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*Public Service Labour Relations Act*

Before an adjudicator

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BETWEEN

**PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA**

Bargaining agent

and

**CANADA REVENUE AGENCY**

Employer

Indexed as

*Professional Institute of the Public Service of Canada v. Canada Revenue Agency*

In the matter of a policy grievance referred to adjudication

**Before:** Steven B. Katkin, adjudicator

**For the Bargaining Agent:** Frédéric Durso, counsel, Professional Institute of the Public Service of Canada

**For the Employer:** Michel Girard, counsel

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Heard at Montreal, Quebec,  
May 13, 2014.  
(PSLREB Translation)

**I. Policy grievance referred to adjudication**

[1] On April 2, 2013, the Professional Institute of the Public Service of Canada (“the Institute”) filed a policy grievance under section 220 of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*) against the Canada Revenue Agency (“the employer” or “the CRA”), alleging that a breach occurred of article 22 of the collective agreement between the employer and the Institute, signed on July 10, 2012, on behalf of the Audit, Financial and Scientific (AFS) Group bargaining unit, which expired on December 21, 2014 (“the collective agreement”).

[2] The details of the policy grievance read as follows:

[Translation]

*We challenge the employer’s decision to refuse to reimburse employees, who are members of the AFS group and members of the Ordre des comptables professionnels agréés du Québec (CPA), a portion of the annual professional fees that they must pay to remain members in good standing of their professional order. That portion, in the amount of \$54.50, covers the cost of membership in the group liability insurance plan. Given that paying that amount is mandatory and essential to maintaining the professional designation, the employer breached article 22 of the collective agreement by refusing to reimburse it.*

[3] As a corrective measure, the Institute requested that the employer reimburse the members of the AFS group and of the Ordre des comptables professionnels agréés du Québec (CPA) the entire amount of the annual professional fees, including the amount of \$54.50 for membership in the group professional liability insurance plan for 2013-2014 and later years.

[4] The employer’s response to the policy grievance indicated that the \$54.50 claimed was not an annual fee within the meaning of the collective agreement’s provisions or the employer’s policy about professional association membership fees. In addition, the professional liability insurance premium was payable to an organization other than the Order of CPAs.

[5] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (“the new Board”) to replace the Public Service Labour Relations Board (“the former Board”) and the Public Service

Staffing Tribunal. That same day, the consequential and transitional amendments contained in sections 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to section 396 of the *Economic Action Plan 2013 Act, No. 2*, an adjudicator seized of a grievance before November 1, 2014, continues to exercise the powers set out in the *PSLRA* as that Act read immediately before that day.

## II. Summary of the evidence

[6] The parties agreed to a statement of facts (ASF), which reads as follows:

[Translation]

1. *Since May 16, 2012, the three professional accountant orders in Quebec have been governed by a single order: the Ordre des comptables professionnels agréés (CPA) du Québec.*
2. *The new CPA made professional liability insurance mandatory for all its members as of April 1, 2013, whether or not they worked privately. Paying that amount is essential to maintaining the professional designation.*
3. *The liability insurance premium, totaling \$54.50 (including taxes), is invoiced separately from the annual fees and must be paid directly to the Association of Insured Chartered Accountants (AICA Services Inc.).*
4. *In April 2013, management refused to reimburse the liability insurance premium for those of its employees who are members of the AFS group and members of one of the professional accountant orders in Quebec.*
5. *The policy grievance challenges the employer's decision to refuse to reimburse the annual liability insurance premium of \$54.50 to cover the cost of membership in the group liability insurance plan.*
6. *Since April 2008, before the CPA was created, some members of the AFS group who were also members of one of the professional accountant orders in Quebec were required to pay professional liability insurance fees, and the employer did not pay that liability insurance premium. Before 2008, no member of the AFS group had ever claimed reimbursement for any contribution to a professional liability insurance plan.*

[7] Each party called a witness: Steve Parent for the Institute, and Peter Cenne for

the employer.

**A. Steve Parent**

[8] Mr. Parent has worked for the employer since 1999 and holds an auditor position. He is classified at the AU-03 group and level. Before becoming a member of the Order of CPAs, he was a member of the Ordre des comptables en management accrédités (CMA).

[9] When Mr. Parent was a member of the Order of CMAs, the employer reimbursed his annual fees. He stated that at that time, as a federal government employee, he was not required to take out professional liability insurance, which applied to CMAs working in private practice. Since April 2013, Mr. Parent has had to pay the professional liability insurance premium; if he does not, he will be removed from the Order of CPAs.

[10] Under cross-examination, Mr. Parent stated that his position's duties did not change when his designation was changed from CMA to CPA.

**B. Peter Cenne**

[11] Mr. Cenne has been the employer's chief negotiator since May 2000. The CRA was designated as a separate agency on November 1, 1999, under the *Financial Administration Act* (R.S.C. 1985, c. F-11). In 2003, Mr. Cenne was appointed the employer's director of collective bargaining. Since 2006, Mr. Cenne has held the position of director of the employer's Collective Bargaining, Interpretation and Recourse Division, as the collective bargaining and recourse sections were merged then. Mr. Cenne has taken part in bargaining for all the employer's collective agreements since May 2000 and was responsible for bargaining during that period.

[12] Mr. Cenne stated that article 22 of the collective agreement was included for the first time in 2000 during bargaining for the collective agreement that was signed in November 2000 and that expired on June 21, 2001 (Exhibit C-2). Before that, the employer's policy was reflected in clause 21.01 of the collective agreement, a generic clause about membership fees an employee paid to an organization or a board of directors when it was essential to continuing to exercise the duties of the employee's position. At that time, the employer did not consider paying membership fees essential to the work of the employees in the AU group. According to Mr. Cenne, were article 22

not part of the collective agreement, the employer would not have paid membership fees for employees in the AU group. However, article 22 was added to recognize the work of employees in the AU group.

[13] Mr. Cenne testified that during the bargaining on article 22 of the collective agreement, it was explained to the bargaining table that the article's intent was to expand the scope of clause 21.01 of the collective agreement or the employer's existing policy about paying membership fees. He added that when article 22 was included in the collective agreement, the employer specifically agreed to cover the annual membership fees to the Office des professions du Québec ("the OPQ").

[14] Mr. Cenne referred to the professional association membership fees policy established in April 2001 ("the 2001 fees policy") by the CRA's predecessor, the Canada Customs and Revenue Agency (CCRA) (Exhibit C-10), clause 3.1.2(e) of which reads as follows:

[Translation]

*3.1.2 Reimbursement shall be limited to annual membership fees as set out in paragraph 7(a). The following are examples of fees or dues that are not reimbursable:*

...

*(e) special fees that are charged separately and that are distinct from annual membership fees (e.g., liability insurance, etc.).*

[15] The same wording was repeated when that policy was revised on March 28, 2006 (Exhibit C-8) ("the 2006 fees policy"). According to Mr. Cenne's understanding, the employer never acknowledged that it had to pay professional liability insurance premiums. That issue was not addressed during bargaining in 2000 because at that time, employees in the AU group were not required to take out professional liability insurance.

[16] Mr. Cenne referred me to the Treasury Board Secretariat's *Guideline on Self-Insurance*, amended on February 4, 2011 (Exhibit E-1), which includes the following principle, in French:

*Le gouvernement du Canada souscrit essentiellement ses propres risques et n'achète pas d'assurance sur le marché de l'assurance commerciale.*

[17] The English version reads as follows:

*The Government of Canada, for the most part, underwrites its own risks and does not purchase insurance in the commercial insurance market. . . .*

[18] According to that document, underwriting risk requires, among other things, a “thorough risk analysis.” According to Mr. Cenne, no such analysis was conducted in this case.

[19] Mr. Cenne also referred me to the [translation] *Policy on Compensation and Legal Assistance that can be Granted to CRA Employees* (Exhibit E-2), the purpose of which, according to him, is to protect employees when they carry out their duties.

[20] Under cross-examination, as an example under article 21 of the collective agreement, Mr. Cenne mentioned lawyers who must be members of a bar to make submissions before a court, and architects and engineers who must be members of their respective professional orders to certify documents.

[21] According to Mr. Cenne, when article 22 was included in the first CRA collective agreement, the fees policy had already existed, since April 2001. Questioned as to whether the purpose of article 22 was to maintain the professional designation of employees in the AU group, Mr. Cenne replied that he understood that article 22’s purpose was that the employer would pay only the core of the fees. In addition, the employer never considered paying the professional liability insurance premium.

[22] When questioned whether during bargaining on article 22 of the collective agreement, professional liability insurance was mandatory and paid by all members, Mr. Cenne replied that as he understood it, members were not required to pay the professional liability insurance premiums imposed by their professional associations during the era of the collective agreement in question.

### **III. Summary of the arguments**

#### **A. For the Institute**

[23] The conditions related to paying the membership fees of employees in the AU group are set out in clause 22.01 of the collective agreement, and exceptions are set out in clause 22.01(b) of the same collective agreement. The Institute pointed out that the collective agreement’s wording must be relied on and asked whether that

corresponded to the parties' intent.

[24] The Institute referred to Mr. Cenne's testimony about the employer's intentions in 2000. However, since no obligation was in place then for employees in the AU group to take out professional liability insurance, the employer reimbursing that premium was not an issue. How can the parties' intent be determined with respect to an issue that did not exist at that time? In recognition of the work of employees in the AU group, the employer reimbursed mandatory membership fees with a view to maintaining their professional designations.

[25] The Institute argued that the employer's policies are documents that are issued unilaterally and that they cannot supplement the collective agreement. Although being a member of a professional association is not an employment requirement for the AU group, the employer agreed to reimburse the annual membership fees. The Institute noted that taking out professional liability insurance is a requirement that the Order of CPAs imposed. While acknowledging that the professional liability insurance premium is payable to a separate organization, the Institute submitted that that was not an obstacle to the employer reimbursing such fees. The Institute added that it is merely an administrative issue and that form must not override substance. The company, AICA Services Inc., is the exclusive administrator of the CPA professional liability insurance plan, not the insurance company.

[26] The Institute pointed out that the employer's 2006 fees policy demonstrates its intent with respect to the collective agreement's wording. Article 22 of the collective agreement defines "annual membership fees." The Institute mentioned article 1 (policy statement) and clauses 3.1.2 (refundable membership fees) and 7(a) (definition of "annual membership fees") of the 2006 fees policy and submitted that the collective agreement contains the same language. The Institute submitted that the non-refundable fees listed in clauses 3.1.2(a) to (i) of the 2006 fees policy are found in the collective agreement, except clause 3.1.2(i) and the one for professional liability insurance. According to the Institute, the employer's 2006 fees policy confirms its allegations.

[27] For the Institute, the parties' intent, as expressed in the collective agreement, is that the employer committed to pay the amounts required for employees in the AU group to maintain their professional designations.

[28] In support of its arguments, the Institute referred me to *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 1998 CanLII 837 (SCC); *Beese et al. v. Treasury Board (Canadian Grain Commission)*, 2012 PSLRB 99; *Communication Energy and Paperworkers Union, Local 777 v. Imperial Oil Strathcona Refinery* (2004), 130 L.A.C. (4th) 239; *Professional Institute of the Public Service of Canada v. Treasury Board*, 2011 PSLRB 46; *Brault v. Canada Revenue Agency*, 2007 PSLRB 108; and *Philippon et al. v. Treasury Board (Veterans Affairs Canada)*, PSLRB File Nos. 166-02-26304 to 26306 (19950927).

### **B. For the employer**

[29] The employer pointed out that this case is a matter of determining the parties' true intent by interpreting the collective agreement within its normal or ordinary meaning. The employer referred me to *Communications, Energy and Paperworkers Union, Local 30 v. Irving Pulp and Paper Ltd.*, 2002 NBCA 30; *Chafe et al. v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112; and *Stevens v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2004 PSLRB 34.

[30] Referring to Mr. Cenne's testimony, the employer pointed out that when the CRA was created on November 1, 1999, only article 21 of the collective agreement addressed the issue of paying membership fees if doing so became essential to the continued exercise of the employment duties in question.

[31] Article 22 of the collective agreement was added in 2000. The employer acknowledged that several employees in the AU group already held professional designations even though it was not a requirement of the position. Since being added in 2000, the wording of article 22 has not been amended.

[32] The employer maintained that according to the normal and ordinary meaning of that article's terms, the professional liability insurance premium is not included in the membership fees. It argued that under clause 22.01 of the collective agreement, the fee must be paid to one of the listed associations. It referred me to *Brault* and noted that the Order of CPAs' membership fees notice does not include the professional liability insurance premium. It added that the premium was not payable to one of the designated associations but to AICA Services Inc. According to the employer, the analysis should end there.

[33] In the alternative, the employer argued that the French and English versions of



clause 22.01(b) of the collective agreement do not have the same meaning. While the French version states that “*Certains frais de nature administrative ne sont pas remboursables sous cet article. . .*,” the English version reads as follows: “Portions of fees or charges of an administrative nature such as the following are not subject to reimbursement under this article . . . .” The employer pointed out that the expression “Portions of fees” has a much broader meaning than “*frais de nature administrative*” and that it applies to the professional liability insurance premium.

[34] The employer submitted that in light of the ambiguity between the two versions of clause 22.01(b) of the collective agreement, extrinsic evidence is admissible. In support of that argument, the employer referred me to *Professional Institute of the Public Service of Canada v. National Research Council of Canada*, 2013 PSLRB 88, at para 69; *Canada v. General Motors of Canada Limited*, 2008 FCA 142, at para 35; and Brown and Beatty, *Canadian Labour Arbitration*, 4th Edition, at para 3:4400.

[35] As extrinsic evidence, the employer referred to several parts of Mr. Cenne’s testimony. According to him, the employer never intended to include reimbursing the professional liability insurance premium in the collective agreement. The objective was not to extend the scope of the clause but to limit it to practices or policies in effect before article 22 was added to the collective agreement.

[36] The employer referred me to the Treasury Board Secretariat’s *Guideline on Self-Insurance*, which states at article 5 (Management practices) that an order issued in 1881 “. . . stated that it is a ‘wise economy for the government to underwrite its own risks . . .’.” Given that the government assumes its risks, why should it pay the professional liability insurance premium? For the employer, the important fact is not that professional liability insurance is mandatory for the professional association. The employer’s policy has been the same since 2001: it does not reimburse professional liability insurance premiums.

[37] The employer also argued that paragraph 6 of the ASF must be considered, which reads as follows:

[Translation]

*Since April 2008, before the CPA was created, some members of the AFS group who were also members of one of the professional accountant orders in Quebec were required to pay professional liability insurance fees, and the employer*

*did not pay that liability insurance premium. Before 2008, no AFS group member had ever claimed reimbursement for any contribution to a professional liability insurance plan.*

[38] For the employer, that demonstrates that it uniformly applies its fee payment practices. It submitted that *Philippon* does not apply in this case, as it deals with a clause similar to article 21 of the collective agreement.

### **C. The Institute's rebuttal**

[39] The Institute argued that there is no ambiguity in the English and French versions. Clause 22.01(a) of the collective agreement includes the French expression "*frais de cotisation*," and clause 22.01(b) includes the French expression "*frais de nature administrative*." So the only term used in French is "*frais*."

[40] The Institute submitted that there is no difference between "Portions of fees" and "charges of an administrative nature," as they are the same thing.

[41] As for the employer's argument that the professional liability insurance premium is not paid to the Order of CPAs, the Institute maintained that the Order of CPAs requires the insurance and that it is an essential condition to maintaining the professional designation.

### **IV. Reasons**

[42] The bargaining agent had to prove that on a balance of probabilities the employer breached article 22 of the collective agreement.

[43] It is appropriate to reproduce the provisions that must be considered in this case. The employer's 2001 fees policy states the following:

[Translation]

#### ***Policy Statement***

- 1. The CCRA shall reimburse eligible employees their annual membership fees when the employer has agreed to such a reimbursement, for example in a collective agreement or a letter of agreement with the union representing the employees.*

...

#### ***Policy requirements***

### 3.1 Reimbursable membership fees

3.1.1 The reimbursement of professional association membership fees is subject to the eligibility requirements set out in Appendix A and the requirements of the policy below.

3.1.2 Reimbursement shall be limited to annual membership fees as set out in paragraph 7(a). The following are examples of fees or dues that are not refundable:

(a) administrative service charges for paying fees on instalment or by post-dated cheques;

(b) late payment charges on membership fees paid after the deadline;

(c) initiation fees charged to new members of a regulatory organization;

(d) reinstatement fees charged to members of a regulatory organization;

(e) special fees that are charged separately and that are distinct from annual membership fees (e.g., liability insurance, etc.).

...

[44] In the 2006 fees policy, article 1 and clauses 3.1.1 and 3.1.2(a), (b), (c) and (d) are the same as in the 2001 fees policy. The rest of clause 3.1.2 reads as follows:

[Translation]

3.1.2 Reimbursement shall be limited to annual membership fees as set out in paragraph 7(a).

The following are examples of fees or dues that are **not refundable**:

...

e. Special fees that are charged separately and that are not included in the total annual membership fees (e.g., liability insurance, etc.). Note: The management group (EX/SM) and participants in management development programs (MD, CA and MM groups) are eligible for the reimbursement of special fees regardless of whether those special fees are charged separately from their annual membership fees, on condition that paying the fees is a requirement to maintain a professional designation and membership in good standing

*in a professional association;*

*f. The payment of arrears from past years for readmission to a professional association;*

*g. The payment of arrears for fees from before the year of implementation;*

*h. Optional fees, such as donations, the education fund, etc.;*

*i. Membership fees for non-residents.*

[Emphasis in the original]

[45] The relevant clauses of the collective agreement read as follows in French:

**ARTICLE 21  
DROITS D'INSCRIPTION**

*21.01 L'Employeur rembourse à l'employé les cotisations ou les droits d'inscription versés par cet employé à un organisme ou à un conseil d'administration lorsqu'un tel versement est indispensable à l'exercice continu des fonctions de son emploi.*

**ARTICLE 22  
COTISATION ANNUELLE D'ASSOCIATIONS  
DE COMPTABLES PROFESSIONNELS**

*Cet article ne s'applique qu'aux employés classifiés AU, CO et FI.*

*22.01 Sous réserve des alinéas a), b) et c), l'Employeur s'engage à rembourser aux employés les frais de cotisation annuelle à l'une des associations canadiennes de comptables professionnels représentées par l'Institut canadien des comptables agréés [sic] (CA), ou la Société des comptables en management (CMA), Comptable professionnel agréé (CPA), ou l'Association des comptables généraux (CGA) et à leur organisation provinciale respective.*

*a) À l'exception de ce qui est prévu au alinéa b) ci-dessous, le remboursement des frais de cotisation annuelle fait référence au paiement annuel exigé par l'une des associations énumérées dans cet article pour maintenir en vigueur un titre professionnel et une qualité de membre. Ce remboursement inclura le paiement de la cotisation annuelle de l'Office des professions du Québec (OPQ).*

*b) Certains frais de nature administrative ne sont pas remboursables sous cet article, tels que : les frais de services liés au mode de paiement des cotisations par acomptes ou*

*par chèques postdatés, les frais de paiement en retard ou pénalité pour des cotisations payées au-delà de la date limite, les frais d'initiation imputés aux nouveaux membres d'une association de comptables, les frais de réintégration exigés pour maintenir une qualité de membre, ou des arriérés de cotisations d'années antérieures exigés par une association comptables pour être ré-admis en ses rangs.*

*c) Quant aux demandes de remboursement des frais de cotisation professionnelle effectuées sous cet article, les employés devront remettre à l'Employeur une preuve de paiement afin de valider leur demande de remboursement.*

[46] The English versions of those provisions read as follows:

**ARTICLE 21  
REGISTRATION FEES**

*21.01 The Employer shall reimburse an employee for the payment of membership or registration fees to an organization or governing body when the payment of such fees is a requirement for the continuation of the performance of the duties of the employee's position.*

**ARTICLE 22  
PROFESSIONAL ACCOUNTING ASSOCIATION  
ANNUAL MEMBERSHIP FEE**

***This Article applies to employees classified as AU, CO and FI only.***

*22.01 Subject to paragraphs (a), (b) and (c), the Employer shall reimburse an employee's payment of annual membership fees in one (1) of either the Canadian Institute of Chartered Accountants (CA), the Society of Management Accountants (CMA), Canadian Chartered Professional Accountant (CPA), or the Certified General Accountants Association (CGA), and to one (1) of their respective provincial organizations.*

*(a) Except as provided under paragraph (b) below, the reimbursement of annual membership fees relates to the payment of an annual fee which is a mandatory requirement by one of the governing organizations listed in this clause to maintain a professional designation and membership in good standing. This reimbursement will include the payment of the "Office des professions du Québec" (OPQ) annual fee.*

*(b) Portions of fees or charges of an administrative nature such as the following are not subject to reimbursement under this Article: service charges for the payment of fees on an instalment or post-dated basis; late payment charges or*

*penalties; initiation fees; reinstatement fees required to maintain a membership in good standing; or payments of arrears for re-admission [sic] to an accounting association.*

*(c) In respect of requests for reimbursement of professional fees made pursuant to this Article, the employee shall be required to provide the Employer with receipts to validate payments made.*

[47] In *Irving Pulp and Paper Ltd.*, the New Brunswick Court of Appeal expressed certain principles about interpreting collective agreements, as follows:

...

*10 It is accepted that the task of interpreting a collective agreement is no different than that faced by other adjudicators in construing statutes or private contracts: see D.J.M. Brown & D.M. Beatty, Canadian Labour Arbitration, 3rd ed., looseleaf (Aurora, Ont.: Canada Law Book, Inc., 2001) at 4-35. In the contractual context, you begin with the proposition that the fundamental object of the interpretative exercise is to ascertain the intention of the parties. In turn the presumption is that the parties are assumed to have intended what they have said and that the meaning of a provision of a collective agreement is to be first sought in the express provisions. In searching for the parties' intention, text writers indicate that arbitrators have generally assumed that the provision in question should be construed in its normal or ordinary sense unless the interpretation would lead to an absurdity or inconsistency with other provisions of the collective agreement: see Canadian Labour Arbitration at 4-38. In short, the words of a collective agreement are to be given their ordinary and plain meaning unless there is a valid reason for adopting another. At the same time, words must be read in their immediate context and in the context of the agreement as a whole. Otherwise, the plain meaning interpretation may conflict with another provision.*

...

[48] In *National Research Council of Canada*, at para 62, the following excerpt was included from *DHL Express (Canada) Ltd. v. Canadian Auto Workers, Locals 4215, 144 and 4278* (2004), 124 L.A.C. (4th) 271, at 295 and 296:

*... The predominant reference point for an arbitrator must be the language in the Agreement ... because it is primarily from the written word that the common intention of the parties is to be ascertained. Language is to be construed in accordance with its ordinary and plain meaning, unless*

*adopting this approach would lead to an absurdity or repugnancy, but in these latter situations, arbitrators will interpret the words used in a manner so as to avoid such results. However, it must be remembered that these particular principles of interpretation are to be used in the context of the written Agreement itself. It is also well recognized that a counterbalancing principle is that anomalies or ill-considered results are not sufficient to cause the alteration of the plain meaning of words. Neither is the fact that one interpretation of the Agreement may result in a (perceived) hardship to one party. . . .*

. . .

*It is well accepted that “arguability as to [different] construction[s]”, standing alone, does not create an ambiguity, allowing the introduction of extrinsic evidence (in Re Canadian National Railway Co. and Canadian Telecommunications Union (1975), 8 L.A.C. (2d) 256 (H.D. Brown) at p. 259). When ascertaining the common intention of the parties objective tests must be used and “not to what the parties, post contractu, may wish to say was their intent, albeit with honesty and sincerity” (Re Puretex Knitting Co. and C.T.C.U., Loc. 560 (1975), 8 L.A.C. (2d) 371 (Dunn) at p. 373).*

*The foregoing principles are reinforced by the prescription in Article 4.05 of the Agreement under which I cannot “change, modify or alter any of the terms of this Agreement”.*

*It is also a well-accepted principle that the provisions of the Agreement are to be construed as a whole and that words and provisions are to be interpreted in context. . . .*

[Emphasis in the original]

[49] In addition, section 229 of the *PSLRA* states the following:

*229. An adjudicator’s or the Board’s decision may not have the effect of requiring the amendment of a collective agreement or an arbitral award.*

[50] The parties’ main arguments rested on the collective agreement’s wording. However, as context for this dispute, the employer produced evidence about the circumstances of the collective bargaining that led to adding article 22 to the collective agreement. It is well established that extrinsic evidence is relevant and admissible when the wording in dispute is clearly or subtly ambiguous. I will first consider the question of the collective agreement’s wording.

[51] Clause 22.01(a) of the collective agreement requires the presence of the three following elements to provide the entitlement to the reimbursement of annual fees under clause 22.01(c): (1) that there is an annual payment; (2) that the fee is required by one of the associations listed in article 22; and (3) that the fee is required to maintain a professional designation and membership in good standing. That is what the adjudicator concluded in *Brault*, at para 66, as follows:

*[66] . . . The entitlement to the reimbursement of membership fees has three aspects: (1) a payment (2) that is annual and (3) that has as its objective to maintain a professional designation and membership in good standing. Taken together, the three elements define the scope of an employee's entitlement to reimbursement. According to the wording of the clause, the three elements cannot be dissociated. To entitle a grievor to entitlement, the circumstances giving rise to a grievance must include the three aspects set out in clause 22.01(a).*

[52] As for the annual payment, the collective agreement does not define the term “annual.” As indicated in paragraph 69 of *Brault*, “. . . the commonly accepted meaning must be used, which defines ‘annual’ as something that recurs each year or is for a one-year period.” Exhibit C-3 includes a document from the Order of CPAs titled “[translation] Professional Liability Insurance - Procedure to follow to comply with your obligations and to maintain your registration in the Order’s table.” Paragraph 1 of that document requires that members complete a proposal and self-assessment form for the professional liability insurance premium. That form is titled, “[translation] Proposal and Self-assessment Form for the Premium for the Period from April 1, 2013, to April 1, 2014” (Exhibit C-6). Therefore, I conclude that the payment of the professional liability insurance meets the definition of an annual fee.

[53] As for the second element of the annual membership fee definition, which is that the fee must be required by one of the associations listed in article 22, the parties seem to have acknowledged it in paragraph 2 of the ASF, as follows: “[translation] The new CPA made professional liability insurance mandatory for all its members as of April 1, 2013, whether or not they worked privately.”

[54] However, the employer pointed out that the Order of CPAs’ membership fees notice did not include the professional liability insurance premiums and that they were payable not to one of the designated associations but instead to AICA Services Inc.



[55] The 2013-2014 membership fees notice (Exhibit C-5) has two parts: the upper part, listing the details of the membership fee, and the lower part, which is detachable and had to be returned with payment. The upper part, titled “Description,” includes the following elements: “[translation] Annual membership fee, Contribution to the Office des professions (non-taxable), GST, QST, Promised donation to the CPA Foundation according to your annual declaration, Total, Payment received, Balance.” Below the box titled “Balance,” the following can be seen:

[Translation]

*Note: The payment of the professional liability insurance premium, required for all CPAs, must be made directly to the plan manager, along with the self-assessment questionnaire that you have received and have duly completed, failing which you will not be registered on the Order's Roll on April 1 of next year, even if you have paid your membership fee to the Order.*

[56] It is true that the professional liability insurance premium is not payable directly to one of the associations listed in article 22 of the collective agreement. However, clause 22.01(a) of the collective agreement does not require that the amount be “payable to” a designated association. It provides for, in the French version, “. . . paiement annuel exigé par l'une des associations énumérées dans cet article . . . .” The English version of that portion of clause 22.01(a) reads as follows: “. . . an annual fee which is a mandatory requirement by one of the governing organizations listed in this clause . . . .”

[57] Thus, I consider that the Order of CPAs' requirement that its members pay the professional liability insurance premium to the group plan manager does not contravene clause 22.01(a) of the collective agreement.

[58] As for the third element of the annual membership fee definition, the parties acknowledged in paragraph 2 of the ASF that paying the professional liability insurance premium was essential to maintaining the professional designation.

[59] The employer argued that because under the *Guideline on Self-Insurance*, the government assumes its risks, why should it pay the professional liability insurance premium? However, that guideline, as indicated earlier in this decision, includes the following principle: “The Government of Canada, for the most part, underwrites its own risks . . . [emphasis added].” The underlined words indicate that there can be

exceptions to self-insurance. In addition, the *Guideline on Self-Insurance* does not have force of law and does not preclude paying the professional liability insurance premium.

[60] I will now examine the employer's argument that ambiguity exists between the French and English versions of clause 22.01(b), thus allowing for presenting extrinsic evidence. While the French version states that "*Certains frais de nature administrative ne sont pas remboursables sous cet article . . .*," the English version reads as follows: "Portions of fees or charges of an administrative nature such as the following are not subject to reimbursement under this Article . . ." The employer submitted that since the expression "Portions of fees" has a much broader meaning than "*frais de nature administrative*," it applies to the professional liability insurance premium.

[61] The French version of clause 22.01(b) of the collective agreement contains no ambiguity. It deals with administrative fees that are not reimbursable and lists some examples in a non-exhaustive way. The examples share the characteristic of being administrative fees.

[62] With respect to the English version of clause 22.01(b) of the collective agreement, I find that in the context of that clause, the word "or" must be interpreted inclusively, and that "Portion of fees" cannot be read in isolation from "charges of an administrative nature." This is an example of the principle of *noscitur a sociis*, explained as follows in P.-A. Côté, *Interprétation des Lois*, Les Éditions Thémis, 3rd Edition, 1999, at 395:

[Translation]

*The meaning of a term can be revealed by its association with other terms; it is known by those to which it is associated (noscitur a sociis). This general principle applies most often to interpreting terms in a list. For instance, the word "horn" is vague when read alone. It is not when included in the list "the trombone, the horn and the clarinet".*

[63] When dealing with bilingual texts, the meaning common to both versions must be sought. In *Interprétation des Lois*, three situations are considered. The first arises when the two versions are absolutely irreconcilable, which is not so in this case. The other two situations are described as follows on pages 413 and 414 of *Interprétation des Lois*:

[Translation]

*In a second type of situation, one version is ambiguous, i.e., it could have more than one meaning, and the other is clear, i.e., it is unequivocal. The meaning common to both versions, which must be given preference, is that of the clear version.*

...

*In a third type of situation, one of the two versions has a broader meaning than the other, referring to a concept with greater extent. The meaning common to the two versions is then that of the text with the more limited meaning.*

[64] Applying those rules to clause 22.01(b) of the collective agreement, it seems to me that the French version is clearer. Even were I to accept the employer's argument that the expression "Portion of fees" gives broader meaning to the English version, the French version has the more limited meaning. Thus, I conclude that clause 22.01(b) of the collective agreement is clear and that it expresses the parties' intent that it apply only to administrative fees, excluding professional liability insurance premiums. Under the circumstances, extrinsic evidence is inadmissible.

[65] I will now consider the admissibility of extrinsic evidence, if it is determined that my conclusion as to the admissibility of such evidence is incorrect.

[66] The employer's extrinsic evidence is based on Mr. Cenne's testimony about the bargaining history. According to him, the employer never intended to include reimbursing the professional liability insurance premium in the collective agreement. The objective was not to extend the scope of the clause but to limit it to practices or policies in effect before article 22 was added to the collective agreement.

[67] Essentially, the bargaining history can be summarized as follows: paying the professional liability insurance premium for employees in the AU group was not considered or discussed at the bargaining table. Under the circumstances, the result is the same: the collective agreement wording must be relied on.

[68] It is interesting to note that under clause 3.1.2(e) of the 2006 policy, the employer agreed to reimburse special fees to the management group and to management development program participants, even though those special fees are charged separately from their annual membership fees, on condition that the regulating organization requires paying those fees to maintain a professional

designation and membership in good standing in a professional association. I find that the policy does not contain any mention of self-insurance in that regard.

[69] The first paragraph of the 2001 fees policy states that it replaces the former CCRA policy about “[translation] professional accountant membership fees” published in October 2000. As the 2000 policy was not adduced as evidence, it is not possible to determine whether changes occurred between the October 2000 policy and that of April 2001. I note in passing the following chronology: the employer’s policy was adopted in October 2000; the collective agreement was signed on November 2, 2000; and the employer’s policy was adopted in April 2001.

[70] The 2001 and 2006 policies are documents that the employer issued unilaterally after the collective agreement was signed in 2000, and they cannot take precedence over the clear wording of the collective agreement. In examining clause 3.1.2 of the 2006 fees policy, with the exception of paragraphs *h* and *i*, it appears that all other examples of non-refundable membership fees or costs listed in it were reproduced from clause 22.01(b) of the collective agreement, with the exception of special fees that are charged separately, such as professional liability insurance. In addition, several of the non-refundable fees are charged to the employee, including late fees, payments by instalment, etc., and are in no way related to paying the membership fee in this case. If the parties intended to exclude paying the professional liability insurance premium from the definition of a professional membership fee, they should have specifically stated so.

[71] Paragraph 6 of the ASF reads as follows:

[Translation]

*6. Since April 2008, before the CPA was created, some members of the AFS group who were also members of one of the professional accountant orders in Quebec were required to pay professional liability insurance fees, and the employer did not pay that liability insurance premium. Before 2008, no member of the AFS group had ever claimed reimbursement for any contribution to a professional liability insurance plan.*

[72] Under that paragraph, since at least 2001, the employer has never paid the professional liability insurance premium for a member of the AFS group, in accordance with its policy. However, that fact, taken alone and out of context, is not evidence that

an interpretation or estoppel agreement would have been in place. Additionally, the requirement to pay the professional liability insurance premium imposed by the Order of CPAs came into force on April 1, 2013, when the applicable collective agreement was in force.

[73] Thus, I conclude that the professional liability insurance premium required by the Order of CPAs is included in the definition of an annual membership fee in clause 22.01(a) of the collective agreement. By refusing to reimburse the premium to members of the AFS group who are members of the Order of CPAs, the employer contravened the collective agreement.

[74] As a corrective measure, the Institute requested that the employer reimburse the members of the AFS group and of the Order of CPAs the entire amount of the annual professional membership fees, including the \$54.50 for membership in the group professional liability insurance plan, for 2013-2014 and following years. The employer did not object to awarding that corrective measure.

[75] For all of the above reasons, I make the following order:

*(The Order appears on the next page)*

**V. Order**

[76] I declare that the professional liability insurance premium required by the Ordre des comptables professionnels agréés du Québec is included in the definition of an annual membership fee for the purposes of clause 22.01(a) of the collective agreement.

[77] I declare that by refusing to reimburse the professional liability insurance premium required by the Ordre des comptables professionnels agréés du Québec, the employer contravened the collective agreement.

[78] I order the employer to reimburse the members of the AFS group and of the Ordre des comptables professionnels agréés du Québec the entire amount of the annual professional membership fees, including the \$54.50 for membership in the group professional liability insurance plan.

July 22, 2015.

PSLREB Translation

**Steven B. Katkin,  
adjudicator**