

**HUMAN RIGHTS TRIBUNAL OF ONTARIO****ONTARIO PUBLIC SERVICE EMPLOYEES UNION****(Applicant)**

– and –

**LIQUOR CONTROL BOARD OF ONTARIO and  
THE CROWN IN RIGHT OF ONTARIO (MINISTER OF FINANCE)****(Respondents)**

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**SCHEDULE “A”  
to the Ontario Public Service Employees Union Application**

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**A. The Parties and Overview of the Issues in Dispute**

1. The Applicant Ontario Public Service Employees Union (“OPSEU”) is the bargaining agent that represents approximately 7,000 employees at the retail stores, warehouses and head office of the Liquor Control Board of Ontario across the province of Ontario.
2. The Respondent Liquor Control Board of Ontario (“LCBO”) is a non-share capital Crown corporation under the *Liquor Control Act*, R.S.O. 1990, c. L18. The LCBO is responsible for regulating the importation, distribution and sale of alcohol in Ontario.
3. The Respondent Crown in Right of Ontario (Minister of Finance) (“the Crown”) has oversight responsibilities for the LCBO under the *Liquor Control Act*. The LCBO is governed by an 11-member board of directors that is appointed by the Lieutenant Governor-in-Council on the recommendation of the Premier and the Minister of Finance. Under the *Liquor Control Act*, the LCBO reports to the Minister of Finance.
4. It is OPSEU’s position that systemic sex discrimination exists at the LCBO contrary to s. 5 of the *Human Rights Code*. This systemic sex discrimination imposes significant disadvantages on workers in the predominantly female job classification of “Casual” (i.e. not “Full Time”) Customer Service Representatives.
5. Until the 1970s, the LCBO had, with only two exceptions, an exclusively male work force. All the jobs were permanent full-time jobs. Compensation and benefits were designed specifically with reference to the male full-time breadwinner. Today, men at the LCBO are more likely than women to hold permanent full-time jobs. The

permanent full-time jobs continue to be valued and to continue to retain the wage and benefits structures that were established when the LCBO had an all-male workforce.

6. In the 1970s, part-time jobs at the LCBO were created for the first time. These part-time jobs were created specifically as “women’s jobs” and were paid significantly less than the full-time “men’s jobs” that were doing identical work. That legacy of disproportionately assigning women to jobs with “casual” status and providing lesser compensation and terms and conditions of work persists.

7. The discriminatory burden is borne by the Casual Customer Service Representatives, nearly 70% of whom are women. The Casual Customer Service Representatives make up nearly 95% of all Casual employees at the LCBO. Nearly 66% of all women employed by the LCBO are working with “casual” status as Casual Customer Service Representatives.

8. Relative to the male compensation norm of Full-Time employees who are doing the identical work, the Casual Customer Service Representatives receive

(a) significantly lower wages (23.5% to 38% lower),

(b) reduced benefits or no benefits,

(c) restricted access to promotions, and

(d) significantly less job security.

9. In addition, the remedy that was created in 1987 to rectify the disadvantage faced by the part-time female employees – Permanent Part-Time positions compensated at the identical rate to Full-Time positions doing the same work – has been effectively eliminated.

10. At the same time, the only job with Casual status at the LCBO that is predominantly staffed by men, the Casual Warehouse Worker, has access to pathways that move them out of casual status on an accelerated schedule and into higher wages, full benefits, and broader access to promotions and permanent full-time jobs. So, even relative to the one male-dominated casual position, the Casual Customer Service Representative has lesser compensation, restricted access to promotions, and lower job security.

11. The Casual Customer Service Representative work continues to be seen as “women’s work”. Women seeking part-time work at the LCBO are streamed away from Logistics (i.e. the Warehouses) and into Retail where the Casual Customer Service Representatives jobs are located.

12. The lower terms and conditions of work for Casual Customer Service Representatives cannot be separated from the distinctly gendered history of how part-time work developed at the LCBO and the continuing patterns of systemic sex discrimination.

13. This Schedule outlines in more detail:
- (a) the collective bargaining relationship between the parties;
  - (b) the nature of work done by the Casual Customer Service Representatives;
  - (c) the history of how the differential treatment of Casual Customer Service Representatives evolved;
  - (d) OPSEU's attempts to rectify systemic sex discrimination; and
  - (e) the impact that systemic sex discrimination has on Casual Customer Service Representatives.

**B. The Collective Bargaining Relationship**

14. OPSEU and the LCBO have a collective bargaining relationship under the *Crown Employees Collective Bargaining Act*, S.O. 1993, c. 38.

15. As a separate legal entity the LCBO has the power to contract in its own name and to engage in bargaining with OPSEU. However, terms in the collective agreement must be approved by the Crown before the collective agreement is signed. In accordance with s. 4.0.2 of the *Liquor Control Act*,

*The Board may appoint such ... employees and retain such assistance as is considered necessary and may, subject to the approval of the Lieutenant Governor in Council, establish job categories, salary ranges and conditions of employment. [emphasis added]*

16. Prior to 2005, the workers at the LCBO were represented by the Ontario Liquor Boards Employees' Union. Subject to a merger agreement, the Ontario Liquor Boards Employees' Union had control of the bargaining that took place in 2005.

17. OPSEU became the bargaining agent in 2005. As of March 2013, there are approximately 7,000 employees in the bargaining unit. Of these, approximately 2,800 are employees with Permanent Full-Time status and approximately 4,200 are employees with Casual status.

18. Following 2005, OPSEU has had two rounds of collective bargaining with the LCBO.

19. The most recent collective agreement between the parties expired on 31 March 2013. The parties are currently in bargaining. A strike date is set for Friday 17 May 2013.

20. In each of the rounds of bargaining it has had with the LCBO, OPSEU has raised the issue of systemic discrimination faced by the predominantly female Casual Customer Service Representatives. In each round of bargaining, including the 2013 round, the LCBO has refused to eliminate the discrimination.

**C. Who are the Casual Customer Service Representatives**

21. Customer Service Representatives are the workers who staff the LCBO's retail stores. In accordance with the LCBO's Position Description, their responsibilities are:

*"To provide prompt and courteous customer service, merchandising and inventory management of product, store security and also social responsibility regarding the sale of the product. To assist in the business and facilities management of the store and inventory management and handling of product."*

22. The Customer Service Representatives make up the single largest group of employees at the LCBO.

23. Of the 7,000 employees in the bargaining unit, as of March 2013, approximately 5,300 are Customer Service Representatives.

24. Of these 5,300 Customer Service Representatives, approximately 1,300 have Permanent Full-Time status and approximately 4,000 have Casual status.

25. There are more Casual Customer Service Representatives than all other employees at the LCBO combined.

26. There is nothing "casual" about the Casual Customer Service Representatives:

- a. They are long-service employees who constitute a regular part-time work force that is the back-bone of the LCBO's retail work force. Most of the Casual Customer Service Representatives have worked at the LCBO for more than a decade. Many have worked for the LCBO for several decades, all the while with "casual" status.
- b. They regularly perform significant hours of work on a weekly basis. Many work the equivalent of full-time hours over the course of the full year or for extended parts of the year. It is not uncommon for Casual Customer Service Representatives with more than 8 years seniority to be regularly working 25 to 40 hours each week. Overall, annual hours of work average 1070 which is slightly more than half of the annual hours of a full-time employee.
- c. They must complete the same Product Knowledge training courses (levels 1, 2 and 3) and the same Service Knowledge course as the permanent retail

employees and must complete these courses within their first two years of employment.

- d. They do all the same duties as the Permanent Full-Time Customer Service Representatives. For example, they have keys to the store, have the security codes, are responsible for cash, are responsible for the safe, handle restaurant and licensee orders, handle special occasion permits, receive delivery of product for the store, order product for the store, do payroll and are in charge of Fixed Term employees who come in during peak seasons in the summer and November/December rush. In smaller stores (C and D level stores), they regularly cover the Store Manager's position when the Manager is on breaks, on lunch, or absent from the store.

27. In summary, the work that the Casual Customer Service Representatives do is the same as the work done by the Permanent Full-Time Customer Service Representatives. However the terms and conditions of the Casual Customer Service Representatives' work are tainted by a history in which part-time work at the LCBO was specifically created as women's work and was subject to significantly lower rates of pay, benefits and security.

#### **D. Understanding the Context: How the Systemic Discrimination Has Developed**

28. The LCBO was created in 1926. Until 1973, the LCBO retail stores were, with only two exceptions, staffed by an all-male work force. Many of the employees were veterans of the Second World War. All the jobs were permanent and full-time. The terms and conditions of work were specifically developed based on the norms of a male worker.

29. Prior to 1973, the only places where women worked in the LCBO's retail stores were at two airport duty free stores.

30. In or around 1973, the first part-time jobs were created at the LCBO. These were the Part-Time Cashier positions (the predecessor to the current Casual Customer Service Representative position). These positions were specifically created as women's jobs. They were paid lower than the lowest-paid LCBO office clerk and 28% lower than the nearest equivalent full-time job classification of Liquor Store Clerk Grade 2. They were not entitled to statutory holidays, attendance credits, attendance credit payouts, severance pay, sick leave, special or compassionate leaves, paid time off to serve as a court witness or juror, extended health benefits, preferential employee access to job postings, death benefits, life insurance or Long Term Disability protection. The Part-Time Cashier position was inferior to all full-time positions at the LCBO in all respects.

31. The female Part-Time Cashiers were the first part-time employees at the LCBO and the wage and benefit discrimination they faced became an enduring feature of the

LCBO pay structure. That connection between female jobs, precarious employment status, and lower compensation continues to be reflected in the current treatment of Casual Customer Service Representatives.

32. As early as 1986, it was recognized that the part-time and full-time employees in retail stores were doing the same work but that improper disadvantages were being imposed on the female part-time work force. To address this, in the 1986 round of collective bargaining, the parties signed a memorandum of settlement which created a new Permanent Part-Time category.

33. In the 1987 interest arbitration that established the collective agreement terms for the new Permanent Part-Time category, interest arbitrator, Michel Picher expressly noted that “one of the general concerns giving rise to the creation of this category of employee [Permanent Part-Time] is to protect against disadvantages historically visited upon part-time workers many of whom are female”. The award recognized that the part-time workers were performing essentially the same job as the full-time workers and awarded the Permanent Part-Time category wages that were identical to the Permanent Full-Time category doing the same work. Permanent Part-Time employees were also awarded pro-rated benefits, job security provisions equivalent to Permanent Full-Time employees, and a guaranteed base number of hours of work per week with the ability to increase time worked where hours were available. With this award, 760 employees in the female-dominated casual jobs were converted to Permanent Part-Time status.

See: *Liquor Control Board of Ontario and Liquor Licence Board of Ontario v Ontario Liquor Board Employees Union* (30 June 1987) (Picher)

34. However, this remedy for discrimination against the female part-time work force has since been almost entirely eroded.

35. Instead, the LCBO has effectively recreated the systemic sex discrimination that the 1987 interest arbitration aimed to rectify.

36. As of March 2013, there are only 28 Permanent Part-Time employees remaining in the entire LCBO system, 20 of them women.

37. At the same time, there are over 4,000 “casual” retail employees who once again are a female-dominated work force, performing the identical job as Permanent Full-Time employees, but having significantly lower terms and conditions of employment regarding pay, benefits, access to promotions and job security.

38. Permanent Part-Time work is defined as work that is less than full time but more than 15 hours per week; or less than 20 full days over a period of four consecutive weeks but not less than 9 full days. Even though nearly 66% of Casual Customer Service Representatives are working annual hours in excessive of these guaranteed minimum work thresholds defined for Permanent Part-Time employees, they are not

granted Permanent Part-Time status and are not granted the terms and conditions that attach to Permanent Part-Time work.

**E. OPSEU's History of Trying to Rectify Sex Discrimination**

39. Since becoming the bargaining agent for employees at the LCBO in 2005, OPSEU has attempted to rectify the discrimination faced by the Casual Customer Service Representatives.

40. In 2005, OPSEU wrote to the LCBO seeking a copy of the original pay equity plan and any documentation supporting it. In January 2006, OPSEU received a copy of two pay equity plans which had been signed in 1990.

41. Rather than creating a single pay equity plan for the bargaining unit as required under the *Pay Equity Act*, the LCBO had created two separate pay equity plans – one for Permanent Full-Time employees and one for Casual employees. The Permanent Full-Time Customer Service Representatives were identified as a male-dominated job class. The Casual Customer Service Representatives were identified as a female-dominated job class. But because they were improperly listed in two separate pay equity plans, the pay equity process maintained the discriminatory wage differentials rather than eliminating them.

42. Despite further requests for background information, this was not forthcoming although the parties agreed that a new pay equity plan needed to be negotiated.

43. Little progress was made on that process and so the Union raised it as an issue during the 2009 round of collective bargaining. On or around 18 June 2009, during negotiations OPSEU tabled a letter to the Employer identifying its concern that the LCBO may be discriminating in a systemic way against women and female job classes in its compensation practices contrary to both the *Pay Equity Act* and the *Ontario Human Rights Code*. OPSEU gave notice that it would be investigating whether there was a systemic human rights complaint regarding the deliberate underpaying of female workers. OPSEU sought a wage grid which would resolve this discrimination by paying all similar/identical work an identical wage.

44. OPSEU tabled the same letter again the next year at pay equity negotiations with the Employer, on or around 13 May 2010.

45. The pay equity negotiations stalled and were put on hold when collective bargaining started in 2013.

46. On or around 13 February 2013, OPSEU tabled another letter with the LCBO in bargaining again expressly raising its concerns about systemic sex discrimination in the treatment of Casual Customer Service Representatives. In that letter OPSEU stated:

*It remains OPSEU's position that fundamental systemic discrimination continues to exist in the wage structure in the LCBO bargaining unit. Female employees are paid unequal wages, the female wage structure is unequal, the female casual employees have unequal access to permanent positions and the LCBO has systematically eroded the permanent part-time positions which were intended to rectify discrimination in the first place.*

*OPSEU would be agreeable to a wage grid which pays all similar and identical work an identical wage.*

*If you are not agreeable and unwilling to consider and rectify the systemic discrimination in the LCBO pay structure, OPSEU will vigorously pursue any and all legal recourse available.*

47. The LCBO has refused to rectify the systemic discrimination faced by the Casual Customer Service Representatives. The LCBO has refused to provide Casual Customer Service Representatives with equal wages and benefits that reflect the work they are actually performing. The LCBO has also refused to award them with the Permanent Part-Time status that reflects their actual role within the LCBO work force and that was their earlier remedy against systemic sex discrimination.

#### **F. The Discriminatory Impact on Casual Customer Service Representatives**

48. As a result of the systemic sex discrimination outlined above, the Casual Customer Service Representatives are affected in multiple ways, including the following ways:

- (a) They are paid from \$6.21 to \$9.33 less per hour than Permanent Full-Time and Permanent Part-Time wage grids depending on what step on the wage grid they are at. That is an hourly wage gap that ranges from 23.5% to 38% less than Permanent Full-Time and Permanent Part-Time grids. The wage gaps at each level of the grids is set out in the table on the following page. While the Casual and Permanent Full-Time grids each have five steps, the Casual employees move up one grid step at 1-year intervals while the Permanent Full-Time employees move up one grid step at 6-month intervals.



**Wage Differential Between Casual and Permanent Full-Time Customer Service Representatives (based on wage rates effective 1 April 2012)**

<b>Grid Step</b>	<b>Casual</b>	<b>Permanent Full-Time</b>	<b>Gap in Dollars</b>	<b>Gap as a Percentage</b>
Start	\$14.94	\$22.65	- \$7.71	- 34.0%
6 months	\$14.94	\$24.08	- \$9.14	- 38.0%
12 months	\$16.44	\$25.03	- \$8.59	- 34.3 %
18 months	\$16.44	\$25.77	- \$9.33	- 36.2%
24 months	\$17.95	\$26.48	- \$8.53	- 32.2%
36 months	\$19.03	\$26.48	- \$7.45	- 28.1%
48 months	\$20.27	\$26.48	- \$6.21	- 23.5%

- (b) The only Casual employees who have access to benefits are Casual employees who have worked a minimum of 1300 hours in the previous calendar year and who have five years of casual seniority. Even when they meet this threshold, the Casual employees are entitled to a more limited range of benefits with more restricted coverage than either Permanent Part-Time employees or Permanent Full-Time employees.
- (c) Casual Customer Service Representatives have no guarantee of any particular level of hours of work, any particular shifts, or any particular days of work from week to week. They only learn their schedule two weeks in advance. The hours they get can vary from week to week and at different times of the year. This places enormous stress on them as it makes it extremely difficult to plan their lives, to arrange child care and/or elder care, to arrange medical or dental appointments, to budget for living expenses, or even to find a second part-time job to make ends meet.
- (d) They have limited job security. If a Casual employee transfers to a store outside of their current geographic location, they lose all their seniority. They must resign and be rehired as a “new” employee at the bottom of the Casual wage grid. There are many Casual employees who have been working for the LCBO for many years – often decades – who have for various reasons needed to transfer their location of work. They have as a result (sometimes multiple times in their career) lost all their seniority and needed to start over as “new” employees despite their actual years of service to the LCBO.

- (e) They have extremely limited access to Permanent Full Time jobs. Apart from permanent postings created through the Permanent Vacancy Review process, they can only apply for entry level jobs within their geographic region and will only be considered if no Permanent Part-Time employee has applied.
- (f) In practice, it can take as many as 18 years of service with the LCBO before a Casual Customer Service Representative can access a Permanent Full-Time job.

49. The female dominated Casual Customer Service Representative has even less job security than the male dominated Casual Warehouse Worker. Again, the Casual Warehouse Worker is the only casual position at the LCBO that is male dominated and in March 2013 was exclusively staffed by men. While the Casual Warehouse Worker starts at the same wage rate as the Casual Customer Service Representative, once they reach a certain threshold of hours (700 hours in a 26 week period), they are automatically converted to "Seasonal" or "Super Casual" status which results in an immediate increase in wages, full benefits, and grants them wider access to promotions into Permanent Full-Time jobs. Unlike the Casual Customer Service Representatives, the male dominated Casual position is not restricted to applying for jobs within their geographic region and can fill temporary vacancies within their department that they are qualified to do allowing them access to a broader range of jobs and work experience. As a result, the only male dominated Casual position at the LCBO has an accelerated pathway out of precarious casual status with enhanced wages, benefits, and other terms and conditions.

50. Women applying for part-time work at the LCBO are streamed away from the Warehouse jobs in the Logistics department and into the Retail department where the Casual Customer Service Representative jobs are.

51. The "Seasonal" or "Super Casual" provisions that apply to Warehouse Workers were created through an interest arbitration award in 2000 which aimed to ensure that where casual employees were doing work that was identical to or similar to Permanent Full-Time employees their terms and conditions of work would appropriately correspond to the value of their work.

52. While the remedy that was tailored to address fair wages and job security for male Casual employees remains in place, the 1987 remedy that was tailored to address non-discriminatory wages for female Casual employees has been effectively eliminated leaving thousands of Casual Customer Service Representatives with unequal and discriminatory terms and conditions of work.

**G. The LCBO Has the Capacity to Rectify the Systemic Discrimination**

53. It is OPSEU's position that there is no doubt that the LCBO has the capacity to rectify the systemic discrimination facing its female dominated Casual workforce.

54. According to the LCBO's 2011-2012 Annual Report:

(a) In 2011-2012, the LCBO had revenues of \$4.58 billion which represented a 5.6% increase over the previous year.

(b) In 2011-2012, the LCBO's net income was \$1.56 billion which represented an 8.8% increase over the previous year.

(c) In 2011-2012, the LCBO transferred \$1.55 billion, excluding all taxes, to the Ontario government representing an increase of \$140 million over the previous year.

55. Despite its robust financial position, since 2009 the LCBO has been creating precarious casual work at a rate more than 5 times faster than permanent full-time work. Since 2009, only 15% of new jobs at the LCBO have been Permanent Full-Time while 85% have been Casual.

56. Across the province, when Permanent Full-Time Customer Service Representative jobs are vacated, there is a practice of leaving the Permanent Full-Time position vacant and using Casual Customer Service Representatives instead. This has the effect of further denying the female dominated Casual Customer Service Representatives access to the security of Permanent Full-Time jobs.