LABOUR RELATIONS CODE
(Section 84 Appointment)
ARBITRATION DECISION

PROFESSIONAL EMPLOYEES ASSOCIATION

UNION

BC PUBLIC SERVICE AGENCY

EMPLOYER

(Earned Time Off Carryover Bank Current Practice)

Arbitrator:	James E. Dorsey, K.C.
Representing the Union:	Jodie Gauthier and Henry Goddard Rebstein
Representing the Employer:	Gradin D. Tyler
Case Management Conference:	June 18, 2026
Written Submissions:	September 11; October 5 and 14, 2026
Decision:	November 17, 2026

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Contents

1. Dispute, Jurisdiction and Hearing Process 1
2. Background and Core of the Dispute 1
3. Evidence of Current Practice as of November 2024 and Party Positions 4
4. Discussion, Analysis and Decision 11

1. Dispute, Jurisdiction and Hearing Process

[1] Has the employer administered Legal Counsel (civil lawyers and articled students) Earned Time Off (ETO) carryover banks so they "will continue to be available in accordance with the current practice" as of November 2024?

[2] After legislated inclusion of Legal Counsel in the licensed professional bargaining unit represented by the union, the employer and union negotiated a Transition Agreement effective November 13, 2024 "to provide timing for implementing the specific agreed to terms" of the collective agreement.[1]

[3] On the application of Overtime, Shift Work and Standby Provisions for Regular Full-Time Employees (OSS) in Article 15 of the collective agreement, Item 13 of the Transition Agreement includes:

> Effective January 1, 2025, full-time employees are entitled to OSS per Article 15. Employees will not be required to repay Earned Day Off ("EDO")/Earned Time Off ("ETO") received for 2023 and 2024. ETO can be added to existing ETO carryover banks, which will continue to be available in accordance with the current practice. (Emphasis added)

[4] The union and employer agree I am properly appointed as arbitrator under their collective agreement, the Transition Agreement and the *Labour Relations Code*. The dispute was heard on the basis of written submissions and accompanying documents.

2. Background and Core of the Dispute

[5] In each calendar year from 2011 to 2014 full-time Legal Counsel earned 35 ETO paid time off hours (5 days x 7 hours). The number increased to 49 hours (7 days x 7 hours) per year in 2015 and continued at 49 hours until January 1, 2025 when Legal Counsel earned OSS instead of ETO. The annual ETO earning maximum was prorated for those working part-time or less than a full calendar year. Since 2015, ETO hours

[1] For background see *PEA and BC Public Service Agency (Applicability of Collective Agreement)*, [2024] B.C.C.A.A.A. No. 34 (Dorsey) and *PEA and British Columbia (Rates of Pay for Legal Counsel and Articled Student Classifications)*, [2025] B.C.C.A.A.A. No. 87 (Dorsey)

could be deferred and accumulated to a maximum of 245 hours. Any accumulated hours over 245 were paid out annually at the rate of pay at the time of payout.

[6] This ETO earned entitlement and payout originated with and was tied to Article 15 of the British Columbia Crown Counsel Association 2007-19 collective agreement which did not apply to Legal Counsel. Article 15 states, in part:

> Article 15: Earned Days Off
>
> Crown Counsel shall be entitled to seven (7) earned days off (EDO) in each calendar year of this agreement. Crown Counsel who work part-time hours for the full calendar year shall be entitled to EDOs on a pro-rata basis. Crown Counsel who commence or end their employment part way through the calendar year, or who work only part of a calendar year, shall be entitled to a pro-rata amount of EDOs based on the number of months worked in the calendar year. **EDOs may be deferred and accumulated over a period not exceeding five (5) calendar years from the calendar year in which they were earned.** The scheduling of such time off shall be by mutual agreement. Crown Counsel may elect at any time to have banked EDOs paid out rather than taken. EDOs shall be at the salary in effect at the time taken or paid out. (emphasis added)

[7] When annual ETO earning entitlement increased from 35 hours to 49 hours, the five calendar year accumulation and deferral limit in a carryover bank increased from 175 hours in 2010 to 245 hours in 2015.

- 2010 – 175 Hours (35 hours x 5 years)
- 2011 – 189 hours (35 hours x 4 years, plus 49 hours x 1 year)
- 2012 – 203 hours (35 hours x 3 years, plus 49 hours x 2 years)
- 2013 – 217 hours (35 hours x 2 years, plus 49 hours x 3 years)
- 2014 – 231 hours (35 hours x 1 year, plus 49 hours x 4 years)
- 2015 – 245 hours (49 hours x 5 years)
- 2016 – 245 hours (49 hours x 5 years)

[8] In 2020, the Treasury Board in Order 2020-603 directed that, except for general salary increases;

> All other terms and conditions for Legal Counsel employees covered by the Legal Counsel Classification Series that were previously linked to the Agreement between the BC Crown Counsel Association and the government in accordance with s. 4.1(2) of the Crown Counsel Act (the "Agreement") shall continue as per the specific terms and conditions that were effect on March 31, 2019.

[9] There is no evidence specific to the administration of ETO carryover banks for Crown Counsel before or after 2020.

[10] The union and employer agree deferred and accumulated hours in excess of 245 hours were paid out so the hours in a carryover bank for the next calendar year did not exceed 245 hours.

[11] The employer says the carryover bank practice before November 2024 was that ETO hours earned in the current year were deferred for five years and the oldest accumulated hours were paid out. After the Transition Agreement payouts consistent with this practice were made in the first pay periods of February 2025 and February 2026.

> ETO carryover banks have continued to be administered based on the longstanding practice in place at the time the Transition Agreement was reached, including with respect to deferral and accumulation of ETO hours being limited to five-calendar years from the calendar year in which they were earned.
>
> **********
>
> ETO leave banks of less than 245 hours were administered in the same manner, with ETO hours earned in the current year being deferred and accumulated and replacing those ETO hours in the leave bank earned in prior years (within the rolling five-year limitation period). However, this did not trigger a payout of ETO hours, because the maximum amount of ETO hours over a five-year period (245 hours) had not been reached; instead, it resulted in ETO hours in the ETO leave bank from past year(s) taken by employees being nominally replaced by ETO hours earned in the current year, because ETO hours were taken from the oldest to the newest. Put differently, when a government civil lawyer used ETO hours, those hours were automatically drawn down from the oldest hours in their ETO leave bank, rather than ETO hours earned in the current year.[2]

[12] Effective January 1, 2025 Legal Counsel stopped earning ETO hours. As a consequence, the rolling five-year maximum of accumulated and deferred ETO hours will decrease by 49 hours per year. Each year all hours in carryover banks in excess of the decreasing five-year maximum will have to be taken as paid leave or paid out. There will be no hours banked to carryover to 2029. All banked hours will be paid out by the first pay period in February 2028.

- 2024 – 245 hours (49 hours x 5 years)
- 2025 – 196 hours (49 hours x 4 years)
- 2026 – 147 hours (49 hours x 3 years)
- 2027 – 98 hours (49 hours x 2 years)
- 2028 – 49 hours (49 hours x 1 year)
- 2029 – 0 hours

[2] Employer's Argument, October 5, 2026, ¶ 3; 45

[13] The union says a rolling five-year limit on accumulation and deferral of ETO hours in the carryover bank was not the "current practice" as of November 2024. Carryover banks included hours earned and deferred longer than five years prior. If the year end hours balance was less than the maximum five year earnings, any hours aged more than five years were carried forward to the next calendar year. Those hours were not paid out.

[14] The union says Legal Counsel were permitted to indefinitely accumulate and defer up to 245 hours without a five calendar year limitation on when the hours were earned. After January 1, 2025, the employer changed the practice from payouts above the 245 maximum hours to a new and different approach of applying an accrual limitation of five years.

> By implementing a new practice post-Transition Agreement and paying out ETO hours below the 245-hour cap, the Employer has taken a benefit earned through service away from members. While the Employer paid out accrued ETO hours, ETO is not simply a monetary benefit. ETO gives members the right to choose to take days off with pay, or receive a payout if they do not want to take time off.[3]

[15] The employer replies: "… the PEA seeks to obtain a new entitlement – the ability to preserve ETO carryover banks indefinitely – under the guise of enforcement of the Transition Agreement. That entitlement has never formed part of the "current practice" and cannot be obtained through an arbitration award."[4]

3. Evidence of Current Practice as of November 2024 and Party Positions

[16] The employer says the ETO carryover bank practice was that Legal Counsel were not permitted to defer and accumulate ETO hours for more than five years. Hours taken or paid were drawn from the oldest to the newest and nominally replaced with any hours earned in the current year.

[17] The employer acknowledges it did not track the year in which ETO hours were accumulated, deferred and banked before ratification of the Transition Agreement. Carryover banks with less than 245 hours did not trigger a payout, including when an employee was on leave for a calendar year and did not earn any new hours.

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[3] Union's Argument, September 11, 2026, ¶ 68
[4] Employer's Argument, October 5, 2026, ¶ 4

[18] Since 2015, the focus was to make payouts so the number of hours accumulated in year end carryover banks did not exceed 245 hours. It was not to limit the time within which the carryover hours were accumulated.

[19] From 2022 to 2024, payouts reduced accrued carryover bank balances to 245 hours. No Legal Counsel with a carryover bank less that 245 hours received a payout that was not requested. In 2025, when the five year maximum carryover bank accumulation reduced to 196 hours, the number of pay outs increased.

Payouts	Number	Carryover Hours		Paid Hours	
		Highest	Lowest	Highest	Lowest
2022	33	294	245.15	49	0.15
2023	31	294	247.50	49	2.50
2024	38	294	251.33	49	6.42
2025	48	196	151.08	49	4.08

[20] In February 2025, Kyle Pollner, Executive Director, Legal Services Branch wrote: "Telus automatically pays out ETO when the total of the new ETO bank and the Carryover bank exceeds 5 years worth of leave - 245 hours."

> Telus Calculates that the above situation is within the 245 hour limit for 2025, so it is OK as is, however I believe the hours applicable to 2020 should now be paid out (these hours are being paid out for the Excluded lawyers), thereby lowering the total allowable ETO Carryover bank to be 196.[5]

[21] Mr. Pollner deposed the practice has been:

a) Lawyers were permitted to defer and accumulate up to 49 ETO hours per year, being the maximum ETO annual entitlement (7 days x 7 hours/day).
b) Lawyers were permitted to defer and accumulate ETO hours over a period not exceeding five calendar years.
c) ETO hours used by lawyer[s] were drawn from the oldest to the newest, with those in ETO leave banks being used and nominally replaced by ETO hours earned in the current year.
d) If the maximum amount (49 hours) was carried over each year for a period of five years (inclusive of the current year), an employee could have up to 245 ETO hours in their ETO leave bank (49 hours/year x five years).
e) ETO hours that were deferred and accumulated above 245 ETO hours were paid out to lawyers annually, with the ETO hours paid out being those hours that were surpassing the five-year limitation.
f) If the lawyer chose to defer and accumulate the ETO hours they earned during the current year, their ETO leave bank would remain at up to 245 hours.
g) ETO hours were paid out at the rate of pay applicable at the time they were paid, rather than the time they were earned.

[5] Email to Ellen Hrad, February 7, 2025

[22] There is no evidence that carryover bank ETO hours which had been accumulated and deferred for more than five years were paid out because their age surpassed five years. There is no employer document stating ETO hours accumulated and deferred longer than five years were or will be paid out.

[23] Each year Legal Counsel received leave balance reports stating their earned ETO in the current year and separately the number of hours in their carryover banks at year end in another line. The union relies on the statements of four Legal Counsel to show the practice was to allow accumulation and deferral of hours for more than five years.

[24] The statements contain more fields than annual earned ETO hours and hours taken as leave or paid. There are unexplained minor adjustments that confound clarity and understanding. One is in the first table below reporting 63 hours earned in 2018. This is 14 hours more than the maximum. This increased the 5-year earned hours to 259. However, any adjustments are specific to individuals, infrequent and materially inconsequential to illustrating the difference in the union and employer approaches.

[25] Christina Drake began as Legal Counsel in 2011. That year she earned 16.34 ETO hours. Because at year end she had no hours banked from years prior to 2011, her carryover bank to 2012 was zero hours. In 2012, her statement reports a prior year earning of 16.34 hours and her year end bank was 16.34 hours to carry over to 2013. Annual statements followed this pattern.

[26] Ms Drake's prior year accumulation and carryover bank at the end of 2016 was 149.34 hours. This was also the balance for the five years from 2012 to 2016.

[27] With a 5-year accumulation and deferral limitation, the total bank balance and carryover each subsequent year end should follow this same pattern. The carryover balance would equal the difference between the hours earned and the hours taken or paid in the preceding five years. They do not.

[28] In each year after 2016, the total 5-year accumulation and deferral hours is a lower number of hours than the carryover balance. This is because the year end carryover bank includes hours accumulated and deferred for more than five years.

[29] The clearest example is the 16.34 hour difference in 2017. These were the hours earned in 2011, but recorded as earned in 2012 in the statement. There were no hours taken in 2016 to offset the hours earned in 2012. The total hours taken in 2014 and 2015 (14 hours) did not offset the hours earned in 2012 on a principle of first in, first out.

[30] For Ms Drake, the difference between the carryover bank hours and the 5-year accumulation and deferral hours increases each year even though her annual earned hours decreased when she began working less than full-time in 2023 (reported in 2024).

C. Drake	Carryover	Earned	Taken/Paid	Balance	Bank Hr > 5 Yr
2011	0.00			0.00	
2012	0.00	16.34		16.34	
2013	16.34	49.00	49.00	16.34	
2014	16.34	49.00	10.50	54.84	
2015	54.84	49.00	3.50	100.34	
2016	100.34	49.00		**149.34**	
5-year		212.34	63.00	149.34	0
2017	149.34	49.00	30.34	**168.00**	
5-year		245	93.34	151.66	16.34
2018	168.00	63.00	35.00	**196.00**	
5-year		259.00	79.34	179.66	16.34
2019	196.00	49.00	52.50	**192.50**	
5-year		259.00	121.34	137.66	54.84
2020	192.50	49.00	45.50	**196.00**	
5-year		259.00	163.34	95.66	100.34
2021	196.00	49.00	49.00	**196.00**	
5-year		259.00	212.34	46.66	149.34
2022	196.00	49.00	49.00	**196.00**	
5-year		259.00	231.00	28.00	168.00
2023	196.00	49.00	50.28	**194.72**	
5-year		245.00	246.28	-1.28	196.00
2024	194.72	40.02	28.94	**205.80**	
5-year		236.02	222.72	13.30	192.50
2025	205.80	39.20	49.00	**196.00**	
5-year		226.22	226.22	0.00	196.00
2026	196.00	0.00	49.00	147.00	

[31] Shannon Davies began as Legal Counsel in 2010. Data from her statements from 2010 to 2021 are in the table below. Again the annual carryover balance is more hours than a 5-year rolling total of hours earned less hours taken or paid out. In 2016, the difference is 35 hours, which she is reported to have earned six years before in 2011. They were not offset from the hours taken or paid.

S. Davies	Carryover	Earned	Taken/Paid	Balance	Bank Hr > 5 Yr
2010	0.00	0.00	0.00	0.00	
2011	0.00	35.00	0.00	35.00	
2012	35.00	49.00	0.00	84.00	
2013	84.00	49.00	0.00	133.00	
2014	133.00	49.00	0.43	181.57	
2015	181.57	0.00	1.88	**179.69**	
5-year		182.00	2.31	179.69	0.00
2016	179.69	25.50	31.89	**173.30**	
5-year		172.50	34.20	138.30	35.00
2017	173.30	49.00	35.07	**187.23**	
5-year		172.50	69.27	103.23	84.00
2018	191.23	48.00	84.38	**154.85**	
5-year		171.50	153.65	17.85	137.00
2019	154.85	49.00	11.07	**192.78**	
5-year		171.50	164.29	7.21	185.57
2020	192.78	15.00	32.42	**175.36**	
5-year		186.50	194.83	-8.33	183.69
2021	175.36	0.00	72.38	102.98	

[32] Lauryn Kerr began as Legal Counsel in 2018. She took leave without pay for a period bridging 2022 and 2023 and was temporarily in an excluded position in 2025 when she earned ETO hours which were paid out. She was on a one year maternity leave in 2025 and 2026. Her annual carryover balance is more hours than her 5-year rolling total of hours earned less hours taken or paid out. In 2024, the difference is the 36.75 hours she is reported to have earned six years before in 2019.

L. Kerr	Carryover	Earned	Taken/Paid	Balance	Bank Hr > 5 Yr
2018	0.00	0.00	0.00	0.00	
2019	0.00	36.75	0.00	36.75	
2020	36.75	49.00	0.00	85.75	
2021	85.75	49.00	0.00	134.75	

2022	134.75	49.00	49.00	134.75	
2023	134.75	44.92	98.00	**81.67**	
5-year		228.67	147.00	81.67	0.00
2024	81.67	28.58	0.00	**110.25**	
5-year		220.50	147.00	73.50	36.75
2025	110.25	49.00	0.00	**159.25**	
5-year		220.50	147.00	73.50	85.75
2026	159.25	12.25	24.50	147.00	

[33] Lauren Knoblauch was Legal Counsel from 1998 to December 2007. She then had a management position, including acting Assistant Deputy Attorney General, until 2019. She continued to earn ETO hours in the same manner as Legal Counsel. In 2020, she returned to a Legal Counsel position.

[34] While Ms Knoblauch's annual earned ETO hours decreased significantly since 2017, her carryover bank hours remained relatively constant and substantially higher than her rolling 5-year total of hours earned less hours taken or paid out. At the end of 2024, her rolling 5-year total was 10.85 hours. Her carryover bank hours were 188.85.

L. Knoblauch	Carryover	Earned	Taken/Paid	Balance	Bank Hr > 5 Yr
2017	144.63	49.00	7.91	185.72	
2018	185.72	27.75	28.14	185.33	
2019	185.33	7.00	16.42	175.91	
2020	175.91	13.00	10.91	178.00	
2021	178.00	10.50	5.58	**182.92**	
5-year		107.25	68.96	38.29	144.63
2022	182.92	8.50	16.00	**175.42**	
5-year		66.75	77.05	-10.30	185.72
2023	175.42	7.00	11.30	**171.12**	
5-year		46.00	60.21	-14.21	185.33
2024	171.12	22.50	5.27	**188.35**	
5-year		61.50	49.06	12.44	175.91
2025	188.35	0.50	0.00	**188.85**	
5-year		49.00	38.15	10.85	178.00
2026	188.85	0.00	41.85	147.00	

[35] In 2026, Ms. Knoblauch was paid out 41.85 hours to reduce her carryover bank to 2027 to 147 hours. She planned to keep those hours in her bank as part of a pre-retirement leave. Using Ms. Knoblauch as an example and based on her statutory declaration, the union says:

> … a monetary payout is not compatible with the purpose of a benefit which aims to provide relief from workplace stresses and strains and enjoyment of leisure activities to members … . As a representative example, Ms. Knoblauch had intended to retain her ETO bank until retirement, and use her banked ETO hours as a 'pre-retirement leave', which would have increased her pensionable service and the duration of her extended health benefits coverage. As a consequence of the Employer's actions in unilaterally paying out ETO, she has been deprived of the opportunity to use her ETO hours for their intended purpose of time off with pay and relief from the stresses and strains of the workplace.[6]

[36] The union submits:

> The Employer is not entitled to simply unilaterally cancel members' right to accrue ETO hours up to the 245-hour cap, even if it pays them those cancelled hours as it did here. This is a departure from its practice in administering ETO banks prior to the Transition Agreement, a breach which requires an appropriate remedy. The Union submits that the appropriate remedy in this case would be return of members' ETO hours to their time banks, so that members receive the central benefit of their ETO time entitlement – paid time off away from the stresses and strains of the workplace.[7]

[37] The employer disagrees:

> Government civil lawyers have never been permitted to defer and accumulate ETO hours beyond the five-year limitation. ETO leave banks of less than 245 hours were handled in the same manner as those at the maximum amount of 245 hours, with ETO hours earned in the current year being deferred and accumulated replacing those ETO hours in the leave bank from prior years (within the rolling five-year limitation period) being used by employees. This did not trigger a payout of ETO hours, because the maximum amount of ETO hours over a five-year period (245 hours) had not been reached – instead, it resulted [in] ETO hours in the ETO leave bank from past year(s) being replaced by ETO hours earned in the current year, because ETO hours were drawn from the oldest to the newest. This "last in, first out" approach to ETO usage represents a complete answer to why government civil lawyers with ETO leave banks of less than 245 hours did not receive past payouts, despite the five-year limitation on deferral and accumulation.
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> **********
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> … the fact that the PSA did not track the year in which ETO hours were earned is a red herring. Government civil lawyers whose ETO leave banks exceeded 245 hours received payouts, based on deferral and accumulation of the maximum amount of ETO hours exceeding the five-year limitation period. Government civil lawyers whose ETO leave banks were less than 245 hours did not receive payouts despite the passage of five years, because ETO hours were drawn from oldest to newest, meaning ETO hours never remained in their ETO banks for greater than five years.[8]

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[6] Union's Argument, September 11, 2026, ¶ 69
[7] Union's Argument, September 11, 2026, ¶ 70
[8] Employer's Argument, October 5, 2026, ¶70(d); 70(k)

4. Discussion, Analysis and Decision

[38] What was the ETO carryover bank practice as of November 2024 which was to be continued?

[39] The extensive work required to do detailed tracking to determine whether ETO hours taken or paid in a calendar year were hours earned in that year or in a calendar year six or more years prior is painstaking and clearly evident in the analysis of the four records scrutinized and tables prepared by the union.

[40] Over the years, the employer did not do this detailed tracking of the calendar year in which ETO hours were earned, accumulated, deferred and taken or carried forward. It operated on the premise hours first earned were hours first taken or paid out and maintained a carryover balance at or below the five calendar year earning maximum.

[41] I took a simpler approach than the union in the tables above. I calculated whether the carryover bank hours included more hours than the difference between what was earned and what was taken or paid out in the previous five calendar years.

[42] The common pattern of this approach in the four examples is that Legal Counsel whose total hour accumulation and deferral was less than the maximum hours which could be earned in five years were allowed to continue to defer any hours in their carryover bank regardless of the calendar year in which the hours were earned, accumulated and deferred. This included hours earned, accumulated and deferred more than five calendar years prior. Hours did remain in banks for more than five years.

[43] Over the years, there was no employer communication informing Legal Counsel that hours earned prior to five years ago must be used or will be paid out. There is no employer evidence of specific payouts of hours from carryover banks when the total hours was less than the maximum hours which could be earned in five years because some of the hours were earned, accumulated and deferred more than five calendar years prior.

[44] In administering the ETO carryover banks, Telus only made unrequested payouts of accumulated hours above the number of maximum hours which could be earned in

five years. Banks with fewer hours than that maximum did not trigger a payout. Telus was not paying out what was not being tracked.

[45] I conclude aged ETO hours were not paid out because their deferral surpassed a five calendar limitation period when the total accumulated hours was less than the maximum hours which could be earned in five years. The focus was on the maximum carryover hours. It was not on the age of any of the accumulated and deferred hours.

[46] I conclude that, while the applicable language was ETO hours "… may be deferred and accumulated over a period not exceeding five (5) calendar years from the calendar year in which they were earned," the actual longstanding practice was to apply a carryover bank maximum equal to the maximum hours which could be earned in the five previous calendar years without regard to whether the carryover bank include hours earned, accumulated and deferred before the prior five calendar years.

[47] If the employer has introduced a five calendar year limitation on accumulation and deferral of ETO hours earned before 2025, that is contrary to Item 13 in the Transition Agreement.

[48] In the practice over the years, the five calendar year maximum carryover was a rolling five year earning maximum which increased from 175 hours in 2010 to 245 hours in 2015.

[49] The practice was that ETO carryover banks could include hours earned, accumulated and deferred longer than five calendar years. The practice was that ETO carryover banks could not include hours above the maximum number of hours which could be earned in the five previous calendar years. The employer paid out the number of hours that surpassed the number which could be earned in five years.

[50] While the maximum in 2024 was 254 hours, there was no "right to accrue ETO hours up to the 245-hour cap" as the union has characterized the practice. Attaching a specific, immutable number to the maximum number of carryover hours eliminates any application whatsoever in the practice of "not exceeding five (5) calendar years from the calendar year in which they were earned." The five calendar year limitation was part of the practice. As it increased, the maximum number of carryover hours increased.

[51] The five calendar year earning limitation decreased in 2025 to 196 hours and will decrease annually until it disappears.

[52] This decrease sets new annual limits on the maximum hours in a carryover bank. Paying out any hours in excess of the lower maximum is consistent with past administration of carryover banks. It is part of the current practice agreed in the Transition Agreement. In this manner ETO carryover banks "will continue to be available in accordance with the current practice."

[53] The union asserts the current practice was not bounded by the source of ETO and the carryover bank. It says the *status quo* was a cap of 245 hours ignoring the longstanding administration of the accumulation and deferral not exceeding five calendar years as the employer had administered carryover banks. It submits: "If the Parties had wanted to enforce a strict and literal interpretation of the words of Article 15 of the Crown Counsel Agreement, they would have incorporated this provision, or the language of this provision, into the Transition Agreement."[9]

[54] The union elaborates on "current practice."

> Per the plain language of this phrase, the parties' intention was that however the Employer had approached carryover of ETO time banks prior to the ratification of the Transition Agreement, this practice would continue as of January 1, 2025, when full-time employees became entitled to OSS. The onus falls on the Employer to establish that any departure from the pre-Transition Agreement practice is permissible, given that the plain language of the Transition Agreement preserves the *status quo*.[10]

[55] The *status quo* was that annual carryover bank limits were determined by reference to the maximum ETO hours which could be earned in five calendar years. Regardless what the employer says about hours not remaining in a carryover bank for more than five years, the employer has nor departed from the way it approached determining the annual carryover hour maximum by limiting it to the number of hours which could be earned in five calendar years.

[56] The inability of Legal Counsel to delay taking or being paid for carryover bank hours for as long as they might have planned prior to 2025 is not the consequence of any employer decision subject to any remedy the union seeks. It is a consequence of

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[9] Union's Argument, September 11, 2026, ¶ 49
[10] Union's Argument, September 11, 2026, ¶ 49

the decreasing number of maximum hours which could be earned in the five previous calendar years after 2025. There was no employer breach of Item 13 of the Transition Agreement.

[57] I retain and reserve jurisdiction over the interpretation and implementation of this decision.

NOVEMBER 17, 2026, NORTH VANCOUVER, BRITISH COLUMBIA.

James E. Dorsey

James E. Dorsey