions d'emploi régissant les employés du groupe des services de l'exploitation dont l'employeur est Sa Majesté, représentée par le Conseil du Trésor, ainsi que les employés du groupe manoeuvres et hommes de métiers et du groupe des services divers dont l'employeur est Sa Majesté, représentée par soit l'Agence Parcs Canada, soit l'Agence canadienne d'inspection des aliments :

a) si la restructuration visée à l'alinéa 32*a*) se produit, les conditions d'emploi établies après la date d'entrée en vigueur de la présente loi peuvent, malgré l'alinéa 43*a*), prévoir une restructuration des taux de salaire au cours de l'exercice 2009-2010 en vue d'établir des taux nationaux, et l'augmentation prévue à l'article 16 s'applique aux taux de salaire ainsi restructurés;

b) si des conditions d'emploi établies au cours de la période allant du 8 décembre 2008 à la date d'entrée en vigueur de la présente loi contiennent une disposition prévoyant une restructuration des taux de salaire au cours de l'exercice 2009-2010 en vue d'établir des taux nationaux, et si la restructuration visée à l'alinéa 32*b*) se produit, l'alinéa 43*b*) est sans effet à l'égard de cette disposition et l'augmentation prévue à l'article 16 s'applique aux taux de salaire ainsi restructurés;

c) si des conditions d'emploi établies avant le 8 décembre 2008 contiennent une disposition prévoyant une restructuration des taux de salaire au cours de l'exercice 2009-2010 en vue d'établir des taux nationaux, et si la restructuration visée à l'alinéa 32*c*) se produit, l'alinéa 43*c*) est sans effet à l'égard de cette disposition et l'augmentation prévue à l'article 16 s'applique aux taux de salaire ainsi restructurés.

Groupe des officiers de navire

53. Les règles ci-après s'appliquent à l'égard de conditions d'emploi établies avant le 8 décembre 2008 et régissant les employés du groupe des officiers de navire dont l'employeur est Sa Majesté, représentée par le Conseil du Trésor :

a) l'alinéa 43*c*) est sans effet à l'égard de toute disposition de ces conditions d'emploi prévoyant une restructuration des taux de salaire au cours de l'exercice 2010-2011 et l'augmentation prévue à l'article 16 s'applique aux taux de salaire ainsi restructurés;

b) l'article 49 est sans effet à l'égard de toute disposition de ces conditions d'emploi prévoyant le versement, au cours de l'exercice 2010-2011, d'une somme pour compenser l'élimination du facteur de congés annuels.

Groupe du droit

54. (1) Les règles ci-après s'appliquent à l'égard des conditions d'emploi régissant les employés du groupe du droit dont l'employeur est Sa Majesté, représentée par le Conseil du Trésor, et de toute période commençant au cours de la période de contrôle :

a) dans le cas de conditions d'emploi établies après la date d'entrée en vigueur de la présente loi :

(i) leurs dispositions qui prévoient des augmentations des taux de salaire ne peuvent avoir un effet rétroactif au-delà du 10 mai 2006,

(ii) toute augmentation des taux de salaire qu'elles prévoient à l'égard de toute période commençant au cours de l'exercice 2006-2007 doit être fondée sur les taux de salaire figurant à l'annexe 2,

(iii) elles doivent prévoir pour tous les employés du groupe les mêmes régimes de rémunération au rendement — et les mêmes montants ou taux pour un niveau de poste donné — que ceux en vigueur le 9 mai 2006 pour des employés de ce groupe, mais ces régimes ne peuvent avoir d'effet rétroactif,

(iv) elles peuvent prévoir toute rémunération additionnelle — autre qu'une prime de rendement — s'appliquant à tout niveau de poste de ce groupe le 9 mai 2006, mais le montant ou le taux de celle-ci ne peut, pour un niveau donné, être supérieur au plus élevé des montants ou taux de la rémunération additionnelle applicable à tout employé occupant un poste de ce niveau à cette date,

(v) elles ne peuvent prévoir de rémunération additionnelle dont aucun employé de ce groupe ne bénéficiait le 9 mai 2006;

b) dans le cas de conditions d'emploi établies à la date d'entrée en vigueur de la présente loi ou avant cette date :

(i) si telle de leurs dispositions a un effet rétroactif au-delà du 10 mai 2006, cette rétroactivité est réputée n'avoir jamais eu d'effet, la disposition est réputée avoir un effet rétroactif au 10 mai 2006 et le premier jour de toutes les autres périodes prévues dans celle-ci est reporté d'un nombre de jours égal au nombre de jours écoulés entre la date originale de sa prise d'effet et le 10 mai 2006,

(ii) si les augmentations prévues par les conditions d'emploi pour toute période commençant au cours de l'exercice 2006-2007 sont fondées sur des taux de salaire supérieurs à ceux figurant à l'annexe 2, ces taux de salaire supérieurs sont inopérants ou réputés n'être jamais entrés en vigueur et les augmentations sont réputées être fondées sur les taux de salaire figurant à cette annexe,

(iii) si le sous-alinéa (ii) s'applique, les dispositions prévoyant les taux de salaire pour toutes les autres périodes commençant le 31 mars 2011 ou avant cette date sont inopérantes ou réputées n'être jamais entrées en vigueur et les taux de salaire qui y sont prévus sont réputés être les taux de salaire en vigueur avant chaque période en application de la présente loi,

(iv) si elles prévoient un régime de rémunération au rendement différent — ou si les montants ou les taux pour un niveau de poste donné sont différents — de tout régime en vigueur le 9 mai 2006 pour des employés de ce groupe, ou si elles prévoient que le régime a un effet rétroactif, les dispositions qui le prévoient sont inopérantes ou réputées n'être jamais entrées en vigueur et sont réputées prévoir, à compter de l'établissement des conditions d'emploi, pour tous les employés du groupe, les mêmes régimes de rémunération au rendement — et les mêmes montants ou taux pour un niveau de poste donné — que ceux en vigueur le 9 mai 2006 pour des employés de ce groupe,

(v) si elles ne prévoient pas de régime de rémunération au rendement, elles sont réputées prévoir, à compter de l'établissement des conditions d'emploi, pour tous les employés du groupe, les mêmes régimes de rémunération au rendement — et les mêmes montants et taux pour un niveau de poste donné — que ceux en vigueur le 9 mai 2006 pour des employés de ce groupe,

(vi) si elles prévoient une rémunération additionnelle — autre qu'une prime de rendement — applicable aux employés de ce groupe le 9 mai 2006 et que le montant ou le taux de celle-ci est, à l'égard des employés d'un niveau de poste donné, supérieur au plus élevé des montants ou taux applicables aux employés de ce niveau à cette date, les dispositions qui la prévoient sont inopérantes ou réputées n'être jamais entrées en vigueur et sont réputées prévoir une rémunération additionnelle dont le montant ou le taux est équivalent au plus élevé des montants ou taux applicables à ces employés à cette date,

(vii) si elles prévoient une rémunération additionnelle dont aucun employé de ce groupe ne bénéficiait le 9 mai 2006, les dispositions qui la prévoient sont inopérantes ou réputées n'être jamais entrées en vigueur.

Précision

(2) Il est entendu que les autres dispositions de la présente loi qui ne sont pas incompatibles avec les règles prévues au paragraphe (1) s'appliquent aux conditions d'emploi régissant les employés du groupe du droit.

Parlementaires

Augmentation

55. (1) Malgré les paragraphes 55.1(2), 62.1(2), 62.2(2) et 62.3(2) de la *Loi sur le Parlement du Canada* et les paragraphes 4.1(2), (4) et (6) de la *Loi sur les traitements*, les indemnités et traitements des sénateurs et députés sont, pour l'exercice 2009-2010, augmentés selon un taux de un et demi pour cent.

Aucune augmentation

(2) Malgré les dispositions mentionnées au paragraphe (1), les indemnités et traitements des sénateurs et députés ne subissent aucune augmentation pour chacun des exercices 2010-2011, 2011-2012 et 2012-2013.

Transition — exercice 2013-2014

(3) L'indice visé aux dispositions mentionnées au paragraphe (1) s'applique, pour le calcul des indemnités et traitements des sénateurs et députés pour l'exercice 2013-2014, à l'égard des indemnités et traitements qu'ils touchent pour l'exercice 2009-2010.

2009, ch. 2, art. 393 « 55 »;
2010, ch. 12, art. 1649.

Dispositions générales

Dispositions inopérantes

56. Est inopérante toute disposition d'une convention collective conclue — ou d'une décision arbitrale rendue ou de conditions d'emploi établies — après l'entrée en vigueur de la présente loi et incompatible avec celle-ci.

Indemnisation interdite

57. Aucune disposition d'une convention collective conclue — ou d'une décision arbitrale rendue ou de conditions d'emploi établies — après la date d'entrée en vigueur de la présente loi ne peut prévoir une indemnisation des employés pour les sommes qu'ils n'ont pas reçues en raison des mesures de contrôle prévues à la présente loi.

Invalidité de certaines dispositions

58. Les dispositions d'une convention collective conclue — ou d'une décision arbitrale rendue ou de conditions d'emploi établies — à la date d'entrée en vigueur de la présente loi ou avant cette date prévoyant une indemnisation des employés pour les sommes qu'ils n'ont pas reçues en raison des mesures de contrôle prévues à la présente loi sont inopérantes ou réputées n'être jamais entrées en vigueur.

Modification interdite des régimes de rémunération au rendement

59. Aucune disposition d'une convention collective conclue — ou d'une décision arbitrale rendue ou de conditions d'emploi établies — après la date d'entrée en vigueur de la présente loi ne peut, à l'égard de toute période commençant au cours de la période de contrôle, modifier les régimes de rémunération au rendement — y compris les montants ou les taux —, qui s'appliquent aux employés régis par la convention, la décision ou les conditions d'emploi.

Régimes de rémunération au rendement — modifications inopérantes

60. Si une disposition d'une convention collective conclue — ou d'une décision arbitrale rendue ou de conditions d'emploi établies — au cours de la période allant du 8 décembre 2008 à la date d'entrée en vigueur de la présente loi modifie, à l'égard de toute période commençant au cours de la période de contrôle, les régimes de rémunération au rendement — y compris les montants ou les taux — qui s'appliquent aux employés régis par la convention, la décision ou les conditions d'emploi, les modifications sont inopérantes ou réputées n'être jamais entrées en vigueur.

Régimes de rémunération au rendement — modifications inopérantes

61. Si une disposition d'une convention collective conclue — ou d'une décision arbitrale rendue ou de conditions d'emploi établies — avant le 8 décembre 2008 modifie, à l'égard de toute période commençant au cours de la période allant du 8 décembre 2008 au 31 mars 2011, les régimes de rémunération au rendement — y compris les montants ou les taux — qui s'appliquent aux employés régis par la convention, la décision ou les conditions d'emploi, les modifications sont inopérantes ou réputées n'être jamais entrées en vigueur.

Pouvoir du Conseil du Trésor

62. Malgré les articles 44 à 49, le Conseil du Trésor peut créer une nouvelle allocation applicable aux membres de la Gendarmerie royale du Canada ou modifier le montant ou le taux d'une allocation qu'ils reçoivent s'il estime qu'une telle mesure est indispensable à la mise en oeuvre de toute initiative de transformation relative à cet organisme.

EXÉCUTION

Attributions du Conseil du Trésor

63. (1) Le Conseil du Trésor a les attributions nécessaires pour lui permettre d'établir si l'employeur d'employés visés par la présente loi — sauf ceux visés aux alinéas 13(1)*c*) et (3)*a*) — s'y conforme.

Renseignements et documents

(2) Dans l'exercice de ces attributions, le Conseil du Trésor peut exiger de l'employeur les renseignements et les documents qu'il estime nécessaires.

Directives du Conseil du Trésor

(3) Le Conseil du Trésor peut donner les directives qu'il juge indiquées pour remédier à la situation dans les cas où il constate l'inobservation de la présente loi par l'employeur.

Recouvrement

64. (1) Toute somme supérieure à celle qui aurait dû être versée à une personne — y compris avant la date d'entrée en vigueur de la présente loi — en application de la présente loi peut être recouvrée à titre de créance de Sa Majesté.

Paiement en trop

(2) Toute somme constituant une créance de Sa Majesté au titre du paragraphe (1) est réputée être un paiement en trop visé au paragraphe 155(3) de la *Loi sur la gestion des finances publiques*.

Précision

(3) Il est entendu que le paragraphe (1) s'applique notamment à l'égard des sommes suivantes :

a) toute somme versée au titre d'une disposition que la présente loi répute inopérante ou n'être jamais entrée en vigueur;

b) toute somme dont le versement est fondé sur une somme visée à l'alinéa *a*).

Décrets

65. Le gouverneur en conseil peut par décret, sur recommandation du Conseil du Trésor, ajouter à l'annexe 1 ou en retrancher le nom de toute société d'État ou de tout organisme public.

ANNEXE 1

(articles 13 et 65)

SOCIÉTÉS D'ÉTAT ET ORGANISMES PUBLICS

Bureau du commissaire du Centre de la sécurité des télécommunications
Office of the Communications Security Establishment Commissioner
Centre canadien d'hygiène et de sécurité au travail
Canadian Centre for Occupational Health and Safety
Centre de recherches pour le développement international
International Development Research Centre
Commission canadienne du tourisme
Canadian Tourism Commission
Commission des champs de bataille nationaux
The National Battlefields Commission
Conseil des Arts du Canada
Canada Council for the Arts
Corporation commerciale canadienne
Canadian Commercial Corporation
Corporation du Centre national des Arts
National Arts Centre Corporation
Musée des beaux-arts du Canada
National Gallery of Canada
Musée canadien de la nature
Canadian Museum of Nature
Musée canadien de l'immigration du Quai 21
Canadian Museum of Immigration at Pier 21
Musée canadien des civilisations
Canadian Museum of Civilization
Musée national des sciences et de la technologie
National Museum of Science and Technology
Société Radio-Canada
Canadian Broadcasting Corporation
Téléfilm Canada
Telefilm Canada

2009, ch. 2, art. 393 « ann. 1 »;
2010, ch. 7, art. 7.

ANNEXE 2

(articles 34 et 54)

TAUX DE SALAIRE — EMPLOYÉS DU GROUPE DU DROIT

Toutes les régions sauf celle de Toronto	Minimum	Maximum
LA-DEV	27 410 $	62 155 $
LA-01	54 580 $	77 868 $
LA-02(A) ou LA-02(I)	75 622 $	108 525 $
LA-02(B) ou LA-02(II)	94 097 $	119 975 $
LA-03(A)	107 300 $	136 300 $
LA-03(B)	124 400 $	152 200 $
LA-03(C)	141 700 $	172 800 $

Région de Toronto	Minimum	Maximum
LA-DEV	27 410 $	62 155 $
LA-01	54 585 $	77 868 $
LA-02(A) ou LA-02(I)	75 630 $	124 940 $
LA-02(B) ou LA-02(II)	98 840 $	138 075 $
LA-03(A)	113 600 $	148 100 $
LA-03(B)	124 400 $	152 200 $
LA-03(C)	141 700 $	172 800 $