

# ***FAQ - Leave Reconciliation Initiative***

## **1. Does a department have the authority to conduct an internal audit in relation to such matters as leave of absence reports?**

Answer: Yes. Each department of the federal public administration has obligations pursuant to Part 1.1 of the [Financial Administration Act \(FAA\)](#) to, among other things, appoint an audit committee.

Additionally, the deputy minister has an obligation in his or her role as an accounting officer to report to the appropriate committees of the Senate and the House of Commons on such things as the measures taken to maintain effective systems of internal control in the department and the performance of other specific duties assigned to him or her by or under this or any other Act in relation to the administration of the department. For more information, please refer to [Part 1.1 of the FAA](#).

## **2. Under what authority does a department have the right to go back in time to correct anomalies that were identified in an internal audit report?**

Answer: The *FAA* allows for the recovery of overpayments on account of salary, wages, pays or pay allowances and authorizes Treasury Board to develop directives in this regard. See ss. [38, 39 and 155 \(3\) of the FAA](#) and the [Treasury Board's Directive on Terms and Conditions of Employment](#) (Section 15 of the Appendix).

The AJC is of the view that leaves do not fall within the meaning of overpayments under section 155 (3) of the *FAA*. This therefore means that the authority to recover would fall under the department's management rights set out in section 5.01 of the collective agreement.

Such management rights would give the employer some discretion to correct errors. However, according to the PSLRB decision in [Murchison v. Treasury Board \(HRSDC\)](#), such discretion

must be exercised reasonably. According to this decision, the recovery caused by the negligence of the employer, which allowed the amount to balloon over years, would likely be an unreasonable exercise of discretion. Not to mention that our members have likely detrimentally relied on the employer's approved records being accurate.

### **3. How far back can a department claim an overpayment? In other words, what is the limitation period?**

Answer: Any government claim for overpayment on account of salary, wages, pay or pay allowances, is subject to a 6-year limitation period pursuant to s. 32 of the [Crown Liability and Crown Proceedings Act](#). This was confirmed in 2003 by the Supreme Court of Canada in [Markevich v. Canada](#) and in 2009 by the Federal Court in [Gardner v. Canada \(Border Services Agency\)](#).

This limitation period is further acknowledged in the attached [Treasury Board memo](#). It provides clear insight on why members should not acknowledge any discrepancy that falls outside the 6-year limitation period. This will help ensure that members do not assume any potential additional debt beyond 6 years.

Notwithstanding the above, in the case of recoveries related to leaves of absence, management's discretion should be exercised reasonably. What is reasonable is a question for the PSLRB.

### **4. Does the DOJ or PPSC's recent leave reconciliation initiative fall within the purview of the collective agreement?**

Answer: Yes. As explained above, management rights provide for a reasonable exercise of discretion. See [Murchison v. Treasury Board \(HRSDC\)](#).

### **5. Why were the management's requirements to document and reconcile leave not made known to me and why do I now have the onus of demonstrating that**

**my prior leaves were approved for legitimate purposes? Doesn't management have a role to play here?**

Answer: None of this makes sense to us either. The AJC is at a loss on why management is not being held accountable for failure to apply and enforce a process that we know has been inconsistently applied and communicated to our members for years. All we can suggest is for you to ask management to consider in clear situations where you have received contradictory, or no instructions, regarding your data entry / reporting obligations, whether some or all of the identified anomalies may be written-off. The AJC has filed a policy grievance with Treasury Board in support of its members and has asked the Treasury Board to suspend the current reconciliation process.

**6. What happens if leave discrepancies are identified and I am unable to account for them? Am I at risk of being disciplined?**

Answer: If you and your manager are unable to retrace the history, in all likelihood, either iCase or Peoplesoft will need to be relied upon. In the meantime, pending resolution of the policy grievance, we encourage you to discuss with your manager to ensure that you have access to all potential sources of information such as payroll or personnel files provided to you before conceding a shortfall.

It is highly unlikely that this reconciliation process will trigger discipline. However there may be very exceptional cases where the department may decide to initiate an investigation in suspected cases of wrongdoing. Please note that the onus of demonstrating misconduct would rest with the department in cases of discipline. For more information regarding the disciplinary process, you may consult the [Treasury Board Guidelines for Discipline](#).

**7. Is the time I spend reconciling my leave records considered to be time worked?**

Answer: Absolutely. Please be sure to docket this time as required.

**8. Does a department require my consent to deduct any claimed overpayment from my pay or can the department unilaterally deduct amounts owing?**

Answer: Unlike the provinces where the law requires consent from individual employees to recover debts, there are no such consent requirements at the federal level for overpayments made under the [FAA](#). The employer has some discretion under its management rights to reconcile leave discrepancies unilaterally however any such reconciliation to a leave bank or potential claim for repayment must be exercised reasonably and in accordance with the collective agreement.

**9. Shouldn't the leave reconciliation discussions with my manager take into account any hours worked in excess of 37.5 hours per week for which no overtime was claimed?**

Answer: To the extent that you are able to show that you have worked in excess of the normal hours of work, i.e. 37.5 hours, but where no overtime was claimed, we encourage you to have these discussions with your manager in the hopes of arriving at a mutually acceptable resolution, subject to the outcome of the AJC's policy grievance, of course.

**10. Can I grieve a request for reimbursement of an overpayment where I disagree with the amounts allegedly owing?**

Answer: The AJC has filed a policy grievance on behalf of all of its impacted members. The remedies being sought include but are not limited to a declaration that the departments' discretion has been exercised unreasonably and a request that any prior adverse collection/reconciliation be reversed.

The AJC invites all members who are adversely impacted by this exercise to complete and submit an [Incident Report](#) to [admin@ajc-ajj.ca](mailto:admin@ajc-ajj.ca) in the event you are willing and prepared to participate as a potential witness should the need arise. You will receive an acknowledgement of receipt only and may be contacted for further details if required.

## **11 - Do I still meet with my manager to reconcile?**

Yes if your manager is requesting it.

Different time frames and deadlines have been provided to our members, depending on where they work. Our advice is to go through the exercise to the best of your abilities in accordance with the “work now, grieve later” principle, pending any employer decision to put the process on hold.

We also suggest that you document any concerns you may have by sending an email to your manager and inform your manager by email if the short time frames are seriously hampering your ability to respond in a fully, thought-out and complete manner.

As a grievance has already been filed to protect your rights, you need not undergo the exercise under reserve as the AJC's policy grievance covers all members covered by this exercise. That said, it is up to you whether you wish to note that your comments or acknowledgements are subject to your remedial rights under the policy grievance.

## **12 - When does the AJC anticipate a resolution to the grievance?**

The AJC has asked Treasury Board to provide a hearing date as soon as possible. That said, and in order to better manage membership expectations, one should not assume that the grievance will be settled before the end of the August 2013.

Treasury Board has 15 working days in which to respond to our grievance following the AJC's presentation, following which, the matter may be referred to arbitration for hearing before the Public Service Labour Relations Act. Currently, the PSLRB is scheduling future hearing dates into February 2014.

Therefore, should Treasury Board's response be unsatisfactory, the AJC will be requesting that the arbitration hearing be expedited. For more information regarding grievance procedure timelines, you may consult the [Grievance Procedure sections](#) set out in the collective agreement.