

MEMORANDUM OF SETTLEMENT

(“MOS”)

of all outstanding matters in respect of Bill 124 remedy negotiations

BETWEEN:

**The Crown in Right of Ontario
(as represented by Treasury Board Secretariat and the Ministry of Education)**

(the “Crown”)

AND

The Canadian Union of Public Employees

(the “Union”)

WHEREAS the Union was the employee bargaining agency in respect of central collective bargaining under the *School Boards Collective Bargaining Act, 2014* (“**SBCBA**”) in respect of certain bargaining units, that are not teachers’ bargaining units, pursuant to subsection 3(1) of Ontario Regulation 493/18 (the “**CUPE EW Bargaining Units**”);

AND WHEREAS the Union, the Crown and the applicable Council of Trustees’ Associations (as the employer bargaining agency) (the “**Bargaining Parties**”), as per the *SBCBA*, negotiated and subsequently ratified/approved central terms as part of collective agreements for each of the CUPE EW Bargaining Units for the period of September 1, 2019 to August 31, 2022 (the “**Moderation Period**”) (together, the “**Moderated Collective Agreements**”);

AND WHEREAS the *Protecting a Sustainable Public Sector for Future Generations Act, 2019* (“**PSPSFGA**” or “**Bill 124**”) was previously in effect and the Bargaining Parties were subject to the terms and conditions of the PSPSFGA during their round of central collective bargaining negotiations for the Moderated Collective Agreements;

AND WHEREAS the Union and the Crown (together, the “**Parties**”) are among the parties to an application (Court File No. CV-20-00637314-0000) in which the Union, among others, challenged the constitutional validity of various provisions of the PSPSFGA (the “**OFL Application**”);

AND WHEREAS the Ontario Superior Court of Justice heard the OFL Application, together with nine other applications (collectively the “**Applications**”), and issued a joint decision dated November 29, 2022 on the issues of liability in the applications (*Ontario English Catholic Teachers Association et al. v. His Majesty the King in right of Ontario et al*, 2022 ONSC 6658) in which it held the PSPSFGA to be contrary to section 2(d) of the *Canadian Charter of Rights and Freedoms* and not justified under section 1 of the *Charter* (the “**SCJ Decision**”);

AND WHEREAS by Order dated November 29, 2022, the PSPSFGA was declared, pursuant to s. 52(1) of the *Constitution Act, 1982*, to be of no force and effect, the balance of the declaratory

relief sought by the Union was dismissed, and consideration of any remedy as a result of the PSPSFGA having been in effect since June of 2019 was deferred to a further hearing before the Honourable Justice Koehnen (the “**SCJ Order**”);

AND WHEREAS the Crown has appealed the SCJ Order and the reasons of the SCJ Decision to the Court of Appeal for Ontario (Court of Appeal File No: COA-23-CV-0010) (the “**Appeal**”), with such Appeal having been heard orally by the Court of Appeal for Ontario on June 21, 22 and 23, 2023 and the Court’s decision being reserved and pending release as of the date of this MOS;

AND WHEREAS the Parties wish to settle in a full and final settlement any and all issues and claims arising from the OFL Application, the liability findings in the SCJ Decision, and in respect of the PSPSFGA and its impact on the Moderated Collective Agreements, for the CUPE EW Bargaining Units only, without the necessity of further litigation between the Parties;

NOW THEREFORE, the Parties agree to the following:

1. The recitals form part of this MOS.
2. The Union and the Crown agree that the central terms of the Moderated Collective Agreements, as ratified/approved by the applicable Bargaining Parties, remain in place and are unaltered, save and except by the following express modifications:
 - a) The Union and Crown agree to the following across-the-board (“**ATB**”) compensation increases (collectively, the “**Fixed Compensation Increases**”) for each of the Moderated Collective Agreements with respect to all compensatory amounts to which the original 1% increase applied:
 - i) September 1, 2019: 0.75%
 - ii) September 1, 2020: 0.75%
 - b) In respect of the third year of the Moderated Collective Agreements (i.e. the period of September 1, 2021 – August 31, 2022), the Parties agree to a further compensation increase for each of the Moderated Collective Agreements (the “**Year 3 Increase**”) equal to the increase awarded in respect of education worker bargaining units for the same year 3 period by the arbitration board in the arbitration process (the “**OSSTF Arbitration**”) established by the Memorandum of Settlement between the Crown, the Ontario Secondary School Teachers’ Federation, and Paul Wayling and Melodie Gondek executed August 25-26, 2023 (the “**OSSTF Remedy Agreement**”).
 - c) For greater certainty:
 - i) If the parties to the OSSTF Arbitration agree to a settled year 3 increase in respect of education worker bargaining units before an award is issued by the arbitration board, thereby settling the OSSTF Arbitration in respect of such bargaining units, the Year 3 Increase shall be equal to the increase agreed to in that settlement.
 - ii) If the award resulting from the OSSTF Arbitration in respect of education worker bargaining units is the subject of an application for judicial review by a party to that arbitration, the Year 3 Increase shall be the amount finally determined after the disposition of the application, any appeals, and any matter remitted to the arbitration board.

- iii) The Union shall not be a party to the OSSTF Arbitration and shall not commence or participate in any application for judicial review or other proceeding reviewing the outcome of the OSSTF Arbitration.
 - iv) The Parties agree that the Year 3 Increase shall be determined by the increase awarded in the OSSTF Arbitration (or any settlement thereof) regardless of whether the OSSTF Arbitration is conducted in accordance with the OSSTF MOS.
 - v) If the arbitration board in the OSSTF Arbitration issues any further award in respect of matters relating to the implementation of its decision, the Union, the Crown, and any arbitrator appointed under clause (d) herein shall be bound by that further award with respect to any like matters arising from the implementation of the Year 3 Increase.
- d) Any disputes related to the implementation of the Year 3 Increase shall be referred to a sole arbitrator for determination. In the event of a dispute requiring adjudication, the Parties shall jointly request Arbitrator Kaplan to act as arbitrator. In the event that Arbitrator Kaplan is unwilling or unable to act, the Parties will make efforts to mutually agree to an alternate arbitrator. In the event that the parties cannot agree on a substitute for William Kaplan, each of the Union and the Crown shall submit a list of 3 names to the Chair of the Ontario Labour Relations Board. If there is a single name that appears on both lists, that person shall be invited to act as arbitrator. If there is more than one name that appears on both lists or if there are no names in common on the lists, the Chair of the Ontario Labour Relations Board shall select the arbitrator from the individuals on the lists submitted by the Parties as described herein. A decision of the arbitrator will be final and binding and not subject to review or appeal.
- e) The Fixed Compensation Increases and the Year 3 Increase (collectively, the “**Compensation Increases**”) are in addition to the 1% annual ATB increases previously implemented under the Moderated Collective Agreements for the same periods.
- f) The Compensation Increases will be compounded and included in the salary grids, wage schedules, applicable premiums and applicable allowances in effect on August 31, 2019, August 31, 2020, and August 31, 2021, as applicable, and will form the basis for the compensation improvements set out in paragraph 13 of the Memorandum of Settlement between the Union and the Council of Trustees’ Associations (and agreed to by the Crown) dated November 20, 2022. For clarity, with respect to premiums and allowances, these Compensation Increases will only apply as a flow-through to applicable premiums and allowances that were increased with 1% ATBs in the Moderated Collective Agreements.
- g) Compensation Increases will apply only to those persons employed in each of the years covered by the scope of the Moderated Collective Agreements, and will be pro-rated as applicable having regard to the actual period of employment and FTE status.
- h) Where a compensatory amount under a Moderated Collective Agreement is already pensionable, these Compensation Increases will also be pensionable.

3. The Parties agree that neither of the following constitute “increases for general salary agreed to at the other education worker table (s)” for the purposes of the final paragraph of section 13 of the Memorandum of Settlement of central terms between the Union and the Council of Trustees’ Associations, and agreed to by the Crown, dated October 6, 2019:
 - a) an agreement on salary increases reached between the Crown and any labour union, employee bargaining agency, or similar entity as a settlement of actual or potential litigation, including litigation relating to the constitutionality of the *Protecting a Sustainable Public Sector for Future Generations Act, 2019*; or
 - b) an award made in an arbitration or a remedy hearing involving the Crown and any labour union, employee bargaining agency, or similar entity as a process to resolve actual or potential litigation, including litigation relating to the constitutionality of the *Protecting a Sustainable Public Sector for Future Generations Act, 2019*.

The Parties shall not take any contrary position in any litigation or negotiation involving each other and/or any other person.

4. If the Court of Appeal for Ontario has not rendered its decision in the Appeal on all matters before it, the Parties agree that they will notify the Court of their respective withdrawal from further participation in the Appeal with respect to that portion of the appeal solely concerned with the CUPE EW Bargaining Units. For greater certainty, no submissions made by the Union on behalf of all the applicants to the Appeal in respect of the agreed upon division of arguments shall be retracted, nor those of the Crown in response, and the Court may continue to rely upon those submissions, and the Parties hereto will notify the Court of same. Notification to the Court will occur, in the form and content agreed between the Union and the Crown, within 5 business days of the day on which all required approval steps for this MOS have been completed. For further clarity, the Parties agree that the Crown does not waive its right to continue its appeal of the SCJ Order and SCJ Decision’s reasons in so far as it relates to the Applicants in Court File Nos. CV-20-00-636089-0000, CV-20-00636529-0000, CV-20-00638156-0000, CV-20-00646385-0000, CV-20-0084683-0000, CV-20-00653134-0000, CV-20-00653130-0000, and the remaining Applicants in CV-20-636421-000, CV-20-00636524-0000, and CV-20-00637314-0000; or the constitutional validity of the PSPSFGA or to seek leave to appeal to the Supreme Court of Canada from the Court of Appeal for Ontario’s decision if the Crown so chooses. It is also agreed that this MOS is without prejudice to the Crown’s right to exhaust all available avenues of appeal in respect of the validity of the PSPSFGA, including but not limited to any court-ordered remedies in the above listed Applications.
5. The Union agrees that if it participates as a party or intervener in any motion for leave to appeal or appeal to the Supreme Court of Canada from any decision of the Court of Appeal of Ontario in File No. COA-23-CV-0010, or participates in any remedy hearing before the Honourable Justice Koehnen in respect of any of the Applications, the Union shall not take any positions, raise any arguments, or seek any relief whatsoever specifically in respect of the CUPE EW Bargaining Units or any employees in those bargaining units.
6. The Parties agree that the outcome of any remedy determinations that may be made by the Superior Court of Justice in the Applications and the outcome of the Court of Appeal for Ontario’s decision in File No. COA-23-CV-0010 or any further appeal to the Supreme Court of Canada shall have no bearing or effect upon the respective rights and obligations of the Parties under this MOS as it relates to the CUPE EW Bargaining Units only.

7. This MOS and the arbitration decision made pursuant to the OSSTF Arbitration (or any settlement thereof) remain final and binding upon the applicable Parties hereto and shall form the exclusive remedy in respect of any and all issues and claims, including claims that could have been asserted, arising from and within the OFL Application as it relates to the CUPE EW Bargaining Units, the liability findings in the SCJ Decision as they relate to the CUPE EW Bargaining Units, and in respect of the PSPSFGA's impact on the Moderated Collective Agreements.
8. All other monetary and non-monetary issues in dispute related to the PSPSFGA and the Moderated Collective Agreements are hereby withdrawn without prejudice to the positions of the Parties.
9. The Parties agree that nothing in this MOS is an admission or concession of liability or wrongdoing on the part of any of the Parties to this MOS, or their employees, agents, officials and servants.
10. The Parties agree that this signed MOS constitutes the entire agreement between the Parties with respect to the subject matter herein and supersedes any and all prior oral or written agreements, arrangements or understandings between them.
11. The Parties agree that this MOS may be executed electronically and in counterpart.

Dated in Toronto this 16th day of November, 2023.

For the Crown:

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Andrew Demio 11/16/2023

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For the Union:

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Laura Walton 11/16/2023

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Rod McGee 11/16/2023

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Michel Revelin 11/16/2023

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