STAFF REPORT
ACTION REQUIRED
with Confidential Attachment

Essential Service Review

Date:	October 16, 2017
To:	TTC Board
From:	Chief Executive Officer
Reason for Confidential Information:	This report is about labour relations or employee negotiations.

Summary

The TTC has been an essential service since the enactment of the *Toronto Transit Commission Labour Disputes Resolution Act* in 2011. A component of this legislation required a review of the legislation within a year of the fifth anniversary of the legislation coming into effect. The fifth year anniversary was March 2016.

In May 2017 the TTC was contacted by a representative of the Ministry of Labour ("MoL") to initiate the review. The MoL has engaged Jim Thomas to conduct the review. Mr. Thomas subsequently contacted the TTC and staff met with him to understand the process, including meetings with all stakeholders which include TTC staff, TTC's various unions and the City of Toronto.

The purpose of this report is to detail the MoL's review process and to articulate the position the TTC proposes to take.

Recommendations

It is recommended the Board:

1. Approve the recommendations as set out in the Confidential Attachment;

2. Authorize staff to make submissions to the Ministry of Labour, consistent with the information as outlined in the confidential attachment, during the review of the *Toronto Transit Commission Labour Disputes Resolution Act, 2011*, S.O. 2011, c. 2;

3. Request staff to forward a copy of the Confidential Attachment to the City of Toronto;

4. Authorize the information contained in the Confidential Attachment to remain confidential in its entirety unless any of this information is released in any Public report to be issued by the MoL upon the conclusion of the review; and

5. Staff to report back upon receipt of the MoL's final report.

Implementation Points

Recommendations will be implemented in submissions made to the Ministry of Labour.

Financial Summary

This report has no financial impact beyond what has been approved in the current year's budget.

The Chief Financial Officer has reviewed this report and agrees with the financial impact information.

Accessibility/Equity Matters

The TTC recognizes the importance of its service to the city and supports continuity of service to the public without exception. Should TTC's current essential service designation be repealed, there is potential for the union to engage in a lawful strike or TTC management to lock-out workers, resulting in transit service to the people of Toronto being suspended. While a strike or lock-out has the potential to negatively impact all TTC customers, it may have a significant and disproportionate impact on marginalized customers. For example, this may disproportionately impact individuals who have no other means to travel (including but not limited to individuals with low income, individuals with disabilities, seniors, youth, new Canadians, refugees and individuals living on the streets) and who rely solely on the TTC to get to medical appointments, treatment centres, hospitals, places of employment, places of worship, food banks, housing shelters, and other critical City of Toronto services.

Decision History

On September 22, 2008, City staff presented a report to Executive Committee and City Council with information regarding information regarding the options for and consequences of recommending to the Government of Ontario that they designate transit in Toronto as an essential service. In the report, the City's Economic Development, Culture Tourism Division (EDCT) estimates that the short term effect of a strike caused by TTC would affect the City's economy approximately $50 million per day (Monday to Friday)

http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-15956.pdf

In May 2016, the TTC sought Board direction to write to the MoL to indicate its interest in participating in any review of the *Toronto Transit Commission Labour Disputes Resolution Act 2011,* to be conducted. The report sets out the history of staff recommendations associated with the legislation introduction.

http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2016/May_31/Reports/11_Essential_Services_Public_Report.pdf

Issue Background

In 2008, at the expiration of the then current bargaining agreement, the union engaged in a lawful strike resulting in all bus, streetcar and subway service being suspended. The strike ended after 36 hours upon the province enacting back-to-work legislation.

In 2011, at the request of City Council, and with the support of the TTC Board, the Province of Ontario enacted the *Toronto Transit Commission Labour Disputes Resolution Act, 2011* (the "*Act*"), which declared the TTC an essential service. The *Act* was implemented prior to the expiration of the then current collective bargaining agreement. The *Act* applies to the TTC as an employer, and all bargaining units representing TTC employees. The material impact of the *Act* is that the bargaining units and unions are precluded from engaging in any strikes and the TTC is prohibited from engaging in any lockouts.

Should the parties reach an impasse during collective bargaining, the matter(s) would be referred to binding interest arbitration. As requested by City Council, the *Act* also includes a mandatory review of the *Act* that is to occur within one year after the fifth anniversary of the *Act* coming into force and effect (March 30, 2016).

Section 22 of the *Act* states as follows:

> Within one year following the fifth anniversary of the coming into force of this *Act*, the Minister shall initiative a review of the operation of this *Act* and shall require a report on the results of the review to be provided to the Minister.

In May 2017, the MoL initiated a review of the *Act*. Mr. Jim Thomas, engaged to conduct the review is a former Ontario Deputy Minister of Labour and Management Board (1992–95), and Assistant Deputy Minister of Employee Relations (1988–92). He is the president of his own consulting firm, which he started in 1995. Mr. Thomas has taken on a number of high profile labour relations and mediation/facilitation assignments over the past twenty years, such as Chair of the Ontario Provincial Stability Commission, Chair of the WSIB Benefits Policy Review, and Chief Negotiator in negotiations with Indigenous

organizations, including Ipperwash, Saugeen Ojibway Nation, and Sioux Valley First Nation in Manitoba. The process described to conduct this review involves:

a) A preliminary meeting with the various stakeholders to get initial input on questions that ought to be posed through the review and the information that would be required to do so;

b) A follow up paper further to point "a" above (see Appendix A attached to this Report);

c) Submissions to be made to the MoL (October 2017); and

d) A final report issued to the MoL. TTC staff do not know if this report will be a public or confidential document and have been advised that this will be a decision made by the MoL.

Additionally, a research paper written by the MoL was also developed with the goal of assisting the various stakeholders tender their submissions, and is attached as Appendix B to this report.

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Attachments

Confidential Attachment

Appendix A- "Review of the Toronto Transit Commission Labour Disputes Resolution *Act*, 2011, Preliminary Report, V. 2", Jim Thomas

Appendix B- "Review of the Toronto Transit Commission Labour Disputes Resolution *Act*, 2011, Background Information", Ministry of Labour Employment and Labour Policy Branch

Review of the *Toronto Transit Commission Labour Disputes Resolution Act, 2011*

Preliminary Report V.2

Jim Thomas

July 2017
Revised August 8, 2017

Review of the *Toronto Transit Commission Labour Disputes Resolution Act, 2011*

Preliminary Report on Review Process and Scope V.2

I. Introduction

In March 2017, the Minister of Labour ("Minister") asked me to undertake a review of the *Toronto Transit Commission Labour Disputes Resolution Act, 2011* (the "Act" or "TTCLDRA"). Section 22 of the Act requires that: "Within one year following the fifth anniversary of the coming into force of this Act, the Minister shall initiate a review of the operation of this Act and shall require a report on the results of the review to be provided to the Minister."

A review of collective bargaining legislation should include a process of consultation with affected stakeholders, research into relevant matters (with the assistance of Ministry of Labour (MOL) policy officials), my analysis of all the information leading to recommendations, and the delivery of my final report to the Minister by early December 2017. Specifically excluded from the scope of my review is consideration of other labour relations issues between the TTC and its employees not directly related to the Act as well as other transit-related issues such as service levels. Also outside the scope of this review is the constitutionality of the Act, recognizing that a constitutional challenge to the TTCLDRA currently is before the courts.

II. Engaging the Parties

By letter sent out in late May 2017, the Minister advised the directly affected parties of my appointment to undertake the review. That letter is attached to this preliminary report as Appendix A. It was sent to the following parties:

- Toronto Transit Commission (TTC)
- City of Toronto
- Amalgamated Transit Union (ATU) Local 113
- Canadian Union of Public Employees (CUPE) Local 2
- CUPE Local 5089
- International Association of Machinists and Aerospace Workers (IAM) Local Lodge 235

Shortly after the Minister's letter was emailed to the parties, I emailed the same parties to request informal preliminary meetings with each of them to allow us to get to know each other, to explore what each party hoped the review would accomplish, and to discuss how best to conduct the review. I advised them that after conducting these preliminary meetings, it was my intention to provide everyone with a document that sets out how I intend to conduct this review including the kinds of questions and issues I hoped the parties would address in their submissions to me later this year. That is what this document seeks to achieve. Over the past month or so I have met with five of the six directly affected parties (everyone except IAM Local Lodge 235) and I appreciate very much the willingness of the parties to take the time to have

these preliminary meetings. They have greatly assisted me in developing a plan for conducting the review based on input from those directly affected by the Act

III. Background Information, Context and Bargaining History

To assist me in understanding the context for this review, I asked MOL's policy officials to undertake some preliminary research into the history and operation of the Act. I should note that during my preliminary meetings I advised each party that I would be asking MOL's policy officials to undertake research on my behalf. I indicated that where I intended to rely on or refer to that research, I would make it available to the parties to avoid surprises. Everyone seemed to be satisfied with this MOL research role.

The Act came from a City of Toronto resolution to designate the TTC as an essential service. It received Royal Assent on March 30, 2011. In its essence, it provides for continuity of TTC services by prohibiting strikes and lock-outs involving the TTC, its unions and employees. Interest arbitration becomes the means of achieving a collective agreement where the parties are unable to negotiate one.

Most of the provisions of the *Labour Relations Act, 1995* (LRA) continue to apply to the collective bargaining process. Where a conciliation officer has been unable to affect a collective agreement, the dispute must be referred to arbitration. The arbitrator is required to take into consideration certain enumerated criteria, which are the same as factors that are listed in other Ontario legislation that provides for interest arbitration as the dispute resolution mechanism. This five-year review also is part of the Act.

The TTC and its four bargaining agents have established common March 31 end dates in their collective agreements. There have been two rounds of bargaining since the coming into force of the Act. In 2011, CUPE Local 2 and IAM achieved negotiated agreements with an end date of March 31, 2014. The TTC and ATU were unable to reach a negotiated agreement and proceeded to arbitration. The issues were resolved by an award of arbitrator Kevin Burkett. Later in 2011, CUPE Local 5089 was certified as the bargaining agent for TTC special constables and fare inspectors and first collective agreement negotiations were determined by an award given by arbitrator William Kaplan. In 2014 all collective agreements were settled between the parties with expiry dates of March 31, 2018.

Prior to the coming into force of the TTCLDRA, and dating back to 1974, there were five occasions where collective bargaining disputes were resolved through specific "back-to-work legislation": in 1974, 1978, 1984, 1989, and 2008.

IV. The Parties to this Review Process

The Act is specific to the TTC and its four unions. That is why the Minister's letter about this review was communicated to the TTC as the employer, the four unions representing TTC employees and the City of Toronto whose interest in the legislation stems from its relationship with the TTC and the fact that it was a City of Toronto resolution that gave rise to this Act. During my preliminary discussions with these directly affected parties, questions arose about the merits of expanding the list of stakeholders to include others who might feel they have an indirect interest in the review perhaps because they are related unions or employers or associations who have similar transit interests.

After reflecting on my discussions with the directly affected parties, I am inclined to focus the submissions and engagement of the parties to those with a reasonably direct interest in TTC bargaining. CUPE officials pointed out to me that CUPE National / Ontario actively and continually supports both CUPE locals at the bargaining table and in providing advice and support on labour relations matters generally. A National / Ontario representative participates in the TTC negotiations. I am satisfied that CUPE National / Ontario should also be viewed as a party with a reasonably direct interest in the review proceedings.

This does not mean I will refuse to receive and consider submissions from other parties who wish to offer their thoughts and perspectives on the issues. The directly affected parties are free to include or incorporate into their submissions information or views of other parties or constituencies whose views they feel should be heard. I will not be taking specific steps to reach out to a wider group of parties beyond those who have a reasonably direct interest in TTC bargaining.

V. The Review Process and Timelines

The parties involved in this review appear to favour a combination of written and oral submissions. Accordingly, I am suggesting a timeline that includes the following elements:

- Provide this report to the directly affected parties by the end of July 2017.
- Engage MOL policy officials in preparing relevant research materials and provide same to the parties by the end of August or early September 2017.
- Encourage the parties to prepare oral submissions over the next two months, with a view to holding several days of oral consultations as early in October as possible.
- Require the parties to provide me with written submissions, should they choose to do so, by November 3, 2017.
- Deliver my report to the Minister by early December 2017.

I will be asking MOL officials to operate within this timeline, to complete whatever research is required by the end of August/early September and to set aside several days for oral submissions to take place as early in October as possible. It would be my suggestion based on previous consultation experience that oral submissions from the directly affected parties could

be accommodated over a two- or perhaps three-day period. MOL officials will be in contact to schedule the consultations.

The parties should understand that this review is based in part, but not solely, on their submissions. It is not just a consultative process, although consultation is an important part of it. I have been asked by the Minister to conduct a review of the operation of the Act. It would be reasonable for the Minister to expect that I will offer advice and recommendations based on not only the views of the parties but my own thoughts on ways of adjusting or improving the Act to improve the way in which it addresses labour disputes.

VI. Relationship between This Review and the Next Round of Bargaining

Most of the parties seemed to feel that while the above timelines might be a bit ambitious, they will make reasonable efforts to comply with them. The current collective agreements have expiry dates of March 31, 2018. Notices to bargain can be given three months before the expiry dates. The close temporal connection between the commencement of the next rounds of bargaining and the delivery of my report to the Minister has raised questions around the possible linkages between the two events.

I indicated to the parties that they should proceed to conduct the next round of bargaining based on the current labour disputes provisions of the TTCLDRA. My report will be delivered to the Minister of Labour and it will be his decision whether or when or how to make it public. The report may or may not include recommendations that would require legislative changes. It will be for the government to decide whether to accept any or all the recommendations that might be included in the report.

VII. What Issues and Questions should this Review Address?

Ultimately, it is for the parties to decide how they wish to frame their submissions. As noted above, the review cannot address other labour relations issues, other transit-related issues such as service levels, or the constitutionality of the Act. The parties expressed an interest in having me outline the issues and questions as I see them to assist them in preparing submissions. I hope the following may prove to be helpful:

1. Review Criteria:

It would be helpful if the parties could offer their views on how they think I should evaluate the operation of the Act over the past six years. How well has it served the parties as measured against what criteria? Often this requires one to identify the purposes for which the Act was passed and to assess the extent to which the Act has achieved those purposes or objectives. The Preamble of the TTCLDRA describes the Act's purpose as follows:

"The public interest requires that a dispute resolution mechanism be introduced that

encourages and respects the process of collective bargaining and ensures access to fair and neutral arbitration to resolve impasses…"

To what extent has the operation of the Act over the past five years achieved the goals set out in the Preamble? What other evaluation criteria might the parties suggest that I use to assess how well the Act has operated?

2. ***The Appropriateness of Continuing the Interest Arbitration Method of Achieving Non-Negotiated Collective Agreements:***

From my preliminary discussions with the directly affected parties, the central issue would appear to be the appropriateness of continuing to resort to interest arbitration as opposed to strikes/lock-outs to achieve collective agreements when negotiations fail. When the parties make submissions on this issue, I would ask that they address not only the arguments in support of their position but reflect on (1) why they believe their position is the preferred one from a public policy perspective, and (2) whether there are any 'middle-ground' positions on an issue that on its face would appear to be very polarized. Are there examples from other relevant jurisdictions of methods of resolving collective bargaining disputes that foster a healthy labour relations climate, preserve public service delivery, and produce a better balancing of interests than the current regime? I am asking MOL officials to do some research on this topic and if it proves useful, I will provide it to the parties.

It is perhaps worth mentioning that for well over forty years, the parties have bargained under both regimes. For all but the past two rounds of bargaining under the TTCLDRA, the labour dispute regime was the right to strike/lock-out (recognizing that back-to-work legislation always was a very important characteristic of the bargaining environment). I appreciate that many or most of the officials with whom I have met over the past month or so do not have TTC bargaining experience that pre-dates the current legislation. Any observations on the comparisons between the two regimes might be helpful.

3. ***How can the Act be Improved?***

The Act consists of 22 sections that detail the way in which the arbitration process can be accessed by the parties, how the arbitrator will be selected, the role and duties of the arbitrator, timing of awards, how this Act intersects with the LRA, regulatory powers, and the five-year review. If this review were to result in a conclusion that the current interest arbitration method should be continued, do the parties have views on how the current Act could be improved or how it could better achieve whatever purposes the parties believe it serves? Are there ways it could contribute to a higher rate of negotiated settlements, or a more positive labour relations environment overall?

VIII. **Concluding Comments**

I wrote this paper solely with the goal of providing the parties with a framework that they might find helpful as they prepare to participate in this review process. I appreciate very much that that parties with whom I have met are taking this review seriously and wish to participate actively in it. By offering suggestions on the kinds of issues and questions I think the parties should address, I in no way want to imply that the parties cannot raise and address other in-scope issues and questions. Getting the balance right in public sector bargaining always is a challenge, and most particularly is so where the withdrawal of the public service directly affects many members of the public, as is the case here. That is why I am inviting the parties (and MOL) to include consideration of whether there are innovative ways of striking the balance in ways that preserve public services and enhance and improve the quality of the labour relations environment.

Jim Thomas
August 8, 2017

Appendix A

Ministry of Labour

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Ontario

Re: Review of the Operation of the *Toronto Transit Commission Labour Disputes Resolution Act, 2011*

I am writing to advise you that the Ontario government is reviewing the operation of the *Toronto Transit Commission Labour Disputes Resolution Act, 2011* (*TTCLDRA*), as required by the legislation. The act prohibits strikes and lock-outs at the Toronto Transit Commission (TTC), and provides for interest arbitration if a negotiated collective agreement cannot be reached.

The review is being conducted by Mr. Jim Thomas, a former Ontario Deputy Minister of Labour and Management Board (1992–95) and Assistant Deputy Minister of Employee Relations (1988–92). He is the president of his own consulting firm, which he started in 1995. Mr. Thomas has taken on a number of high profile labour relations and mediation/facilitation assignments over the past twenty years, such as Chair of the Ontario Provincial Stability Commission, Chair of the WSIB Benefits Policy Review, and Chief Negotiator in negotiations with Indigenous organizations, including Ipperwash, Saugeen Ojibway Nation, and Sioux Valley First Nation in Manitoba.

Mr. Thomas will deliver a report to me at the end of the review process.

The review will focus exclusively on the operation of the *TTCLDRA*. It will not consider other labour relations issues between the TTC and its employees not directly related to the act, or other transit-related issues such as service levels. A constitutional challenge to the *TTCLDRA* is currently before the Superior Court of Justice. The constitutionality of the act is also outside of the scope of the review.

You will be contacted shortly with further details about the review process. As well, you may contact the review or submit written comments via email at TTCLDRA.Review@Ontario.ca.

Thank you in advance for your contribution to this review.

Sincerely,

Kevin Flynn
Minister of Labour

REVIEW OF THE TORONTO TRANSIT COMMISSION LABOUR DISPUTES RESOLUTION ACT, 2011

Background information

Ministry of Labour
Employment and Labour Policy Branch

REVIEW OF THE
TORONTO TRANSIT COMMISSION LABOUR DISPUTES RESOLUTION ACT, 2011
BACKGROUND INFORMATION

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REVIEW OF THE
TORONTO TRANSIT COMMISSION LABOUR DISPUTES RESOLUTION ACT, 2011
BACKGROUND INFORMATION

1. Interest Arbitration legislation in Ontario

1.1 Six statues governing interest arbitration

- The following statutes govern interest arbitration in Ontario's public sector / broader public sector;[1] the approximate number of employees covered by collective agreements[2] is noted for each:

    - *Hospital Labour Disputes Arbitration Act* (HLDAA)
        - Hospitals and long-term care facilities
        - Over 263,000 employees, including approximately:

Hospital Nurses	62,000
Hospital Support	98,000
Long-term Care	100,000
Other Health Services	2,400

    - *Police Services Act* (PSA)
        - Municipal police
        - 27,000 employees

    - *Fire Protection and Prevention Act, 1997* (FPPA)

        - Professional firefighters
        - 11,000 employees

    - *Ontario Provincial Police Collective Bargaining Act, 2006* (OPPCBA)
        - Ontario Provincial Police
        - 9,000 employees

    - *Crown Employees Collective Bargaining Act, 1993* (CECBA) Part III.1
        - Correctional Services workers
        - 5,800 employees

    - *Toronto Transit Commission Labour Disputes Resolution Act, 2011* (TTCLDRA)
        - Toronto Transit Commission employees
        - 11,000 employees

[1] Note that there is also interest arbitration legislation applying to one specific part of the private sector in Ontario; i.e., ss. 150.1-150.5 of the *Labour Relations Act, 1995* create a special bargaining and dispute resolution regime for the residential construction sector in the City of Toronto and the surrounding area. It requires a common contract expiry date for three-year collective agreements, and creates a 46-day window from May 1 to June 15 when work stoppages can occur. After that, either party may require that the matters in dispute be decided by arbitration. If the parties do not agree on an arbitration method or procedure, it is as prescribed by regulation.
[2] Source: Ministry of Labour, Collective Bargaining Information Services (CBIS). Based on information that has been filed with the Ministry of Labour as of July 31, 2017 (may not be an exhaustive list if settlements have not been filed with the Ministry).

- An estimated 33.7% of employees covered by collective agreements in Ontario's public sector / broader public sector fall under interest arbitration under one of these statutes.[3]

1.2 Key features of Ontario's interest arbitration legislation

Duty to bargain

- Parties are required to bargain in good faith and make every reasonable effort to reach a collective agreement.
    - In respect of parties covered by the TTCLDRA, HLDAA and CECBA, this obligation arises from section 17 of the *Labour Relations Act, 1995* (LRA).
    - See also PSA (s. 119(3)), FPPA (s. 48(1)), OPPCBA (s. 3(8)).

Conciliation

- Parties are required to engage in conciliation. If negotiations reach an impasse in the conciliation stage, the Ministerial notice ending conciliation (sometimes referred to as a "no-board") is issued and, the parties then proceed to arbitration.
    - See TTCLDRA (s. 3), HLDAA (s. 4), CECBA Part III.1 (s. 28).
    - See also: PSA (s. 121(5)), OPPCBA (s. 6(1). Conciliation Officers under these statutes are appointed by the Minister of Community Safety and Correctional Services.
    - Note that amendments to the FPPA introduced by the *Building Ontario Up for Everyone Act (Budget Measures), 2016* removed the requirement for conciliation under the FPPA.

Appointment of arbitrator / board of arbitration

- The parties are to appoint the person to act as arbitrator or make the necessary appointments to constitute their board of arbitration.
    - Under the TTCLDRA arbitration is conducted by a single arbitrator (s. 5).
    - Under the CECBA Part III.1 (ss. 29.1, 29.2) the parties can agree to either a single arbitrator or a three-person board of arbitration.
    - Under the HLDDA (s. 5(1), 6(1)) and the FPPA (ss. 50.1, 50.1) the parties can agree to a single arbitrator, but the default if they do not agree on this would be to have a three-person board of arbitration.
    - Under the PSA (s. 122(2)) and the OPPCBA (s. 6(2)(1)) the parties can agree to a three-person board of arbitration, but the default if they do not agree on this would be to have a single arbitrator.

- Only if the parties cannot agree would the Minister of Labour make the necessary appointment(s).
    - TTCLDRA (s. 5(4)), HLDAA (s. 6(3), (5)), FPPA (ss. 50.2(3),(5)), CECBA Part III.1 (s. 29.3)).

[3] CBIS data indicate that (as of July 31, 2017) there were 970,577 employees within the public sector / broader public sector in Ontario (excluding the federal jurisdiction); 326,779 of these employees were covered under interest arbitration legislation.

- In practice, ministerial authority to make such appointments has been delegated to the Director of Dispute Resolution Services.
- Appointments under the PSA (s. 122(2)) and OPPCBA (s. 5(2)) are made by the Ontario Police Arbitration Commission (OPAC) rather than the Minister of Labour. The OPAC is established by the PSA (see s. 131).

Method of arbitration

- Where the arbitrator / board of arbitration is appointed by the parties, the method of arbitration is determined by the parties (in the TTCLDRA this is stated explicitly (s. 6(1)); in other legislation it is implicit that the choice of method is open to the parties).

- Under the TTCLDRA (s. 6(2)), the method of arbitration shall be mediation-arbitration unless the parties select a different method. It appears that this is the method that is almost universally adopted for interest arbitration cases in Ontario.

- The Minister has the discretion to determine the method of arbitration if a ministerial appointment of the arbitrator / chair of the board of arbitration is necessary (i.e., where the union and employer fail to make the appointment). The method selected will be mediation-arbitration, unless the Minister is of the view that another method is more appropriate. The method of arbitration can be "final offer selection" (FOS, discussed below) only if mediation is part of the process, and, even then, only if the Minister in his or her sole discretion selects that method because he or she is of the view that it is the most appropriate method having regard to the nature of the dispute.
  - TTCLDRA (ss. 6(3)-(6)), HLDAA (s. 6(7.1)-(7.4)), FPPA (ss. 50.2(8),(11)), CECBA Part III.1 (ss. 29.4(3)-(6)).
  - Under the PSA (s. 122(2)(4)) and the OPPCBA (s. 6(2)(4)) this discretion is exercised by the OPAC.

- Historically, the discretion to impose FOS has not been exercised under any of these statutes.

The arbitration process

- Once appointed, the arbitrator / board of arbitration has authority over the process, and must give full opportunity to the parties to present their evidence and make their submissions.
  - TTCLDRA (s. 7(5)), HLDAA (s. 6(16)), FPPA (s. 50.2(21)), CECBA Part III.1 (s. 29.5(6)).

- Typically, a formal hearing will be held, and each side will have the opportunity to:
  - Present evidence;
  - Make submissions;
  - Respond to the evidence and submissions made by the other party.

- Note that amendments to the FPPA introduced by the *Building Ontario Up for Everyone Act (Budget Measures), 2016*:
  - Require written submissions to be filed prior to the hearing; and generally prohibit boards of arbitration from referring items back to the parties for further negotiation.
  - These provisions were not added to any other interest arbitration statute.

Timelines

- Within seven days of the Minister advising that the conciliation officer has failed to effect a collective agreement, each party shall:
    - Appoint an arbitrator
        - TTCLDRA, s. 5(1).
    - Appoint a member to the board of arbitration
        - HLDAA (s. 6(1)), FPPA (s. 50.2(1).
    - Agree to refer matters to a single arbitrator or to a board of arbitration
        - CECBA Part III.1 (s. 29).
    - The parties may extend this for one additional period of seven days
        - TTCLDRA (s. 5(2)), HLDAA (s. 6(2)), FPPA (s. 50.2(2).

- In the case of a board of arbitration, within ten days, the two members appointed by the parties must appoint a chair (HLDAA (s. 6(4)), FPPA (s. 50.2(4); if the parties agree to a board of arbitration under the CECBA Part III.1 the relevant time is five days (s. 29.2(1)(b)).

- The arbitrator / board of arbitration shall hold the first hearing within 30 days after the arbitrator or the last member of the board is appointed.
    - TTCLDRA (s. 7(2)), HLDAA (s. 6(13.1)), FPPA (ss. 50.5(5),(6)), CECBA Part III.1 (s. 29.5(2)), PSA (s. 122(3)), OPPCBA (s. 6(3)).

- The board of arbitration shall give a decision within 90 days after the last (or only) member of the board is appointed; the parties may agree to extend this time limit.
    - TTCLDRA (ss. 10(6),(7)), HLDAA (ss. 9(4)(5)), FPPA (s. 50.2(17)), CECBA Part III.1 (ss. 29.7(6),(7)), PSA (ss. 122(3.5),(3.6)), OPPCBA (ss. 6(8),(9)).

- Within five days of the date of the decision of the board of arbitration (or such longer period as may be agreed upon in writing by the parties) the parties shall prepare and execute the collective agreement.
    - TTCLDRA (s. 13(5)), HLDAA (s. 10(5)), FPPA (s. 50.6(5)), CECBA Part III.1 (s. 29.10(1)).

Criteria

- Arbitrators under all of Ontario's interest arbitration statutes are required to consider the same criteria; i.e., the following factors must be considered:

    1) The employer's ability to pay in light of its fiscal situation.
    2) The extent to which services may have to be reduced, in light of the decision, if current funding and taxation levels are not increased.
    3) A comparison of the terms and conditions of employment and the nature of the work performed as between the affected employees and other comparable employees in the public and private sectors.
    4) The economic situation in Ontario and in the municipality.

5) The employer's ability to attract and retain qualified employees.[4]

- Note that the factors are not exhaustive; i.e., in each case the legislation states that the arbitrator shall take into consideration "all factors it considers relevant" including these criteria. As well, the legislation does not assign priority or relative weights to the different criteria.
- TTCLDRA (s. 10(2)), HLDAA (s. 9(1.1)), FPPA (s. 50.5(2)), CECBA Part III.1 (s. 29.7(2)), PSA (s. 122(5)), OPPCBA (s. 6(10)).[5]

- The PSA (s. 122(5)) also requires arbitrators to consider the interest and welfare of the community served by the police force and any local factors affecting that community (s. 122 (5)).

- In addition, arbitrators must take into consideration the purposes of the *Public Sector Dispute Resolution Act, 1997* (PSDRA);[6] i.e.:

1) an expedited resolution during bargaining
2) to encourage settlement through negotiation
3) to promote the best methods of delivering quality and effective public services that are affordable to taxpayers

- The PSDRA factors do not appear to be frequently referenced in interest arbitration decisions.

[4] These factors were introduced to interest arbitration legislation in 1996, through Schedule Q of the *Savings and Restructuring Act*. In particular, Schedule Q amended the *Fire Departments Act* (which was subsequently replaced by the FPPA), the HLDAA, the PSA, the *Public Service Act* (in so far as it applied to the Ontario Provincial Police, now covered by the OPPCBA), and the *School Boards and Teachers Collective Negotiations Act* (which was later repealed, and is now replaced by the *School Boards Collective Bargaining Act, 2014.* As indicated in the text above, the criteria are now uniform across all of Ontario's current interest arbitration legislation.

[5] Note that the same criteria also apply to interest arbitration under the *Ambulance Services Collective Bargaining Act, 2001* (s. 21(2)) and the *School Boards Collective Bargaining Act, 2014* (s. 38). In addition, these criteria have been applied in "back-to-work" legislation; e.g., *York University Labour Disputes Resolution Act, 2009* (s. 15(2)).

[6] Section 2 of the PSDRA states that it applies to arbitrations under the FPPA, HLDAA, PSA, and OPPCBA. The purposes of the PSDRA are included as one of the criteria in the TTCLDRA (s. 10(2)(6)).

2. Legislation in other jurisdictions

- This section briefly reviews legislation in other select jurisdictions (i.e., Quebec, New York, Los Angeles) relevant to labour relations for municipal public transit workers.[7]

- These three jurisdictions are highlighted because:
  - These jurisdictions have been looked at in the past as examples relevant to the TTC experience.[8]
  - Each presents a different model in respect of addressing potential work stoppages affecting public transit.
  - The legislation described cover large urban transit systems.

2.1 Quebec – Essential services designation

Background

- In Quebec, the labour relations framework is set out in the *Labour Code*. The Code is primarily concerned with the recognition, certification, and rights and obligations of trade unions. It includes the principles included in other Canadian labour relations frameworks, such as, the exclusive right of a certified trade union to represent an appropriate bargaining unit, and the obligation for employers and trade unions to bargain collectively and in good faith.

- On January 1, 2016, the Tribunal administratif du travail (TAT)[9] replaced Quebec's former Labour Commission, the Commission des relations du travail (CRT). The Tribunal is responsible for recourses exercised under approximately 40 statutes in the fields of employment and labour law. Among other issues, the Tribunal deals with matters concerning employment protections, labour relations, the maintenance of essential services during a legal work stoppage, and occupational health and safety.

Essential Service Designation

- Under the Code, prescribed public services, such as, the public transportation sector, the health and social services sector and public service workers, may be subject to essential service requirements.

- The notion of "essential services" is not defined under the Code, however, the Quebec Government and parties involved in the process have generally agreed upon the purpose and a list of criteria (e.g., services required to ensure respect for health, order and public safety; services inherent in

[7] Note that no other Canadian jurisdiction has a labour relations statute specifically directed at municipal public transit workers. Generally, municipal public transit workers fall under the labour relations legislation of general application (such as the LRA); in some jurisdictions (such as Quebec, described below), they may be subject to restrictions related to essential services.

[8] For example, these were among the jurisdictions examined in a 2008 City of Toronto staff report: "Declaring the Toronto Transit Commission an Essential Service in Toronto".

[9] The Tribunal replaced the Commission des relations du travail (CRT), and also, the Commission des lésions professionnelles (CLP). The Tribunal was established under the *Act to establish the Administrative Labour Tribunal*. The new Tribunal's website is currently under construction.

respecting the rights of individuals with respect to financial assistance; and necessary services for the functioning of the National Assembly) of what constitutes an essential service.

- Specifically, organizations providing "a fixed schedule land transport service such as a railway or a subway, or a transport service carried on by bus or by boat", are identified as a "public services" under subsection 111.0.16.(4) of the Code.

- The Quebec Government has identified bus companies serving the major urban centres of Quebec, Montreal, Longueuil and Laval as being covered by decrees that require the employers to maintain essential services in the event of a legal work stoppage. Other private transportation companies and shipping companies are also covered by a decree to maintain essential services. [10]

- Although the Quebec Government recognizes that public transportation is not, in itself, a component to maintaining health, order and safety for the general public, it emphasizes that the absence of public transportation would cause such issues as, traffic congestion, and that such instances would make it very difficult to ensure the proper flow of emergency vehicles.

General Operation of Essential Services

- Prior to the expiry of collective agreements, the Quebec Government, on the recommendations of the Minister of Labour, may order certain employers and trade unions, by decree, to be subject to essential service requirements, if the Government is in the opinion that a strike could endanger public health, order and public safety.

- The order is published in the *Gazette officielle du Quebec* and the affected parties are notified of the order.

- The order suspends the right to strike until the affected parties have negotiated an essential services agreement that must be maintained in the event of a legal work stoppage to ensure the health and safety of the general public. The order remains in effect until a collective agreement is reached between the affected parties.

- If no essential services agreement is reached between the affected parties, the trade union must forward, to the employer and the Tribunal, a proposed list of the essential services that should be maintained in the event of a strike.

- On receiving an essential services agreement or a proposed list, the Tribunal will assess whether or not the essential services provided are considered sufficient. Several factors that may influence the Tribunal's decision include: what the public service is, the duration of the announced strike, the season of the strike, and conditions in the municipality.

[10] The application of Quebec's essential services model has in the past required that rush hour and late night service be provided during public transit work stoppages. For example, during the Montreal transit strike in 2007, the transit authority was required to maintain service during certain periods (weekday: 6-9 am, 3:30-5:30pm, and 11pm-1 am; weekend: 6-9 am, 2-5pm and 11pm-1am) and to maintain para-transit service in its entirety.

- If the Tribunal considers the essential services provided to be insufficient, it may, make the appropriate recommendations to the affected parties to amend the agreement or list, and must notify the Minister of Labour of its decision.

- Once an essential services agreement is deemed sufficient and in place, a trade union can legally strike if it has acquired the right to do so in accordance with section 58 of the Code, and if it has met all other required timelines and conditions under the Code, including providing a notice to the Minister of Labour, Tribunal and the employer of its intention to go on strike.

- Under the Code, lock-outs are prohibited in a public service that is subject to a decree to maintain essential services.

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2.2 New York State – Fact-finding followed by interest arbitration

Background

- In New York State, state level legislation regulates collective bargaining between public employees and government entities. Article 14 of the *Civil Service Law,* the *Public Employees' Fair Employment Act,* popularly known as the Taylor Law, came into effect in 1967 and prohibits any public employee or employee organization from engaging in a strike, and any public employee or employee organization from causing, instigating, encouraging or condoning a strike (s. 210(1)). Employees of the New York City Transit Authority are subject to this prohibition.[11]

- The Taylor Law is administered by the Public Employment Relations Board (PERB), which has responsibility for issues such as representation, improper practices, and also overseeing the law's impasse procedures (Russ 2000: 172).

Operation

- In the event of an impasse in collective bargaining disputes, the Taylor law offers three courses of action to transit workers to resolve disputes.
    - The first step is mediation whereby management or the union may request a mediator by filing a Declaration of Impasse with the PERB (s. 209(3)(a)). The mediator assigned seeks to cultivate a settlement between the parties (s. 209(3)(a)).
    - If settlement is ultimately unsuccessful, the second step is a fact finding process, whereby the fact finder may hold hearings, take testimony and accept materials from the parties (s. 209(3)(b)). The goal of this process is to elicit enough information to make a non-binding recommendation to the parties (s. 209(5)).
    - If the fact finding process does not entice parties to agree, then for select public unions, including transit workers, the dispute is then referred to binding arbitration where the issues are resolved by a three person Arbitration Board comprised of representative members appointed by the workplace parties and a chair appointed by the workplace parties in concert (s. 209(5)(a)). The arbitration board is empowered to hold hearings on all matters within the scope of negotiations related to the dispute for which it was appointed.

Criteria

- The Arbitration Board is required to make a" just and reasonable determination of matters in dispute" taking into consideration the criteria mandated by statute which include:

    (i) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work and other employees generally in public or private employment in New York city or comparable communities;

[11] *Civil Service Law*, Article 14, *Public Employee's Fair Employment Act*, Online at: http://codes.findlaw.com/ny/civil-service-law/.

(ii) the overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and all other benefits received;

(iii) the impact of the panel's award on the financial ability of the public employer to pay, on the present fares and on the continued provision of services to the public;

(iv) changes in the average consumer prices for goods and services, commonly known as the cost of living;

(v) the interest and welfare of the public; and

(vi) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits and other working conditions in collective negotiations or impasse panel proceedings. (s. 209 (5) (d))

Penalties

- The Taylor law contains penalties for illegal strikes (s. 209(a) and 210). These penalties include docking workers two days' pay for each day spent striking, imposing union fines, or suspending the dues check off to a union (s. 201, s. 210(3)(a)). A municipality may also seek an injunction to judicially end a strike (s. 209-a (4) & (5)). Union leaders failing to respond to the injunction order may be subject to various penalties, including incarceration.

- Despite the existence of the Taylor law, transit strikes have occurred in New York State. Since its enactment there have been at least two transit strikes, including a high profile work stoppage in December 2005 (Russ 2000: 166).

2.3 Los Angeles – "Cooling off" period

Background

- The *Public Transportation Labor Disputes Act*, establishes detailed procedures for state intervention in strikes by public transit employees, and applies to any transit district of the state.[12] Transit workers in California are able to strike, subject to the terms and conditions of this legislation.

Operation

- When a strike or lock-out is threatened, either party can request a gubernatorial intervention. Upon this request, the Governor must determine whether a strike or lock-out would "significantly disrupt public transportation services and endanger the public's health, safety, or welfare" (s. 3612).

- If it is determined that such danger is present, a board may be appointed to investigate the issues. A report, outlining the facts and respective positions of the parties, will be delivered within 7 days of the appointment. The report is not to include recommendations or a suggested settlement. The board has the power to summon and subpoena witnesses, require the production of documents or evidence and may also hold public hearings.

- A strike or lock-out during this investigatory period is prohibited by the legislation (s. 3612, 3613).

- On receipt of the board's report, the Governor may request the Attorney General to petition the court for an injunction against a strike or lock-out for a period of 60 days (s. 3614). This is meant to act as a "cooling off period" between the parties.[13] The court must issue an injunction if it finds that the strike or lock-out would "significantly disrupt public transportation services and endanger the public's health, safety, or welfare" (s. 3614).

- Given the limited scope of the report, the main impact of the procedure is the 60-day delay (Edelman and Mitchell 2005: 166). Following the injunction period, a legal strike can begin (s. 3616).

- The California law does not impose interest arbitration. The parties are however, free to agree to a voluntary settlement mechanism on their own. In the 2003, transit strike in Los Angeles, the parties resolved their dispute through a voluntary arbitration process (Edelman and Mitchell 2005: 166).

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[12] *Government Code*, Title 1, Division 4.5, Chapter 3, *Public Transportation Labour Disputes*, 2012, Ch. 46, s. 11 online at: http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=4.5.&title=1.&part=&chapter=3.&article=

[13] See: California PERB, "BART Strike: Could the Government have Stopped it Sooner?", July 7, 2013. Online at: http://www.caperb.com/2013/07/07/bart-strike-when-can-the-governor-intervene/

3. Published research regarding interest arbitration outcomes

Empirical research on interest arbitration has focused largely on two key issues:

- **Compensation**: researchers have investigated whether the system results in wages and benefits that are comparable with similarly placed employees under the strike/lock-out model.

- **Dispute rates**: researchers have looked at whether the parties reach impasse proportionately more often when negotiations end in interest arbitration compared to negotiations under the strike/lock-out model.

Published academic research on each of these points is briefly highlighted below.

Compensation outcomes

- In an assessment of the state of interest arbitration, Joseph Rose (2000: 256) wrote that: "There is general (although not unanimous) agreement that arbitration imparts a modest upward bias on wage settlements." There is a small amount of published research literature on this point.[14]

  Currie & McConnell (1991)
  - Currie and McConnell (1991) reviewed collective bargaining in public sector units with more than 500 employees across Canadian jurisdictions between 1964 and 1987 using a sophisticated statistical model that attempted to control for a number of other factors (e.g., economic conditions) that were likely to impact bargaining outcomes. They estimated that replacing the strike/lock-out model with interest arbitration increases wages by between 1 and 2 percent of the wage.

  Gunderson, Hyatt and Hebdon (1996)
  - Gunderson *et al* (1996) noted a number of discrepancies between the legislative classifications of Currie and McConnell (1991) and the contents of the relevant statutes as well as the actual practice. As a result, these authors reclassified over 30% of the contracts in the dataset. However, when they reproduced the statistical analysis with the recoded data, these authors reached essentially the same result; i.e., jurisdictions which switch from the strike/lock-out model to interest arbitration would be expected to experience an increase in wage costs of about 2 percent.

  Campolieti, Hebdon and Dachis (2016)
  - In this study Campolieti *et al* looked at Canadian data on negotiation outcomes between 1978 and 2008 for workplaces of 500 or more, using a methodology similar to Currie and McConnell (1991). They found that legislation requiring compulsory arbitration in labour disputes involving

[14] Note that these studies all state that, to the extent that negotiated settlements are determined by the parties' expectation of what arbitration would have produced, the compulsory arbitration model alters the process of wage determination. Thus, in considering the possible impact caused by arbitration, it is the *availability* and not the usage of this dispute resolution procedure that matters. The relevant comparison is not between arbitrated awards and negotiated settlements, but between outcomes in the interest arbitration sector (*both arbitrated and negotiated*) and outcomes in the strike/lock-out sector.

public employees has increased wages in the range indicated by earlier studies; however, the difference was not statistically significant under all specifications tested.

- In the U.S. context, there have been both:

    - Studies finding that interest arbitration has a positive, statistically significant impact on wages:
        - Data from more than 900 US cities (1971-1981) suggests collective bargaining and the availability of interest arbitration do have positive although modest effects on police salaries; the authors suggest that arbitration's strongest impact may be the protection of existing salary advantages in the face of change rather than the creation of new advantages (Feuille and Delaney, 1986).
        - Wage data from 72 US cities (1972-1977) finds that the availability of arbitration has a positive effect on wages (Olson, 1980).

    and

    - Studies finding that it appears to have little or no effect
        - Econometric estimates of the effects of interest arbitration on wage changes in a national US sample suggest wage increases differed little in states with arbitration from those without it (Kochan, Lipsky, Newhart and Benson, 2010).
        - A study of police salaries in 33 US states 1961-1992 finds no robust evidence that the presence of arbitration statutes systematically affected overall wage levels. On average, the effect of arbitration was approximately zero, although the authors find substantial heterogeneity in the estimated effects among states (Ashenfelter and Hyslop, 2001).
        - Survey of local US governments (1972-1980) finds departments covered by interest arbitration appear to have the same or somewhat lower wages than other departments (Freeman and Valletta, 1988).

- Note: a comparison of annual increases in base wage rates in TTC bargaining units and other municipal sectors (both under interest arbitration and strike/lock-out) for the period 2006-2016 is provided in Appendix A below.

Dispute rates

- Researchers have concluded that compared to the strike/lock-out model a higher proportion of negotiations reach impasse under interest arbitration (Rose and Piczak 1996; Rose and Manuel 1996; Rose 1994; O'Grady 1992; Currie and McConnell 1991).

- For example, Hebdon and Mazerolle (2003) found that Ontario bargaining units covered by legislation requiring interest arbitration between 1984 and 1993 arrived at impasse 8.7 percent to 21.7 percent more often than bargaining units in the strike/lock-out sectors. Even after controlling for a variety of factors that could impact bargaining, such as union, bargaining unit size, and occupation, these authors found evidence that interest arbitration may have "chilling" and

"dependence" effects on the bargaining process.

  - The "chilling effect" refers to the risk that interest arbitration will inhibit effective negotiations, to the extent that parties anticipate getting more from an arbitrator than from the opposite party in a negotiated settlement and thus have an incentive not to make concessions.
  - The "narcotic" or "dependent" effect suggests that negotiators become accustomed to leaving the difficult decisions to arbitrators, so that, over time, fewer and fewer settlements are negotiated.

- While the research cited above suggests a degree of consensus in regard to higher dispute rates associated with interest arbitration, note Lipsky and Katz (2006; 267) statement that: "Empirical research on these two effects ["chilling"/"narcotic"] certainly did not result in uniform or consistent findings, and researchers and practitioners continue to disagree on the precise effects of interest arbitration on the bargaining process and bargaining outcomes."

4. Different models related to interest arbitration

4.1 Mediation-Arbitration

- Under "conventional" interest arbitration, the most widely used model in Canada, the arbitrator is free to fashion the terms of the award after hearing the submissions of the parties and taking into consideration the legislated criteria.

- In Ontario this model is refined as mediation-arbitration. The mediator-arbitrator first attempts to mediate the dispute by finding common interests that would form the basis of a new agreement; should mediation fail, the mediator-arbitrator has power to impose the terms of a collective agreement. As noted above, mediation-arbitration is the default method under interest arbitration legislation in Ontario (i.e., TTCLDRA s. 6(2)).

- Mediation-arbitration is designed to enhance the prospects for settling issues by agreement, as well as maximizing the decision-maker's understanding of the issues, thereby increasing the chances that an award will reflect both parties' expectations. It can also improve the efficiency of the process by preventing the parties from having to repeat submissions at separate mediation and arbitration stages.

- It is likely that, whether or not "mediation-arbitration" is specified as the method, most Ontario arbitrators would begin any arbitration proceeding by engaging in a mediation effort to identify an areas of common ground and try to reduce the number of issues in dispute.

- In certain contexts, parties have seen value in adding a separate stand-alone mediation component to the collective bargaining process, prior to arbitration but subsequent to conciliation.

4.2 Final Offer Selection (FOS)

- The main alternative to conventional arbitration is FOS. Under this approach, the parties must place their final offers before the arbitrator, who must choose one or the other. Variations on FOS may increase the number of discrete choices put before the selector, but all FOS models preclude any changes by the arbitrator to the options put forward.

- Limiting arbitral discretion in this way is intended to promote effective negotiations in two ways. First, by requiring the arbitrator to choose either the employer's or the union's offer, FOS encourages the parties to compromise and settle in advance of the arbitration, to avoid the risk of an all-or-nothing settlement. Second, FOS is supposed to encourage effective bargaining behaviour because it forces both parties to develop and reveal reasonable positions. Finally, FOS may be less expensive and more expeditious than conventional arbitration, because it forces the parties to narrow their presentations to focus on a single package proposal, and because the arbitrator does not have to spend time creating an award.

- By increasing the uncertainty costs of arbitration for the parties, FOS should induce more settlements, but the evidence on this point appears to be mixed (see: e.g., Kritikos 2005; Dickinson 2004; Hebdon 1996; Swimmer 1992; Ashenfelter, Currie, Farber and Spiegel 1992).

- The lack of flexibility of FOS, intended to encourage settlement, also increases the risk that the parties will be left with an unworkable arrangement. Where a large number of issues are left unresolved, and especially where there are issues that cannot easily be reduced to monetary terms, FOS may result in a choice between two problematic arrangements. For example, complex and contentious issues may be difficult to decide in an "either / or" format. FOS can also foster an adversarial "win-lose" environment detrimental to developing positive labour relations (see: e.g., Mas, 2006).

- The basic FOS model forces the selector to choose one of two complete packages. A number of variations have been developed that introduce greater flexibility. Under FOS by issue, for example, the parties submit final offers on each of the outstanding issues, and the arbitrator creates a package award. This reduces the risk that the selector will be forced to choose between two packages each of which contains unacceptable elements. Alternatively, a defined set of monetary issues may be dealt with as a package, with other issues settled on an issue-by-issue basis. While increasing flexibility, each variation would appear to dilute the "risk" element of FOS that is designed to give maximum encouragement to the parties to settle.

- As noted above, conventional arbitration is by far the most widely used form of interest arbitration in Canada and there has been limited experience with FOS.[15]

4.3 Single arbitrators, boards of arbitration, or other

- As noted above, interest arbitration in Ontario occurs under both single arbitrators and tripartite boards of arbitration (under the TTCLDRA arbitration is conducted by a single arbitrator).

- Arbitrators / boards of arbitration are appointed on an *ad hoc* basis to address particular disputes. Generally these appointments are made by the parties; appointments are made by the Minister of Labour (or for police, the OPAC) only where the parties are unable to agree.

- A third approach is for Interest arbitration cases to be dealt with by a permanent tribunal.[16]

[15] As noted in footnote 1 above, the LRA contains a unique dispute resolution regime for the residential construction industry in Toronto and the surrounding area, which includes interest arbitration as the dispute settlement mechanism. Under Ontario Regulation 522/05 (section 4), the method of arbitration in such cases would be FOS for monetary issues, and conventional mediation-arbitration for all other issues. Similarly, the *Royal Newfoundland Constabulary Arbitration Regulations* provide for FOS for wages only, if wages are in dispute. In addition, FOS is used as the default method prescribed by the Newfoundland and Labrador *Fishing Industry Collective Bargaining Regulations* to establish prices for various fish species when the processors and union are unable to agree.

[16] Bill 136, the *Public Sector Transition Stability Act, 1997*, as originally introduced would have a new government appointed Dispute Resolution Commission (DRC) to decide interest arbitration cases. In response to strong opposition from stakeholders, amendments were introduced to Bill 136 removing the DRC and re-established the existing interest arbitration system.

- The model of arbitration decision-making chosen may have an impact on outcomes (i.e., dispute rates; timing and length of the proceedings), but there does not appear to be empirical research on this point.[17]

[17] This is discussed in Lipsky and Katz (2006).

APPENDIX A:
Compensation increases in TTC bargaining units compared to other municipal sectors

The table below was prepared by MOL Collective Bargaining Information Services (CBIS). It provides a comparison between the average annual increases in base wage rates for the selected Toronto Transit Commission bargaining units (i.e., where wages were recorded; note CBIS only tracks wage settlements for bargaining units of 150 or more), municipal bargaining units subject to interest arbitration legislation (primarily police and firefighters, but also municipal long-term care homes) and municipal bargaining units not subject to interest arbitration legislation (i.e., all other municipal employees). Note that in 2008 back-to-work legislation (*Toronto Public Transit Service Resumption Act, 2008*) was enacted in respect of TTC bargaining units.

Average Annual Increase of Municipal Bargaining Units*

Ratification	Toronto Transit Commission**		Subject to Interest Arbitration Legislation***			Not subject to Interest Arbitration Legislation****
	ATU (REL 29810)	CUPE (REL 29776)	(1) Settled through Arbitration	(2) Settled through Non-Arbitration methods	(1) and (2)	Any method of Settlement
2006	-	-	2.7	3.2	3.1	2.8
2007	-	-	3.2	3.2	3.2	3.0
2008	3.0	3.0	3.3	3.1	3.2	3.1
2009	-	-	3.0	2.9	2.9	2.2
2010	-	-	2.9	2.9	2.9	2.1
2011	-	-	2.4	2.8	2.7	2.0
2012	2.0	2.0	2.1	2.3	2.1	1.4
2013	-	-	2.4	2.5	2.4	1.7
2014	1.4	1.4	2.0	1.5	1.7	1.6
2015	-	-	1.4	2.0	1.9	1.8
2016	-	-	2.5	1.9	2.1	1.5
2006-2016	**2.1**	**2.1**	**2.5**	**2.5**	**2.5**	**1.9**

*Data reported is information that has been provided to the Ministry of Labour as of April 24, 2017 and is subject to revision. The settlements reviewed may not be an exhaustive list if settlements have not been filed with the Ministry. Prior to 2011, wage information was recorded for bargaining units with 200 or more employees. From 2011 onwards, wage information is recorded for bargaining units with 150 or more employees.

**Displayed AAI of collective agreement of bargaining units with Toronto Transit Commission where wages were recorded. For REL 29810, there was a change in the designated base wage classification, ratifications prior to 2014 was Janitors (Wage Group 2), for 2014 it was Junior Ticket and Information Clerk (Wage Group 4).

***Municipal bargaining units under legislation which prevent a work stoppage. (1) indicates bargaining units where settlement was reached through interest arbitration. (2) indicates settlements reached through any non-arbitrated method, such as direct bargaining, conciliation, etc.

****Municipal bargaining units not under interest arbitration legislation, settled through any bargaining method.

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