Canadian Association of Professional Employees

ACEP
Association canadienne des employés professionnels

CAPE
Canadian Association of Professional Employees

2003 — 2013

Anniversary Edition

CAPE ANNUAL REPORT 2012 – 2013

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10 Years and Counting!
A Special CAPE Anniversary Edition

This year marks the 10th anniversary of CAPE's genesis, the creation of a new professional labour union committed to diligently serving and representing its members in the federal public service. This Annual Report is solely dedicated to reviewing and celebrating ten great years of working together to safeguard the workplace rights and well-being of our members. Happy Birthday CAPE and many more!

In this edition, we'll begin with a brief sketch of the 2003 genesis of CAPE, which secured its place as the third largest labour union representing Canadian federal public service employees. From here, we'll go on to highlight some of the key milestones and victories we've managed to secure during this decade. And, as we survey together these challenging years of effort and accomplishment, we'll see the dedication and the vision of CAPE in action.

If we ever needed an effective labour union for government professionals, then this has certainly been the time. According to financial experts, the worst global economic crisis in over 80 years occurred in 2008, right in the middle of the last ten years, and Canada's economy and the Canadian federal government workforce was not spared from the devastating impact. As the government announced drastic, at times draconian, job cuts in response to the crisis, CAPE was already gearing up for what we knew would be a long and difficult battle. Through aggressive and effective representation and consultation, CAPE has been able to secure the best possible outcomes for the highest possible number of members affected by these cuts.

We invite you now to join us on a brief trip down memory lane and see how far we've come.

President's Message

Mobilizing in response to government attacks

The current level of federal public service employee mobilization is higher than it has ever been. This is to be credited to the efforts of the present government to destroy the public service and break the unions. It is clear that solidarity is of key importance in the face of such an onslaught of adversity.

The Conservative government is expending massive energy and resources with the aim of eradicating the gains achieved by public service unions, and to fundamentally alter benefits. Gains negotiated through collective bargaining, or negotiated outside of collective agreements. The present government is using its legislative powers to shift even greater powers to its side of the playing board. This is a tactic in an ongoing attack on federal public service employees, that has been gaining momentum for years – a more recent manoeuver being the announcement of the elimination of 19,200 public service jobs, in the 2012 – 2013 budget. The government has unions clearly in its sights, and its intentions are not aimed at the benefit of union members.

They have made unilateral changes to the public service pension plan that will see the employee's contribution increased from 40% to 50%. They have eliminated severance pay. The 2013 – 2014 budget proposes the elimination of the accumulated sick leave system, replacing it with a short-term disability plan. Bill C-377 proposes that unions be compelled to publish all their financial details – the aim of this Bill is to determine whether unions are contributing to any political party or cause. Bill C-525 would make it more difficult to establish a union, and much easier to disassemble a union. They are considering the elimination of the Rand formula Bill C-4 would see a complete change to the face of collective bargaining – unions would no longer have recourse to arbitration. It would change the definition of danger in the workplace, putting employees at greater risk, not only in the federal public service but in any organization covered by the Canada Labour Code – a total of 1.2 million people. It would give the employer total authority to designate essential positions, in the event of a strike. It would give the employer greater authority regarding searching and entering workplaces – threatening your privacy.

Over recent years, we have had to defend ourselves more and more frequently and more and more vehemently against an employer who is also legislator and treasurer. These attacks have a political agenda, and that agenda is, as it has always been, to stay in power.

The current government, however, has as its leader one of the most power hungry leaders of recent history.

These developments have compelled public service employees to step up, speak out and be heard. We have been listening to our articulate and mobilized membership, and we are taking the lead in the battle against the government's attempts to neuter unions once and for all. We are taking the battle into their constituencies.

After reading this Annual Report, you will see that the last ten years have been a decade long build up to the present battle that we find ourselves in. But we are prepared – this Report shows you clearly that we have been in training.

Claude Poirier
CAPE President

A New Union is Born: the Genesis of CAPE

On May 1, 2003, after thirteen months of intensive joint exploration into the viability of merging their two organizations, a majority of members from the Social Sciences Employees Association (SSEA) and the Canadian Union of Professional and Technical Employees (CUPTE) voted in favour of merging their unions into a single entity to be called the Canadian Association of Professional Employees (CAPE).

This historic merger was built on several key founding principles:

- To provide an enhanced profile and increased visibility for a union of knowledge workers;
- To respect the autonomy of individual groups with regard to collective bargaining;
- To maintain a high level of services to which members of both organizations are accustomed, in a financially efficient manner;
- To respect democratic principles, and to provide a fully bilingual union, both in services provided to members and its major bodies;
- To speak with one voice while recognizing the specific character of each individual group.

Coupled with these core principles, consideration was also given to the issues of governance, structure and roles, organization, rights and obligations of members, as well as a Constitution and By-Laws.

A Pre-emptive Merger

CAPE was founded as a pre-emptive, strategic merger in the face of what was coming. The

federal public service was about to undergo major changes that would strain union resources across the federal public sector. The everyday manner in which unions related to public sector employers was about to expand in ways that were not anticipated by anyone.

As well, there were signs at Treasury Board that smaller bargaining agents would be forced to merge in order to reduce the employer's cost of labour relations.

SSEA, CUPTE: a Good Fit

Neither SSEA nor CUPTE had been shy in the past to take a stand where the interests of their members required strong advocacy. Both could be team players with other unions. Both organizations were prepared to stand alone if they felt that it was necessary in order to properly defend the interests of their members. Both organizations had long histories of working with management to approach problems rationally and to seek solutions that could mend a work place torn by conflict.

However, both organizations were relatively small. To combine through merger the forces of both organizations in pursuit of shared objectives through shared approaches was seen as having the potential of a great step forward for the respective memberships, resulting in the combined strengths of both, and to some extent a positive development for labour relations in the public service. These past ten years have shown just how correct the leaders and the two memberships were in their assessments, and have validated the creation of CAPE time and again.

Neither SSEA nor CUPTE had been shy in the past to take a stand where the interests of their members required strong advocacy.

CAPE Members – Who We Are, What We Do

The EC Group

Our professions include economists, sociologists, lawyers, statisticians and health professionals, and we work as analysts, methodologists, evaluators, researchers, policy consultants, project leaders and managers. Our work forms the backbone of Canadian public policy, research, evaluation, and program management in federal industry, labour, employment, health and social welfare programs.

We consult with our various internal and external stakeholders, and collaborate and share information with representatives of other levels of government, academia, professional organizations, major voluntary agencies, business, labour, and with the general public. What drives our work is what we hear from Canadians, including our political leaders, through the formal expressions of individuals and organizations and through focus groups where we ask directly for Canadians' opinions on important issues and trends.

What we do influences the development, evaluation, and renewal of major government policies. The results of our work – be it informed opinion, statistics, or research results – can be found in articles on the front pages of Canadian newspapers, in every federal department's list of publications, and at major national and international symposia. Often our work forms public discussion from the House of Commons to classrooms to coffee bars.

The TR Group

We are a heterogeneous group that translates, revises and carries out terminological research, and we interpret English, French and many many other languages.

In the Translation Bureau of the Government of Canada, we work in departmental sections that service a particular federal department or agency. We also work in specialized central sections, translating more specialized material in such fields as the natural sciences, technology, informatics, medicine, economics and law that are forwarded from the departmental units.

We provide linguistic advice to our clients. We conduct on-demand terminological research in the short term to assist our colleagues with their translations, and longer-term terminological research in specific subject areas, in order to assemble glossaries on a wide variety of subjects that will be of use both to our colleagues and to members of the general public. We interpret in both official languages in the House of Commons and the Senate, at meetings of parliamentary committees and at conferences in which the federal government is a participant.

We provide sign-language interpretation and we also translate, interpret and do terminological research in languages other than English and French for many clients including the departments of Foreign Affairs Trade and Development, and National Defence.

The LoP Group

Working on Parliament Hill poses special challenges for our group of approximately 100 CAPE members who work for the Parliamentary Information and Research Service of the Library of Parliament. The principals, analysts, research editors, statistical officers, and research assistants who make up this group provide objective and confidential research, analysis and advice to Members of the Senate and the House of Commons.

The CAPE LoP members include scientists, economists, lawyers, and social scientists who are experts in fields as diverse as fisheries, defence and security, finance and banking, agriculture, transportation, international affairs, health, aboriginal affairs, the environment, human rights, and public administration.

Principals and analysts spend much of their time assisting parliamentary committees. They prepare work plans, witness lists, briefing notes, and draft committee reports. They also accompany the committees when they travel to hold public hearings.

Through their professional expertise, their commitment to promoting sound public policy, and their organizational and interpersonal skills, the CAPE Library of Parliament members are a vital help to Parliamentarians in their roles as legislators and representatives of the Canadian people.

The Pension Surplus Litigation Battle — *Bill C-78*

In 1999, the government of Canada passed controversial pension legislation — Bill C-78, *allowing it to confiscate, for the purpose of paying down the national debt, over $30 billion in pension surplus that had accumulated in the three major pension plans. These three pension plans were the Public Service Superannuation Plan, the Canadian Forces Superannuation Plan and the RCMP Superannuation Plan. In response to the government's initiative, the Canadian Association of Professional Employees, the Professional Institute of the Public Service of Canada, the Public Service Alliance of Canada, the Armed Forces Pensions/Annuitants' Association of Canada and RCMP employee associations launched a joint legal action challenging the validity of this new legislation. The action, filed in the Ontario Superior Court of Justice, claimed ownership of the pension surplus for federal government employees and claimed the government had no legal right to (mis)appropriate these funds for any other uses.*

How did the Pension Surplus arise?

In the 1990's, the Liberal government instituted a program of wage controls, which lasted for 6 years, and which featured a freeze on salaries for the last 5 years of the program. As employee pensions are based upon an average salary, the net effect was to reduce future pensions by an estimated 15%. This was the primary reason that the pre-1999 federal public service pension plan accumulated a surplus of $30 billion, which the government then confiscated.

It is both ironic and hypocritical that the federal government obligates private sector firms with pension plans to a high standard, from which it exempts itself.

Current Norms and Expectations:

Naturally, the actions of the federal government in 1999 cannot be examined in a vacuum, or apart from those of other employers faced with similar responsibilities. At the same time the government misappropriated the pension plan surplus, the Canadian Central Housing and Mortgage Corporation (CHMC) was also faced with a similar dilemma. The CMHC plan had a substantial surplus, and the plan had no provision regarding its distribution in such an eventuality. CMHC's decision was to share the pension surplus with its employees. There was no legal obligation to do so. It was a moral decision on what was the right course of action. Other pension plans have routinely distributed surpluses to employers and plan members.

As might be expected, in some circumstances, Canadian courts have had to defend pension plans from employer raids. In 1985, the federal government passed legislation, the *Pension Benefit Standards Act (PBSA)*, to regulate private sector plans, and protect pension plan surpluses from employer raiding. The *PBSA*, however, does not apply to the public service pension plan. The *PBSA* requires any employer seeking to access a surplus or part thereof to obtain a 2/3 vote of consent from plan members, as well as a 2/3 vote of consent from former members of the plan. It is both ironic and hypocritical that the federal government obligates private sector firms with pension plans to a high standard, from which it exempts itself.

13 year legal battle

- September 1999, Parliament passed the *Public Sector Pension Investment Board Act (Bill C-78)*, which introduced amendments to the laws covering the three pension plans, allowing the federal government to grab the $30 billion surplus. The federal government is exempted from the *Pension Benefits Standards Act*, which limits employer access to any surplus in federally registered pension plans.
- November 1999, unions representing workers affected by the *Act*, employee associations and retiree groups filed a lawsuit against the federal government. In total, 670,000 Canadians – or 1 in 50 Canadians across the country – were directly affected by the *Act*. However, millions of other Canadians were also affected, considering the impact the *Act* has on the families of the workers.
- November 2005, the first phase of the trial began and lasted four days as law-

yers for the government tried to block 128 government documents from being presented as evidence. It was an apparent attempt to force the unions to call the authors of all the documents during the trial, which would have created serious delays in the six-year-old case. On December 2006, the Court ruled that the 128 documents were admissible as evidence, marking a victory in the first phase for the plaintiffs.

- February to May 2007, the second and final phase of the trial took place. In their opening statements, the government lawyers made clear that their position was that the surplus is not real. They argued that the superannuation accounts consist of accounting entries, and are simply a means to track the government's liabilities and therefore do not constitute real assets. More than this, the government's representatives repeatedly highlighted how generous the benefits are under the current pension plans – suggesting that employees and retirees should not be entitled to anything more. Expert witnesses on behalf of the claimants testified that in their professional opinion the superannuation accounts do, in fact, contain real assets.
- November 2007, Justice de Lotbinière Panet of the Ontario Superior Court of Justice dismissed the actions challenging the federal government's decision to take the $30-billion surplus accumulated in the superannuation accounts of the Canadian Forces, the Public Service, and the RCMP. The judge concluded his 102-page decision by finding that: "the members of the three superannuation plans under the three *Acts*, the *PSSA*, the *CFSA*, and the *RCMPSA*, have no equitable interest in the superannuation accounts established under the legislation."
- December 2007, the claimants filed a Notice of Appeal before the Court of Appeal for Ontario.
- October 2010, the Court of Appeal for Ontario rendered its decision to deny the pension surplus appeals.
- January 2011, the claimants submitted to the Supreme Court of Canada an application for leave to appeal the Court of Appeal for Ontario decision.
- May 2011, the Supreme Court made public its decision that said the plaintiffs had legal grounds to appeal the 2010 Court of Appeal for Ontario decision, stating that members of the federal public service, Canadian Forces and RCMP pension plans were not entitled to the $30-billion estimated surplus to have accumulated in these pension plans.
- February 2012, the claimants made an appeal to the Supreme Court to overturn the Court of Appeal for Ontario ruling that the federal government had the right to use its employees' pension surplus to pay off its debt.
- December 2012, the Supreme Court of Canada dismissed the appeal with costs, thus supporting previous court decisions stating that employees were not entitled to the $30-billion estimated surplus accumulated in these pension plans.

The Wrap Up

The decision by the Supreme Court to dismiss the appeal put an end to the court proceedings that were initiated in 1999 by the Canadian Association of Professional Employees, the Public Service Alliance of Canada, the Professional Institute of the Public Service of Canada on behalf of other National Joint Council bargaining agents and organizations, including FSNA; and the Armed Forces Pensioners'/Annuitants' Association of Canada in conjunction with several RCMP employee associations.

CAPE, together with all the other claimants, was naturally disappointed at the outcome of the pension surplus case. This 13 year marathon struggle was one of the longest and most important legal battles ever fought by unions in Canadian history. It has shown, once again, like other battles whose outcome have gone against the interests of employees, that unions play a key role in representing their members, and when needed, will fight tirelessly to the end to ensure and protect workers' rights, regardless of the outcome.

While public service employees and retirees lost this important battle, much to our disappointment, the government has witnessed first-hand the clear and undeterred resolve of its collective workforce and their bargaining agents, and their unwillingness to just passively accept whatever the government of the day decides to do.

Was it Worth it? Yes!

Was it all worth it? Yes it was, without a doubt. The consensus among the eighteen claimants and the countless public service workers directly affected by this pension grab was that had this been a case involving the private sector, an employer would never have gotten away with such an action. We had to fight, we had no choice.

Public Service Accountability: What it is, Why it Matters, How it Works.

Years ago, a leading maker of oatmeal cereal became a household brand simply by associating eating their product with the phrase: "It's the right thing to do!" That's a powerful statement. In the realm of human behaviour few phrases are more compelling than this one, and it could just as easily be applied to ethics as nutrition. We all seek to act responsibly — ethically — to do the right thing and we expect ourselves, and others, to be held accountable to high ethical standards. This is as true for workplace behaviour in the federal public service as it is for any other public or private venue. In the wake of the infamous sponsorship scandal which brought down the previous government, the current government campaigned on the promise of putting workplace accountability centre stage in their administration, both for elected parliamentarians and for all levels of the federal public service. Recent years have seen new accountability measures put into place and CAPE has played a part in the process.

The *Federal Accountability Act*, (2006)

On April 11, 2006, the Government of Canada introduced the *Federal Accountability Act* and Action Plan to make government more accountable. It was granted Royal Assent on December 12, 2006. Through the *Act*, specific measures were established to strengthen accountability and increase transparency and oversight in government operations.

During the consultation process prior to passage and implementation, of greatest interest to CAPE as a bargaining agent, were the changes that would be made to the *Public Servants Disclosure Protection Act (PSDPA)*. The purpose of the *PSDPA* is to allow public service employees to step forward if they believe that wrongdoing has taken place, and provides protection against reprisal. As well, it provides an objective process for those against whom allegations have been made.

What is "Wrongdoing"?

The *PSDPA* defines wrongdoing in the public sector as:

- violating any *Act* of Parliament or any *Act* of the legislatures of Canada's provinces and territories. This includes violating any regulations made under these Acts;
- misusing public funds or a public asset;
- gross mismanagement;
- doing something—or failing to do something—that creates a substantial and specific danger to the health, safety, or life of persons or to the environment;
- seriously breaching any code of conduct that applies to the public sector; and

- knowingly directing or counseling a person to commit wrongdoing as defined above.

Codes of Conduct required by *PSDPA*

The *PSDPA* required Treasury Board to establish a comprehensive Code of Conduct for the federal public service. Chief Executives of departments and organizations had to establish their own codes that are consistent with the Treasury Board code but adapted to the needs of their organizations. Chief Executives also had to establish an internal disclosure mechanism. Employees may make a disclosure to their supervisor, or the senior officer designated for the purpose. Employees may also make a disclosure to the Public Sector Integrity Commissioner (PSIC).

"Whistleblowing" - The Disclosure Process

Whistleblowing is the common-place term used to describe the disclosure process whereby a federal public service employee makes known in a prescribed manner what he or she believes to be wrongdoing in the federal public sector workplace. A disclosure of wrongdoing is the filing of any information by a federal public service employee that could show that a wrongdoing has been committed or is about to be committed. Information showing that a federal public service employee has been asked to commit a wrongdoing is also considered to be a disclosure of wrongdoing. A disclosure of wrongdoing is protected if it is made in good faith and in accordance with the provisions of the PSDPA.

How to make a Disclosure of Wrongdoing

Any federal public service employee has a choice of making a disclosure to either their supervisor, the Senior Officer for Disclosure, or the Public Service Integrity Commissioner.

If the disclosure is to a supervisor, the supervisor passes it on to the Senior Officer for Disclosure, in accordance with an organization's internal disclosure procedures.

The Senior Officer for Disclosure is designated by each Chief Executive in the Public Service to establish an internal disclosure process. The process involves assessing the disclosure, investigating it, where necessary, and reporting on it, if there are any findings. Due to size, small organizations may be exempt from designating a Senior Officer for Disclosure, in which case, disclosures may be made to the Public Service Integrity Commissioner.

The Integrity Commissioner can perform the same roles as the Senior Officer for Disclosure, and can be contacted in a number of ways:

- 60 Queen Street, 7th Floor, Ottawa ON K1P 5Y7;
- Telephone 613-941-6400;
- Toll free 1-866-941-6400;
- Fax 613-941-6535

Public Disclosure

In extreme circumstances, an employee may make a public disclosure if there is not sufficient time to make the disclosure using the internal or independent third party processes, and the employee believes that there is a serious breach of federal or provincial laws, or an imminent risk of a substantial and specific danger to the life, health and safety of individuals or to the environment.

Sanctions Against Wrongdoing

The Accountability Act and the Public Servants Disclosure Protection Act have real teeth. Specific sanctions depend on the type and seriousness of the wrongdoing. In addition to any sanctions that may be required by law, Chief Executives have the authority to apply administrative and disciplinary penalties. These may include:

- the return of all monies;
- financial penalties;
- reprimands;
- suspensions;
- demotions; and
- termination of employment

Definition of "Reprisal"

The PSDPA clearly stipulates that no federal public service employee shall be subject to any reprisal for having made a disclosure in accordance with this *Act*.

- Reprisal is any measure taken against a federal public service employee because they made a protected disclosure or co-operated in an investigation into a possible wrongdoing. Reprisal includes:
- disciplinary measures;
- demotion of the employee;
- termination of employment;
- any measure that adversely affects the employment or working conditions of the employee, or
- a threat to do any of those things or to direct someone else to do them.

CAPE's role since 2004

CAPE was approached in August of 2004 by two Members of Parliament who expressed an interest in the Association's position on whistleblowing. For the purpose of clearly communicating

CAPE continues to maintain that whistleblowing legislation must clearly serve the greater public interest.

CAPE's position, a position paper was prepared by the National Office and presented to the National Executive Committee. The paper, entitled CAPE Position Paper on Disclosure Protection Legislation, was approved by the National Executive Committee on September 9, 2004. Three CAPE Executive Officers were mandated by the National Executive Committee to meet with the Honourable Mauril Bélanger and the Honourable David Kilgour for the purpose of presenting the position paper. CAPE continued to play an active role in various consultations leading up to the passage of the Accountability Act in 2006, again with particular interest in the PSDPA and whistleblowing protection for federal public service employees.

Proposed 2004 Legislation was Inadequate

Bill C-25, The Public Servants Disclosure Protection Act, was introduced in the House of Commons on March 22, 2004 but died on the Order Paper when the June election was called. CAPE's view at the time was that this legislation was inadequate in many ways and did not successfully address the concerns raised by most commentators, CAPE included.

In a way, the legislation itself was a test of integrity for all parties involved – politicians, government officials and union officials. In its existing form prior to the 2004 election, the legislation proposed was not only weak; it was dangerous. It created a false impression of safety which had already fed cynicism across the public service. It had to be either changed or killed.

Requirements for New Investigative Body

CAPE, along with other commentators and consulting bodies, maintained that any new proposed body responsible for investigating allegations of wrongdoing and for investigating allegations of reprisal had to meet the following criteria:

- It had to be independent of persons or organizations that would have an interest, one way or another, in the outcome of investigations;
- It to be empowered, firstly, with the authority to investigate allegations fully with complete access to information under the usual safeguards of confidentiality within the public service; secondly, with the authority to pursue an investigation beyond the public service where evidence may warrant; thirdly, with the authority to compel with enforceable recommendations the appropriate parties of the public service to take action; and
- It had to be accessible to public service employees who must be able to communicate directly, freely and openly their concerns, questions and allegations.

CAPE supported the 34 recommendations of the Working Group on the Disclosure of Wrongdoing reporting to the Privy Council on January 29, 2004, including: a new "Office" should be created that would incorporate the functions of the existing Public Service Integrity Office and would act as an independent investigative body for matters relating to the disclosure of wrongdoing. The new "Office" should be created as an agent of Parliament, accountable to Parliament either directly or through a Minister.

CAPE supported the positions taken by the Public Service Integrity Office (PSIO) on the required legislation for true disclosure of wrongdoing in the public service, including: that the legislation ensure effective protection of identities and other types of confidential information; that information gathered or generated by the Commissioner should be made inaccessible in order to protect the integrity of the investigation process.

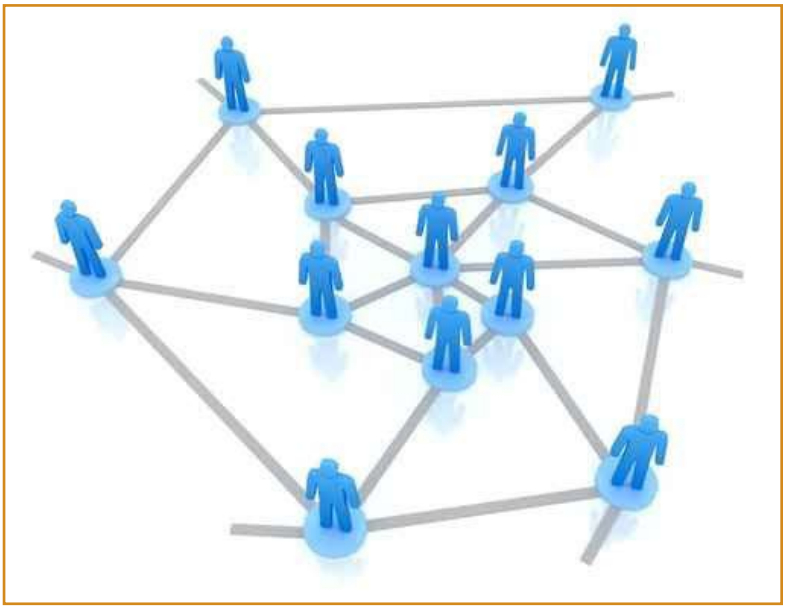
CAPE's View Today

CAPE continues to maintain that whistleblowing legislation must clearly serve the greater public interest. It must also include safeguards for the people who take personal risk in revealing wrongdoing by persons in authority or even by colleagues. Finally, it must encourage only legitimate revelations made in good faith, and be careful not to paralyze the decision-making process of the public service.

CAPE Communications Forge Ahead into the 21st Century

The evolution of communications between CAPE and its members can be summarized in one Twitter message: In 10 years, #CAPE has progressed from #pen and #paper to #keyboard and #Internet. #virtual #evolution

The reality of things, however, is a bit more complex than a 140 character tweet. Although communications between CAPE's national office and its members are now entirely paperless, this transition did not take place overnight. Rather, it paralleled changes that occurred in modern society.



When the Social Science Employees Association (SSEA) and the Canadian Union of Professional and Technical Employees (CUPTE) merged to form CAPE in 2003, the new union undertook a review and assessment of how it might best communicate with its approximately 10,000 members.

An in-depth review

In 2006, the National Executive Committee decided to mount a review of all of the Association's communications with its members and to develop a protocol on information delivery to members. The work done by CAPE's Communications Committee began to bear fruit in 2007, when CAPE made a commitment to initiate a changeover to electronic communications. The first real step was taken when an online survey of members at the Library of Parliament was conducted to prepare for their upcoming round of collective bargaining. At this point, the Committee was already theorizing that CAPE's next elections might be conducted entirely by means of electronic balloting.

As the amount of new technology being used by CAPE members in their everyday work continued to increase, the pilot project at the LoP clearly demonstrated that electronic modes of communication were the way of the future. In fact, at 32%, the participation rate for this 2007 electronic survey was identical to the participation rate for previous consultations that had been conducted by mail. However, the

electronic survey offered key advantages: significantly lower costs and the ability to analyse results faster. The trail was clearly being blazed.

Around the same time as this e-survey experiment, CAPE went about improving its website to make it more user-friendly. The new site was launched in the fall of 2008.

Another important communication tool was given a face-lift in 2008: the Stewards' Manual was fully updated to reflect legislative changes and organizational changes within the public service. This manual is an essential tool for CAPE's stewards, who volunteer to be the union's eyes and ears in the workplace.

Making the leap to e-communications

Following the success of its e-survey of members at the Library of Parliament, CAPE resolutely entered the world of e-communications in 2009. The major benefits of this transition were obvious: mail-outs to more than 10,000 members cost a great deal of money and required a complex infrastructure to print and send out documents and, in the case of ballots and surveys, to collate and compile results. Switching from snail mail to email makes it possible to reach the same number of people at a far lower cost, while facilitating the speedier compilation and processing of information.

By the end of 2009, CAPE members had begun enthusiastically accepting their union's invitation to shift from regular mail to electronic communications. More than 2,000 of CAPE's 12,800 members at the time had already opted to receive information from the union electronically, and 1,500 members subscribed to CAPE's electronic newsletter, which provided them with the latest news and information from the National Office.

#CAPE is raising its #traditionalmedia and #socialmedia profile through increased #communication opportunities. #virtual #evolution

Of course, the act of communication, whether in person, by regular mail or by electronic means, always involves problems and challenges. For CAPE, the task of setting up and maintaining a reliable and up-to-date member database is complicated by the fact that information on members is provided to us by a third party. With regard to our EC and TR members, we get this information from Public Works and Government Services Canada (PWGSC). The problem is that PWGSC has often changed the tools it uses to compile information on public service employees, forcing us to modify our database accordingly.

In June 2009, for example, after ES and SI positions were converted into EC positions, we determined that the Treasury Board list administrated by PWGSC was incomplete. No fewer than 4,000 names of CAPE members were not on the list! We had to wait until the fall of 2009 before we could obtain updated information.

Surveys for each of the bargaining tables

After witnessing the success of the pilot project involving its members at the LoP, CAPE decided to conduct electronic surveys of its EC, TR and LoP members in 2010 to prepare for the upcoming rounds of collective bargain-

ing for each of these groups. Once again, the success of the operation, which resulted in a participation rate similar to what would have been achieved through a regular mail survey, but without the drawbacks and inconveniences of postal mail-outs, convinced CAPE's leadership to continue progressing along that path. These pre-bargaining surveys were followed by consultations with Local Leaders to find out more about their needs and concerns with respect to communications between the union and its members.

Also in 2010, the Communications Committee shepherded the development of a communication plan that would allow CAPE to adequately manage the development of its communications. Some of the projects that flowed from this plan include the establishment of the Online Discussion Platform, the reconfiguration of CAPE's website, a campaign to encourage non-members (Rands) to become members, and a concerted push to elevate CAPE's profile in the media and with Parliamentarians. In addition, promotional material was developed to improve CAPE's visibility, including banners and signs in CAPE's colours for use by the Locals.

Paperless communications

As the benefits of electronic modes of communication became increasingly evident, CAPE began using electronic communications more and more. Early in 2011, NEC members accepted the Communications Committee's recommendation to stop communicating with members by regular mail as of September 2011. Information bulletins, newsletters, notices for training sessions, bargaining updates - in short, the full range of communications between the Association and its members - would now be provided only in electronic form. A contest was held to encourage members to provide us with their email addresses, and this allowed us to increase the number of members on our distribution lists by 30% in only a few short weeks.

In 2011, all of CAPE's votes and consultation initiatives were conducted electronically. The members voted in favour of certain amendments to the Constitution and By-Laws, participated in a survey on health care, adopted the union's audited financial statements and budget, audited and chose a firm to be tasked with the responsibility of auditing CAPE's books. With a participation rate of 20%, the evidence was clear that it was possible to consult a larger number of members with greater efficiency and effectiveness.

Coalition between unions

As far as CAPE is concerned, communication is an exercise that goes beyond its membership. In its capacity as a labour organization, CAPE must interact with the 17 other federal public service bargaining agents and with a broad range of other organizations as well. Within the context of its involvement in the National Joint Council and in other forums, CAPE is often called upon to work jointly with other organizations representing workers. In November 2010 and April 2011, the Professional Institute of the Public Service of Canada (PIPSC), the Association of Canadian Financial Officers (ACFO) and CAPE organized two events.

In November 2010, the three unions organized the Evidence versus Ideology in Public Policy Forum, an event that identified the dangers to democracy that can result from basing public policy solely on ideology, and the importance of ensuring that the government bases its policy making on rigorous scientific evidence produced by its federal public service employees.

A survey of the members of these three unions subsequently paved the way for a panel discussion on the public service pension plan in April 2011. This panel discussion was developed with the goal of informing the general public and public service employees about two key issues, and the truths, lies and half-truths concerning the public service pension plan. Responding to attacks launched by organizations such as the Fraser Institute and the Canadian Federation of Independent Business, which would like to see a reduction in public service pension benefits, the panel, which was available as a webcast, successfully demonstrated that the pension plan is not a financial burden to the federal government.

The following year, the founding members of the coalition reached out to three more unions, the Association of Justice Counsel, the Canadian Federal Pilots Association and the Professional Association of Foreign Service Officers, to create Professionals Serving Canadians. During the summer of 2012, after the Conservative government tabled an austerity budget in March that included numerous federal public service job cuts, this coalition conducted a social media campaign to explain the detrimental impact the government's cutbacks would have on services to the Canadian public.

An increased presence

The communication plan produced in 2010 by the Communications Committee has produced a number of tangible results. In addition to the Online Discussion Platform which

started hosting discussions in the spring of 2012, CAPE now has a Twitter account that retweets about a dozen items daily, in particular news articles and blogs that are likely to be of interest to members. The President of CAPE also publishes a weekly blog on a wide variety of subjects. In recent months, moreover, the President has met with Senators and MPs to outline CAPE's positions on the government's budget cuts, the public service pension plan, bills that have an impact on union participation and the labour movement in general, and other topical issues.

When the last two federal budgets were tabled in the House of Commons, particularly Budget 2012 which brought in major cuts to the federal public service, CAPE elevated its profile by publishing a rigorous analysis of the impact of the budget cuts. Whereas the Minister of Finance, in statements before the House of Commons, had tried his best to discredit the figures put forward by CAPE in its analysis of the government's austerity measures, the Parliamentary Budget Officer and the Canadian Centre for Policy Alternatives both subsequently confirmed the information we had provided. Not only did the government's $5.2 billion in spending cuts and its elimination of 19,200 federal public service jobs cause tens of thousands of job losses in the private sector, they also slowed down Canada's gross domestic product growth.

In short, as Twitter users might put it: **#CAPE is raising its #traditionalmedia and #socialmedia profile through increased #communication opportunities. #virtual #evolution**

The *Charter* Challenge: Collective Bargaining, a Constitutional Right

When Canada's federal public service employees won the right to collective bargaining in 1967, the matter of a framework for collective bargaining was discussed in great detail. The legislation of the time which resulted from these discussions, the Public Service Staff Relations Act (PSRA), *as it was then called, was very restrictive, excluding three key matters from bargaining that are not excluded in most other labour statutes in Canada: pension, classification and staffing.*

A 46 year injustice

Public service bargaining agents have argued since the '60s that the exclusion of these key matters — pension, classification and staffing — from the bargaining table is unreasonable and exists only because the employer is also legislator. This matter has come up at various times and in various forums over the past five decades, but with no change to the existing bargaining format.

The importance of pensions is easy to argue. Tied with wages, there is no entitlement or benefit that compares to pensions for federal public service employees. Pension is a form of deferred wages. Staffing processes determine the potential realization of career aspirations, while classification is the cornerstone on which salary is based in the federal public service. All three of these matters are front and center when it comes to CAPE's membership and all federal public service employees.

Therefore, their continued exclusion from the bargaining table is unreasonable and the relevant sections of the *Public Service Labour Relations Act (PSLRA)*, adopted in 2003, should be stricken from the legislation or amended.

Exclusion of these key matters — pension, classification and staffing — from the bargaining table is unreasonable and exists only because the employer is also legislator.

Supreme Court: BC Health Services Decision Opens a Door

In June 2007, a door to possible change opened up with the Supreme Court of Canada's landmark BC Health Services decision, which tied collective bargaining to the right of association provisions of Section 2 of the Canadian Charter of Rights and Freedoms. This ground-breaking decision created a legal avenue whereby public service bargaining agents were permitted to file court actions in this matter.

In May 2008, after considerable discussions among bargaining agents, CAPE and the Pro-

Courts have come to a few unexpected decisions over the past couple of years that would seem to indicate that a winning argument isn't necessarily a winning case.

fessional Institute of the Public Service of Canada (PIPSC) joined forces to file an action demanding that the *PSLRA* be changed to reflect the significance of the BC Health Services decision, before the Superior Court of Ontario


Supreme Court of Canada

If successful the litigation would have allowed federal government employees to have some real say over important terms and conditions of employment through the process of collective bargaining. Both the employer and the unions would have been obligated to bargain in good faith over the full range of workplace issues, and to include negotiated provisions in these areas in collective agreements.

Legal theory underlying the case

The *Charter* Challenge relied upon the guarantee of freedom of association contained in section 2(d) of the *Charter* as interpreted by the Supreme Court of Canada in the recent B.C. Health Services case. In that case, the Supreme Court of Canada overturned its previous decisions and held for the first time that freedom of association protected the process of collective bargaining. The Court concluded that the constitutional right to collective bargaining "concerns the protection of the ability of workers to engage in associational activities, and their capacity to act in common to reach shared goals related to workplace issues and terms of employment."

It was the position of CAPE and PIPSC that the legislative restrictions at issue fundamentally interfered with their ability to engage in protected associational activity and that the employer has substantially interfered with the ability of their members to engage in authentic collective bargaining by enacting these limitations.

As a result, the two unions decided to take this issue to court as they and their members believed federal public service employees should have the right - as do their private sector counterparts, and most other public service workers - to bargain all of their terms and conditions of employment, and not just some of them. It was a long overdue right which has been denied.

The next two and a half years were spent addressing the herculean task of preparing affidavits with and for a group of expert witnesses. It was hoped this process would be completed by late 2010, but unfortunately the legal complexities of the matter and the coordination of a number of affidavits and supplementary affidavits made this impossible. CAPE and PIPSC worked in tandem with legal counsel through countless hours to identify, coordinate and clarify issues identified by the multiple affidavits.

Recent unfavorable Supreme Court decisions: the Fraser Decision

During the preparation period, a number of Supreme Court decisions on matters closely and not so closely related to the matter of a *Charter* right to bargaining were issued, while other related matters were still before the courts. In April 2011, the Supreme Court issued yet another decision on the *Charter* rights to association on work place matters: the Fraser decision.

While the facts in the Fraser decision are only tangentially related to the facts of the BC Health Services Decision, the Justices of the Supreme Court did review principles and tried to give a clearer picture of what the Court meant in the BC Health Services Decision.

In the Fraser decision, a majority of Justices focused on association rights almost to the exclusion of any regard to the significance of the statutory environment in which the rights were being expressed. The Court was asked to decide on the matter of legislation passed by the Ontario government that compensated for the exclusion of Ontario farm workers from the *Labour Relations Act of Ontario* with a pro-forma mode of presenting concerns to employers. The Court found the Ontario government did not act in contravention of the right to association by imposing a separate and much weaker regime of labour management relations on farm workers. According to the decision, the responsibility of the government of Ontario was simply to define in legislation some form of relation to give meaning to the right of association.

The Court, by finding in favour of the government's position, seemed to give employers greater latitude in fulfilling their *Charter* obligations with respect to freedom of association than what the BC Health Service decision seemed to indicate. It was not a hopeful sign. The Supreme Court appeared to be a taking a step back from that decision.

Options being explored

In early July 2011, counsel for CAPE and PIPSC wrote to Treasury Board to explore the possibility of settling matters out of court. The parties had seen each other's affidavits, for the most part. And there was a feeling on the union side that there may be common ground on which an agreement could be built. That being said, little progress has been made to conclude this matter to date.

Courts have come to a few unexpected decisions over the past couple of years that would seem to indicate that a winning argument isn't necessarily a winning case. Working things out rather than rolling the dice of tribunals may be less risky for both parties.

Pension Issues — Supreme Disappointment

There is little doubt that all government employees were extremely disappointed when the Supreme Court of Canada released its decision on Wednesday, December 19, 2012, stating that the Canadian Government does not have to account separately for pension money it owes public service retirees, or pay back a $28 billion surplus that had accumulated on its pensions accounts, and which the government had used to ease its National Debt. The decision of Canada's highest court upheld two lower court rulings against federal public service employees, members of the RCMP and the military. The high court ruled that the federal government could account for its pension obligations and liabilities as it wished, within its general treasury or consolidated revenue fund.

The Court's decision culminated a bleak 2012, in which the government announced a further erosion of public service benefits, increasing employee contributions to the pension plan, and increasing the retirement age for newly hired employees to 65.

The Court's ruling effectively stated that the pension accounts were not pension funds and need not be handled with fiduciary responsibility. The Court felt these were not real monies, merely paper records. For thousands of government employees and retirees who contributed their income to the plan, and who took home less wages as a result, their reality was clearly at odds with Canada's highest court.

The Conservative Government said they were relieved the high court didn't saddle the government with an obligation to pay out the surplus that had accumulated. Interestingly, the public service plaintiffs had never asked that any funds be paid out to plan members, rather the unions had always sought that the funds be credited to the plan and retained as a protection against any future financial downturn. This view was ultimately both prophetic and prudent, given the 2007 recession and the contraction of financial markets and pension funds, and moreover ironic, given how the Government's confiscation of the surplus exacerbated the plan deficit that existed following the 2007 recession.

In response to the Court's decision and the actions of the federal government in its July 2012 budget, the Canadian association of Professional Employees slammed the federal government for forcing current and future public service employees to "pay larger contributions over a longer period of time because, among other things, a portion of the accumulated funds to ensure the continued viability of their pension plans was used for other purposes by their employer."

CAPE noted that the government reneged on its contractual commitments when it dipped into the accounts to reduce the deficit. Regardless of whether the federal government was legal entitled to dip into the surplus, the impact of this siphoning off of funds is now evident. The public service pension plan, like other defined-benefit plans, is in difficulty today because of the contribution holidays taken by many employers between 1994 and 2003.

CAPE pointed to the government's decision in the last budget to hike the normal retirement age to 65 for employees hired after January 1, 2013 and to gradually increase employees' contributions until they are equal to the employer's contributions. These changes are due in part to the shortfall caused by the government's appropriation of the pension plan surplus, even though the pension plan remains solvent and fully funded.

Pension History

This disagreement over pension matters has been part of an acrimonious public debate spanning nearly 2 decades. And while a re-examination of these pension issues will not change the Court's ruling in these matters, it is important not to forget the unfolding of events, the motivations and actions of a disingenuous government employer, and the unique difficulty faced by government employees. All this can clearly provide some lessons learned and a lens for assessing future government actions. It will add context and understanding to current labour unrest in the federal workforce.

A. The Plan

The Supreme Court was perhaps correct in stating that the pre 1999 Pension Plan was not a financial fund. In fact, it was more in the nature of a payday loan program. While no money was invested in financial markets, the federal government did take 7.5% of employee wages from each paycheck. These monies were then credited to the government's general revenues and quickly spent. This amount, plus the government's own contribution were shown on the pension's accounts as a debt owing the plan. They were reflected as a debt in Canada's National Accounts. The government never really made any cash contribution. The entire plan was effectively a very large IOU. In addition to these monies reflected in the loan, interest was credited based on the 20 year bond rate. The use of the 20 year bond rate was highly beneficial to government finances, as the long-term bond rate was substantially less that the current interest rate throughout the 1970's and 1980's. The plan was a source of capital borrowed at less than market rates. The difference between the amount owing the plan and the projected cost of the plan was the "actuarial surplus."

B. The Surplus

How was the surplus created? In the 1990's the Liberal government instituted a program of wage controls which lasted 6 years, and which featured a salary freeze for the last 5 years of the program. As pensions are based upon average salary, the net effect was to reduce future pen-

One has to question the honesty and integrity of any organization that keeps two sets of accounts for the same thing.

sions by an estimated 15%. This was the primary reason the pre-1999 federal public service pension plan accumulated a $28 billion surplus. The federal government never contested the factors creating the surplus.

During the 1990's period of restraint, the government sought to access these surplus funds in order to reduce the National Debt, and its borrowing costs. Commencing around 1995, the government began to amortize a portion of the surplus as a net credit for its contribution. As well, it reduced the interest calculation for the plan due to the lowering of the surplus in the plan. This creative accounting gave the government a pension contribution holiday and reduced Canada's National Debt. As the Pension legislation provided no mechanism for withdrawing any surplus, the government's creative accounting was met with legal challenges, filed by CAPE's predecessor unions, (CUPTE and SSEA). In light of the Supreme Court decision, these cases were eventually dropped.

During this period of the 1990's, the government kept two sets of books. The Pension accounts always reflected the $28 billion surplus of the plan, while the National Accounts reflected the dwindling surplus. The first set of books were shared with labour unions, retiree associations, and members of the government's Pension Advisory Committee, to assure them that the pension surplus was in the plan. Paradoxically, the National Accounts, which were publicly released, reflected the amortization of the surplus and thus gave the federal government credit that its restrain measures were effective in reducing Canada's deficit and debt. One has to question the honesty and integrity of any organization that keeps two sets of accounts for the same thing.

C. The New Pension Plan (Bill C-78)

So if the federal government's pension plan was doing so well as to create paper surpluses, why did it need to create a new plan as envisaged in Bill C-78? This is of course a simple question of economics and greed. First, real pension plans with invested funds had significant performance throughout much of the 1980's and early 1990's. Consequently a funded pension plan was viewed as a source of real cash, especially if the government gave itself the ability to withdraw plan surpluses. In addition, the government's practice of borrowing and spending employee pension contributions was becoming the victim of cyclical economic markets. The skyrocketing interest rates of the 1980's eventually gave way to lower rates in the 1990's. This meant that the 20 year bond rate used to credit interest in the current pension plan would be significantly higher than current interest rates. It was a secondary factor in increasing the pension surplus. The government needed to transform the current pension plan, as interest credits would more adversely impact the National Debt.

During this period of the mid 1990's the government floated the idea of a real pension plan,

with money invested by employees and the federal government. Negotiations (discussions) between government officials and union members of the National Joint Council Executive Committee quickly came to an impasse. Government officials took the position that bargaining agents should let the government have the entire surplus ($28 billion). In exchange, the government would give the bargaining agents seats on the pension management board and potentially share any future surplus in the new plan. Unions took the position that current surplus funds should be retained as a hedge against unforeseen market downturns. These positions were intractable and led to the litigation that was ultimately decided by Canada's highest court. This litigation commenced around 1999, following the passage of Bill C-78.

D. New Plan Surpluses

With Bill C-78, the federal government decided to enter the world of real pension funds, probably with the expectation that performance would yield a surplus that it could use for its own purposes. It should be appreciated that such a scheme was completely foreign to properly invested and administered Canadian pension plans. Years earlier (1985), the federal government had passed the Pension Benefit Standards Act (PBSA) to regulate private sector pension plans and to protect plan surpluses from employer raiding. This legislation obligates any employer seeking to access a plan surplus or part thereof to obtain a 2/3 vote of consent from plan members and a 2/3 vote of consent from former members (retirees). It is the epitome of hypocrisy that the federal government obligates private sector pension plans to a high standard of conduct, in order to protect employees, and then exempts itself from the same standard.

A key feature of the new plan was the government's ability to withdraw surplus funds to pay down the government's debt or to give the government a pension contribution holiday.

E. The Shifting Nature of Pension Risk

As federal government employees have a defined benefit pension plan, the federal government has argued both in court and in public that it alone bears the full risk of any shortfall in plan earnings. Indeed this claim was the central part of its public relations campaign throughout the pension litigation. While the claim seems reasonable, actions by the federal government

have consistently undermined this assertion. While the benefit in the plan is defined, there have been consistent efforts to extract money from plan members and reduce the government's contribution (exposure).

In the early 1980's, faced with significant inflation, the federal government capped indexation for two years with a promise to restore that indexation at the earliest possible moment. Nearly 28 years later, retirees are still waiting.

In 1985 the Conservative government, facing a forecast of increases in pension plan costs and a forecasted plan deficit sought to replace the guaranteed indexation that was paid by employee contributions. In exchange the government offered a joint management board. A political backlash and demonstrations by unions and retiree organizations saw this attempt to remove indexation collapse.

As noted in this piece, actions of the federal government to control federal employee wages directly resulted in a plan surplus, which the government confiscated to reduce the National Debt. The surplus could have been retained as a hedge against any future downturn in the new pension plan, thus mitigating potential future risk. The federal government's actions contrasted sharply with other employers in similar circumstances. The Canada Mortgage and Housing Corporation (CMHC) was faced with a similar pension dilemma. Despite any obligation, it chose to share the pension surplus with its employees.

Recent (2012) legislative/regulatory changes to the pension plan have markedly increased employee contributions, and increased the retirement age to 65. As employees contribute more and will retire later, the risk to the federal government employer is lessened by its reduced contributions.

The imposition of draconian bargaining, with the government imposing wage increases of 1.5%, should lower the average salary calculation used to determine an employee's pension. Though not as extreme as the controls of the early 1990's, the effect will be similar and could generate a future surplus, which the government will withdraw.

F. The Public Debate

Following the economic recession of 2007 and the medium term collapse of equity markets, conservative political groups and think tanks began to attack the federal pension plan. Naturally, the plan was in a deficit situation owing to the worldwide recession and retreat of equity markets. In December 2009, the CD Howe Institute published a report claiming that there was an additional $58 billion deficit in the plan. The CD Howe Institute derived that estimate using a method called "fair-value accounting (FVA)". They further demanded a reduction in plan costs (benefits) and risk. CAPE responded quickly to the Howe report, demonstrating that FVA was merely a method used to clear margin accounts on stock exchanges and was never intended to assess pension accounts. CAPE showed that a number of political and economic figures, and major corporations had seriously question the use of FVA, suggesting that the rapid rise of equity markets and downturn was partially the result of this accounting method. Left unanswered was the question of who had supplied the CD Howe Institute with pension information, so that they could conduct their misguided analysis. The lack of any comment from senior government officials provided the best answer to that question.

Undaunted, the CD Howe Institute continued is misguided efforts and reported in December 2011 that the pension plan deficit was really $80 billion greater than the amounts reported in the

public accounts. In a letter published by the Ottawa Citizen entitled Institute cries "wolf" on lurking liability, submitted by Bill Krause, a former member of the Public Service Pension Advisory, and former CAPE President, the Institute was again taken to task.

"It's that time of year again when the little boy runs into town and shouts: "Wolf!" That little boy is the mischievous CD Howe Institute, and the wolf is the monstrous unfunded liability hiding in Canada's Public Service Pension Plan… I can appreciate the approach of the CD Howe Institute. Say a lie often enough, and loudly enough, and someone will believe it."

G. Pension Myths

It is easy to see why Canada's Public Service Pension Plan is such a convenient target – only 40% of Canadian workers are members of employer assisted pension plans. As well, pundits and newspapers have frequently referred to the federal government pension plan as the "Cadillac Pension Plan". CAPE, in response, has shown that benchmark comparisons prepared for the federal government have demonstrated conclusively that the plan is average compared to similar plans for provincial governments and large corporations. Here again, the federal government has never once produced this information in support of its employees or the plan. It would appear that the intention of the government has always been to inspire public animosity/envy towards government employees, setting the groundwork to impose future restraint on its workforce.

Lessons and Expectations

Rather obvious from these experiences, but in any period of restraint all governments place a heavy burden on their own workforce rather than share the discomfort of restraint across the population. It is politically expedient and has been the norm of behaviour for successive Canadian governments, both Liberal and Conservative. Federal government employees, even armed with convincing data and analysis, should never expect the public at large to be sympathetic on most labour relations matters.

Issues regarding the federal pension plan have never been about fairness, integrity, or discussions based on facts and information. The debate has been an exercise in power, with the federal government using legislation to impose its will.

While the government of Canada is a sponsor of the Federal Pension Plan, you may always expect its financial interest in the plan to trump any perceived responsibility to administer pension monies in any way beneficial to employees. You can expect it to forecast at the earliest possible moment a plan surplus that it will withdraw. Subsequently, should economic cycles lead to any projected deficit, it will explore avenues to shift costs to plan members. This is exactly what has transpired since the mid 1990's. It will happen again.

Were you expecting something better from an organization that maintained two sets of books for the same thing?

Public Service Modernization – a Difficult Road

A massive shift in goals and strategies has occurred for labour unions since they first came on the scene over a century ago. In the early days of union history, efforts focused primarily on gaining employee rights and benefits that workers never had. Things like the 40-hour work week, the right to strike, the right to weekend rest, a paid vacation, safe working conditions, sick leave, a reasonable pension, and so on, were the clear objectives of those times. However, in recent years, this focus has shifted dramatically. Instead of working to acquire new rights and benefits for employees, unions are now working simply to hang on to what was previously won through hard-fought battles and negotiations.

CAPE is no exception as it works tirelessly to resist and mitigate the federal government's relentless efforts to erode employee rights and benefits, first through heavy-handed unilateral actions, and more recently by subtly-crafted, prohibitive legislation. A brief survey of the government's public service modernization strategies in recent years reveals just how bad things have become, and shows how CAPE's role as your bargaining agent has been largely defined by these challenging workplace realities.

2001: The Fryer Report, hopeful signs

Labour relations between the federal government and the public service during the 1990s were, by many accounts, the worst they had ever been. This was due to repeated heavy-handed unilateral actions taken by the employer to resolve labour disputes in its favour. These actions included imposing wage freezes, the repeated suspension of collective bargaining, the repeated refusal or suspension of binding arbitration, unilateral changes made to key labour legislation that protected employee rights, the appropriation of the $30 billion surplus generated by the pension regimes of RCMP, Armed Forces and public service employees, and more.

Labour relations in the federal workplace had reached such a toxic state that in 2001 the government formed a special committee to investigate the situation and to make recommendations for improvements.

The root cause of labour relations dysfunctionality in the public service was the critical imbalance of power between employer and employees.

Under the leadership of John Fryer, and with a balanced compliment of employee and employer representatives, plus labour relations experts, the Advisory Committee on Labour

Management Relations went to work. In July 2001, after extensive research and consultations the committee published its findings in a document entitled "Working Together in the Public Interest" in which it made 33 recommendations.

In a nutshell, the committee concluded that the root cause of labour relations dysfunctionality in the public service was the critical imbalance of power between employer and employees. The proposed recommendations sought to address and correct this imbalance.

While the unions had concerns about a few items in the report, their view generally was quite favourable, expressing cautious optimism for positive change. However, the employer's response was quite different.

2002: Quail Task Force, disappointing trends

While Part II of Fryer's report was still at the printer, and without any notice to labour, Treasury Board struck its own investigative committee, but with no employee representation at all.

The Task Force on Modernizing Human Resources Management in the Public Service (2002) was led by Ranald Quail, former Deputy Minister of Public Works and Government Services Canada. Its mandate was to recommend a modern human resources management policy, as well as legislative and institutional frameworks in the hopes of updating the system and making the federal public service an employer of choice.

The Task Force planned to table legislation in Parliament by the summer of 2002. It was clear that the "vision" of this Task Force was not to be limited by the existing legislative framework or the precedents that governed human resources management. In fact, the goal of the Task Force was to propose new legislation to govern human resources management in the federal public service.

The goal of the Quail-led Task Force was to propose new legislation to govern HR management in the federal public service... there were to be no employee representatives on this Task Force.

In the end, the Task Force announced that expected legislation would bring major changes in four key areas of HR management and, as time would show, none of these changes resulted in favourable outcomes for employees. These four areas were staffing, recourse, labour relations, and values. (Please refer of the July 2009 edition of the Professional Dialogue for the details).

In sum, it can be said that the principal concern of the Task Force was putting together legislation that would be accepted by Deputy Ministers. So it was with minimal consideration of the views and concerns of the unions that this Task Force issued its report. As expected, what followed were rapid changes in legislation to implement its recommendations.

2003: The *Public Service Modernization Act* and the new *Public Service Labour Relations Act*

On September 2, 2003, CAPE appeared before the Senate's Standing Committee on National Finance and presented the Association's view of *Bill C-25*, the new *Public Service Modernization*

Act (PSMA), which was intended to "modernize employment and labour relations in the public service".

There were many concerns. But CAPE focused on the most far-reaching for the membership and recommended 11 amendments to the *PSMA*, seven to that portion that created a new *Public Service Labour Relations Act (PSLRA)*, and 4 to the changes proposed to the *Public Service Employment Act (PSEA)*.

CAPE tried to convince the Committee that the new *PSLRA*, and the proposed changes to the *PSEA*, were not going to improve relations. They were, in fact, realigning relations so that any progress that unions had made over the previous 36 years would be effectively eliminated.

In spite of CAPE's efforts, and the efforts of other bargaining agents including the Public Service Alliance of Canada and the Professional Institute of the Public Service of Canada, the *PSLRA* received Royal Assent in November 2003 with none of the amendments proposed by unions to the Bill authored by the employer. The imbalance of power that had been noted by the Fryer Committee did not disappear, but in fact increased.

2009: The *Budget Implementation Act*, the *Expenditure Restraint Act* and the *Public Sector Equitable Compensation Act*

Restructuring the balance of power in order to accentuate and enshrine in legislation the employer's overriding power was only one way that the employer cum legislator imposed its will. Similar to what it did in the 1990's with the suspension of bargaining, Treasury Board decided to strike down the right to bargain yet another time in 2009 – with a little more subtlety this time – with the *Expenditure Restraint Act (ERA)*, part 10 of *Bill C-10* or the *Budget Implementation Act*. If the *ERA* wasn't enough, the *Public Sector Equitable Compensation Act (PSECA)* or part 11 of *Bill C-10*, was thrown in for good measure.

The *ERA* was put together in such a way that, while it did not prohibit bargaining of all matters, it effectively defined the salary increases of unionized federal public service employees for a period of five years without the opportunity to negotiate. As a result of the *ERA*, no collective agreement or arbitral award could provide for increases to rates of pay that were more than that prescribed by the legislation. And, to add insult to injury for CAPE in particular, the *ERA* rendered moot an understanding going back to 2003 regarding the salary impact of the implementation of the EC conversion on CAPE's EC members.

The BC Health Services Decision and the Future of Labour Relations in the Federal Public Service

On June 8, 2007 the Supreme Court of Canada released its landmark decision in BC Health Services, where the Court recognized for the

The Supreme Court of Canada recognized for the first time that the right to collective bargaining is constitutionally protected.

first time that the right to collective bargaining is constitutionally protected by the freedom of association guarantee in s. 2(d) of the *Canadian Charter of Rights and Freedom*. As the Court concluded, the right to collective bargaining cannot be reduced to a mere right to make representations. Bargaining agents must be able to bring to the bargaining table matters of importance in the work place. The necessary implication is that if prohibited matters cannot be adopted into a valid collective agreement, then the process of collective bargaining becomes meaningless with respect to them.

As a result of the Court's decision, CAPE has argued that restrictions imposed by the *Public Service Labour Relations Act* on bargaining violate the guarantee of freedom of association contained in the *Charter*. It argued that Treasury Board can no longer refuse to bargain matters of importance to public service employees simply because it deems that they are covered by the *Act's* prohibitions. Nor can the employer unilaterally legislate changes to the very nature of its relation to bargaining agents.

The *Charter* Challenge

In May of 2008, the Professional Institute of the Public Service (PIPSC) and CAPE jointly launched a constitutional challenge seeking to invalidate provisions contained in the *Public Service Labour Relations Act* prohibiting federal employees from negotiating protections and improvements in a variety of areas, including pensions, classification and staffing. In their affidavits, the unions argue that the legislative restrictions at issue fundamentally interfere with their ability to engage in protected associational activity and that Government has substantially interfered with the ability of PIPSC and CAPE members to engage in collective bargaining by enacting these limitations. See our article "The *Charter* Challenge: Collective Bargaining, a Constitutional Right" elsewhere in this publication.

In November 2011 the CAPE National Executive Committee decided that because of mounting jurisprudence that indicated that our ongoing efforts would eventually prove unsuccessful, the Association would withdraw the challenge.

Looking Forward

The only way to improve relations at this time in our history is for unions and employees to keep insisting on rights recognized under the *Charter*, further to the BC Health Services decision, even if the government won't recognize them.

The employer needs to be challenged and reminded of its obligations so that pressure is maintained and a new landscape can be established – a new and balanced relationship. Once a balance is established, it will be possible for bargaining agents and the employer to sit down together and work as real partners, talk through problems, identify converging interests, respect differences and get to solutions that last through the inevitable crises of the public service work place.

Collective Bargaining in the Federal Public Service – Optimizing Outcomes in a Challenging Context

As a bargaining agent, CAPE does many things in the service of its members, and collective bargaining stands squarely at the centre of these activities. However, with the employer being the federal government of Canada we are faced with a special set of challenges not faced by private sector unions. In this 10-year retrospective article about collective bargaining in the federal public service we want to shed some critical light on this difficult context and the resultant bargaining process, and hopefully build a renewed understanding and appreciation for the challenges that CAPE faces daily in representing its members and protecting their rights.

The Big Picture - An Unfair Match

In a nutshell, collective bargaining in the federal public service is akin to wrestling with one hand tied behind your back. This is the hard reality facing all public service bargaining agents ever since collective bargaining was first introduced to the federal public service in 1967.

While legislation officially granted public service employees the right to collective bargaining, the employer has, over the years, repeatedly used a variety of tactics to inhibit and at times prevent this right from being fairly exercised. These tactics have included back to work legislation, wage freezes, repeated suspension of collective bargaining, suspension of binding arbitration, wage increase caps for prescribed periods of time, and more.

It is within this difficult, restrictive context, which is highly weighted in the employer's favour, that CAPE and other federal public service unions have worked tirelessly to achieve the best possible outcomes for their members.

Public verses Private Sector Bargaining

The first distinctive feature of public sector versus private sector bargaining is the absence of profit as a major issue. In contrast to its private sector counterpart, the public sector employer does not exist for the purpose of making profits for the owners of a corporation or company. It exists in order to carry out public policy in accordance with the will of a government, which is presented as the will of an electorate.

An important consequence of the nature of the employer's political perspective on collective bargaining, in contrast to a profit perspective, is instability. Every four years, often within a shorter span of time, fundamental changes can occur in the direction of a public service and even in its structure. This ongoing instability makes public management inherently cost ineffective. This does not mean that public sector managers are ineffective, quite the contrary. Private sector managers could

learn much from public sector managers who need to develop means to ensure continuity and the effectiveness of operations within a maelstrom of constant directional change. But it does mean that the objective forces of the market, so to speak, make themselves felt only indirectly on the public sector employer at the bargaining table through a filter of politically defined policies.

A second distinctive feature of public service bargaining is the matter of a bargaining process where one of the two parties can change the rules of the process in mid-stream. When employer and employee representatives cannot agree at the bargaining table in the private sector, events work themselves out according to the rules set in legislation. But, in the case of federal public service bargaining, the rules are defined by one of the two parties: the employer. The federal public service employer is also legislator. At the end of the day if one party can force the other party to go back to work with an imposed collective agreement, the entire bargaining process is skewed.

Pawn in a Larger Game

Since the early 1990s, successive federal governments have pursued a policy of dampening the growth of wages in the private sector by means of controlling or freezing wages in the public sector. The purpose has been to control inflation and to create a more stable market not only for Canadian investment but also to attract more foreign investment. Supported by provincial governments that have followed a similar wage strategy, federal governments have successfully pursued a policy of wage controls for the purpose of creating conditions for a low, stable and predictable rate of inflation. Wage policy has been only one of many tools added to monetary policy in order to control inflation. But, it has been the one policy that has had a direct effect on public service collective bargaining.

Collective Bargaining in the Federal Public Service is akin to wrestling with one hand tied behind your back - it's not a fair match and the outcome is pre-determined.

As a result, Treasury Board negotiators have carried wage adjustment mandates to the bargaining table that were in line with Finance Canada's prediction of changes to the rate of inflation. Beyond impasses that may have been reached at the table, the mandates have been protected by the threat of back-to-work legislation and a narrow interpretation of the Act.

CAPE's Response

Faced with negotiating within the constraints set by government wage policy, public service bargaining agents have been given quite a challenge at the bargaining table. In response, CAPE and other public sector unions have pushed for other economic proposals to come to center stage.

Firstly, public service bargaining agents have increasingly emphasized pay scale restructuring as a means to address "pay" issues. The distinctive feature of pay restructuring is that it has a lesser general impact than wage adjustments, while carrying the potential of a positive impact on some if not all members of a bargaining unit.

Secondly, bargaining agents have proposed, sometimes successfully, one-time economic gains such as signing bonuses. Again, more money in the pockets of individuals, but a smaller impact over time as such bonuses are not permanent features of wage cost to the employer.

Thirdly, when temporary market conditions create a situation where recruitment or retention has become a problem for the employer, bargaining agents have successfully argued for temporary allowances.

Fourthly, there is the matter of leave provisions. It could be argued that the most important improvements to collective agreements made at the bargaining table with Treasury Board in recent years have been to leave provisions. Leave of various types have been incrementally improved with increases to the amount of leave allowed. Improvements have also been made by bargaining into agreements expansion of the conditions under which different forms of leave can be taken. These improvements are very important - almost as important as pay increases, as survey after survey has demonstrated that leave, whether annual leave, bereavement leave or one of many other types of leave won by public service bargaining agents rank second only to wages as priorities for public service employees.

In short, while constrained by the policy directed wage mandates of Treasury Board, bargaining agents, as directed by the expressed interests of their members, have focused mostly on creative pay proposals and on improving leave provisions at the bargaining table. It should be expected that these types of matters will continue to be the top priorities brought forth in negotiations with Treasury Board.

Below you will find a summary of improvements to each of CAPE's respective bargaining units, accomplished during the past ten years.

Improvements to the three CAPE Collective Agreements

In 1967 the first collective agreements in the federal public service entitled employees to four weeks of annual leave, not after 8 years but after 18 years of continuous employment. Medical certificates were required for sick leave periods of more than 3 consecutive days or if the employee had already taken 7 days of sick leave in the year. Maternity leave was for a maximum of 6 months, with no maternity allowance.

The maximum annual rate of pay for the ES group was $21,750, the maximum for the ES-05 level. There was no ES-06, ES-07 or ES-08 levels at that time. We do not have data for our members working on Parliament Hill in 1967. But, it is safe to assume that wages were comparable. The maximum annual rate of pay for a TR-02 was $10,106 and $11,861 for a TR-03.

Without tracing back to 1967 for the purpose of identifying improvements to collective agreements negotiated by ES, SI, EC LoP and TR bargaining committees over the years, here is a very incomplete list of recent improvements, i.e. since 2002.

Depending on your personal and professional circumstances, some improvements may be more important than others. Over the course of a career, you and your colleagues will benefit at one time or another from most entitlements in the collective agreement.

Concessions to the employer have also been made during these years, mostly of marginal value to members. The one significant exception has been severance pay on retirement and resignation. CAPE never stopped fighting to protect the severance pay provisions for retirement and resignation. However, in three separate decisions, arbitrators included in their decisions a concession to the employer of severance pay for retirement and for resignation.

EC collective agreement over the past 10 years have included the 30 following changes:

1. Wages have gone up for EC employees over the past ten years. For example from 2002 to 2013, the maximum annual rate of pay for an EC-04 has gone from $69, 631 to $74,647. The maximum for an EC-06 increased from $78,913 to $101,148 a year. An EC-07 stuck at the maximum for the past 11 years has seen the maximum annual rate for the level go from $88,259 to $113,016. (Please see “Wage Comparisons for CAPE Bargaining Units – 2002 to 2013”, below.)
2. The maximum life of a schedule of variable hours (e.g. a compressed work schedule) has increased from twenty-eight (28) days to fifty-two (52) weeks which allows employees to bank paid off-duty days to be used consecutively.
3. The definition of family for Leave Without Pay for the Care of Family has been broaden to allow EC employees to take leave for a brother, a sister, a father-in-law, a mother-in-law, a grand-child or a grandparent.

If when one party can force the other party to go back to work with an imposed collective agreement, the entire bargaining process is skewed.

4. EC employees are entitled to Compassionate Care Leave to take care of a dying family member.
5. The definition of a bereavement period has been broadened for greater flexibility.
6. Parental leave can be taken in two periods of consecutive weeks. Previously, parental leave could only be taken in one period of consecutive weeks.
7. The definition of family for Leave with Pay for Family-Related Responsibilities (FRR) has been expanded with the addition of all children (was "dependent" children), parents of spouse or common-law partner and grandparents.
8. The maximum of FRR leave has been removed in each sub-clause, giving greater flexibility of use to EC employees.
9. A new entitlement to 7.5 hours of volunteer leave with pay is added to the collective agreement.
10. A new entitlement to 7.5 hours of leave with pay for reasons of a personal nature is added to the collective agreement.
11. An EC employee who is granted leave with pay as a result of injury, illness or disease does not have repay the amount received from a personal disability policy.
12. Leave without pay for personal needs for three months and for up to a year can be taken twice in an EC employee's career.
13. Where the Employer cancels a period of vacation leave which had been approved, the cancelled leave may be carried over and used in the next vacation year.
14. The definition of compensatory leave was expanded in order to include work performed on a designated holiday.
15. The maternity and parental provisions of the collective agreement were harmonized with the Quebec Parental Insurance Plan, allowing members in Quebec to take full advantage of the Plan.
16. Time compensated for stop-overs en route while on travelling time was increased from 3 to 5 hours.
17. EC members who work for the Translation Bureau on Parliament Hill are entitled to sessional leave, similar to a leave entitlement of TR members on the Hill.
18. The Marriage Leave Article was replaced with a new clause under the Vacation Leave Article that allows 37.5 hours (5 days) of Leave with Pay.
19. The Inmate Custodial Allowance has been redefined in terms of risk, rather than custody of inmates. And, the maximum allowance paid to employees who work in penitentiaries is no longer reduced based on the degrees of exposure to risk at each security level.
20. Further to complaint by CAPE before the Public Service Staff Relations Board,

the language in the collective agreement covering retroactive salary for a new collective agreement was changed. EC employees are entitled to the more favorable of two different calculations of salaries that are used by the employer for promotions, demotions, deployments, transfers or acting situations during the retroactive period. The Treasury Board subsequently applied the same principle to all public service employees. This new provision can represent thousands of dollars for members to whom it applies.

21. Previous to the collective agreement that expired in 2006, EC members received double time (2T) on a second or subsequent day of rest only if they worked also on the first day of rest. Compensation for overtime on a second or subsequent day of rest was progressively improved over two rounds. Starting with the collective agreement that expired in 2006, overtime on the second or subsequent day of rest was compensated at double time, unless it was the employee who requested to work on the second day. In such circumstances, overtime was compensated at time and a half (1.5). Then, starting with the current agreement, EC employees are paid double (2) time for each hour of overtime worked on the employee's second or subsequent day of rest in all situations.

22. An entitlement to a higher maximum of 15 hours of compensation was added for travel outside Canada or Continental USA.

23. An EC employee who is away on travel for 40 nights during a fiscal year will be granted 7.5 hours off with pay and credited with an additional 7.5 hours for each additional 20 nights away on travel up to a maximum of 37.5 hours earned in a year.

24. An EC employee may elect to carry over into the next fiscal year up to a maximum of thirty-seven and one-half (37 ½) hours of unused compensatory leave.

25. All work on holidays will be compensated at time and one-half (the first seven and half hours) or double time, never straight time.

26. Shift and Weekend premiums were increased from $1.75 to $2.00 per hour for EC employees.

27. The overtime meal allowance was increased from $9.50 to $10.50 for EC members.

28. When an EC member attends a conference or convention at the request of the Employer, the Employer will pay the registration fees.

29. The entitlement to 6 weeks of vacation is reached one year earlier, after 28 years of service.

30. Subject to the availability of appropriate facilities, the Association may hold general meetings of the local membership on departmental premises. The location, date, and duration of such meetings shall require the prior approval of the deputy head or his or her delegate.

Improvements to the TR collective agreement over the past 10 years have included the 30 following changes:

1. Wages have gone up. For example from 2002 to 2013, the maximum annual rate of pay for a TR-02 has gone from $56,142 to $74,542. The maximum for a TR-03 increased from $66,754 to $87,730 a year. (Please see "Wage Comparisons for CAPE Bargaining Units – 2002 to 2013", below.)
2. The definition of a bereavement period has been broadened for greater flexibility.
3. Marriage Leave was replaced with five (5) days of leave, once in a career and placed in the Family Related Responsibilities (FRR) leave article.
4. The 5-day leave entitlement was then moved to the annual leave article and was thus removed from under the cap for FRR leave.
5. The definition of family for Leave with Pay for Family-Related Responsibilities (FRR) has been expanded from "dependent" children to all children.
6. The maximum of FRR leave has been removed in each sub-clause, giving greater flexibility of use to TR employees.
7. The parental and maternity provisions have been harmonized with the new Quebec Parental Insurance Plan, allowing members to take full advantage of the Plan.
8. A new entitlement to 7.5 hours of volunteer leave with pay is added to the collective agreement.
9. A new entitlement to 7.5 hours of leave with pay for reasons of a personal nature is added to the collective agreement.
10. An employee who has been granted leave with pay as a result of injury, illness or disease does not have to repay the amount received from a personal disability policy for which the employee or the employee's agent has paid the premium.
11. Parliamentary Leave and Interpretation Leave is extended to interpreters who do sign language interpretation.
12. Approval of Leave without Pay for Personal Needs is no longer subject to operational requirements.
13. Travelling time compensation is extended to all multi-lingual interpreters.
14. The pay supplement of $7 for each gross hour has been extended to beyond televised interpretation to include all live broadcasts.
15. The pay supplement of 7% of pay has been extended to all TR-2 translators in parliamentary services at night and in the evenings.
16. A meal or an allowance is provided to all TR employees who work in the Interpretation and Parliamentary Translation Directorate (IPTD) for a continuous period of ten decimal five (10.5) hours or more.

17. A new provision was added in connection with the special work arrangement for translation, i.e. the after-hours 24/7 translation service pilot project.

18. A TR employee who is subject to the special work arrangement for translation will receive an allowance of seven dollars ($7) per hour for all normal hours of work.

19. The special work arrangements and the pay supplement have been extended to hours of work between 6:00 p.m. and midnight and on Saturday or Sunday.

20. The employer may authorize telework for an employee who has voluntarily agreed to a special work arrangement.

21. The meal allowance was increased from $10 to 10.50.

22. The period to take compensatory leave earned but unused during a twelve-month period is extended to 16 months.

23. A TR employee who is away on travel for 40 nights during a fiscal year will be granted 7.5 hours off with pay and credited with an additional 7.5 hours for each additional 20 nights away on travel up to a maximum of 37.5 hours earned in a year.

24. Further to complaint by CAPE before the Public Service Staff Relations Board, the language in the collective agreement covering retroactive salary for a new collective agreement was changed. TR employees are entitled to the more favorable of two different calculations of salaries that are used by the employer for promotions, demotions, deployments, transfers or acting situations during the retroactive period. The Treasury Board subsequently applied the same principle to all public service employees. This new provision can represent thousands of dollars for members to whom it applies.

25. The entitlement to 6 weeks of vacation is reached one year earlier, after 28 years of service.

26. A TR employee is reimbursed up to six hundred dollars ($600) for the annual dues payable to a professional association of the Canadian Translators, Terminologists and Interpreters Council when the payment of such dues is required for the performance of the duties of that employee's position, or when required by the selection and evaluation standards for the Translation Group.

27. The technological change article has been expanded to reflect what is found in other agreements.

28. The Employer will provide two (2) rest periods of fifteen (15) minutes each per normal work day except when operational requirements do not permit, to full-time and part-time employees.

29. A new provision allows an employee to receive on written request, a full and current description of their duties and responsibilities, including the classification level of their position.

30. Effective April 19, 2003, all salaries are increased by $3,845 as the final pay equity adjustment.

Improvements to the AN/RA collective agreement over the past 10 years have included the 30 following changes:

1. Wages have gone up for members of the AN/RA group. For example from 2002 to 2013, the maximum annual rate of pay for an AN-02 has gone from $69,631 to $92,016. The maximum for an AN-03 increased from $76,553 to $101,165 a year.

#Groups and Selected Levels	Maximum Pay $		Increase from 2002 to 2013	
	2002*	2013	$	%
AN-02	69,631	92,016	22,385	32.1
AN-03	76,553	101,165	24,612	32.2
EC-04 (ES-03/SI-04)	58,295	74,647	16,352	28.1
EC-06 (ES-05/SI-06)	78,913	101,148	22,235	28.2
EC-07 (ES-06/SI-07)	88,259	113,016	24,757	28.1
TR-02	56,142	74,542	18,400	32.8
TR-03	66,754	87,730	20,976	31.4

* 2002: Pay Equity for TR group; restructuring for the AN group

2. New language on career development states that management is responsible for actively promoting career development opportunities and shall make every reasonable effort to provide such opportunities.

3. An employee may now request that his or her supervisor provide the reason in writing in the case of refusal, change and cancellation of any type of leave.

4. If, following maternity and/or parental leave, a term employee is rehired at the Library of Parliament within 90 days upon returning to work, he/she is no longer required to reimburse the amounts received while on leave.

5. The title of the Leave without Pay for the Care and Nurturing of Parents

Article has now been renamed Leave without pay for Caregiving and in addition to the employee's parents, the employee will be able to take leave under this article for the care of their spouse. The minimum period for leave has been reduced from 6 weeks to 3 weeks.

6. The definition of family under Family Leave without Pay for Caregiving has been extended to include any relative permanently residing in the employee's household or with whom the employee permanently resides, as well as children a common-law spouse, or a ward or a grandchild, all children whether dependent or not.
7. On request, and depending on individual circumstances, an employee may be granted paid Family Related Responsibilities leave for a period greater than the 5 days cap provided in the article.
8. An AN/RA employee may be granted compassionate care leave without pay to care for a dying member of the family.
9. An employee who has or will have the care and custody of a new born child or who adopts a child will now be able to split into two periods the 37 week period of parental leave without pay.
10. Under sub-clauses (a) and (b) of the Leave Without Pay for Personal Needs, leave without pay for a period of three months and for a period of one year respectively, is available twice in an employee's career.
11. An AN/RA employee is entitlement to 28 days of annual leave after 28 completed years of service.
12. A new entitlement to 7.5 hours of volunteer leave with pay is added to the collective agreement.
13. The definition of immediate family under the Bereavement Leave Article now also includes grand-parents and "a person for whom the employee has legal responsibilities" (a breakthrough in the federal public service).
14. When a member of an employee's immediate family dies, the employee is entitled to a bereavement period of 5 consecutive working days rather than 5 consecutive calendar days.
15. An employee who was bereaved during a period of compensatory leave had his/her leave credits restored. Now, an employee will also have his/her leave credits restored if he/she is bereaved during a period of sick leave or vacation leave.
16. An employee will receive acting pay after 3 consecutive working days rather than 10 days.
17. When an employee is asked to provide a medical certificate, he or she shall be reimbursed for the cost of the certificate.
18. An employee who works overtime shall now have the choice of being reimbursed for the cost of parking or provided with taxi fare.
19. Meal allowance for employees working overtime has been increased to $11.00.
20. With one exception covered by the collective agreement, all periods of continuous or intermittent employment with the Library of Parliament and employers listed in Schedules I, IV and V of the Financial Administration Act will serve as the basis for calculating vacation leave credits.

21. An employee's accumulated sick leave credits with a previous employer will be recognized at the Employer's discretion.

22. The requirement to work on a travel day is no longer a prerequisite to overtime compensation.

23. In addition, when an employee travels on a day not worked during a short week, this day will be replaced by a workday of equivalent working hours.

24. Employees will be compensated at the applicable overtime rate for the first five (5) hours travelled in excess of the normal daily hours of work and at straight time for the remaining contiguous hours travelled.

25. Similarly, an employee who travels on a day of rest or on a designated paid holiday will be compensated at the applicable overtime rate for the first five (5) hours travelled and at straight time for the remaining contiguous hours travelled.

26. Subject to operational requirements, employees will be allowed time off with pay to a maximum of two (2) hours for medical and dental appointments.

27. An employee eligible for a promotion may request a formal assessment of his/her performance if the employee has not received a performance appraisal within the past year.

28. A Telework Policy must be developed in consultation with CAPE within one hundred and eighty days of the arbitral award.

29. The collective agreement guarantees the right to work in a workplace free from all forms of harassment. The inclusion of a harassment article in the agreement also provides employees with recourse to a neutral third party, the Public Service Labour Relations Board.

30. The Hours of Work Article has been modified to allow more flexibility in setting the calendar of long weeks while ensuring that there can be no less than 16 short weeks of 30 hours.

Representation and Consultation –

CAPE's Labour Relations Officers and Education Officer Working for You

Without question, one of the most important set of functions that CAPE engages in year after year is Labour Relations activities. This vital work of representation and consultation is performed by CAPE's dedicated team of experienced, highly-skilled, professional Labour Relations Officers and the Education Officer. As we survey and celebrate the last 10 years of service to our members it is fitting that we highlight this important work and those who so effectively perform it.

The Education Officer

All new queries coming into the CAPE national office relating to terms and conditions of employment, working conditions and the collective agreements are directed to the CAPE Education Officer, who acts as the first contact and information source to members. The CAPE Education Officer is confronted with all of the same issues and concerns that face the Labour Relations Officers. If members contact the office with issues that require ongoing advice or representation, they are directed through this conduit to the appropriate Labour Relations Officer.

Representation

CAPE's Labour Relations Officers are the face of the Association – they are the employees of CAPE that members are most likely to meet – either in the workplace, in the grievance hearing, in consultation, at the Public Service Labour Relations Board and in the National Office. They are responsible for informing and advising members and representatives of the Association. They are responsible for representing members informally, as well as representing members through various formal dispute resolution mechanisms. They also have a key role in the consultative responsibilities of the Association.

Member Satisfaction High

CAPE has historically had one of the lowest ratios of Labour Relations Officers to Members of all the federal public service bargaining agents. Yet despite this, our members' satisfaction with the service they receive is consistently high. What this means, however, is that over the course of any given month, CAPE Labour Relations Officers and Education Officer handle enormous workloads, and consequently are compelled to work in the most effective and efficient manner possible. Such are your professional representatives.

Part of the workload requires that Labour Relations Officers consult with department officials on matters that relate to all the members of a department; another part of the workload involves providing information on rights and entitlements to individual members, as well as advice. Yet, another part of the workload, possibly the most important in terms of direct effect on the memberships working conditions, is the individual representation.

Casework Spectrum

Over the course of the last 10 years CAPE Labour Relations Officers have managed and successfully concluded thousands of individual and group complaints, grievances, appeals and sundry dispute resolutions covering a vast range of employment and workplace issues. The following list is an abbreviated snapshot of the types labour relations issues that were dealt with. These included issues of:

- Recruitment
- Staffing
- Discipline
- Termination
- Overtime
- Acting Pay
- Retroactive Pay
- Bilingual Bonus
- Leave: vacation, sick, other
- Flexible Work Arrangement
- Harassment (various types)
- Discrimination based on disability
- Discrimination based on sex
- Duty to Accommodate
- Classification
- Workforce Adjustment
- Workers Compensation
- Health and Safety
- Insurance
- Political Activity

Consultation

In addition to the representation activities described above, CAPE Labour Relations Of-

ficers also meet the employer in variety of forums, where the Association and other bargaining agents play a consulting role. In the arena of consultation committees and working groups, instead of equality with the employer there is an asymmetrical relationship, where representatives of bargaining agents are used mainly as consultants for decisions that are taken by management within the rationale of management interests.

For bargaining agents, the justification for participation in such unequal forums is twofold. Firstly, consultation committees and working groups are a good source of information that allows bargaining agents to serve their members more efficiently. And secondly, we believe that even the little influence that can be exercised by sitting on consultation committees can be used to move management away from the most ill-advised courses of action that it may be considering. Often this is the best that can be hoped for in such a skewed labour relations environment which the Federal Government has created, and CAPE is determined to work for the best possible outcomes for its members despite the unfair, adverse circumstances.

A considerable amount of time is required to prepare for meetings, attend meetings and report on meetings. More resources than ever have been needed in recent years to co-ordinate actions and ensure consistency in our representations on all committees. The growth of consultation has been exponential over the past decade and cannot be expected to subside for the foreseeable future

Departmental and Agency Consultations

Over the past ten years, a significant amount of time and energy has gone into, and continues to be dedicated to, departmental and agency Workforce Adjustment Committees, as well as other topics relating to the implementation of the 2012 federal budget. In addition to this increase in consultation, Labour Relations Officers continued to consult on a vast array of other issues including, but not limited to:

- EC Development Programs
- Action Plans for the federal budget reductions
- Public Service Surveys
- Workplace Wellbeing
- Employment equity
- Harassment
- Shared Services
- Values and Ethics Code
- Language Training,
- Official Languages
- Travel
- Professional Development
- Terms of reference for Consultation
- Committee Mandates
- Access to Education Leave
- Restructuring
- Amalgamations
- Relocation
- Disability management
- Return to Work policies
- Casual and Term employment

The Work Force Adjustment Directive (WFAD), Alternations and CAPE Members

In the June 6, 2011 federal budget the government announced its intentions to eliminate up to 80,000 Public Service jobs and to eliminate a number of related services on which Canadians have come to depend.

Job Cuts in the Public Service Workforce

Only two weeks after giving these assurances, the government announced cuts to programs and positions at Public Works and Government Services Canada (PWGSC) – cuts that directly impacted CAPE members. Shortly after this, on August 4, it was announced that several positions within the Translation Bureau were also going to be abolished.

Clearly the Conservative government's claim that attrition would be enough to attain the desired savings was a fallacy. While nobody disputes a government's legitimate right to clean up its finances, our concern, however, is with the method by which it chooses to go about doing so.

CAPE's Role during Workforce Adjustment

By the time the government brought in their 2011 budget in the summer of that year, CAPE had already spent months preparing for the fallout, and, as noted, the fallout began almost immediately with cuts announced at Public Works and Government Services that directly impacted on our members.

Playing a leadership role on the National Joint Council (NJC), CAPE, along with 17 other bargaining agents, negotiated with the employer to put into place a system through which employees who are at risk of losing their employment may exercise their rights within the Workforce Adjustment Directive (WFAD) to switch positions with a member who wants to leave the employ of the federal government - alternation.

CAPE then tailored this system specifically for its members and established the "Exchange Facilitation Service", wherein CAPE members who wish to voluntarily leave the public service and vacate a position that could be filled with an opting employee are invited to communicate with the Association and have their names and contact information put on a list. The list is made available to opting members who communicate their intention with the Association. Both volunteers to leave and opting employees are invited to contact CAPE at options@acep-cape.ca.

The "opting" employee, as referred to in the WFAD, that is, the employee who wishes to remain in the employ of the federal government, maintains employment, while the employee who volunteers to leave will receive either a lump-sum payment equivalent to up to 52 weeks of pay, depending on years of service, or up to 52 weeks of pay plus up to $11,000 in tuition fees (see the Work Force Adjustment Directive for details).

Special tools created for CAPE members

Members visiting CAPE's website will find a section entitled "Work Force Adjustment", a link to which can be found on the CAPE homepage. CAPE has developed several information tools, including "The Continuation of Employment for Affected Employees", as well as a "Work Force Adjustment: Questions and Answers" document, which was originally a document prepared by the National Joint Council, but has been tailored to the unique nature of the CAPE membership.

For CAPE members, considering the wide range of skills that are typical of the membership and considering current demand for these skills, in most instances it should be expected that a notice of affected status will be followed with a reasonable job offer. Where a reasonable job offer is not made, in most cases where alternates come forth, alternation will occur.

As the current government moves further into its mandate, more cuts are anticipated. Our members possess knowledge, skills and experience that make them valuable and highly employable public service employees. We are confident that there will be few actual job losses to our members.

Holding the Employer Accountable

Workforce adjustment can be a devastating experience. CAPE will do everything that it can in order to support members throughout this difficult process. CAPE will work to minimize involuntary departures, and will constantly and consistently remind the employer that they share this responsibility.

Nobody disputes a government's legitimate right to clean up its finances. Our concern, however, is with the method by which it chooses to go about doing so.

For members who are not directly affected by job cuts, it will be important to keep an eye on work load. A workforce will often experience overload when managers refuse to accept that less staff means less work can be accomplished. CAPE members should contact a Labour Relations Officer at CAPE if they feel that work load has become unreasonable.

In addition to tailoring and implementing the WFAD alternation mechanism for it members, CAPE has also sent letters to all departments and agencies asking specifically what measures have been taken to facilitate alternations. The federal government had committed to putting effective mechanisms in place and to ensure their adoption through the various affected Departments and Agencies. However, the efficacy of these mechanisms has been constantly called into question during the past many months by bargaining agents across the federal public service. In some cases, Departments and Agencies had not even created such a mechanism, until the bargaining agents reminded them, time and again, of their obligation to do so.

In addition, the bargaining agents were obligated to hold the employer accountable for the application of the Workforce Adjustment Directive. As a result of several irregularities and inconsistencies in the application of the directive, CAPE filed three policy grievances: one concerning the improper implementation of the WFAD alternation process for employees

wishing to swap jobs; one concerning a competitive process at Human Resources and Skills Development Canada (HRSDC) in violation of the provisions of the WFAD; and one concerning the definition of "years of service" for the purpose of calculating the Transition Support Measure of the WFAD.

As it concerns the alternation process policy grievance, in a previous adjudication decision in regards to PSAC and PIPSC policy grievances, an adjudicator had clarified a number of issues with respect to aspects of the alternation policy under the NJC WFAD. The adjudicator had provided replies to four questions on the alternation process, allowing the parties including CAPE to resolve all or most of their issues. CAPE had advised the PSLRB that it would not litigate anew the issues dealt with in the PSAC and PIPSC decision. As that decision did not address one of CAPE's questions, that is whether a non-affected employee (an alternate) who wants to exchange positions with an employee subject to workforce adjustment (an opting employee) could access one of the options under the NJC WFAD. CAPE sought to clarify whether the option that allows an opting employee who is subject to workforce adjustment to delay his or her departure date and go on leave without pay for a maximum of two years while attending a learning institution was available an alternate; that option also allows opting employees to participate in public service benefits and in the Public Service Superannuation Plan. The adjudicator determined that the WFAD did not fully apply to an alternate. Since under the PSE Regulations the alternate must submit a resignation to take effect not later than five days after the alternation, and he or she ceases to be an employee when the resignation takes effect, even if the NJC WFAD afforded an interpretation that allowed the alternate the option of a leave without pay while attending a learning institution, the Regulations make it impossible for him or her to benefit from that option. Accordingly, the policy grievance was dismissed.

Regarding the HRSDC policy grievance, in a decision rendered September 4, 2013, adjudicator Michael Bendel dismissed the policy grievance. In the adjudicator's estimation, the evidence, including testimonies from the Local representatives, did not allow him to decide if the process employed by HRSDC was unfair. The adjudicator also pointed out that the employer had consulted with the union in accordance with the provisions of the WFAD. However, the decision points out serious questions regarding the role of Local representatives and the use of a petition to communicate with the employer. While the Association does not agree with the decision, and after having reviewed all the elements of the decision, CAPE has decided not to seek a judicial review, and the decision is therefore final.

Finally, we are pleased to report that the employer has accepted our interpretation of the term "years of service" and amended its position accordingly. Once again, notwithstanding public service employees' ability to defend their own rights, CAPE was able to take up the torch because it has the specific resources necessary to fulfil this role and can speak on behalf of its members.

Furthermore, CAPE, the PSAC and the PIPSC joined forces to pressure the government to recognize that individuals who voluntarily take the place of colleagues and leave their jobs are entitled to employment insurance benefits. It took several months of representations and arguments from the three unions when, in a letter dated March 8, 2013, to all affected unions, Treasury Board agreed. This decision affects thousands of federal public service employees.

CAPE Committee Members

Minutes of all CAPE committee meetings can be found on the CAPE Website at www.acep-cape.ca

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To contact any member of CAPE's Committees or Local Leadership, please call our National Office at 613-236-9181 or 1-800-265-9181.

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Steward	Maureen Collins
OHS Rep	Mumani Simeti

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Vice President	Patricia Hoy
Secretary/Treasurer	Martin Fournier
Employment Equity Representative	Salma Jaroudi
OHS Rep	Martin Fournier
	Patricia Hoy
Stewards	Alexander Jenkin
	Suzette LaTouche

Canadian Human Rights Commission

Steward	Lynne Groulx

Canadian International Development Agency (Local #517)

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Vice President	Mia Mouelhi
Treasurer	Pierre Bernier

Citizenship and Immigration Canada (Local #522)

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Vice President	Tannis Bujaczek
Secretary	Bruce Kelly
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	David MacGregor
	Ahmad Syed
	Monica Van Huystee

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Co-Vice President	Jean Roy
Treasurer	Alain P. Tremblay
Secretary	Kathryn Gallacher
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	Tanney Kennedy
	Tanya Primok
	Chris Rogers

Finance Canada

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Foreign Affairs & International Trade (Local #516)

Steward	Shawn Morton

Health Canada and Public Health Agency of Canada (Local #512)

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Vice-President - Public Health Agency of Canada	Simone Powell
Vice-President - Health Canada	Richard Duranceau
Secretary/Treasurer	Khaddouj Souaid
Directors	Mohammad Afzal
	Lisa Hansen
	Patrick Laffey
	Jacob Porter
	Francois Rivest
	Erik Windfeld
Stewards	Tawnia Albert
	Sandra Chatterton
	Richard Duranceau
	Nick Giannakoulis
	Lisa Hansen
	Patrick Laffey
	Jacob Porter
	Simone Powell
	Jacky Tweedie
	Erik Windfeld
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	Nick Giannakoulis
OHS Reps - Public Health Agency of Canada	Nick Giannakoulis
	Simone Powell

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	Hanna Torres
Place Vanier	Johanna Hove
	Jeanne To-Thanh-Hien
Promenade du Portage II	Michel Fourzly
	Susan Kerr
Promenade du Portage IV	Trent Craddock
	Emer Killean
	Liam Lynch
105 Hôtel-de-Ville Street	Ryan Kelly
	Andrija Popovic
	Joanie Portelance-Galarneau

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Vice President	Placide Kalonji
Secretary	Michelle Pelletier
OHS Rep	Louise Carrière

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Steward	Jay Jackson

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	Litsa Papathanasopoulou
Stewards	Andrew Ide
	Shelley Sutherland
OHS Rep	Lisa Raymond

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Secretary	Lorna Derouin
Director	David Pelc

Library of Parliament (Local #515)

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	Gerly Jean-Baptiste
	Michael Lynch
	Chan Quang

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Public Works and Government Services (Local #521))

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Steward	Lorne Holyoak

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Parliamentary Translators Representative	Lionel Perrin
OHS Coordinator	Jackie LeBlanc

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OSH Rep	Pascale Lamoureux
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	Heather Leighton
OHS Rep	James Connelly

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	Claude J. Poirier
OHS Rep (WOHS Co-chair)	Jackie LeBlanc
OHS Rep (Regional)	Jackie LeBlanc
OHS Rep (Local)	Mylene White

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Annie Bayeur

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Committees II
Steward Olivier Alarie

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Stéphanie Beaulieu
OHS Rep: Isabelle Rochon

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Assistant Representative Natacha Canuel
Assistant Representative Martial Ménard

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Department or Agency	EC	AN/RA	TR	Total
Statistics Canada	1923			1923
Public Works and Government Services Canada	352		886	1238
Human Resources and Skills Development Canada	1069			1069
Health Canada	882			882
Aboriginal Affairs and Northern Development Canada	706			706
Public Health Agency Canada	634			634
Justice Canada	417			417
Natural Resources Canada	384			384
Industry Canada	382			382
Agriculture and Agri-Food Canada	374			374
Environment Canada	373			373
Transport Canada	357			357
Foreign Affairs and International Trade Canada	355			355
Citizenship and Immigration Canada	324			324
Treasury Board of Canada Secretariat	321			321
Finance Canada	319			319
Fisheries and Oceans Canada	258			258
Public Safety Canada and Emergency Preparedness Canada	219			219
Library and Archives Canada	205			205
National Defence	204			204
Canadian International Development Agency	188			188
Canadian Heritage	134			134
Library of Parliament		95		95
Elections Canada	94			94
Canada Border Services Agency	88			88
Privy Council Office	84			84
Infrastructure Canada	83			83
Office of the Director of Public Prosecutions	83			83
Royal Canadian Mounted Police (Civilian Staff)	79			79
Public Service Commission	63			63
Correctional Service of Canada	61			61
Immigration and Refugee Board of Canada	50			50
Veterans Affairs Canada	49			49
Atlantic Canada Opportunities Agency	39			39
Western Economic Diversification Canada	37			37
Economic Development Agency of Canada for the Regions of Quebec	31			31
Canada School of Public Service	31			31
Shared Services Canada	28			28
Federal Economic Development Agency for Southern Ontario	25			25
Canadian Environmental Assessment Agency	24			24
Passport Canada	23			23
Canadian Transportation Agency	20			20
Office of the Information Commissioner of Canada	17			17

Membership Distribution cont'd ...*

Department or Agency	EC	AN/RA	TR	Total
Canadian Space Agency	17			17
Status of Women	16			16
Canadian Human Rights Commission	15			15
Office of the Registrar of the Supreme Court of Canada	13			13
Patented Medicine Prices Review Board	11			11
Canadian Radio-television and Telecommunications Commission	9			9
Canadian Grain Commission	9			9
Transportation Safety Board of Canada	8			8
Courts Administration Service	8			8
Canadian Dairy Commission	6			6
Royal Canadian Mounted Police Public Complaints Commission	5			5
Farm Products Council of Canada	5			5
Office of the Public Sector Integrity Commissioner of Canada	5			5
Office of the Secretary to the Governor General	5			5
Office of the Commissioner of Official Languages	3			3
Office of the Commissioner for Federal Judicial Affairs Canada	3			3
Copyright Board Canada	2			2
National Parole Board	2			2
Office of the Commissioner of Lobbying of Canada	2			2
Indian Residential Schools Truth and Reconciliation Commission	2			2
Military Police Complaints Commission	1			1
International Joint Commission	1			1
Canada Industrial Relations Board	1			1
TOTAL:	**11538**	**95**	**886**	**12519**
Associate Members:				**13**
TOTAL:				**12532**

* Based on the most recent information provided by Treasury Board.

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