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*Federal Public Sector  
Labour Relations and  
Employment Board Act  
and Federal Public Sector  
Labour Relations Act*



Before a panel of the  
Federal Public Sector  
Labour Relations and  
Employment Board

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BETWEEN

**IAN MCKENZIE**

Grievor

and

**TREASURY BOARD  
(Correctional Service of Canada)**

Employer

Indexed as

*McKenzie v. Treasury Board (Correctional Service of Canada)*

In the matter of an individual grievance referred to adjudication

**Before:** Michael F. McNamara, a panel of the Federal Public Sector Labour Relations and Employment Board

**For the Grievor:** Tony Jones, Professional Institute of the Public Service of Canada

**For the Employer:** Lesa Brown, counsel

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Heard at Kingston, Ontario,  
July 14 to 16, 2015, and February 24 and 25, 2016.

## REASONS FOR DECISION

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### **I. Individual grievance referred to adjudication**

[1] Ian McKenzie (“the grievor”) was employed by the Correctional Service of Canada (CSC or “the employer”) as a psychologist in the Health Services group classified at the PS-03 group and level. On March 23, 2012, he filed a grievance claiming that his work description was not a complete and current statement of his duties and responsibilities as required by article 20 of the collective agreement between the Treasury Board and the Professional Institute of the Public Service of Canada with the expiry date of September 30, 2014 (“the collective agreement”).

[2] 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 to replace the former Public Service Labour Relations Board as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 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 s. 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2) before November 1, 2014, is to be taken up and continue under and in conformity with the *Public Service Labour Relations Act* as it is amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[3] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the names of the Public Service Labour Relations and Employment Board, the *Public Service Labour Relations and Employment Board Act*, and the *Public Service Labour Relations Act* to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act*.

[4] For the reasons that follow, I find that the grievor was not provided with a complete and current statement of his duties and responsibilities as required by the collective agreement and that his work description should be amended to reflect the duties and responsibilities he was required to perform.

## **II. Summary of the evidence**

### **A. Original work description**

[5] The grievor began working as a psychologist at the employer's Beaver Creek Institution (BCI) in Gravenhurst, Ontario, a minimum-security correctional facility, in 2002. His original work description, dated 1988, lists the following duties:

- carries out a comprehensive range of psychological assessments of offenders, where appropriate;
- conducts group and individual therapy to meet the identified needs of offenders;
- acts as a consultant to institutional management, case management teams, National Parole Board staff, aftercare, and community agencies;
- facilitates the planning, implementation, quality control, and evaluation of treatment programs;
- acts as a resource and consultant to the superintendent/Warden in the development, implementation, and evaluation of staff training, Employee Assistance, and professional development programs;
- conducts research projects, surveys, and studies on topics relevant to correctional psychology; and
- performs other duties, including:
  - representing the institution at meetings and conferences as required,
  - participating in the staffing process by being a member of selection boards as requested,
  - providing information for budgetary requirements and preparing submissions regarding main estimates and cash forecasts,
  - keeping abreast of current developments in correctional research by liaising with professional and research facilities,

- maintaining ongoing functional and professional communication with colleagues by participating as a member of the Ontario Region Psychology Group,
- assisting in the development of policy and procedures pertaining to the delivery of mental health services, and
- participating as an ad hoc member of task forces, special projects, and special assignments, as required.

[6] The original work description states that the grievor is “[u]nder the administrative supervision of the Superintendent/Warden...”. The two organizational charts submitted for BCI, dated 2000 and 2010 respectively, both indicate one position reporting to the psychologist: the psychology testing assistant.

[7] Two generic work descriptions for a psychology testing assistant were submitted, one with no effective date but signed by the authorizing manager in 2014 (“the 2014 work description”), and the other with an effective date of October 2005 (“the 2005 work description”). The 2005 work description indicates that the testing assistant is supervised by “Various”, while the 2014 work description indicates that the supervisor is a chief psychologist classified at the PS-04 group and level.

[8] Both work descriptions contain similar text under “Client Service Results”. The 2005 work description indicates “Office management, case documentation and test administration”, while the 2014 work description states that the testing assistant “[p]lans, organizes and coordinates the administrative operations of the Institutional Psychology Unit, including the administration of psychological tests to offenders”.

[9] In terms of knowledge, the 2005 work description states among other things that “[t]he work requires knowledge to administer, monitor and score a variety of psychological tests”. On this specific knowledge criteria, the 2014 work description elaborates that the work of a testing assistant requires knowledge of the following:

*Test administration, basic knowledge of psychometrics and administration guidelines for various standardized psychological tests to administer and score a variety of psychological tests under the supervision of a registered Psychologist on site.*

[10] During the grievor's tenure at BCI, there was no chief psychologist on-site, and none was indicated on the organizational charts submitted. For the most part, aside from employing a psychologist on contract, the grievor was the only registered psychologist on-site at BCI until 2012.

### **B. Work history**

[11] The grievor's "Performance Evaluation Report" for 2002-2003 indicates that "he has demonstrated the ability to manage the institutional psychology department in an effective, responsible manner". Two additional achievements are listed: his leadership of the complex Critical Incident Stress Debriefing group, and his program development. The report goes on to list his objectives and assignments for the next year as including the coordination of the Psychology Department at BCI.

[12] For the years that followed, from 2003-2010, the grievor's Performance Evaluation Reports contain similar comments and objectives. In 2003-2004, the report notes that "Mr. McKenzie has demonstrated the ability to organize and operate an effective psychological department" and that "[h]e coordinates and prioritizes [sic] the department's work load including the activity of the assigned clerical assistant".

[13] In 2004-2005, the grievor's Performance Evaluation Report again provides that one of his objectives was to "[c]oordinate psych [sic] department and provide a proactive role in transfer of appropriate inmates to BCI". It adds that "[i]n spite of loss of resources Mr. McKenzie has maintained the excellent service of the psych [sic] department over the past year".

[14] That report also includes an "Annex to Employee's Performance Evaluation Report". It contains a specific section to evaluate "Supervisory Responsibilities". Under the first performance objective in this section, "Contributes to the management of the Program Area", six criteria are evaluated. The following five were marked as "No basis for rating":

- *Operational Objectives - manages in such a way that objectives are met through subordinates;*
- *Policy, Program Design, Evaluation - formulates policy, designs programs, evaluates the efficiency and effectiveness of programs;*

- *Program control - sets and negotiates priorities, obtains, allocates and controls resources;*
- *Financial control - exercises effective control over all resource expenditures, both directly and by fostering a sense of economy and restraint; and,*
- *Performance Evaluations - quality of performance evaluations including the validity of the information and judgements contained therein.*

...

[15] The one rated criteria is “Problem solving – confronts and resolves problems with employees”. The grievor was rated at three for this criteria, which indicates “Objectives met most of the time”.

[16] Following the evaluation of “Contributes to the management of the Program Area”, there is a comment that “Mr. McKenzie is a compassionate individual who seeks to ensure that his clerical assistant and the contract psychologist he works with are shown all due respect and concern”. The comments for this objective conclude with the following: “Many of the areas in this section have limited application”.

[17] The second performance objective in the Supervisory Responsibilities section is “Contributes to the Quality of Work Life”. Seven criteria are evaluated under it, and the following five were marked “No basis for rating”:

- *Attracts, develops and deploys staff and fosters a positive and productive work milieu;*
- *Staff Relations - Establishes and maintains constructive relationships with employee bargaining agents;*
- *Official Languages - is sensitive to and makes efforts towards achieving CSC official languages objectives;*
- *Employment Equity - takes action on policies related to designated groups, i.e. women, aboriginals, disabled and visible minorities; and,*
- *Communications - achieves a high quality of internal communications within the organization for which the supervisor is responsible.*

[18] The two rated criteria are “Demonstrates a genuine consideration for the personal interests and well-being of employees supervised”, and “Occupational Health and Safety - ensures safe and healthful working conditions”. The grievor was rated at three for both criteria, which as noted indicates, “Objectives met most of the time”.

[19] In 2005-2006, the grievor’s Performance Evaluation Report states as follows:

*Mr. McKenzie works hand in glove with our contract psychologist to provide crisis intervention to inmates in need, risk assessments for Parole Officers use in [National Parole Board] submissions, completes [Management Control Frameworks] relevant to his area of expertise, supervises a new part time clerical support person.*

[20] His objectives included “[t]o exercise control and monitor operational activities to ensure fiscal prudence in all areas under supervision”. The 2005-2006 report also notes that “[t]he psychology department has been able to manage with the reduced Regional resources aloted [sic]. Mr. McKenzie has maintained the high efficiency of his department with the new person, but reduced hours of clerical support available”.

[21] Similarly, his 2006-2007 Performance Evaluation Report indicates that the grievor “supervises clerical support staff as well as provides input into contract submissions within his area”. The 2006-2007 report adds that “Ian has managed well the human and financial resources within his section”.

[22] The grievor’s 2007-2008 Performance Evaluation Report again specifies that “[h]e supervises clerical support staff as well as provides input into contract submissions within his area”. He also “coordinated the activities of a student placement and worked on the development of the 24/7 Dad program”. The grievor’s objectives included to “[c]oordinate the human and financial resources of the psychology dept and maintain them within budget”. The 2007-2008 Performance Evaluation Report notes that the grievor “managed well” those human and financial resources.

[23] The 2008-2009 Performance Evaluation Report states that the grievor “functionally supervises a nurse practitioner and a clerk”. It also includes an “Annex to Employee’s Performance Evaluation Report”. In it, under “Flexibility”, are comments that “[t]he mental health team is a new addition to the psychology department which Ian has managed well”. Compared to the one criteria evaluated in the Annex of 2004-

2005 Performance Evaluation Report, four of the six criteria for the first objective under Supervisory Responsibilities, “Contributes to the management of the Program Area”, are evaluated in the 2008-2009 Annex. The grievor received a rating of four, “Objectives met or exceed all of the time”, for the following criteria:

- *Operational Objectives - manages in such a way that objectives are met through subordinates;*
- *Policy, Program Design, Evaluation - formulates policy, designs programs, evaluates the efficiency and effectiveness of programs;*
- *Problem solving - confronts and resolves problems with employees; and,*
- *Performance Evaluations - quality of performance evaluations including the validity of the information and judgements contained therein.*

[24] The criteria of “Program control - sets and negotiates priorities, obtains, allocates and controls resources” and “Financial control - exercises effective control over all resource expenditures, both directly and by fostering a sense of economy and restraint” continued to have a “No basis for rating” evaluation.

[25] The comments for the “Contributes to the management of the Program Area” objective in the 2008-2009 Annex specify that “Ian manages the work of clerical support staff as well as functional supervision of the Mental Health Team ... Ian also coordinates the activities of a contract psychologist”.

[26] Again, compared to the two criteria evaluated in the Annex of 2004-2005 Performance Evaluation Report, four of seven of the criteria for the second objective under Supervisory Responsibilities, “Contributes to the Quality of Work Life”, are evaluated in the 2008-2009 Annex. The grievor received a rating of four, “Objectives met or exceed all of the time”, for the following criteria:

- *Attracts, develops and deploys staff and fosters a positive and productive work milieu;*
- *Demonstrates a genuine consideration for the personal interests and well-being of employees supervised*
- *Staff Relations - Establishes and maintains constructive relationships with employee bargaining agents;*



- *Communications - achieves a high quality of internal communications within the organization for which the supervisor is responsible.*

[27] The criteria of “Occupational Health and Safety - ensures safe and healthful working conditions”, “Official Languages - is sensitive to and makes efforts towards achieving CSC official languages objectives”, and “Employment Equity - takes action on policies related to designated groups, i.e. women, aboriginals, disabled and visible minorities” have a “No basis for rating” evaluation. The comments for the “Contributes to the Quality of Work Life” objective in the 2008-2009 Annex specify that “Ian seeks to meet the needs of the staff who work in his section”.

[28] Finally, the grievor’s 2009-2010 Performance Evaluation Report comments that “[h]e supervises clerical support staff as well as provides input into contract submissions within his area. Ian manages the mental health initiative at BCI and has had to deal with some challenging labour relations issues”.

### **C. Request to amend work description**

[29] In August 2011, the grievor requested a copy of his current work description. While a new work description was being developed, he was told it was not yet ready. Instead, he was provided with his original work description, dated 1988.

[30] On November 21, 2011, the grievor made a request in writing to the Assistant Warden to amend his work description to more accurately reflect the duties required of his position. He wrote the following:

*While the current PS-03 Job Description (prepared sometime before March 1987) accurately reflects many of the duties, it is incomplete ... and does not accurately reflect the domains of “Technical Complexity” or “Professional Responsibility”, and omits significant activities that clearly fall in the area of “Management Responsibility”.*

[31] The grievor’s request went on to identify duties and responsibilities that he performed that he believed were not encompassed in his work description, including the following:

- Supervising and evaluating the clinical duties of the psychology testing assistant, offender counsellors, other unregistered psychological service providers, and Institutional Mental Health Initiative staff.

- Planning, coordinating, and organizing the work of the psychology department staff members to meet the demands of the institution for psychological services.
- Providing quality control of risk assessments and other documentation prepared by contractors and ensuring that the services provided by contractors meet or exceed their contractual obligations.

[32] Ultimately, while the grievor and Assistant Warden discussed the request to amend the work description, the request did not go any further. As a result, he filed a grievance.

#### **D. Grievance**

[33] On March 23, 2012, the grievor grieved that his work description was not a complete and current statement of his duties and responsibilities as required by article 20 of the collective agreement, which provides as follows:

*20.01 At time of hiring or at any other time upon written request, an employee shall be entitled to a complete and current statement of the duties and responsibilities of his position, including the position's classification level and the position rating form.*

[34] The grievor requested in his grievance that he be provided with a complete and current statement of his duties and responsibilities, retroactive to November 11, 2001. He also asked that he "... be made whole in every way".

[35] At the first level, on April 18, 2012, the Assistant Warden found that in two areas, the duties the grievor was performing fell outside his work description. The first was in relation to the oversight of the Institutional Mental Health Initiative (IMHI) program. Specifically, the grievor was performing supervisory functions over the IMHI mental health nurse. The Assistant Warden directed that any such supervisory function cease immediately, as supervision was not a function of the grievor's duties.

[36] The second duty identified related to the quality control of the risk assessment reports completed by the contracted psychologist for the institution. Again, the Assistant Warden determined that that function fell outside the grievor's work description, and he was asked to cease carrying it out.

[37] Ultimately, the Assistant Warden upheld the grievance in part, as the grievor was provided with a more recent work description dated 2010. However, at the hearing, the Assistant Warden stated that the 2010 work description was never put into effect. All other requested corrective action was denied.

[38] At level two, on June 20, 2012, the Warden upheld the Assistant Warden's decision. He noted that the grievor was required to perform only the duties and responsibilities listed in his work description and that any and all additional responsibilities that fell outside it should cease immediately.

[39] Following the level-two decision, the grievor and the Assistant Warden discussed the psychological tasks the grievor was performing. In an email dated July 4, 2012, the Assistant Warden confirmed some of the changes discussed including among other things that the Assistant Warden would assume supervision of the psychology testing assistant, that the grievor agreed to complete all required testing for risk assessments, that there was no requirement to put the risk assessments provided by contractors through quality control, and that the Assistant Warden should handle any issues with contractual monitoring.

[40] The grievor's Performance Evaluation Report for 2011-2012 reflected the grievance decisions at levels one and two. Under Supervisory Responsibilities in the Annex of his 2011-2012 Performance Evaluation Report, the evaluation of all the same criteria as found in his 2004-2005 and 2008-2009 reports is rated as "No basis for rating". The report comments that "Ian's role as a Psychologist does not require him to perform the functions associated with this section. Therefore, there is no basis for rating at this time".

[41] At the final level, on January 15, 2013, the Assistant Commissioner, Human Resources Management, upheld the decisions made at levels one and two. She concurred that the grievor had not been asked to perform the duties in question by local management and that he had been directed to cease performing duties outside his work description.

#### **E. Updated work description**

[42] An updated PS-03 psychologist work description, with a stated effective date of April 2, 2013, indicates that the position reports to a PS-04 or WP-05 chief

psychologist. The key activities of the position include: “Provides leadership to more junior staff, including the provision of training, and may provide clinical supervision to interns, practicum students, mental health staff and Mental Health Clinicians”.

[43] Other responsibilities include advising the budget manager on mental health department purchases and expenditures, the administration and evaluation of contracts awarded to professional and other staff (except where the activity is performed by the supervisor), and professional responsibility for the work of unregistered staff who provide mental health services under their clinical supervision.

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

#### **A. For the grievor**

[44] The grievor submits that the work description provided to him when he requested one in August 2011, and later when he filed his grievance, did not match the duties his employer requested that he perform. Specifically, he states that from 2002-2012, he was required to supervise, coordinate, and manage the BCI Psychology/Mental Health department and staff, coordinate the IMHI at BCI, and carry out the quality control of the risk assessments of contract psychologists.

[45] Once he filed his grievance, the grievor was directed to cease performing these duties. He believes that that was punitive and that it was an acknowledgement from the employer that he was indeed performing these duties.

[46] The grievor asks for a declaration that article 20 of the collective has been violated and that the duties he performed from 2002-2012 be retroactively added to his work description for that time.

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

[47] With the exception of his clinical supervision of the psychology testing assistant and other IMHI staff, the employer submits that the grievor was provided with a complete and current statement of work in response to his grievance. Before he filed it, his 1988 work description was in effect, and he should have confined himself to those duties. Once management became aware that he was performing duties beyond his work description, he was directed to cease performing them.

[48] With respect to the psychology testing assistant and other IMHI staff, the employer notes that there is a distinction between clinical supervision and performing management duties. That is, it is not necessary to be a manager to provide clinical supervision. On that point, the employer notes the grievor had no financial authority for purchasing, budgeting, or contracting.

[49] Similarly, the employer contends the grievor was not required to perform any substantive quality control of the contract psychologist's risk assessments. He did not have any supervisory responsibilities over the contractor, whether line or clinical. As a psychologist, the contractor was responsible for the contents of his risk assessments.

[50] The employer notes that the grievor's work description has been amended to include the clinical supervision of mental health staff and clinicians. If the Board determines that any other retroactive corrective action is required, the employer submits that it should be restricted to the 25-day period before the grievor filed his grievance, pursuant to clause 34.12 of the collective agreement and *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813 (C.A.)(QL).

#### **IV. Reasons**

[51] The question I need to determine in this case is whether, in light of the evidence before me, the work description provided to the grievor was a complete and current statement of the duties and responsibilities of his position. To successfully prove that the collective agreement was violated, the grievor had to prove on a balance of probabilities that his work description lacks the elements he has identified. A work description must not omit a reference to a particular duty or responsibility that the employee is required to perform (see *Jennings v. Treasury Board (Department of Fisheries and Oceans)*, 2011 PSLRB 20 at para. 52).

[52] In consideration of the documentary and testimonial evidence presented by the parties, I am satisfied that the grievor's original work description, which continued to be in effect when he filed his grievance in 2012, did not provide him with a complete and current statement of his duties and responsibilities.

[53] The grievor's Performance Evaluation Reports from 2002-2012 are telling. While the employer argues that the grievor should have confined himself to the duties in his 1988 work description and that it was not aware that he was performing duties beyond

his work description until the grievance was filed, it is clear from the Performance Evaluation Reports that the employer was aware and that it even required him to perform certain duties not found in the 1988 work description.

[54] From 2002-2012, the grievor coordinated the BCI Psychology/Mental Health department. His testimony, supported by the statements in his Performance Evaluation Reports, indicates that he coordinated the department's workload and human and financial resources.

[55] There is no "coordination" duty in the grievor's original work description; nor can it be said to be included in any of the other duties described in it. He played an active role in organizing, prioritizing, and ensuring the efficient completion of the workload of the BCI Psychology/Mental Health department.

[56] With respect to human and financial resources, as noted by the employer, while the grievor might not have had financial authority for purchasing, budgeting, or contracting, I am satisfied that his role went beyond merely "providing information for budgetary requirements and preparing submissions regarding main estimates and cash forecasts" as indicated in his original work description. In his coordination of the Psychology/Mental Health department at BCI, he played an active role in ensuring the fiscal prudence of the department. This duty is included in the updated work description as "advising the budget manager on mental health department purchases and expenditures".

[57] I am also satisfied that from 2002-2012, the grievor clinically supervised the psychology testing assistant and subsequently other IMHI staff when the IMHI was put in place. Clinical supervision is not a duty included in his original work description, which the employer does not dispute. Furthermore, the organization charts, applicable psychology testing assistant work description, and again the Performance Evaluation Reports also support the requirement that he perform clinical supervision. This duty is included in the updated work description as the following: "Provides leadership to more junior staff, including the provision of training, and may provide clinical supervision to interns, practicum students, mental health staff and Mental Health Clinicians" and "professional responsibility for the work of unregistered staff who are providing mental health services under their clinical supervision".

[58] Finally, with respect to the grievor's contention that he carried out the quality control of the risk assessments of contract psychologists, I am not convinced that it was a requirement of his position. As opposed to the other duties he grieved, that quality control is not indicated in his Performance Evaluation Reports. In his role of organizing and prioritizing the work of the BCI Psychology/Mental Health department, the grievor appears to have coordinated the work of contract psychologists and to have worked with them to complete the department's work. However, there is no indication that the employer required him to review the quality of their work.

[59] Therefore, I am satisfied on all the evidence that the grievor's work description, at the time he filed his grievance, did not provide him with a complete and current statement of his duties and responsibilities. His work description ought to be amended to reflect his duties and responsibilities of coordinating the BCI Psychology/Mental Health department, including advising on budget issues, and of clinically supervising or having professional responsibility over mental health staff and mental health clinicians.

[60] Pursuant to clause 34.12 of the collective agreement, the employer argues that any retroactive corrective action should be restricted to the 25-day period before the grievor filed his grievance. That clause provides as follows:

*34.12 A grievor may present a grievance to the first step of the procedure in the manner prescribed in clause 34.06, not later than the twenty-fifth (25th) day after the date on which the grievor is notified or on which the grievor first becomes aware of the action or circumstances giving rise to the grievance....*

[61] In *Coallier*, the Federal Court of Appeal had to interpret a similar provision. The employee had filed a grievance because he had not been paid according to the salary scale set out in his collective agreement. The Court found that the salary claim could not cover the period before the prescribed period for filing the grievance (20 days in that case). Given clause 34.12 of the collective agreement and the reasoning in *Coallier*, the amendment to the grievor's duties and responsibilities shall be effective as of 25 days before his grievance was filed, which is February 27, 2012.

[62] For all of the above reasons, the Board makes the following order:

*(The Order appears on the next page)*

**V. Order**

[63] The grievance is allowed.

[64] Effective February 27, 2012, the following duties are to be appropriately described and added to the grievor's work description:

- Planning, coordinating and organizing the work of the Psychology/Mental Health department staff members to meet the demands of the institution for psychological services.
- Advising the budget manager on mental health department purchases and expenditures.
- Providing leadership to more junior staff, including the provision of training, and may provide clinical supervision to interns, practicum students, mental health staff and Mental Health Clinicians.
- Ensuring professional responsibility for the work of unregistered staff who are providing mental health services under their clinical supervision.

July 26, 2017.

**Michael F. McNamara,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**