# ARBITRATION TRIBUNAL

CANADA
PROVINCE OF ONTARIO

Date: May 31, 2018

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**ADJUDICATOR: MAUREEN FLYNN**

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**CANADA POST CORPORATION**
Hereinafter: “the Corporation” or “CPC”

**AND**

**CANADIAN UNION OF POSTAL WORKERS**
Hereinafter: “the Union” or “CUPW”

Collective Agreement: Collective Agreement for Rural and Suburban Mail Carriers between Canada Post Corporation and the Canadian Union of Postal Workers – Expires December 31, 2017 (the “collective agreement”)

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**AWARD OF THE ARBITRATOR**

**(In the matter of a pay equity review process for the Rural and Suburban Mail Carriers)**

269-18 S/A

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## 1. THE CONTEXT OF THE PAY EQUITY REVIEW PROCESS

[1] During the 2009 re-opener round, CUPW stated to the Corporation that Rural and Suburban Mail Carriers ("RSMCs") were mainly women and required equal benefits and treatment. In one of their demands before Arbitrator Keller in 2009-2010, the Union indicated that the skill, effort, responsibility and working conditions of the RSMCs were comparable to other CPC operational workers and that their wage proposal was in line with the Corporation's obligation under the Canadian Human Rights Act (the "Act").

[2] During the 2012 collective agreement negotiations between the parties, CUPW explicitly advised the Corporation that it had an obligation to ensure equality for the RSMCs under the Act. In the 2016 round, the issue of pay equity for the RSMCs was a major demand ultimately leading to the Pay Equity Memorandum of Understanding ("MOU") being signed on September 1, 2016.

[3] Pursuant to the MOU, the Union and the Corporation agreed to undertake a joint pay equity review of the RSMCs in accordance with the Act and the Equal Wages Guidelines (the "Guidelines").

[4] As per the MOU, the parties each nominated an expert, or consultant, who, in turn, both scheduled the steps required for them to produce their reports (pay equity project plan). A Joint Pay Equity Committee ("JPEC") was created to provide guidance and input to the consultants.

[5] On January 27, 2017, the Undersigned was appointed by the Minister of Employment, Workforce Development and Labour, as per paragraph 1.c) of the MOU.

[6] Following discussions with both parties in August 2017, I issued an order providing, in part, that the parties' expert reports be completed by October 16, 2017. The reports were submitted on the agreed-upon time[1]. Following pre-mediation meetings in December 2017, the matter was referred to arbitration without further negotiations, as per Article 21 of the MOU. Hearings were to start on January 9, 2018.

[7] Later in December, the Employer indicated that it wished to revise its expert's report and requested permission to deliver it at a later date. I granted the Employer's request, in part. After further delays, on January 24, 2018, the Corporation filed its amended expert report[2], along with two reports from Mercer[3], a consulting firm. CUPW's expert issued a reply report on February 5, 2018[4]. Arbitration hearings began on February 18, 2018. Fourteen days of hearing were scheduled between February 18 and May 2, 2018.

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[1] Hereinafter, the October 2017 reports shall be referred to as "Ms. Haydon's October report" and "Mr. Durber's October report".

[2] Hereinafter, "Ms. Haydon's January report".

[3] Hereinafter, the "Mercer reports".

[4] Hereinafter, referred to as "Mr. Durber's reply report".

## 2. THE ISSUES

[8] The present case raises the following issues:

a) Should the Permanent Relief Employees ("PREs" be excluded on the basis of a newfound gender incumbency?

b) Was the job evaluation conducted by the experts gender neutral and reliable? How should the experts' methodological differences be resolved? More specifically:

   i. Should a fourth level be added to the emotional effort sub-factor?

   ii. What is the appropriate weighting for all sub-factors?

   iii. What is the appropriate points progression?

   iv. Can the Corporation's expert split certain jobs in her job evaluation?

   v. On the whole, what are the most appropriate results upon which the Tribunal should base its wage gap analysis?

c) For the purpose of determining a potential wage gap, should a direct or an indirect job comparison be conducted?

d) By relying on a notional hourly rate, has the Union proven, on a balance of probabilities, that RSMCs' wages are not equal to the male comparator(s)? In the context of a pay equity review, can the Union reasonably use an "hourly wage" as a wage comparison tool? Should the Tribunal rely on the Corporation's pay per POC methodology instead?

e) What should be included in "wages"?

f) Is monetary valuation of indirect benefits the most appropriate remedy for the past and the future?

g) What is the impact of the agreed retroactivity period on the appropriate remedy?

h) If a wage gap is found, should the damages be reduced to compensate for the potential unreliability of the Union's methodology?

i) What is the jurisdiction of the Undersigned regarding the remedies sought for by the Union?

## 3. THE WITNESSES

[9] In the interest of clarity, a list of witnesses is presented separately in this section.

### FOR THE UNION

[10] Ms. Nancy Beauchamp has been an RSMC for 22 years at the Corporation. She is one of the Union JPEC members. Currently, Ms. Beauchamp is Chief Negotiator for the RSMC bargaining unit in the 2017-2018 negotiations. She was a member of the

RSMC negotiation team in three previous rounds: the 2009 re-opener negotiations, the 2012 and the 2016 negotiations.

[11] Mr. Geoff Bickerton's position with the Union is Director of Research, a position he has held since 1977. He was a member of CUPW bargaining teams, including for the RSMCs and the Urban bargaining units. He participated in all rounds of collective bargaining for both units, notably since 2004 for the former and 1977 for the latter. During these negotiations, Mr. Bickerton would conduct research, financial analysis and serve as an advisor for the Union's negotiating committees and for the National Executive Board.

[12] Ms. Barb McMillan is an RSMC and has been working for the CPC since 1999. She is one of the Union representatives on the JPEC. As a local union president, Ms. McMillan was a member of the union RSMC bargaining unit negotiation team in 2012 and 2016, during which tenure she represented both Letter Carriers ("LCs") and RSMCs.

**Expert Witnesses**

Mr. Paul Durber

[13] Mr. Durber was employed in the federal public service from 1975 to 1998, accumulating 32 years of experience. During those years, Mr. Durber's work focused mainly on compensation and job evaluations and he held various positions including: Research Leader, Compensation Policy Review Project (1975 to 1977); Project Officer, then Senior Project Analyst and then Senior Program Analyst at the Personnel Policy Branch of the Treasury Board Secretariat (1976 to 1983); Chief of Classification and Organization for Consumer and Corporate Affairs (1983 to 1985); Chief of Compensation, House of Commons (1985 to 1989); Director, Pay Equity, Canadian Human Rights Commission (1989 to 1998). Since 1998, Mr. Durber is President of Opus Mundi Canada, an Ottawa-based consultation firm. Mr. Durber was qualified on three occasions as an expert witness before federal tribunals.

Dr. Richard Shillington

[14] Dr. Shillington has a Master's degree in Mathematics and a Ph.D. in Statistics from the University of Waterloo. He has conducted gender equity analyses for five universities, carried out several research projects and written several reports on gender equity. He has presented evidence as an expert in a number of legal proceedings.

## FOR THE CORPORATION

**Witnesses that have appeared and testified before the tribunal**

[15] Ms. Sylvie Charbonneau has been employed by the CPC since 1994. She worked her way up progressively to more senior positions to occupy her current one of Director, National Route Optimization, since May 2017. In this capacity, she is responsible for the proper application of the collective agreements governing both units and of the various manuals. She consults with the unions and manages the impact of transformation initiatives and route restructures.

[16] Mr. Graham Howse, a professional engineer, is a CPC employee since 2000 and holds a degree in industrial engineering from the Technical University of Nova Scotia. Since April 2017, he is Manager of Delivery Strategy Development. Mr. Howse's previous responsibilities at the Corporation include managing and maintaining the complete set of time standards that are used to design and structure LC routes.

[17] Mr. Randy McGrath is currently the Director of Operations, Eastern Ontario, since June 2016. As such, he is responsible for all delivery and mail operations for Eastern Ontario, including urban, suburban and rural mail delivery. He oversees the work of both RSMCs and LCs. Before that, during his 24 years with the Corporation, he has been a Letter Carrier, Mail Service Courier, a Postal Clerk, a Despatcher and Director of the Ottawa Mail Processing Plant.

[18] Mr. Rob Sinclair has been employed by the CPC since 2010 and was responsible for the RSMC and Canadian Postmasters and Assistants Association ("CPAA") portfolios as Director of Labour Relations. In 2012, Mr. Sinclair was appointed Chief Negotiator for the RSMC unit and became responsible for the implementation of the collective agreement that had been negotiated that year. In January 2014, he took a position of Manager for the RSMC Central Region in Ontario to gain field experience of RSMC operations. In the fall of 2014, Mr. Sinclair returned to CPC head office to prepare for the 2015 round of negotiations. He currently holds the position of Director, Labour Relations.

[19] Ms. Susan Whiteley has been employed by the CPC since 1989. Ms. Whiteley initially worked out of the Mail Processing Plant in Vancouver, British Columbia, but from 1990 to 2014, she occupied various positions related to CPC's finances and internal audits. More recently, from 2014 to March 2017, Ms. Whiteley was Director, National RSMC Operations, overseeing a team responsible for policies and procedures, route restructuring and management of RSMCs time and leave system. Since April 2017, Ms. Whitley's incumbent position is Director, Delivery Strategy, but she has been working full time as a CPC representative on the JPEC.

**Witnesses that testified solely through their will-say statements**

[20] Ms. Jenny Bolduc, Acting Director, Disability Management, Wellness and Leave, has been employed by the CPC since 2010. She is responsible for the Corporation's Short and Long-term Disability, Injury on Duty and Extended Disability plans. Administrating leaves of absence and attendance management programs also falls under her responsibility.

[21] Mr. Philippe Boutin has been an employee of CPC since 2002. As Director of Corporate Accounting, he is responsible for maintaining the Corporation's financial records.

[22] Ms. Audrey Lizotte is currently Director, Pension and Benefits Policy for the Corporation, a position she has held since October 2016. Her responsibilities include overseeing CPC contracts with third party benefits providers, ensuring that plans are well managed and identifying opportunities for efficiency and improvements of the pension and benefits plans. Ms. Lizotte is a member of the Law Society of Upper Canada.

[23] Ms. Shari Nurse has been employed by the CPC since 1998 and is currently its Director of Health and Safety. In that capacity, she is responsible for national policy and compliance reporting related to health and safety for all CPC employees.

**Expert Witness**

Ms. Haydon

[24] Ms. Haydon currently owns and operates a consulting firm, since 2014. Her practice focuses on job evaluations, compensation and pay equity, servicing primarily the Ontario provincial public sector. During her undergraduate studies, she worked for boutique research firms in Ottawa. She then worked as a consultant for Deloitte for over 15 years in job evaluation and pay equity.

[25] As a consultant, Ms. Haydon worked with over 200 clients on pay equity issues. She worked on the following five key federal pay equity projects: NAV Canada - development and implementation of a number of job evaluation projects; Canada Post - supported Canada Post analysis of the CPAA pay equity complaint; Greater Toronto Airports Authority – joint union management project working with Public Service Alliance of Canada ("PSAC"); Halifax International Airport – job evaluation and pay equity working with PSAC; Farm Credit Canada – job evaluation and pay equity. Ms. Haydon was qualified once as an expert witness before a tribunal.

## 4. THE EVIDENCE

[26] The evidence section shall present the following themes, in this order: a broad summary of the RSMCs work organization followed by an LCs equivalent, the presentation of both units' route management, the RSCMs and LCs working conditions, a brief history of RSMCs collective bargaining and resulting agreements, the evolution of CPC activities, and the criticisms of both units' route management systems.

[27] Of all the evidence adduced, the Tribunal deems the following as most relevant and integral to this case's resolution.

## A. RSMC WORK ORGANIZATION

[28] Generally speaking, RSMCs are motorized letter carriers that deliver mail and parcels to rural and suburban parts of Canada. This section reviews the daily tasks and responsibilities of RSMCs. As of December 13, 2017, CPC employed 8,905 RSMCs, including Permanent Relief Employees ("PREs") and On Call Relief Employees ("OCREs").[5]

**CPC's Products, Services and Points of Call**

[29] CPC services three main customer groups: consumers (individual Canadians who use postal services for their own personal needs); small business (businesses with fewer

[5] See Ms. Whiteley's Will-say.

than 100 employees that use many of the same services as consumers but require other services as well for their corporate needs); and large companies or entities (banks, major retailers, governments, etc.) that send large volumes of mail.

[30] The Corporation's three main lines of business are: transaction mail, parcels, and direct marketing: comprised of addressed admail (promotional material directed at a specific customer) or unaddressed admail (mailings that target specific customers types such as homes, apartments or businesses in a given area).

[31] RSMCs operate from different types of facilities, which Mr. Bickerton describes as follows: CPAA Corporate-owned offices, in which six or seven employees work and are located in rural areas; Letter Carrier Depots - larger facilities where LCs and RSMCs work side by side; Lead Hand - unsupervised offices; CPAA PM owned - offices installed in premises owned by the Postmaster, which could be a house, a business, etc.; Franchise (Dealer) - an office located inside a private business. Such a diversity in facilities requires different management structures, for instance, CPAA corporate facilities are less supervised than other sites, such as Letter Carrier Depots.

[32] According to information provided by Ms. Whiteley, as of June 2016, there were 7,387 RSMCs working in 2,168 facilities. The clear majority of RSMCs work in Letter Carrier Depots (3,221) and CPAA Corporate-owned offices (3,151). There were 1,433 CPAA corporate offices and 324 Letter Carrier Depots in June 2016.[6] Mr. Bickerton explains that the number of RSMC routes located in Letter Carrier Depots has increased by 273 since 2011.

[33] RSMCs deliver to and retrieve mail from various mail receptacles, also known as transfer points or POCs. Specifically, they deliver and, if applicable, retrieve mail from: community mailboxes ("CMBs"), group mailboxes ("GMBs"), kiosks, lock box assemblies ("LBAs") and rural mailboxes ("RMBs"). They also retrieve mail from street letter boxes ("SLBs").

[34] In more densely populated areas, customers are likely to receive their mail in a CMB. CMBs are mailboxes with several individual customer receptacles, an outgoing mail slot (not always the case) and a parcel compartment. The locks and keys for each receptacle are provided to the customer by CPC. Customers can open their compartment individually, while RSMCs can open the main CMB door to access all compartments at once.

[35] GMBs are also used to deliver mail to many people at one stop. They are green in color and have fewer receptacles than CMBs. The compartment lock is provided by the customer. GMBs do not have a parcel receptacle. They are also equipped with individual doors for customers and a main one for RSMCs.

[36] LBAs are also transfer points with many customers. LBAs are usually located inside apartment or office building lobbies and outdoor walls at plazas or townhouse complexes. Locks are provided by the customers and there is no parcel compartment.

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[6] See tab 3 of Mr. Bickerton Book of Documents.

Just like CMBs and GMBs, they are also equipped with individual doors for customers and a main one for RSMCs.

[37] Kiosks are covered structures with several CMB-resembling receptacles housed together.

[38] Whereas CMBs and LBAs are common in suburban routes, RSMCs also service more rural areas where they deliver to RMBs. RMBs are individual receptacles that are affixed to a 105-115 cm tall post. Each RMB is equipped with a door through which the RSMC delivers and retrieves mail. Customers can use a flag on the RMB that they raise when they have outgoing mail. The mail receptacle has minimum required dimensions.

[39] In her will-say, Ms. Whiteley states that there are 7,437 RSMC routes servicing over 4.7 million POCs. RSMCs service a wide diversity of routes, some involve driving long distances to deliver mail to as few as 12 POCs per day, while others deliver to CMBs in high density areas where they drive short distances and deliver to hundreds of POCs every day. 84% of all RSMC POCs are found in centralized locations, where many POCs are grouped together; this includes GMBs, CMBs, apartments, kiosks and LBAs. She also testifies that Centralized POCs can be found everywhere in the rural network, including remote areas.

**Variables (Personal Contact Items, lock changes and unaddressed admail)**

[40] RSMCs also complete variable work.

[41] Ms. Beauchamp testifies that unaddressed admail, or neighbourhood mail, includes flyers, coupons, free samples and other advertisement without a specific address on them. CPC's corporate customers pay to have them delivered to every customer in a designated area.

[42] Personal Contact Items ("PCIs") are items that require personal contact with the customer to complete the delivery. The contact may require a signature, proof of age or collection of funds.

[43] When customers move or lose their keys, or when locks break or become unusable, a lock change is necessary. When a lock change is required, the LPO assigns the lock change and provides the RSMC with a lock change packet (the new lock, two keys and a "new key issue" form). From then on, no later than the following day, the RSMC must change the lock according to the procedure and record the lock change in her log sheet.

**Beginning of the day and checking in**

[44] Ms. Beauchamp, using a 2014 RSMC training manual titled "Route to a successful start" (hereinafter "2014 RSMC training manual") as a reference, indicates that, when starting their day, RSMCs must first check in with their Local Postal Official ("LPO"). Checking in is not required at facilities were no LPOs work, as can be the case for some rural routes.

**Mail Sorting**

[45] As indicated in the 2014 RSMC training manual, RSMCs must then collect their mail for the day. Depending on the facility, different types of mail will be available at different areas. Not all RSMCs distribute the same type and amount of mail; each route is unique. If applicable to them, RSMCs must pickup and sort "normal" mail, addressed and unaddressed admail and PCIs separately for their route.

[46] RSMCs sort their mail in a sortation case, which is a frame equipped with holes in which the employee inserts mail for delivery. The most common sortation case used by RSMCs is called an A32 sortation case. Each hole represents a series of addresses serviced. Most RSMCs use an A32 sortation case, according to Ms. Whiteley. Only 40 RSMCs in the country use A62 cases, which is a more recent and ergonomic model. Ms. Whiteley indicates that in some locations, due to space restraints, RSMCs sort mail on counter tops, using incomplete A32 cases, or using other, ad hoc methods.

[47] The 2014 RSMC training manual states that each sorting case has a summary of its route either on a case header board or in a binder. The summary contains certain information related to the RSMC's route, such as, but not limited to: the identification of the Retail Postal Outlet ("RPO") where the RSMC drops off items for customer pickups; the keys required to open the mail receptacles on the route; the total number of POCs, or individual customer addresses, serviced on the route; the time at which the mail is available for pickup; the turnaround/last call time, which is when the RSMC must bring all the mail that doesn't belong to her route to the turnaround area and also when she must collect any remaining mail to bring back to her workstation (sorting case) to sort; a street sortation section which indicates the ranges of addresses for streets on the route. This list allows the RSMC to quickly determine if a given address is part of a specific section of her route; a "Directs" section which specifies the locations where RSMCs enter a building to pick up and/or deliver mail directly to the customer counter. These are normally business customers with high mail volume.

[48] As it appears in a 2014 RSMC training manual[7], in certain rural areas, some CPC customers do not have a civic address and employees must do a so-called "knowledge sort". The RSMC sorts and delivers mail to these customers based on their name and the location of their mailbox. Instead of civic addresses, names are affixed to the sortation cases to indicate the order of delivery.

**Mail Sequencing**

[49] Described in the 2014 RSMC training manual, mail sequencing is a process implemented by the Corporation to streamline and mechanize part of the delivery processes and procedures. Mail sequencing does not apply to all RSMCs but does impact some of them. More specifically, what that means for certain RSMCs is that they receive part of their mail already sequenced in the order of delivery in a Letterflatainer. As such, they do not have to manually sort this mail like they would traditionally do in the sortation case.

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[7] See Exhibit 14A.

[50] As per Ms. Whiteley's will-say, about 1,000 RSMCs receive sequenced mail.

**Delivery Preparation**

[51] Once all mail is sorted, and after the last call, RSMCs must tie out their mail for delivery, which is to say they bundle it with elastic straps into manageable sized packages and set it out in the order of delivery.

[52] Ms. Whiteley affirms that some 1,300 offices are only serviced by a single mail delivery truck from a neighbouring mail plant, which means that once mail is tied out the RSMCs can immediately leave to distribute it without waiting for the last call.

[53] During cross-examination, Ms. Whiteley asserts that RSMCs do not have to wait until after the last call to start servicing their route and that some employees do so and choose to loop back to the facility after if needed. There are no company expectations concerning last calls. However, Ms. Whiteley concedes that waiting for all the mail to arrive at the facility is more efficient than looping back.

[54] Before final departure, RSMCs must perform an inspection of their vehicle if it is provided by the Corporation. If the employee uses a personal vehicle, a pre-departure check-up is not mandatory but is recommended by CPC. RSMCs must always install the CPC rooftop sign and orange flashing light on the roof of their personal vehicle before departure for delivery.

**Route Documentation (Schedule A1, Schedule A2 and map)**

[55] Three main documents are related to any RSMC's route: the Schedule A1 (route summary), the Schedule A2 (details of travel) and a route map. Together, Schedules A1 and A2 are colloquially referred to as the Schedule A by RSMCs and management alike[8]. The Schedule A is not part of the collective agreement, but, as per Article 27.01, it is part of the RSMCs' job description:

> "The parties agree that all employees in the bargaining unit shall perform the duties of rural and suburban mail carriers and that their tasks are generally described in Schedule "A" of the Mail Transportation and Delivery Agreement that applied prior to this Collective Agreement taking effect as amended by the Corporation from time to time in accordance with the Collective Agreement."

<u>Schedule A1</u>

[56] Every route has its own Schedule A1 and is comprised of many elements, including, but not limited to, the following:

- The name of the route and an identification number;
- The starting depot's name;
- The time at which the mail is available for the RSMC to sort;
- The time by which the RSMC must have delivered the mail;

[8] An example of a Schedule A can be found in Appendix B of this award.

- A list of the mail type to sort and an estimated sorting time. The estimated sorting time includes: time to get set-up, scanning of all mail items, sorting of the mail, packing of the mail and loading unto the RSMC's vehicle;
- A list of the mail type to deliver and an estimated delivery time. It includes: number of each type of POC or receptacles to be serviced, the number of kilometres travelled, and the number of vehicle stops. The estimated delivery time does not include the time necessary for delivering variables;
- A total time estimate to complete the route;
- The frequency of service which corresponds to how many days per week the RSMC must complete the route;
- A section detailing the number of each variable that the RSMC will have to deliver on average: average yearly number of lock changes, average weekly neighborhood mail packages and PCI stops.

[57] Ms. Beauchamp asserts that the time at which the mail is available for sortation time corresponds to the time when RSMCs usually arrive at work.

[58] Ms. McMillan, however, asserts that arrangements with supervisors are possible, such as beginning their day later; the mail available time is not a mandatory start time. For instance, she would start her day later, because otherwise she would finish sorting her mail too quickly and had to wait for the last call before leaving.

[59] The estimated time for sortation and delivery for each route excludes time spent by RSMCs on variables (PCIs, lock changes and admail). According to Ms. McMillan in cross-examination, it also excludes time spent for preparation, delivery or completion of these items.

[60] In 2017, the Corporation introduced a new way of displaying the estimated times of completion in Schedule A1. There is now a range that corresponds to 25 minutes more or less from the previous fixed time. For instance, where a Schedule A1 previously mentioned an estimated 100 minutes for completion of sortation or delivery, it now displays a range such as "75 – 125 minutes".

Schedule A2

[61] Schedule A2 describes, step by step, the precise RSMC itinerary: where to turn, the driving distance for each segment, the number of stops and the type of mail distributed at each stop. RSMCs arrange the mail in this delivery order during the tying out process at the facility. Schedule A2 is used along with the delivery map to guide the RSMC through her route. The itinerary matches the sortation order of the sortation case.

[62] Both Ms. Beauchamp and Ms. McMillan state that The Schedule A is the route they always follow; moreover, they assert that they are expected to comply with the directions and order of the route to ensure proper mail delivery. It is the most efficient way to complete the route.

[63] According to Ms. Whitely, the route of travel is only a suggestion and RSMCs can elect to follow it or not. CPC does not expect RSMCs to follow their suggested line of travel. In cross-examination, she concedes that when a route has been optimized with a specific software then Schedule A2 is the most efficient itinerary, but not otherwise. She also admits that when an RSMC's mail is sequenced, the itinerary becomes more prescriptive.

[64] Ms. Whiteley indicates that a wide variety of routes exists for RSMCs. Some have high numbers of POCs with little drive time, while others have long driving times and few POCs. Some routes may take less than an hour while others last a full day.

Route map

[65] The route map is simply a visual representation of the RSMC's Schedule A2 route of travel.

**Delivering the mail and end of day tasks**

[66] While Addressed Admail and most transaction mail does not require special handling during delivery, this is not the case for all items and some do require extra processing.

[67] Unaddressed admail must be delivered to every customer on the RSMC's route, whether or not mail is to be delivered at this address, unless the customer has elected to not receive admail. Unaddressed admail, Ms. Beauchamp explains, must be delivered within one day by RSMCs.

[68] Also, even if RSMCs do not have mail to deliver to RMBs, they must stop and collect outgoing mail from the boxes. As such, RSMCs must always pass by the RMBs on their route, even when they do not have any mail to deliver at that POC. If outgoing mail is present, a flag affixed to the RMB will be put up by the customer. Similarly, RSMCs must stop at CMBs to collect outgoing mail, even if they don't have mail to deliver to that CMB.

[69] PCIs and other parcels that either require a delivery confirmation (parcels with bar codes) or are too large to fit into the sortation case holes are kept separately from the rest of the mail. These must be packed in a separate container in the RSMC's vehicle. RSMCs then put "flash cards" into their mail bundles to remind them that a special item must be delivered at a certain address.

[70] Special service items include: PCIs, Bar-coded non-PCI (mail that does not require personal contact but must be scanned for package tracking purposes) and safe drop items (non-signature premium items that are too large for a delivery receptacle but may be "safe dropped" at the customer's address).

[71] When delivery of special service items is not possible, RSMCs must leave a delivery notice card to inform customers where and when their item will be ready for pickup. If an RSMC does not have a portable data terminal ("PDT"), she must carry Items Delivered Bills to record delivery of special service items.

[72] If delivery is not possible, but the item is eligible for safe dropping, the RSMC must do so and fill out a specific form to inform the customer that the item has been safe dropped. Safe dropping can only be done in specifically approved neighborhoods, with items of no obvious high value, that are not perishable and that can be dropped in a safe, weather-proof area and out of view of passersby.

[73] In addition to their normal mail delivery duties, RSMCs must perform other on route tasks, such as: change locks on CMBs, handle damaged mail discovered on route, perform POC maintenance, block unused receptacles in CMBs and GMBs and clear mail receptacles of outgoing mail.

[74] When encountering damaged mail, the RSMCs must write “received in damaged condition” on the mail item, deliver it as normal and inform their LPO of the situation. POC maintenance is the process of documenting any changes noticed by RSMCs from their Schedule A compared to the reality of customers serviced on the route, for instance, the arrival of a new customer in the area.

[75] The last other route task required from RSMCs is mail receptacle clearance, which is to pick up outgoing mail during the day. RSMCs pick up mail from CMBs and GMBs, RPOs and Street Letter Boxes (boxes used by customers to deposit outgoing mail). If applicable, RSMCs must scan the mail receptacle’s bar code with their PDT or manually complete the appropriate form to verify that mail clearance was done.

[76] RSMCs cannot pick up mail from SLBs before certain times determined by the Corporation, as doing so could mean that mail would not be fed into the system in a timely matter. This is to ensure that when customers put letters in a SLB before a defined collection time, their letters will be delivered within a given timeframe.

[77] Some 200 RSMCs also do scheduled pick-ups for businesses that require packages to be picked up at their facilities.

[78] RSMCs must complete their RSMC log sheet at the end of day. The document captures various information, some relevant to the employee’s pay, namely: the number of PCIs delivered; the number of lock changes performed; the total number of pieces of Unaddressed Admail delivered; any changes to the number of POCs on the route; any permanent changes to the distance travelled for the route. Temporary increases in travel distance due to construction and/or detours and delivering an item beyond 0.5 kilometre of the line of travel limit are reported in a different way. Only new POCs or kilometres approved by the RSMC’s LPO can be recorded on the log sheet. The RSMCs must file their log sheet to their supervisor every two weeks.

[79] Ms. Beauchamp explains that RSMCs usually fill in their log sheet at the beginning of the day when one has all their mail before them, because it is otherwise probable that one would forget to add an item to the list. She adds that, if necessary, the log sheet is amended at the end of the day to reflect any discrepancies encountered.

[80] Before returning home, RSMCs must stop by an RPO as their second to last or last stop on their route. If this is the second to last stop, RSMCs drop off items that were “carded” during the route (for instance, PCIs that could not be delivered and for which the

RSMC left a Delivery Notice card). If the RPO is the RSMC's last stop, she must also drop off the collected money on route (for items that required customs clearance, for example), outgoing mail collected on route and unclaimed mail collected on route (mail not collected by customers after a specific number of days). These three steps are otherwise completed at the RSMC's facility if applicable.

[81] Other end-of-day tasks include removing the CPC rooftop sign and flashing light from the RSMC's personal vehicle, docking their PDT and following the upload procedures.

**The Corporation's expectations and flexibility at work**

[82] Ms. Beauchamp adduces a self-directed training guide prepared by the Corporation that every RSMC must complete. The CPC expectations are described in part as the following:

> "Respect all Canada Post equipment, facilities and property. Respect the responsibilities and safe work procedures of your job, including not limited to:
>
> - Proving a vehicle with sufficient space to carry the amount of mail you regularly deal with,
> - Respecting "hold mail" or "redirection" requests
> - Collecting outgoing mail from outgoing receptacles,
> - Meeting times for any designated mail delivery points on a route,
> - Returning to the designated end point prior to the mail dispatch time,
> - Meeting prescribed delivery standards for all products, and
> - Following the safe work procedures when performing your job.
>
> Report immediately any incidents of theft or delayed mail. Report any incidents of non-delivery of mail, and any injury while on duty (to your Local Postal Official).
>
> Secure means:
>
> - Keep corporate keys secure at all times.
> - Secure mail receptacles equipment (e.g. Close and lock the main door of a Group Mailbox (GMB) or Community Mailbox (CMB) when delivery is complete.
> - Secure (lock) the area in the vehicle where mail is carried" [9]

[83] Ms. Beauchamp adds that RSMCs are to respect the meeting times for any designated mail delivery points on route. RSMCs are required to respect the return to the designated end point prior to the mail dispatch time (final tender point) and meeting prescribed delivery standards for all products. RSMCs are required to advise their supervisor of additional customers or changes on a route, updates to the customer lists,

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[9] See tab 4 of Ms. Beauchamp Book of Documents. See also Exhibit 28A, page 9.

routes maps and case plan. Ms. Beauchamp adds that she was trained to complete her route by following precisely the Schedule A itinerary and using the prescribed procedures.

[84] Ms. Whiteley affirms that RSMCs have great flexibility to manage their days as they see fit. For instance, she recalls witnessing an RSMC in Richmond that advised his Postmaster that he would be beginning work at 9 a.m. so he could go to the gym before starting his day. She adds that when she was a Local Area Manager, such arrangements were very common. As long as employees deliver the mail safely and in a timely manner, they can manage their time however they wish. Ms. Whiteley specifies, however, that RSMCs working in suburban areas don't enjoy as much flexibility since their routes are busier than their rural counterparts. Ms. Whiteley also asserts that it is relatively common that RSMCs take breaks during the day to attend to personal matters.

[85] Ms. Whiteley testifies that there is no set time for employees to start or finish their workday in most offices, but they typically do not start before their mail available time and they must often return to the office at a set time if they have originating mail to bring back. She adds that the Corporation does not have any performance expectations regarding RSMCs' work, as long as time and delivery commitments are met. As such, the decision to take breaks is up to the RSMCs.

[86] RSMCs have supervisors, or Team Leaders, when they work out of an LC Depot or larger retail outlets. The latter answer any work-related questions RSMCs may have and are responsible for annual route inspections. Overall, approximately 3,250 RSMCs work without direct supervision, representing 44% of the workforce.

[87] Mr. Sinclair confirms that RSMCs have more flexibility and less prescriptive work methods than other units since they are not paid hourly.

[88] In a 2014 online training guide entitled "Route to a Successful Start" and created for new employees, the Corporation indicates that:

> "You [the RSMC] are the direct link between Canada Post and its customers. Your job is to serve all of your customers by delivering all types of mail efficiently, reliably and professionally. Reliably means <<accurately and on time 99% of the time>>"

[89] In cross-examination, Mr. Bickerton denies that RSMCs have much, if any, flexibility during their day, that they cannot attend to personal matters and can only take time off to eat lunch or take short breaks. For instance, Mr. Bickerton has no recollection of any RSMC ever dropping off or picking up her children to or from school.

**Emotional stressors**

[90] RSMCs, as the name suggests, can work in very rural and isolated areas. Ms. McMillan testifies that she serviced such a route in the past and that it added many more stressors to her job. For instance, she drove on back roads that were covered in ice and snow all winter long and she could not tell where the road ended and where the ditch started. Ms. McMillan blew a tire once in a massive pot hole and had to wait hours before a towing truck finally showed up. She asserts that she would get nervous and was scared of being stuck. That pressure was made worse by poor cellphone service and dangerously cold temperatures in the winter.

[91] Ms. Beauchamp explains that RSMCs can be verbally abused by certain customers who can become agitated and even violent at times. Ms. McMillan also testifies that a customer once ran and yelled at her for not stopping at his RMB that was covered in snow. She explains that customers have the responsibility to make their RMB accessible to CPC employees and that she was not allowed to get out of her car to access the mailbox.

**Alternate work methods and Portable Data Terminal ("PDT")**

[92] Delivery to RMBs normally involves reaching out of the passenger side window and can be physically challenging. CPC has developed different methods for delivering the mail to these transfer points.

[93] RSMCs can use a Rural Reaching Device ("RRD"), which acts as a claw and works as an extension to the RSMC's arm to service RMBs (open the mailbox, retrieve and deliver mail, and close it). It comes with a RRD Holder, which serves to secure the RRD when driving, to hold a Letterflatainer of mail and acts as a support when reaching out for the mailbox. Specific training is provided to employees using these devices.

[94] Some RSMCs who service routes with a large percentage of RMBS use Right Hand Drive Vehicles ("RHDVs") to deliver mail. The vehicles are either provided by CPC or RSMCs can buy or retrofit a personal RHDV. Finally, RSMCs can still decide to deliver mail to RMBs by unbuckling their seatbelt when stopped at the box and sliding into the passenger seat to access the RMB. Employees who use a RHDV are also provided with specific training.

[95] Most RSMCs use a PDT, which is essentially a small, cell-phone like device that is used to track certain activities completed by employees throughout their day. It is used during the preparation, sorting, delivery and end-of-day phases of the RSMCs work.

## B. LETTER CARRIER WORK ORGANIZATION

[96] As per Mr. McGrath's will-say, LCs are full-service delivery agents who deliver letter mail and parcels, collect from SLBs and complete customer pick-ups and RPO clearances. LCs focus on the country's most populated urban environments. In cross-examination, Mr. McGrath acknowledges that although LCs focus on Canada's densest environments, they also work in less populated areas alongside RSMCs. For instance, some LCs work in Arnprior, which is a town of 8,000. Thus, LCs also pick up mail from RMBs, albeit rarely so. Ms. Charbonneau's will-say indicates that CPC employs approximately 12,000 full-time LCs and 900 part-time LCs.

[97] The LC's workday mostly resembles that of an RSMC. As Mr. McGrath describes: When arriving at the depot in the morning, LCs must first sign in, identify their route number, get their keys and obtain their motorized board. LCs must then retrieve their mail, parcels and neighbourhood mail, sort them and tie out their mail. Once they have made sure that they have all their mail and that all the wrong mail has been brought back, they can pack their vehicle. Finally, once all their preparation is completed, they service their route by following their line of travel.

[98] Mr. McGrath describes the LCs' three types of delivery models: 1. Park and loop - LCs use a vehicle to transport letter mail and deliver parcels, they park their vehicle, usually at one end of the street, walk to distribute letter mail and small packets and "loop" back to their vehicle. For larger or heavier parcels, LCs park their vehicle closer to the business or residence to deliver them. 2. Centralized delivery - LCs use a vehicle to go to centralized locations, with highly concentrated POCs (CMBs, kiosks, LBAs, apartments and GMBs), where they distribute mail and parcels. 3. Foot walk (door to door) - LCs sort the mail at the depot, which is then transported by another employee to relay boxes at several locations on the LC's route. LCs then deliver mail and small packets by walking to every POC on their route. Door to door delivery in urban centers is exclusive to the LCs.

[99] Mr. Bickerton, in cross-examination, explains that after the introduction, in 2007, of postal transformation, the CPC converted thousands of foot-walk routes in motorized ones, where motorized LCs deliver mail to CMBs and parcels directly to customers. Ms. Charbonneau, in cross-examination, explains that part of CPC's objective with postal transformation was to become the number one carrier in terms of parcel delivery.

[100] Ms. Whiteley explains that LCs use A62 cases. A62 cases were implemented starting in 2006 and LCs' time values for sortation were lowered as a result, since they require less time to sort mail.

[101] According to Ms. Beauchamp, LCs have a "last call" time for mail preparation, which is an average time at which they are allowed to leave the facility and begin their workday.

[102] Ms. Beauchamp indicates that LCs have three, sometimes up to five, days to deliver Neighbourhood mail, but they can also opt to deliver them in one day. Time spent on the sortation time for admail is included in their workday.

[103] Ms. Beauchamp explains that while LCs deliver the same type of mail and mostly service the same type of POCs, they do not complete lock changes.

[104] Ms. Beauchamp explains that LCs mostly receive their mail sequenced. Approximately 73% of LC routes receive sequenced mail according to Ms. Haydon's January report.

[105] Mr. Sinclair testifies that the Corporation is much more prescriptive in its work methods and policies for managing LCs, thus resulting in substantially more grievances on discipline for LCs. In contrast, there are very few grievances related to discipline for reporting to work late for RSMCs.

[106] Ms. Haydon explains that when she conducted the interviews with focus group participants, she heard numerous testimonies of LCs saying they could come under physical or verbal threats from customers or passersby, especially when servicing poorer neighbourhoods. They also reported being afraid of getting robbed while on duty.

## C. RSMC ROUTE MANAGEMENT

### Route Management System ("RMS")

[107] In 2003, the Corporation recognized RSMCs as employees. When, on January 1, 2004, the first collective agreement for RSMCs became effective, CPC imported the contracts it had with its past contractors into a database of route characteristics, the Route Management System ("RMS"). Ms. Whiteley explains that the RMS is only a database, a picture of what the contracts with route holders were prior to 2004. The data that was used before 2004 was part of a system called BEXX, which was developed and used by CPC in the 1990s to evaluate tenders for routes, by projecting an estimate of the average time to do certain tasks, and ensure they were reasonable.

[108] Ms. Whiteley, in her will-say, explains that the RMS time does not factor in mail volume, mail coverage (the percentage of POCs receiving mail each day), types of mail, differences in terrain, roads, vehicles, offices, environment or work methods of the RSMCs.

[109] Mr. Bickerton explains that the estimated times that appear in an RSMC's Schedule A are referred to as RMS time. There is a difference between actual hours worked by RSMCs and the time appearing in the Schedule A. Because the system is based on averages, it is possible for RSMCs to finish before the estimated time on their Schedule A, or after it, depending on mail volume, weather conditions or other circumstances.

[110] The RSMC's workday is broken down into activities and each activity has a time value linked to it; for instance, delivering mail to a CMB, driving in certain areas, etc. The sum of all time values for a route equals to the estimated time to complete sortation and delivery on the RSMC's Schedule A.

[111] 4,884 out of 7,437 RSMCs routes are scheduled to last 6 RMS hours per day or more, or approximately 65.67%.[10]

### Georoute

[112] The Corporation uses a route optimization software called Georoute. First introduced to the urban unit, Georoute allows the Corporation to optimize, structure an itinerary and manage routes for mail and parcel delivery and pickups. Routes entered into the Georoute system can have their POCs and variables updated directly by a supervisor, without having to wait for the annual route inspection.

[113] In re-examination, Ms. Whiteley indicates that approximately 2,000 RSMC routes are managed through Georoute. She adds that Georoute only allows the optimization of the line of travel.

### Route Design and Restructuring

[114] The collective agreement provides that CPC will maintain existing routes, until decided otherwise, in accordance with the provisions of Article 11. Route restructuring is

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[10] Mr. Durber's Reply Report, page 40.

done by the Company, at its full discretion[11]. As per the collective agreement, route restructuring "[…] is defined as the reallocation of a minimum of five (5) percent of the points of call on one route to one or more other routes"[12]. Under Article 11.03 (c), the Corporation shall not restructure routes for more than 40 hours per week. The Corporation must notify the Union 30 days prior to beginning a restructure[13].

[115] Route restructuring did not exist before 2008, when Ms. Whiteley introduced a restructure process. Since then, about 700 routes have been restructured, some of them repeatedly. The other routes may have had minor, informal, changes such as adding or removing a few POCs, but have not gone through the process described at Article 11.

[116] Restructuring is a lengthy process which begins 12 to 18 months prior to the implementation of the restructure. Route restructures are completed by members of the Corporation's National Route Optimization Group ("NROG"), whose members are called Route Service Optimizers ("RSOs"), which has one team for the urban and another for rural bargaining units.

[117] Ms. Whiteley indicates that building routes without an engineered time system has proven challenging. The NROG's officers use POCs to estimate how long a route will take to service. For instance, for centralized POCs, the officers initially assign about 650 POCs and further adjust other determinants, including information about mail volume (for example, by taking into account the presence of a large business retailer on the route), after consulting with local team leaders and employees. The RSOs must also take into consideration the grouping of postal codes and the grouping of CMBs with common postal codes. RSOs directives are to consider suburban growth, to prioritize servicing businesses early in the day and design safe route design by limiting U-turns, for instance.

[118] Ms. Whiteley testifies that, when restructuring a route, RSOs want to avoid having routes of more than 40 hours a week, as the collective agreement forbids it. As a result, restructured routes often have RMS time of no more than five or six hours, leaving a gap for RSMCs to complete their variables, leave room for growth and make sure that their route doesn't last more than 40 hours a week. Nevertheless, Ms. Whiteley insists that RMS time is not used at any point by the Corporation to restructure routes.

[119] Ms. Charbonneau also testifies to the effect that RMS time values are not used to restructure routes. She asserts that only the 40 hours target matters and that RSOs rely instead on first contact with the route holder and their immediate supervisor to ask what is, on average, the work load for the route. Ms. Charbonneau compared RSMC route building to art. In cross-examination, she admitted having never seen the RSMCs' time values until she prepared for the present arbitration, as she does not use them for route restructures or building routes.

[120] Both Mr. Bickerton and Ms. Beauchamp assert that the Corporation has recently been restructuring routes to around 6.5 RMS hours. Mr. Bickerton insists that the logic

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[11] Article 11.03 of the collective agreement.
[12] Article 11.03 (b) of the collective agreement.
[13] Article 11.04 of the collective agreement.

expressed by CPC is that 6.5 RMS hours leaves an hour for parcels and PCIs and another half hour for growth. Mr. Bickerton claims that the Corporation doesn't know how many hours RSMCs actually work.

[121] During cross-examination, Mr. Sinclair acknowledges that the average for RMS hours for new routes was 6.1 but mentions that this is not a company policy. He adds that the Corporation would rather build all its routes around 3 RMS hours, except that this would upset the Union and workers and so there is pressure for RSOs to build routes nearing actual 40 hours. However, RSOs are reluctant to build routes that are longer than 6 or 6.5 RMS hours, due to work fluctuations. The CPC has no obligation, under Article 13 of the collective agreement, to build routes that are equivalent to 40 hours of actual work per week.

[122] Ms. Beauchamp, relying on a document that she prepared showing the results of an office restructure in September 2016, affirms that the Corporation relies on time values to restructure routes. Prior to the restructure, there were 10 RSMCs servicing routes which had RMS hours ranging from 6.60 to 12.66 hours. After the restructure, 3 routes were added, and the range changed to 6.28 – 6.80 RMS hours, with two smaller routes with RMS hours of 3.68 and 4.17. Ms. Beauchamp asserts that this demonstrates that CPC uses Schedule A and time values for its restructures. The total RMS hours for the depot has not gone down as a result of the restructure.[14]

[123] Ms. McMillan explains that when the route she was servicing, Pakenham, went from knowledge sort to civic sort, the assessed time for sortation was lowered for her route. Ms. MacMillan says that civic sorting is easier and thus faster to do than knowledge sorting.

[124] Route restructures trigger a process described at Article 11 of the collective agreement. Ms. Beauchamp explains that this process involves advising the Union of the modifications brought to the routes' Schedule A and then waiting 10 working days to allow the Union to comment on the route (Article 11.04 c)). She maintains, however, that the Corporation is in no way obligated by the collective agreement to act upon the Union's recommendations.

[125] In a Team Leader Reference Material produced by CPC, dated May 2, 2017, it is indicated that "Once a restructure has been implemented it will be key for local operations to maintain the routes to ensure accurate and timely adjustments to RSMC's pay."[15]

[126] The collective agreement's Letter 1 states that:

> "The Corporation agrees to identify and restructure routes where the workweek exceeds sixty (60) hours where the normal workweek is five (5) days.
>
> The Corporation agrees to consider adding growth to a route or routes in an office that are below forty (40) hours per week where the normal workweek is five (5) days."

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[14] See tab 9 of Ms. Beauchamp's Book of Documents.
[15] See page 67 of Exhibit 28A.

**Annual Route Inspection**

[127] Routes are inspected annually by the Corporation. The date of last inspection of the route's specifications can be found in Schedule A.

[128] In the same above-mentioned 2017 Team Leader Reference Material, it is specified that the team leader, in addition to managing the daily operation at a depot or an outlet, must perform annual route inspections as per the provided schedule, monitor RSMC routes and resolving any issues that may arise and ensure that Route Updates are done in a timely manner as per the provided schedule and ensuring any other documents impacting compensation are submitted on time to ensure RSMCs are paid correctly.[16]

[129] Concerning the importance of conducting an annual inspection, it is mentioned in the training material:

> "**Conducting an Annual Inspection**
>
> A route inspection must be completed and variable allowance information must be updated on each RSMC route, once each year. The POC and kilometres information must be updated a minimum of twice a year. The purpose of the Annual inspection report is to identify all changes in route specifications. This will ensure that RSMCs, permanent relief employees (PRE), on call relief employees (OCRE), and replacement contractors are provided with an accurate Schedule "A" to use to provide reliable and efficient mail delivery.
>
> In addition, changes captured during the annual route inspection will ensure the employee's route compensation is adjusted appropriately. Maintaining up-to-date information will also ensure the point of call information (POC) is captured and maintained in the Rural & Suburban Route Management System (RSRMS) and Address Management System (AMS).
>
> It is imperative that the LDU Maintenance Report is completed and submitted to the regional DSO.
>
> At the same time, as you submit the LDU Maintenance Report, you must update the Schedule "A (2)" Details of Travel and submit to your Regional RSO".

[130] Ms. McMillan explains that the inspection can also be conducted by a Route Supervisor Officer ("RSO"). During the last inspection of her route, in 2013, the inspector drove the car and looked at each point of call and changed the hour of the final Delivery Point on her Schedule A1 from 15:00 to 14:00. She adds that the inspector can also update the route from the office. Once the inspection is done, the RSMC signs off the inspector's report.

[131] The inspector uses a Corporation Annual inspection report for RSMC routes. Among other things, he must verify some elements related to time:

> " Question
>
> 1. At what time is the mail available to the RSMC?

[16] See page 7 of Exhibit 28A.

2. What is the normal start time of the RSMC?
3. What is the normal departure time of the RSMC for delivery?
4. What is the normal arrival time at the RSMC's final designated delivery point?"[17]

[132] Ms. McMillan's annual inspection report for her route, a CPC document, and the 2017 Team Leader Reference Material, show that the inspector essentially covers the route's Schedule A and makes sure that it corresponds to the reality of the RSMC by driving the route herself. The following elements are inspected: number of "to the door deliveries" stops, number of sets of unaddressed admail delivered each week, number of lock changes, PCIs completed, vehicle requirements, RMB conformity verification (418 verification), changes to POCs types and number, kilometres traveled and route map, condition of equipment labels, dispatch times, data from the RSMC log sheet and consumer's choice.[18]

[133] During cross-examination, Ms. Whiteley indicates that annual inspections are not meant to optimize the route, but rather to ensure that the POC information is accurate, to inspect the mail receptacles' integrity and to update new POCs or mileage. In re-examination, Ms. Whiteley pointed out that inspectors do not follow RSMCs during their work as part of their inspection.

[134] Ms. Charbonneau points out that annual route inspections for the RSMCs are not meant to measure the workload of an employee, but rather inspect the Corporation's material and property on the route and assess if the number of POCs is accurate. Inspectors do not time anything during the annual inspection.

[135] As per Article 11.02 of the collective agreement, RSMCs' annual pay adjustments to reflect changes to a route are made in accordance with Appendix A of the collective agreement.

## D. LETTER CARRIER ROUTE MANAGEMENT

### Letter Carrier Route Management System ("LCRMS")

#### System operation and time values

[136] The time evaluation and model to build the LC routes differ from those used for RSMC routes; the Corporation relies on the LCRMS.

[137] The LCRMS manual for Route Measurement Officers ("RMOs" – officers responsible for building LCs' routes), dated July 2016 states the following:

> "The Letter Carrier Route Measurement System was developed to provide management with a means to assess and adjust, on a National basis, an equitable workload for individual letter carrier routes.

[17] Tab 14 of Ms. McMillan's Book of Documents.
[18] Tab 14 of Ms. McMillan's Book of Documents and page 53 of Exhibit 28A.

> The system is designed in accordance with engineered standards and method study techniques, and consists basically of the application of time values to each segment of the duties performed by an average experienced Letter Carrier in the sortation, preparation and delivery of mail.
>
> […]
>
> To ensure the equality and objectivity of the program, detailed instructions and procedures contained in this manual must be followed by Route Measurement Officers in the various regions when establishing letter carrier routes at each individual letter carrier unit. […]".[19]

[138] The system is based, in part, on engineered time studies of every action undertaken by LCs during their workday. For instance, the time needed to open a door, look for the right envelope in a package or open and close a CMB has been repeatedly calculated by industrial engineers to establish an average completion time for each of the LCs' actions. This is how routes are built and work times assessed within the LCRMS. The time values are based on the MOST system and are designed to be accurate, plus or minus 5%, 95% of the time. The system is not designed to predict how long an LC's workday will be, but rather to accurately assess the average LC day.

[139] Mr. Howse explains that every LC's action is measured in time measurement units ("TMU"); there are 100,000 TMUs in an hour and one TMU equals 0.036 second.

[140] As described by Mr. Howse, every LC's action is broken down into sub-operations. For example, placing a piece of mail into a sortation case is comprised of the following: read label plus 50% chance reading a second item (in cases where an LC needs more information on the letter to properly sort it), move hand to next letter, grasp letter, look to case label, read case label, move letter to case, position letter to separation, flip letter into separation, look to next letter, push letter up with thumb.

[141] Actions and sub-operations are grouped in standards. A high-level list of standards was adduced as evidence during Mr. Howse's testimony. The list includes a date for the last update. These last updates range from 1966 for walking to 2010 for sequenced mail standards. When cross-examined on the list, Mr. Howse conceded that he did not know that the 1966 walking standard had been developed using only male LCs. [20]

[142] Mr. Howse indicates that every work method goes through the same evaluation process. For instance, LCs use different movements to sort mail: some use both hands, some flip the mail, some turn it, etc. The Corporation's engineers, through their observations, must determine the frequency of each method to arrive at a precise estimate.

[143] To illustrate the extent of the system, Mr. Howse indicates that to develop the standard applied for sorting mail in an A62 sorting case, 179,000 pieces of mail being sorted were observed on 150 different routes.

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[19] Tab A of Ms. Charbonneau Book of Documents.
[20] See Exhibit 3.

[144] Mr. Howse also indicates that the LC work methods must be very prescriptive to ensure the accuracy of the time evaluations. He adds that precision is key to ensure that LCs have enough time to complete their route. As such, the RSMCs' looser work organization – different work tools, varying make and type of vehicles, vast array of distances travelled from the vehicle to the POC, etc. – would present serious challenges to any engineered time study. Nevertheless, Mr. Howse deems that such an endeavour would not be insurmountable.

[145] In cross-examination, Mr. Howse affirms that time standards for sortation in A32 cases could not be used for RSMCs since the latter do not use A32 in a specific arrangement, which is the case for LCs. Mr. Howse recognises that since the implementation of time standards for A32 cases for LCs in 1998, CPC never demanded to adapt the time standards for RSMCs.

[146] When being cross-examined, Mr. Howse indicates that concerning weight, height, skill, training, etc., the time standards were developed for an average LC.

[147] When he inspected a training manual for RSMCs describing the work organization and methods, Mr. Howse indicates that the descriptions lacked details and that, as such, it could not be considered a standard work method. Rather, Mr. Howse qualifies the manual descriptions as a process, which entails a larger look at the work than is required to build a standard.

[148] Mr. Howse rejects as inappropriate the idea of importing time values from the engineered LCRMS to the RMS, as there are too many discrepancies between each unit's work methods.

[149] In total, there are 200 evaluated time values, or sub-operations, used to build LC routes. None of the RSMCs' time values have been evaluated through the same process, according to Mr. Howse.

[150] Each time standard has a 7% fatigue allowance added to it to represent personal fatigue and usual work delays, such as washroom breaks or the inability of the LC to read certain addresses, etc. Mr. Howse indicates that a fatigue allowance can only be added to an engineered time standard in which the time needed to complete certain tasks has been precisely evaluated.

[151] In cross-examination, Mr. Howse insists that a fatigue allowance could not be added to the RSMCs' time values, because it is an engineering concept specific to time standards. He adds that time could be added for washroom breaks but that the principles of fatigue allowances cannot be applied to non-standardized time values.

[152] Once, to come up with a time value for Parcel Lockers, which is a new type of equipment that is installed in condominium apartments to allow for parcel drop-offs, Ms. Whiteley consulted the LCRMS engineers. The latter gave Ms. Whiteley information regarding the time standards they were developing for the Parcel Lockers. Ms. Whiteley cannot, however, remember if the exact LCRMS numbers were used or not.

**Route building and restructure, other inputs**

[153] Ms. Charbonneau explains that LC route restructure in the LCRMS goes through a series of three steps[21]. In her will-say, she states that CPC undertakes a complete restructuring of all routes in most depots every three to five years, but some may be restructured less frequently. There are 500 LC depots across Canada located in about 380 facilities. CPC employs 150 Route Measurement Officers who work full-time on the application of the LCRMS; their main responsibility is to restructure routes. To support her explanations, Ms. Charbonneau makes reference to the Letter Carrier Route Measurement System Manual[22].

[154] Ms. Charbonneau testifies that the first step of a restructure, after having made sure that all POCs and their type are accounted for in CPC system, is the combination of volume count, route characteristics and time values. Mail volume for each route is evaluated regularly for LC routes, which helps the Corporation determine the appropriate assessed time for the route. Every type of mail, including parcels and admail, are evaluated for every POC.

[155] The mail volume count lasts 10 days, after which the results are indexed to compensate for seasonal fluctuations of mail volume throughout the year. To do this, the results of the two-week volume count are adjusted using the City mail volume statistics for the past year.[23]

[156] The LCRMS accounts for local route characteristics, which are inventoried in a so-called "Form 038"[24]. Ms. Charbonneau, in her will-say, explains that each POC has several items of information related to it, including, but not limited to: the number of steps for a staircase, the elevation of the route, the presence of 90 degrees angled sidewalks that can be cut through, the distance from the line of travel to the POC, the number of doors to open to access the POC, elevator times, etc.

[157] Thereafter, Ms. Charbonneau asserts that mail volume, time values and route characteristics are combined to arrive at the desired route length. At this stage, coverage adjustment percentage is applied to the route. Percentage of coverage determines the POC coverage for the LC, since some POCs have higher volume (such as businesses, which can receive multiple pieces of mail per day) and lower ones (which may not receive mail daily). As such, the LC route estimated time is cut accordingly; for instance, a 10-hour route may be cut to 8 hours if it has a 80% route coverage.

[158] Ms. Charbonneau indicates that after coverage adjustment, the results are processed through Georoute to provide the most efficient line of travel for the specific route, taking into consideration the above-mentioned route specific criteria. Other elements are added to the equation at this point: transportation time (stop watched), load time (stop watched) and deviation for oversize parcels.

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[21] See tab B of Ms. Charbonneau's Book of Documents.
[22] Tab A of Ms. Charbonneau's Book of Documents.
[23] See Chapter 2, Page 2, Tab A of Ms. Charbonneau's Book of Documents.
[24] See Exhibit 51 for an example of a Form 038.

[159] Ms. Charbonneau explains that although the objective is to build 480-minute routes (eight hours), this is not always possible or the best options for a certain territory. Because there is a fixed amount of work for every sector and a certain distribution of it in the depot territory, the Corporation has no choice but to build certain routes that last less than eight hours. Mr. Durber's Reply Report shows that 94% of LC routes are assessed between seven to nine hours[25].

[160] Ms. Charbonneau points out that, however, if a certain route necessitates constant overtime to finish, the LC can, under Article 50 of the Urban collective agreement, demand to have the route re-evaluated. Sometimes a volume count can be done to determine the nature of the issue.

[161] Mr. Sinclair asserts that LC route restructures under the LCRMS are very litigious and costly for the Corporation. Since 2011, 11 national and 400 regional grievances have been filed under Article 47 of the Urban collective agreement (Restructuring of Letter Carrier Routes). Additionally, the CPC spends around $10M yearly on the LCRMS and a further $3M on route restructures.

**Route verification**

[162] Article 50 of the Urban collective agreement covers the role of the LCRMS in the evaluation of work performance. The provision also provides that, in case of excessive work, an LC can submit a request for workload verification:

> "50.01 Role of Letter Carrier and Route Measurement System in the Evaluation of Work Performance
>
> (a) The Corporation recognizes that the Letter Carrier Route Measurement System, (LCRMS) as described in the Route Measurement Manual, is based on averages. On days when volumes, climatic, and walking conditions are extreme, overtime may be necessary to complete delivery. In situations where an employee is not completing his or her assignment within the prescribed hours of duty on a regular basis, the LCRMS is to be used solely as a means of establishing whether the source of the problem is related to the workload on the route under normal conditions as opposed to evaluating the employee performing the assignment. The above principles will also apply to mail service couriers and their assignments. The Corporation's findings on the above are to be included in any discussions with the employee and the Union steward, if the employee so desires.
>
> (b) An employee who is able to demonstrate the workload is excessive may submit a written request for verification. The Corporation shall perform a route verification within three (3) months of this request. Should a volume count be required as part of the verification, the months of July, August and December shall be excluded from this period.
>
> […]
>
> (f) If the verification conducted under 50.01 (b) or (e) shows an over-assessment, the employee will be paid in accordance with Appendix "V" or alternatively he or she may be provided with help for the over-assessment until adjustment can be

[25] See Exhibit 6, page 40.

> made. Reasonable effort will be made to adjust a route which is overassessed by fifteen (15) minutes or more within three (3) months. Where it is not possible to make such an adjustment, alternate accommodation may be made by local agreement."

## E. RSMC AND LC WORKING CONDITIONS

[163] Where applicable, LC working conditions will be covered at the end of each section to provide a comprehensible side-by-side comparison of the two jobs. Each section first presents the working conditions of the RSMCs, with a sub-section treating LC working conditions.

[164] Article 38.01 of the Urban Collective Agreement states that classifications recognized for the purpose of the agreement are those mentioned in Appendix "A" (classifications and wages). Of the six male comparators initially retained by the parties, only the Mail Despatcher, (P05) is part of the Urban collective agreement's Group 1. The five other comparators – the LC and RLC (P0 LC-1), Mail Service Courier and Relief Mail Service Courier (P0 MSC-1) and the Mail Service Courier Heavy Vehicle (P0 MSC(HV)-3 – are part of the agreement's Group 2.

[165] Certain working conditions on benefits and indirect compensation shall appear in section "N", "Aspects of Indirect compensation".

### Normal Workday and Workweek

[166] The normal workday and workweek:

> "[…] shall correspond to the time needed each day and each week for an employee to perform the work required on any route. However, the normal workweek shall not exceed forty (40) hours on average, calculated over a two (2) week period. The normal workweek is five (5) days or less."[26]

[167] If the average workweek of an RSMC exceeds 40 hours for a period of two consecutives weeks or more, she must advise the Corporation so that it may correct the situation.[27]

[168] Ms. Whiteley explains that when RSMCs report working more than 40 hours a week, their Team Leader arranges a two-week study to verify if the RSMC's route requires more than 40 hours per week to complete. If the study shows that to be the case, a RSO team will adjust the route to make it compatible with the collective agreement.

[169] Using a Two-Week Study form as an example, Ms. Whiteley describes the process: RSMCs indicate on the form at what time they started and finished working and must declare the time not worked during the day. Every day, the LPO or Team Leader must confirm that the input information is complete and accurate. Time not worked is defined on the form as: "time incurred for breaks, meals, personal time, etc.". Ms. Whitley explains that the instructions given to the RSMCs are the ones on the form only. There is

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[26] Article 13.01 of the Collective agreement.
[27] Article 13.02 a) of the Collective agreement.

no performance standard during the two-week studies: each one is specific to the employee and evaluates how much time it takes for that individual to complete their route.

[170] Ms. Whiteley explains that CPC makes employees responsible to inform it of such a situation because the Corporation has no way of knowing how many hours RSMCs work. She adds that she has no reason to believe that employees do not meet their obligation to inform the Corporation.

[171] Mr. Bickerton asserts that, in practice, virtually no RSMC would declare that her route takes more than eight hours per day to complete, because the Corporation will simply cut down on the route's POCs or kilometres, resulting in a loss of pay.

[172] In December 2015, Ms. McMillan submitted a grievance to have her route restructured down to 40 hours per week, as it was assessed over 40 RMS hours per week[28]. The grievance has not yet been resolved.

[173] Ms. Whiteley indicates that, in 2016 and 2017, six RSMCs made a request for a two-week study. During that period, over 1,300 routes had RMS hours in excess of 40 hours per week. In her will-say statement, Ms. Whiteley summarized the results of the six studies as follows[29]:

| Route | RMS Hours | Average Daily Hours (Two-Week Study) | Difference |
|---|---|---|---|
| Granby (QC) SS 101 | 9.97 | 10.30 | .33 hours more than RMS |
| Bromont (QC) SS117 | 9.10 | 9.41 | .31 hours more than RMS |
| Bromont (QC) SS 114 | 10.05 | 11.77 | 1.72 hours more than RMS |
| Bromont (QC) SS 116 | 9.91 | 7.5 | 2.16 hours less than RMS |
| St Janvier (QC) SS 123 | 12.37 | 11.5 | .87 hours less than RMS |
| Prevost (QC) RR 4 | 10.67 | 10.16 | .51 hours less than RMS |

**Letter Carrier Normal Workday and Workweek**

[174] Article 14.02 of the 2018 Urban collective agreement states:

> "(c) The normal workweek for full-time employees shall be forty (40) hours, eight (8) hours per day, five (5) days per week with a half (½) hour paid meal period each day."

[175] Article 14.04, concerning the start time for the LCs' workday, holds:

> "14.04 Definitions and Standards

[28] See Tab 15 of Ms. McMillan's Book of Documents.
[29] See Ms. Whiteley will-say, paragraph 63.

> (a) The normal workday for full-time employees in Groups 1 and 2 shall not commence before the official starting time set by the Corporation in accordance with this Article. In the case of Group 2, the starting time will be set by the Corporation following local consultation.
>
> […]
>
> (b) The normal workday for full-time employees in Groups 1 and 2 shall not be spread over a period of more than nine and one-half (9½) hours."

[176] Ms. McMillan indicates that LCs are considered full-time if the assessed time for their route is evaluated to last at least six hours in LCRMS time.[30]

[177] Part-time employees are defined at Article 14.04 (f):

> "(f) A part-time employee in Group 2, for the purposes of the Collective Agreement, is an employee who is working a minimum of one third (1/3) the hours of a full-time employee in Group 2."

[178] Article 14.05 indicate when and how long the LCs' meal periods shall be:

> "14.05 Meal and Rest Periods - Full-time Employees
>
> (a) Time off for a meal for full-time employees shall be as close as possible to mid-shift and shall be for a minimum of one-half (½) hour. The provisions of this paragraph do not apply to Group 4."

[179] Ms. McMillan affirms that when she worked out of an LC Depot, she never saw the LCs take their full 30 minutes lunch break. According to Mr. McGrath, Appendix BB of the Urban collective agreement stipulates that door-to-door LCs are expected, but not obliged, to have their lunch break at the depot. There is time built into the LC routes to allow them to return to the depot, whether or not they elect to do so. LCs must take their lunch break on their line of travel unless authorized by a supervisor to run errands.

[180] Under Article 14.20 of the Urban collective agreement, LCs are entitled to five minutes of paid wash-up time before the meal period when the nature of their work makes it necessary.

[181] Article 14.05 e) of the Urban collective agreement covers paid breaks for the LCs:

> (e) All full-time employees, other than full-time employees in Group 2, shall be allowed a rest period of fifteen (15) minutes in the first as well as in the second half of a shift. All full-time employees in Group 2 shall be permitted a ten (10) minute rest period both in the first and second half of a shift. These rest periods shall be taken during the hours specified in clause 14.02 and are therefore paid.

[182] Note 3 in Appendix A of the Urban collective agreement mentions that in lieu of their full 15-minute breaks, LCs shall receive extra compensation for the five minutes not taken as breaks, paid at the LC's daily rate mentioned in Note 4 ($4.29 for 2016).[31]

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[30] Articles 14.02 and 14.03 of the Urban collective agreement.

[31] As indicated in Ms. Haydon's October report, this represents an annual sum of $1,192.

[183] Mr. McGrath states in his will-say that time for communication with supervisors and/or the review of information bulletins, is included in the LCs' paid breaks. LCs must not use their corporate vehicle to engage in personal activities during meal or rest periods.

**Additional Work and Overtime**

[184] Where the Corporation deems it necessary, it may permit an RSMC to perform the sortation and/or delivery portion of another route (additional work[32]). Payment for these activities and variables will be in accordance with Appendix A of the collective agreement.

[185] Overtime falls under Article 13.04 of the collective agreement. Overtime is only paid if the additional work, if it was specifically authorized or required by a representative of the Corporation, results in an excess of 80 hours per two weeks. Mr. Sinclair explains in his will-say that, in practice, and as per agreement with CUPW, overtime is paid only when an RSMC covers for another employee's route and the resulting RMS time for both routes exceeds 80 RMS hours per two weeks. [33]

[186] Mr. Sinclair explains that, before 2012, very little overtime was paid, as the RMS makes it hard to gauge actual overtime. Nevertheless, RMS time was elected as a proxy for overtime hours: any RMS hours over 80 per two weeks is remunerated at a ratio of 1.5.

[187] As it appears in an RSMC pay report for the period of October 9 to 22, 2016, an "Overtime premium in RMS HOURS" of $467.81 is added for 48.13 RMS hours or the equivalent of approximately $9.7119 premium per hour. As such, the proxy RMS hourly rate would be $19.4394."[34] check figures for 4 digits

[188] Ms. Beauchamp explains that if she exceeds 40 hours of actual work per week because of higher than usual volume or bad weather, she will not be compensated, unless it has been specifically authorized or required by a representative of the Corporation.

[189] If an RSMC is ordered, for any reason, to wait at the facility before departure, she would not be compensated for that time, as their salary is fixed. Ms. Beauchamp asserts that RSMCs are not compensated for the time required to prepare and sort neighbourhood mail for delivery, nor is it the case for when they inspect their vehicle in the morning before departure; in fact, they do so on their own time.

[190] Ms. Beauchamp indicates that if RSMCs work parcel delivery during weekends (letter mail is only delivered during the week), they are paid the normal PCI rate of $1 per parcel plus the activity value for travel time. In his will-say, Mr. Sinclair specifies that RSMCs are paid at the highest per kilometre rate when delivering parcels on the weekend.

[191] Concerning work on a Designated Holiday, Article 16.02 states that:

> "16.03 Work on a Designated Holiday

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[32] See Article 13.03 of the collective agreement.
[33] Article 13.04 of the collective agreement.
[34] Exhibit 32.

> An employee required to work on a designated holiday shall be paid in addition to his or her regular rate of wages for that day, at a rate equal to one and one-half (1½) times his or her regular rate of wages for the time that the employee worked on that day."

**Letter Carrier Overtime**

[192] If more work is necessary to complete one's route, overtime on that route is, if practicable, done by that route's assigned LC, as per Article 15.08 of the Urban collective agreement.[35]

[193] Mr. McGrath, in his will-say, explains that if LCs anticipate that they will need overtime to complete their route, they must obtain pre-authorization from a supervisor to do so. LCs can still work overtime without obtaining pre-authorization, but they will have to justify the overtime request thereafter.

[194] For uncovered routes, the CPC relies on voluntary overtime. If the Corporation is unable to obtain sufficient employees to work overtime, it can assign the required number of employees to cover for the routes.[36]

[195] If LCs begin their workday prior to the times specified by the Corporation, either 9:00 or 10:00 a.m., the Urban collective agreement, at Article 14.04, provides that:

> "(i) Where an employee in Group 2 commences his or her duties before the official starting time set forth above, with the approval of the supervisor, he or she shall be paid overtime rates for all hours worked prior to the official starting time."

[196] In cross-examination, Ms. Beauchamp said that LCs can probably make local arrangements to start at earlier times, since it was observed at the Kanata depot that the LCs arrived at 7:00 a.m. instead of 9:00 a.m. as their collective agreement prescribes. Ms. Beauchamp asserts that LCs can also arrive later for other reasons, for instance if they have a medical appointment and they obtain permission from their supervisor. She concedes that it is not possible to do so for other purposes.

**Replacements**

[197] If RSMCs cannot check in at work, they must call their LPO to inform them of their absence to ensure route coverage. In facilities where there are six or more RSMC routes, the Corporation is responsible for covering the route. If RSMCs work in a postal installation with five routes or less, they must personally find a replacement to cover their absence.[37] Article 14 states that:

> "14.01 Replacement
>
> Except in circumstances where the Corporation has provided a permanent relief employee or an on call relief employee to cover employee absences as per Appendix "H", an employee who is on an absence recognized under the collective

[35] See also Appendix LL of the Urban collective agreement.
[36] Article 15.14 of the Urban collective agreement.
[37] Article 14.01 and Appendix H of the collective agreement.

> agreement shall take the necessary measures to have a qualified replacement cover his or her route for the entire duration of his or her absence.
>
> Barring exceptional circumstances, such replacement shall meet security requirements.
>
> Such replacement must sign a contract for services with the Corporation in the form of a voucher provided by the Corporation for such purpose.
>
> Notwithstanding the above, where the employee can demonstrate that she/he has made every reasonable effort to provide a qualified replacement, but is unable to provide one, discipline shall not be imposed.
>
> 14.02 Contract Amount
>
> The replacement shall not be considered an employee of the Corporation while performing such work. The value of services rendered shall be the equivalent of the daily rate of the employee being replaced, for each day the replacement works. The daily rate includes an amount for vehicle expenses."

[198] Where it is responsible for covering the route, the Corporation employs Permanent Relief Employees ("PREs") or On Call Relief Employees ("OCREs") to cover for absences. Concerning PREs, Appendix F of the collective agreement provides that:

> "PERMANENT RELIEF EMPLOYEES
>
> 1. As of January 1, 2014, the Corporation agrees to create and implement the position of permanent relief employee, to primarily cover vacation leave absences in postal installations with fourteen (14) or more RSMC routes.
>
> (a) Once the vacation leave schedule is established under clause 15.02 (b), permanent relief employees in the installation shall be offered vacation leave coverage assignments by seniority.
>
> (b) Coverage of known absences of greater than six (6) months shall be offered to permanent relief employees by seniority.
>
> 2. Permanent relief employees will be assigned a minimum work schedule of twelve (12) hours per week."

[199] When a PRE is not assigned to another route, she is scheduled 15 hours per week, or three hours per day. The 2017 Team Leader Reference Material states the following regarding PREs:

> "On January 1, 2014, a new position called Permanent Relief Employee (PRE) was created
>
> PREs exist in offices with 14 or more RSMC routes and are used primarily to cover vacation leave
>
> Currently, when they are not assigned to another route, they are scheduled 15 hours per week
>
> […]

> […] If a PRE is not assigned to cover a route, he or she is paid a $60 lump sum and is expected to work on other duties assigned by the Team Leader for 3 hours. […]"[38]

[200] In cross-examination, Ms. Whiteley says that the above-mentioned document does not override the collective agreement and that PREs are not necessarily scheduled for the whole three hours. During his cross-examination, Mr. Sinclair indicates that it makes sense to use the maximum hours if no route is assigned to a PRE. He adds that the policy was put in place because managers would not have PREs work their full three hours.

[201] Concerning OCREs, Appendix E of the collective agreement provides, in part, the following:

> "1. As of January 1, 2014, on call relief employees will be utilized in postal installations with six (6) or more RSMC routes."

**LC Replacements (Relief Letter Carrier)**

[202] In his will-say, Mr. McGrath states that Relief Letter Carriers ("RLC") mostly cover for LCs' long term vacancies but can be required to cover day-to-day routes. The vast majority work full-time.

## Vacation Leave and Designated Holidays

[203] As per Article 15.01, RSMCs with less than 10 years of continuous employment with CPC are entitled to three weeks of paid vacation per calendar year; employees with 10 years of more of continuous employment are entitled to four weeks annually.

[204] In postal installations where PREs and/or OCREs are working, vacation leave is granted using a bidding system (Article 15.02 (b) and Article 15.03 of collective agreement). In other installations, RSMCs may take leave when they choose, but must give advance notice to CPC, as per Article 15.02 (a) of the collective agreement.

[205] Under Article 16.01 of the collective agreement, the RSMCs' designated holidays are the following:

> "New Year's Day; Good Friday; Easter Monday; The day fixed by proclamation of the Governor-in-Council for celebration of the Sovereign's Birthday; Canada Day; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day; One additional day in each year that in the opinion of the Corporation, is recognized to be a provincial or civic holiday in the area in which the employee is employed."

**Letter Carrier Vacation Leave and Designated holidays**

[206] LCs' vacation leave entitlements are as follows:

> "19.01 Definition and Entitlement
>
> […]

[38] Exhibit 28A, pages 10 and 71.

(b) An employee who is entitled to receive pay for at least ten (10) days in each calendar month of a vacation year, as defined in 19.01(a), shall earn vacation leave at the following rates:

(i) three (3) weeks per vacation year if he or she has completed less than seven (7) years of continuous employment;

(ii) four (4) weeks per vacation year after he or she has completed seven (7) years of continuous employment;

(iii) five (5) weeks per vacation year after he or she has completed fourteen (14) years of continuous employment;

(iv) six (6) weeks per vacation year after he or she has completed twenty-one (21) years of continuous employment;

(v) seven (7) weeks per vacation year after he or she has completed twenty-eight (28) years of continuous employment."

[207] LCs are entitled, under Article 19.12 of their collective agreement, to six weeks of pre-retirement leave.

[208] The LCs' designated holidays are the following:

"(a) New Year's Day; (b) Good Friday; (c) Easter Sunday; (d) the day fixed by proclamation of the Governor-in-Council for celebration of the Sovereign's birthday; (e) Canada Day – when July 1 is a Sunday, the designated paid holiday shall be July 2; (f) Labour Day; (g) Thanksgiving Day; (h) Remembrance Day; (i) Christmas Day; (j) Boxing Day; (k) one additional day in each year that, in the opinion of the Corporation, is recognized to be a provincial or civic holiday in the area in which the employee is employed, or in any area where, in the opinion of the Corporation, no such day is recognized as a provincial or civic holiday, the Corporation shall give employees thirty (30) days' notice that the first Monday in August is the holiday to be observed; (l) any additional federally legislated holiday, when such legislation is passed. This new holiday would not be in lieu of an existing holiday."

**Vehicle Requirements**

[209] RSMCs need to provide their own, "appropriate", vehicle, as per Article 32.01 of the collective agreement:

"32.01 Type of Vehicle

If the Corporation requires that an employee provide a vehicle to perform the work on his or her route, the employee must pay all operating and maintenance costs and provide the type of vehicle as stipulated in Schedule "A" of the Mail Transportation and Delivery Agreement that was applicable to the route on December 31, 2003. This obligation shall be maintained until the nature of the work to be performed or the situation has changed.

When an employee's route is altered in accordance with Article 11, the Corporation may require that the employee use a specific type of vehicle when necessary as a result of changes made to the route. Only when this results in an employee being required to change the vehicle he or she has provided shall the employee be

> entitled to the amount set out in Appendix "A" for the use of a specific type of vehicle. This payment shall only be paid while the employee retains the route for which the vehicle was required."

[210] RSMCs must insure their vehicle at their own expense for a minimum of $1M "[…] per occurrence for damages, including damage to the property of others and, when authorized by law, for bodily injury and death, until decided otherwise by the Corporation."[39]

[211] Between 6,800 and 6,900 RSMCs use a personal vehicle while the rest use RHDVs, according to Ms. Whiteley.

[212] If a route services 200 or more RMBs, it is considered a "RHD route" and the Corporation gives RSMCs the option to either buy or retrofit a personal RHDV or it can provide a company vehicle. If RSMCs opt to buy a personal RHDV, they will receive an additional sum, on top of the vehicle expense, for the next four years[40]. For RSMCs using a RHDV, the activity value for each RMB serviced will go down, as per Appendix A of the collective agreement.

[213] Ms. McMillan asserts that when RSMCs choose a company vehicle, they receive 25 to 30 years' old cars that have been refurbished for RSMCs. Ms. McMillan used to have a second vehicle on her previous route in case the first one would break down and had to be repaired, to not lose a day's work. In cross-examination, Ms. McMillan recognizes that having a second vehicle at the ready was not an operational requirement, but that, nevertheless, she said she needed one in practice in case of mechanical failure.

[214] Ms. Beauchamp's employment offer letter for her current route, concerning the vehicle requirements, states the following:

> "Comme condition d'embauche, il vous incombe de fournir un véhicule pour effectuer les tâches exigées par votre itinéraire, au premier jour de travail. Le type de véhicule doit satisfaire aux exigences précisées dans le document ci-joint (annexe A [Schedule A]) de la Convention de transport et de livraison. Le manquement aux exigences relatives au véhicule pourrait entrainer un renvoi si vous ne rencontrez pas les conditions d'emplois reliés au poste.
>
> Exigences du véhicule :
>
> Espace de chargement minimal de 100 pi. Cu. (2832 litres)
>
> Toit en métal et prise de courant pour accessoires permettant l'installation de l'enseigne et des feux giratoires de Postes Canada
>
> 5e porte / hayon arrière pour permettre le chargement d'Articles volumineux et surdimensionnés. (préférable)

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[39] Article 32.02 and 11.05 of the Collective Agreement.
[40] Article 2 c), Appendix K of the Collective Agreement.

> Vous recevrez un montant fixe pour les dépenses liés à l'utilisation de votre véhicule et vous serez responsable de tous les frais d'exploitation et d'entretien connexes."[41]

Vehicle expense and allowance

[215] RSMCs who use a personal vehicle receive a vehicle expense for doing so, which is determined in the following way, as per Article 33.01 (b) of the collective agreement:

> **"**33.01 Wages
>
> […]
>
> (b) Effective January 1, 2013, the vehicle expense kilometre reimbursement rate shall be equal to the Canada Revenue Agency's automobile allowance rate for the year, distance and geographical region in question, unless otherwise agreed to by the parties. The number of kilometres travelled in a year shall be determined based on the number of kilometres established by the Corporation for the route."

[216] Some RSMCs also receive a special allowance, which is added to their vehicle expense, as per Article 5 of the collective agreement, Appendix A:

> "5. The special allowance that was being paid, prior to the coming into effect of this collective agreement, for the use of a specific type of vehicle shall continue to be paid as long as the employee is required to use such a vehicle and the employee retains the route for which the vehicle was originally required. Following the coming into effect of this collective agreement, when the Corporation requires, in accordance with clause 32.01, that an employee use a specific type of vehicle, it shall pay a minimum of twelve hundred dollars ($1,200) per year. The amount set out above is to be added to the vehicle expenses determined under paragraph 33.01 (b)."

[217] According to Mr. Sinclair, it is up to the employees to choose how they deduct their vehicle expenses when filing their tax return. The Corporation does not oversee the tax treatment of employees' vehicle expenses. The vehicle expense is paid bi-weekly with other wages, as opposed to usual vehicle reimbursement which is paid once or twice a year. He adds that RSMCs are entitled to their vehicle expense during designated holidays. Moreover, LCs using a private vehicle are reimbursed at a lower rate under the Corporate Travel Policy for Unionized Employees and the amount is not included in their collective agreement provisions on wages.

[218] The CPC sends employees a CRA T2200 form and an explanation letter at the end of each year. A February 2017 example of such a letter states, in part:

> "Eligible RSMCs receive a per-kilometre vehicle expense reimbursement based on the number of kilometres travelled to service their route. The amount of reimbursement is based on the distance of the line of travel for the route multiplied by a per-kilometre rate, as per the collective agreement.

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[41] See tab 3 of Ms. Beauchamp's Book of Documents.

> The T2200 – Declaration of Conditions of Employment form is issued by employers to employees who may be able to deduct eligible expenses on their personal tax return. […]
>
> An employee's expenses are not automatically eligible for deduction under the law simply because he/she receives a T2200. Other conditions must be met in order to deduct employment-related expenses."[42]

[219] In cross-examination, Mr. Sinclair acknowledged that the CPC doesn't deduct vehicle expenses in its tax filings but denied this implies that the vehicle expense is not an income. He insisted that the parties agreed to that arrangement and that paying the CRA's maximum rate was a way to maximize non-taxable dollars to employees.

[220] Mr. Sinclair affirms that vehicle expenses are part of an employee's annual pay. The Union also shares that position, he says, as one of its 2015-2016 National Program of Demands of special importance stated that "Appropriate Corporate vehicles [are] to be provided to employees while ensuring no loss of income"[43]

[221] In an August 11, 2009 email, a CPC representative sent a document that details the results of a route restructure in Kanata. Attached to the email is a table showing the list of the restructured routes. Mr. Sinclair confirms that the annual salary is the combination of wages, variables and vehicle expenses, as shown in the document. The hourly rate shown in the document, however, is derived from the "wages" column, which excludes variable pay and vehicle expenses, divided by RMS hours. Mr. Sinclair, during cross-examination, asserted that the hourly wage in the CPC document was probably a proxy RMS hourly wage.[44]

[222] During cross-examination, Mr. Sinclair claims that RSMCs who use their own vehicle enhance their annual pay and are fortunate to be able to do so.

[223] Ms. McMillan placed a bid on a new route in 2016 for which she would drive a company RHDV. She asserts that the vehicle expense does not cover fully the operational costs of a personal vehicle. As such, it cannot be considered as a salary. Ms. Beauchamp also switched to a corporate vehicle in 2012 for the same reason as Ms. McMillan

[224] Mr. Bickerton indicates that, as per Article 15.01 (a) of the collective agreement, RSMCs do not receive the vehicle expense during their vacation leave. Under Article 18.03 (b) of the collective agreement, vehicle expenses are excluded from the maternity leave allowance. RSMCs do not receive vehicle expenses when they are on short term disability (Article 36 of the collective agreement). Ms. McMillan indicates that RSMCs do not receive the vehicle expense during their vacations or when they are on disability leave.

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[42] Tab A of Mr. Sinclair's Book of Documents.
[43] See tab G of Mr. Sinclair's Book of Documents.
[44] See tab 21 of Mr. Bickerton Book of Documents.

**LC Vehicles**

[225] Ms. Beauchamp asserts that, except for some rare cases, LCs do not have to provide a personal vehicle and are provided one by the Corporation.[45]

**Wages**

[226] RSMCs are not, under the collective agreement, paid on an hourly basis. Instead, as per Article 33 of the collective agreement, RSMCs are paid an annual pay which is comprised of a vehicle expense and actual wages. The actual wages correspond to the yearly sum of the activity values, variable allowances and sortation allowances appearing in the RSMC's Schedule A.[46]

[227] Mr. Bickerton concedes, during cross-examination, that CPC wage policies are found in the collective agreement.

[228] Mr. Sinclair, in his will-say, indicates that the RSMCs wages do not account for mail volume or time worked and are paid regardless of actual sortation or service to POCs on the route, whether that may be for letter mail or admail.

[229] Article 33.01 of the collective agreement defines annual pay as follows:

> "**33.01 Wages**
>
> (a) Beginning January 1, 2016, an employee's annual pay shall be determined using the actual wage set out in Appendix "A", and the vehicle expense where applicable.
>
> (b) Effective January 1, 2013, the vehicle expense kilometre reimbursement rate shall be equal to the Canada Revenue Agency's automobile allowance rate for the year, distance and geographical region in question, unless otherwise agreed to by the parties. The number of kilometres travelled in a year shall be determined based on the number of kilometres established by the Corporation for the route.
>
> (d) Actual wages shall correspond to the difference between the annual pay and the vehicle expenses."

**Actual Wages**

[230] The collective agreement's Appendix A, Article 1, defines actual wages as follows:

> "1. An employee's actual wage is determined by the activity component specified in paragraph 2, the variable allowance specified in paragraph 3, and the knowledge sort and civic addressing allowance specified in paragraph 4."

<u>Activity component or values</u>

[231] RMSCs' work is broken down into activity, each having a specific value and appearing in Appendix A of the collective agreement. There are three categories of activity values: sortation, delivery and drive time. Sortation and delivery values are paid out per assumed action, for instance sorting a single residential mail address or delivering

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[45] Article 32 of the Urban Collective Agreement.

[46] The Collective Agreement's relevant Article of its Appendix A have been reproduced in Appendix C of the present award.

mail to a CMB. Drive time values compensate the RSMC by kilometres travelled. The amount for every kilometre is determined by the number of POCs per kilometres for the route. For example, if a route has 9.9 POCs per kilometre or less, the RSMC gets paid $0.3948 per kilometre travelled.[47]

[232] The activity values are subject to three different Zones. Zone 1 provides the lowest value, while zone 3 provides the highest. For instance, delivering mail to an RMB in 2016 was worth: $0.0924 in Zone 1, $0.1005 in Zone 2 or $0.1045 in Zone 3. A detailed breakdown of activity values per year and per zone is laid out in Appendix A of the collective agreement.

[233] As per Article 2 (b) of the collective agreement, Appendix A, RSMCs' wages are subject to pay progression per year of experience. OCREs remain at the minimum wage progression level.

[234] Ms. Beauchamp adds that if an RSMC must deviate from the Schedule A2 itinerary for a distance greater than 0.5 kilometre, because of road work or other circumstances, the employee must declare it on the log sheet and advise their supervisor of the situation. The RSMC will receive compensation for the extra distance travelled.

[235] Ms. Mc. Millan explains that when RSMCs became employees, their routes were directly imported as they were. At that time and until 2012, activity values were used only to increase a route holder's salary if POCs were added to the route. For instance, 9 cents were added per new POC.

[236] Ms. Beauchamp points out that the salary zone in which the RSMC works can have a significant impact on her salary. Ms. Beauchamp herself indicates that one of the main reason she bid on her most recent route was to have a route in a better salary zone.

[237] Ms. McMillan indicates that Appendix A values are used to adjust the annual pay when POCs or kilometres are added or removed from a route.

Variable Pay

[238] The amounts paid for variables completed are laid out in Article 3, Appendix A of the collective agreement:

> "(a) An employee's variable allowance is the annualized total of the following:

[47] Article 2 of the Collective Agreement, Appendix A.

Neighbourhood Mail Sets (per point of call)

| | |
|---|---|
| Less than 500 grams | 1.5 cent |
| Greater than 500 grams and less than 1,000 grams | 10.0 cents |
| From 1,000 to 2,000 grams | 15.0 cents |

Other

| | |
|---|---|
| Lock changes | $1.00 each |
| Personal contact items | $1.00 each |

(b) Changes to the variable allowance will be made by the Corporation once per calendar year until such time as an employee's route is automated to capture actual variable allowance data. At such time, the variable allowance will be based on actual data and paid bi-weekly. "

[239] Ms. Whiteley explains that routes entered into the Georoute software are also called automated routes and can be updated dynamically. As such, this allows the Corporation to pay the RSMC for every variable completed during her shifts. For non-automated routes, the RSMC gets paid bi-weekly for the average number of PCIs in her route's Schedule A. For instance, at the end of the year, if more PCIs were delivered, the employee is paid retroactively, and the Schedule A's PCI numbers are adjusted for the next year. If less PCIs were delivered, the average is adjusted for the next year, but the employee's pay is not affected.

Knowledge Sort

[240] When an RSMC has POCs without an address on her route, her sortation value is increased in the following way:

"(a) Subsequent to January 1, 2013, an employee performing sortation on a route identified as requiring a knowledge sort (a route with no civic addressing at the sortation case) shall be entitled to five (5) cents per day per point of call requiring a knowledge sort. The entitlement under this paragraph exists for a maximum of three (3) months. […]"[48]

**Other Allowances and Pay**

[241] RSMCs are also paid an annual boot allowance. The boot allowance is equal to $30 times the RSMCs' daily RMS hours for their route. For instance, Ms. Beauchamp's replacement receives $221.70 every year, or $30 multiplied by 7.39 RMS hours.[49]

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[48] Article 4 (a) of the Collective Agreement's Appendix A.
[49] Article 24.03 of the Collective Agreement.

[242] A corporate Questions and Answers document states that RSMCs who undergo the two hours and 15 minutes RRD training are paid $42.50, or the equivalent of $18.89 per hour.[50]

[243] Ms. McMillan affirms that, in 2016, RSMCs who took the trainer-led-training for using a newer PDT model were paid $39.72 for a two-hour course, as per a memorandum of agreement signed by the parties. This is equal to $19.86 per hour.[51]

**LC other Allowances**

[244] As per Article 34.05 (a) (ii) of the Urban collective agreement, LCs receive $20 per year as a glove allowance.

[245] Article 34.05 also provides that LCs receive a $240 boot allowance every year.

**Compensation for PREs and OCREs**

[246] PREs are paid in the following manner:

> "3. (a) Permanent relief employees shall be paid the Appendix "A" activity values and variable allowance of the route being replaced. Unless a corporate vehicle is provided, the appropriate vehicle expense will apply.
>
> (b) When a permanent relief employee is not assigned to a route and being compensated in accordance with paragraph 3 (a), he or she shall receive sixty dollars ($60.00) per day in compensation and be required to perform other duties assigned by the Corporation for a maximum of three (3) hours per day."[52]

[247] During cross-examination, Ms. Whiteley speculated that the $60 per three hours, or $20 per hour, was a reasonable rate for PREs, but she stated that she could not explain why. When pressed on about a potential relationship between the PRE hourly rate and the RMS hourly rate, Ms. Whiteley said that she did not know if such a relationship existed.

[248] OCREs are paid in the following way:

> "3. On call relief employees shall be paid at the minimum progression level of the Appendix "A" activity values and variable allowance of the route being replaced. Unless a corporate vehicle is provided, the appropriate vehicle expense will apply.
>
> […]
>
> 8. On call relief employees shall be entitled to leave on the designated general holidays if the holiday falls on an assigned working day. Each month, in respect to the payment of general holidays, on call relief employees shall receive pay equal to four point four (4.4) percent of their actual wages as defined in Appendix "A".[53]

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[50] See tab 17 of Ms. McMillan's Book of Documents.
[51] See tab 18 of Ms. McMillan's Book of Documents.
[52] Appendix F of the Collective Agreement.
[53] Appendix E of the Collective Agreement.

**RMS Time Values**

[249] Every activity value has a time value linked to it. Ms. Beauchamp indicates that the time values existed before 2004, when the RSMCs became part of the Union. She adds that the Union receives a copy of the time values during every bargaining round. While the latter do not appear in the collective agreement, they have been mentioned and used by the parties during collective bargaining since 2004. The sum of the time values for each activity in the RSMC's Schedule A is the route's RMS time.

[250] In her will-say, Ms. Whiteley indicates that the majority of existing time values were imported directly from BEXX and have not been updated since their development in the late 1980's and 1990's. Also stated in her will-say is that each time the parties agree to increase the activity values in Appendix A of the collective agreement, the Corporation also increases time values in the background. During her testimony, she indicates that RMS time values encompass a broad range of activities for each figure, for instance, sorting values include all tasks that happen inside the facility (walking, sorting, tying out, etc.). The same applies to delivery activities. Ms. Whiteley also states that there is no proper system to time the RSMC activities, or a detailed assessment of time values.

[251] Ms. Whiteley indicates that new time values or adjustments are based off her and her colleagues' judgment and other pre-existing values. She adds that to arrive at a new time value, she and her team members use their sense of what would be an appropriate time value for the activity, which can sometimes be negotiated with the Union. CPC's objective, when creating or amending time values, is to better represent the workload. To achieve this goal, Ms. Whiteley consults colleagues and vouchers for extra work approved by managers.

[252] As an example of unilateral time value change, Ms. Whiteley mentions the RPO clearance time value that was introduced in 2017: over the years, RSMCs would drop off more and more carded items at RPOs and the existing time value used to represent that activity was not appropriate. Another example given by Ms. Whiteley is the Business special, which is a new time value that was created because she and Mr. Sinclair felt that some business counters like the ones at Costco or casinos required more time to complete delivery than normal, street-level businesses. Once, the Corporation also reduced a time value for the Business Exterior receptacle, which is less work content than when an RSMC needs to go inside the building. Ms. Whiteley and her team also came up with time values for "pick-up other" and apartments.

[253] Mr. Bickerton, in cross-examination, asserts that time values are indirectly reflected in the collective agreement in the activity values for driving, since you can simply multiply the activity value, which is given per kilometre, by kilometres per hour, thus obtaining an hourly rate.

[254] Concerning drive time, Ms. Beauchamp explains that if, for instance, one looks at the activity value of drive time per kilometre at 20km/hr in Appendix A of the collective agreement and were to multiply it by 20 (the number of kilometres travelled per hour), one would obtain around $21.81 per hour. She adds that doing the same calculation with the activity value for drive time at 30km/hr would result in the same $21.81 figure.

[255] In a September 19, 2017 email to both the Union's and the Corporation's experts, Mr. Sinclair provided the time values for each activity in the RMS system for the year 2016:

"

| **Sortation** | **Time value** |
|---|---|
| Residential Sort | 0.25 |
| Farm Sort | 0.25 |
| AMS Business Sort | 0.80 |
| Apartment Sort | 0.17 |
| Business Direct Sort | 0.80 |
| Sortation Caller | 0.80 |

| **Deliver** | **Time value** |
|---|---|
| rmb | 0.280 |
| rmb-rhd | 0.170 |
| rmb-rrd | 0.370 |
| cmb | 0.140 |
| gmb | 0.170 |
| kiosks | 0.150 |
| apts | 0.190 |
| busdirect | 0.650 |
| rpo | 2.900 |
| slb | 2.900 |
| pickup | 2.900 |
| stop time / stop | 0.240 |

| **Drive** | |
|---|---|
| 50 km/hr | 1.2 |
| 40 km/hr | 1.5" [54] |

[256] Mr. Sinclair explains that, prior to 2012, there was no link between activity values, Schedule A and time values.

[257] Mr. Sinclair indicates that because the Corporation can simply change time values at will, relying on an RMS hourly wage would be odd. Indeed, CPC could simply lower time values for activities and end up with a higher hourly wage, even if no actual changes to the workload were made.

[258] The parties also negotiated time values changes. In 2016, the parties agreed to lower the time values for sequenced mail. The exact reduction percentage has yet to be determined by CPC and the change has not been implemented yet. In her will-say, Ms. McMillan asserts that during the 2016 negotiation discussions, CPC held the position that sequenced mail reduces time needed for sorting by 25%. Ms. McMillan also indicates that CPC's suggestions for the new time values for sequenced mail is part of a document

[54] Tab 42 of Mr. Bickerton's Book of Documents.

she prepared that tracks time value changes for each collective agreement. The time values appearing in her document show a time reduction for sequenced mail ranging from 29.5 to 32%, depending on the activity. Ms. McMillan's document shows new time values for RPO clearance, pick-ups, high POC CMBs, business exterior, parcel locker clearance, and business special. [55]

[259] Mr. Sinclair testifies that, in 2016, following the increase of the drive time activity value, drive time values were also augmented by CPC. However, he asserts that the payment is not based on any notion of time and suggests that the Corporation should have called the drive time a density pay, as it would be a more appropriate term considering the objective behind the change. He adds that, since the Corporation augmented the time value proportionally to the activity value increase, there was no change in the RSMCs' notional hourly rate, even though compensation went up.

[260] Using a RHDV lowers the work content and, Mr. Sinclair concedes, probably reduces the time needed to deliver and retrieve mail from an RMB. During cross-examination, he admits that when a change is made because an activity requires less work content, it also means that the activity requires less time.

[261] In cross-examination, Ms. Whiteley asserts that when the Corporation raises the time values for certain activities or creates a new time value, it is to reflect that an activity requires more effort. Pressed on the issue, she concedes that, all else being equal, the Corporation felt some activities required more time to perform. For instance, such is the case for the changes made for drive time in areas with denser traffic, which increases drive time.

[262] Still in cross-examination, Ms. Whiteley concedes that implementing a time value for PCIs would not be "insurmountable", although it would have to be a negotiated item and it would not be a straightforward task. In re-examination, she affirmed that the introduction of such a time value would not, in any event, make the RMS more accurate.

**Payment Notification and Wage Calculator**

[263] Ms. Beauchamp describes the link between Schedule A1 and the pay from her own route that she obtained in May 2017. Her route's annual earnings amounted to $53,269.36 and comprised the three followings items, as appears from the letter CPC sent her when she obtained the route:

> " [...]
>
> Gain annuel relié aux activités: 42, 052.31$
>
> Dépenses annuelles de véhicule: 3, 084.12$
>
> Indemnité variable annuelle : 8,132.93$"[56]

[264] Ms. Beauchamp's relief RSMC covering her route, for the period of February 26, 2017 to March 11, 2017, made a daily rate of $161.19 (excluding variables). The RMS

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[55] Tab 21 of Ms. McMillan's Book of Documents.
[56] Tab 3 of Ms. Beauchamp Book of Documents.

time for the route amounts to 443.45 minutes, or about 7.39 hours (excluding time for variables), resulting in an estimated hourly rate of $21.81. Ms. Beauchamp's route is in salary zone 2.[57]

[265] Ms. McMillan explains that an online wage calculator is made available by the Corporation to help RSMCs estimate their pay and RMS hours for their route. Employees put in their Schedule A route information in the calculator (daily kilometres, numbers of POCs, average lock changes, etc.), frequency of service, vehicle and pay zones and they receive an estimate of their annual wage by years of service.[58]

[266] During the hearings, counsel for the Corporation confirmed that CPC's pay system allows, with the right query, to show an hourly rate proxy for RSMCs.

**LC Wages**

[267] LCs are paid on an hourly basis which is stated in their collective agreement[59]. As of January 1, 2016, the maximum hourly rate for LCs that have accrued six years of service or more was $25.95. LCs are paid on an hourly basis to deliver PCIs, which is included in their workday.

[268] Full-time LCs are paid for eight hours, regardless of if they complete their route in less than 8 hours.

[269] Ms. McMillan explains that if an LC route is over assessed, say at 500 minutes per day (eight hours and 20 minutes), the employee will get paid regular time for the 500 minutes, plus 20 minutes of overtime. If the route is completed in 450 minutes, the LC still gets paid 500 minutes of regular time. If the LC completes the route in 510 minutes, the employee will receive 500 minutes of regular time, plus 30 minutes of overtime.[60]

[270] Ms. McMillan asserts that an LC working the same 560.81 minutes route as her, would make $63,276.53 annually, while she would only make $48,109.66 (without variables). Indeed, the LC would be paid overtime for every minute worked above 480 minutes (eight hours). For a 480-minutes route, she would make $41,177.30 per year (without variables), while the LC would make $54,158.69 per year. A comparison table has been adduced by the Union.[61]

[271] Ms. McMillan asserts that when she was servicing a six RMS hours route, she would still come back later than the full-time LCs and would get teased by them for finishing later than they did and being paid only for six hours.

[272] Under Appendix D of the Urban collective agreement, LCs are paid 2.3 cents per piece of admail delivered of less than 115 grams each, with maximum length of 30.5 centimeters, 15.24 centimeters width and 1.91 centimetres of thickness. LCs have three days to deliver the admail, if they are forced to deliver it in less than three days, they

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[57] See tab 3 of Ms. Beauchamp's Book of Documents.
[58] See Tab 10 of Ms. McMillan's Book of Documents.
[59] See Article 35.01 of the Urban Collective Agreement.
[60] Exhibit 17.
[61] Exhibit 19.

receive an additional 2.3 cents per admail piece with the same weight and dimensions as above, as per Article 7.02 (b) of Appendix D of the collective agreement.

[273] Ms. Beauchamp explains that LCs have time built into their route for sorting neighborhood mail before delivery.

RLC wages

[274] Mr. McGrath's will-say indicates that RLCs are paid on an hourly basis at a slightly higher rate than LCs.

## Pension and Benefits Plans

### Pension Plan

[275] Article 22.01 of the collective agreement states that "It is understood that the employees who meet the eligibility requirements of the Canada Post Corporation Pension Plan shall participate in it."

[276] Mr. Bickerton explains that RSMCs' pensions are based on the RMS hours appearing in Schedule A of their route and only those hours. Actual hours worked in the sense of Article 13 of the collective agreement do not count as pensionable, whether the RSMC works more or less than what appears in the employee's Schedule A. AN RSMC must have 12 RMS hours scheduled or more per week to be eligible for the pension plan.

[277] A CUPW presentation to the Pay Equity Committee, dated September 8, 2017, on RSMC compensation states that:

> "Our pension is based on a 40-hour workweek. Any RMS time over 40 hrs/week is not pensionable. Our year is based on 260.88 working days. 2016 base salary for pension is $41,177.08. $41,177.08/260.88 = $157.39 day. $157.39/8 = $19.73 per hour"[62]

[278] Ms. McMillan's Pension Statement shows that pension is accrued in proportion of RMS hours appearing in Schedule A. For instance, 40 RMS hours per week will grant full pension benefits for the time worked on that route, while a six RMS hours route would grant 75% of pension benefits.[63]

[279] Ms. McMillan and Ms. Beauchamp indicate that pay for variables and the vehicle expenses are not pensionable. Neither is additional work on another route or excess work hours, except if it is overtime expressly ordered by a representative of the Corporation. Similarly, time for vehicle inspection, time for preparation and sorting of Neighborhood mail and vehicle expenses are not pensionable. The boot allowance is also not pensionable.

[280] Mr. Sinclair testifies that the RSMCs' pensions operate in the same way for RSMCs and LCs: each receives a percentage of their salary. In the end, the principle is the same and an RSMC with the same salary as an LC will receive the same pension. In cross-examination, Mr. Sinclair indicates that the maximum annual pension for an RSMC

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[62] See tab 5 of Ms. McMillan's Book of Documents.
[63] Tab 9 of Ms. McMillan's Book of documents.

servicing a 40 RMS hours route or more is $41,000. He adds that RMS hours are used because a proxy was necessary to create a ratio between maximum pensionable hours and time worked.

[281] Ms. Beauchamp's indicates that her route bidding was mainly driven by a desire to augment her salary. For instance, when she bid on a route on the North Shore of Montreal, she did so because it is a Zone 2 route, which increases her wages and, thus, her pension. Ms. McMillan also bid on a route of over eight RMS hours per day to get her full pension benefits.

[282] Ms. Whiteley explains that the new 2017 display of an estimated time range in the Schedule A does not affect RMS time for pensions, which remain the "fixed" figure that previously appeared in the RSMC's Schedule A. For example, if the range is 50 to 100 minutes, the pensionable RMS time would be 75.

**Benefit Plans**

Extended Health Care Plan

[283] Ms. Lizotte reports in her will-say that CPC offers an Extended Health Care Plan ("EHCP")[64] that includes drugs, paramedical services, hospitalization, out of country coverage, and extended vision and hearing benefits. Its participation is optional. For RSMCs opting in the program, the Corporation pays 95% of the premium coverage. Only RSMCs with a minimum of 12 RMS hour workweeks are eligible. RSMCs that are not eligible can still participate, but their coverage excludes prescription drugs and their rates are reduced accordingly.

Vision and Hearing

[284] Per Ms. Lizotte's will-say, RSMCs have a mandatory hearing and vision benefits plan[65]. The Corporation pays 100% of the cost.

Dental Benefits

[285] Ms. Lizotte, in her will-say, indicates that indeterminate RSMCs employees have access to dental benefits, but not term employees[66]. CPC pays 95% of the premium. New RSMCs must wait six months before they can take advantage of the dental benefits.

Life Insurance and Death Benefit

[286] Ms. Lizotte states in her will-say that RSMCs do not have access to a life insurance and death benefit plan.

British Columbia Health Care Premium

[287] RSMCs in British Columbia do not have a portion of their provincial premium paid by the Corporation.

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[64] Article 22.04 of the Collective Agreement.
[65] Article 22.02 of the Collective Agreement.
[66] Article 22.03 of the Collective Agreement.

**Post-retirement Benefits**

[288] RSMCs are not eligible to receive post-retirement benefits.

**LC Pension and Benefit Plans**

[289] All hours worked by LCs are pensionable, including paid breaks, but excluding overtime hours[67]. Mr. Bickerton states that all hours scheduled for a part-time LC are pensionable as well as all hours worked above the scheduled hours.

[290] According to Mr. Sinclair, LCs receive a percentage of their salary. In cross-examination, he indicates that the maximum annual pension for a full-time LC is $55,000, while the pension for an RSMC servicing a 40 RMS hours route or more is $41,000. Mr. Sinclair mentioned, however, that the hours worked by each employee would not be the same.

Extended Health Care Plan

[291] Ms. Lizotte, in her will-say, explains that CPC offers an Extended Health Care Plan ("EHCP") that includes drugs, paramedical services, hospitalization, out of country coverage, and extended vision and hearing benefits. Its participation is optional. For LCs opting in the program, the Corporation pays for 95% of the premium coverage. All members of the urban unit are eligible to participate in this plan.

Vision and Hearing

[292] In her will-say, Ms. Lizotte states that LCs have mandatory hearing and vision benefits. The Corporation pays 100% of the cost for both groups.

Dental Benefits

[293] Indeterminate LCs have access to the same dental benefits, but not term employees, as indicated Ms. Lizotte's will-say. CPC pays 95% of the premium.

Life Insurance and Death Benefits

Ms. Lizotte indicates, in her will-say, that indeterminate Urban employees must participate in the basic life insurance program. The basic benefit is equal to two times the employee's annual salary. LCs pay $0.16 per $1,000 of coverage and CPC pays $0.04. Coverage is reduced by 10% every year starting at age 66 until coverage reaches the greater figure of either $10,000 or a third of the employee's salary. The life insurance also includes a $10,000 death benefit after the age of 65. The first $10,000 of employees' life insurance is a CPC-paid death benefit for which the employee does not pay any portion of the premium.

British Columbia Health Care Premium

[294] Ms. Lizotte's will-say indicates that for indeterminate Urban employees in British Columbia, the Corporation contributes to the Provincial Medical Insurance Plan Premium at the rate of 70% of the provincial medical premium. In 2016, the Corporation paid a total

[67] Article 42 of the Urban Collective Agreement.

of approximately $2,161,444.35, including retroactive adjustments for prior years, in British Columbia Health Premium Reimbursement for 2,461 LCs.

Post-retirement Benefits

[295] Ms. Lizotte, in her will-say, states that indeterminate employees in the Urban unit may be eligible to receive post-retirement benefits. To be eligible, LCs must meet the following criteria: Have been eligible to be covered under the plan on the day immediately before they retired; Have completed at least 15 years of continuous service at the Corporation or have previously been grandfathered (with 10 years of continuous service at CPC prior to January 1, 2008 at CPC on the date of retirement, or be totally disabled and approved for disability retirement); Receive a monthly pension from the defined benefit component of the Canada Post Registered Pension Plan; For British Columbia: having been hired prior to November 1, 2009 in order to be eligible for British Columbia medical premium reimbursement.

[296] An employee meeting the above-mentioned criteria may elect to participate in the following plans: Post-retirement EHCP: CPC pays 65% of the premium for employees who retired on or after April 1, 2013. Post-retirement Life: CPC pays 66.7% of the premium for those opting in. At age 65, the first $10,000 of the life insurance is a CPC-paid death benefit. Post-retirement Dental: CPC pays 60% of the premium for the eligible retirees who opt in, except for retirees hired on or after November 1, 2009, who pay 100% of the premium. Post-retirement British Columbia Medical Premiums: CPC pays 50% of the premium for eligible retirees submitting a claim for reimbursement. Employees hired after November 1, 2009, are not eligible.

Costs

[297] In 2017, the Corporation paid a total of $1,183,779.98 to 1,783 retired British Columbia urban employees on account of their 2016 British Columbia medical premium partial reimbursement, as reported in Ms. Lizotte's will-say.

[298] Mr. Boutin explains, through his will-say, that post-retirement EHCP costs are paid for weekly by the CPC to the insurer, based on the actual costs incurred by claims. Each year, based on projected claim costs, the Corporation ensures it has the funding necessary to cover the benefits cost.

[299] Mr. Boutin also states that, in 2000, CPC's shareholder contributed one billion dollars to fund dental benefits, among other plans. This contribution is held in a segregated fund.

[300] Also stated in Mr. Boutin's will-say is that CPC finances its life insurance through a segregated fund on an annual basis. As at December 31, 2016, the fund's balance was approximately $177,000,000. Death benefits are also funded through a segregated fund, with a balance of $103,000,000 as at December 31, 2016.

[301] Mr. Boutin's will-say reports that the dental benefits for retirees are financed through a segregated fund, which had a balance of approximately $243,000,000, as at December 31, 2016.

## Disability Programs

### Short-term disability program

[302] Ms. Bolduc reports in her will-say that RSMCs benefit from a self-funded plan (not an insured one) and the benefit is paid for by the Corporation. An employee is eligible for the benefits after being off work for seven consecutive days of illness or from the first day of accident or hospitalization. The benefit amounts to 70% of the employee's base wage for a period of up to 30 weeks. CPC pays the entire benefit for the first 15 weeks and, thereafter, an offset applies for employment insurance disability benefits.

### Extended disability program

[303] In her will-say, Ms. Bolduc states that, as of January 2013, CPC established an extended disability program for RSMCs. It is self-funded, and the benefit is paid entirely by CPC. The program provides an additional 74 weeks of benefits based on 70% of base pay, following the end of the short-term disability program's 30 weeks period.

### Injury on duty

[304] Ms. Bolduc, in her will-say, asserts that RSMCs are entitled to leave for work-related injuries. RSMCs who are injured on duty receive the compensation determined and paid by the provincial workers' compensation board in the province in which they work, at the applicable provincial rate. Pending the province's board's decision, RSMCs do not receive any pay from the Corporation. When the claim is approved, the employee receives compensation payments retroactive to the first day after injury. Because RSMCs, contrary to LCs, are paid two weeks in arrears, Ms. Bolduc asserts in her will-say that they usually receive some pay on their next pay day.

[305] Ms. Nurse, in her will-say, indicates that CPC maintains a weekly and annual report on Total Injury Frequency, which she is responsible to maintain. According to Ms. Nurse's will-say, reported hours for injured RSCMs are based on RMS hours, which is used as a proxy for actual hours of work.

### LC Disability Programs

<u>Short-term disability program</u>

[306] Ms. Bolduc reports that LCs benefit from a self-funded program (not an insured plan) and the benefit is paid for by the Corporation. An employee is eligible for the benefits after being off work for seven consecutive days of illness or from the first day of accident of hospitalization. The benefit amounts to 70% of the employee's base wage for a period of up to 30 weeks. CPC pays the entire benefit for the first 15 weeks and, thereafter, an offset applies for employment insurance disability benefits.

<u>Extended disability program</u>

[307] As stated in Ms. Bolduc will-say, as of January 2013, CPC established an extended disability program for RSMCs only. It is self-funded, and the benefit is paid entirely by CPC. The program provides an additional 74 weeks of benefits based on 70% of base pay, following the end of the short-term disability program's 30 weeks period.

Disability insurance

[308] Ms. Bolduc, in her will-say, states that LCs participate in a disability insurance plan for long-term disability coverage, which provides a benefit of 70% of the employee's salary at the end of the elimination period, up to age 65. Employees pay 50% of the premiums. After two years, the definition of disability changes and requires the employee to be disabled from any occupation, rather than only from his/her own occupation, to continue to receive benefits.

Injury on duty

[309] Indicated in Ms. Bolduc's will-say is that LCs are entitled to leave for work-related injuries. The provincial workers' compensation boards adjudicate all claims, but the Corporation pays the benefit (75% of the worker's salary) directly to the employee. For provinces where the statutory payment is higher than 75%, CPC adds a differential payment to meet the province's rate. While awaiting a compensation board's decision on whether a claim is approved, urban workers receive 70% of their salary from CPC. The waiting period varies depending on the severity of the claim, if a third party is involved, workload within the workers' compensation board, etc.

Special paid leaves

[310] Urban employees have access to the following special paid leaves: personnel selection leave, examination leave, marriage leave and career development leave. Ms. Bolduc reports in her will-say that CPC has no record of any career development leaves being granted in 2016.

**Union Education Fund**

[311] Appendix D of the collective agreement provides that the Corporation pays three (3) cents per hour paid to all employees to the fund.

[312] Following a request made by the Union, the Corporation confirmed, on October 10, 2017, that the practice used to calculate the amounts paid to the Union Education Fund was as follows:

> "Canada Post did in fact use the number of daily hours for the activities in effect on December 31, 2016, which it multiplied by 260.88, i.e. the average number of annual paid days.
>
> Canada Post's method is based on the hours in the Route Management System (RMS). It is agreed that RSMCs are not paid on an hourly basis, but rather on an activity base; the values in the RMS are the ones that are the most similar to "hours paid" that can be used to comply with the wording in Appendix "D" of the RSMC collective agreement."[68]

**Letter Carrier Education Fund**

[313] As per Appendix U of their collective agreement, the Corporation pays three cents per hour worked by LCs into their Union Education Fund.

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[68] See tab 14 of Mr. Bickerton's Book of Documents.

## F. RSMC COLLECTIVE AGREEMENTS AND BARGAINING HISTORY

[314] In 1987, the Canada Labour Relations Board ("CIRB") determined that the rural mail couriers were "independent contractors". The Board's decision was quashed on judicial review on a jurisdictional question. Nevertheless, the Union continued to pursue the employee status of the RSMCs through unionization. Concerning the extent of CPC's control over RSMCs, the Board concluded as follows:

> "[34] It is the view of the Board that the actual day-to-day control exhibited by the supervisor over the courier, in conjunction with the strict terms of the contract and conditions of performance as stated in the rural mail delivery handbook provide no leeway for the manner in which the courier is to perform his or her services. The sum total of the conditions established by the Corporation over the manner in which a courier is to perform his or her day-to-day work binds the courier in the same manner as it does any employee of the Corporation performing the same or a similar function. It is abundantly evident that the couriers are not being told by the Corporation, <<Here is the mail. Do what you want with it. Just make sure it's delivered on time and that other mail is collected on time and brought in to us.>> Rather the Corporation is saying, <<Here is the mail. This is how you shall go about delivering it. These are the rules that you must follow. These are the other services that you must perform on our behalf and this is *how and when* you are to perform those services.>>
>
> [35]. In sum, we are satisfied that the Corporation has total administrative control over the day-to-day performance of couriers in the same manner that it has for any person working for them." [69]

[315] In 2003, the Corporation recognized the RSMCs as employees. Mr. Sinclair's will-say states that previously, as independent contractor, the RSMCs individually negotiated the terms and conditions of their employment, including salary for a route. Each individual's rate of pay was unique and two RSMCs having similar workloads could be paid drastically different wages. At that time, some RSMCs were individual contractors holding a single route and others were master contractors, servicing many routes by sub-contracting the job to other contractors.

[316] Ms. Whiteley states that certain individual route owners would service it with a spouse or a family member and that such a flexibility has been maintained. Mr. Bickerton sustains that since the CIRB decision rendered in 1987, there are more guidelines and control.

### First collective agreement (2004-2011)

[317] On September 30, 2003, the parties signed off a first collective agreement for RSMCs, which became effective January 1, 2004. Mr. Bickerton, in his will-say, reports that:

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[69] *Canada Post Corp.* v. *Assn of Rural Route Mail Couriers*, 1987 Carswell Nat 1029.

> "[…] the parties agreed to three wage re-openers where either party could seek revisions to the collective agreement. The effective date of increases from the re-openers were: August 1, 2006, August 8, 2008 and October 26, 2011."

[318] Mr. Bickerton explains that in 2004, time values already existed but that activity values did not. An RSMC's Schedule A would indicate a number of hours estimated to complete the route. Nevertheless, the parties had agreed to define a normal workday and workweek as follows:

> "The normal workday and workweek shall correspond to the time needed each day and each week to perform the work required on a route. However, the normal workweek shall not exceed forty (40) hours on average, calculated over a four (4) week period. The normal workweek is five (5) days or less."

[319] The parties also negotiated a list of adjustments, dollar values for certain activities which is akin to activity values, to be made to the RSMC wages when their route was changed. The adjustments listed in the first collective agreement's Appendix A are defined per point of call, per activity (for example per stop for delivery of PCI or per lock change), per kilometre, per volume.

**Transition Committee**

[320] The parties agreed to create a joint Transition Committee to facilitate the integration of RSMCs as employees of the Corporation and to improve their wages, benefits and workings conditions. Appendix F of the first collective agreement provides that the Transition Committee shall study the feasibility of the adoption of an hourly rate pay system[70].

[321] In an October 2004 proposal to the CPC members of the Committee, CUPW members suggested a method to determine what the minimum hourly rate should be for RSMCs. Mr. Bickerton explains that the hourly rate would be used to assist with the allocation of the general wage increases and to ensure the lowest paid RSMCs were brought up to a base minimum wage. In their reply, the Corporation's representatives agreed in part with the method of calculating the base hourly rate suggested by the Union as follows:

> "Our response:
>
> 1. We cannot agree to a change to the current hour database by the addition of fifteen or thirty minutes periods. This is a significant departure from the methodology used to measure rural routes.
> 2. We are in agreement that the base hourly rate for RSMC should exclude the non-taxable vehicle allowance, the $1200 allowance where applicable and the variable expense calculation. The calculation of the base hourly rate would be based on the current evaluated hours for each route.
> 3. Appendix C of the collective agreement contains the provisions for implementing a wage increase. We agree that the establishment of a minimum

[70] See tab 3 of the Joint Book of Documents, Volume 3.

hourly rate could be one method used for the purpose of distributing the one half portion of any wage increase to those RSMC with lower hourly rates.

4. We do not agree at this time, that the hourly rate for new positions created in 2005, be built into the route based on the minimum wage rate as described in your proposal [...]"[71]

[322] The Transition Committee produced a list of RSMCs earning less than the Federal minimum hourly wage[72]. That hourly wage had been calculated from the Schedule A. The minimum wage was then $10.50 an hour. At the time, Mr. Léveillé, from the Corporation, accepted the results of the calculation of an hourly rate, and recommended to go ahead with the proposed list of employees for the increase with the understanding that no routes should be under 85% of the benchmark as well as no routes should be under $10.50 per RMS hour[73].

[323] Mr. Bickerton reports that the parties agreed to a $29M expenditure as the first base financial year for general wage increases and other improvements to benefits and pension. The parties agreed to an additional $15M for every twelve-month period following the first base financial year to be spent on improvements to the terms and conditions of the RSMC employment.

[324] During the eight years of the first collective agreement, Mrs. Whitely states that the Corporation spent $652M on the RSMCs to equalize their wages.

[325] Ms. Beauchamp explains that throughout the first collective agreement and its re-openers, the RSMCs achieved equal pay amongst themselves through the progressive pay increases coupled with the "red circling" of employees' salaries when they already achieved or exceeded the rate that was aimed for.

[326] Mr. Sinclair asserts that the notion of an hourly rate, or a proxy hourly rate, has long been used by the parties. During the years of the distribution of the financial cap, the notion of an hourly wage allowed the parties to have a reference point in their discussions. It was used to provide relativity between RSMCs and to equalize their salaries.

[327] Mr. Bickerton notes that under Article 33.02 of the first collective agreement, the first increase to annual pay was calculated as the number of daily hours of work established for the route multiplied by $225. The daily hours of work were determined by dividing by five the number of weekly hours established by the Corporation for the employee's route.

[328] Mr. Bickerton also explains that Article 16.03 of the collective agreement (2003-2011) provides that an employee required to work on a designated holiday, shall be paid in addition to his or her regular rate of wages for that day, at a rate equal to one and one-half (1½) times his or her regular rate of wages for the time that the employee worked on that day. The Corporation proposed using the same hourly rate formula = daily hours x

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[71] See tab 18 of Mr. Bickerton's Book of Documents.
[72] Tab 16 of Mr. Bickerton's Book of Documents.
[73] See tab 17 Mr. Bickerton's Book of Documents.

frequency x 52.18 weeks per year. The Corporation agreed to use the 52.176 per year formula.

[329] Mr. Bickerton reports that the Transition Committee studied and used multiple time values and that the parties discussed information on the RMS time values as well as route changes. For instance, in 2009 the Corporation restructured a route in Kanata that was measured at 10.01 RMS hours per day and was restructured to 6.41 RMS hours and a new route was created at 4.06 RMS hours. Mr. Bickerton underlines that the Corporation's analysis included the hourly wages for the depot's route holders.[74]

[330] Mr. Bickerton affirms that, in 2004, the Transition Committee, in a Transportation Cost Analysis, had proposed time values for lock changes and PCIs of 5 and 3 minutes respectively. Both the Union and CPC members of the Committee had agreed on the time values, but the Corporation rejected the proposal.

**Keller Award (2010-2011)**

[331] Mr. Bickerton explains that the last re-opener was resolved through interest arbitration. The Corporation's proposal, awarded by Arbitrator Keller[75], was an increase in "minimum annual wage per daily route hour for an employee's route in each region". The increase, as of January 1, 2010, was based upon the employee's annual pay calculated by "an increase in his or her annual pay calculation by multiplying the number of daily hours of work established for his or her route" or "RMS hours" by a set amount based upon the region. The Corporation's proposal further set out that "the number of daily hours were determined by dividing by five (5) the number of weekly hours established by the Corporation for the employee's route".

[332] Mr. Bickerton asserts that, as a result of the Keller Award, RSMCs were awarded a maternity or an adoption leave allowance, which was set out in Article 18.02 of the collective agreement (2012-2015). After six months of employment, RSMCs were eligible for an allowance of 93% of their weekly wage. The weekly wage is defined at Article 18.02 c) as "the actual wages normally earned by the employee during the weekly hours of work established by the Corporation for the employee's route".

**2012 Round**

[333] Mr. Bickerton testifies that in this round, the Union sought pay equity amongst RSMCs through negotiations. The Union wanted to secure uniformity for all RSMCs and to establish a range of job rates including a pay structure. The Union sought to bring a consistent approach to the pay structure for all RSMCs across the country. It wished to negotiate an hourly rate.

[334] Mr. Bickerton further explains that what the Union wanted was to essentially have the same work conditions as the LCs: equal pay, equal benefits, same paid breaks, vacations, overtime, etc. unless the difference in the work justified a differing treatment.

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[74] See tab 21 of Mr. Bickerton's Book of Documents.
[75] See tab 22 of Mr. Bickerton's Book of Documents.

[335] An August 2011 CUPW bulletin shows that the Union wanted to obtain a route measurement system that provides time values for each and every task, to ensure that "[…] everyone has an equal workload and a healthy and safe work process". The time values would be imported from the LCRMS for work not recognized.[76]

[336] Mr. Sinclair explains that his mandate during the 2012 round was to come up with a self-perpetuating system that would eliminate discrepancies between routes inherited from the contractor days. This is how the activity-based model came to be. It ensures that RSMCs know how and why they are paid. In cross-examination, Mr. Bickerton admitted that CPC's goal with the introduction of activity values in the 2012 collective agreement was not to create an hourly rate.

[337] Mr. Bickerton mentions that during the negotiation meeting held on January 23, 2012, Mr. Sinclair confirmed that the minimum hourly wage for 2011 following Arbitrator's Keller Award was $15.55.

[338] During the meeting of March 5, 2012, Mr. Bickerton explains that the Corporation reviewed its compensation proposal and introduced regionalization. The minimum rate was 15% less then the maximum rate and all route holders would progress through five steps from minimum to maximum. Route updates would therefore be more frequent based on point of call maintenance. He also states that when Mr. Sinclair explained this new proposal, he specified that "all route holders whose current actual wage (not including variable and vehicle) was higher than the maximum rate, would be red circled". Later, during the same meeting, Mr. Bickerton's notes show the values of the activities proposed by the Corporation. Mr. Bickerton explains that the drive time proposed is based on a rate of $18.42 per hour which correspond to the maximum rate in the province of Quebec. He explains that the hourly rate of $18.42 is the simple result of the value of $0.46 per kilometre x 40 kilometres.

[339] Mr. Sinclair asserts that hourly rates where never negotiated and that the discussions revolved around activity values. In cross-examination, Mr. Sinclair admitted that lack of supervision was, indeed, a factor in the Corporation's reluctance to introduce an hourly system, as managing overtime with company supervision is easier. He denies that CPC fears any abuse from employees.

[340] Mr. Bickerton asserts that, in a subsequent meeting, time values were negotiated to better represent the actual work completed by RSMCs. The parties also negotiated a "me too" clause for pension reform, where RSMCs would get the same changes to their pension plans as LCs. The parties also agreed to make five changes to RMS as it exists. The changes are summarized as follows in Mr. Bickerton will-say:

> "1. Adding 100 000 POC that were businesses in AMS to RMS. In RMS they were counted as CMB, RMB and other types of addresses. More accurate. 2. Move to actual stops for routes with more than 2 stops per hour. 4. Premium for 3 months for knowledge sortation. 5 Apartment sort time to reflect lesser volumes received by apartments."

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[76] See Tab 2 of Ms. Beauchamp's Book of Documents.

[341] During that same meeting, Mr. Sinclair stated that the model "looks and acts and walks like an hourly rate. When you apply a 3% increase to $18.50 the results is the same for everyone."[77]

[342] During another meeting, Mr. Sinclair proposed an average rate of $19.95[78]. Mr. Bickerton's notes also laid down the hourly rates that would result from a wage increase for the years 2013, 2014 and 2015, depending in which of the three salary zones the RSMC was working.[79]

[343] In rebuttal, Mr. Bickerton explains that towards the end of the collective bargaining, CUPW accepted that the hourly rate be lowered from $18.80 to $18.50 in exchange for EHCP coverage of the RSMCs.

[344] Mr. Sinclair, in his will-say, indicates that three different compensation rates were negotiated based on regional economic influences, with Zone 3 being the highest and Zone 1 the lowest.

[345] In an email, dated October 2012[80], Mr. Jeff Leech, a representative for the Corporation at the time, wrote to Mr. Bickerton and other CUPW representatives regarding updated information regarding the proposal model. Mr. Leech sends the data and specifies that there has been no change to RMS time values or knowledge sort routes:

| **Compensation Summary** | **Average rate** | **Increase % in Wage base** |
|---|---|---|
| Financial Cap Reconciliation | $18.32 | 6.7% |
| 01-Jan-12 | $18.78 | 2.5% |
| 01-Jan-13 | $19.57 | 4.6% |
| 01-Jan-14 | $19.95 | 2.0% |
| 01-Jan-15 | $20.41 | 2.3% |

[77] See tab 29 of Mr. Bickerton's Book of Documents.
[78] See tab 29 of Mr. Bickerton's Book of Documents.
[79] See tab 33 of Mr. Bickerton's Book of Documents.
[80] Tab 40 Mr. Bickerton's Book of Documents.

**2013 Red Circled Employees by region**

| Zone | Red circled routes | % of region |
|---|---|---|
| Zone 1 | 1,909 | 44% |
| Zone 2 | 1,101 | 44% |
| Zone 3 | 287 | 85% |
| Total | 3,297 | |

**RMS time values**

| Sortation | Time value |
|---|---|
| Residential Sort | 0.25 |
| Farm Sort | 0.25 |
| AMS Business Sort | 0.80 |
| Apartment Sort | 0.17 |
| Business Direct Sort | 0.80 |
| Sortation Caller | 0.80 |
| **Deliver** | **Time value** |
| rmb | 0.280 |
| cmb | 0.140 |
| gmb | 0.170 |
| kiosks | 0.150 |
| apts | 0.190 |
| busdirect | 0.650 |
| rpo | 2.900 |
| slb | 2.900 |
| pickup | 2.900 |
| Stop time/ stop | 0.240 |

[346] In another October 2012 email exchange, Mr. Leech, replying to an inquiry by Mr. Bickerton about the prospective minimum rate, wrote that:

> "After the reconciliation fund has been applied the min rate we have calculated through our models is $17.20. As we go through the final process this amount may be updated however I don't expect significant change."[81]

[347] Mr. Sinclair mentions that the emails sent by Mr. Leech referencing to an hourly rate was about how to spend the last lump sum from the financial cap. The parties tried to identify the lowest and highest paid RSMCs at the time. It was not a reference to an actual hourly rate, similarly to what had been done since 2004 by the Transition Committee.

[348] On October 17, 2012, the Union distributed a negotiation bulletin to its RSMC members. The bulletin introduces the new compensation model that was negotiated and explains the variations of salary depending on years of experience and zones[82]:

> "The activity-based compensation model that will take effect on January 1st, 2013 builds on the current system, but includes a number of changes that address many problems. It is still not an hourly rate system, but brings us very close to it.
>
> […]
>
> If your current hourly rate* is higher than the one determined by the compensation model, your wages will be red circled. You will continue to receive these same wages under some conditions, which will be addressed in a later bulletin.
>
> * The hourly rates are only given as a guide. They will not appear in the collective agreement. However, the charts that will be included in the collective agreement were established based on these amounts.
>
> NOTE: To calculate your current hourly rate, divide your total daily rate (excluding variables and the vehicle allowance) by the number of daily hours indicated in the Schedule "A" for your route."

[349] Mr. Sinclair, during cross-examination, pointed out that the October 2012 Union bulletin itself states that the new system does not introduce an hourly rate. He asserts that with the implementation of the activity-based system, the notion of hourly rate becomes outdated, as all RSMCs, except those who have been red-circled, get paid the same amount for the same work performed. Contrary to what the Union representatives argued, he disagreed that having an hourly rate was the only way for RSMCs to get equal compensation.

[350] During the negotiations, Mr. Sinclair had told CUPW representatives that CPC was not in a position to provide an hourly rate system of pay. Mr. Sinclair explains that the RMS and the RSMCs' working conditions cannot support the implementation of an hourly rate system. Neither the Corporation, nor the Union, would know how to reasonably

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[81] Tab 36 of Mr. Bickerton's Book of Documents.
[82] See tab 37 of Mr. Bickerton's Book of Documents.

operate this transition. Mr. Sinclair adds that such a project would be very costly and that, consequently, the Corporation would rather invest in its employee's remuneration.

[351] Mr. Sinclair indicates that the LCRMS system requires many more expenditures than the RMS system: more RSOs are required, CPC pays observers to monitor unproductive time, an annual volume count for each route is required and the system had to be setup and now maintained. On the other hand, the RMS approach allows for more flexibility, to the benefit of both parties. The RMS system, according to Mr. Sinclair, remains a useful proxy for certain activities when the Corporation is in need of an hourly tool.

[352] In cross-examination, Mr. Sinclair further explains that RMS hourly rates were often used as a communication tool with the Union, and that it was regularly used as such during negotiations. He maintained, however, that did not entail that the parties negotiated an hourly rate of pay, but rather that this is how CPC communicated the changes in activity values to its counterpart.

[353] Still in cross-examination, Mr. Sinclair maintains that the proxy RMS hourly rate was never negotiated and that the parties either negotiated activity values or CPC made a global monetary offer that was then translated into a proxy hourly rate. The RMS hourly rate was solely used to represent changes to activity values to CUPW.

[354] In re-examination, Mr. Sinclair explains that the Corporation would usually use an RMS hourly rate to illustrate raises to comply with the Union's demand that it be presented that way. Activity values would then allow CPC to show how the RMS hourly rate figures are rooted.

[355] Mr. Sinclair indicates that, in the end, the parties agreed to salary increases in percentages, as well as the inclusion of new activity values in 2013.

[356] Mr. Sinclair, during cross-examination, admitted that the Corporation used RMS hours to ensure compliance with federal laws regarding overtime hours in 2012.

**2016 Round**

[357] In 2016, the Urban and the Rural units of the Union negotiated their respective collective agreements jointly. Mr. Bickerton repeated that the 2016 CUPW goal for RSMCs was to obtain equality with LCs.

[358] According to Ms. McMillan, at this round of negotiation, the Union was concerned with CPC's policy to restructure routes with a maximum of RMS hours of 6.5 per day. Such a practice negatively impacted RSMC wages and pension protections. Therefore, one of the Union demands was to obtain a full eight-hour workday for routes evaluated between six and eight hours, as is the case for LCs. This would have increased pensionable time for many RSMCs and would have brought them closer to their LC counterparts.

[359] Ms. McMillan affirms that during the 2016 round, the Union, influenced by the Letter 3 study, made a proposal to CPC to increase some of the RSMC time values and add new ones, along with specifically mentioning the RMS time system and its time values

in the collective agreement. The Union also suggested that certain activities, such as an RPO stop to deliver parcels, be timed by stopwatch in a similar fashion to the LCRMS[83]. In the end, the Union's suggestions were left unanswered by CPC.

[360] Cross-examined on the Union's coveting to obtain a system like the LCRMS, Mr. Bickerton indicated that CUPW would desire some parts of the system, but not others. He cites the amount of overtime done by LCs as something the Union wishes to avoid.

[361] Ms. McMillan testifies to the effect that the Corporation refuses to implement a system similar to that of the LCRMS because it would be too expensive. Mr. Sinclair confirmed that this is, indeed, the reason why CPC wishes to stay away from an engineered time system.

[362] Mr. Sinclair indicates that the high amount of litigation related to the LCRMS route restructures show that the parties do not seem to be satisfied with the actual system.

[363] Mention of an hourly rate can be found in an October 2016 email that Ms. Beauchamp sent to Mr. Bickerton concerning an RSMC tentative agreement, which reads, in part, as follows[84]:

> "Here are information about RSMC tentative agreement
>
> 1. How hourly rate will be with the 1.5% raise
>
> a. Zone 1 = $19.73 in 2016 and $20.03 in 2017 for 4325 members
>
> b. Zone 2 = $21.49 in 2016 and $21.81 in 2017 for 2577 members
>
> c. Zone 3 = $22.47 in 2016 and $22.81 in 2017 for 477 members
>
> 2. Number of routes that will have their drive time impacted
>
> a. Gain 3295 routes for $5,601,093.60
>
> b. Lose 1733 routes for $3,616,405.60 current drive time will be maintained until such time as the route holder leaves the route, or the route is restructured.
>
> c. Same 2390 routes no change
>
> […]"

[364] Ultimately, Mr. Bickerton states in his will-say that

> "54. […] through negotiations in 2016, the parties agreed to general wage increases so that the Zone 1 rate was $19.73 effective January 1, 2016. The parties agreed to several changes to the activity values. Sequenced mail was introduced. New delivery values for parcel locker clearance and other duties and responsibilities was introduced.
>
> 55. The parties agreed to two new drive time values as of January 1, 2017. The Corporation also agreed to a 1.5 per cent increase effective January 1, 2017 which was premised upon an increase to the 2016 $19.73 job rate for Zone 1."

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[83] See Tab 19 of Ms. McMillan's Book of Documents.
[84] See tab 38 of Mr. Bickerton's Book of Documents.

[365] Mr. Sinclair states that the wage increases were not negotiated on an hourly wage basis, but rather as a percentage increase on activity values. Much like in 2012, the Corporation's goal was to spend money on raising the RSMCs' pay. Mr. Sinclair states in his will-say that the generous pay increases during the relatively short period of time since RSMCs became employees has resulted in a low turnover rate, with the result that the resignation rate was 1.34% in 2017.

[366] Mr. Sinclair adds that the Corporation's goal was to inject more money into suburban routes, as there was a feeling that they had more work content, principally from parcel growth and admails, than rural routes. While the Corporation cannot rely of any volume figures, Mr. Sinclair indicates that experience and data could allow to come to that conclusion, at least directionally.

[367] During the 2016 negotiations, the Union prepared a document comparing LCs' and RSMCs' productive hourly rate. CUPW emulated an analysis that had been done by the Corporation to compare its LCs with competitors' data. The Union had asked for a comparison with RSMCs, but the Corporation refused to grant that request on the basis that it could not be done.

[368] Ms. McMillan asserts that when asked why the Corporation could not provide such a document, Mr. Sinclair had replied that CPC could not give away that competitive advantage. Mr. Sinclair testifies that what he meant by competitive advantage was not that RSMCs were paid a lower wage than LCs, but rather that the management of the former was more efficient and fluid for the Corporation.

[369] As for the reason why CPC could not conduct such an analysis, Mr. Sinclair states that the Corporation could not rely on an hourly rate for RSMCs. Additionally, CPC does not know the productive and unproductive time of RSMCs, as they have some flexibility in how they complete their workday and can take breaks at will. Using RMS hours to do a productive rate analysis would only yield superficial results with no significance.

[370] Nevertheless, the Union tried to recreate the Corporation analysis with RSMCs, through estimates and used the Corporation's same model[85]. Its results, presented in March 2017, show a productive hourly rate of $43.07 without benefits and $58.40 with benefits for LCs (CPC's original figures) and a productive hourly rate of $26.13 without benefits and $32.82 with benefits for Zone 1 RSMCs.[86] Mr. Bickerton asserts that the productive rate analysis shows that LCs are paid for a lot of unproductive hours, contrary to RSMCs.

[371] In cross-examination, Ms. Beauchamp denies that the Union has demanded or longs for an LCRMS-like system to be implemented for RSMCs. She insists that the Union rather demands a transparent system and an hourly pay to ensure that RSMCs be compensated for the actual hours worked. An hourly pay system would effectively stop RSMCs from suffering the inherent variance of the work. Ms. Beauchamp adds that the Union's complaint is that there are two groups of workers who do a similar job, but one

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[85] See tab 44 of Mr. Bickerton's Book of Documents.

[86] The table reporting the full results of the Union's analysis can be found in Appendix D of this award.

group is paid for all hours worked and the other is not. The Corporation's assertion that the LCRMS is infallible and that the RMS is totally unreliable is not credible. Ms. Beauchamp insists that even with an allegedly precise system like the LCRMS, LCs still have to cope with high levels of overtime and that the only difference with RSMCs is that they get paid for working overtime.

[372] According the Mr. Sinclair, although the Union certainly wants to have an hourly wage integrated into the collective agreement and that the Corporation tried to evaluate the feasibility of such an arrangement, no hourly wage has ever been integrated into any of the collective agreements.

[373] To support his claim, Mr. Sinclair presented a document laying out the activity values and their related time values and the resulting notional hourly rate[87]. While all the hourly rates are very close to one another, variations can still be observed. For instance, the lowest hourly rate in zone 1 is for delivery to a CMB, at $19.59, while delivery to kiosks is at $19.88. There is a similar difference for zone 2 between the lowest and highest hourly rate with a 28 cents difference. The zone 3 difference is at 31 cents. Mr. Sinclair asserts that, because the hourly rates of 2012 had no such differences, these discrepancies would show that the Union, when negotiating activity values, moved away from an hourly rate.

[374] In cross-examination, Mr. Sinclair was presented with the suggestion that the differences in hourly rates are due to the rounding up or down of activity values between 2012 and 2016 in the collective agreement and that, in fact, if activity values had not been previously rounded, the RMS hourly rate would have been the same for all activities. Mr. Sinclair responded that it is possible that the differences were due to rounding. He admits that, in 2013, the Corporation used activity values with four decimals even though the collective agreement only displayed three decimals per activity values.

[375] Mr. Bickerton prepared a review of elements from the current RSMC collective agreement that are based upon time-values, thus RMS hours, and activities, such that it enables a calculation of an hourly rate for the RSMCs and PREs. Presented in his will-say, the elements include, but are not limited to:

> " [...]
>
> - **Appendix A and the Schedule A time and activity values** which by 2012, the parties agreed to an average hourly wage equivalent in order to standardize and bring consistency to the RSMC pay.
> - **Article 11 Route Changes.** CPC assigns an RSMC to a route. Each route has an assigned length and assigned completion time. The Employer has complete discretion and authority "to evaluate, revise or restructure routes for legitimate business reasons." (Article 11.03 (a)). The hours of work referred to are based upon the Corporation's RMS.
> - **Article 11.05.** Operational Requirements requires the employee to fulfill the operational requirements outlined in Schedule A. The Schedule A, the

[87] See Exhibit 33.

document with activity values and minutes to complete the RSMC route, is read directly into the collective agreement.

- **Article 13 Hours of Work**. The agreed "normal workweek" shall not exceed 40 hours on average calculated over a 2-week period. The normal workweek is 5 days or less.
- **Letter 1 Routes in excess of Sixty (60) hours and route growth**. The Corporation agreed to restructure routes in excess of 60 hours. The hours were determined by the RMS.
- **Article 16.03 Designated Holiday Pay.** Provides 1.5 times the regular rate of wages for the day when a designated holiday is worked.
- **Article 18.03 Maternity Leave.** Supplemental allowance is calculated on 93% of the weekly wage which is determined by hours paid during the weekly hours of work established by the Corporation for the employee's route.
- **Appendix D Union Education Fund.** The Employer contributes 3 cents per hour paid to RSMCs. The Employer agrees to pay into the Union Education Fund for RSMCs on the same terms as the operational bargaining unit.
- **Benefits and Pension contributions.** The Corporation makes its calculations based on the RMS hours.
- **Statutory benefits, such as Employment Insurance and Canada Pension Plan.** They are based upon hours of work established by the Corporation.
- **Canada Labour Code and application of the statutory minimum overtime provisions.** As employees, RSMCs are eligible to the statutory minimum protections."

## G. EVOLUTION OF CPC'S ACTIVITIES AND ITS IMPACT

[376] Mr. Bickerton affirms that when RSMCs became employees of the Corporation in 2004, there were only about 4,000 routes serviced and that the number is around 7,000 now.

[377] As of December 31, 2016, the RSMC delivery profile and POCs was the following[88]: [table appears on following page]

[88] See Ms. Haydon's January report.

| Type of POC | Number | Percentage of total POCs |
|---|---|---|
| CMB | 3,358,407 | 71.34% |
| RMB | 708,600 | 10.05% |
| Apartments | 421,628 | 8.96% |
| GMB | 95,644 | 2.03% |
| Kiosks | 74,206 | 1.58% |
| Business Direct | 35,339 | 0.75% |
| DTD | 5,742 | 0.12% |
| RPO | 5,369 | 0.11% |
| SLB | 1,334 | 0.03% |
| Callers | 942 | 0.02% |
| Pick Up | 339 | 0.01% |
| Total | 4,707,550 | 100% |

[378] A 2011 CPC presentation states that 60% of corporate annual POC growth is assigned to RSMC delivery mode.[89]

[379] Mr. Bickerton explains that a shift has occurred in the postal market: the volume of letters has diminished while the number of parcels has greatly augmented due to the widespread adoption and use of e-commerce. These changes have had an impact on the breakdown of office types. For instance, the number of CPAA Corporate-owned facilities have gone down, while Letter Carrier Depots' numbers have gone up, since the latter service suburban areas where the postal market has seen the largest growth in volume over the past years.

[380] Mr. Sinclair states that letter mail volume, the largest source of RSMCs' work content, has decreased by 44% since 2007. Yet, he says, RMS time has never been adjusted to consider that decline.

[381] A corporate presentation dated December 11, 2017[90], shows that parcel volume has grown steadily over the last five years. It also reveals that December and November are the busiest months of the year and that Mondays have a higher volume than other

[89] See tab 3 of Mr. Bickerton's book of documents.
[90] See tab 4 of Mr. Bickerton's book of documents.

days of the week, Friday being the least busy day. Mr. Bickerton asserts that because of these high seasonal and weekly variations in volume, the Union has argued for years that a time system based on averages is not appropriate to prepare RSMCs' schedules.

[382] In a 2017 presentation, CPC summarizes the impact of the above-mentioned variations in parcel and packets volume:

> "Parcel volumes and other variable work types impact the amount of labour required, creating an imbalance throughout the year.
>
> In higher volume months, the incremental work requires overtime and weekend delivery, whereas in the lower months there isn't enough work for the staff in the depot.
>
> The ability to adjust staffing levels to match the workload would improve this imbalance.
>
> When staffing levels change the delivery routes need to be reworked regularly to enable staff to be assigned to a delivery area that is sized for the current volume and workload (low volume = more POC route, higher volume = less POC per route)." [91]

[383] The same presentation states that parcel volumes are also not distributed evenly amongst routes in a depot due to different types of customers serviced by each driver. Also, when volumes fluctuate, the routes with the normally higher volumes are disproportionally impacted than the routes that have a lower volume. In summary, CPC concludes that the dynamic nature of parcel volumes requires a different approach to processing and how routes should be structured.

[384] Mr. Bickerton explains that CPC announced, in 2013, its intention to reduce door-to-door delivery and transfer these POCs to CMBs over the next five years. Between 2015 and 2016, 800 000 addresses have been moved from door-to-door to CMBs.

[385] From 2010 to 2016, CPC's delivery method and average annual cost per point of call evolved in the following way[92]: [table appears on following page]

[91] See tab 4 of Mr. Bickerton's Book of Documents.
[92] See Mr. Bickerton's Book of Documents, Tabs 8 and 11, CPC annual reports for 2010 and 2016.

| Delivery method | Number of POCs | | Average annual cost per POC | |
|---|---|---|---|---|
| **Year** | **2010** | **2016** | **2010** | **2016** |
| **Door-to-door** | 5,102,466 (34%) | 4,203,080 (26.3%) | $261 | $298 |
| **Centralized point (e.g. apt. lobby lockbox)** | 3,659,146 (24%) | 4,189,149 (26.2%) | $123 | $122 |
| **GMBs, CMBs and kiosks** | 3,681,977 (25%) | 5,165,402 (32.3%) | $108 | $126 |
| **Delivery facility (postal box, general delivery)** | 1,807,818 (12%) | 1,739,778 (10.8%) | $56 | $74 |
| **RMBs** | 776,825 (5%) | 708,445 (4.4%) | $171 | $207 |
| **All methods** | 15,028,232 (100%) | 16,005,854 (100%) | $160 | $169 |

[386] Mr. Bickerton explains that the growth of the average annual cost per point of call depends on many factors. Nevertheless, a close reading of the evolution per year shows that the average cost per point of call keeps growing from one year to another[93]. It also reveals that the shift of 800,000 addresses from door to door to CMBs serviced by Letter Carriers impacted the average annual cost per CMBs significantly. The average cost went from $111 in 2014 to $126 in 2016.

## H. CRITICISM AND LIMITATIONS OF THE RMS AND LCRMS

### Precision and reliability of the RMS

[387] Ms. Whiteley, during her time as a supervisor in the Belleville area, observed that RMS time values do not accurately reflects the time needed for RSMCs to complete the work.

[388] Ms. Whiteley further claims that the extreme disparity that exists within RSMCs' routes discredits the Union's reliance on RMS hours. For instance, the route holder for Enfield (NS) RR6 travels 39.2 kilometres per day, servicing 1,209 POCs over 8 stops (8.73 daily RMS hours) and receives, per year, $44,827 in activity values, $5,004 of vehicle expenses and $5,270 for variables. The route holder of Winnipeg (MB) SS 34 travels 142.14 kilometres a day, servicing 556 POCs over 51 stops (6.95 daily RMS

[93] See tabs 8 to 12 of Mr. Bickerton's Book of Documents.

hours) and receives, yearly, $38,888 for activity values, $17,356 for vehicle expenses and $5,068 for variables. The route holder of New Norway (AB) RR 1 & 2 travels 227 kilometres per day, servicing 180 POCs over 182 stops (6.97 daily RMS hours) and is paid, annually, $39,037 for activity values, $27,552 for vehicles expenses and $1,835 for variables.[94]

[389] In 2007, following changes to the RMS, an informative CPC document, signed by the Director of Delivery Network Development, was distributed to RSMCs explaining the novelties. In the form of a Q&A, the documents stated, in part:

> "1) How did these changes come about?
>
> Canada Post and CUPW agreed to jointly study specific elements of the RMS to determine if the work content estimates should be updated. Based on the results of this study the parties agreed to change certain elements, effective December 1, 2007. […]
>
> 2) What was changed?
>
> […] The driving estimate was amended from a flat 1.5 minutes per kilometre (or 40 kilometres per hour) to a formula that takes into consideration the time it takes to slow down and merge back into traffic at each stop. […] Therefore, routes with lots of stops per kilometre will see their driving time estimates increase while routes with few stops and lots of kilometres will see that their driving time estimates have gone down. Note that on average the net result of this adjustment increased the driving time estimate in RMS therefore most routes will see an increase. […]
>
> 5) Does this increase in time estimate mean that I will be expected to work longer hours?
>
> No, you will continue to do your route in the same manner that you have been doing in the past. The change in time estimate simply provides us with a better estimate of the average work content associated with the characteristics of your route. It is understood that these averages and other factors, such as volume will affect the actual workload."[95]

[390] During her cross-examination, Ms. Whiteley says that she agrees with the answer to the first question of the above cited CPC document. However, she disagrees with the suggestion that these changes made the RMS more accurate, as stated in the answer to the fifth question. She recognizes that the author of the document holds the position of Director of Delivery Network Development, which is senior to hers.

[391] Nevertheless, Ms. Whiteley maintains that the changes do not make the RMS more accurate. While some routes' RMS hours may be more accurate following a change, that may not be the case for all routes across the nation.

[392] In re-examination, Ms. Whiteley indicated to make the RMS more accurate, the activity breakdown would have to be much more detailed and have volume be taken into

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[94] See page 1 of Exhibit 14A.
[95] Exhibit 31.

account. Because of the high variability of RSMCs' routes across the country, the system needs to be very specific in its route details.

[393] Ms. Charbonneau explains that the transition to a range was done by CPC to manage its employees' expectations of their day and reinforce the idea that the time appearing in the Schedule A is an estimate and that there are wide variations from one day to the other.

[394] Ms. Whiteley asserts that modifications to the time values do not make the RMS, as a whole, more accurate regarding the work completed by RSMCs. According to her, a single time value change cannot be assumed to make the system more accurate on a national level. She insists that none of the values have been actually measured in a meaningful manner. Mr. Sinclair also affirms that the time value changes did not make the RMS more accurate.

[395] In cross-examination, Ms. Beauchamp affirms that time values do not reflect the actual time worked by RSMCs and that there is a difference between evaluated time, or RMS time, and actual time worked. She adds that while RSMCs never know how long their shifts are going to last, they are aware that their route's RMS time is an approximate indicator of the time necessary to complete one's route. Ms. Beauchamp insisted that both LCs and RSMCs can have their routes over evaluated, above eight hours per day, but that the only difference is that RSMCs are not paid for overtime. In any event, the consequences of the Corporation's choice of a less efficient or precise system should not be shouldered by employees.

[396] During her cross-examination, Ms. McMillan asserts that time values from the RMS are not inaccurate per se, but rather are insufficient and don't represent the actual time spent by RSMCs to complete certain activities. Mr. Bickerton, in cross-examination, also states that time values are insufficient and that RSMCs need more time to complete their work. He adds that, in the past, time values were augmented by the Corporation to better reflect the work required by RSMCs for certain tasks. He adds that times values were changed through negotiations and agreements between the parties.

**Time Available for Delivery and RMS time**

[397] According to Ms. Whiteley's will-say, CPC maintains data about the mail available time and the final tender point time for over 5,500 RSMC routes. The final tender point time is the latest time at which RSMCs must return to their depot or office with outgoing mail before it is picked up by CPC highway services. Ms. Whiteley indicates that, in short, between these two times is known as RSMCs' window of hours during which they must complete their route.

[398] In her will-say, Ms. Whiteley writes that for many RSMC routes, the window of available time to deliver the mail is less than the RMS hours for the route. RSMCs who complete their route in less than the RMS hours for that route are paid for unproductive time.

[399] Ms. Whiteley's book of documents includes a list of 5,196 routes showing the mail available time, final tender point time, time available for delivery, daily RMS hours and the

difference, in hours, between the time available for delivery and daily RMS hours. Approximately 2,205 routes have more daily RMS hours than time available for delivery (ranging from 8.2 to 0.1 hours). Approximately 160 routes have equal time available for delivery and daily RMS time. Approximately 2,830 routes have less daily RMS hours than time available for delivery (ranging from 0.1 to 9.5 hours).[96]

**RMS Time Studies**

[400] Ms. Whiteley, during her cross-examination, acknowledges that a total of 308 routes out of approximately 7,400 have been studied over the past 10 or 11 years.

Appendix C study (2007)

[401] Ms. Whiteley reports that, as part of the allocation of the financial cap, the parties agreed in the 2006 re-opener to jointly study 10 residential and two business routes. The endeavour was called the Appendix C study and while it was conducted jointly, CUPW and CPC representatives released two separate reports.

[402] The CPC report concluded that business sortation, RMB delivery and driving time were seemingly undervalued in the RMS, while CMB, GMB and business delivery times were seemingly overvalued in the RMS. The report underlined that driving time was the lowest for rural routes and highest for business ones, with suburban routes in between. Finally, it stated that the lack of formalized standards allows RSMCs the flexibility to perform their work at their own pace and preferred style but jeopardized the study's results' validity.[97] The Union representatives, on the other hand, found that all activity values were undervalued in the RMS, except for drive time.[98]

[403] In December 2007, the parties, based on the results of the Appendix C study, agreed to make changes to certain time values. A document prepared by the Corporation at that time shows the differences in RMS hours from November to December 2007[99]. Time for business sortation was increased from 0.25 to 0.65; Time for RMB delivery was increased from 0.19 to 0.28; Time for business direct delivery was reduced from 0.95 to 0.65; Drive time per kilometre was reduced from 1.5 to 1.2; A time value of 0.24 was added for each stop[100].

[404] The same document shows that, overall, these changes represented an increase in RMS hours of close to a million. As a result, the number of routes that had more than 8 RMS hours per day went from 668 to 1,332. It must be noted, however, that there was a 2.94% POC growth from December 2006 to December 2007. Ms. Whiteley explains that, in parallel to the time changes, the Corporation also increased activity values proportionally. From November to December 2007, the total annual salary for all RSMCs went from $205,961,537 to $209,534,987. As a result, the RMS hourly salary stayed the same for RSMCs.

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[96] See tab X of Ms. Whiteley's Book of Documents.
[97] Tab Q of Ms. Whiteley's Book of Documents.
[98] Tab R of Ms. Whiteley's Book of Documents.
[99] Tab V of Ms. Whiteley's Book of Documents.
[100] All times referred to are in minutes.

2008 Study

[405] The 2008 study was conducted by Ms. Whiteley shortly after she joined the national RSMC group in 2007. The study used RMS data and other CPC information. Another part of the study was conducted by members of Ms. Whiteley's team, who phoned CPC team leaders and asked them several questions regarding the RSMCs' work. The questions examined the time at which RSMCs started and finished their day, the type of equipment they used, and other factors that might affect the reliability of RMS hours for their route. In cross-examination, she acknowledges that RSMCs were not questioned for the study.

[406] On a total of 251 RSMCs, 101 finished their route, sortation and delivery included, in more time than the RMS value, 134 finished in less time than the RMS value, while 16 had unknown data. 47% of RSMCs finished their route within an hour more or less than the route's RMS time. Ms. Whiteley affirms that these results show the unreliability of the RMS. Indeed, the study was conducted in an effort to single out factors that made the RMS unreliable, but none could be identified.[101]

[407] In cross-examination, Ms. Whiteley admits that the studies that she performed were not particularly rigorous in their methodology. She further indicated that this particular study was inconclusive because LPOs could not, as a matter of fact, know what the actual hours were worked by RSMCs.

[408] During cross-examination, counsel for the Union asked Ms. Whiteley if the fact that about half of RSMCs in the study were under the RMS time and the other half was over, was a reasonable outcome, on a national basis. She asserted that considering that RMS time excludes variables, RSMCs should, in fact, finish over their RMS time more often than the contrary.

Letter 3 study (2015)

[409] Ms. McMillan indicates that during the 2012 negotiations, the parties accepted to conduct a joint study by December 31, 2015, to evaluate RMS time values and verify if they corresponded to RSMCs' reality. The study was incorporated in the 2012 collective agreement as the Letter 3 study.

[410] Ms. Whiteley testifies that the study evaluated 30 routes for one day. A total of 30 rural, suburban and urban routes were evaluated (10 routes per category) by representatives of both parties. She further explains that while both parties used a stopwatch method to time the employees' activities, the Corporation excluded non-productive time in its calculations, which would include chatting with a colleague or a client, taking breaks, etc. The results were exchanged in June 2016.

[411] The Corporation's results show that 10 out of 30 routes took longer than the RMS value to complete, with sortation and delivery included. Four routes had longer sortation times and 14 routes had longer delivery times.[102]

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[101] Tab C of Ms. Whiteley's Book of Documents.
[102] Tab U of Ms. Whiteley's Book of Documents.

[412] The Union's results show that there was an equal number of over and under-assessed routes for total time. 14 routes had longer actual sortation time and 22 routes had longer actual delivery times.[103]

[413] Ms. Whiteley states that the Corporation conclusions regarding the Letter 3 study were that, broadly speaking, RMS time values were more generous to the employees. However, CPC also noted that RSMCs servicing suburban areas should receive additional compensation and time for their work, as the area they were operating in were denser than for other routes. As a result, activity values and time values for drive times were revised, using the new formula of POC per kilometre. Ms. Whiteley affirms that while the aim of the new formula was to direct more compensation to high density areas, it also affected routes that did not targeted by the change.

[414] Ms. McMillan says that, despite the small size of the sample, it was observed that a lot of RSMCs were not following health and safety procedures due to lack of time allotted to each activity.

Two-week Studies of Whistler Routes (2017)

[415] Ms. Whiteley reports that, in January 2017, the Corporation conducted seven two-week studies on Whistler routes to evaluate those employees' hours of work, since CPC was considering adding more addresses to those RSMCs' routes, without making their routes last longer than 40 actual hours a week.

[416] The results of this study have been summarized by Ms. Whiteley in her will-say statement as follows:

| **Route** | **RMS Hours** | **Average Daily Hours (Two Week Study)** | **Difference** |
|---|---|---|---|
| Whistler (BC) RR 1 | 10.77 | 6.65 | 4.12 hours less than RMS |
| Whistler (BC) RR 2 | 14.17 | 7.5 | 6.67 hours less than RMS |
| Whistler (BC) RR 3 & RR 5 | 5.32 | 6.28 | .96 hours more than RMS |
| Whistler (BC) RR 4 | 14.64 | 8.75 | 5.89 hours less than RMS |
| Whistler (BC) RR 6 & RR 7 | 8.16 | 5.33 | 2.83 hours less than RMS |
| Whistler (BC) RR 8 | 6.93 | 5.9 | 1.03 hours less than RMS |
| Whistler (BC) RR 9 | 4.03 | 5.81 | 1.78 ours more than RMS |

[103] Tab T of Ms. Whiteley's Book of Documents.

[417] Ms. Whiteley, using the results of the two-week studies, including those initiated by employees[104], calculated RSMCs' "actual rates of pay" by using the theoretical hourly rate for the zone, the weekly variable pay average from the Schedule A and their vehicle expenses. Her results show a range of $19.72 to $47.73 per actual hour worked for all employees. The range was $21.43 to $31.23 for the employee-initiated studies while the Whistler range was $19.72 to $47.73. The average for all route holders is $30.58.[105]

[418] Ms. Whiteley affirms that the Whistler time studies also showed that RSMCs take breaks during their workday.

Ms. Whiteley's study

[419] To compare the LCRMS with the RMS, Ms. Whiteley developed a model to study the relationship between LCRMS and RMS hours. To do so, she assigned RMS time values to a sample of LC routes based on the latter's activities for the route. She testifies that LCRMS and RMS values do not perfectly coincide, and some RMS values have no equivalent in the LCRMS. Specifically, mileage, stops, SLBs and RPOs are not part of the LCRMS. Nevertheless, the conversion was made feasible by extracting data from the Georoute software and applying it as a proxy.

[420] In total, Ms. Whiteley converted 45 LC routes from the Kanata and Boisbriand Rive Nord depots. To showcase variety in RSMCs' routes, she explains that she chose a busier depot (Kanata), with higher mail volume, and another that is less busy and receives less mail (Boisbriand). In both depots, LCs do not deliver mail to door-to-door POCs. The results of the conversion show that, on average, the resulting RMS-equivalent routes had 17.41% more hours than its LC counterpart.[106]

[421] Ms. Whiteley asserts that this shows how unreliable the RMS is, especially considering that RMS hours do not account for time spent for variables. Mr. Sinclair said of Ms. Whiteley's study that it showed that RMS hours and LCRMS hours cannot be expected to be equal. There is high variability in RSMCs' routes which makes any comparison with LCs' routes hazardous.

[422] Still in cross-examination, Ms. Whiteley acknowledges that, for the depots she chose, LCs have their mail sequenced while RSMCs do not. In general, RMS times for RSMCs could include up to two to three hours of sortation. She admits that she did not assess the impact of sequencing on the study's results.

[423] In cross-examination, Mr. Sinclair said that Ms. Whiteley's choice of depots where only LCs' mail was sequenced was not consequential for the study, as sequenced mail does not affect RMS time values. He further stated that the time difference would be minimal, since the average sortation time in the LCRMS is 1.5 hours for non-sequenced routes and 1.18 hours for sequenced ones.

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[104] As per Article 13.02 (a) of the Collective Agreement.

[105] See tab N of Ms. Whiteley's Book of Documents and Exhibit 67 for Ms. Whiteley's clarifications on her methodology for calculating the "actual hourly rate".

[106] See Tab Y of Ms. Whiteley's Book of Documents.

[424] During cross-examination, Mr. Sinclair agrees that, all things being equal, and with mail volume accounted for, less sortation time for LCs meant that more POCs can be serviced in a single route. Or, alternatively, that mail sequencing allows to service the same number of POCs with fewer employees. However, he nuanced that since volume is not measured for RSMCs' routes, the same logic could not apply to RSMCs. Moreover, RSMCs that get their mail sequenced service the same routes and, thus, have less work content yet receive the same salary.

[425] Further into his cross-examination, Mr. Sinclair claims that the study was a useful tool to show that using and relying on RMS hours as a comparator for a pay study would inherently flaw it. Nevertheless, he concedes that, because of the theoretical modelling of the study, it could not be used as a wage gap analysis method.

## Precision and Reliability of the LCRMS

### System design, daily fluctuations and rise in parcel delivery

[426] Mr. Sinclair indicates that the LCRMS has been adjusted to take into account the significant drop of 44% in mail usage across the country since 2007. RMS hours, on the other hand, have not been reduced. He concedes that rising parcel volumes may have somewhat offset that issue for RMS time.

[427] Mr. Bickerton indicates that there are inherent weaknesses in the LCRMS capacity to predict workload, which makes the system unresponsive to daily delivery fluctuations. He cites a document titled "Study of Parcel Variability on Motorized Letter Carrier Routes", and signed by representatives of both parties on April 2014, which states the following:

> "Canada Post changed the parcel pick-up and delivery process with the introduction of Postal Transformation (PT). Under PT most parcel pickup and delivery was moved from dedicated parcel work by MSCs to Motorized Letter Carriers (MLCs) who pick-up and deliver parcels along with all other mail products.
>
> When parcels were delivered or picked up by MSCs, under the Parcel Delivery Model (i.e. Appendix S), the model had built in flexibility to accommodate the daily and seasonal fluctuations in delivery and pick-up volume. In comparison, Letter Carrier duties, including parcel delivery, are structured under the Letter Carrier Route Measurement System – which builds 8 hours routes using time standards and volumes averaged over the year. This system is not responsive to daily or even seasonal fluctuations in parcel volume, nor to the fluctuations in the letter carriers' other duties which may change the amount of time available for parcel delivery and pick-up.
>
> Routes structured to deliver many parcels are particularly vulnerable to the impact of parcel volume fluctuation. A letter carrier route structured for an average of 6 parcels per day, when faced with a heavy parcel day – say with an increase of 50% in number of parcels – would likely be able to accommodate the 3 parcel increase without much trouble. However, a letter carrier on a route structured for 40 parcels per day, and faced with the same heavy parcel day and 50% volume increase,

> would have a much harder time handling the 20 extra parcels within the structured workday."[107]

[428] In cross-examination, Mr. Bickerton admits that the LCRMS is not inaccurate *per se*, insomuch as its purpose is to design, on average, an eight-hour workday. He indicates, however, that both the LCRMS and the RMS were inaccurate in the sense that they are not an actual reflection of the time worked on any given day. He adds that the Union may want a more beneficial system, such as the LCRMS, even if it still is inaccurate. In any event, a system with work measurement would prevent the Corporation from making arbitrary changes.

[429] Ms. Whiteley, during cross-examination, concedes that the LCRMS is intended to be accurate on a yearly basis only, and that, in practice, there can be huge daily disparities from day to day.

[430] Ms. Charbonneau indicates that during her first years at the Corporation, after she joined in 1999, every LC route restructure would result in positions being cut, sometimes up to 10 positions per depot due to the falling mail volume that occurred during those years. Because of that, now fewer LCs finish early and more of them have to do overtime sometimes. Ms. Charbonneau argues that this shows that the LCRMS does a good job at evaluating the average workday and that, overall, the number of route holders was now more appropriate for the amount of work available.

[431] During her cross-examination, Ms. Charbonneau underlines that 3 000 LC positions have been cut since 2010, but that RSMC positions in the same areas have not changed and that the work load is considered the same. To her, that shows how inadequate the RMS is and how difficult, if not impossible, it is for the Corporation to know exactly how much work is really done on the suburban and rural side.

[432] Still in cross-examination, Ms. Charbonneau asserts that the cutoff of LC positions was due to reduced workload. She concedes that the conversion to CMBs and mail sequencing also had an impact on LCs' number of layoffs. She acknowledges that growth was in the RSMCs' sectors, in suburban areas, and that urban growth was limited.

[433] A national survey of finishing times for motorized LC routes was done in the late 1990s. The survey displayed a certain disparity between the workers, some finishing their eight hours route in less than six hours and some in over eight hours. The majority of LCs were finishing their route in under eight hours.[108]

[434] Mr. Bickerton asserts that this is another illustration of the imperfections of the LCRMS. He adds that although an LC's actions have been timed to the millisecond, the system still cannot capture the reality of the postal world where the weather and ever-changing parcel volumes make for an unpredictable environment. This unpredictability explains the amount of overtime and its distribution over specific days and periods of the year.

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[107] Tab 7 of Mr. Bickerton's Book of Documents.
[108] Tab 6 of Mr. Bickerton's Book of Documents.

[435] Ms. Whiteley, in re-examination, affirms that the national survey of finishing times for LCs cannot be held as representative, since it was made before postal transformation. Mail sequencing, which did not exist at that time, has reduced variability in mail sortation and has reduced overall the variability in LC schedules.

**Accuracy and Frequency of Volume Counts**

[436] Ms. McMillan, using the Corporation's 2015 data on LC routes, points out that certain routes have not had a mail count done in years and that sometimes there simply was no mail count for other routes. She adds that certain routes get restructured without any mail count and that some others get restructured years after the last mail count. Other routes also have an assessed time that is over eight hours per day.[109]

[437] Mr. Howse, during cross-examination, was also questioned on whether the LCRMS was considering the sharp rise in parcel delivery. His answer was that the system is adjusted through regular volume counts, but that he could not himself confirm with certainty if volume counts are done consistently. He also concedes that he did not know that the LCRMS was created in 1995.

[438] Ms. Charbonneau explains that not all routes need to have their mail volume evaluated at the same rate and that certain zones need to be prioritized while others only necessitate a mail count every 10 years. She says that, on average, routes have their mail volume evaluated every three to five years. She adds that 2016 was an outlier in the sense that the Corporation had started, in 2015, to transition to CMBs as the preferred POC, but that the new government had ordered the Corporation to halt its transition. The abrupt stop disrupted normal restructure and mail count activities for CPC.

[439] In cross-examination, Ms. Charbonneau indicates that five or six years between each volume count can be sufficient to maintain the LCRMS' accuracy and that, for instance, mail volume has declined, and parcel volume has augmented in the previous years, having an offsetting effect on overall workload. In addition, there are other reasons for which the Corporation does route restructures, such as updating routes after postal transformation, convert POCs to CMBs, etc. These situations do not require a volume count.

**Rise of Letter Carrier Overtime**

[440] Mr. Bickerton provided a 2016 Corporation summary of the overtime executed by Letter Carriers as per Article 15.08 of the collective agreement[110]. It shows that for the years 2011 to 2015, Mondays were consistently over-represented in overtime percentages, hovering around 37% of total overtime hours per week. Mr. Bickerton infers from the data that even with a more sophisticated time system such as the LCRMS, the estimates of time worked by LCs remain imperfect. He adds that CPC does not track the actual hours *per say* worked during the eight hours day. LCs can leave work when their

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[109] Exhibit 18.
[110] See tab 5 of Mr. Bickerton's Book of Documents.

route is finished. CPC keeps track of overtime hours only and does not know exactly the amount of time actually worked by LCs.

[441] The same document shows that overtime for full-time and part-time LCs has steadily increased from 2011 to 2015, while the total number of full-time and part-time routes has declined. The average overtime yearly hours per route went from 25.80 in 2011 to 49.90 in 2015 and the number of routes went from approximately more than 16,000 in 2011 to approximately over 13,500.

[442] When asked, in cross-examination, if rising overtime hours showed weaknesses of the LCRMS's accuracy in building eight hours routes, Mr. Howse answers that it was not the case. Instead he argues that when standards become more precise, there will be a tendency for overtime to go up, since the system is built to be accurate on average only. He adds that mail sequencing, introduced in 2010, cut LCs' ability to complete their route more quickly by sorting mail faster than the estimated LCRMS time. Motorization of routes also prevents LCs from walking faster on a busier day to finish.

[443] Ms. Charbonneau affirms that the rise of overtime in the past years does not necessarily indicate that there is a problem with the LCRMS. She points out that most of the overtime hours are generated by the same 10% of LCs and that this is indicative of a job performance issue and not a sign of excessive workload. She adds that, in any event, 50 hours per year of overtime represent only 1% of an LC's yearly hours.

[444] Citing the Corporation's productive rate analysis[111], Ms. Charbonneau asserts that LCs' overtime data is not abnormal and is comparable to CPC's competitors. In cross-examination, asked if she was aware that the document states that the overtime figures for CPC's competitors was assumed to be the same as the Corporation, Ms. Charbonneau states that she did not know, and that the finance department had prepared the document and that she did not question its data. She adds that she isn't part of the finance department.

**CPC's desire to change the LCRMS**

[445] Mr. Sinclair reports that the Corporation is considering changes to the LCRMS because it needs to be better adapted for the mail volume variations. This is especially true for parcels, which have grown steadily over the years and made the LCRMS less reliable that it once was, as it does not account for daily mail fluctuations.

[446] Asked, in cross-examination, if CPC was trying to change the LCRMS in the last round of bargaining, Ms. Whiteley acknowledged that this was her understanding, but that she was not involved in these negotiations. She adds that LCs regularly work overtime because no system can accurately capture the significant changes from one day to the other in the postal market.

[447] Ms. Charbonneau also indicated that the Corporation is looking at ways to have a new system that would respond to daily mail and parcel fluctuations, now that new

[111] Tab 44 of Mr. Bickerton's Book of Documents.

technologies make it possible. She still asserts, nonetheless, that the LCRMS is very good at determining the average workday.

[448] In cross-examination, Ms. Charbonneau nuanced that CPC longs for a more dynamic and reactive system and that the LCRMS is good to predict yearly averages, but not daily ones. She adds that no system can accurately predict the length of a workday with 100% accuracy.

## 5. ANALYSIS AND DECISION

[449] To facilitate the reading of this award and to avoid undue redundancy, the parties' positions and arguments, as well as the expert's evidence, shall be described and treated as they arise throughout this section.

### I. PRINCIPLES OF A PAY EQUITY REVIEW

### Fundamentals of Pay Equity

[450] Sections 7 (b) and 11 of the Act, state that:

> "**Employment**
>
> **7**. It is a discriminatory practice, directly or indirectly,
>
> > […]
> >
> > (b) in the course of employment, to differentiate adversely in relation to an employee,
> >
> > on a prohibited ground of discrimination.
>
> **Equal wages**
>
> **11 (1)** It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value
>
> **Assessment of value of work**
>
> **(2)** In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.
>
> **Separate establishments**
>
> **(3)** Separate establishments established or maintained by an employer solely or principally for the purpose of establishing or maintaining differences in wages between male and female employees shall be deemed for the purposes of this section to be the same establishment.
>
> **Different wages based on prescribed reasonable factors**

> **(4)** Notwithstanding subsection (1), it is not a discriminatory practice to pay to male and female employees different wages if the difference is based on a factor prescribed by guidelines, issued by the Canadian Human Rights Commission pursuant to subsection 27(2), to be a reasonable factor that justifies the difference.
>
> **Idem**
>
> **(5)** For greater certainty, sex does not constitute a reasonable factor justifying a difference in wages.
>
> **No reduction of wages**
>
> **(6)** An employer shall not reduce wages in order to eliminate a discriminatory practice described in this section."

[451] The Act's quasi-constitutional nature requires that it be given a broad and liberal interpretation to allow the attainment of its objective of eradicating undue discrimination and providing equal opportunity to all.[112]

[452] Underlying that principle, the Supreme Court of Canada, in *Canada (Human Rights Commission)* v*. Canadian Airlines International Ltd*., indicated that:

> "[16] In *Canadian National Railway Co.* v. *Canada (Canadian Human Rights Commission)*, 1987 CanLII 109 (SCC), [1987] 1 S.C.R. 1114, at p. 1134, Dickson C.J., acknowledging the unique purpose of human rights legislation, held that "the words of the Act must be given their plain meaning, but [that] it is equally important that the rights enunciated be given their full recognition and effect" and held that remedial statutes like the Act are to be given "such fair, large and liberal interpretation as will best ensure that their objects are attained".
>
> [17] The object of s. 11 of the Act is to identify and ameliorate wage discrimination. This purpose guides its interpretation. As Evans J. stated in *Canada (Attorney General)* v*. Public Service Alliance of Canada*, 1999 CanLII 9380 (FC), [2000] 1 F.C. 146 (T.D.), at para. 199:
>
>> <<[N]o interpretation of section 11 can ignore the fact that the mischief at which it is principally aimed is the existence of a wage gap that disadvantages women, as a result of gendered segregation in employment and the systemic undervaluation of the work typically performed by women.>>"[113]

[453] For a breach of section 11 of the Act, the test for *prima facie* discrimination has been set out by the the Canadian Human Rights Tribunal's ("CHRT") in *PSAC* v. *Canada Post Corp*[114]. Justice Evans, in his dissent in the Federal Court of Appeal's decision, approvingly cited the test as follows:

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[112] *Canadian National Railway* v. *Canada (Canadian Human Rights Commission)*, [1987] CarswellNat 831, para. 78.

[113] [2006] 1 SCR 3.

[114] 2005 CHRT 39; While the CHRT's decision was overturned by the majority of the Federal Court of Appeal. It was restored by the Supreme Court of Canada, which rendered a two-paragraph award stating that it unanimously agreed with the dissent of Justice Evans; see: *Public Service Alliance of Canada* v. *Canada Post Corp*., 2011 SCC 57.

> "(1) The complainant occupational group is predominantly of one sex and the comparator occupational group is predominantly of the other sex. In this Complaint, that means the complainant CR's must be predominantly female and the comparator PO's must be predominantly male.
>
> (2) The female-dominated occupational group and the male-dominated occupational group being compared are composed of employees who are employed in the same establishment.
>
> (3) The value of the work being compared between the two occupational groups has been assessed reliably on the basis of the composite of the skill, effort, and responsibility required in the performance of the work, and the conditions under which the work is performed. The resulting assessment establishes that the work being compared is of equal value.
>
> (4) A comparison made of the wages being paid to the employees of the two occupational groups for work of equal value demonstrates that there is a difference in wages between the two, the predominantly female occupational group being paid a lesser wage than the predominantly male occupational group. This wage difference is commonly called a "wage gap"."[115]

[454] The first and second points of the Commission's section 11 test are not in dispute by the parties. It is agreed that the RSMC occupational group is predominately female while all six male comparators are predominantly male. All employees concerned work in the same establishment.

[455] Thus, the remaining two factors of the Commission's test are to be assessed: the validity of the job evaluation tool and its results, along with the comparison of the wages being paid.

**Onus and standard of proof**

[456] For any claim of discrimination, the Union has the burden of proof to first establish a case of *prima facie* discrimination. If done so successfully, the onus then shifts to the employer, who must demonstrate that no such discrimination is at play.[116]

[457] As for the standard of proof, still in *PSAC* v. *Canada Post Corp*, Justice Evans concurred with the CHRT's assertion that a *prima facie* case of discrimination must be established on the "civil standard, a balance of probabilities" [117]. In other words, Justice Evans states that the standard is one of "reasonable accuracy":

> "[225] […] since perfect gender neutrality is probably unattainable and pay equity is not susceptible to precise measurement, "one should be satisfied with reasonably accurate results based on what is, according to one's sense, a fair and equitable resolution" of a wage gap between men and women performing work of equal value"[118]

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[115] 2010 FCA 56, para. 34.

[116] *Ont. Human Rights Comm*. v. *Simpsons-Sears*, [1985] 2 S.C.R. 536.

[117] *PSAC* v. *Canada Post Corp*, previously cited at note 115, para. 215.

[118] *Ibid,*; Justice Evans was quoting another pay equity decision: *PSAC* v. *Canada (Treasury Board)*, (1996) 29 C.H.R.R. Decision 36.

[458] In developing its test, the CHRT was endorsing an earlier decision of justice Evans, then judge at the Federal Court, where he stated that:

> "In short, the correct interpretation of section 11 in my opinion is that Parliament intended to confer on the agencies created to administer the Act a margin of appreciation in determining on a case-by-case basis, and with the assistance of technical expertise available, how the statutorily endorsed principle of equal pay for work of equal value is to be given effect in any given employment setting."[119]

[459] The CHRT also indicated that reasonable reliability could be split into three sub-categories, each meeting the test of reasonable reliability, but showcase different degrees nonetheless:

> "[696] While the Tribunal concluded that it is difficult, and probably unwise, to attempt to be quantitatively precise about the width of the range or band of acceptability, it found that it was administratively useful to think in terms of three possible sub-bands. The first sub-band represents the upper percentiles of the band, the second sub-band represents the mid-percentiles, and the third sub-band the lower percentiles. The Tribunal called these respectively, "upper reasonable reliability", "mid reasonable reliability" and "lower reasonable reliability."[120]

[460] Justice Evans concurred with the CHRT's "spectrum" approach in the following terms:

> "[231] The Tribunal does not spell out explicitly what it understands by "reasonably reliable". However, evidence, or a finding of a fact in issue, can surely only be called "reasonably reliable" if it is more likely than not to be true, regardless of the point on the "reliability spectrum" that particular evidence or the evaluation of a job may be located. "Low-level reasonable reliability" is still "reasonable reliability". While the Tribunal would clearly have preferred the evidence in a pay equity case to meet an upper "sub-band" of reasonable reliability, it was also of the view that evidence that met only the lower sub-band was still reasonably reliable. It said (at para. 698): "Thus, while all three sub-bands meet the test of reasonable reliability …". The Tribunal made the same point at para. 700."[121]

[461] When conducting a pay equity analysis, adjudicators must rely on expert evidence. The CHRT thus developed a systematic approach to examining the over-abundant experts' testimonies and reports:

> "1. What is the expert qualified to give evidence about, and what Party is calling the expert witness?
>
> 2. What is the expert's mandate?
>
> 3. What is the extent of the expert's knowledge and experience, and his or her standing in the field of expertise concerned?
>
> 4. How did the expert fulfill his or her mandate?

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[119] *Canada (Attorney General)* v. *Public Service Alliance of Canada*, [2000] 1 FC 146, para. 152.
[120] *PSAC* v. *Canada Post Corp*, [CHRT decision] previously cited at note 114.
[121] *PSAC* v. *Canada Post Corp*, [Federal Court of Appeal decision] previously cited at note 115.

5. What conclusions did the expert reach?

6. How did the expert present his or her conclusions to the Tribunal?

7. What weight does the Tribunal give to the conclusions of the expert?"[122]

## J. POTENTIAL JOB COMPARATORS AND GENDER PREDOMINANCE

### Occupational groups

[462] As per article 7 (d) of the MOU, the parties agreed to compare eight jobs as part of the joint study. The RSMCs and the PREs were deemed to be female-dominated, while the LC, RLC, Mail Service Courier, Mail Service Courier (Heavy), the Despatcher and the Letter Carrier Assistant ("LCA"), were deemed to be male dominated (potential male comparators).

[463] Mr. McGrath briefly describes each male comparator in the following way:

- LC: full-service delivery agents who are responsible for delivering mail and parcels, collect mail from SLBs, as well as doing customer pick-ups and RPO clearances.
- PO5 – despatcher: the despatcher works at CPC's plants, where he dispatches mail to highway services by loading and unloading mail trucks.
- Mail Service Courier and Mail Service Courier-Heavy ("MSC" and "MSC-H"): the MSC delivers parcels only or deliver mail and parcels to large government agencies. The MSC-H moves mail trailers at CPC's three plants.
- LC Assistant ("LCA"): the LCA gives and distributes mail to LCs and RSMCs at depots.
- LC Relief ("LCR"): LCRs cover for LCs absences on a daily or, more frequently according to Mr. McGrath, on a weekly basis.

[464] The LCA's job was divided, or "split", from the LC occupational group to aid in the development of the job evaluation tool, as it was expected by the parties to be valued at the minimum. The division was agreed to by the parties.

### Exclusion of the PREs

[465] During the evidence, Ms. Whiteley asserted that a human resources report of December 2017 indicates that PREs are now gender neutral, with 249 male workers and 219 female workers (46.8% female and 53.2% male).[123]

[466] The experts did not comment on the matter, as it was only revealed after they had submitted their report.

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[122] *PSAC* v. *Canada Post Corp*, [CHRT decision] previously cited at note 114, para.
[123] Exhibit 20.

[467] The Corporation simply affirmed that since a subset of the RSMC occupational group, the PREs was now gender neutral and, as such, should be excluded from the occupational group and the pay equity review.

[468] The Union claims that the Corporation's submission is untimely as none of the consultants were able to review it, that it was agreed that the RSMCs would be treated as one group for the purpose of gender incumbency, and that, in any event, it is improper to exclude the PREs from the RSMC occupational group at the stage of determining gender predominance.

[469] Dr. Siu, in his *Federal Equity Manual*, indicates the following regarding how one should determine occupational groups:

> "Sections 12 to 15 of the *Equal Wages Guidelines* of 1986 do not provide a definition of "occupational group". It appears that there are some flexibilities in grouping different jobs together for the purpose of comparing "occupational groups". In order to operationalize the objective of pay equity, an occupational group may be defined as a group of jobs used as a comparator of value with another groups of jobs. The size of these occupational groups depends on the nature and size of the establishment.
>
> The Human Resources Skills Development Canada puts forward a number of criteria which may assist the employer to identify occupational groups for analysis:
>
> - Jobs characterized by work of similar nature including skills and responsibilities, such as financial analyst and financial accountant
> - Jobs which have the same basic qualifications
> - Similar career patterns and interchangeability of personnel
> - Jobs already grouped together for compensation purposes, such as management and administrative jobs
>
> For the purpose of establishing pay equity, these occupational groups are gender predominated with one largely made up of women, the other largely made up of men."[124]

[470] In the above cited *PSAC* v. *Canada Post Corp.*, the CHRT had, for the purpose of determining the gender predominance of occupational group, if a certain, gender neutral and higher paid, subgroup could be split from a larger male predominant occupational group. The tribunal considered that that was not appropriate for the following reasons:

> "[…] The federal government job classification scheme is predicated upon the concept of groups of employees, bound together by occupational categories. Within these groupings, the concept of levels is connected to wage differentials. Historically, these levels, with their wage differentials, were based on factors such as seniority, management's view of the importance of the work performed at each level, and the requisite training and skills necessary. That a union at Canada Post, representing many or all of the Postal Operations group may have decided to

[124] Dr. Bobby Siu, *Federal Equity Manual*, vol. 1, Toronto, Thomson Reuters, 2002, loose-leaf, release 3 2017, p. 2-11 and 2-12.

> attempt to create a situation where the classification levels are essentially unrelated to wage differentials cannot change the historical concept that is the basis for the groups and levels themselves. It is this concept that is important to the designation of "occupational group" in sections 12 and 13 of the 1986 Guidelines, and to the issue of "pay equity" in section 11 of the Act"[125]

The Tribunal's conclusions

[471] Judging from the legislation, the CHRT's decision and the words of Dr. Siu, it is inappropriate, for the purposes of determining gender predominance in accordance with section 13 of the Guidelines, to discard a sub-group of the female predominant RSMC occupational group. The PREs meet all the Human Resources Skills Development Canada criteria: the work performed is almost entirely the same as the RSMCs', the qualifications are identical, they are clearly interchangeable with RSMCs, as their principal function is to replace them in cases of absences and the PREs are grouped together with RSMCs for the purposes of compensation. Moreover, if a wage gap were to be found, excluding the PREs would be inequitable for that sub-group as they would be excluded from the forthcoming wage adjustment.

[472] As such, I share the Union's position that the PREs' cannot be excluded from this pay equity review and that the Corporation's claim must be rejected.

## K. GENDER NEUTRAL JOB EVALUATION EXERCISE

### General principles

[473] Concerning the assessment of value of work, subsection 11(2) of the Act mandates that:

> "**11** […]
>
> **(2)** In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed."

[474] Regarding the assessment of value, the Guidelines provide that:

> "**Assessment of Value**
>
> **Skill**
>
> **3** For the purposes of subsection 11(2) of the Act, intellectual and physical qualifications acquired by experience, training, education or natural ability shall be considered in assessing the skill required in the performance of work.
>
> **4** The methods by which employees acquire the qualifications referred to in section 3 shall not be considered in assessing the skill of different employees.

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[125] *PSAC* v. *Canada Post Corp.*, [CHRT decision] previously cited at note 114, para. 271.

**Effort**

**5** For the purposes of subsection 11(2) of the Act, intellectual and physical effort shall be considered in assessing the effort required in the performance of work.

**6** For the purpose of section 5, intellectual and physical effort may be compared.

**Responsibility**

**7** For the purposes of subsection 11(2) of the Act, the extent of responsibility by the employee for technical, financial and human resources shall be considered in assessing the responsibility required in the performance of work.

**Working Conditions**

**8 (1)** For the purposes of subsection 11(2) of the Act, the physical and psychological work environments, including noise, temperature, isolation, physical danger, health hazards and stress, shall be considered in assessing the conditions under which the work is performed.

**(2)** For the purposes of subsection 11(2) of the Act, the requirement to work overtime or to work shifts is not to be considered in assessing working conditions where a wage, in excess of the basic wage, is paid for that overtime or shift work."

[475] Section 9 of the Guidelines provides insight on the appropriateness of an employer's job evaluation tool:

**"Method of Assessment of Value**

**9** Where an employer relies on a system in assessing the value of work performed by employees employed in the same establishment, that system shall be used in the investigation of any complaint alleging a difference in wages, if that system

**(a)** operates without any sexual bias;

**(b)** is capable of measuring the relative value of work of all jobs in the establishment; and

**(c)** assesses the skill, effort and responsibility and the working conditions determined in accordance with sections 3 to 8."

[476] Dr. Siu shines light on the gender neutrality of the job evaluation components and how it can be attained:

"Job evaluation must be gender-neutral. This was the finding of the Tribunal's 1991 decision in the Hospital Services case which dealt with the compensation of health care employees employed by the federal government. This decision provides the central principle upon which job evaluation plans are prepared. In 1996, the Tribunal also established a standard of "reasonableness" in determining the neutrality of a job evaluation system.

By "gender neutral", it means that the job evaluation system has to align well with the work context and organization mission; to have fair weighting in rating criteria for work that men and women do; to be non-sexist in language; to have safeguards against discriminatory approaches and terms of reference; and to be bias-free by using a comprehensive sets of job information without selective skewedness and by training raters to be fair.

> While job evaluation may not be perfectly objective, the subjective and often, personal discretion and biases, have to be put in check. Job evaluation therefore must be as systematic as possible, and "checks and balances" must be put in place to pre-empt "blind spots" and personal opinions without substantiation."[126]

[477] As noted by the Federal Court, the employer's system must be inclusive and balanced, clear and comprehensible, and carefully applied. Moreover, work characteristics typical of predominantly female jobs must be made visible and reflected in the system.[127]

[478] Traditional job evaluation has pervasively undervalued the work done by women and conversely overinflated the importance of male work content. As stated by the Ontario Pay Equity Hearings Tribunal in the *Haldimand Norfolk* case that indicates:

> "Traditional job evaluation often reinforced and perpetuated these attitudes, largely rewarding the skills and job content characteristics of male work and ignoring or giving less value to the skills and job content requirements of women's work. Originally, job evaluation was designed and applied in industrial and manufacturing workplaces, and to managerial positions. When these systems were applied to workplaces in the health, service and office sectors, few changes were made to the underlying assumptions with which the value of jobs were assessed. The skills, ability and experience of women in these jobs were not recognized, leading to an inaccurate and inadequate appraisal of the value of their work, and the resultant wages paid to them."[128]

[479] It is with such a reminder that job evaluation must be conducted in order to avoid the blunders of the past. Gender biases can subtly afflict a job evaluation process unbeknownst to the people conducting it, hence why it must be conducted in a manner that is as systematic as possible.

**Joint job evaluation process**

[480] Prior to building their respective job evaluation tools, the expert drafted a profile of each job, an invitation and a series of questions for participants to consider before attending the sessions. Over several months, the consultants conducted interviews and focus groups with incumbents to determine the job content and to refine their job profiles drafts. In total, more than 150 workers were met during 45 focus group meetings throughout various locations across Canada[129].

[481] After the sessions, both experts updated the job profiles and the parties had an opportunity to review the material to provide additional comments. Although there were minor differences between the consultants on the job profiles, Ms. Haydon's view is that they were not material to the outcome of the job evaluation's results. Mr. Durber also

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[126] *Federal Equity Manual*, vol. 1, previously cited at note 124, p. 2-20.
[127] *PSAC* v. *Canada (Treasury Board)*, 2005 FC 1297, para. 5.
[128] *Haldimand-Norfolk (Municipality)*, [1991] 2 PER 105, para. 271.

[129] Including: Vancouver/Richmond, Kelowna, Calgary, Red Deer, Regina, Winnipeg, Toronto (Greater Toronto Area – Scarborough, Mississauga), London, Windsor, Thunder Bay, Ottawa, St. Jerome, Montreal, Drummondville, Halifax and Fredericton.

indicates that, except for some caveats inserted by the Corporation, the job profiles were agreed to by the parties.

[482] In his reply report, Mr. Durber also states that "the parties agreed that the RSMC and Letter Carrier (LC) profiles would be as parallel as the nature of the work would permit […]"[130], except for certain aspects of the work that is not shared by both jobs (RMBs, foot walk delivery, etc.). Mr. Durber affirms that the job evaluation tool was tested through discussions with incumbents, "reference to nearly-complete job profiles, notes taken during the interviews, questions posed to the parties and identification of maximum and minimum demands"[131].

[483] Based on the Act (section 11), the Guidelines (sections 2 to 8), and the Features of women's work[132] document, the parties agreed to equity criteria[133] and to standard features of a job evaluation tool: subfactors, levels and points, point value, number of levels, weight and total points available.

[484] Despite some differences, both consultants underlined that the job information collected was "accurate, complete and consistent across the eight jobs", as Mr. Durber puts it in his reply report[134]. Ms. Haydon indicated that she was "[…] of the view that the differences of opinion are not material to the outcome of the evaluation results […]"[135]. The final job profiles can be found in Ms. Haydon's January Report[136].

[485] While they agreed on the structure of the job evaluation tool and on most of its inputs, the consultants had certain disagreements which are covered in the following sections. The consultants had four points of contention regarding the job evaluation tool's final construct and methodology: the visibility of certain features of the RSMCs' work through the addition of a fourth level for emotional effort, the weighting of the subfactors, the point progression scheme, and the splitting of jobs.

**The appropriate level for emotional effort**

[486] Ms. Haydon asserts that the RSMCs' Emotional Effort subfactor could be well represented with a maximum at level 3 of the common job evaluation tool, which reads:

> "3 - Emotional effort is high given that:
>
> - the work is often unpredictable with significant impacts experienced
>
> - there is a frequent requirement to deal with others that are angry or hostile people; threats to safety are clear but may also be unpredictable
>
> - control over the work is very difficult because of varying circumstances"[137]

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[130] Exhibit 6.
[131] Durber Reply Report, Exhibit 6.
[132] See Annex A-5 of Mr. Durber's Reply Report Book of Documents. The list is an excerpt from the previously cited OPEHT's decision *Haldimand-Norfolk (No. 6),* see *supra*, note 128.
[133] The complete descriptions of the criteria and headings can be found in Appendix F of this award.
[134] Exhibit 6.
[135] January Report, Exhibit 9.
[136] Exhibit 6.
[137] Tab B-3 of Exhibit E-7.

[487] Ms. Haydon testifies that the stress of working in large urban environments (aggressive clients or individuals, with or without mental illness, theft, etc.) for LCs is equivalent to those faced by RSMCs, inclusive of the latter's isolation. She affirms that emotional effort for RSMCs and LCs is equal.

[488] Mr. Durber, regarding emotional effort, thought that a fourth level in the job evaluation tool allows to better represent the isolated, and vehicle dependent, position of RSMCs in rural areas. Mr. Durber's proposed fourth level reads as follows:

> "4 – Emotional effort is very high given that:
>
> - isolation produces vulnerability especially where communication may not be possible, and conditions can produce higher threats to safety
>
> - controls over work are much more difficult because of distances and highly variable conditions in the environment and vehicles"[138]

[489] The particular stress of rural work, the isolation and the vulnerability experienced by RSMCs, are not fully captured in the third level of the Emotional Effort subfactor, according to Mr. Durber. He adds that isolation is a female aspect of the work, as appearing in the Features of women's work[139], that needs to be taken into account for this particular subfactor and that a rating of 4 for the RSMC and 3 for the LC accurately captures both groups' realities.

**The Tribunal's conclusions**

[490] The Undersigned must side with Mr. Durber's point of view on this matter. While it is true that LCs can feel threatened while on duty and be victims of verbal or physical aggressiveness, the evidence shows that RSMCs are exposed to the same issues. Indeed, both Ms. McMillan and Ms. Beauchamp testified that they had to deal with angry customers who were verbally abusive or threatening. However, RSMCs service the most rural, sometimes isolated, parts of Canada. Ms. McMillan affirmed that she often felt stressed out and isolated when driving in difficult weather conditions on backcountry roads, often without reliable cellphone coverage. As Mr. Durber indicates, isolation is a working condition that is a feature of women's work and, thus, requires special attention when assessing the value of work.

[491] Consequently, it was appropriate for Mr. Durber to use a fourth level for emotional effort and to grade the RSMCs' work accordingly.

## Weightings

[492] Ms. Haydon explains that she opted for 15% weighting for physical and sensory efforts because of the very physical nature, due to driving, walking, lifting and delivering mail and parcels, etc., of all jobs evaluated. Because of the importance of physical and sensory effort in all eight jobs, she considers it important to value it slightly more than other criteria.

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[138] *Ibid.*

[139] Previously cited note 132.

[493] Her overall weightings are shown below:

| Subfactors | Weight |
|---|---|
| **Knowledge** | 10% |
| **Mechanical & Physical Skills** | 10% |
| **Communication/Interpersonal Skills** | 10% |
| **Complexity and Problem Solving** | 10% |
| **Physical Effort** | 15% |
| **Sensory Effort** | 15% |
| **Emotional Effort** | 5% |
| **Accountability for Resources** | 10% |
| **Responsibility for the Work of Others** | 5% |
| **Environmental Working Conditions and Hazards** | 10% |

[494] Mr. Durber asserts that a total of 30% for physical and sensory effort was unduly favoring male work and, as such, opted for a total weighting of 24% for the two subfactors, thus allowing more room for subfactors that better reflect the work done by women. As such, Mr. Durber slightly augmented the weights of the Emotional Effort and Responsibility for the Work of Others. The former is a feature of women's work and the latter is exclusive to the RSMCs' work. Mr. Durber also attributed 12% to Knowledge instead of 10%. Because both consultants and the Union agreed that Communications Skills were somewhat limited in all jobs, Mr. Durber thought a weighting of 8% was more appropriate. Finally, 10% for Accountability for Resources was, in Mr. Durber's opinion, unusually low given the range of accountabilities in the work. In cross-examination, Mr. Durber explained that accountability for resources should be higher to better represent the use of a personal vehicle by RSMCs.

[495] Mr. Durber's weightings can be summarized as follows:

| Subfactors | Weight |
|---|---|
| **Knowledge** | 12% |
| **Mechanical & Physical skills** | 10% |
| **Communication/Interpersonal Skills** | 8% |
| **Complexity and Problem Solving** | 10% |
| **Physical Effort** | 12% |
| **Sensory Effort** | 12% |
| **Emotional Effort** | 8% |
| **Accountability for Resources** | 12% |
| **Responsibility for the Work of Others** | 6% |
| **Environmental Working Conditions and Hazards** | 10% |

**The Tribunal's conclusions**

[496] Once more, it is important to underline the importance of gender neutrality in the creation of job evaluation tools. Here, lowering the weightings of the physical and sensory effort subfactors allows to better reflect other parts of the work. That includes highlighting the importance of emotional effort, a feature of women's work, or providing higher visibility to the subfactors of accountability for resources (use of a personal vehicle) and responsibility for the work of others (finding a replacement), which are unique and important aspects of the RSMC work.

[497] Thus, I retain Mr. Durber's weightings as being preferable to those of Ms. Haydon. It is notable, however, that both consultants indicated that the differences between the two models were modest and expresses slight differences of opinion, rather than fundamental disagreements. Nevertheless, Mr. Durber's adjustments, albeit relatively minor, display a more accurate and gender-neutral representation of the jobs being evaluated and, as such, must be retained.

**Points progression**

[498] On the issue of points progression, Mr. Durber has opted to have a 50% minimum as the first level of his job evaluation tool's factors. His rationale is that there is not a large difference in the actual job demands across the eight jobs. He adds that the small compensation range between the male comparators, about a dollar at base rate, is consistent with that assessment and justifies a minimum of 50%. The maximum rates of pay of the male comparators, as displayed in Mr. Durber's Reply report, are as follows:

**Table Four: Maximum Rates of Pay: Male-predominant Jobs**[27]

| Job | Hourly Rate (1 Jan 16) | |
|---|---|---|
| | NET | BASE |
| Letter Carrier | $29.45 | $25.95 |
| Relief LC | $30.07 | $26.50 |
| LCA | $29.45 | $25.95 |
| Mail Serv. Courier | $29.45 | $25.95 |
| MSC--Heavy | $30.56 | $26.94 |
| Despatcher (PO-5) | $29.64 | $26.10 |

[499] Mr. Durber further asserts that Ms. Haydon's 33% minimum exaggerates the differences in point totals and that it gives credence to the assertion that fewer male jobs should be comparators, a conclusion he does not support.

[500] To that critique, Ms. Haydon responds that the objective of a job evaluation tool is to evaluate the distinctions of the work performed and that using a 50% minimum makes the evaluation of differences and similarities difficult. Ms. Haydon disagrees that one should look at rates of pay to determine the methodology, as a job evaluation tool is built to test the appropriateness of rates of pay, not support them.

[501] Ms. Haydon indicates the 50% minimum overinflates jobs of lower value and results in artificially injects more comparators in the evaluation, since it limits the range of possible results.

**The Tribunal's conclusions**

[502] To the statements of Mr. Durber, regarding the relatively limited differences in actual job demands and corresponding wage differences in the male comparators, the Undersigned must opine. The evidence favors such a conclusion: the eight jobs being compared are analogous in nature and, hence, their differences should not be exacerbated by the use of a lower minimum. The very slight differences in renumeration for the male comparators bolsters that conclusion. Accordingly, I accept the 50% minimum as a superior alternative in this case.

## Job splitting

[503] Another difference of methodology between Ms. Haydon and Mr. Durber is the former's choice to "split" certain jobs into two categories. Ms. Haydon asserts that doing so better showcases the work done by each sub category. As such, Ms. Haydon considered that the MSC, the LC and RSMC jobs should be split.

[504] Her rationale for doing so is expressed as follows in her January report[140]. For the LC, she states:

> "While the Letter Carrier role is treated as a single job insofar as they share a job description as well as a compensation model, based primarily on the focus groups that were conducted and the information shared by Letter Carriers themselves, I am of the view that there are two, possibly three, distinct versions of the Letter Carrier job that result in different job evaluation results.
>
> […]
>
> During the conduct of the focus groups, Letter Carriers were emphatic that those routes that are foot walks and/or park and loop are substantially more physically and sensory demanding than those that are primarily centralized delivery.
>
> Had I collapsed the job and only provided ratings for the foot walk, I would have concluded that the Letter Carrier is not an appropriate comparator with the RSMC given the 100+ point differential. By dividing the Letter Carrier job, this allows me to conclude that the RSMC and a Letter Carrier should be compared from a job value perspective.
>
> The issue of whether there are multiple versions of a Letter Carrier is not relevant to this study. What is important is that through job evaluation I have established a precise job-to-job comparison between the RSMC route and the Letter Carrier that may be described as centralized."

[505] As for the MSC-H, Ms. Haydon indicates:

> "Focus groups participants in this group indicated that there is one version of this role that drives a heavy vehicle and is out on the road interacting with Canada

[140] Exhibit 6.

> Post's customers. Yet, there is a second version that is limited to the Canada Post vehicle yard and focuses on moving vehicles from location to location within the yard (referred to as shunting). This second version does not drive a vehicle outside the facility nor does it interact with customers. I am of the view that this job can be divided into two unique roles with quite different outcomes from a JE perspective. As Table 7 illustrates, there is a significant point differential between the two versions (529/679)."

[506] Concerning the RSMCs, Ms. Haydon affirmed:

> "As illustrated below, the RSMC job has been divided into two versions based solely on the single responsibility that one segment of this workforce has for providing a replacement when they themselves are unavailable for work. This is a unique feature of the work that is largely related to those routes found in rural Canada where there are small offices.
>
> As highlighted in Table 4 above, this unique feature of the work is accounted for under Responsibility for the Work of Others at 5% and provides for two levels where the difference is 25 points. From a job value perspective, this difference is not material and has no impact."

[507] During her testimony, Ms. Haydon also stated that, in any event, she was going to have to split the jobs in her data analysis anyway, because of the methodology used to compare LCs to RSMCs.

[508] Mr. Durber, on the issue of job splitting, asserts that the collective agreements do not split the jobs as Ms. Haydon did. Indeed, the collective agreement for RSMCs provide a single set of qualification and a single set of wages (the Appendix A). Similarly, the Urban collective agreement also provides a single set of wages per male comparator job. Because of the interchangeability within each of the jobs, Mr. Durber alleges that splitting should be avoided.

[509] Mr. Durber adds that the only split that was agreed to by the parties was that of the LCA, which was made to broaden the job evaluation spectrum of results. Moreover, Ms. Haydon did not split other jobs that, based on her reasoning, could have potentially been separated. This is the case of the RLC, whose work mirrors that of the LC, yet wasn't split by Ms. Haydon. Similarly, there are also broad differences amongst RSMCs who own their own vehicle, those that service rural areas, etc. Ms. Haydon did not split the RSMC job beyond the difference between RSMCs that must find a replacement and those that don't.

[510] Mr. Durber also sustained during the hearing that splitting the jobs of LCs between foot walk routes and motorized ones demonstrated gender bias towards more traditionally male physical aspects of the work.

**The Tribunal's conclusions**

[511] Despite the Undersigned's earlier findings that occupational groups could not be excluded when first determining their gender predominance, at the stage of job comparison and wage adjustment, the jurisprudence allows for such a possibility. The CHRT, in *PSAC* v. *Canada (Treasury Board)* (1998), expounds the following reasoning:

> "[228] The Commission's approach, supported by the Alliance, is to disregard the framework of occupational group for making comparisons once gender predominance is determined. Both Mr. Sadler and Mr. Durber testified the Commission's task under s. 11 is to compare "work" not "groups".
>
> […]
>
> [264] Mr. Durber testified the "occupational group" determination made for purposes of sex predominance in the investigation of the complaint no longer applies in formulating a wage adjustment methodology because the focus for comparison is then on the "work" rather than on comparing groups identified in the complaint. […]
>
> […]
>
> [305] We find the reference to "occupation group" refers to the groups which have been designated by the application of s. 13 of the Guidelines as either female-dominated or male-dominated. The term "deemed to be one group" [of section 14] describes how the male comparators will be treated for the purposes of wage adjustment methodology. We further find the reference to "occupational group" does not mean that comparison between male work and female work has to be by whole occupational groups designated by the Respondent's classification system."[141]

[512] In the application for judicial review of the above cited *PSAC* v*. Canada (Treasury Board)*, Justice Evans dismissed the Attorney General's application and denied that the Guidelines require a comparison strictly within occupational groups:

> "[187] Accordingly, in my opinion the references to "occupational groups" in the sections of the Guidelines simply refer to the groups identified under section 12 and 13 as predominantly male or predominantly female. Interpreted both in the context of section 11 properly understood, and of the dangers in assigning to employer-designated occupational groups any broader significance in the pay equity exercise, I cannot conclude that section 15 mandates that comparisons be based on employees in predominantly male occupational groups, sampled by group."[142]

[513] Although case law deems the splitting of jobs possible, remains the determination of its pertinence and congruity with the objectives set forth by the law and the jurisprudence. Specifically, does splitting certain jobs as Ms. Haydon did serve the purpose of a neutral job evaluation tool? In Dr. Siu's words, does it "[…] align well with the work context and organization mission […]"[143]?

[514] In the present matter, splitting jobs as Ms. Haydon did does not seem to be neither opportune nor aligned with the work context. Rather, it is a precarious and hazardous initiative that does not seem to be called for in the present manner. As Mr. Durber illustrated, there are no aspects of the collective agreement that would naturally lead to separate or split one or more of the eight jobs, as each of the LC, MSH-H and RSMC are

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[141] *PSAC* v*. Canada (Treasury Board)*, 1998 CanLII 3995.
[142] 1999 CarswellNat 2001.
[143] *Federal Equity Manual*, vol. 1, previously cited at note 124, p. 2-20.

treated alike. They are paid using the same respective wage system and are interchangeable.

[515] Again, it is essential to quote Dr. Siu:

> "While job evaluation may not be perfectly objective, the subjective and often, personal discretion and biases, have to be put in check. Job evaluation therefore has to be as systematic as possible, and "checks and balances" be put in place to pre-empt "blind spots" and personal opinions without substantiation."[144]

[516] On the contrary, Ms. Haydon's choices seem arbitrary and inconsistent with the work structures of the jobs. The decision to split the above-mentioned three jobs raises more questions than it answers. For instance, why has the LC been split, but not the RLC? Why were rural and suburban routes serviced by RSMCs treated differently? CPC representatives have been keen to affirm that the work of RSMCs differs drastically from one employee to the other, yet no splitting has been done on that basis; an RSMC working a 200-kilometre drive route servicing a few dozen RMBs is treated the same as another that delivers to hundreds of POCs in a densely populated suburban area. Ms. Haydon states no motive for not splitting other jobs and why that would not be appropriate.

[517] Furthermore, where the parties had agreed to split the LCA, because of its recognized and expected lower value, Ms. Haydon acted on her own premises that were scantly explained in her report.

[518] For all the above-mentioned reasons, I must reject as inappropriate the splitting of the LC, MSC-H and RSMC positions. In view of the principles of gender neutral job evaluation, the potential risks of distortions are higher than the expected benefits of clearer results.

## Job evaluation ratings and results

### Detailed ratings

[519] Mr. Durber, in his reply report, presents the detailed ratings of the consultants as follows: [table appears on following page]

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[144] *Ibid*, p. 2-20.

**Table Seven: Detailed Ratings showing differences (22 Durber ratings shown in bold); total: 80)**

| Job, where split jobs (in italics) were not rated by Durber | Knowledge | Mechanical & Physical Skill | Communications | Complexity and Problem Solving | Physical Effort | Sensory Effort | Emotional Effort | Accountability | Responsibility for the Work of Others | Environmental Working Conditions |
|---|---|---|---|---|---|---|---|---|---|---|
| Despatcher PO 5 | 2 | 1... **PD: 2** | 1 | 1... **PD: 2** | 2... **PD: 3** | 2... **PD: 3** | 1... **PD: 2** | 2 | 1 | 2 |
| *Letter Carrier 1* | 3 | 2 | 2 | 3 | 3 | 3 | 3 | 3 | 1 | 3 |
| Letter Carrier 2 | 3 | 3 | 2 | 3 | 4 | 4 | 3 | 3 | 1 | 3 |
| Letter Carrier Assistant | 1 | 1... **PD: 2** | 1 | 1 | 2 | 2 | 1 | 1 | 1 | 2 |
| Mail Service Courier – Heavy Vehicle (HV) | 2 | 2... **PD: 3** | 2 | 2 | 2... **PD: 3** | 3 | 2 | 3... **PD: 2** | 1 | 2... **PD: 3** |
| *Mail Service Courier – HV (Shunting only)* | 1 | 2 | 1 | 1 | 3 | 2 | 1 | 1 | 1 | 3 |
| Mail Service Courier | 2 | 2... **PD: 3** | 2 | 2 | 3 | 3 | 2 | 3... **PD :2** | 1 | 3 |
| Permanent Relief Employee | 3 | 2... **PD: 3** | 2 | 3 | 3 | 3... **PD: 4** | 3...**PD: 4** | 3 | 1 | 3 |
| Relief Letter Carrier | 3 | 2... **PD: 3** | 2 | 3 | 3... **PD: 4** | 3... **PD: 4** | 3 | 3 | 1 | 3 |
| *Rural and Suburban Mail Carrier 1* | 3 | 2 | 2 | 3 | 3 | 3 | 3 | 3 | 1 | 3 |
| Rural and Suburban Mail Carrier 2 | 3 | 2... **PD: 3** | 2...**PD:3** | 3 | 3 | 3... **PD: 4** | 3...**PD: 4** | 3 | 2 | 3 |

[520] Ms. Haydon comments that Mr. Durber attributed more points to physical and mechanical skill for the RSMCs because of the use of the RRD, whereas Ms. Haydon did not conclude that it should be that high. Ms. Haydon considers that when LCs walk, carry and sort their mail at the same time, it is more demanding than using an RRD. Concerning Mr. Durber's higher ratings to RSMCs for obtaining and training replacement, Ms. Haydon asserts that it does not fall into the communications category and that, regardless, dealing with angry or aggressive customer is more difficult than training a replacement.

[521] Mr. Durber indicates that key differences between Ms. Haydon and him on the rating of RSMCs are: he considers that the use of an RRD warranted a higher mechanical skill level, that driving long distances is more sensory demanding than what Ms. Haydon graded, that communication should be higher for RSMCs due to the training of replacements, and that emotional effort should be higher due to the isolation of the rural work.

[522] On the whole, Mr. Durber is satisfied that the results are fairly sensible for both consultants. Because his and Ms. Haydon's values were the same 75% of the time, Mr. Durber concludes that both evaluations were focused and reliable. The range of choices of values with subfactors is small and actual point value difference is mainly due to weighting and point progression, resulting in a similar overall ranking.

The Tribunal's conclusions

[523] After careful examination, the Undersigned finds that Mr. Durber's ratings for the LC, the RSMC, the RLC and the PRE are more in line with the evidence that was adduced before the Tribunal. Ms. Haydon's ratings undervalue the RSMC's emotional and sensory efforts (related to the isolation and long driving, respectively), the mechanical skill needed to use an RRD and the communications proficiency needed to properly train replacements for their routes. Since RLCs cover for LC absences, their ratings should naturally be the same as the latter.

**Final points results**

[524] Mr. Durber's total points results and ranking for all eight jobs, compared with those of Ms. Haydon, are the following as shown in his reply report:

| Job title | Haydon Points (corrected)[145] | Haydon Ranking | Durber Points | Durber Ranking |
|---|---|---|---|---|
| **LCA** | 424 | 8 | 590 | 8 |
| **MSC-H** | 681 | 6 | 799 | 6 |
| **MSC** | 752 | 5 | 799 | 6 |
| **PO-5** | 492 | 7 | 754 | 7 |
| **LC** | 942 | 1 | 937 | 2 |
| **RLC** | 835 | 2 | 937 | 2 |
| **RSMC** | 835 | 2 | 980 | 1 |
| **PRE** | 835 | 2 | 980 | 3 |

[525] As shown in Mr. Durber's table, before splitting jobs, the consultants arrive at a 5 points difference between their respective LC results. However, the difference in points between their two results for RSMCs is at 145. Mr. Durber's results display a point difference of 43 between the RSMC and the LC, while Ms. Haydon's shows a 107 points difference.

[526] Ms. Haydon's total points results for jobs having been split only are as follows: [table appears on following page]

[145] By "corrected", Mr. Durber meant that he used the maximum values of Ms. Haydon's ratings. The latter differ from the results appearing in Ms. Haydon's table, since, as she explains, she had added rounded values which caused her final results to be off by a few points.

| Jobs | Total Points |
|---|---|
| **Mail Service Courier – HV (shunting only)** | 529 |
| **Mail Service Courier – Heavy Vehicle** | 679 |
| **Letter Carrier 1 (no footwalks)** | 833 |
| **Letter Carrier 2** | 942 |
| **RSMC 1 (no need to find replacement)** | 833 |
| **RSMC 2** | 858 |

[527] Ms. Haydon's split results show a difference of 109 points between her LC 1 and LC 2 and a difference of 25 points between the RSMC 1 and RSMC 2. There is no difference between the LC 1 and the RSMC 1, but there is a 84-points gap between the LC 2 and the RSMC 2. Finally, there is a 109 points difference between the LC 2 and the RSMC 1.

[528] Concerning the total points results, Ms. Haydon asserts that a point difference of 75 entails that jobs are different and not readily comparable, but that within a 40 to 60 points range they become more so. Later during her testimony, she adds that differences of 75 to 100 points are not dramatic differences.

[529] Ms. Haydon believes that, despite their differences, she and Mr. Durber came to the same conclusion that RSMCs and LC1s are of equal value and, thus, comparable. However, LC2s would not be comparable to RSMCs since they are too far apart in terms of job value.

[530] Overall, Mr. Durber explains that despite the consultants' slightly different total points results, the roughly came to the same conclusion regarding the value of the jobs, as shown in the similarity of their ranking. He indicates that both he and Ms. Haydon found that RSMCs and LCs were of equal value.

The Tribunal's conclusions

[531] Considering the Tribunal's previous findings regarding Ms. Haydon's weightings, points progression scheme and splitting of the jobs, her final results cannot be relied upon for the purpose of determining the appropriate comparator(s). Conversely, those of Mr. Durber accurately reflect the job content and better represent the particularities of each potential comparator.

[532] In light of all the evidence adduced, the Tribunal finds that the 43-point gap in Mr. Durber's final results between the RSMC and LC is a faithful representation of the differences between the two jobs. Furthermore, it is a relatively minor one that, at face value, signifies that RSMCs and LCs can be readily compared. Ms. Haydon's results, on the other hand, show a 107 points difference between the RSMC and the LC that seldom resonates with the work of these employees.

[533] Thus, for all of the above-mentioned reasons, the Undersigned finds that Mr. Durber's results are the most reasonably accurate ones and should be used in assessing a potential wage gap between the female and male comparators.

## L. DIRECT WAGE COMPARISON METHODOLOGY

[534] Shall be covered in this section: the use of a direct or indirect comparison and the methodologies used by the parties to assess the wage gap.

### Direct or indirect comparison

[535] As a reminder, the Tribunal retains Mr. Durber's final point results for comparison purposes of the following job classes: LC at 937 points, RSMC at 980 points, RLC at 937 points and PRE at 930 points. Therefore, there is a 43 points gap between the RSMC and LC and a 7 points gap between the RLC and LC (equal results) and the PRE. The gaps between the RSMC and the other four male comparators ranges from 181 to 390 points.

[536] Ms. Haydon asserts that the legislation requires that if a direct comparator is available, then using an indirect comparison would not be appropriate. Counsel for CPC repeated that assertion and presented case law to support it.

[537] Mr. Durber affirms that all six male comparators should be compared, instead of the LC only. He claims that the parties agreed to include other male dominated jobs which were studied by the consultants. Additionally, the Guidelines provide that where a female-predominant job is to be compared with numerous male comparators, the latter's weighted average should be used. Alternatively, when comparing "groups", a wage line should be used.

[538] The CUPW has argued that an indirect comparison was essential here, as there are multiple male comparators. Counsel for the Union stressed that it is important that the tribunal recognize that several of the male comparators were of lower job value yet are compensated at a superior rate than the RSMC. The only way to truly uncover the inequalities faced by the RSMCs is by the use of a wage line.

[539] Concerning the determination of job comparators, Dr. Siu presents the following guide:

> "Pay equity requires the employer to compare the value of work in a female-dominant occupational group with that in a male-dominant occupational group. But, which male-dominant occupational group(s) could be used as comparator?
>
> **Job-to-job comparison**
>
> Identify one or more male job classes with comparable or equal value in the same bargaining unit or in non-bargaining areas. The male job class with the lowest [rate of compensation] is the most appropriate comparator. When the [rate of compensation] for the female job class is at least as high as that of the lowest paid comparable or equal male job classes, pay equity is achieved.
>
> **Band comparison**

> When male comparators could not be located for comparing a female job class, the above job-to-job comparisons could not be carried out. Under this circumstance, another method is needed.
>
> This method is the "band comparison" method. It utilizes the concept of value based on a point-factor comparison system (discussed later in this chapter). Thus, two jobs with the same number of points are considered as two jobs with equal value. Therefore, jobs with have the same number of points or close to the same number of points are considered to be comparable. […]"[146]

[540] The Government of Canada's Pay Equity Task Force, in an extensive 2004 report on pay equity, indicates that:

> "The job-to-job methodology is the simplest of all wage adjustment methodologies and could be an appropriate methodology for organizations with few job classes. It consists of comparing a female predominant job class with a male predominant job class of equal value. All female predominant job classes that have a male comparator of equal value will be paid exactly the same as the male comparator after the pay equity wage adjustment."[147]

[541] The Guidelines provide some insight on the proper comparison tool to use when comparing female and male occupational groups:

> "**15 (1)** Where a complaint alleging a difference in wages between an occupational group and any other occupational group is filed and a direct comparison of the value of the work performed and the wages received by employees of the occupational groups cannot be made, for the purposes of section 11 of the Act, the work performed and the wages received by the employees of each occupational group may be compared indirectly.
>
> **(2)** For the purposes of comparing wages received by employees of the occupational groups referred to in subsection (1), the wage curve of the other occupational group referred to in that subsection shall be used to establish the difference in wages, if any, between the employees of the occupational group on behalf of which the complaint is made and the other occupational group."

[542] In another decision titled *PSAC* v. *Canada (Treasury Board)*, Justice Evans reported the parties' agreement on the interpretation of article 15 of the Guidelines as follows:

> "[37] it was also agreed that it was not possible to make a direct comparison of the value of the work performed by, and the wages paid to, each individual employee in the complainant occupational groups. […] When a direct comparison of positions

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[146] *Federal Equity Manual*, vol. 1, previously cited at note 124, p. 2-20 and 2-21.

[147] Government of Canada, Pay Equity Task Force (under the authority of the Minister of Justice and Attorney General of Canada, and the Minister of Labour), *Pay Equity: A New Approach to a Fundamental Right: Pay Equity Task Force Final Report*, 2004, p. 331.

> is not possible, subsection 15(1) of the Guidelines authorizes the making of an *indirect* comparison of the value of the work and wages paid."[148]

**The Tribunal's conclusions**

[543] It stems from both the legislation and the jurisprudence that where a direct male comparator is available, there is no need to do an indirect comparison. When possible, pay equity is measured through the direct comparison between a female and a male comparator of equal job value. This is especially true when, as is the case here, only a few job classes are to be compared, as indicated by the Pay Equity Task Force.

[544] In the present case, the LC and the RLC are male comparators of equal job value to the RSMC and the PRE (7 to 50 points gap), as showcased by Mr. Durber's results. On the basis of the evidence and the consultants' opinion, such points convergence suggests that the jobs are of equal value. Moreover, the evidence reinforces this conclusion, as it demonstrates work of almost identical nature for these job classes. The other potential male comparators, from 181 to 390 points apart, cannot be retained as male comparators of equal value.

[545] It is also noteworthy that both parties' experts were in agreement that LCs and RSMCs were comparable job classes. A conclusion that, in view of all the evidence, is shared by the Undersigned. Moreover, to determine the appropriate methodology of the job evaluation and the determination of the wage gap, the near entirety of the evidence presented by the parties focused solely on the RSMC and the LC.

[546] In any event, Mr. Durber's comparison with other male jobs of lower value is not significant, since it merely suggests an internal inequity that is beyond the scope of this review. Moreover, the use of a wage line, as evidenced in Mr. Durber's reply report, would hardly bring forth a different outcome than using a direct comparison, seeing as the resulting wage line is almost flat[149].

[547] Finally, as indicated by Dr. Siu, it is the lowest paid male comparator of equal value that must be used for a direct comparison. In the present matter, the LC is the lowest paid male comparator of equal value available and thus, is the appropriate job class for a direct comparison.

**Methodologies used by the parties**

[548] In the following sub-sections shall be covered: Mr. Durber's methodology followed by his cross-examination on the matter, the criticism of Ms. Haydon, part of Mr. Durber's reply, the submissions of the Union in favour of Mr. Durber's methodology and the Corporation's criticism of the latter's methodology. This general order is repeated with Ms. Haydon's methodology, with the necessary adaptations.

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[148] 1999 CarswellNat 2001, previously cited at note 142; see also *PSAC* v. *Canada Post Corp.* [CHRT decision], previously cited at note 114; *Wiseman* v. *Canada (Attorney General)*, 2009 CHRT 19, para. 85 and 87.

[149] The wage line was calculated by Dr. Shillington, who was retained by Mr. Durber to devise wage regression lines and other calculations.

**Mr. Durber's methodology and results**

[549] Mr. Durber retains two elements for his methodology: the hourly rate of pay and an eight-hour day full-time basis. In his October report, Mr. Durber explains his rationale as follows:

> "The alternative [to CPC's methodology] is the usual method for pay equity wage compensations, use of the maximum rate of pay for full-time work on an hourly basis. There are reasons for that method: the base unit of time is consistent; differences of time in the job are eliminated (that is, the variations in employee pay due to placement in steps in a salary range); and variations stemming from the amount of work (for example, whether less than full-time) are also eliminated for purposes of making the comparisons.
>
> Moreover, the wage-setting practices of the parties must be considered. As noted above, Appendix A is an example of that practice. While time and amount of work is considered, calculations revolve around a standard rate of pay. The August CPC Approach of cost per point of call is not reflected in the collective agreement, nor to my knowledge in the establishment of entitlements to elements of indirect compensation.
>
> I would conclude that an hourly rate of pay is a reasonable basis for establishing the point of reference for RSC compensation. It already is evident for all of the male comparators.
>
> C. Note on the meaning of "full-time" work
>
> Above, I have also noted the maximum hourly rate for "full-time" work. The parties have been unable to agree what that term might mean for the RSMC job. I would conclude, however, that it is reasonable to set an eight-hour day as the reference point for wage comparisons for the following reasons:
>
> - While there are variations in RSMC direct and other wages based on the composition of the route, distance and types of services offered (an accounted for under Appendix A), the resulting variations in the wages should not be considered in setting a reference point for compensation comparisons.
> - The variations can come into play when looking at individual wages through proportional calculations. So if a route generates half of the standard hours of work, that proportion would be used when calculating any wage gap.
> - The eight-hour day is used as the standard for the male comparators and is in fact an integral part of RSMC wages under section 13 of the RSMC collective agreement. It is also used in statutory and pension entitlement calculations.
> - Any pay for time not worked, as found in the Urban collective agreement, also does not detract from the eight-hour day reference point for the male comparators. It will be accounted for in the detail of the actual value of compensation (as it was in the Tribunal case of the Public Service Alliance of Canada and Canada Post)."

[550] As such, Mr. Durber relies on the Union's use of the RMS hours to obtain an hourly rate for RSMCs. He testified that while RMS hours may not perfectly reflect the RSMCs' reality, there is no reliable common denominator without it. Moreover, he argues that in the face of complexity, it is a good idea to go back to a more commonly used tool.

[551] More specifically, as appears in his October report, Mr. Durber used the highest rate of pay for Zone 1 RSMCs as of January 2016. While not mentioned in his report, Mr. Durber explained during his examination and cross-examination, that the rate is derived from the activity values in Appendix A of the collective agreement along with the corresponding time values (RMS hours). The rate of pay corresponds to the Union's calculation of an hourly rate, as it appears in an email from Ms. Beauchamp to Mr. Bickerton during the 2016 round of negotiations:

> "[…] a. Zone 1 = $19.73 in 2016 and $20.03 in 2017 for 4325 members
>
> b. Zone 2 = $21.49 in 2016 and $21.81 in 2017 for 2577 members
>
> c. Zone 3 = $22.47 in 2016 and $22.81 in 2017 for 477 members
>
> […]"[150]

[552] Mr. Durber explains in his October report that LCs are accorded a number of daily periods of time not worked but compensated, including lunch and other rest breaks. In total, the LCs thus only work seven hours and five minutes[151]. Because RSMCs do not receive such paid breaks, Mr. Durber affirms that the LC wages must be adjusted to reflect how much they would be remunerated under the same conditions as RSMCs. The adjustment represents an approximate 13% difference. Therefore, the wage gap can be quantified at $9.72 an hour for the net rate, while the wage gap based on the base rate is $6.22.[152]

[553] His October report results are as follows:

| **Hourly rate (1 Jan 2016)** | | |
|---|---|---|
| | **Net** | **Base** |
| **RSMC** | $19.73 | $19.73 |
| **LC** | $29.45 | $25.95 |

[150] Tab 38 of Mr. Bickerton's Book of Documents.

[151] Based on the Urban Collective agreement, the 55-minute breaks correspond to: a 30-minute lunch break, two 10-minute breaks and a five-minute wash-up time before meals. Additionally, LCs receive extra compensation in lieu of a five-minute break ($4.29 and $2.14 in 2016 for full-time and part-time employees respectively); In Ms. Haydon's October report, she indicates that the annual rest period amount paid to LCs is $1,192.

[152] The Corporation, in its Final Argument submissions indicates that the hourly wage comparison done by the Union results in a "$118.7M wage gap in direct wages alone".

Mr. Durber's cross-examination on his methodology

[554] During cross-examination, Mr. Durber indicated that the accuracy of RMS hours is not important and that what matters is that employees expect to be paid when they are present at work; the discussion should not revolve around time actually worked but about the time when employees are expected to be at work. Mr. Durber added that he was not concerned about actual time worked since no data is available on the question.

[555] Mr. Durber added that the Schedule A is what is expected from RSMCs and that it would be unfair to tell the employees that they don't work as much as what appears on their Schedule A.

[556] Still in cross-examination, Mr. Durber indicated that pay for variables should be included in the direct pay of RSMCs, but states that how the parties do it is "not [his] problem".

[557] When asked if he knew that time values could be changed by the Corporation to affect the hourly rate, Mr. Durber responded that he did not and that, in any event, he only examined the end result.

[558] In cross-examination, Mr. Durber asserted that one needs to be careful with the vehicle expense because there is variability between the amounts that RSMCs receive. He nonetheless acknowledged that vehicle expenses could be part of the compensation for some RSMCs.

[559] On the notion of time not worked but paid for in the LC world, Mr. Durber indicated that it is CPC's view that the lunch breaks were being paid because LCs were still supervised and, therefore, it is considered to be part of their work day. When asked if the gross up of 13% should not be included if the LCs are supervised, Mr. Durber responded that was "lawyer talk".

[560] Mr. Durber, when cross-examined, explains that he advised the Union on what to include in the Productive rate analysis, indicating what elements should be excluded from the RSMCs' wages, such as overtime and the glove allowance.

Ms. Haydon's criticism of Mr. Durber's methodology

[561] In her October report, Ms. Haydon lays forth her rationale for rejecting the hourly rate approach:

> "[…] As my report makes clear, this lack of a shared foundation in compensation design combined with the inherent complexity of the RSMC pay model has required a degree of analytic creativity to complete the wage analysis.
>
> […]
>
> The final section of my report deals with the challenge of a wage comparison methodology and outcomes. As I illustrate in my report, the RSMC pay model is complicated and unlike many workforces, there is no straightforward answer to "how much does an RSMC get paid?"

There are over 7,400 RSMC routes in three different compensation zones and each RSMC route has a unique compensation outcome based on a range of elements including:

- number and type of points of call
- distance travelled
- number of stops made
- value of variable pay awarded based on specific volumes (personal contact items, lock changes, and neighborhood mail)
- payment for vehicle"

[562] In her report, Ms. Haydon explains her understanding of the CUPW methodology and provides a table summarizing the CUPW model for the direct wage gap analysis:

"It is my understanding that Mr. Durber has provided a wage gap analysis that is based on establishing an hourly rate for the RSMC of $19.73 and using an assumption of 2087.04 arrives at a wage gap of over $20,000 per annum, or one of $6.22 or $9.72 per hour (Table 15). While I understand that Mr. Durber has used each of the potential male jobs, for purposes of illustration, I have used only the Letter Carrier given my conclusion of a job-to-job comparison for purposes of pay equity.

| Element | Letter Carrier | RSMC | Wage Gap Hourly |
|---|---|---|---|
| Hourly Rate | $25.95 | $19.73 | $6.22 |
| Annual Rate | $54,159 | | |
| Value of Rest Periods / Breaks | $2.97 | | |
| Rest Period Allowance | .53 | | |
| Revised Hourly Rate | $29.45 | $19.73 | $9.72 |
| Hours of Work - Annual | 2087.04 | 2087.04 | |
| Annual | $61,463.33 | $41,177.30 | $20,286.03 |

[…]

While I appreciate the simplicity of this model, given how complex the issue at hand is, I am of the view that a wage gap methodology that begins with an hourly rate for RSMC is not sound or defensible. Simplicity cannot substitute for completeness or accuracy. Specific concerns with the proposed methodology include:

- The lack of detailed analysis to account for all components of the RSMC direct wage compensation (activity, variable, and vehicle).
- The assumption of an hourly rate for the RSMC that in some way presumes that RMS time is equal to actual time worked and does not account for the coverage model for delivery where pay is provided for 100% POC coverage.
- The reference to a full time RSMC of 2087.04 hours which does not reflect the structure of hours of work for RSMCs.

- The premium values added to the Letter Carrier based on what is viewed as nonproductive time to increase the hourly rate to $29.45; as I discuss below, it is likely that there is also unproductive time built into the RSMC compensation model and yet this is not accounted for.

As I have discussed above, there is no single answer to how much does an RSMC make, unlike a Letter Carrier where the answer is, using the January 2016 data of $25.95 per hour and a 2087.04 hour per year model, $54,159. But for overtime, the answer for a Letter Carrier working full time is consistently $54,159 where an incumbent is at the top of the range.

However, based on a review of route level data that was provided by Canada Post where 7,437 routes are profiled, the answer as to how much does an RSMC route pay is rarely if ever $41,177.30 as suggested by the CUPW model.

[…]

Using this RSMC database, Table 16 provides a profile of the predicted annual salary for all routes and it ranges from $556.19 to $94,333.17.

[…]

| Annual Pay Range | Number of Routes | Percentage of Total Routes (n= 7,437 |
|---|---|---|
| Under $10,000 | 68 | 0.91% |
| $10,001 - $20,000 | 184 | 2.47% |
| $20,001 - $30,000 | 571 | 7.68% |
| $30,001 - $40,000 | 1365 | 18.35% |
| $40,001 - $45,000 | 1047 | 14.08% |
| $45,001 - $50,000 | 1463 | 19.67% |
| $50,001 - $54,000 | 1060 | 14.25% |
| $54,001 - $60,000 | 1096 | 14.74% |
| $60,001 - $65,000 | 366 | 4.92% |
| $65,001 - $75,000 | 190 | 2.55% |
| $75,001 - $85,000 | 21 | 0.28% |
| $85,001 and above | 6 | 0.08% |
| Total | 7,437 | 100% |

”[153]

[563] Finally, regarding the RSMC routes distribution of RMS hours, Ms. Haydon states the following in her October report:

“Before discussing this feature of RSMC compensation, I want to first provide a profile of RMS time. While I do not have confidence in RMS hours as necessarily

[153] Ms. Haydon indicates that the average annual salary for all routes is $45,179.50 (regardless of RMS hours).

a reflection of actual hours worked, profiling the distribution highlights how varied RMS hours are, if only directionally.

Table 17 makes clear that RSMC routes, unlike those of Letter Carriers which are designed to balance workload, including volumes, for an 8-hour day, are much more variable where routes can be less than 1 RMS hour or greater than 8 RMS hours. Given that RMS hours are not meant to be indicative of time worked it is not possible to define a full time or part time RSMC based on the RMS hours, or a theoretical but not actual 2087.04 per annum. Notably,

- over 1/3 of all route have RMS time of less than 6 hours
- 50% of all routes have RMS time of between 6 and 8 hours - note that this range represents a 33% difference (6 hours versus 8 hours) which is too wide a range for reliable analysis but is directionally important
- approximately 14% of the routes are greater than 8 RMS hours

| Range of RMS Hours | | Number of Routes | Percentage of Total Routes (n= 7,437 |
|---|---|---|---|
| Minimum | Maximum | | |
| 0 | 1 | 40 | 0.54% |
| 1.1 | 2 | 113 | 1.52% |
| 2.1 | 3 | 216 | 2.90% |
| 3.1 | 4 | 408 | 5.49% |
| 4.1 | 5 | 698 | 9.39% |
| 5.1 | 6 | 1078 | 14.50% |
| 6.1 | 7 | 1855 | 24.94% |
| 7.1 | 8 | 2006 | 26.97% |
| 8.1 | 9 | 783 | 10.53% |
| 9.9 | 10 | 176 | 2.37% |
| 10.1 | 11 | 48 | 0.65% |
| 11.0 | 12 | 8 | 0.11% |
| 12.1 | 13 | 4 | 0.05% |
| 13.1 | 14 | 2 | 0.03% |
| 14.1 | 15 | 2 | 0.03% |

Whether RMS time is reliable or not as a reflection of actual time worked is not my concern and there is no doubt that the parties will not agree on this, nor is there clear data or evidence on this question. My concern is the variability, at least directionally, of RMS time across all routes. Like compensation, there is significant variability in RMS time and this must be more carefully considered in any reliable methodology. Time is simply not a reliable data point for the analysis."

[564] Ms. Haydon goes on further:

"Perhaps the most significant concern related to the use of RMS time as the basis for establishing an hourly rate is the RSMC coverage model, particularly in comparison with the Letter Carrier coverage model. As I described above, Letter Carrier routes are designed for an 8-hour day based, in part, on a coverage model

that is less than 100% of points-of-call. That is, route design is based on knowing that not each point-of-call is serviced each day.

In contrast, the RSMC route is built on the reverse assumption – each point-of-call is serviced every day for which the RSMC is compensated regardless of whether the POC is serviced or not. Unfortunately, there is no way to determine coverage models for RSMCs short of a massively complicated and long-term study. However, given that letter mail volume is falling and recognizing that the entire Letter Carrier model is designed in recognition of less than 100% coverage, it is unlikely that each point-of-call is serviced every day. One might argue, in fact, that the RSMC is receiving compensation for unproductive time or for points-of-call for which there is no service provided whether in sortation, delivery, stop made, or distance travelled. The quantum of this time is impossible to know but it underlines one of the key challenges of the RSMC pay model which is its imprecision where actual time and compensation values are linked.

Based on the above discussion, when faced with the question as to whether an hourly rate based on RMS time is suitable for the specific purpose of a pay equity wage gap analysis, I conclude the answer is no. There are simply too many methodological issues that have not been, and in fact I would argue cannot be, addressed for the methodology to be valid. To accept time as a major component of establishing a wage gap, there must be a much higher degree of confidence in the reliability of the data.

By way of conclusion for the CUPW/Durber methodology, I want to return to a specific example that was provided by CUPW to demonstrate the calculation of an hourly wage of $19.73 using route 29784. The key data for the route is provided in Table 18. I do not dispute that the arithmetic works and it is possible to produce a $19.73 hourly rate. However, as I note above, several complicating factors and compensation elements must be ignored to arrive at that rate (actual time worked, potential of unproductive time, no value for variable/vehicle).

| Point-of-Call Profile | | Time Value | Total Time | Activity Value ($) | Total Value | Hourly Rate |
|---|---|---|---|---|---|---|
| Residential Sort | 707 | 0.25 | 176.75 | 0.0822 | $58.12 | $19.73 |
| AMS Business Sort | 14 | 0.8 | 11.2 | 0.2629 | $3.68 | $19.73 |
| Business Counter | 3 | 0.8 | 2.4 | 0.2629 | $0.79 | $19.73 |
| Total | 724 | | 190.35 | | $62.58 | $19.73 |

One of the many interesting elements about this route is that despite a 40-hour time limit, this route has RMS time of 9.3 hours. Based on 5 days a week, this is over 46 hours. This raises the question of the reliability of transferring RMS time to actual time worked. This sentiment was one that was echoed in the focus groups.

The disconnect between RMS time and actual time worked is further suggested by this route's mail availably time (7 am) and final point of delivery time of 3:45 (8 hours and 45 minutes). By my calculation this time span is less than the 9.3 hours reported in RMS time. I recognize that this is but a single example, but in concert with broader concerns of the reliability of the RMS time as a measure of hours

worked – the very basis for an hourly rate - I believe this points to the lack of efficacy of an hourly rate.

More importantly, during the presentation by CUPW, they also provided a copy of the route holder's payment notification covering a two-week period in February 2016. When this is annualized, the value of route is $10,000 greater than the theoretical $41,177 that has been used to calculate a wage gap.

| Pay Element | Value |
|---|---|
| Basic Pay | $1,817.02 |
| Variable Pay | $161.17 |
| Total Bi Weekly | $1,978.19 |
| Annualized (26 pay periods) | $51,432.94 |

„

Mr. Durber's reply to Ms. Haydon's criticism

[565] On the question of unproductive time for RSMCs, Mr. Durber stated in his reply report:

"126. During Focus Groups, RSMCs spoke of annual audits of their routes and an obligation to report changes to their routes. So far from conveying that their routes were leisurely, more spoke of the time pressures that delivery involved. Annoted Notes from Focus Groups on this question are at Annex One [of Mr. Durber's Reply Report Book of Documents]. Increasing volumes of product was a major comment, along with stresses involved. RSMC views mirrored those of Letter Carriers.

127. I would also point out the following:

(a) The Consultants did not conduct a structured review of the question of time values during the Focus Groups.

(b) As reviewed by consultants, the work manual for RSMCs notes that "To best serve our customers it is critical that delivery be completed in a timely, accurate, and efficient manner." [Page 23] A sub-goal of the work is to "Meet Canada Post standards for delivery in major and non-major urban centres." [same citation]

(c) Finally, there is the issue of the variability of RSMC compensation, durations of routes, in comparison with those of Letter Carrier routes. That is, the extent to which the "non-standard" character of routes is an impediment to deriving hourly rates. Routes of Letter Carriers also vary (though less so), as Table Eleven shows on the following page. It enables comparison of both RSMC and Letter Carrier route variability in hours (the original Haydon version showed only the RSMC variability).

**Table Eleven: Comparative Route Distributions – RSMCs and LCs**

| Range of RMS Hours: Total Routes (n=7437)[48] | | | | Range of LCRMS hours (Total Routes = 12,907) | | | |
|---|---|---|---|---|---|---|---|
| Minimum | Maximum | Routes -- # | % of Total | minimum | Maximum | routes | % of Total |
| 0 | 1 | 40 | 0.54 | 0 | 1 | 0 | |
| 1.1 | 2 | 113 | 1.52 | 1.1 | 2 | 0 | |
| 2.1 | 3 | 216 | 2.90 | 2.24 | 2.65 | 4 | 0.03% |
| | | | | 2.66 | 3 | 39 | 0.30% |
| 3.1 | 4 | 408 | 5.49 | 3.02 | 4 | 243 | 1.88% |
| 4.1 | 5 | 698 | 9.39 | 4.1 | 5 | 303 | 2.35% |
| 5.1 | 6 | 1078 | 14.5 | 5.1 | 6 | 276 | 2.14% |
| 6.1 | 7 | 1855 | 24.9 | 6.1 | 7 | 40 | 0.31% |
| 7.1 | 8 | 2006 | 26.9 | 7.1 | 8 | 8065 | 62.49% |
| | | | | 8.01 | 8.08 | 1784 | 13.82% |
| 8.1 | 9 | 783 | 10.5 | 8.1 | 9 | 2126 | 16.47% |
| 9.9 | 10 | 176 | 2.37 | 9.1 | 10 | 25 | 0.19% |
| 10.1 | 11 | 48 | 0.65 | 10.1 | 11 | 2 | 0.02% |
| 11 | 12 | 8 | 0.11 | | | | |
| 12.1 | 13 | 4 | 0.05 | | | | |
| 13.1 | 14 | 2 | 0.03 | | | | |
| 14.1 | 15 | 2 | 0.03 | | | | |

128. The range of RSMC route durations, extending far below the 6.1 to 8.1 hours a day demonstrates variety geographical contexts, especially concentrations of populations and distances, that are characteristics of those routes."

The CUPW's submissions in favour of Mr. Durber's methodology

[566] According to the Union's submission, Mr. Durber's methodology should be adopted in the instant matter. The Durber Reports use a reasonably reliable approach that contains a detailed and coherent analysis. The Durber Reports should therefore be given greater weight. Moreover, the evidence demonstrated that the Durber Reports were independent of the party with whom he was consulting, unlike the Haydon Reports.

[567] A pay equity analysis of the job rate for a female-dominated job should rely upon a method of calculation that enables an accurate calculation of the existing compensation practices and is least disruptive to the compensation practices and collective agreement.

[568] It was reasonable for Mr. Durber to rely on the same approach used by the Corporation to ensure statutory compliance with the Canada Labour Code – specifically the Corporation's use of RMS hours – and others listed by Mr. Bickerton in his will-say. The reliable evidence in this case demonstrated that the Corporation's "assigned" RMS hours form the basis of its pay practices. The RSMC base pay may therefore be calculated on an hourly basis. These hours provide the "same currency" for comparison to the letter carriers and the other jobs in the Urban bargaining unit.

[569] Moreover, the bargaining history demonstrates a reliance upon an hourly rate to this effect. In consideration of the three Northland tests, the RMS hours are therefore an accurate reflection of the time assigned and estimated by the Corporation for an RSMC to complete a route. Consequently, in accordance with the objectives of the Act, reliance upon the hourly rate provides a reasonably reliable assessment of the RSMCs base wage compensation.

[570] What the Ontario pay equity jurisprudence demonstrates is that the reliability and accuracy of the job rate is determined specifically in the context of the day-to-day practices of the parties and the terms of the collective agreement. "Actual hours worked" should not be arbitrarily inserted into a pay equity analysis. The evidence would have to demonstrate that such an approach existed in the parties' day-to-day practices or was contemplated in the collective agreement.

[571] Conversely, in the case of the RSMCs, "actual time worked" does not form part of the day-to-day practice in respect of the assigned routes nor does it form part of either the RSMC or Urban collective agreement. It is therefore wholly inappropriate to include such a standard.

The Corporation's submissions regarding Mr. Durber's methodology

[572] The onus is on the Union's shoulders and, consequently, CUPW must demonstrate, on the balance of probabilities, that a wage gap is more likely than not. While the data does not have to be perfect, it needs to be accurate, consistent and complete. In other words, it needs to be more likely than not to be correct than to be wrong.

[573] However, relying on the Union's RMS hourly-based method is manifestly unreasonable and wrong, since it is based on inaccurate and unreliable data: RSMCs are not paid on the basis of time and their pay system design makes it impossible to know the actual hours worked. Their normal workweek corresponds to the "time needed […] to perform the work required", as per article 13.01 of the collective agreement. Because of the RMS's inaccuracy, the Union data is more likely to be incorrect than correct.

[574] The parties did not negotiate and agree to an hourly rate of pay, nor did they negotiate the time values. Such an hourly rate of pay is not readily derivable from the collective agreement's Appendix A, or any other provision. The 2012 introduction of activity values, although it procured a more consistent pay system for RSMCs, did not result in the creation of an hourly rate system, as claimed by the Union.

[575] RMS does not predict how long it takes to complete a route. The work done by RSMCs varies tremendously across the country and from one day to the other. When the parties studied the relation between RMS hours and actual time worked, they found that RMS does not accurately reflect the time needed to complete the work. There are 1,300 routes longer than 8 RMS hours per day and yet only six employees in 2016 and 2017 reported that their actual time was above 8 hours per day. RSMCs who finish their route early are not taken into account by Mr. Durber's method.

[576] CUPW did not account for the fact that RSMCs are paid as if they delivered mail to each POC every day, whether or not they do.

[577] RSMCs and LCs do not share an hourly rate of pay, this is not a "common currency" that the Union can rely on. The LCRMS measures the workload of the LCs and it is used to build a 40-hour workweek; the RMS is not used to build RSMC routes nor measure the time it takes to complete them, let alone to plan a 40-hour workweek; it is simply a database. The LCRMS is built on engineered time standards that requires

extensive resources to develop and maintain, conversely, the RMS is not even intended to be accurate at all. The two systems are not comparable.

[578] Mr. Durber did not test or verify the Union's data upon which he relied regarding an hourly wage, he stated that that was not his role. He did not challenge whether or not an hourly rate comparison was adequate in this case.

[579] Finally, the Union has not established that there is a single, consistent RMS hourly rate of pay. Mr. Durber also only used the maximum rate for Zone 1 RSMCs, while he should have taken into account the RSMCs working in other Zones.

**Ms. Haydon's methodology and results**

[580] Ms. Haydon testifies that she thought, at first, that using an RMS derived hourly wage would be the most sensical, straightforward, option for pay equity analysis. However, over time and after numerous discussions with representatives of the Corporation, mainly Mr. Sinclair, Ms. Haydon's confidence in the reliability of the RMS hours waned. She claims that CPC did not try to persuade her, but rather that she inquired about both the RMS and the LCRMS and that the more knowledge she acquired, the less she estimated the RMS to be an appropriate tool for the study.

[581] As such, Ms. Haydon looked for a common denominator that could be used to compare the wages of RSMCs and motorized LCs that deliver to centralized POCs[154], since she had found that the foot-walk LCs were not comparable to RSMCs. In her January report, she explains that:

> "Given the complexity of the RSMC compensation model, one that is not based on either hours of work or an hourly rate, I am of the view that a wage comparison methodology cannot rely on these two dimensions as has been proposed by CUPW.
>
> Canada Post has proposed a methodology that starts from the one element that both letter Carriers and RSMCs have in common, points-of-call and focuses on those jobs and types of route that are most similar, centralized."

[582] Still in her January report, Ms. Haydon indicates that the second common features between the two job classes is the annual salary. Therefore, she used the latter and the POCs to obtain an annual pay per POC for both jobs.

[583] To ensure that she was adequately comparing the two jobs, Ms. Haydon tested different POC combinations and evaluated the results. For instance, she tried different threshold percentage values for centralized POCs and looked at the impact of other factors. In the end, she writes in her January report that:

> "[…] Based on the various models, I have concluded that using a threshold of 75% centralized POCs, by route, is optimal for purposes of comparing direct compensation between Letter Carriers and RSMCs. Doing so neither advantages

[154] In her January report, the following POCs were considered centralized: apartments, CMBs, GMBs, LBAs and kiosks.

> nor disadvantages either party. There are options that both reduce and increase the potential variance between RSMC and Letter Carriers."

[584] Any percentages could have been used, but Ms. Haydon felt that 75% of centralized POCs was an adequate comparator for work of equal value for both LCs and RSMCs. To accurately and fairly portray the work, she did include RMBs and other types of POCs in her sample, but the predominant types were centralized ones, which aligns with her job evaluation results. For the same reasons, she also included some door-to-door POCs in her LC sample.

[585] Ms. Haydon explains that changes to POC makeup can have a large effect on the resulting compensation per POC. For instance, including more RMBs in the RSMC sample will inflate the compensation per POC because fewer RMBs than CMBs can, on average, be serviced on a single route.

[586] Ms. Haydon excluded some routes from RSMC data set for various reasons. For instance, she removed routes that had abnormally high pay per POC which had peculiar characteristics.

[587] For the LC wages, Ms. Haydon used and combined the following figures:

> "Full time routes that were under 485 minutes were assigned an annualized salary of $54,701 ($26.21 per hour[155] multiplied by 2087.04 hours per annum).
>
> Where a full time route had minutes beyond 485 (over-assessed), an additional value of .44 cents per minute was added ($26.21 hourly rate / 60 minutes), multiplied by 260.88 days a year.
>
> For part time routes, a minimum of 180 minutes multiplied by .44 was used, or the actual minutes if greater than 180 to calculate a daily value multiplied by 260.88 days per annum.
>
> A householder bonus value of $3,342 was added to full-time roles and $1,140 for part-time roles. These data were provided by Canada Post.
>
> A rest period allowance of $1,119 was added to full-time roles and $558 to part-time. This information is linked to the collective agreement.
>
> Given the variance of the value of the glove allowance between RSMC and Letter Carriers, a further $20 was added to all routes. Given the small number of part-time routes and the relatively low value of a $20 per annum, no adjustment was made for part-time route. Doing so favours the outcomes for RSMCs, albeit marginally."[156]

[588] For the RSMC wages, Ms. Haydon used the total yearly compensation, including all variable pay and vehicle expense, but presenting the latter separately. Ms. Haydon indicates that she focused her analysis on variable and activity pay. In her October 2017

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[155] Ms. Haydon is using the February 2016 rate of pay for LCs.

[156] Householder bonuses represent the pay per piece for admail delivery by LCs. The rest period allowance corresponds to the five minutes paid out of the 15-minute break time (10 minutes actual break and five minutes paid for).

report, Ms. Haydon indicates that just under 250,000 lock changes were compensated for in 2016.[157]

[589] Ms. Haydon testified that she is hesitant to include the vehicle expense as part of RSMC wages, since it is hard to determine its nature. For instance, a route with long distances travelled each day where an RSMC receives amounts upwards of $20,000 annually might not be considered an expense. Conversely, vehicle expenses for routes servicing densely populated areas with many stops can reasonably considered an expense and not an additional wage.

[590] Ms. Haydon's results allow her to conclude that there is no pay equity wage gap between the RSMCs and the LCs, as appears in her January report. Her results, with the 75% centralized POC threshold are as follows:

| | **Number of Routes** | **Average POCs** | **Compensation value per POC** | **Compensation value per POC including Vehicle expense** |
|---|---|---|---|---|
| **RSMC** | 4,603[158] | 775 | $59.02 | $71.29 |
| **Letter Carrier** | 2,785[159] | 1,064 | $58.75 | $58.75 |

[591] Ms. Haydon also calculated the pay per POC for all RSMCs and obtained a result of $73.82 per POC without including vehicles expenses and $93.58 including them. RMBs drive up the compensation per POC figures, which is why Ms. Haydon limited their number in her analysis to treat RSMCs fairly.

[592] Using the October CPC calculation method of overall average[160], Ms. Haydon obtained the following results for her sample: [table appears on following page]

[157] Ms. Haydon states in her October report that, on a total payroll of more than $235 million, it is "not a significant" and that it does not provide significant value to any single employee.
[158] Approximately 61.89% of all RSMC routes.
[159] Approximately 21.58% of all LC routes.
[160] Total compensation divided by the number of POCs.

**Same sample with October CPC calculation method (overall average)**

| | Pay per POC (excluding vehicle expenses) | Compensation per POC (including vehicle expenses) |
|---|---|---|
| **RSMC** | $53.64[161] | $60.61 |
| **LC** | $54.57[162] | $54.57 |

[593] Ms. Haydon explored different POC thresholds with different percentages of POC types making up the total POCs for both RSMCs and LCs. As she explains, the various makeups changed the resulting compensation per POC as illustrated in some tables featured in her January report:

[594] Ms. Haydon also found that the average compensation per POC for RSMCs was lower in zones 2 and 3, as opposed to her expectations. Ms. Haydon suggests that these results are probably due to a higher concentration of POCs in highly dense suburban areas like Calgary. She underlines that the difference is not major but remains surprising.

[595] Ms. Haydon also reported a pattern that she describes as follows:

> "While my report provides a number of variations in data segments – centralized, rural mail boxes, door to door delivery – in reviewing the data, I noted a pattern where those RSMC routes that had higher points of call and lower kilometers travelled tended to be below the overall average compensation value per point of call for Letter Carriers."

[596] Her results, for routes servicing 1,000 POCs or more with 30 kilometers or less of driving, are as follows:

| | Average POC serviced | Compensation per POC without the vehicle expense | Compensation per POC including the vehicle expense |
|---|---|---|---|
| **RSMCs (551 routes)** | 1,092 | $47.60 | $50.05 |
| **LCs (1,683 routes)** | 1,235 | $48.85 | $48.85 |

[597] Ms. Haydon also presented the impact of various POC concentration on the resulting compensation per POC for RSMCs. For instance, the compensation per POC for the 2,947 routes without any RMBs is of $59.18, while it is $122.07 for the 83 routes servicing RMBs exclusively[163]. For centralized POCs, the relationship is inverted. The 119

[161] The average yearly compensation for the RSMC sample is approximately $41,546.50.
[162] The average yearly compensation for the LC sample is approximately $58,086.22.
[163] For the 1,625 routes servicing 50% (or more) of RMB POCs, their compensation per POC is of $100.96.

routes not servicing any centralized POCs have a compensation per POC of $137.99, while the 2,279 routes servicing centralized POCs only receive $53,59 per POC[164]. Only the compensations excluding the vehicle expenses have been presented. All numbers are averages.

[598] Ms. Haydon presented the same results for LCs:

| Centralized POC percentage | Number of routes | Average POCs serviced | Average compensation per POC |
|---|---|---|---|
| **0%** | 1,335 | 453 | $137.64 |
| **25%+** | 7,389 | 900 | $72.58 |
| **50%+** | 4,831 | 984 | $64.91 |
| **75%+** | 2,785 | 1,064 | $58.75 |
| **100%** | 521 | 1,148 | $52.84 |

| Door to door POC percentage | Number of routes | Average POCs serviced | Average compensation per POC |
|---|---|---|---|
| **0%** | 521 | 1,148 | $52.84 |
| **25%+** | 9,418 | 670 | $100.39 |
| **50%+** | 7,359 | 612 | $108.12 |
| **75%+** | 4,482 | 540 | $119.41 |
| **100%** | 1,353 | 453 | $137.64 |

October 2017 methodology

[599] Ms. Haydon indicates that when she produced the October report, she did not have access to the data on RSMC and LC routes and had to rely on CPC calculations. At that time, the Corporation had not finished merging and amalgamating the two databanks, for LCs and RSMCs, that she later used in her January 2018 report.

[600] The October report's methodology was that of CPC and had some differences with the January report's methodology. Although the principles were the same – using an

[164] The 5,645 routes servicing 50% (or more) of centralized POCs have a compensation per POC of $63.18.

annual pay per POC approach – some aspects related to the POC type and calculations methods were not the same. Specifically, while the centralized POCs threshold was the same in the October report, its definition was limited to CMBs only.

[601] The October results were as follows:

| Element | Letter Carrier | RSMC |
|---|---|---|
| **Number of routes** | 942[165] | 3,527[166] |
| **Average Wage (LC)/ Activity Value (RSMC)** | $54,221 | $33,733 |
| **Householder Bonus/ RSMC variable** | $3,342 | $6,580 |
| **Vehicle** | | $5,313 |
| **Rest Period Allowance** | $1,192 | |
| **Training Allowance** | | $208 |
| **Total Direct Wages** | $58,755 | $45,885 |
| **Compensation per POC** | $58,87 | $58.91 |

[602] It is important to note that Ms. Haydon, in her January calculations, used a route by route average (average of average) instead of dividing the total remuneration by the total POCs for each group, which was the method used by CPC in the October report. She explains that this method better reflects the reality that there is no generic RSMC route, that each one is unique.

[603] Ms. Haydon asserts that the main reason that prompted her to come up with a slightly different methodology, or sample group, for her January report was that she had an opportunity to examine and analyse the data that CPC had amalgamated after October. She wanted to expand and refine the sample size used in the comparison.

Ms. Haydon's cross-examination on her methodology

[604] Ms. Haydon recognized that, generally, the fewer number of POCs serviced, the higher the pay per POC, but that this is truer for LCs. She admits that this is also true for RMBs and centralized POCs alike.

[605] Ms. Haydon acknowledged that LCs may have an 8-hour scheduled route but might still be able to finish it earlier and be paid for a full day.

[165] Approximately 7.30% of all LC routes.
[166] Approximately 47.42% of all RSMC routes.

[606] When asked why she stated in her report that it was incorrect for Mr. Durber to use a 2087.04-hour year for RSMCs, Ms. Haydon indicated that this data is not available for RSMCs. Pressed on whether the Mercer consultants used a 2087.04-hour year for the RSMCs in their report, Ms. Haydon indicated that she had not read the report since it was first issued.

[607] During her cross-examination, Ms. Haydon denied that she changed her methodology from her October to her January report to not obtain a wage gap. Instead, she asserts that she did so because the Union had voiced its concerns relative to the sample size and because the initial methodology did not align with her job evaluation results.

[608] During her cross-examination, Ms. Haydon was shown a document presenting the differences in results one would obtain using either the overall average compensation per POC (CPC calculation used in her October report) or the route-by-route average (January report calculation). The document displays a situation where there are two routes, one services 200 POCs and the other services 800 POCs and each route is compensated for a total of $20,000 annually. Using the CPC calculation method, the compensation per POC is $40.00 ($40,000 divided by 1,000 POCs). Using Ms. Haydon's route-by-route calculation method, the compensation per POC is $62.50 (the average of $20,000 divided by 200 POCs (100$) and $20,000 divided by 800 POCs (25$)). Ms. Haydon indicated that her calculation method should be used when one is dealing with inconsistent data, such as is the case here. She asserts that the route-by-route method better reflects the disparities between routes with higher POCs services and routes with lower POCs serviced but that have the same compensation.

[609] Ms. Haydon denies that her methodology is one of costing and that it focuses solely on compensation. She recognized that in her January report, she did name her study "Point of call costing methodology for direct compensation".

[610] When asked if her new results had the effect of augmenting the compensation per POC by $12.30 and therefore benefited CPC, Ms. Haydon responded that it was a different outcome based on different data. When pressed on the matter, Ms. Haydon recognised that when including vehicle expenses, her results benefited the Corporation, but with the caveat that a different population is used in her January analysis.

[611] Ms. Haydon admitted that 73% of LCs receive their mail sequenced, compared to only 15% of RSMCs. Nevertheless, she insists that this does not advantage the LCs by augmenting the number of POCs they can service. Instead, she claims that this is a simplification of the LC model and sometimes servicing more POCs would be an advantage but not always.

[612] On her findings that RSMCs servicing more than 1,000 POCs and driving less than 30 kilometres per day, Ms. Haydon affirms that routes with less driving were potentially underpaid and that is the reason why the parties changed the values of the drive time later in 2016. Asked if less driving time meant more POCs serviced, Ms. Haydon responded that this is potentially true, but that it depends on the specifics.

[613] Ms. Haydon recognizes that LCs service many times more apartment POCs than RSMCs, but denies that this means LCs have access to more concentrated POCs than the RSMCs and that one would need to look at the data before reaching any such conclusions.

[614] When interrogated on her results showing that RSMCs in Zone 3 are the least paid of all three zones, Ms. Haydon indicated that this does not show that her methodology is flawed. Rather, she asserts that it illustrates the complexity and variance in RSMC pay and why there is no single answer to how much an RSMC makes.

Mr. Durber's criticism of Ms. Haydon's methodology

[615] Mr. Durber doubts Ms. Haydon's initial assumption that RSMCs have too much time to complete their workday. He cites anecdotal accounts of RSMCs during the interviews he conducted prior to the finalization of the job profiles. He adds that, additionally, the RMS time estimate does not factor in the time it takes for RSMCs to complete their admail distribution or to deliver PCIs.

[616] As such, on the notion of paid unproductive time, Mr. Durber asserts that Ms. Haydon cannot simply assume that RSMCs have paid unproductive time and that LCs have none, that there is no point of reference on that issue. In his report, Mr. Durber states that he has not seen strict evidence that either RSMCs or LCs work all the time they are paid.

[617] Mr. Durber indicates that Ms. Haydon's approach is one of segmenting the jobs, which is contrary to actual practice of paying all employees within a job by one set of rules. It is likely gender-biased as it magnifies the money paid to RSMCs driving long distances who receive pay that is independent from the POCs serviced. The actual wage practice is to pay RSMCs with an hourly rate.

[618] Similarly, injecting apartments into the equation, which augments the concentration of POCs in a delivery agent's route, will likely result in a reduction in the compensation per POC for LCs. Moreover, the apartments that RSMCs and LCs service do not necessarily share the same POC density and, after their addition, apartments make 46% of the POCs in Ms. Haydon's sample, a figure that isn't matched on the RSMC side. Delivery to apartments in rural and suburban areas is likely to take longer than delivering to the same POC type in urban environments.

[619] The comparability of the routes was not conducted by Ms. Haydon. Unless there is consistency in the relative activity/time values of the RSMC routes and those of LCs, there is a likelihood of gender bias.

[620] In Mr. Durber's opinion, the changes in outcomes from Ms. Haydon's October 2017 report and the January 2018 version suggest that the methodology yields unpredictive results, thus greatly undermining, if not compromising entirely, its credibility. There is no certainty of application.

[621] Mr. Durber considers that to express wages in constant terms for RSMCs, one needs to use zone 1 wages and national rates for male comparators. The inclusion of all three zones into Ms. Haydon's analysis worries Mr. Durber as to the effect of overstating

RSMC salary by including more routes in zones 2 and 3, as illustrated in his reply report by the following table:

**Table Twelve: Distribution of RSMCs through Pay Zones**

| RSMC Zone | RSMC pop* | Zone as % | Haydon sample | As % of sample | Variance from Pop. |
|---|---|---|---|---|---|
| 1 | 4,280 | 58.5 | 2,004 | 43.5 | minus 15% |
| 2 | 2,565 | 35.1 | 2,137 | 46.4 | plus 11.3% |
| 3 | 473 | 6.5 | 462 | 10.0 | plus 3.5% |
| | 7,318 | | 4,603 | | |

* Including routes of five days a week; Source: response by CUPW to enquiry, Jan/18

[622] Also, among Mr. Durber's critiques is that the compensation per POC methodology fails to showcase the entirety of the work performed by both RSMCs and LCs by excluding the rural aspect for the former and the more urban aspect for the latter. As a result, it would be hard to determine which employees suffer from a pay equity injustice.

[623] Mr. Durber disagrees that vehicle expenses should be treated as part of an RSMC's salary, as Ms. Haydon suggested in both her reports. In his report, he argues that the collective agreement, under article 33, excludes these expenses from the actual pay, that the expenses are considered to be a cost of doing business seen as a reimbursement and, finally, it is unreasonable to characterize vehicle expenses as a benefit when it is a job requirement for RSMCs.

[624] Mr. Durber concludes that the compensation per POC approach seems more of an accountant's value per dollar exercise or company cost analysis, as opposed to an employee-oriented compensation for work.

<u>The Corporation arguments in favour of Ms. Haydon's methodology</u>

[625] Ms. Haydon rigorously tested the idea of using an hourly wage approach since she realized that it is the most common method but rejected it after coming to the conclusion that it is too unreliable. On the contrary, Mr. Durber was never opened to discussing a different approach.

[626] Using a common denominator shared by both units, the POC, along with annual salaries, allows for a methodology that is aligned with case law, which requires that the wage methodology be compatible with how work and wages are structured, as reflected in the collective agreement.

[627] 84% of the POCs serviced by RSMCs are centralized. Centralized POCs exist in the rural network, inclusive of remote areas. Nearly 50% of the POCs serviced by LCs are centralized. Thus, it is logical to use this POC type to compare work that is similar in nature.

[628] Moreover, that allowed her to broaden her sample, thus complying with the Union's complaint that the October sample was too small. This approach is also more consistent with Ms. Haydon's job evaluation results, which is that the work of RSMCs is comparable

to centralized delivery LCs. The broadening of her sample was not done to eliminate any earlier potential findings of a wage gap, but rather address a CUPW complaint and match her job evaluation results to the analysis.

[629] The inclusion of apartments in her January sample barely changed the final results of the compensation per POC for LCs from her October to her January reports.

[630] The initial calculation method of using the overall average masks the different type of work done on each route. Ms. Haydon tried to better represent the variability in RSMC work by using a calculation method that better reflects reality.

[631] Also, Ms. Haydon's results, by including RSMCs from different pay zones, properly accounted for the different rates paid in each one, contrary to Mr. Durber, who simply used Zone 1 rates.

[632] Sequenced mail does not affect overall results, as was claimed by CUPW, since RSMCs are paid for sorting mail while LCs are out delivering mail. Moreover, her data shows that servicing a greater number of POCs will not result in a lower or higher compensation per POC.

[633] Overall, Ms. Haydon's methodology, contrary to Mr. Durber's, better represents the comparable work done by RSMCs and LCs. It also uses common features of both job classes and, as such, is better aligned with the collective agreements of both units.

<u>The Union's criticism of the Corporation's methodology</u>

[634] The expert analysis needs to be grounded in a detailed gender equality analysis to properly assist the Arbitrator in applying the statute. The Haydon reports and oral evidence were partial and internally inconsistent which displayed a lack of understanding of systemic gender discrimination in compensation practices. The Haydon reports seem completely disengaged from the purpose of the exercise to investigate discriminatory compensation practices and policies at the Corporation in respect of women's work. Her modus operandi appears to be result-driven.

[635] What is most telling is that the Haydon reports did not contain the terms gender, female, women, stereotype or discrimination – these concepts did not form part of the framework of analysis. The Haydon expert reports did not engage with the central premises of an equal pay for work of equal value analysis - systemic discrimination.

[636] After much prodding from the Corporation, Ms. Haydon completely accepted the Corporation's position that the RMS hours are not accurate measure of the actual time worked and therefore are unreliable. The Haydon reports filed in October and January did not spell out in detail how she reached that conclusion. The reports did not provide a comprehensive analysis of why the RMS proxy hourly rate was not appropriate. Even though CPC assigns time values for each activity, the time values were completely ignored in the report. The reasoning is specious.

[637] Rather, the Haydon reports immediately jumped to a framework that "the hourly wage presumes that RMS time is equal to actual time worked". The reports did not analyze the fact that the male-dominated jobs in the Urban collective agreement sets

hours of work where a Letter Carrier working 361 minutes or more is paid for 8 hours or 480 minutes. This variability of the LC hours was ignored in the Haydon report. However, the variability of the RSMC hours is relied upon to claim that there is no ability to analyze time or an hourly wage.

[638] In order to demonstrate the alleged unreliability of the hourly rate model, the Haydon reports rely on Ms. McMillan's route to demonstrate the unreliability of RMS time as a measure of hours worked. Specifically, Ms. Haydon references that the route is over 46 hours per week or 9.3 hours a day. However, the length of this route is the subject of a grievance by Ms. McMillan.

[639] The Haydon report and January study introduced an entirely new methodology to overcome the Corporation's refusal to relying upon a presumptive hourly rate. The "centralized" point of call methodology took total compensation and divided those wages by either the letter carrier or RSMC points of call as the denominator. The Report and the Study did not analyze that such a method does not exist in the collective agreement or any other element of the existing compensation practices for either the RSMCs or the Urban Operations bargaining unit.

[640] A comparison between Ms. Haydon's October and January reports demonstrates significantly changed and inconsistent sample sizes with an increase in both the number of LCs and RSMCs, changed and inconsistent sample compositions by increasing significantly the number of apartment buildings for LCs, and changed and inconsistent analysis from alleged total averages to a route by route average. There is no rationale in the January report for the selection of a route sample with 75% centralized points of call.

[641] The January report considerably changed the wage gap. Excluding vehicle cost, the October report demonstrated an approximate $6.79 wage gap where RSMCs were paid less than LCs. Excluding vehicle costs as well, the second report demonstrated no wage gap and that RSMCs are compensated at a rate of $0.27 more per POC than letter carriers. In Ms. Haydon's January report, she does not explain why LC POC cost, decreased by $0.12 while RSMC POC cost, excluding vehicle expenses, increased by $6.94. The January report demonstrated no wage gap and showed that RSMCs are compensated at a rate of $12.03 more per POC than letter carriers.

[642] The January report demonstrated that the longer the driving distance, the higher the costs based on the POC method. Lower paid RSMCs, driving many kilometres, are not actually paid at the high rate suggested in the POC method. Moreover, concentrated points of call in apartments in urban areas would obviously decrease the cost of letter carriers in that the denominator would increase substantially.

[643] The methodology is one of costs, not compensation. In cross-examination, the evidence demonstrated that the lower the number of POCs, higher is the POC cost. By comparison, the higher the number of POCs, such as LCs delivering to apartments, the lower the POC cost. By comparison, an RSMC delivering to fewer CMBs or apartments at the end of a rural route, was found to be compensated at a much higher rate.

[644] The Haydon report does not address how the POC method would be accepted under the Canada Labour Code. In an expert report, the relationship of the new POC method to the Code is a key element of pay equity analysis; however, her report does not address how the new compensation method, devoid of time, complies with the Code.

**The Tribunal's conclusions regarding the wage methodology**

Wage comparison methodology principles

[645] The parties in this case have devised two drastically different methodologies to calculate a potential wage gap between the female predominant groups and the male comparator. Because the LCs are paid on an hourly basis while the RSMCs are mainly paid on a piece-rate basis, both groups are not readily comparable and require some form of harmonization. Each party took a different route leading to dissimilar results. As such, it is important to lay down guiding fundamentals from case law as they relate to the election of the proper wage gap methodology.

[646] The principles presented in this subsection are an extension to the ones expounded in the "Principles of a Pay Equity Review". The purposes of the Act and its necessary broad and liberal interpretation must guide the assessment of either party's methodology. As made clear by the jurisprudence, a flexible, case-by-case, approach of the facts and the expert evidence are necessary to appreciate its "reasonable reliability", as confirmed by justice Evans.

[647] As illustrated earlier, when conducting a pay equity review, an adjudicator will usually rely on extensive expert evidence to shine light on the issues of wage discrimination. Regarding the importance of expert evidence and the selection of an appropriate wage gap methodology, justice Evans states that no prescribed method is laid out in the Act and that:

> "[116] Section 11 provides only a broad legal framework within which problems of wage discrimination between men and women are to be tackled in light of the facts of the particular employment situation, the evidence of expert witnesses, and the underlying purposes of the statute. In my view it would be inconsistent with both the underlying purpose of section 11, and the legislative record, to interpret the section as impliedly prescribing with the particularity suggested by counsel for the Attorney General the characteristics of the permitted comparative methodologies. Much must inevitably be left to be decided by the Commission and the Tribunal case by case, with the assistance of experts"[167]

[648] In the precited *PSAC* v. *Canada Post Corporation*, the CHRT stated that:

> "[413] Focusing specifically on the job information and data used in this case, a further means of determining whether they are reasonably reliable is to test them against a generally accepted practice of the job evaluation industry. […] Accuracy calls for the data to be correct. […] Completeness relates to ensuring that important information about a job is not missed and that the collected data is compatible with the job evaluation plan being used.

[167] *PSAC* v. *Canada (Treasury Board)*, [1999 decision] previously cited at note 142.

> [414] A very important factor affecting the Tribunal's judgement about the reasonable reliability of the job information collected, the methodology employed and the evaluation of jobs/positions, is the evidence provided by a number of expert witnesses. Equally important, is the fact that several of these expert witnesses significantly disagreed with, and even sometimes contradicted, each other."[168]

[649] From the Guidelines' silence on any imposed methodology, the CHRT infers that flexibility must be privileged when assessing wage gap measurement techniques. As such, the CHRT states that:

> "[244] […] It is to be noted that no precise wage adjustment methodology for group complaints was spelled out in the Guidelines. We believe it reasonable to infer from this the Commission favours a flexible approach as opposed to a regulated one. Flexibility allows the Commission to adopt a methodology best suited to the circumstances of the case.
>
> […]
>
> [246] We are of the opinion, therefore, if a difference in wages is established through a methodology that adheres to the principles of "equal value" and "equality" it will be sufficient proof of a prima facie discrimination based on gender under s. 11 without recourse being had to the notion of causation. […]" [169]

[650] While Ontario's Pay Equity Act refers to a "job rate" instead of wages, the interpretation of the province's tribunals is certainly helpful in making sense of the federal legislation. Indeed, both legal frameworks are silent on how exactly to identify and quantify an eventual wage gap.

[651] In *Ontario Northland Transportation Commission v. TCU, Lodge 1463*, a case invoked by both parties, the Ontario Pay Equity Hearings Tribunal ("OPEHT") indicated that:

> "[29] Subsection 6(1) of the Pay Equity Act specifies that pay equity is achieved when the job rate for female job class is at least equal to the job rate for the male job class which has been compared and found to be of equal value. The Pay Equity Act defines the job rate as the highest rate of compensation for a job class. Compensation is defined in subsection 1(1) as:
>
> > All payments and benefits paid or provided to or for the benefit of a person who performs functions that entitle the person to be paid a fixed or ascertainable amount.
>
> Thus, the job rate is the highest rate of wages and benefits payable to a job class. Calculation of the job rate must be accurate so that the parties can proceed to assess whether wage discrimination exists and if so, can design a plan to correct it. In most cases, the calculation of the wage component is not disputed. […] Although the Act defines the job rate as total of wages and benefits, it does not specify how wages or benefits are to be calculated. Nothing in the Act either

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[168] Previously cited at note 114.
[169] *PSAC* v. *Canada (Treasury Board)*, [1998] previously cited at note 141.

> prohibits or mandates the use of particular time measurements (annual, weekly, hourly) for wages, or particular actuarial approaches in the calculations of benefits; what it does require is that the calculations be correct.
>
> [30] In determining the job rate of wages and benefits, we start with the following principles. First, the calculations must be accurate as possible, based upon realistic and fair compensation calculations. Second, the job rate should be calculated in a manner which is least disruptive to the collective agreement and compensation practices of the parties. Third, it must conform to the purpose and Scheme of the Act."[170]

[652] The OPEHT, in another case, indicates that the same "currency" must be used when comparing wages and that converting annual wages to an hourly one would serve no useful purpose as both job classes can already be compared on an annual basis:

> "[6] A meaningful comparison of the job rates of a female job class and its potential male comparators can only occur where the same "currency" is used to describe their wages and benefits. If we look at the "wages" component of "job rate" for example, the wages for most job classes (with the exception of piece work) are described by the formula "dollars per unit of time". So, for example, the wages for one job class might be expressed as $30,000 per year, while for another job class they might be expressed as $15.00 per hour. No meaningful comparison of the job rates for those two job classes can be made unless the unit of time measurement used to express them is the same.
>
> [7] In this case, the elementary classroom teachers and all of the proposed potential male comparators are paid annual salaries: that is the wage component of their job rates is expressed as $XX per annum. <u>There is no useful purpose served in reducing those annual salaries to an hourly rate – they can already be compared</u>. Furthermore, as counsel for both parties candidly stated, to the extent that there are specific "hours required" of the incumbents of these job classes, there is a discrepancy between the "hours required" of them and the "hours actually worked" by them. Obviously, if we convert the wage rate to an hourly one and calculate it on the basis of the hours actually worked, <u>we introduce an inappropriate element of incumbent performance into the determination of what is the job rate for the job class. On the other hand, if an hourly rate were calculated on the basis of "hours required", it would be inaccurate and artificial</u>. […]"[171] [emphasis added]

[653] From these more general principles, the Undersigned retains the following as essential to the analysis of either party's methodology: the direct wage compensation methodology must be analysed in a flexible, case-by-case, approach that complies with the intention and purpose of the Act and the Guidelines. However, the data must still be correct, and the job rate has to be calculated as accurately as possible, in a manner that is least disruptive to the collective agreement and that aligns with the compensation practices of the parties. To this end, similarly to what is done with the job evaluation outcome, the results must be tested against the evidence to ensure they correspond to

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[170] *Ontario Northland Transportation Commission* v. *TCU, Lodge 1463*, 1992 CarswellOnt 6602.
[171] *York Region Board of Education* v. *York Region Women Teachers U Assn.*, 1995 CarswellOnt 7049.

the realities of the workers. Thus, it is through this lens that the Tribunal shall evaluate the appropriateness of each consultant's methodology.

Ms. Haydon's methodology

[654] Before properly addressing the Corporation's consultant methodology, a few remarks are in order. The Union has criticized CPC for delays it has caused and has even alleged that its counterpart was trying to voluntarily hinder and postpone the arbitration process. While the Undersigned can understand the Union's frustration, it must be underlined that the Corporation and its consultant have devised a unique methodology that, evidently, was laboriously long to develop and refine. Additionally, the magnitude of this case's intricacies and the sheer amount of evidence adduced, as underlined by experts from both parties, certainly complicated the consultant's and the Corporation's endeavour. One can readily appreciate that designing a completely new methodology to address and compare the drastically different RSMC and LC working conditions and work organization required a significant amount of work, which explains, at least in part, some of the delays incurred during the process.

[655] Besides, the Corporation has the right to seek supplementary expert evidence – as was done with the Mercer reports – to complement its evidence. It was reasonable for CPC to try to find an alternative method and to further develop its new methodology. Throughout this process, the Tribunal has authorized, occasionally in part, CPC's extension requests whilst conciliating those demands with the MOU. I cannot read any dilatory undertaking in the Corporation's actions throughout the course of the arbitration. On the contrary, the parties and their counsels have, at every step of the process, collaborated to ensure that the intensive schedule and deadlines be met at the best of their capacities. It is manifest that the intended celerity of the process has put considerable strain on the parties, their counsel, the consultants and the Tribunal.

[656] Now, on the instant matter, the Undersigned appreciates and acknowledges the Corporation's desire to explore a different methodology using a common denominator that seems, from its perspective, more appropriate than the Union's reliance on an RMS proxy hourly rate. Nevertheless, this approach does not qualify as "reasonably accurate" or reliable. Below are the reasons for which the Tribunal comes to this conclusion.

[657] Ms. Haydon explains that she based her methodology on two common features of the work of the RSMCs and the LCs: annual salary and POCs. However, neither is actually equivalent in the way Ms. Haydon used them.

[658] The annual salary for RSMCs is, as Ms. Haydon points out in her reports, extremely variable between one worker to the other while the LCs' annual salary of $54,158.69 is the result of a fixed hourly rate and a fixed number of hours per day (eight hours for full-time workers). Due to the fixed hourly rate, there is very little disparity from one LC's salary to another. Conversely, as Ms. Haydon indicates in her October report, the annual pay for RSMCs ranges from $556.19 to $94,333.17, with an average of $45,179.50.

[659] As for POCs, while it may be a feature of the work for both jobs, it is only part of the RSMC compensation, whereas POCs are not part of the LC compensation. The remuneration of the LCs does not depend on the volume or number of POCs serviced on their route, while that is the case for RSMCs. As shall be demonstrated below, these discrepancies and the high variability bring about surprising and improbable results that, when weighted against the evidence adduced, do not prove to be accurate or consistent. Indeed, Ms. Haydon's two bases require her to extensively and arbitrarily manipulate and adjust the data and her methodology.

[660] Ms. Haydon's methodology's most prominent flaws lie in how sensitive the results are to the slightest adjustment in the data. As she recognized, both orally and in her January report, different POC combinations will result in different outcomes with drastic disparities. For instance, for RSMCs, there is a $62.89 difference in the compensation per POC between routes servicing no RMBs and the ones exclusively servicing RMBs, the same difference for centralized POCs is $84.40. As such, the impact of the POC makeup on the samples is enormous, yet, Ms. Haydon simply justifies her 75% centralized POCs threshold by stating that it is "[…] optimal for purposes of comparing direct compensation between Letter Carriers and RSMCs. Doing so neither advantages nor disadvantages either party." How she came to that conclusion is not clear, nor is it convincing that it respects and complies with the Act and the Guidelines. There is no rationale in her report for choosing the 75% threshold.

[661] The consequence of that variability in compensation per type of POC is displayed in the variance of the results that Ms. Haydon, and the Corporation before her, have found. For instance, in October 2017, CPC's calculations resulted in a compensation per POC, without the vehicle expense, of approximately $52.12, resulting in a $6.79 wage gap with the LC compensation per POC. Yet, in Ms. Haydon's January report, the compensation per POC for RSMCs jumped to $59.02 (without the vehicle expense), while the LC results have stayed static. It appears to be a direct result of the choices she made in the sample selection.

[662] Furthermore, in her January report, Ms. Haydon states that the compensation per POC for RSMCs servicing routes of more than 1,000 POCs and less than 30 kilometres of driving is $47.60 (without the vehicle expense), as opposed to the $59.02 she had found with her 75% centralized threshold results. Once more, this renews the question of her results' reliability: there is no identifiable factor to clarify why there would be such a difference for these RSMCs. Again, these results illustrate the variance and disparity of the results depending on which factors are retained in the methodology.

[663] Mr. Durber pointed out that LCs deliver to areas where POCs are usually highly concentrated, hence why adding the apartment POCs in the January methodology likely disadvantages RSMCs. This is also why the prevalence of mail sequencing on the LC side (more than 70% receive their mail sequenced) allows them to service more POCs by spending less time doing sortation, thus reducing their compensation per POC. Only about 17% RSMCs receive their mail sequenced, leaving less time to deliver to POCs. Not taking that factor into account clearly disadvantages the RSMCs in the methodology. Mr. Durber also stated that the change from the October and the January results suggest

that Ms. Haydon's methodology penalizes RSMCs. The Undersigned shares these conclusions.

[664] Furthermore, the differing calculation method – from the overall average to the route-by-route one – raises concerns on how it could affect the results, as was shown in Ms. Haydon's cross-examination. No assessment of the impact of that method was done by Ms. Haydon. However, the lower results obtained for the RSMCs in the October report would suggest that January route-by-route average calculation disadvantages RSMCs in the presentation of their wages under the compensation per POC method. This method could artificially inflate the compensation per POC of the RSMCs[172]. In fact, when using the overall average calculation method with her final sample, Ms. Haydon found a small wage gap between the RSMCs and the LCs: $53.64 for the former and $54.57 for the latter, excluding vehicle expenses.

[665] Additionally, the same variance can be observed on the LC side, with higher compensation per POC for door-to-door intensive routes and lower compensation for centralized POCs routes. At face value, such an outcome makes no sense since it is clear that, in practice, the LC compensation displays very little variability. The full-time LC servicing a 100% door-to-door POCs route and full-time LC servicing a 100% centralized POCs route will both earn the same annual salary, yet Ms. Haydon's methodology would result in a wage gap of $84.80. These incongruous results for the LCs indicate that Ms. Haydon's methodology is one that measures labour costs, while the objective of the pay equity review is to assess if there is a wage gap.

[666] Another illustration of the discrepancy of the so-called pay per POC methodology with the evidence adduced, is that her final sample result shows no wage gap in compensation per POC, yet the actual average annual pay for her RSMC sample is of $41,546.50 and that of the LC sample is of $58,086.22[173]. At face value, these annual averages strongly suggest that a wage gap is at play and certainly do not match her compensation per POC figures. Furthermore, those averages are within the range of the data adduced by both parties on average annual salaries.

[667] Thus, the Undersigned shares the Union's consultant's conclusion that the pay per POC methodology is one of labour costs to the Corporation and not one that evaluates the employee's compensation for work. This is evidenced by the rising "compensation" with less concentrated POCs, such as RMBs for the RSMCs and door-to-door delivery for LCs. Conversely, "compensation" is lower for centralized POCs. The consequence is that the more POCs a route services, the lower the "compensation".

[668] Ms. Haydon's methodology also relies on splitting the LC job into door-to-door and centralized categories that do not reflect the actual pay practices of the parties and create inconsistency in the samples being compared. As was found above, the splitting was not appropriate and further weakens Ms. Haydon's results.

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[172] See Exhibit 57.

[173] The average annual salary for each sample was obtained using the total annual compensation and incumbent numbers used in Ms. Haydon 's January report (tab 2, pages 4 and 5).

[669] Therefore, for all of the aforementioned reasons, the Tribunal comes to the conclusion that the Corporation's methodology must be rejected. It is not reasonably accurate nor is it reliable. Rather, it is fundamentally flawed and, consequently, produces so-called compensation results that do not correspond to the employees' respective realities in light of all the evidence that was adduced in this case.

Necessary definitions and their application

[670] Before proceeding further, some fundamental definitions and semantics must be clarified for the Tribunal to ground its analysis in ascertained language. These will allow for the differentiation of seemingly similar concepts, but whose differences are crucial and decisive in the present case. More practically, it will allow the Undersigned to address the thorny question of the existence of an hourly rate for the RSMC.

[671] Whether or not RSMCs are paid, in part, on an hourly basis, has been a focus point for both parties during the hearing. On the one hand, the Union alleges that RSMCs are paid on an hourly rate of pay, which is derived from activity values and RMS time values. The latter further claims that the parties have been negotiating hourly wages during the collective bargaining. On the other hand, CPC asserts that RSMCs are paid on a piece-rate basis and insists that no hourly rate appears in the collective agreement, that no hourly rate has been negotiated per se. The RMS "proxy hourly rate" may have been used on various occasions as a communication aid in negotiations, but it was never agreed that the rate invoked by the Union be part of the collective agreement and it is not used to compensate RSMCs.

[672] Before moving on, this question must be addressed.

[673] Mr. Gérard Dion's *Dictionnaire canadien des relations du travail* provides the following definitions concerning compensation:

> « **Salaire** m – salary; wage; pay; rate; wage rate; compensation /rate/; pay rate
>
> Prestation versée par l'employeur au salarié en contrepartie de son travail. Cette rémunération est réglée par le contrat de travail, écrit ou verbal, conclu entre l'employeur et le salarié. Considéré du point de vue de l'employeur, il est un coût. Quand il y a une convention collective, celle-ci détermine les conditions du travail et, par conséquent, le salaire du salarié. Selon la *Loi sur les normes du travail*, le salaire est « la rémunération en monnaie courante et les avantages ayant une valeur pécuniaire dus pour le travail ou les services d'un salarié ».
>
> Alors que le salaire (*wage*) est un montant versé au travailleur et que le taux (*rate*) est un montant fixé d'avance pour calculer le salaire, dans le langage courant, en français comme en anglais, les deux termes sont souvent interchangeables et employés de façon elliptique.
>
> On peut regrouper les différents types de salaires sous plusieurs chefs. […] ; selon le mode de paiement : direct, indirect, anticipé, différé, rétroactif, d'investissement ; […] selon le mode de calcul : à forfait, à la tâche, fixe, au rendement, à commission, aux pièces, au mérite, au temps alloué, au temps, à la semaine, au mois, horaire, hebdomadaire, mensuel, à la démarcation, selon la durée de présence, d'exécution, individuel, collectif […]

**Salaire à forfait** – *job wage*

Rémunération fixe que reçoit un travailleur pour l'exécution d'une certaine quantité d'ouvrage qui a été déterminée à l'avance. Syn. – Salaire à la tâche.

**Salaire à la pièce** – *piecework /wage/ ; straight piecework*

Forme de salaire qui consiste à rémunérer un travailleur selon le nombre d'objets produits ou la fréquence des opérations accomplies après fixation d'un prix unitaire par objet ou par opération. Généralement, si l'employé n'atteint pas dans la semaine ou la journée une production lui permettant de gagner un salaire minimum horaire ou hebdomadaire suffisant, ce minimum lui est garanti. Le salaire à la pièce peut être individuel ou collectif.

**Salaire annuel** – *annual salary; annual wage*

Salaire établi à un montant fixe pour une période d'un an. Son versement s'effectue cependant selon les périodes de paye qui peuvent être au mois, à la quinzaine, à la quatorzaine, etc.

**Salaire horaire** – *hourly wage*

Taux de salaire établi à un montant fixe par heure de travail. C'est le mode de calcul le plus simple et le salaire horaire reste encore le plus courant.

**Taux d'un emploi** – *job rate*

Salaire au temps ou à la pièce attaché à un poste indépendamment de son titulaire. Salaire attaché à un emploi, salaire pour un emploi.

**Taux de salaire** – *wage rate; rate; wage; rate of pay; pay /rate/; compensation /rate/*

Montant fixé pour mesurer le salaire par rapport soit au temps (heure, jour, semaine, mois), soit à la quantité (globale ou à l'unité) d'objets produits ou d'actes posés. […]

**Taux horaire** – *hourly rate, rate per hour*

Taux de salaire fixé par heure de travail. C'est un mode de rémunération fondé sur la durée du temps de présence au travail. Contractuel ou légal, ce taux horaire ne doit pas être confondu avec les gains horaires, qui représentent le montant effectivement gagné par heure de travail ; contrairement aux gains horaires, le taux horaire n'inclut ni prime, ni majoration pour heures supplémentaires ou pour toute autre raison, ni aucun autre avantage pécuniaire de quelque nature qu'il soit. »[174] [underlined for emphasis]

[674] Concerning the notion of time-based and piece-rate salaries, Quebec authors Frédéric Lauzon-Duguay, Patrice Jalette and Ghislain Hallé indicate the following:

"13.2.1 Salaire au temps

Le salaire au temps – à l'heure, à la semaine ou à l'année – est le régime salarial le plus fréquent dans les conventions collectives (Ferland, 1996). Il fait partie

[174] Gérard DION, *Dictionnaire canadien des relations du travail*, 2nd edition, Québec, Les presses de l'Université Laval, 1986, p. 425 to 430, 472 and 476.

> intégrante du « mode traditionnel de gestion de la rémunération » (Thériault et St-Onge, 2000, p. 409). Le recours fréquent à ce mode de rémunération peut s'expliquer par le besoin d'établir celle-ci sur la base d'un indicateur objectif et par le fait que les lois du travail y font souvent référence.
>
> Les syndicats ont toujours favorisé la rémunération selon le temps passé au travail, car elle présente de nombreux avantages. D'abord, le salarié est assuré d'une rémunération régulière. De plus, il éprouve moins de tension et d'insécurité au travail puisque sa rémunération ne fluctue pas selon le rendement. Par ailleurs, les syndicats tentent de baser la rémunération sur des critères objectifs laissant peu de place à la discrétion de l'employeur. Enfin, dans bien des cas, lorsque ce travail est mal défini et que la contribution de chaque employé est difficilement mesurable, il n'existe guère d'autre façon pratique et cohérente de calculer le salaire dû à l'employé pour le travail qu'il accomplit que sur la base du temps travaillé.
>
> […]
>
> A. Salaire au rendement individuel
>
> La rémunération à la pièce, généralement appelée « travail à la pièce », est probablement le régime incitatif le plus ancien. Selon ce régime, la rémunération de l'employé dépend du nombre d'unités produites ou d'opérations effectuées conformément aux standards préétablis. La plupart du temps, une clause de la convention collective prévoit qu'un employé est assuré de recevoir un salaire minimal même s'il n'atteint pas, pour toutes sortes de raisons, les objectifs de production. Cette forme de rémunération, qui est moins répandue (Tremblay et autres, 1996), reste présente dans le secteur du vêtement (ISQ, 2001)."[175]

[675] In the present case, the evidence reveals clearly that RSMC wages are not based on an hourly rate, nor on time spent on duty, but are rather based on an hybrid model where RSMCs receive two non-time compensation items: activity values (job wage) and variable allowance (piece-rate)[176]. As stated in article 1 of Appendix A of the collective agreement:

> "1. An employee's actual wage is determined by the activity component specified in paragraph 2, the variable allowance specified in paragraph 3, and the knowledge sort and civic addressing allowance specified in paragraph 4."

[676] Conversely, LC wages are primarily expressed on an hourly basis, but LCs also receive piece-rate compensation for the delivery of admail[177] which is not included in their hourly rate.

[677] While the LC mode of compensation is also hybrid, it can be referred to as a time-based system essentially comprised of an hourly rate and, peripherally, a piece-rate component. RSMCs, on the other hand, are not paid based on any notion of time or

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[175] Patrice JALETTE and Gilles TRUDEAU (dir.), *La convention collective au Québec*, 2nd edition, Montreal, Gaëtan Morin éditeur, 2011, p. 293 to 295.

[176] Whether or not the vehicle expense should be included in the RSMCs' direct compensation shall be addressed later in another section.

[177] Both experts have referred to the LC admail delivery wages as the householder bonus.

presence at work like LCs, but rather on the execution of work which is remunerated on a job wage and piece-rate basis. Nevertheless, as we shall see below, there is a time component that is part of the RSMC work organization and that is used in the determination of the value of their work.

[678] Therefore, since the interchangeable notions of wage rate or job rate include both types of pay – time based or a piece-rate/job wage – the Undersigned shall refer to “wage rate” or “job rate” to describe RSMC wages, as opposed to an hourly rate. When referring to the job rate on an hourly basis of time, the Tribunal will refer to a “derived hourly job rate” or “derived hourly wage rate”.

[679] The above notwithstanding, despite the fundamental differences in both types of remuneration, the evidence demonstrates that consideration is given to time in the assessment of the value for both activity values and variable pay for RSMCs. This is an inescapable consequence of the fact that time is part of all human activities and while it may be accounted for in a different manner for RSMCs and LCs, it is still inevitably part of their work.

<u>The use of RMS hours as a common denominator in this pay equity review</u>

[680] The use of a wage rate based on RMS hours has been a point of contention of the utmost importance for both parties. In his October report, Mr. Durber used the so-called RSMC “hourly rate”[178] and multiplied it by eight RMS hours per day as his basis to evaluate what he called a full-time daily hourly rate of pay; he deemed that the Corporation was erring in its reservations concerning the RMS hours and that, in any event, the latter hours were as inaccurate as the LCRMS hours. On the contrary, CPC and its consultant have argued that RMS hours cannot be relied upon by the Union to obtain an “hourly rate” equivalent to the LC, since it too unreliable and inaccurate.

[681] A great deal of evidence has been adduced by both parties regarding the components and reliability of both systems. The Tribunal, after careful consideration, has retained the following as essential in dealing with that issue, which shall be presented alongside the Undersigned’s conclusions on the matter.

[682] On the LC side, the Corporation relies on the LCRMS, which is an extremely detailed and sophisticated system used to build routes of around eight daily hours for the approximately 12,000 full-time LCs and the approximately 900 part-time LCs. Every activity is timed to the second and other inputs allow to adjust for mail volume, POC coverage, walking distances, the optimal delivery sequence, etc. With all those elements accounted for, the system produces routes that should, on average, require eight hours per day for the LCs to complete. Because LCs are paid for eight hours if their route is assessed to last at least six hours, building eight hours route is important to maximize productivity. For CPC, this system is highly reliable and can be trusted to produce accurate results.

[683] However, the evidence shows that the system is far from perfect. LCs can finish their route earlier or later than its intended finish time, which can require that the

[178] For Zone 1 employees.

employees work overtime. In fact, overtime has been steadily increasing over the years. The variations can be attributed to many factors: seasonal peak demands, time of the week, mail and parcel volume fluctuations, weather conditions, delayed trucks, etc. As recognized by the Corporation's witnesses, the LCRMS is not designed to account for these variations and cannot react to them. It is a system that is based on averages and is not predictive, on a daily or even weekly basis, of time actually worked by LCs.

[684] Another factor that influences the accuracy of the LCRMS is the fact that volume counts are not done regularly by the Corporation; yet, consideration for volume has been repeatedly lauded by CPC's representatives throughout the hearing as a hallmark and distinguishable feature of the LCRMS. Likewise, some of the time values have not been updated in decades.

[685] Also, there are several constraints which the LCRMS cannot adapt to, such as the total number of POCs to be serviced for a LC depot. Consequently, 94% of LC routes are assessed to last between seven to nine hours daily, meaning that despite the sophistication of the LCRMS, some routes are nevertheless over or under-assessed.

[686] The LCRMS does not evaluate workload for a predictable environment, the high variability in the work means that the LCRMS eight hours do not necessarily equate to eight hours actually worked in practice. Furthermore, the eight-hour day includes 55 minutes of paid breaks and a 7% fatigue rate to account for the employee's personal fatigue and usual work delays, such as washroom breaks. It has been recognized that such situations arise, but no evidence has been adduced to precisely quantify the time paid but not worked.

[687] Finally, it was showed that the LCRMS is a very costly and litigious system. CPC spends $10M annually on the maintenance of the system and $3M for route restructures, while 11 national and 400 regional grievances have been filed since 2011 concerning route restructures. CPC representatives have recognized that the Corporation is considering replacing the actual system with one that can account for fluctuations in ways that the LCRMS cannot.

[688] Overall, the evidence shows that the LCRMS is a very intricate system that allows the Corporation to maximize daily productivity, but that system is not as accurate as the Corporation would want to portray it. As indicated by Ms. Haydon in her reports, the LCRMS is truly a unique system in its sophistication.

[689] On the RSMC side, no comparable time-based system exists. Nevertheless, there is a time dimension to the work of RSMCs. The latter each receive company documentation pertaining to their route, the Schedule A, which includes approximate times to sort and deliver mail each day. The Schedule A is designed by CPC, which retains control over the assessment of time values and, as such, the time estimated to complete one's route. The estimated time to complete one's route excludes time for variable pay. The Schedule A forms part of the RSMC job description as per article 27.01 of the collective agreement.

[690] Undeniably, the estimated time, as the name suggests, is not a precise calculation of the employee's time required to do the work. To reinforce that notion, the Corporation has recently added plus or minus fixed 25 minutes range to the estimated time, no matter the length of the route. As shown by the approximate 2,205 routes whose RMS hours are above the available delivery time, RMS hours clearly do not always equate to actual hours worked[179], similarly to the LCs.

[691] The time studies conducted by the parties show that some RSMCs finish early while others finish later than their estimated time required; the intensity of the variance is not dramatic either. Mr. Durber, in his reply report, showed that the majority, 66% to be exact, of the RSMC routes are assessed to last between 5.1 and 8 RMS hours daily. Once again, the same pattern, although it is less pronounced, can be observed on the LC side, where 94% of route last between 7 and 9 hours.

[692] Despite that variability, RMS hours are not totally disconnected with the time needed to complete a route as CPC argues. Both Mr. Sinclair and Ms. Whiteley have recognized that when building a new route or during a restructure, the Corporation leaves a two-to three-hour gap to allow RSMCs to complete their variable work and to have room for growth. In cross-examination, Mr. Sinclair stated that the average RMS hours were 6.1 for new routes. Therefore, there is a correlation between RMS hours and the actual time needed to complete one's route and CPC is aware of that comparability and relies on it.

[693] This gap in RMS hours is left because the Corporation must comply with the Canada Labour Code maximum hours of work when restructuring routes.[180]. This is in line with what the Canada Labour Code prescribes at its sub-section 169 (2) for work environments with irregular hours:

> "Averaging
>
> (2) Where the nature of the work in an industrial establishment necessitates irregular distribution of the hours of work of an employee, the hours of work in a day and the hours of work in a week may be calculated, in such manner and in such circumstances as may be prescribed by the regulations, as an average for a period of two or more weeks."

[694] Likewise, annual inspections of RSMC routes, done yearly or bi-annually, include several questions pertaining to time: When is the mail available? What is the normal start time of the RSMC? What is the normal departure time of the RSM? What is the normal arrival time at the RSMC's final designated delivery point? These questions indicate that time does matter to the Corporation and RSMCs alike: the latter have a mail available time at which they usually start their day and they have a final time at which mail must be

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[179] See tab X of Ms. Whiteley's Book of Documents. Note that approximately 160 routes have equal time available for delivery and daily RMS time. Approximately 2,830 routes have less daily RMS hours than time available for delivery (ranging from 0.1 to 9.5 hours).

[180] To determine if a route is over-assessed, the parties have agreed that the average hours of work are to be calculated over a two-week period, as per the collective agreement's article 13.01.

brought back. CPC manuals on the subject underline the importance of the annual inspection not only for the Corporation but also for the accuracy of an RSMC's pay.

[695] Additionally, Ms. Whiteley and Mr. Sinclair have both stated or admitted that when the Corporation updates time values, time required to do the work is considered. One cannot help but wonder why CPC would update time values, including on its own volition following a change in activity values, if they are considered to be completely inaccurate? Furthermore, despite the claimed disconnect between time values and activity values, CPC representatives have used an "hourly rate proxy" during negotiations with the Union. The parties have also negotiated the increase or decrease of time values, thus reflecting that the Corporation cares about their relative representativeness of the work completed.

[696] The RMS may not be as complex as the LCRMS, but both systems generate, to some extent, the same kind of issues, which is not surprising given the similarity of the work done by both RSMCs and LCs. Fluctuations in the work is an intrinsic aspect of both jobs and results in the same problems. Actual time worked is an elusive concept for RSMCs as well as for LCs, since neither works under a system that is designed to evaluate it perfectly. While the LCRMS may be closer to that reflection, both systems are nevertheless based on averages.

[697] As mentioned above, an hourly wage basis is the most common form of compensation in unionized workplaces. However, it is rare that a company uses and maintains such an expensive and sophisticated tool as the LCRMS to assess the needs of production. Most rely on management's knowledge and experience of the job, as is the case for RSMCs. Those estimates are not considered unreliable and those companies are able to maintain a competitive production level.

[698] The RMS hours are also used in a number of ways by the Corporation, which Mr. Bickerton listed, in part, in his will-say[181]. It can be summarized in the following way:

- The Letter 1 agreement, part of the collective agreement, in which CPC agrees to restructure routes in excess of 60 RMS hours;
- Overtime premium is paid using RMS hours[182];
- The Designated holiday pay premium is paid using RMS hours (article 16.03 of the collective agreement);
- In the collective agreement's Appendix D, the Union Education Fund, RMS hours are used;
- Pension and benefits eligibility are determined using RMS hours;
- Statutory benefits and compliance, including, but not limited to, overtime compliance;
- The RSMC's boot allowance is paid using a ratio of RMS hours;

[181] Some of Mr. Bickerton's elements are litigious and, as such, have not been retained by the Tribunal.
[182] Exhibit 32.

- The hours used in the Corporation's Injury Frequency Report are RMS ones.

[699] Mercer consultants have also used the RMS hours to determine the allowance rates for their calculations of the Isolated Post Allowance.[183]

Conclusions

[700] For all of the above-mentioned reasons, it seems appropriate to rely on the RMS hours as a time component to establish a job rate for RSMCs in this pay equity review. Basing the time component on an hour is the most common denominator that allows to compare RSMC wages to the LC hourly rate.

[701] Despite the intrinsic inaccuracy of the RMS time, the Corporation has extensively relied on it for very important aspects of RSMC work, including overtime provisions, pension and benefits eligibility, and the Schedule A, which forms the most important RSMC work tool integrated into the job description in the collective agreement. It is a measure of time that is supported by a range of parameters aimed at maintaining its relevance: time range in the Schedule A, annual inspections, two-week studies, time values updates, final tender point, etc.

[702] In any event, an RMS hour-based job rate appears to be the most reliable measure of comparison and the only means available for the parties to use as a reference point. Furthermore, it is part of the RSMC work and it is the usual tool the parties use for so many aspects of RSMC working conditions and work organization.

[703] Nevertheless, given the previous findings, it is evident that the derived hourly job rate must be perfected and adjusted to provide reasonably accurate results. The question remains: how can the RMS time be adjusted to more accurately portray the work done by RSMCs? Should a percentage correction be applied? Should the base salary used in the direct compensation evaluation be the same as the salary used for establishing the cost of indirect compensation? Would the use of a sample of "full-time equivalent" LC and RSMC routes produce more accurate data (for instance, 6 to 8 hours routes)? Unfortunately, not enough data and facts have been presented to the Tribunal to allow the Undersigned to make that determination with confidence.

[704] It flows from the above that the RSMC job rate can be compared, with the necessary adjustments, to the LC job rate on an hourly basis. From all the evidence adduced and the reports of the experts, it appears to be the most reliable common denominator available to estimate a wage gap. As established previously, neither the Act, the Guidelines, nor the case law require the methodology to be perfect, only that it yield reasonably accurate results by using correct data.

[705] As we shall see in the forthcoming section on what should be included in direct wages, the methodology and the calculations must be adjusted to yield more accurate results based on correct data.

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[183] Exhibit 64.

## M. OTHER ASPECTS OF DIRECT WAGE COMPENSATION

[706] In addition to their disagreement on the wage gap methodology, the parties also had conflicting views on certain aspects of the RSMC and LC compensation. Specifically, the following elements were debated or treated differently: the applicable job rate, the inclusion of vehicle expenses in RSMC wages, the inclusion of variable allowance, the inclusion of overtime wages and the adjustment to LC wages for paid meals and breaks.

[707] Each aspect will be treated individually, with both sides' position on the matter, followed by the applicable law and the conclusions of the Undersigned. Note that certain elements were not litigious per se and were simply treated differently by the parties; for clarity, the Undersigned shall nevertheless state the appropriate conclusions.

[708] Prior to proceeding, it is worth reproducing section 11 (7) of the Act's definition of wages, which reads as follows:

> "**Definition of wages**
>
> **11(1)** It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.
>
> […]
>
> **(7)** For the purposes of this section, wages mean any form of remuneration payable for work performed by an individual and includes
>
> (a) salaries, commissions, vacation pay, dismissal wages and bonuses;
>
> (b) reasonable value for board, rent, housing and lodging;
>
> (c) payments in kind;
>
> (d) employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans; and
>
> (e) any other advantage received directly or indirectly from the individual's employer."

[709] The *Dictionnaire canadien des relations du travail*, defines direct wages as follows :

> "**Salaire direct** – *direct wage; direct compensation*
>
> 1. Salaire que touche immédiatement l'employé à chaque période de paie, à l'exclusion des avantages sociaux, lesquels forment le salaire indirect.
>
> […]"[184]

### Applicable job rate

[710] In his report, Mr. Durber used the maximum hourly job rate for RSMCs working in Zone 1. During testimony, he asserted that a single national rate should be used and that using rates for Zones 2 and 3 would overstate RSMC wages.

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[184] Gérard DION, previously cited at note 174, p. 429 and 430.

[711] The Corporation asserts that using a single rate is not representative of RSMC wages and that a weighted average of all zones would be the correct approach.

[712] On the question of which wage rate should be used as the comparator, in its above-cited 2004 report, the Pay Equity Task Force explains:

> "[…] According to pay systems specialists, the maximum rate is the one considered as the job rate. Indeed, this is the salary paid to a person who has mastered all the skills necessary for the position. […]"[185]

[713] In cases where regional rates apply, the CHRT indicates that a weighted average approach is more accurate to determine the wage rate of the female and male comparators:

> "[416] We find the weighted average approach more accurate in identifying the regional wage rate for the purpose of the level-to-segment calculations. The employee population paid on a regional rate basis is available to estimate a weighted average. In all instances, we note the weighted approach was preferred for calculating a wage gap."[186]

**The Tribunal's conclusions**

[714] In the present case, that would mean using a weighted average of maximum rates for all three zones. The Tribunal agrees that doing so would result in a fairer representation of the activity value wages paid to all RSMCs throughout the country. Both jobs would then share a common base. The derived hourly job rate for the RCMS should be adjusted accordingly.

[715] According to the Tribunal's calculations, the RSMC derived hourly job rate of $19.73 used by the Union would be raised to $20.52.[187]

## Vehicle expense

[716] The Union argues that the vehicle expense is, as stated by Mr. Durber, a cost of doing the Corporation's business that RSMCs incur for delivering postal products. It adds that no authority in either the federal or provincial pay equity context clearly establish vehicle expenses as wages. The reimbursement is not an advantage under the Act, and is also excluded from employment income under the Income Tax Act.

[717] The Corporation asserts that the entirety of the vehicle expenses constitutes part of RSMC direct compensation. It is computed differently than an actual expense and is paid regardless of any costs incurred by the employee.

[718] Whether or not the amounts paid are taxable is irrelevant under 11 (7)(e) of the Act, given the inclusions both taxable and non-taxable amounts under 11(7)(a), (c) and

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[185] Previously cited at note 147, p. 310; both experts also agreed that the maximum rate should be used in the comparison.

[186] *PSAC* v. *Canada (Treasury Board)*, [1998] previously cited at note 141.

[187] (4325×19.73+2577×21.49+477×22.47) / (4325+2577+477) = 20.52177395; based on rates and employee count appearing in Ms. Beauchamp's email to Mr. Bickerton (tab 38 of Mr. Bickerton's Book of Documents).

11(7)(b), (d), respectively. In addition, vehicle expenses are akin to the list of items enumerated at 11(7)(b) and can therefore be considered an advantage. The Corporation is not required to pay RSMCs to use a vehicle and, as such, it constitutes an advantage.

[719] Moreover, the vehicle expense is part of RSMCs' annual pay under the collective agreement and the parties have always treated it as such. The parties have agreed to pay the vehicle expense in this manner to maximize non-taxable dollars to employees, as stated by Mr. Sinclair during his cross-examination. Every year, all RSMCs receive a CRA T2200 form and correspondence from the Corporation explaining that RSMCs may claim vehicle expenses in their personal income tax returns but that CPC has no visibility on such matters. Likewise, the Union demanded in the 2016 round of bargaining that the Corporation provide company vehicle to RSMCs without loss of compensation, and that RSMCs receive vehicle expenses in their designated holiday pay.

[720] Concerning the vehicle expense, article 32 of the collective agreement states:

> "32.01 Type of Vehicle
>
> If the Corporation requires that an employee provide a vehicle to perform the work on his or her route, the employee must pay all operating and maintenance costs and provide the type of vehicle as stipulated in Schedule "A" of the Mail Transportation and Delivery Agreement that was applicable to the route on December 31, 2003. This obligation shall be maintained until the nature of the work to be performed or the situation has changed.
>
> When an employee's route is altered in accordance with Article 11, the Corporation may require that the employee use a specific type of vehicle when necessary as a result of changes made to the route. Only when this results in an employee being required to change the vehicle he or she has provided shall the employee be entitled to the amount set out in Appendix "A" for the use of a specific type of vehicle. This payment shall only be paid while the employee retains the route for which the vehicle was required.
>
> 32.02 Insurance
>
> In respect of any employee provided vehicle used to cover his or her route, an employee shall provide and maintain, at his or her own expense, the required automobile liability insurance of not less than one million dollars ($1,000,000.00) inclusive per occurrence for damages, including damage to the property of others and, when authorized by law, for bodily injury and death, until decided otherwise by the Corporation.
>
> The Corporation may require that an employee provide and maintain an insurance policy with greater coverage than that set out above. In such cases, the Corporation shall pay the additional costs of such coverage up to a maximum equivalent to the provincial insurance industry average."

[721] The collective agreement defines wages and actual wages as follows:

> "33.01 Wages
>
> (a) Beginning January 1, 2016, an employee's annual pay shall be determined using the actual wage set out in Appendix "A", and the vehicle expense where applicable.
>
> […]
>
> (d) Actual wages shall correspond to the difference between the annual pay and the vehicle expenses."

[722] In its 2015 *Guide to Interpreting Ontario's Pay Equity Act*, the province's Pay Equity Office, on the notion of benefits, states that:

> "The value of a benefit must be included in the job rate if it contributes to the total compensation of a job class, or it provides an advantage to that job class over others that do not have the same benefit. […]
>
> In situations where an item is something that is required to do the job, that item would not be considered a benefit and thus, not included in the job rate. For example, the value of a uniform or protective clothing would not be considered a benefit if these items are required to do the job."[188]

[723] On the specific issue of mileage allowance or use of a company vehicle, the Office indicates:

> "[…] Mileage allowance or use of a company vehicle may or may not be considered a benefit. For example, if travel or transportation is required for the job, then access to mileage allowance or use of a company vehicle may be a work arrangement and not a benefit. However, if employees can have the car on the weekends for personal use, it may be considered a benefit."[189]

**The Tribunal's conclusions**

[724] The Corporation argues that reasonable value for board, rent, housing and lodging is of the same nature as a vehicle expense. The Undersigned respectfully disagrees: the list at 11(7)(b) is clearly focused on various allowances granted for lodging. Had the provision been intended to cover vehicle expenses, similar items, such as paid meals or transportation expenses, would have been included as per the interpretation rule of *ejusdem generis*[190].

[725] That being said, vehicle expenses could be, under certain circumstances, considered an advantage, as per 11(7)(e) of the Act. The *Dictionnaire canadien des relations du travail* defines advantages as follows:

> "Avantage – *benefit; advantage*

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[188] Ontario Pay Equity Office, *A guide to Interpreting Ontario's Pay Equity Act*, February 2015, p. 50.
[189] *Ibid*, p. 51.
[190] When a list of items is followed by non-expansive wording, then the general wording is restricted to things of the same nature.

> Ce qui s'ajoute au salaire de base, sous forme de salaire indirect et qui augmente le revenu. On parlera d'avantages en nature : nourriture, logement; d'avantages en espèces : indemnités, primes, gratifications; d'avantages sociaux : assurances de toutes sortes sous forme de pension, de rente ou d'allocation."

[726] In the present case, it is manifest that having to provide a personal vehicle is not voluntary. Article 32 stipulates clearly that when the Corporation requires that the employee provide a vehicle to perform work on his or her route, the vehicle must meet specific requirements. As was the case with Ms. Beauchamp, who received a letter after she had successfully bid on a new route which stated that:

> "**Véhicule**
>
> Comme condition d'embauche, il vous incombe de fournir un véhicule pour effectuer les tâches exigées par votre itinéraire, au premier jour de travail. Le type de véhicule doit satisfaire aux exigences précisées dans le document ci-joint (annexe A [Schedule A]) de la Convention de transport et de livraison. Le manquement aux exigences relatives au véhicule pourrait entrainer un renvoi si vous ne rencontrez pas les conditions d'emplois reliés au poste.
>
> Exigences du véhicule :
>
> > Espace de chargement minimal de 100 pi. cu. (2 832 litres)
> >
> > Toit en métal et prise de courant pour accessoires permettant l'installation de l'enseigne et des feux giratoires de Postes Canada
> >
> > 5e porte / hayon arrière pour permettre le chargement d'Articles volumineux et surdimensionnés. (préférable)
>
> Vous recevrez un montant fixe pour les dépenses liés à l'utilisation de votre véhicule et vous serez responsable de tous les frais d'exploitation et d'entretien connexes."[191]

[727] Such specifications are required to allow the delivery of mail and parcels of all sizes. The Undersigned was able to witness the above during a visit to the Kanata LC depot where RSMCs and LCs work side by side; the RSMCs virtually all used the same type of vehicle for the work, which was arranged in a similar fashion as LCs' corporate vehicles.

[728] The evidence demonstrates that providing a personal vehicle to perform the work is a requirement for employment and, therefore, as stated by the Ontario Pay Equity Office, it cannot be considered an advantage.

[729] Moreover, while the parties have chosen to include vehicle expenses in the annual pay for fiscal reasons, as stated by Mr. Sinclair, they also specified that the expenses are not part of the actual pay. It is worth noting that the meaning of actual refers to something that is "existing in fact and not merely as a possibility", as opposed to "alleged, assumed, reputed, supposed, conceived, envisaged, …".[192] The parties used the word actual with

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[191] See tab 3 of Ms. Beauchamp's Book of Documents.
[192] Definitions taken from the Merriam-Webster dictionary online.

a specific intent, evidently to make a distinction between annual pay and actual wages, the only difference between the two being the vehicle expense.

[730] The Corporation also argued that some routes receive more than $30,000 annually in vehicle expenses. In those cases, CPC alleges such amounts cannot be considered to be all expenses for the vehicle and that a part of the amount could be considered wages, and therefore be a taxable advantage. Absent from any evidence to sustain this argument, it is therefore speculative and cannot be retained.

[731] Considering the above-cited stipulations of the parties reflected in the collective agreement with regards to the obligation to provide a personal vehicle and the usual criteria used to define an advantage under the Act, the Tribunal concludes that vehicle expenses must be excluded from the RSMC derived hourly job rate. The fact that some RSMCs may benefit from an advantage in some circumstances is not sufficient to contradict the previous findings.

[732] Moreover, the company's expert herself testified that she had reservations on treating vehicle expenses as wages for RSMCs, save for the ones that received high amounts. Again, she did not adduce any evidence to support her latter assumption.

**Variable allowance (or pay)**

[733] On the notion of variable compensation, Mr. Durber did not include it in his derived hourly job rate for RSMCs, focusing solely on activity value remuneration. Nevertheless, Mr. Durber indicated in his October report that variable pay should be accounted for in the pay equity review.[193]

[734] The Corporation asserts that variable pay is an important part of RSMC remuneration. Such items include PCIs, lock changes and neighborhood mail. They are clearly part of an employee's compensation under 11(7) (a) of the Act.

**The Tribunal's conclusions**

[735] Appendix A of the collective agreement clearly states that variable pay is part of RSMC wages and, as such, it should be included in the derived hourly wage rate in the pay equity review.

[736] The OPEHT, in *Windsor Casino Limited*, concluded that tips, a variable type of pay, should be included as compensation in a pay equity review. Insofar as tips are not included to artificially manipulate the compensation with a negative pay equity result, it is appropriate to include it.[194]

[737] A comparison with tips suggests that despite their variability, lock changes, admail delivery and PCIs should be included in RSMC direct compensation.

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[193] The Union also demanded that RSMC compensation be augmented for PCIs, admail and lock changes. That request will be treated in the Remedies section.

[194] *Group of Employees* v. *Windsor Casnio Limited*, 2007 CanLII 62083.

[738] As stated by Ms. Haydon, variable pay is an important part of RSMC compensation, with approximately $40 million paid annually by the Corporation for it[195]. Even if it is but a single example, variable pay accounted for approximately 19% of Ms. Beauchamp's wages when she successfully bid on her new route (when excluding vehicle expenses)[196].

[739] As indicated by the Pay Equity Task Force:

> "If pay adjustments are limited simply to equalizing basic salary rates, there is a risk that benefits and flexible pay, which are two important components of employee compensation, will continue to be affected by discrimination. The detrimental effects of such an approach would be all the more serious in that these components tend to account for a substantial part of total compensation for many workers."[197]

[740] However, the inclusion of Variable allowance in the RSMC derived hourly job rate, will require an adjustment to RMS hours to reflect the time required to complete them in the calculation of a derived hourly job rate. Otherwise, the result would artificially inflate the derived hourly job rate of RSMCs and would result in an inequitable outcome. This issue will be addressed further in the section on the remedies sought by the parties.

**Paid meals and breaks**

[741] Mr. Durber reasoned that since RSMCs have no paid breaks built in their day or do not receive a Rest Period Allowance, LC compensation should be grossed up for their paid break time. As such, he applied an approximate 13.49% adjustment to the LC hourly rate, which represents approximately $3.50 per hour.

[742] The Corporation asserts that a further top up of LC wages for paid breaks would be inappropriate, since RSMCs are being paid for unproductive time as well. Furthermore, case law indicates that a gross up for paid breaks is inappropriate when employees remain subject to the employer's control, which is the case for LCs.

[743] Concerning paid meal breaks, the Ontario Pay Equity Office states that:

> "[…] A paid meal break may or may not be considered a benefit depending on the circumstances. For example, a paid meal break is not likely a benefit if it is considered work time and part of the normal work week during which time employees remain subject to the employer's control and direction."[198]

[744] In *Peel (Regional Municipality)* v. *CUPE, Locals 966 and 2101,* citing two arbitration awards[199], the OPEHT came to the following conclusion:

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[195] The Employer indicated that a $0.29 difference in RSMC wages would cost $3.5 million. One can thus infer that $40 million in variable pay is roughly equal to a $3.31 hourly job rate.

[196] See tab 3 of Ms. Beauchamp's Book of Documents.

[197] Previously cited at note 147, p. 314.

[198] *A guide to Interpreting Ontario's Pay Equity Act*, previously cited at note 188, p. 50.

[199] *Town of Midland and Ontario Public Service Employees Union, Local 328*, (1987), 31 L.A.C. (3d) 251 and *Re Religious Hospitallers of Hotel-Dieu of St. Joseph of the Diocese of London and Service Employees' Union, Local 210*, (1983), 11 L.A.C. (3d) 151.

> "[23] It is our view that the meal break period for employees in the female job classes in Locals 966 and 2101 must be considered time worked, as employees are subject to the control and direction of the employer. Article 17.01 clearly provides that employees must be available for work during this time. We hold that the paid meal break is not a benefit that must be included in the calculation of compensation for these job classes."[200]

**The Tribunal's conclusions**

[745] In the present matter, the uncontested evidence is that LCs are still under the Corporation's control when taking their breaks. They may communicate with supervisors during that time and they are not to use their corporate vehicle to engage in personal activities. During their lunch hours, LCs are to remain on their route of travel, unless authorized by a supervisor to run errands.

[746] Thus, it stems from the above that the LC hourly rate cannot be grossed up as the Union's expert did, since LCs remain under the Corporation's control during their paid breaks, which are integrated into their eight-hour day.

**Overtime, weekend and night shift premiums payments**

[747] On overtime, Mr. Durber writes that:

> "In the "Productive Rate Analysis", a total dollar value was reported for various levels of overtime (straight time, time and a half and double time) for male jobs. There is one rate (x1.5) for "extra work overtime" for RSMCs.
>
> On average, the male comparator jobs were paid between $2,799 annually and $6,241. Given population figures for those jobs, the average is likely about $3,000. A figure of $81.00 is calculated for the RSMCs.
>
> There are three wage discrepancies apparent in respect to overtime between the RSMCs and the male comparator:
>
> - Rules for granting overtime differ, to the extent that the RSMCs do not have equal entitlements to overtime
> - The resulting amount of compensation is higher for the male comparators, and
> - The actual hourly rate, which is noted above, is inequitable.
>
> I would conclude that in this aspect of compensation there is an inequity. Given differing rules for overtime, one can recalculate overtime that has been claimed by RSMCs by substituting equitable rates. However, it would be difficult to assign a reasonable monetary value for what overtime could have been under equal access rules or equitable rates. Ongoing equity should be more readily established by the parties."[201]

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[200] 1992 CarswellOnt 6644; see also *Ontario Northland Transportation Commission v. TCU, Lodge 1463*, previously cited at note 170.

[201] See Mr. Durber's October report, based on the Union's productive rate analysis (Exhibit 13 C).

[748] Mr. Durber also indicated that weekend premiums contribute to the wage gap between RSMCs and LCs.

[749] The Union argues that the Corporation should be ordered to negotiate with them on access to the same overtime pay comparable to LCs. Counsel for the Union also argued that weekend overtime should have been included in LC compensation for the purposes of assessing the wage gap. CUPW also specifically requests the following remedy:

> "The Corporation be ordered to negotiate with the Union on access to overtime pay comparable to the Letter Carriers and to be effective no later than 30 days of the award The Corporation would be ordered to pay RMSCs for all hours worked within 30 days of the order (similar process as the letter carriers)."

[750] The Corporation asserts that since overtime is excluded from the job evaluation process, it should also be excluded from the wage calculations. On the notion of weekend and shift premiums, CPC argues that they should not be included for the same reasons, but that, in any event, there is not evidence that the weekend compensation is less for RSMCs than what is paid to LCs in such a circumstance. Regarding access to overtime, CPC affirms that granting that request would be highly disruptive to the collective agreement and cannot be granted.

**The Tribunal's conclusions**

[751] As it appears from the following case law that the legislation supports the exclusion of overtime payment in both the assessment of job value and the calculation of direct wages for the purpose of pay equity reviews.

[752] Section 8(2) of the Guidelines states that:

> "Working Conditions
>
> […]
>
> (2) For the purposes of subsection 11(2) of the Act, the requirement to work overtime or to work shifts is not to be considered in assessing working conditions where a wage, in excess of the basic wage, is paid for that overtime or shift work."

[753] Thus, it is only natural that overtime wages be excluded from the pay equity review, in what the CHRT called a "neutral policy trade-off" in *PSAC* v. *Canada Post*.[202]

[754] Regarding access to overtime, it is to be noted that RSMCs benefit from a 1.5 ratio of their RMS derived hourly wage rate and that LCs benefit from the same 1.5 ratio of their hourly rate for overtime payment. The fact that RSMCs perform less overtime than LCs is a direct consequence of their respective compensation plans and the averaging of their standard hours of work in accordance with subsection 169(2) of the Canada Labour Code. As seen previously, the LC compensation plan is fixed and does not allow for adjustments in the regular hours, while the RSMC's is more flexible in that regard. These working conditions are not intrinsically illegal or discriminatory.

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[202] Previously cited at note 114, para. 164.

[755] That being said, the above does not imply that RSMCs cannot perform overtime on their own route during specific, high volume, circumstances (for instance, during the Holiday season), as per article 13.04, since these circumstances are temporary, and do not require a permanent change as per article 13.02 of the collective agreement. This implies that the Corporation cannot expect that RSMCs will complete their route while it is aware of a particular situation requiring more hours than the 80 hours averaged over a two-week period.

[756] The evidence demonstrates that RSMCs perform overtime, as the collective agreement permits, under certain conditions which fall within the usual management rights of the Corporation (13.04 of the agreement). At face value, the provisions of the collective agreement are not discriminatory and nothing in this regard justifies the Tribunal's involvement in this matter under the scope of the pay equity review.

[757] In light of the Tribunal's findings regarding the collective agreement's overtime provisions, the Union's demand of equal access to overtime pay is rejected as well.

[758] On the issue of including overtime wages in the direct compensation, the Undersigned shares CHRT's position, taken in *PSAC* v. *Canada Post,* that they should be excluded from the direct wage calculations.

[759] For the same reasons, weekend and shift premiums should be excluded, especially since LCs do not benefit from shift or weekend premiums. Again, the compensation method is different, since RSMCs are paid when working during the weekends on a voucher system and are not called upon to work weekend or night shifts.

## N. ASPECTS OF INDIRECT COMPENSATION

[760] In this section shall be covered the following: legal principles of indirect compensation, indirect compensation and benefits, and the parties' position.

### Legal principles of indirect compensation

[761] The *Dictionnaire canadien des relations du travail*, defines indirect wages as follows:

> "Salaire indirect – *indirect wage*
>
> 1. Salaire qui revient à l'employé sous forme de prestations ou d'avantages sociaux divers. […]"[203]

[762] The CHRT clarifies the notion of what it calls "non-wage" compensation as follows:

> "[848] Non-wage forms of compensation, sometimes also called in the evidence "non-wage benefits", "indirect compensation", "indirect wages", "indirect remuneration", or even "non-cash wages" or "non-cash remuneration", is the term

[203] Gérard DION, previously cited at note 174, p. 429 and 430.

> that has arisen most frequently to include all forms of compensation itemized in subsection 11(7) of the Act, other than base wage or salary."[204]

[763] Mr. Chaykowski, in a study commissioned by the Pay Equity Task Force, indicates that non-wage benefits are sometimes hard to quantify and can be varied:

> "In view of the gaps in benefits coverage by sex, it is vital to account for the full range of the forms or methods of compensation in order to determine a comprehensive measure of pay. In some cases, however, quantifying their value may be difficult.
>
> […]
>
> Non-wage benefits are, generally, an increasingly important component of total compensation. The number and prevalence of the types of benefits has increased over the past several decades, and may include pension plan, life insurance, supplemental medical and dental care, a group RRSP, stock purchase plans, maternity-layoff benefits, and other benefits."[205]

[764] The Pay Equity Task Force suggests the following regarding non-wage benefit:

> "Given the range of monetary benefits, the main types of monetary benefits (paid time off, group insurance, non-wage benefits) should be specified in the legislation, for the purpose of clarity, along with examples.
>
> […]
>
> In fact, as with flexible pay, we find that a sequential approach would be appropriate, and would consist of the following steps:
>
> First, it must be determined whether the non-wage benefit is equally accessible to all job classes being compared.
>
> ➤ If it is, there is no need to include it in compensation for the purposes of estimating wage gaps.
>
> ➤ If not, there are two options:
>
> • the benefit can be granted to predominantly female job classes that currently do not enjoy that benefit; or
>
> • the value of the benefit can be estimated and included in compensation for the purpose of wage comparisons.
>
> As Ontario's Pay Equity Hearings Tribunal asserted[206]:
>
> > Where the compensation paid to a female job class must be adjusted to achieve pay equity that adjustment may be made to wages or salaries, to benefits, or to a combination of the two."[207]

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[204] *PSAC* v. *Canada Post Corporation*, previously cited at note 114.

[205] Richard P. Chaykowski. (2002). *Implementing Pay Equity in the Context of Emerging Workplaces and Employment Relationships*. Unpublished research paper commissioned by the Pay Equity Task Force, p. 32 and 43.

[206] Ontario's Pay Equity Hearings Tribunal, *Lady Dunn General Hospital* (1991), 2 P.E.R. 168.

[207] Pay Equity Task Force, previously cited at note 147, p 324.

[765] The Pay Equity Task Force provides national suggestions on how to estimate these different types of benefits:

> "The proposed Canadian Pay Equity Commission will need to develop guidelines for assigning a monetary value to benefits. Below we provide an overview of options for estimating benefits:
>
> - Time-related benefits: Vacation leave, statutory holidays, floating holidays, leave without pay for various reasons, and parental and family leave. For this type of benefit, the determining criterion should be equal access for the job classes compared. However, where applicable, cost would be calculated on the basis of salary (or on employer contributions to the various group plans for a leave without pay). Maternity leave is not included in benefits for pay equity purposes since it is addressed to a different issue of discrimination concerning women, and it is a statutory requirement.
> - Group coverage benefits: Pension plans, life insurance, disability insurance, drug insurance, health insurance. Cost should be based on employer contributions. For flexible plans, the estimation will be based on the total amount the employer allocates for each job class compared.
> - Non-wage benefits: Tools, uniforms and clothing must be included based on cost to the employer, unless required by occupational health and safety legislation. Other expenses such as parking, payment of professional dues, paid educational leave and reduced-rate loans should be included, based on the cost to the employer."[208]

[766] Overall, the question of non-wage gap compensation is further divided into two levels of analysis, as described below by the CHRT:

> "[851] In effect, the Tribunal is examining the question of "indirect compensation" at two levels. The first level is the impact of the non-base salary elements specified in subsection 11(7) on the definition of "wages". The second level is the inclusion in any wage gap adjustments, not only adjustments to the base salary or direct wage, but also to the non-salary elements, as may be appropriate.
>
> [852] Presumably, this becomes an issue only if the non-salary elements have not been costed, and therefore, not included in the employer's definition of "wages". If they have been costed and included in "wages", their value will be reflected in any resulting wage adjustments. The employer will, understandably, have to deduct from an individual employee's gross wage adjustment such items as relevant income tax and incremental pension plan contributions. The employer will have, however, an additional liability in terms of making remittances against any wage adjustments that may be required under statutory-based non-salary obligations which are jointly supported by employee and employer, such as pension plan contributions."[209]

[767] In a document titled *Implementing Pay Equity in the Federal Jurisdiction*, the Canadian Human Rights Commission indicates the following concerning benefits:

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[208] Pay Equity Task Force, previously cited at note 147, p 325.
[209] Previously cited at note 114.

> "Section 11 of the Canadian Human Rights Act speaks of comparing wages. Wages, as the Guidelines make clear, do not refer only to cash salaries. Indirect compensation such as vacation time, health plans and allowances should also be factored into comparisons. This is only fair: if men and women doing jobs of equal value received the same cash salaries but different amounts of time off and different levels of health coverage, their compensation could hardly be viewed as equal.
>
> When setting out to compare benefits for equality, the first step is deciding what the basis for comparison should be. Under section 11(7)(d) of the Act, three kinds of benefits must be compared on the basis of employer's contribution to plans: pension measured either as a percentage of employees' salaries or in simple dollar terms.
>
> All other benefits are, as a matter of Commission policy, compared on the basis of their availability to the occupational groups in question. Availability can be measured in different ways, depending on the nature of the benefit. For example, it may mean the number of days employees are allowed to take off during a year for vacation or a dollar figure for a premium. Whichever methodology is used to make the comparison, no further action is required if benefits enjoyed by the groups in question are found to be equal. If, on the other hand, they are found to be unequal, their precise value in monetary terms must be calculated and the gap between them identified. In the case of benefits failing under section 11(7)(d), that gap is simply the difference in the size of the employer contributions to the plans. For all other benefits, an attempt should be made to determine value based on maxim entitlements; for instance, the maximum amount of time an employee may take off. Where valuing based on maximum entitlement is not possible, actual usage may have to be employed to establish value; this would be necessary, for example, where an allowance is triggered by a sporadic occurrence such as dirty work.
>
> Where the gap in benefits is found to be insignificant in monetary terms – worth no more than a few cents an hour – it often may be disregarded. Where the gap is found to be significant, equalization can be achieved either through modification of pay equity adjustments or by extension of the same benefit to all groups. Where calculation of the gap in monetary terms is not possible, equalization can be achieved only through the latter course, extension of the same benefit."[210]

### Indirect compensation and benefits

[768] In the following paragraphs, indirect compensation and benefits shall be treated as the following groupings: Disability and Life Insurance and Retiree coverage, Leave entitlements, and others. For each grouping, Mr. Durber's analysis will be provided, followed by the Mercer costings when applicable. Finally, a summary of Ms. Haydon's October report findings on indirect compensation will be provided.

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[210] Paul Durber, March 1992, p. 12 and 13; A note on the front page of the document indicates that "This document reflects the views of the CHRC at the time of publication and is subject to development in jurisprudence and academic theory".

[769] Since overtime was addressed in the previous section, it has been removed from Mr. Durber's list. Similarly, although Mr. Durber treated the Glove allowance and the Isolation Post Allowance as part of direct compensation, they should be treated as indirect compensation and, as such, appear below.

**Disability, life insurance and Retiree coverage**

- Life insurance and Death Benefits:

  "[Durber] Analysis: The benefit is unequal for RSMCs. This is a matter of equality of access, but the parties will work out the details of any monetary value."

- Dental Plan and other Health-Related benefits – Retirees:

  "[Durber] Analysis: There may be a question of whether these benefits, which affect active employees and the choices they have to make with respect to retirement in light of health care benefits, are still covered by Section 11 since they apply directly to retirees. In my opinion, the aspect of equality in choice is covered. The parties have also agreed to include this element in pay equity analysis.

  If so, then these several benefits (all on the list of items that the parties have agreed need to be assessed as part of the RSMC Study, and are listed in the Corporation's 22 September 2017 Costing document) are unequal for the RSMC jobs."

- Disability Insurance:

  "[Durber] Analysis: The level of benefits to an RSMC employee in comparison with an Urban employee is unclear. The September 22nd 2017 document sheds no light on this matter. There is no indication of premiums or sharing in their cost in respect of RSMC employees. The fact that Disability Insurance (Urban) and Extended Disability Program (RSMC) are listed separately in the Summary of compensation elements indicates only that they are separate. Whether they are equal is not clear.

  It is difficult to say whether these two distinct elements to disability entitlement are equal, and the parties will need to ensure that they are, or else address any inequality."

[770] Mercer consultants estimate that the total annual difference in employer-paid costs for the above is $1,480 per employee. In total, this represents an annual sum of $11M for 7,437 RSMCs.[211]

[771] Of note is that Mercer, as directed by CPC, used January 1, 2016, as the date for continuous service calculations regarding post-retirement benefits (life insurance, death benefit, dental and health-related benefits), as it is the date of retroactivity outlined in the MOU.[212]

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[211] In its Benefits Costing Report's Appendix B, Mercer consultants' data used for the valuation show an average salary of $41,272 for RSMCs as of December 31, 2014. The cost estimates of the report have been adjusted to reflect the current number of RSMC workers and median salary level ($39,883, including variables value).

[212] Exhibit 66.

**Leave entitlements**

- Vacation (or annual) leave:

  "[Durber] Analysis: the entitlement is higher for RSMCs in terms of paid days of work a month for earning entitlement, but less for RSMCs having between seven and 10 years of experience, and less for higher periods of service."

[772] Mercer's costings for the 1,264 RSMCs that currently have completed seven, eight, or nine years of service (as of December 31,2017) is $969,463 annually.

- Marriage, birth/adoption & special (including bereavement) leaves:

  "[Durber] Analysis: While many special leaves offer parallel benefits, marriage leave and birth leave (two days to spouse) as well as adoption leave is less for RSMCs than for Urban jobs; the entitlement for bereavement leave is also more limited in one respect for RSMCs; court leave is narrower in circumstances and has different impact on pay in terms of leave."

- Leave for other reasons including care and nurturing leave:

  "[Durber] Analysis: Entitlements are unequal though possibly without monetary value, with lower level to RSMCs."

[773] Mercer's costings for the birth or adoption leave is $26,623 annually. For Special leaves, it is $153,396 annually.

- Pre-retirement Leave:

  "[Durber] Analysis: The entitlement is less for those aged 60 with at least five years of service."

[774] Mercer estimates that it would cost $842,911 to CPC annually for Pre-retirement leaves.

**Others**

- Sick Leave:

  "[Durber] Analysis: The RSMC entitlement is less than the Urban jobs: in a shorter entitlement to Sick Leave of Absence without pay. This is a disadvantage (especially re access to health benefits), which should be considered in the achievement of equitable treatment in compensation."

- Provincial Health Care Contribution, British Columbia:

  "[Durber] Analysis: The benefit is not available to the RSMC jobs, and is therefore unequal."

[775] Mercer's consultants indicate that the annual cost of contributing 70% of the premium rates for the 671 RSMCs in British Columbia would be $211,365.

- Worker's Compensation (Injury on Duty Leave):

  "The benefit is less for RSMCs than for Urban employees."

[776] Mercer consultants have concluded that since there is no compensatory loss for RSMCs and only a different administrative process, there is no costing to be done for the Injury on Duty Leave.

- Displacement Lump Sum:

> "[Durber] The parties in discussions initially looked to exclude this benefit from discussions, perhaps because the circumstances of displacement of RSMCs were thought not to apply. [See Summary document in respect of elements of compensation, item number 26.] More recently, however, the union has noted that benefit should be examined as below:
>
> […]
>
> Analysis: The benefit, if circumstances are applicable to RSMCs (which the parties need to determine), is unequal. The value is also clearly stated."

- Isolated Post Allowance:

[777] Mr. Durber indicates that RSMCs do not receive an Isolated Post Allowance, contrary to LCs and that, where conditions for both jobs are parallel, provisions should be the same to be equitable. Mr. Durber has not costed that element. Mercer consultants indicate that the annual costing for the 44 RSMC routes considered in isolated areas is $146,456.

- Glove Allowance:

[778] Mr. Durber indicated that RSMCs should also receive the Glove Allowance. Ms. Haydon included the Glove Allowance in her direct wages calculations. The glove allowance, as per article 34.05 (a) (ii) of the Urban collective agreement, is $20 annually, payable on October 1 each year.

**Mr. Durber's summary of findings**

[779] Mr. Durber summarizes his findings as follows:

> "Of fifteen elements of indirect compensation, 14 provide unequal entitlements to the disadvantage of RSMCs in one respect or the another (with an advantage to RSMCs in the minimum number of paid days for earning vacation entitlement). The fifteenth is unclear."

[780] Mr. Durber indicated that these inequities could be solved either through equal access or by costing them when applicable. However, Mr. Durber did not cost any of the elements of indirect compensation.

**Ms. Haydon's October and January reports**

[781] Although Ms. Haydon and the Corporation first treated indirect compensation in the October report, CPC submitted two reports on the matter from the Mercer consulting firm in January 2018, along with Ms. Haydon's second report. Consequently, the latter did not cover this subject in her January report.

[782] In her October report, Ms. Haydon indicates that:

> "While direct wages do not demonstrate a wage gap between Letter Carrier and RSMC, the Canada Post methodology has also analyzed indirect wages and has determined that there is a gap that requires remedy. […]
>
> Canada Post has calculated that […] there is a gap of $9.0 million. In addition, Canada Post has identified an annual leave gap of $1.2 million. In total, Canada Post has identified a gap of $10.2 million between Letter Carriers and Rural and Suburban Mail Carriers that requires remedy to achieve compliance."

[783] In her January report, Ms. Haydon provided a list of items which Mr. Durber considered in his October report. She then stated that given that the CUPW has not costed any of the elements, no further comment was provided at this point.

**Mr. Durber's reply report**

[784] In his reply report, Mr. Durber stated the following:

> "168. The parties spent considerable time seeking to identify those elements of indirect compensation where there was equal treatment, or where the element could be set aside for the purposes of calculating any wage gap that might be assessed. I do not see that the methods for treating indirect compensation elements were subject of agreement between the consultants or the parties. The three methods that were discussed were equality of access to indirect compensation elements, equal level of the benefit, and the cost or usage of the benefit. The treatment of these matters in the Haydon Report of October 2017 is as follows: [no citation appears in Mr. Durber's report]
>
> 169. It appears that the report takes employee usage or cost to the Employer as its approach. An amount is also given on page 34 for "annual leave". There is a distinction to be made between a gap in value for the past, where a gap adversely affects RSMC jobs, and for which an amount needs to be derived for purposes of making employees of those jobs whole, and ongoing closing of the gap. The latter, judging from pay equity practice noted above, equalizing the formulas for a benefit is in fact the most equitable.
>
> 170. Apparent issues, highlighted in my October 2017 report, include different treatment of aspects of compensation for purposes of pension contributions. Examples are parcel delivery payments, integrated into salary of male comparators but not RSMC jobs; extra work time that can also count for pensionable salary.
>
> Conclusion
>
> 171. For the retroactive period involved in the study – back to 1 January 2016 – to make the RSMCs "whole", the value of unavailable, or unequal benefits, would need to be costed, with distribution to be set on an individual basis. In my October Report, Part III, I did not do this costing. Data are in the possession of the Employer and have not been shared with me. Moreover, there would be two costing exercises: one for an approximate amount, by each element where entitlements differ and are impacted by any wage gap, during that period; another for costing at the level of the individual. For ongoing purposes, these indirect elements of compensation need to be modified to ensure equal entitlements."

**The Union's position**

[785] The RSMCS has unequal entitlements on fourteen of fifteen elements of indirect compensation.

[786] Therefore, the Union seeks that the RSMCs be entitled to the following benefits and leaves effective January 1, 2016, as described in the Mercer Indirect Compensation and Benefit reports, save one exception: Disability Benefits; Life Insurance and Death Benefit; Post-Retirement Health Plan; Post-Retirement Dental Plan; Post-Retirement Term Life and Death Benefit; Isolated Post Allowance; BC Medical Premium; Annual Leave; Special Leave; and Pre-Retirement Leave.

[787] As part of the reports, Mercers applied an eligibility date of December 15, 2015. The report assumed that RSMCs "would need to complete 15 years of service after December 15, 2015 to be eligible". Mercer's did not reference the RSMCs with fifteen years of service and seniority as of January 1, 2016. The report demonstrated a significant ambiguity. Mercers did not analyze the unequal opportunity created by the RSMC's historic lack of access to the post-retirement benefit. There is no acknowledgement of the potential human rights impact of requiring RSMCs to wait another 15 years for access to post-retirement benefits. In short, the discrimination would be perpetuated for another 15 years.

[788] Thus, the Union seeks an order that the continuous service date for the applicable post-retirement benefits be calculated using the effective date of January 1, 2004 for the calculation of employee's continuous service.

[789] The Union also demands that the money value of PCIs, lock changes and admail be accounted for in the RSMCs pension calculations. This question will be treated in the Remedies section.

**The Corporation's position**

[790] The Corporation asserts that RSMCs and Letter Carriers enjoy many of the same group benefits and leave entitlements. The two groups have the same entitlements under the Extended Health Care Plan (EHCP), Short Term Disability Plan, vision and hearing, and dental benefits. It adds that they receive the same maternity leave and maternity allowance, adoption leave and allowance, and personal days as LCs. They have similar entitlements to court leave and bereavement leave as LCs. Both groups have the same benefit and leave entitlements for work-related injuries, save for the administrative process, which does not result in compensation loss for RSMCs.

[791] While the parties do not agree on the treatment of certain non-monetary items, they agree that the following items should be included: basic life insurance, contribution to the provincial medical insurance plan premium for employees in British Columbia, post-retirement benefits, isolated post allowance, different long-term disability coverage and premium cost sharing, entitlement to the same vacation leaves, pre-retirement leave, and personnel selection leave, examination leave, marriage leave, and career development leave.

[792] Overall, CPC claims that the least disruptive and most appropriate approach to determine pay equity is to assess the monetary value of the benefits and include them in the comparison along with monetary items.

**Retroactivity date**

[793] Post-retirement benefits have several eligibility requirements on the Urban side, including that employees must have accumulated 15 years of continuous employment at the time of retirement.

[794] The MOU restricts the Corporation's liability for any potential pay equity adjustment by creating a limit on the retroactivity of the award. As per subsection 7(b) of the MOU, retroactivity is limited to the period spanning from January 1, 2016 to the conclusion of the pay equity review.

[795] The consequence is that the service accrual date for eligibility for applicable benefits must begin no earlier than January 1, 2016.

[796] Furthermore, CPC accounts for the applicable benefits in its financial statements as a liability, accrued on an annual basis, for each year that employees accumulate service time, up to 15 years. The Corporation cannot be expected to accrue liabilities retroactively prior to January 1, 2016. Allowing RSMCs to be eligible for these benefits beginning in 2004 would be financially detrimental to the Corporation and would be inconsistent with the retroactivity clause of the MOU.

**Displacement lump sum**

[797] The displacement lump sum does not apply to RSMCs and, as such, does not have to be assessed. This benefit aims to compensate Urban employees having been displaced permanently from one working site to another. RSMCs are not displaced from one place to another and, as such, the lump sum does not apply to them.

**Unpaid leave**

[798] Because unpaid leaves of absence have no monetary value, they should not be included in any assessment of a wage gap. Mr. Durber included in his October report unpaid leaves to which RSMCs should be granted access such as: sick leave without pay, education leave, leave without pay for relocation of spouse, military leave, and leave without pay for nurturing pre-school age children. The Union provided no monetary value for these items.

**Pensionable service**

[799] The parties agree that RSMCs and LCs participate in the Pension Plan under the same terms as employees under the Urban collective agreement. Employees with the same earnings would receive exactly the same pension. Both plans are calculated using a full-time equivalent salary which is reduced proportionally for part-time employees. The fact that full-time equivalent salary is different is not a pay equity issue.

[800] Subsection 11(7)(d) of the Act provides that employer contributions to the plans be included in wages, but no evidence was provided to support that there is a wage gap in employer contributions to the Pension Plan.

[801] Also, the pension plan specifically excludes variable pay for all employees of the Corporation. Yet, the Arbitrator does not have jurisdiction to change the pensionable service maximums or to include PCIs in the pensionable service.

[802] Any order from the Arbitrator to include PCIs in RSMCs pensionable earnings would raise issues under the Pension Plan and applicable pension legislation and may require the approval of the Office of the Superintendent of Financial Institutions, as the Pension Plan text does not recognize variable payments in pensionable earnings.

[803] In appreciating the CUPW's requests, it is important to remember that the Arbitrator does not have jurisdiction to amend the collective agreement unless required to do so by the Act or any other public order statute. Such is not the case here, therefore the Tribunal cannot grant the Union's requests on that matter.

## Analysis and decision

### Unpaid leaves and worker's compensation

[804] LCs are entitled to certain leaves without pay to which RSMCs have no access. These are: sick leave without pay, education leave, leave without pay for relocation of spouse, military leave, and leave without pay for nurturing pre-school age children.

[805] It is apparent that throughout the legislation and case law, the notion of wages is treated as something having a monetary value. Indeed, article 11(7) defines wages as "[…] any form of remuneration payable for work performed by an individual […]". The words "remunerate" and "payable" clearly indicate that the wages must have an ascertainable value.

[806] Therefore, unpaid leaves are excluded from the scope of this review. It is not within the Tribunal's purview to settle question of access to non-wage conditions that are not part of the RSMC compensation. This will be further elaborated on in the following Remedies section. The MOU precisely indicates that the pay equity review was undertaken to identify and resolve a potential wage gap at its article 7(b):

> "The pay equity analysis will examine whether there is gender-based wage discrimination as defined under the Act and the Guidelines with regard to the RSMC female predominant group or groups for the period from January 1, 2016 to the conclusion of the pay equity review."

[807] Similarly, since RSMCs receive the same amount of money as LCs under the worker compensation scheme (injury on duty), there is no reason for the Tribunal to intervene. The evidence shows that RSMCs' payments are administered differently, but that they do not receive a lesser amount. Again, such a potential issue is beyond the scope of this review.

### Glove allowance

[808] It is undisputed that there is a discrepancy between how LCs and RSMCs are treated regarding the glove allowance: the former receive $20 annually on October 1 and the latter do not. As such, the glove allowance should obviously be part of RSMC wages. Indeed, Ms. Haydon had included the amount in her methodology.

[809] Nevertheless, I have not retained Ms. Haydon's methodology and no demand or suggestions have been formulated by the parties regarding that issue. No evidence has been adduced to allow the Undersigned to adjudge the issue of how best to equalize this item. Should it be integrated through a monetary sum or be granted access? The Tribunal has insufficient information to conclude on this matter.

[810] Thus, a solution must be devised by the parties to seamlessly integrate the glove allowance to the RSMCs' compensation.

**Displacement lump sum**

[811] On that issue, the parties have simply pleaded their opposite views. Mr. Durber sustains that, at first, the Union considered that it should not be part of the issues but changed its stance thereafter. CPC asserts in its arguments that it is not to be considered in this review, since it is not applicable to RSMCs and demands that the item be removed from the analysis.

[812] Beyond the contradictory arguments of both parties, no evidence on the issue has been adduced by either one of them. As such, the Undersigned cannot be expected to adhere to one position or the other, and, consequently, the issue shall be referred back to the parties.

**Other indirect benefits**

[813] In regards of all the benefits mentioned above, the Union demands full equal access, while CPC asserts that the least disruptive and most appropriate approach is to cost each item.

[814] As stated by the Pay Equity Task Force, neither costing nor granting benefit is always the most appropriate remedy:

> "The proposed Canadian Pay Equity Commission will need to develop guidelines for assigning a monetary value to benefits. Below we provide an overview of options for estimating benefits:
>
> - Time-related benefits: Vacation leave, statutory holidays, floating holidays, leave without pay for various reasons, and parental and family leave. For this type of benefit, the determining criterion should be equal access for the job classes compared. However, where applicable, cost would be calculated on the basis of salary (or on employer contributions to the various group plans for a leave without pay). Maternity leave is not included in benefits for pay equity purposes since it is addressed to a different issue of discrimination concerning women, and it is a statutory requirement.
> - Group coverage benefits: Pension plans, life insurance, disability insurance, drug insurance, health insurance. Cost should be based on employer contributions. For flexible plans, the estimation will be based on the total amount the employer allocates for each job class compared.
> - Non-wage benefits: Tools, uniforms and clothing must be included based on cost to the employer, unless required by occupational health and safety legislation. Other expenses such as parking, payment of professional dues,

> paid educational leave and reduced-rate loans should be included, based on the cost to the employer."[213]

[815] As Mr. Durber mentioned in his reply report, based on his experience, equalizing benefits is the most equitable option when bridging the indirect benefits gap. He concludes his analysis on indirect compensation as follows:

> "171. For the retroactive period involved in the study – back to 1 January 2016 – to make the RSMCs "whole", the value of unavailable, or unequal benefits, would need to be costed, with distribution to be set on an individual basis. In my October Report, Part III, I did not do this costing. Data are in the possession of the Employer and have not been shared with me. Moreover, there would be two costing exercises: one for an approximate amount, by each element where entitlements differ and are impacted by any wage gap, during that period; another for costing at the level of the individual. For ongoing purposes, these indirect elements of compensation need to be modified to ensure equal entitlements."

[816] From the Pay Equity Task Force's and Mr. Durber's positions, it flows that both options are available to the Adjudicator. While the solution does not have to be perfect, it nevertheless must redress the discriminatory issue in a fair and equitable manner going forward. Sometimes that is done through costing of the benefit, while sometimes it is best to grant access, such as for equalizing time-related benefits. Therefore, careful examination of each situation is required to adopt the alternative that will optimally address the inequity for both the past and the future. The number and nature of the benefits require to go beyond a unique approach. Granting access is not necessarily always the most disruptive solution available.

[817] In the present matter, the evidence shows that the parties have discussed the list of items and the potential ensuing wage gap. However, it is apparent that both consultants elected under the MOU have not completed their work jointly on this issue. Thereafter, the parties have presented solutions that are one-dimensional and do not account for the specifics of each benefit to be treated, despite that both experts indicated in their October reports that further work was necessary. Mr. Durber stated it again in his reply report: the work is incomplete. This is made obvious when contrasting the work done and the evidence adduced with, for instance, what was achieved and presented regarding the job evaluation process.

[818] Essentially, the evidence on indirect benefits was limited to demonstrate that there is unequal access, which represents a given cost for each item as determined by the Mercer consultants.

[819] Evidently, the question of which method would be the most appropriate for each benefit remains wholly unanswered. The parties have not indicated to the Undersigned how their approach would be integrated and what would be its potential benefits or hindrances, and which one would better serve the objectives of the Act. Once again, the Tribunal is left to speculate on the best avenue to elect.

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[213] Pay Equity Task Force, previously cited at note 147, p 325.

[820] It is manifest that it would be highly unwise of the Tribunal to elect one solution or the other, without the parties having completed their analysis on this issue and without the necessary evidence being adduced. Given the magnitude of the case, the importance for the parties going forward, and the rushed analysis that was conducted, this aspect of the wage gap must be referred back to the parties. The actual work done, and the evidence presented does not allow the Undersigned to give the rights protected under the Act their full recognition and effect. The Tribunal must have all the necessary and crucial elements before it to allow an appropriate treatment of this aspect. Granting either one of the parties' request would be prioritizing a swift resolution over finding the most appropriate one, aligned with the objectives of the Act.

[821] Moreover, the potential consequences of the inclusion of variables on pensionable compensation would have to be studied, given the Arbitrator's conclusions regarding PCIs. The impact of the Tribunal's earlier findings must be assessed as a whole in the elaboration of a sensible remedy.

[822] Thus, the parties must assess and measure the impact of each approach in order to evaluate which one would serve the purpose of the Act better depending on the nature of the benefit. Clearly, due to the consultants' early cessation of their joint work, they have not had an opportunity to exchange on the matter, as per the intent of the MOU to come to an agreed upon solution.

Date of retroactivity for pensionable service

[823] On this issue, the MOU is very specific, the parties chose January 1, 2016, as the date of retroactivity and they have not mentioned the possibility of exceptions. Furthermore, given the significant liability incurred on such a short time for the Corporation, it is highly unlikely that it would have agreed to such a sweeping scope for the retroactivity.

[824] As such, the Union's demand is rejected.

## O. REMEDIES

### Resolved and outstanding issues

[825] It is worth listing below the issues that have been dealt with so far in this award:

- Aspects of the job evaluation: the exclusion of the PREs, the appropriate emotional level, the weightings, the points progression, the split of jobs, the most reliable results.
- The direct or indirect comparison.
- The wage assessment methodology: which methodology should be retained and which adjustments should be made to Mr. Durber's methodology (an RMS derived hourly job rate, based on a full-time eight hours per day basis).
- What should be included in direct wages: the weighted average maximum rate should be used, variables should be included (with the necessary adjustments).

What should be excluded: vehicle expenses, paid meals and breaks, overtime and night/weekend shifts.

- What elements should be excluded from the indirect compensation: unpaid leaves.
- Which date of retroactivity should be used for pensionable service.

## The position of the parties

### Position of the Union

[826] The Union indicates that a few general principles should guide the Arbitrator in crafting a remedy under article 53 of the Act and its related provisions: ensure effective remedial, be innovative and flexible, be mindful of the broad remedial powers provided under the Act, craft remedies designed to educate individuals where appropriate, consider historical patterns of discrimination, and be alert to the fact that remedial orders designed to redress systemic discrimination can be difficult to implement.

[827] When assessing damages, complainants are not held at a high standard of certainty to receive damages. A Court cannot refuse to make an award simply because the proof of the precise amount thereof is difficult or impossible. An adjudicator must try to the best of their ability in determining the extent of the evidence. If needed, the adjudicator can refer the issue back to the parties to prepare better evidence on what the wage loss would have been but for the discriminatory practice.

[828] Furthermore, CUPW affirms that due to the quasi-constitutional nature of the Act and the importance of systematic discrimination, the Undersigned must, in addition to redress any inequalities in direct and indirect compensation, impose certain changes to RSMC working conditions. In other words, the Union asserts that systematic discrimination demands systematic remedies. Such remedies would be in line with a broad interpretation of the Act and the remedial powers of the Arbitrator that would allow to nullify entrenched systematic discrimination.

[829] The Union demands damages equivalent to the $9.72 derived hourly job rate difference between the LC net rate and the RSMC derived hourly job rate, as per Mr. Durber's methodology.

[830] CUPW thus seeks that CPC be ordered to negotiate a "gender neutral" route measurement system within 12 months of the present award. The Union also seeks the following orders for increased compensation: $0.2975 per PCI, $0.1625 for lock changes and $0.08 per admail piece. Furthermore, CUPW requires the addition of a pensionable time value of 3 minutes for PCIs and a pensionable time value of 5 minutes for lock changes.

[831] The Union requests any further remedies that the Arbitrator deems just.

[832] CUPW demands that the Arbitrator remain seized of any and all issues arising on the interpretation and implementation, inclusive of delay, of any order which may result from her award and order.

**Position of the Corporation**

[833] When determining the appropriate wage rate for comparison purposes, the Adjudicator must follow the following principles: the calculations are to be as accurate as possible, the job rate must be calculated in the manner that is least disruptive to the collective agreements and calculations must conform to the purpose of the Act. The Arbitrator must avoid a result that would be a significant intrusion into the parties existing compensation practices.

[834] Providing LC bargained working conditions to RSMCs would be highly disruptive to the collective agreement. That would create an enormous financial burden and undue hardship to the Corporation. Evidently, the Adjudicator cannot impose to CPC another pay system for RSMCs or the creation of time values that were not negotiated and which are not intrinsically discriminatory.

[835] In the event that a wage gap is identified using the RMS-based methodology, the award of damages should be heavily discounted to reflect the high degree of uncertainty about the accuracy of the RMS derived hourly job rate and the Union's failure to include variable pay in its analysis. The CHRT had applied such a 50% discounting in the aforementioned *Canada Post* v. *PSAC*, which was upheld by Justice Evans in his dissent[214]. The same discounting was applied in other cases.

## Analysis and decision

**Legal principles and jurisdiction of the Arbitrator under the MOU**

[836] The Union relies on many decisions and awards that underline the importance of giving a broad and liberal interpretation to the Act: *Canadian National Railway* v. *Canada*[215], *O'Malley* v. *Simpsons-Sears Ltd*[216] and *PSAC* v. *Canada (Department of National Defense)*[217]. The jurisprudence underlines the importance of taking into account systematic discrimination in the pay equity review.

[837] Under article 15 of the MOU, the Arbitrator has the following powers regarding process and procedure:

> "15. The Arbitrator shall determine the process and procedure for the arbitration, including holding hearings through a teleconference, videoconference or through written submissions, and will have, with such modifications as may be required, all the powers of an Arbitrator under sections 60 and 61 of the Canada Labour Code. The Arbitrator shall have jurisdiction to extend any timelines agreed to under this Memorandum of Understanding and shall be guided by the parties' commitment to complete the pay equity review process."

[838] Articles 60 and 61 of the Canada Labour Code state:

> "60 (1) An Arbitrator or arbitration board has

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[214] Previously cited at note 115, para. 302.
[215] Previously cited at note 112.
[216] [1985] 2 SCR 536.
[217] [1996] 3 FC 789.

(a) the powers conferred on the Board by paragraphs 16(a), (b), (c) and (f.1);

(a.1) the power to interpret, apply and give relief in accordance with a statute relating to employment matters, whether or not there is conflict between the statute and the collective agreement;

(a.2) the power to make the interim orders that the Arbitrator or arbitration board considers appropriate;

(a.3) the power to consider submissions provided in the form that the Arbitrator or the arbitration board considers appropriate or to which the parties agree;

(a.4) the power to expedite proceedings and to prevent abuse of the arbitration process by making the orders or giving the directions that the Arbitrator or arbitration board considers appropriate for those purposes; and

(b) power to determine any question as to whether a matter referred to the Arbitrator or arbitration board is arbitrable.

Power to extend time

(1.1) The Arbitrator or arbitration board may extend the time for taking any step in the grievance process or arbitration procedure set out in a collective agreement, even after the expiration of the time, if the Arbitrator or arbitration board is satisfied that there are reasonable grounds for the extension and that the other party would not be unduly prejudiced by the extension.

Power to mediate

(1.2) At any stage of a proceeding before an Arbitrator or arbitration board, the Arbitrator or arbitration board may, if the parties agree, assist the parties in resolving the difference at issue without prejudice to the power of the Arbitrator or arbitration board to continue the arbitration with respect to the issues that have not been resolved.

Procedure

61 An Arbitrator or arbitration board shall determine their own procedure, but shall give full opportunity to the parties to the proceeding to present evidence and make submissions to the Arbitrator or arbitration board."

[839] Paragraphs 16(a), (b), (c) and (f.1) read as follows:

"16 The Board has, in relation to any proceeding before it, power

(a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce such documents and things as the Board deems requisite to the full investigation and consideration of any matter within its jurisdiction that is before the Board in the proceeding;

[…]

(f.1) to compel, at any stage of a proceeding, any person to provide information or produce the documents and things that may be relevant to a matter before it, after providing the parties the opportunity to make representations;"

[840] As stated in article 15 of the MOU, the Arbitrator "shall be guided by the parties' commitment to complete the pay equity review process".

[841] As per article 16 of the MOU, the Undersigned's decision is final and binding. The Arbitrator remains seized, under article 18 of the MOU, "of any difficulties encountered by the Committee or Parties in implementing the Arbitrator's decision and shall have full jurisdiction to resolve any such difficulties".

[842] The MOU states that:

> "19. In the event that a wage gap is identified, the Parties will have ninety (90) days to negotiate any adjustments, subject to a mutually agreed to extension. Accordingly, the Collective agreement would be changed pursuant to clause 34.02."

[843] In case of difficulties, article 21 states that:

> "If the Parties are not successful in negotiating any adjustment, if applicable, the matter would be referred to the Arbitrator who would have ninety (90) days to hear the matter and render a decision binding on the Committee, the Corporation, the Union and all affected employees. In addition to the one day per month, the Arbitrator shall set aside 10 days that would allow the Arbitrator to hear the matter within the expected timeframe."

[844] In *Canadian Human Rights Commission* v. *Canada (Attorney General)*, the Federal Court indicated that the CHRT has certain duties regarding the assessment of damages. The Federal Court expounded the following:

> "The Tribunal has the duty to assess the lost income or wage loss on the material before it, <u>or refer the issue back to the parties to prepare better evidence on what the wage loss would have been but for the discriminatory practice</u> […]."[218] [emphasis added]

[845] The CHRT indicated that adjudicators must be innovative and flexible when fashioning an effective remedy:

> "[15] That said, constructing effective and meaningful remedies to resolve a complex dispute, as is the situation in this case, is an intricate task. Indeed, as the Federal Court of Canada stated in Grover v. Canada (National Research Council) (1994), 24 CHRR D/390 (FC) at para. 40 [Grover], "[s]uch a task demands innovation and flexibility on the part of the Tribunal in fashioning effective remedies and the Act is structured so as to encourage this flexibility."
>
> [16] Aside from orders of compensation, this flexibility in fashioning effective remedies arises mainly from sections 53(2)(a) and (b) of the CHRA. Those sections provide the Tribunal with the authority to order measures to redress the discriminatory practice or prevent the same or similar practice from occurring in the future [see s. 53(2)(a)]; and to order that the victim of a discriminatory practice

[218] 2010 FC 1135, para. 67.

> be provided with the rights, opportunities or privileges that are being or were denied [see s. 53(2)(b)]."[219]

**Pay equity review process halted precipitately**

[846] In this instance, the work of the Pay Equity Committee was essentially halted at the point of determining the appropriate wage methodology (subsection 7(i) of the MOU). Difficulties between the consultants were evidenced beginning August 2017 and I had then ordered that the experts adduce their reports no later than October 16, 2017.

[847] At that time, the arbitration hearing was to begin in January 2018, which would have left another three months for the parties to pursue their endeavour. Unfortunately, the work of the Pay Equity Committee was halted at this point in time, three months before arbitration.

**The Union's demand that a $9.72 wage gap be recognized**

[848] It is manifest that, in light of the Undersigned's previous findings, the Union's request cannot be granted.

[849] Considering the necessity for the parties to adjust the methodology, as stated above, to which is added the inclusion of variables both in the assessment of direct wages and in the evaluation of the pension benefits, it is inappropriate to render any decision regarding damages at this point of the process.

[850] The time necessary for the parties to proceed with the aforementioned adjustments will not cause prejudice to the parties. On the contrary, it will allow them to find a better and fairer solution that is more equitable to both. It is in their interest to pursue the work that was suspended prematurely to achieve more fruitful results.

**Variable pay to be augmented and made pensionable**

[851] The evidence clearly demonstrates that variable pay is part of RSMC compensation and that, furthermore, it constitutes an important part thereof. That variable pay is not considered in the RSMCs' pension is manifestly discriminatory. With growing parcel volume, this effect on RSMC wages will only worsen.

[852] However, the Corporation's argument regarding the exclusion of variable pay from the Pension Plan and the issues that are raised due to a potential modification of the latter is an important one (the necessity to obtain the approval of Office of the Superintendent of Financial Institutions). Because of these implications, it only reinforces how preferable it is to have the parties disentangle how best to implement those changes, in accordance with the intent of the MOU.

[853] Due to the Tribunal's findings on both the methodology and the pensionable service, the parties have evidently not had an opportunity to jointly analyze the repercussion of these conclusions.

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[219] *First Nations Child and Family Caring Society of Canada et al.* v. *Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 10.

[854] Nonetheless, if the parties cannot agree on a time value for PCIs and lock changes, or another way to remunerate them other than variable pay compatible with the Pension Plan provisions, or obtain the necessary permission, the Tribunal will have the power to amend the collective agreement accordingly. Otherwise, the objective of the Act could not be attained, and discrimination would be allowed to flourish, which is incompatible with a broad and liberal interpretation of the legislation.

[855] The above notwithstanding, the rationale and the consequences of implementing the precise time values and dollar amounts that the Union requests has been left out of the latter's submissions or evidence. This further reinforces the importance and pertinence of referring that issue back to the parties.

**Adopting a gender-neutral route measurement system**

[856] As stated previously, I am not seized of a discrimination complaint at large. The MOU squarely delineates the Tribunal's jurisdiction on the matter: it is limited to wage issues only.

[857] At the risk of being repetitive, the RMS and the RSMC compensation plan are not intrinsically discriminatory. They may not be perfect and some of their flaws may result in questionable outcomes, but it remains within the Corporation's right to use this system and its related compensation plan, as long as it does not result in illegal outcomes.

[858] Therefore, the Union's demand is rejected.

**Final remarks**

[859] It flows from the above-stated legal principles, the provisions of the MOU, the legislation (provisions 60(a.1), (a.2), (1.1), 16(f.1) of the Canada Labour Code), and case law, that it is within the Undersigned's powers to refer a number of issues back to the parties.

[860] Considering the intent of the MOU, the nature of the outstanding issues, their importance, and the requisite work to be finished, it is preferable to refer the outstanding issues to the parties. In the event that they are unable to reach an agreement, the Tribunal shall hear the issues anew.

[861] Considering the complexity of this case, the enormous stakes that are at play for both parties, the absence of exact and correct data on certain issues, it is ostensibly in the interest of the parties and that of justice to proceed with such a remedy.

[862] Therefore, the delays set forth in the MOU must be extended, with the necessary adaptations. Given that, as per article 19 of the MOU, the parties had 90 days following the identification of a wage gap to negotiate the necessary adjustments, the Tribunal finds reasonable to allow the same length (90 days) set forth in that article. The parties will thus have until August 31, 2018, subject to a mutually agreed extension, to present their agreement. If no agreement is reached, the Undersigned, after having consulted with the parties' counsels, will set aside days for arbitration during the Fall of 2018. If desired, the Tribunal will set aside the necessary dates for mediation sessions.

**FOR THE REASONS SET ABOVE**:

Orders the parties to act accordingly;

Reserves jurisdiction to address any and all issues arising on the interpretation and implementation, inclusive of delay, of this award.

Maureen Flynn, Arbitrator

Attorneys for the Corporation: Karen Jensen and Daphne Fedoruk

Attorneys for the Union: Paul J.J. Cavalluzzo and Janet E. Borrowy

Hearing dates: February 18, 19, 20, 21, 22, and 23. March 1, 15, 21, and 22. April 18, 19, and 20. May 2.

File nº MF-1702-31025-FP

Award nº 269-18

# 6. APPENDICES

## APPENDIX A – LIST OF EXHIBITS

Mr. Bickerton's Will Say and Book of Documents: **E-1**

Net Profit Margin of International Postal Operations: **E-2**

Changes to the LCRMS over time: **E-3**

Report to the Committee on Cost per Point of Call – August 2017: **E-4**

Mr. Durber's October 2017 report: **E-5**

Mr. Durber's Reply report: **E-6**

Mr. Durber's Reply report's Book of Documents: **E-7**

Dr. Shillington's Curriculum Vitae: **E-8A**

Dr. Shillington's analysis: **E-8B**

Ms. Haydon's January 2018 report: **E-9**

Ms. Haydon's October report: **E-10**

Amalgamated RSMC data: **E-11A**

Amalgamated LC data: **E-11B**

Corrected graph of Ms. Haydon and Mr. Durber's job value comparison: **E-12**

Ms. Beauchamp's Will-say: **E-13A**

Ms. Beauchamp's Book of Documents: **E-13B**

The Union's Productive Rate Analysis, "RSMC pay equity study", April 19, 2017, listing of agreed and disputed compensation items, Ms. Haydon's presentation dated June 2, 2017: **E-13C**

RSMC Training modules, "Route to a successful start" (English): **E-14A**

RSMC Training modules, "Vers un départ réussi" (French) : **E-14B**

Ms. McMillan's Book of Documents: **E-15A**

Ms. McMillan's Will-say: **E-15B**

CUPW Time and Activity values 2013 including hourly rate: **E-16**

Letter Carrier assessed time and overtime compared to Barb McMillan: **E-17**

075 AMS 2016 Book page 1: **E-18**

Comparison Letter Carrier vs RSMC: **E-19**

HR report on PREs' gender incumbency: **E-20**

Ms. Whiteley's Will-say and Book of Documents: **E-21**

Topic: Best practices for a Rural Restructure: **E-22**

Rural Restructure Strategy Road Map: **E-23**

Decision-Making Practice 9.3.2 – Approve changes to the Urban Route Measurement Systems, January 1, 2007: **E-24A**

Pratique 9.3.2 en matière de prise de décision Approbation des changements apportés aux systèmes de mesure des itinéraires urbains : **E-24B**

Decision-Making Practice 9.3.3 – Approve Changes to an Urban Route, January 1, 2007: **E-25A**

Pratique 9.3.3. en matière de prise de décision Approbation des changements à un itinéraire urbain : **E-25B**

Decision-Making Practice 9.3.4 – Approve Changes to Rural and Suburban Route Management System, January 1, 2007: **E-26A**

Pratique 9.3.5 en matière de prise de décision Approbation des changements à un itinéraire rural ou suburbain (factrices et facteurs ruraux et suburbains) : **E-26B**

Decision-Making Practice 9.3.5 – Approve Changes to a Rural Suburban Route (Rural and Suburb and Mail Carriers), January 1, 2007: **E-27A**

Pratique 9.3.4 en matière de prise de décision Approbation des changements au Système de gestion des itinéraires ruraux et suburbains : **E-27B**

Managing RSMCs, Team Leader Reference Material: **E-28A**

Gestion des FFRS, Documentation de référence du chef d'équipe : **E-28B**

RSMC Delivery Job Aid: **E-29A**

Outil de travail de livraison FFRS : **E-29B**

A new look for RSMC, Nouvel uniforme pour les FFRS : **E-30**

Q&A: Appendix C – Changes to RMS: **E-31**

Overtime Payment Notification (16/10/09 – 16/10/22): **E-32**

Mr. Sinclair's 2016 hourly rate calculations: **E-33**

Mr. Sinclair's Will-say and Book of Documents, Exhibit "I": **E-34**

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List of sub OPS studied in development of A62 standard: **E-36**

A62 Interim proposal for the time value calculations presented Dec. 8, 2005: **E-37**

Mr. Howse's Will-say and Book of Documents: **E-38**

Training program for LCs: **E-39**

Participant Guide National Delivery Agent: **E-40**

National Delivery Agent Training Program: **E-41**

LC Instructor Manual: **E-42**

Mr. McGrath's Will-say and Book of Documents: **E-43**

1605.33 Corporate Manual System, Driver Safety Program: **E-44**

Extracts from the Urban collective agreement expiring January 31, 2018: **E-45**

Ms. Sandra Haydon's Curriculum Vitae: **E-46**

Questions for Focus Group, RSMC Pay Equity Study: **E-47**

Future State Adjusted Summary of Inventory, LRMS: **E-49**

Future State Summary of Restructured Individual Route Assessment, LCRMS: **E-50**

Inventory of Points of Delivery (038): **E-51**

Time Values for the LCRMS: **E-52**

Manuel du Système de Mesure des Itinéraires de Facteur: **E-53**

Ms. Charbonneau's Will-say and Book of Documents: **E-54**

Corporate Manual System (CMS), Delivery Modes and Transfer Points: **E-55**

Extracts from the RSMCs expiring December 31, 2017: **E-56**

Route by Route Average Vs Total Points of Call comparison: **E-57**

RSMC Zones in collective agreement versus Haydon Study #2: **E-58**

Mr. Boutin Will-say and Book of Documents: **E-59**

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Ms. Nurse's Will-say and Book of Documents: **E-61**

Ms. Bolduc's Will-say and Book of Documents: **E-62A**

Mr. Cavaluzzo's Letter of Clarification of language for Ms. Bolduc's Will-say and Book of Documents: **E-62B**

Benefits Costing Report by Mercer: **E-63**

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Answers from Mercer to Union's March 29 Questions: **E-66**

Ms. Whiteley Explanations on Hourly Wages in Tab "N" of her Book of Documents: **E-67**

## APPENDIX B – EXAMPLE OF A SCHEDULE A

### Schedule A1

Schedule A

Page 1 of 4

**Report Schedule A1/ Rapport Annexe A1**
**Route Summary / Sommaire**

| | | | | | |
|---|---|---|---|---|---|
| Depot Name<br>Bureau de poste | BOW ISLAND PO | | | Depot Code<br>Code de dépôt | T893 |
| Route Name<br>Nom de l'itinéraire | BOW ISLAND (AB) RR 1 | RS-RMS Route #<br>No de l'itinéraire RS-RMS | 5277 | Effective Date<br>En vigueur le | 2017/12/19 |

Mail will be available at:
Le courrier pourra être ramassé à: **12:00**

The RSMC shall deliver to the final delivery point located at:
FFRS doit faire la livraison au dernier point de remise situé à: BOW ISLAND POST OFFICE By: Avant: **14:00**

| Major Collection and Delivery Points<br>Principaux points de levée et livraison | Collection and Delivery Times<br>Temps de levée et livraison | |
|---|---|---|
| | | Salary Zone:<br>Zone Salariale: 2 |
| | | Vehicle Expense Rate:<br>Taux régional/dépense de: 1 |
| | | Last inspection date:<br>Dernière date d'inspection: **2017/07/24** |

A complete list of Points of call appears in Schedule A2 Details of Travel / La liste complète des points de remise figure à l'annexe A2, Détails de l'itinéraire

**SORT/TRI**

| HOUSE RESIDENCE | FARM FERMES | APT APP | AMS BUSINESS COMMERCE SGA | BUSINESS DIRECT COMMERCE INTÉRIEUR | Total Points Of Call Total de points de remise |
|---|---|---|---|---|---|
| 8 | 0 | 0 | 0 | 0 | 8 |

***Estimated time for sort portion/***Temps estimé pour le tri : **1 - 3 minutes**

**COLLECTION AND DELIVERY/LEVÉE ET LIVRAISON**

| RMB BLR | CMB BPC | Hi/POC CMB BPC H/PDR | GMB BPM | KSK | LBA BBL | Caller Direct Tri | BUS CNTR COM | BUS EXT COM | BUS SPC COM | Total Delivery Points of Call Total de points de remise livraison | PL Clear Levée AR | RPO Drop CSP | RPO CLR/ other Levée CSP/ autre | SLB BLP | P/ups street level CEUIL niveau rue | P/ups Other CEUIL Autre | Total Collection Points Total point de levée | Daily KM Km/jour | Stops Arrêts |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 0 | 0 | 0 | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 86.00 | 1 |

Estimated time for collection and delivery portion / Temps estimé pour la portion de levée et livraison: **79 - 129 minutes**

Estimated time to complete service/Temps estimé pour compléter l'itinéraire: **81 - 131 minutes**

*** Estimated Time does not include Neighbourhood Mail (Unaddressed Admail), PCI sort and delivery, Lock Changes ***
*** Ne comprend pas le Courrier Quartier (Médiaposte sans adresse), le tri et la livraison de ERMP, le changement de serrures ***

**Frequency of Service:**
**Fréquence du service:**

☑ Monday lundi ☐ Tuesday mardi ☑ Wednesday mercredi ☐ Thursday jeudi ☑ Friday vendredi

## Schedule A2

Date:

Local Area Manager

Schedule "A" (2)
Details Of Travel

| Name Of Service | Route ID # | Office of Origin | Effective Date (YY/MM/DD) |
|---|---|---|---|
| **ARNPRIOR (ON) RR 3 & WHITE LAKE RR1** | **29784** | **ARNPRIOR STN MAIN** | **2015/11/08** |

| **Suggested Routing**<br>After sortation of all Mail, proceed | | | **Delivery Points (Occupied Compartments only)** | | | | | | | | | | | Freq. 5 Day<br>**Exceptions noted below** |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | KMS | RMB | CMB | GMB | Kiosk | LBA | BUS CNTR | Caller | BUS EXT | RPO | SLB | P/ups | Comments |
| 1 | Left on Elgin St. W. to Daniel St. | 0.50 | | | | | | | | | | | | |
| 2 | Turn right on Daniel St to Mini Mall | 2.00 | | | | | 5 | | | | | | | |
| 3 | Cross Daniel St. to Reid Bros Collision Centre | 0.10 | | | | | | | | 1 | | | | |
| 4 | Continue to Mr. Gas | 0.10 | | | | | | | | 1 | | | | |
| 5 | Left on Winners Circle Dr. to 39, serve Box Panel | 0.10 | | | | | 7 | | | | | | | |
| 6 | Retrace to Daniel St. | 0.40 | | | | | | | | | | | | |
| 7 | Left on Daniel St. to Vanjumar St. | 3.10 | | | | | | | | | | | | |
| 8 | Left on Vanjumar to service Antrim Truck Stop | 0.20 | | | | | | | | 1 | | | | |
| 9 | Retrace to White Lake Road | 0.20 | | | | | | | | | | | | |
| 10 | Left on White Lake Road to Campbell Dr. | 1.30 | | | | | | | | | | | | |
| 11 | Right on Campbell Road to Wabalac St. | 0.10 | | | | | | | | | | | | |
| 12 | Right on Wabalac St. and retrace to Campbell Dr. | 0.60 | 17 | | | | | | | | | | | |
| 13 | Right on Campbell Dr. to retrace to White Lake Rd. | 3.10 | 39 | | | | | | | | | | | |
| 14 | Continue over to Van Duesen Rd. to Potter's Trailer Park CMB Site | 1.70 | 1 | 21 | | | | | | | | | | |
| 15 | Retrace to White Lake Road | 1.70 | 1 | | | | | | | | | | | |
| 16 | Left on White Lake Road to Moorehead Cres. | 0.40 | 2 | | | | | | | | | | | |
| 17 | Left on Moorehead Cr. To 880 and retrace to White Lake Rd. | 0.60 | 6 | | | | | | | | | | | |
| 18 | Left on Whitelake Rd. to Wallace Rd. | 0.30 | 1 | | | | | | | | | | | |
| 19 | Right on Wallace Rd. to 1234 Wallace Rd. and retrace | 0.30 | 3 | | | | | | | | | | | |
| 20 | Right on Whitelake Rd. to Greenmeadows | 0.50 | | | | | | | | | | | | |
| 21 | Left on Greenmeadows to CMB site and retrace to White Lake Rd. | 1.00 | | 9 | | | | | | | | | | |
| 22 | Left on White Lake Rd to Young Rd. | 1.20 | 2 | | | | | | | | | | | |
| 23 | Right on Young Rd to #868B and retrace to White Lake Rd. | 1.50 | 3 | | | | | | | | | | | |
| Grand Total (all pages) | | 105.10 | 388 | 265 | 56 | 0 | 12 | 0 | 0 | 3 | 0 | 0 | 0 | |
| | | | Total Points Of Call | | | | | | | | | 724 | | |

## APPENDIX C – ACTIVITY VALUES

### APPENDIX "A"

### ACTUAL WAGE CALCULATIONS

**1.** An employee's actual wage is determined by the activity component specified in paragraph 2, the variable allowance specified in paragraph 3, and the knowledge sort and civic addressing allowance specified in paragraph 4.

**2. Activity Component**

A route's activity component is the annualized total of the following completed activities and their corresponding values, inclusive of the zones set out under Letter 3, subject to the appropriate progression percentage set out in paragraph 2(b). (a) The sortation, delivery, delivery stops and value per kilometre activity values are as follows:

[see next page]

| Zone 1 | Activity Values | |
|---|---|---|
| **Sortation Values** | **2016** | **2017** |
| Residential Sort | $ 0.0822 | $ 0.0834 |
| Residential Sort - Sequenced | | $ 0.0570 |
| Farm Sort | $ 0.0822 | $ 0.0834 |
| Farm Sort - Sequenced | | $ 0.0567 |
| AMS Business Sort | $ 0.2629 | $ 0.2668 |
| AMS Business Sort - Sequenced | | $ 0.1836 |
| Apartment Sort | $ 0.0558 | $ 0.0567 |
| Apartment Sort - Sequenced | | $ 0.0401 |
| Business Direct Sort | $ 0.2629 | $ 0.2668 |
| Business Direct Sort - Sequenced | | $ 0.2103 |
| Sortation Caller | $ 0.2629 | $ 0.2668 |
| Sortation Caller - Sequenced | | $ 0.2103 |
| **Delivery Values** | | |
| RMB | $ 0.0924 | $ 0.0938 |
| RMB - RRD | $ 0.1217 | $ 0.1235 |
| RMB - RHD | $ 0.0559 | $ 0.0567 |
| CMB | $ 0.0457 | $ 0.0464 |
| GMB | $ 0.0558 | $ 0.0567 |
| Kiosks | $ 0.0497 | $ 0.0505 |
| High POC CMB sites | | $ 0.0534 |
| LBA | $ 0.0629 | $ 0.0639 |
| Parcel Locker Clearance | | $ 0.1502 |
| Business Counter | $ 0.2132 | $ 0.2163 |
| Business Exterior | | $ 0.1669 |
| Business Special | | $ 2.5034 |
| RPO | $ 0.9531 | |
| RPO Clearance/Other | | $ 1.3352 |
| RPO Drop | | $ 0.9680 |
| SLB clearance | $ 0.9531 | $ 0.9674 |
| Pickup | $ 0.9531 | |
| Pickup Street Level | | $ 1.1683 |
| Pickup Other | | $ 1.8359 |
| Delivery Stops | $ 0.0792 | $ 0.0804 |
| **Drive Time/KM (POC/KM)** | | |
| 50km/hr – 9.9 or less POC/KM | $ 0.3948 | $ 0.4008 |
| 40km/hr – 10 to 24.9 POC/KM | $ 0.4933 | $ 0.5007 |
| 30km/hr – 25 to 49.9 POC/KM | | $ 0.6676 |
| 20km/hr – 50 or more POC/KM | | $ 1.0014 |

| Zone 2 | Activity Values | |
|---|---|---|
| **Sortation Values** | **2016** | **2017** |
| Residential Sort | $ 0.0893 | $ 0.0907 |
| Residential Sort - Sequenced | | $ 0.0618 |
| Farm Sort | $ 0.0893 | $ 0.0907 |
| Farm Sort - Sequenced | | $ 0.0618 |
| AMS Business Sort | $ 0.2862 | $ 0.2905 |
| AMS Business Sort - Sequenced | | $ 0.1999 |
| Apartment Sort | $ 0.0609 | $ 0.0618 |
| Apartment Sort - Sequenced | | $ 0.0436 |
| Business Direct Sort | $ 0.2862 | $ 0.2905 |
| Business Direct Sort - Sequenced | | $ 0.2290 |
| Sortation Caller | $ 0.2862 | $ 0.2905 |
| Sortation Caller - Sequenced | | $ 0.2290 |
| **Delivery Values** | | |
| RMB | $ 0.1005 | $ 0.1020 |
| RMB - RRD | $ 0.1325 | $ 0.1345 |
| RMB - RHD | $ 0.0609 | $ 0.0618 |
| CMB | $ 0.0497 | $ 0.0505 |
| GMB | $ 0.0609 | $ 0.0618 |
| Kiosks | $ 0.0538 | $ 0.0546 |
| High POC CMB sites | | $ 0.0582 |
| LBA | $ 0.0680 | $ 0.0690 |
| Parcel Locker Clearance | | $ 0.1636 |
| Business Counter | $ 0.2324 | $ 0.2359 |
| Business Exterior | | $ 0.1817 |
| Business Special | | $ 2.7262 |
| RPO | $ 1.0394 | |
| RPO Clearance/Other | | $ 1.4540 |
| RPO Drop | | $ 1.0541 |
| SLB clearance | $ 1.0394 | $ 1.0550 |
| Pickup | $ 1.0394 | |
| Pickup Street Level | | $ 1.2722 |
| Pickup Other | | $ 1.9992 |
| Delivery Stops | $ 0.0863 | $ 0.0876 |
| **Drive Time/KM (POC/KM)** | | |
| 50 km/h – 9.9 or less POC/KM | $ 0.4304 | $ 0.4368 |
| 40 km/h – 10 to 24.9 POC/KM | $ 0.5380 | $ 0.5460 |
| 30 km/h – 25 to 49.9 POC/KM | | $ 0.7270 |
| 20 km/h – 50 or more POC/KM | | $ 1.0905 |

| Zone 3 | Activity Values | |
|---|---|---|
| **Sortation Values** | **2016** | **2017** |
| Residential Sort | $ 0.0934 | $ 0.0948 |
| Residential Sort - Sequenced | | $ 0.0646 |
| Farm Sort | $ 0.0934 | $ 0.0948 |
| Farm Sort - Sequenced | | $ 0.0646 |
| AMS Business Sort | $ 0.2994 | $ 0.3039 |
| AMS Business Sort - Sequenced | | $ 0.2091 |
| Apartment Sort | $ 0.0639 | $ 0.0649 |
| Apartment Sort - Sequenced | | $ 0.0456 |
| Business Direct Sort | $ 0.2994 | $ 0.3039 |
| Business Direct Sort - Sequenced | | $ 0.2395 |
| Sortation Caller | $ 0.2994 | $ 0.3039 |
| Sortation Caller - Sequenced | | $ 0.2390 |
| **Delivery Values** | | |
| RMB | $ 0.1045 | $ 0.1061 |
| RMB - RRD | $ 0.1386 | $ 0.1407 |
| RMB - RHD | $ 0.0637 | $ 0.0646 |
| CMB | $ 0.0528 | $ 0.0536 |
| GMB | $ 0.0639 | $ 0.0649 |
| Kiosks | $ 0.0558 | $ 0.0567 |
| High POC CMB sites | | $ 0.0608 |
| LBA | $ 0.0711 | $ 0.0721 |
| Parcel Locker Clearance | | $ 0.1711 |
| Business Counter | $ 0.2436 | $ 0.2473 |
| Business Exterior | | $ 0.1901 |
| Business Special | | $ 2.8511 |
| RPO | $ 1.0861 | |
| RPO Clearance/Other | | $ 1.5206 |
| RPO Drop | | $ 1.1024 |
| SLB clearance | $ 1.0861 | $ 1.1023 |
| Pickup | $ 1.0861 | |
| Pickup Street Level | | $ 1.3305 |
| Pickup Other | | $ 2.0908 |
| Delivery Stops | $ 0.0903 | $ 0.0917 |
| **Drive Time/KM (POC/KM)** | | |
| 50km/hr – 9.9 or less POC/KM | $ 0.4496 | $ 0.4564 |
| 40km/hr – 10 to 24.9 POC/KM | $ 0.5623 | $ 0.5707 |
| 30km/hr – 25 to 49.9 POC/KM | | $ 0.7603 |
| 20km/hr – 50 or more POC/KM | | $ 1.1405 |

(i) The following activity values shall be in effect as of January 1, 2017: Parcel Locker Clearance, RPO Clearance/Other, RPO Drop, Pickup Street Level and Drive time 30 km/hr, and 20 km/hr.

(ii) Sequenced activity values shall apply following the implementation of a restructure, where applicable.

## APPENDIX D – LCS AND RSMCS PRODUCTIVE RATE ANALYSIS BY THE UNION

| Three Zones Assuming Full Time Hours<br>PCI and Lock Changes as Time | CPC POS | CPC MSC | CPC LETTER | | | RSMC | RSMC | RSMC |
|---|---|---|---|---|---|---|---|---|
| BASE HOURLY RATE | | HVO | | CARRIER | | ZONE 1 | ZONE 2 | ZONE 3 |
| ANNUAL TOTAL PAID HRS | $26.10 | $26.94 | | $25.95 | | $19.44 | $21.17 | $22.14 |
| **TOTAL ANNUAL BASE SALARY** | 2087.04 | 2087.04 | | 2087.04 | | 2087.04 | 2087.04 | 2087.04 |
| CTI,BONUS | $54,472 | $56,225 | | $54,159 | | $40,572 | $44,183 | $46,207 |
| OVERTIME 2.0 | $0 | $0 | 0.00% | $0 | | $0 | $0 | $0 |
| OVERTIME 1.5 | $4,175 | $2,199 | 1.50% | $796 | | $0 | $0 | $0 |
| OVERTIME 1.0 | $2,066 | $2,501 | 3.70% | $2,003 | | $81 | $81 | $81 |
| **TOTAL OVERTIME** | $0 | $0 | | $0 | | $0 | $0 | $0 |
| HOUSEHOLDER BONUS | $6,241 | $4,700 | | $2,799 | | $81 | $81 | $81 |
| PCI | 0 | 0 | 5.20% | $2,838 | | $3,056 | $3,056 | $3,056 |
| LOCK CHANGES | 0 | 0 | | $0 | | $0 | $0 | $0 |
| SHIFT DIFFERENTIAL | 0 | 0 | | $0 | | $0 | $0 | $0 |
| WEEKEND PREMIUM | 1339 | 1217 | 0.01% | $44 | | $0 | $0 | $0 |
| BOOT GLOVE | 158 | 260 | 0.00% | $0 | | $0 | $0 | $0 |
| REST PERIOD ALLOWANCE | 240 | 260 | | $260 | | $240 | $240 | $240 |
| UNIFORMS | 0 | 871 | 1.60% | $871 | | $0 | $0 | $0 |
| LONGEVITY | 122 | 407 | | $407 | | $407 | $407 | $407 |
| MEAL ALLOWANCE | 110 | 75 | | $75 | | $0 | $0 | $0 |
| **ALLOWANCES OVERTIME AND BONUSES** | 45 | 53 | 0.10% | $53 | | $0 | $0 | $0 |
| **SALARY INCLUDING ALLOWANCE AND OVERTIME** | $8,255 | $7,843 | | $7,347 | | $3,784 | $3,784 | $3,784 |
| **PRODUCTIVE HOURS** | $62,727 | $64,068 | | $61,506 | | $44,356 | $47,967 | $49,991 |
| ANNUAL TOTAL PAID HRS | | | | | | | | |
| VACATION | 2087.04 | 2087.04 | | 2087.04 | | 2087.04 | 2087.04 | 2087.04 |
| PRE RETIREMENT | 216 | 181 | | 199 | | 140 | 140 | 140 |
| OTHER LEAVE | 13 | 8 | | 9 | | 0 | 0 | 0 |
| PERSONAL DAYS /OPTIONAL HOLIDAYS | 36 | 33 | | 56 | | 3.3 | 3.3 | 3.3 |
| STDP | 56 | 56 | | 56 | | 56 | 56 | 56 |
| STATUTORY HOLIDAYS | 62 | 45 | | 66 | | 102.1 | 102.1 | 102.1 |
| **TOTAL ATTENDANCE HOURS** | 88 | 88 | | 88 | | 88 | 88 | 88 |
| LUNCH | 1616.04 | 1676.04 | | 1613.04 | | 1697.67 | 1697.67 | 1697.67 |
| BREAKS | 101 | 101 | | 101 | | 0 | 0 | 0 |
| WASH UP | 101 | 67 | | 67 | | 0 | 0 | 0 |
| **Productive Hours** | 17 | 17 | | 17 | | 0 | 0 | 0 |
| **Productive Hourly Rate- Without Benefits** | 1397.04 | 1491.04 | | 1428.04 | | 1697.67 | 1697.67 | 1697.67 |
| Benefit Rate | $44.90 | $42.97 | | $43.07 | | $26.13 | $28.25 | $29.45 |
| **Productive Hourly Rate- With Benefits** | $22,017.48 | $22,726.09 | 40.42% | $21,890.94 | 28.00% | $11,360.18 | $12,371.14 | $12,937.98 |
| **CPC Hourly Rate % difference vs competitors** | $60.66 | $58.21 | | $58.40 | | $32.82 | $35.54 | $37.07 |
| | | | | | | 44% | 39% | 37% |
| | | | | | | 78% | 64% | 58% |

**Weighted Productive Hourly Rate all 3 Zones** **$34.04**

| | |
|---|---|
| **RSMC Less Than LC** | **41.71%** |
| **RSMC Less Than POS** | **43.88%** |
| **RSMC Less Than MSC HV** | **41.52%** |

Conversion of PCI to time

| | | |
|---|---|---|
| PCI per week | 298894.00 | |
| PCI per year | 15542488.00 | |
| PCI Minutes/year | 45073215.20 | 2.90 minutes per PCI |
| PCI Hours/year | 751220.25 | |
| **FTE Positions** | **359.95** | |

Conversion of lock changes to time

| | | |
|---|---|---|
| Lock changes/year | 246999.00 | |
| Minutes/year | 1234995.00 | 5.00 minutes per lock change |
| Hours/year | 20583.25 | |
| **FTE Positions** | **9.86** | |

## APPENDIX E – ACTIVITY VALUES AND RESULTING "HOURLY WAGES"

| Activity | 2016 ZONE 1 | 2016 ZONE 2 | 2016 ZONE 3 | Activity Values | Workers | 2016 "Hourly Rate" ZONE 1 | 2016 "Hourly Rate" ZONE 2 | 2016 "Hourly Rate" ZONE 3 |
|---|---|---|---|---|---|---|---|---|
| **SORT** | | | | Sort Values | RMS Est. Time | | | |
| RESIDENTIAL SORT | $ 0.0822 | $ 0.0893 | $ 0.0934 | Residential Sort | 0.25 | $19.73 | $21.43 | $22.42 |
| FARM SORT | $ 0.0822 | $ 0.0893 | $ 0.0934 | Farm Sort | 0.25 | $19.73 | $21.43 | $22.42 |
| AMS BUSINESS SORT | $ 0.2629 | $ 0.2862 | $ 0.2994 | AMS Business Sort | 0.80 | $19.72 | $21.47 | $22.46 |
| APARTMENT SORT | $ 0.0558 | $ 0.0609 | $ 0.0639 | Apartment Sort | 0.17 | $19.69 | $21.49 | $22.55 |
| BUSINESS DIRECT SORT | $ 0.2629 | $ 0.2862 | $ 0.2994 | Business Direct Sort | 0.80 | $19.72 | $21.47 | $22.46 |
| SORTATION CALLER SORT | $ 0.2629 | $ 0.2862 | $ 0.2994 | Sortation Caller | 0.80 | $19.72 | $21.47 | $22.46 |
| **DELIVERY** | | | | Delivery Values | | | | |
| RMB | $ 0.0924 | $ 0.1005 | $ 0.1045 | RMB | 0.28 | $19.80 | $21.54 | $22.39 |
| RMB - RRD | $ 0.1217 | $ 0.1325 | $ 0.1386 | RMB - RRD | 0.37 | $19.74 | $21.49 | $22.48 |
| RMB - RHD | $ 0.0559 | $ 0.0609 | $ 0.0637 | RMB - RHD | 0.17 | $19.73 | $21.49 | $22.48 |
| CMB | $ 0.0457 | $ 0.0497 | $ 0.0528 | CMB | 0.14 | $19.59 | $21.30 | $22.63 |
| GMB | $ 0.0558 | $ 0.0609 | $ 0.0639 | GMB | 0.17 | $19.69 | $21.49 | $22.55 |
| KIOSKS | $ 0.0497 | $ 0.0538 | $ 0.0558 | Kiosks | 0.15 | $19.88 | $21.52 | $22.32 |
| LBA | $ 0.0629 | $ 0.0680 | $ 0.0711 | LBA | 0.19 | $19.86 | $21.47 | $22.45 |
| BUSINESS COUNTER | $ 0.2132 | $ 0.2324 | $ 0.2436 | Business Counter | 0.65 | $19.68 | $21.45 | $22.49 |
| RPO | $ 0.9531 | $ 1.0394 | $ 1.0861 | RPO | 2.90 | $19.72 | $21.50 | $22.47 |
| SLB CLEARANCE | $ 0.9531 | $ 1.0394 | $ 1.0861 | SLB | 2.90 | $19.72 | $21.50 | $22.47 |
| PICKUP | $ 0.9531 | $ 1.0394 | $ 1.0861 | Pickup | 2.90 | $19.72 | $21.50 | $22.47 |
| DELIVERY STOPS | $ 0.0792 | $ 0.0863 | $ 0.0903 | Delivery Stops | 0.24 | $19.80 | $21.58 | $22.58 |
| **DRIVE TIME** | | | | Drive Time | | | | |
| 50 KM/HR | $ 0.3948 | $ 0.4304 | $ 0.4496 | 50km/hr (0-2 stops/km) | 1.20 | $19.74 | $21.52 | $22.48 |
| 40 KM/HR | $ 0.4933 | $ 0.5380 | $ 0.5623 | 40km/hr (2.01+ stops/km) | 1.50 | $19.73 | $21.52 | $22.49 |

## APPENDIX F – EQUITY CRITERIA AND HEADINGS

| Equity Criterion/Evaluation Sub-factor | Heading in the Job Profile |
|---|---|
| SKILL (Intellectual): Knowledge | • **Knowledge and Experience** (including route experience; product and delivery experience; standards, process, procedure and legislative knowledge; administrative knowledge; facility knowledge, and licenses, certifications and insurance) |
| Communications & Interpersonal Skills | • **Communications & Interpersonal Skills** (including interpersonal situations, range of skills, and challenges) |
| Complexity and Problem Solving Skills | • **Complexity and Problem Solving Skills** (including the policy & procedures framework, difficult situations and adaptations, equipment malfunctions) |
| SKILL (physical): Mechanical & Physical Skills | • **Mechanical & Physical Skills** (including equipment, tools and vehicles; skills in coordination, dexterity, spatial skills, balancing and technical for difficult physical situations)[19] |
| EFFORT (intellectual or psychological): Emotional Effort | • **Emotional Demands** (including repetitiveness of the work; isolation; sense of responsibility for own safety & conditions involved; challenges creating stresses, e.g., weather, finding replacement staff; unpredictability of work, e.g., volumes) |
| EFFORT (physical): Physical Effort | • **Physical Demands** (each of many actions, awkwardness of positions, strains, how extensive efforts can be; effects of weights, conditions) |
| EFFORT (physical): Sensory Effort | • **Sensory Demands** (including many requirements for attention to detail (& fineness of detail) and concentration, multiple or simultaneous demands; visual, auditory and olfactory demands) |
| RESPONSIBILITIES (technical, informational & financial resources): Accountability for Resources | • **Judgement Responsibilities** (including organising, setting priorities, vehicles, privacy & confidentiality for clients, money, accuracy in reporting & importance, own safety, guidance & help available)<br>• **Also "Job Purpose" and "Major Accountabilities"** (the span of duties & requirement to accomplish all duties) |

[19] Also found under Physical Effort heading: fine motor skills – considered in evaluation process under physical skills.

| Equity Criterion/Evaluation Sub-factor | Heading in the Job Profile |
|---|---|
| RESPONSIBILITIES (human resources) Work of Others | • **Work of Others** (finding, training and scheduling replacement staff; not supervision) |
| WORKING CONDITIONS (physical): Environmental Working Conditions & Hazards | • **Environmental Conditions, Risks & Hazards** (including a wide range of disagreeable physical and environmental conditions, risks and hazards) |