

PAFSO Update – Spring 2008 – Vol. 23-2

Question? Comments? Concerns? Please contact PAFSO staff or executive members directly, or for referral call PAFSO's office number at (613) 241-1391 or send an e-mail to info@pafso.com. You may also wish to check PAFSO's website at http://www.pafso.com/french/index_fr.cfm (French) and <http://www.pafso.com/index2.cfm> (English).

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Collective Bargaining

Details of the negotiations will be posted separately on the PAFSO website, but we provide here a short summary of where we are at.

The collective bargaining process has begun, but slowly. We have exchanged proposals in February, and gone through two rounds of negotiations in March and May, with a third round proceeding as this Update is being finalized. We have begun (as is common) with relatively minor issues, leaving more contentious questions (notably pay) until later.

The slow start is not limited to PAFSO. Even larger unions such as PSAC, that traditionally would finish before PAFSO have experienced delays (see Hill Times article at http://www.thehilltimes.ca/html/index.php?display=story&full_path=2008/april/28/civiccircles/&c=2 discussing this issue).

In addition, the Association of Justice Counsel, representing the vast majority of lawyers in the public service is negotiating its first collective agreement for the LA group, representing the vast majority of lawyers in the public service. As we consider them a close comparator group we are particularly interested in the results that they obtain. As set out on their website (see their collective bargaining page at <http://www.ajc->

ajj.org/eng/news/negotiations.aspx) they received what they felt was an unreasonable offer on pay and initiated arbitration on March 29, 2008. That process is likely to take a fairly long time.

As things stand, we do not anticipate finalizing negotiations before fall at the earliest.

CIC Ongoing Promotion Exercises

FS-04

CIC is presently in the process of completing a second round of FS-04 promotions to staff the 22 positions remaining vacant at the end of the first process. It is unclear when that process will be complete, though evidently the competition is at an advanced state. Applicants had to pass the 810 in-basket exercise with a cut-off of 17 points to proceed to the technical expertise assessment. The technical expertise standard is "expert", followed by an interview with the screening board. Exams are being marked only where candidates meet all the competency definitions at interview. All the interviews were completed in late May.

FS-03

An FS-03 competition is also underway. The process is the same as the FS-04 except that the cut-off score for the 810 in-basket exercise is 16 and the technical standard is "thorough." It is expected that interviews will start this summer.

EX(FS)-01

CIC recently announced completion of the EX(FS)-01 promotion exercise that was launched in early 2007. While some half dozen members were apparently found qualified, ultimately just two candidates were promoted. PAFSO understands as well that the employer has chosen not to create an eligible pool of the qualified candidates not promoted. This is disappointing since it means that those candidates will need to compete *de novo* in a future competition. It also limits the potential return to CIC from what proved to be a lengthy process.

Significant Success – Challenge of FS-04 promotion exercise at CIC

In what we believe is an important decision for future staffing processes throughout the public service, the Public Service Staffing Tribunal (PSST) found that a CIC FS was inappropriately screened out of the previous CIC FS-04 competition, and ordered CIC to reassess that person's qualifications appropriately (that decision will be available on the PSST website at <http://www.psst-tdfp.gc.ca/article.asp?id=2676> (look for the case involving CIC) once it is available in both official languages.

The case is important because it is the first decision upholding an employee complaint since the PSST began hearing cases under the new Public Service Employment Act (PSEA) approximately two years ago. Under the PSEA, in order for an employee complaint to succeed the employee must show an "abuse of authority" by the employer. The PSST rejected the arguments advanced by the employer that this standard was limited to serious breaches, such as "improper intention such as bad faith or personal favouritism". Instead, the PSST found that lesser errors, such as decisions based on irrelevant considerations or without consideration of relevant matters, also were within the standard.

In this specific case of the grievance for the CIC FS-04 competition, three complainants were all advised that they had been eliminated from the appointment process because they did not meet one of the merit criteria used for screening candidates, namely, significant headquarters experience in CIC, CBSA or another government department, in an area related to the immigration or citizenship programs or in corporate services.

The grievances by two complainants were rejected. In those cases, the PSST found that the employer had reasonably considered whether they had met the substance of the requirement for significant HQ experience.

In the remaining case, however, the PSST held that the employer relied on an arbitrary rule (a minimum of 22 months of HQ experience) in assessing a qualification that was deliberately set to allow for flexibility ("significant" HQ experience, of "approximately" 24 months). The PSST found that the imposition of this arbitrary rule by the assessment board improperly fettered its discretion, and ordered the employer to continue the screening process for this complainant.

Promotion Exercises at DFAIT

PAFSO has recently met with the Assistant Deputy Minister of Human Resources, Michael Small, to discuss its concerns with elements of the promotion process. We also provide below a short summary of recent information about these processes below. As always, this information is based upon formal and informal information from Human Resources, so we cannot guarantee its accuracy.

FS-02

FS-01s who were successful in the competition have been offered a position in the rotational pool. Non-FS successful in the competition are required to first obtain an FS-2 position before being appointed.

FS-03 Competition

The external FS-03 deployment process has been cancelled on the basis that there are already too many qualified candidates in the internal process.

The pool for successful candidates has not been published yet on Publiservice, but some candidates have received an email confirmation that they are part of the pool, while others have been advised that their language results or reference checks are still being processed.

HEF/HMO committed to appoint all of those in the pool of successful candidates to FS-3 eventually. However, procedures will be established sometime in the fall to determine how and when successful candidates will be appointed. This seems to mean that there will be no appointments under the promotion process until the 2009 posting cycle. Further, only some positions deemed to fit with specific organizational needs will lead to an appointment in the short term, not any FS-03 assignment. Qualified candidates acting in FS-03 positions will not be nominated automatically.

FS-03 (“grandfathering”)

Those hired before January 1, 2003 who have been at the top of the FS-2 band for 12 months are entitled to be grandfathered if they pass the FS-3 exam (without other conditions, such as being picked from a pool), a commitment recently formally included in our collective agreement.

The first promotions under this process (for a fairly small group of people) should have taken place August 1, 2007, but to date none have been promoted. We hope to see a formal decision on this shortly.

FS-04

Most qualified candidates should be nominated by the end of the summer.

There are not enough FS-04 qualified candidates to fill all FS-04 positions, so a new competition is expected relatively soon.

The grievances about the process are still at the information exchange stage.

In Memoriam – Paul Whelan, long serving CIC officer

Friends and colleagues of Paul Whelan gathered with his family on April 8, 2008 in Ottawa for a Celebration of Life Memorial dedicated to him. The large turnout provided ample testimony of the high regard in which he was held. Paul’s enthusiasm, humour and humanity were well captured in the many effusive testimonials offered by friends and co-workers. Paul’s Foreign Service career spanned 30 years and 8 foreign postings, including most recently as IPM in Moscow. PAFSO members and staff offer their sincere condolences to Paul’s family. He is fondly remembered and sorely missed by all.

PAFSO long term strategic planning process

In the late 1990s, PAFSO faced financial difficulties to such an extent that the continued viability of the association was in question. Through prudent management, we are now in much better shape. For example, the financial information presented at the last Annual General Meeting confirms that we now have reserves to fund ongoing activities, as well as a growing job action fund. PAFSO has clearly moved beyond a hand to mouth existence and is well on track to achieving a fiscal model that is stable and sustainable. A fundamental lesson learned from those earlier difficult days has been the importance of ongoing vigilance and discipline in our fiscal management.

With the immediacy of PAFSO's fiscal problems greatly diminished, the Executive has begun to turn its collective mind to long term planning. This exercise will include a consideration of what sort of reserves should be maintained and for what purpose, questions of staffing (appropriate size, skill sets and succession planning), premises (for example whether to purchase a location under the right circumstances), and any additional tasks or tools that PAFSO should consider (as a small example we are considering setting up some form of internet based discussion forum, which would likely require staff time and a financial commitment). We hope to be in a position to provide an initial report to PAFSO members on this issue at the fall Annual General Meeting.

If you have any suggestions related to long term strategic planning, please direct them Robert.brookfield@international.gc.ca or to Philip.lupul@cic.gc.ca .

CIC Career Assignment Program (Careers Rendez-vous Carrières)

CIC recently publicized the formal launch of a new employee development opportunity called "Careers Rendez-vous Carrières", which is described as a program:

Designed to help develop CIC employees and to create a stronger, more knowledgeable organization, Careers Rendez-vous Carrières can benefit both the employer as well as the employee. As an employee, Careers Rendez-vous Carrières can assist you in obtaining developmental assignments of interest in another area of CIC or at a different government department. As managers, the program gives you access to a database of employees looking for new experiences. Careers Rendez-vous Carrières provides employees with another solution to achieving their learning goals while strengthening working relationships within CIC and other key partners.

Although PAFSO had understood that the program would be open to all staff, CIC has recently confirmed that FS employees are excluded. This is a severe disappointment, especially as FS are the only occupational group excluded and there is no obvious reason why they could not benefit from this program as much as other employees. PAFSO has written to the Director of Personnel in International Region to register our concern. Though some assurance has been offered that FS may be included in future, PAFSO will

continue to press this issue and urges members interested in career development to raise it individually with their personnel officers.

Ab Initio - Employment Status While on Official Language Training

Following up on our message in the last PAFSO update, the Federal Court on April 22, 2008 issued its ruling on whether those in official language training prior to working as FS (“Ab Initio candidates”) could be considered employees, and thus count their time in language training as pensionable service (see decisions.fct-cf.gc.ca/en/2008/2008fc525/2008fc525.html). Unfortunately the Court found against us, saying that ab initio candidates do not become employees of the government until they receive a formal offer of employment. The Court relied on a prior Federal Court of Appeal decision which had determined that “ab initio candidates” were not members of the FS bargaining unit.

Alternative Methods of addressing problems in the workplace

In the last update we highlighted the grievance procedure process, which provides a formal way to challenge actions which violate collective agreement provisions such as pay, overtime, or leave. But if you are experiencing conflicts in the workplace that you cannot resolve directly, you might also want to consider less formal options for resolving the issue.

Both CIC and DFAIT have offices that contain experts who can provide various ways to help you resolve problems, such as mediation or conciliation. These alternative approaches are “without prejudice” to more formal processes (such as grievances or human rights complaints): timelines for the formal process are deferred while participating in the alternative approach, and information gained through the alternative approach cannot be used in the more formal process. You can also withdraw at any time.

DFAIT employees contact the Office of Prevention and Conflict Resolution at 613-946-0544, solution@international.gc.ca. For further information on the DFAIT policy, see <http://intranet.dfait-maeci.gc.ca/department/drc/menu-en.asp>.

CIC Employees contact the Office of Conflict Resolution at 941-1785, conflict-resolution-resolution-des-conflits@cic.gc.ca. For further information see <http://cicintranet/cicexplore/english/org/bjo/index.htm>.

Once you have contacted the relevant office, they will speak to all parties involved in the dispute to try to determine what mechanism might be most effective to address the problem, and who might usefully participate. You may always ask that a person of your choice be involved in the process, such as a PAFSO representative.

PAFSO supports the use of informal conflict management as a mechanism for members to resolve their concerns effectively and efficiently. If you have any comments on the

services of the CIC or DFAIT offices dealing with these issues, or on informal conflict management processes more generally, we would appreciate hearing from you.

Employment Insurance (EI) for Spouses – Recent legislation and request for volunteers

As most of you are probably aware, a significant injustice faced by spouses of rotational members of the Foreign Service (and other government employees posted abroad) is that while they are required to pay into the EI system, they are unable to receive regular EI benefits either at post or on return to Canada.

PAFSO and the Foreign Service Community Association (“FSCA”) have been working together to address this inequity. We have supporters across the political spectrum in Parliament (see for example the message below), and hope to persuade them to adopt legislative change that we believe is necessary to address this problem. The legislative process has already begun, with introduction of Bill S-239 in the Senate by Senator Sharon Carstairs

http://www2.parl.gc.ca/content/Senate/Bills/392/public/S-239/S-239_1/S-239tocE.htm.

That Bill received first reading on June 12, 2008 (see

http://www.parl.gc.ca/39/2/parlbus/chambus/senate/deb-e/069db_2008-06-12-E.htm?Language=E&Parl=39&Ses=2#27)

Senator Carstairs’s Bill would extend the qualification period for EI for up to 5 years for spouses abroad, thus making it more likely that a spouse could qualify for EI on return to Canada. We would encourage you to write to your Member of Parliament indicating support for legislative measures to address the problems faced by spouses, expressing gratitude to Senator Carstairs for her initiative, and also noting whether you think the approach of extending the qualification period would serve your particular purpose. PAFSO would appreciate being copied on any such letters both so that we are aware of the volume of correspondence, and so we are aware of your views.

While we believe that legislative change is necessary, and are studying Bill S-239 to see if it goes far enough, we also are considering seeking clear practical examples to point to in order to show precisely how the existing legislative system is inadequate to address this issue. We are looking for any spouse of a federal government employee who has served, or is serving, in a mission abroad (it need not be a spouse of a PAFSO member) to provide us with precise details about their experience so as to better understand the precise problems faced by spouses with reference to the existing legislative framework. We are looking for details such as when you paid, how long, and whether you tried to obtain EI. We may then ask for volunteers to make a formal application for EI and to pursue administrative appeals when that application is denied. PAFSO has set aside some funds to provide legal advice for that application and appeals if it proves necessary. If you are willing to provide us with details initially, potentially leading to a test case, please contact Neil Swain, at (613)996-7290, neil.swain@international.gc.ca.

Communications with Parliament about spousal and family issues (including life insurance)

Related to the above, we are pleased to see that Parliament has taken up issues relating to the hardships facing the families of foreign service officers. The Parliamentary Standing Committee on Public Accounts held a hearing on April 15, 2008 (see transcript at cmtte.parl.gc.ca/Content/HOC/committee/392/pacp/evidence/ev3425768/pacpev27-e.htm) that addressed these issues. For the most part we are happy with the tone of the questions and the answers.

PAFSO Insurance Update

Following up on our message in the last PAFSO Update, the details of the use of the surplus will be up on the PAFSO Website shortly. <http://pafso.com/index2.cfm>

Accessing Publiservice while on leave

As you may know, the internal government website where jobs are posted, “Publiservice”, is generally not available from non-government computers. This often causes problems for those who do not have access to such computers for an extended period (such as those on parental leave), as they then do not have access to information about competitions (such as the past promotion exercise at DFAIT).

For those people, we would like to bring to your attention that you may wish to set up before you go on leave (or get someone to set up for you after you are gone), access to the “Career Watch” notification system, which sends e-mails about job opportunities, at a non-work e-mail address. You can sign up for Career Watch at <https://jobs-emplois.psealefp.publiservice.gc.ca/cw-cc/CWmain?l=1> by selecting the “Register for Career Watch”, and using your non-work e-mail. If you have already signed up using your work e-mail, you can modify the destination by selecting “Modify” on the same page.

Note that you still will not be able to access Publiservice from a non-governmental computer, but that Career Watch will hopefully at least mean that you will know when to ask a colleague to get further information for you.

Tax assessment for tuition fees for Lycée Claudel

A number of members have recently received a letter from the Canada Revenue Agency informing them they will be required to pay income tax on the tuition paid under FSD 33 for their children at the Lycée Claudel in Ottawa.

While PAFSO cannot provide legal or tax advice to our members on this question, we consider that such assessment is inappropriate, and contrary to the Federal Court of Appeal’s finding in *Guay v. Canada* (available at http://decisions.fca-caf.gc.ca/en/1997/a-499-96_1487/a-499-96.html). We have included more detailed information on this issue on our website (at http://www.pafso.com/news_releases.cfm?newsID=64).

Period of Probation for FSDP Employees

When FSDP take parental, educational, or other leave without pay (parental is leave without pay, because the EI “top up” is not pay), they are usually told that this time does not count towards the probationary period of 3 years which an FSDP must complete before being promoted to FS-2.

Recently PAFSO investigated to see if this is correct. Unfortunately, the answer is yes: section 2(2)(a) of the Treasury Board Regulations on Probation (available at <http://www.psagency-agencefp.gc.ca/hrmm-mgrh/hrmm/policies->

[politiques/resourcing/probation_e.asp](#)), states that any period of leave without pay is not counted as part of the probation period.

Pension Issues – work of the Pension Advisory Committee

The Pension Advisory Committee (PAC) is a committee that meets regularly to address pension issues, and includes representatives of both the Employer and collective bargaining units. Ron Cochrane, our Executive Director, is a member. (More details can about the PAC can be found in the Backgrounder at http://www.tbs-sct.gc.ca/media/nr-cp/2006/1222_e.asp#Backgrounder). While the details of the work of the PAC are confidential, we provide you with an overview of some issues they are dealing with that may be of interest:

- **Transition into retirement.** The *Income Tax Act* has recently been amended to permit an employee to work while receiving a pension from the same employer if the employee's pension allows it. However, the Public Service Pension Plan (PSSP) so far does not allow this, so federal government workers cannot presently take advantage of this possibility. The PAC is presently studying whether to amend the PSSP to allow this, and if so under what circumstances - for example, whether all employees will be able to use it, or whether it would be available only under certain circumstances.
- **Pensions for those unable to work due to disability.** Federal public servants who are on disability leave without pay may be terminated from the public service after 2 years. They continue to receive disability payments, but no longer can contribute to the PSSA, and thus their years of service for purposes of pension are limited to the service they had at the time of their termination. As a result, at age 65 (when disability payments normally cease, and pension payments begin), they can suffer a catastrophic loss of income if they had a short period of service prior to their disability. PAFSO has proposed a solution that would involve allowing people in that situation to remain on leave without pay indefinitely. The PAC is exploring this suggestion, together with other ways to address this unfairness.

FSD Hint – FSD 50 Vacation travel assistance

We introduce a new, hopefully regular feature to the PAFSO Update: a short summary of the proper interpretation of a particular FSD where there have been some difficulties in the past.

Summary of the FSD: FSD 50 – Vacation Travel Assistance (VTA) provides money in the form of an allowance for travel based on the cost of return air travel between the post and Ottawa (though the travel need not actually be to Ottawa, or even to Canada). You must apply for it and take at least 10 compensation days of leave with pay. You may use

the money for multiple trips, but at least 5 days of leave must be taken at one time. How often you can apply is determined by the hardship level of your post (roughly speaking from once per tour for non-hardship posts to once for each year for hardship levels III to V). While the allowance is technically "non-accountable" you may be required to show that it has been spent on appropriate travel (see FSD 70.07 and 70.08).

Problem: At least one FSD advisor interpreted this FSD to mean that an employee could not use the VTA money for travel while on leave without pay (including maternity or parental leave) because of the requirement to take 10 compensation days of leave with pay. This overlooked the fact that the employee had already applied for and obtained the VTA money and had already taken the necessary 10 compensation days of leave.

Resolution: Following PAFSO intervention and internal discussion, the interpretation was clarified: the VTA money can be used for travel while on leave without pay where the requirement to take 10 compensation days of leave with pay has already been met.

Hint: if you are taking leave without pay (like parental or maternity leave) and plan on using your VTA money for only one trip, then take the 10 compensation days of leave with pay in conjunction with your leave without pay. For example if you were going back to Canada for 3 months, take 10 compensation days of leave at the start or end, with the remainder of time as parental leave (which may be split into two parts).