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File: 566-02-09994

Citation: **2022 FPSLREB 102**

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

BETWEEN

AMANDA PETERMAN

Grievor

and

TREASURY BOARD (Correctional Service of Canada)

Employer

Indexed as
Peterman v. Treasury Board (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Nancy Rosenberg, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Barry Reid, representative

For the Employer: Marc Séguin, counsel

Heard via videoconference,
January 11 and 12, 2021.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Amanda Peterman ("the grievor") studied at the University of Alberta in Edmonton. She graduated with distinction from a four-year program with a Bachelor of Arts ("BA") degree in psychology, with a minor in sociology and a focus on criminology. She then took a two-year nursing training program, received her nursing diploma, and became a registered nurse ("RN"). She has worked at three different establishments of the Correctional Service of Canada ("CSC" or "the employer"). By all accounts, she is an excellent mental health nurse and a strong staff member who effectively applies her mental health knowledge, her initiative, and her leadership skills on the employer's behalf.

[2] The relevant collective agreement provides an education allowance for those nurses who have education in addition to their nursing diplomas if that education is used in the performance of their job duties.

[3] The employer called no evidence and did not seriously challenge the evidence presented or dispute that the grievor used her additional education in the performance of her job duties. It argued that this case was simply a matter of collective agreement interpretation. The grievor's psychology degree was not eligible for the allowance because it was neither "post-graduate" to her nursing diploma, nor "nursing training or education" all of which was required by the collective agreement. Also, psychology was not listed as one of the acceptable nursing-related fields of study for which a degree could be eligible for the allowance. The employer also argued that the grievance was untimely, but withdrew that objection, said it was a continuing grievance and, therefore, timely but subject to a restricted retroactive remedy.

[4] I find that from the very beginning of her employment at Edmonton Institution for Women the CSC failed to pay the grievor her appropriate education allowance of $2750 per year, the amount accorded for three years of relevant university education. However, I am constrained by the grievance which requested that that amount be paid from November 29, 2010, the date she deployed to the Edmonton Institution, a facility for male offenders. I have ordered the remedy requested by the grievance but, in addition, strongly encourage the employer to voluntarily pay the grievor her appropriate allowance retroactive to her original start date of January 2, 2007.

II. Summary of the evidence

[5] To obtain her degree, the grievor took, the following psychology courses: basic psychology processes, individual and social behaviour, social psychology, brain and behaviour, developmental psychology, personality, principles of behaviour, perceptual and cognitive development, abnormal psychology, human neuropsychology, advanced topics in developmental psychology/parenting, introduction to clinical psychology, topics in advanced psychology I/adolescent development, principles of learning, topics in advanced psychology II/psychology of sex, educational psychology for teaching, and psychology of self-estrangement.

[6] She took the following sociology and criminology courses: introductory sociology, criminology, Native people & the Canadian criminal justice system, introduction to the family, criminal justice administration in Canada, sociology of aging, sociology of deviance and conformity, juvenile delinquency, sociology of religion, and sociology of death and dying.

[7] Then, she took the nursing training program at Grant MacEwan College in Edmonton. The program consisted of a class portion followed by a clinical placement, which she asked to do at the Edmonton Institution for Women ("EIFW"). This placement consolidated her passion for this field of work, and when she received her nursing diploma, she was rehired at EIFW as a casual nurse. The grievor was still a graduate nurse at that time, meaning that she had not yet received her registration. It came in December 2006, and on January 2, 2007, at that point an RN, she accepted an offer of indeterminate employment with the CSC at the NU-HOS-03 group and level.

[8] The relevant contract language is found in Appendix B of the Health Services (SH) agreement between the Treasury Board and the Professional Institute of the Public Service of Canada ("the union") (expiry dates September 30, 2007, 2011, and 2014) "the collective agreement"). During those years, Appendix B read as follows:

*****Appendix "B"***	*****APPENDICE « B »***
EDUCATION ALLOWANCES – NURSING GROUP	***INDEMNITÉS DE FORMATION - GROUPE SCIENCES INFIRMIÈRES***

Effective on the date of signing of the collective agreement and for all purposes of pay, the annual rates of pay for the Nursing Levels stipulated in Appendix "A" shall be altered by the addition of the amount specified hereunder in Column II in the circumstances specified in Column I.	*Aux fins de la rémunération et en vigueur à compter de la date de signature de la présente convention collective, les taux annuels de rémunération des niveaux du groupe Sciences infirmières stipulés à l'appendice « A » sont modifiés par l'addition des montants précisés ci-dessous dans la colonne II compte tenu des circonstances exposées dans la colonne I.*

Column I	***Column II***	***Colonne I***	***Colonne II***
Educational Allowances		***Indemnités de formation***	
Where the following ***post-graduate nursing training or nursing education is utilized in the performance of duties of the position:***		*Lorsque les éléments suivants* ***de formation en sciences infirmières ou d'instruction postscolaire en sciences infirmières sont utilisés dans l'exercice de leurs fonctions:***	
(a) Recognized speciality training course including the Primary Care Skills Program, 3-6 months	*$605*	*a) Cours reconnu de formation spécialisée y compris le Programme d'habiletés en soins primaires, 3 à 6 mois.*	*605$*
(b) Recognized speciality training course, 7-12 months	*$935*	*b) Cours reconnu de formation spécialisée, 7 à 12 mois.*	*935$*
(c) (i) One academic year university leading to a certificate in Administration, Administration*	*$1,650*	*c) (i) Cours universitaire d'une année menant à un certificat en administration, enseignement et*	*1 650$*

*and Education (« organisation des soins et éducation »), Clinical Fields (« milieu clinique »), Community Health (« santé communautaire »), Gerontology (« gérontologie »), Health Services Administration I and Health Services Administration II (« gestion des services de santé 1 et 2 »), **Mental Health** (« **santé mentale** »), Nursing, Psychiatry, Public Health, Teaching and Supervision, Substance Abuse Prevention and Intervention or in any other related field of study approved by the Employer.*		*surveillance, gérontologie, gestion des services de santé 1, gestion des services de santé 2, hygiène publique, milieu clinique, organisation des soins et éducation, psychiatrie, santé communautaire, **santé mentale**, sciences infirmières, toxicomanie ou dans n'importe quel autre domaine d'études connexe et approuvé par l'employeur.*	
(ii) Two certificates each representing one academic year university as described in (i) above.*	*$2,200*	*(ii) Deux cours universitaires d'une année menant à un certificat tel que décrit en (i).*	*2 200$*
*(iii) **Three certificates* each representing one academic year university as described in (i) above.***	*$2,750*	*(iii) **Trois cours universitaires d'une année menant à un certificat tel que décrit en (i)***	*2 750$*
(d) Baccalaureate degree in nursing	*$3,300*	*d) Baccalauréat en sciences infirmières.*	*3 300$*

(e) Master's degree in nursing or any other health related field of study approved by the Employer. *$3,850*	*e) Maîtrise en sciences infirmières ou dans n'importe quel autre domaine d'études relié à la santé approuvé par l'employeur.* *3 850$*
One (1) allowance only will be paid for the highest relevant qualification under paragraph B.	*Conformément au paragraphe B, une (1) seule indemnité est versée pour la plus haute qualification pertinente.*
****	****
In the present collective agreement "certificate" refers to a certificate in a first cycle program that results in 30 credits (or 10 courses) in a field of study in the province of Quebec or the equivalent in the other provinces.	*Dans la présente convention le terme « certificat » fait référence à un certificat dans un programme de premier cycle qui totalise 30 crédits (ou 10 cours) dans un domaine d'études dans la province de Québec ou son équivalent dans les autres provinces.*

[Emphasis added]

A. Edmonton Institution for Women (2007-2010) - grievor received $1650

[9] The grievor described her first job at EIFW as a "floor nurse" position. Her duties were medication administration, "sick parade", clinics with the doctors, and the like. Mental health was not yet her assigned role; however, she necessarily cared for many patients with mental health issues, which are endemic in incarcerated populations generally and prevalent at EIFW. Part of her medication administration duties involved administering injectable antipsychotic medication.

[10] The grievor explained that her nursing training had included only a six-week module on mental health and one rotation. She recalled that other newly trained nurses were taken aback by the acuity of the mental health issues presenting at EIFW. They expressed that it was not what they "had signed up for" and that they did not feel that their nursing training had adequately equipped them to deal with those issues.

[11] For the grievor though, mental health was her interest, and she felt that her education equipped her well and was put to good use. Without her psychology

education, she believes that, like her colleagues, she would also have felt ill-equipped to deal with the mental health issues at EIFW.

[12] The work description for the classification NU-HOS-03 was entered in evidence. The excerpts that follow are examples that illustrate the degree to which mental health is embedded in our current concept of nursing and especially so in correctional institution nursing. There are many more examples; the work description contains more than 20 references to mental health or to social and cultural factors. The first words of the work description under the heading “client service results” are “provision of nursing services (physical and/or **mental health**) …”**.**

[13] Some of the “key activities” of the position are listed as follows:

> • *Serves as a primary health care provider related to physical, **mental**, acute, chronic and palliative treatment and support ….*
>
> …
>
> • *Conducts initial and/or comprehensive health screenings for offenders upon admission and/or transfer, consisting of a history and focussed physical health assessment, **and a mental health history to include past and current psychiatric disorders or conditions warranting close observation** ….*
>
> • *… participates in the development and delivery of programs promoting optimal health in areas of physical and **mental health, cultural, spiritual well-being** for offenders ….*
>
> …
>
> • *… administers and supports medication compliance for offenders with physical and **mental health diagnosis**, through offender health education; and is responsible for providing nursing care for ambulatory and inpatients with physical and/or **mental health needs**.*
>
> …
>
> • *Promotes individual and group well-being through both physical and **mental health education** activities, including counselling and teaching in structured programs ….*
>
> …
>
> • *Organizes and coordinates nursing, medical, physical and **mental health** related clinics ….*
>
> [Emphasis added]

[14] Some excerpts from the “skills - job content knowledge” section read as follows:

> *… to provide health services in a correctional setting (for informed delivery of health care); current trends in the nursing profession and knowledge of* ***inmate culture and values****, to provide inmates with* ***holistic nursing care.***
>
> *…*
>
> *Knowledge of the nursing process and assessment skills and practices used in a physical and* ***mental health*** *examination and diagnostic testing ….*
>
> *…*
>
> *… Knowledge of* ***psychotropic medications*** *to assess the impacts and success of these types of medications ….*
>
> [Emphasis added]

[15] Cory Simon, the grievor's current manager explained in his testimony that nursing involves looking at the whole client and that a BA in psychology is not only of great benefit to a mental health nurse but is also beneficial to the job performance of any nurse working in corrections.

[16] However, the grievor's letter of offer did not mention an education allowance, and she was unaware that the collective agreement provided for one. Months later, she learned that a co-worker had received an education allowance for his prior paramedic training. She approached her supervisor, who agreed that her psychology degree was relevant to the job and that she should receive the allowance. On October 9, 2007, 10 months after obtaining her indeterminate position, the CSC amended its initial letter of offer to add an education allowance of $1650 per year, retroactive to her start date of January 2, 2007.

[17] Appendix B of the collective agreement provides for an allowance of $1650 for one academic year of university leading to a certificate in several related fields, one of which is mental health. The grievor did not know why the employer chose this amount in recognition of her four-year psychology degree. She recalled a discussion that ended when her supervisor ultimately said, "Let's just go with this." The employer offered no explanation as to why the grievor received a discounted allowance or, alternatively, why she received one at all, given its current argument that her education met none of the requirements.

[18] While she was at EIFW, the employer recognized the grievor's mental health expertise by assigning her to manage the mental health "portfolio", so-called because

funding for an actual mental health position in the women's prison was only intermittently available. The grievor alternated between working as a floor nurse, reporting to the manager of health services, and working as a mental health nurse, reporting to the chief of psychology whenever funding was available. Her resume estimates that in total, she worked one year as a mental health nurse while at EIFW. Ultimately, due to the funding unreliability, the mental health portfolio was eliminated, and the grievor's mental health responsibilities were redistributed among the entire EIFW nursing staff.

[19] However, she was approached by Edmonton Institution, a maximum-security facility for male offenders, to consider a fully funded mental health nurse position there. On November 29, 2010, the grievor deployed to Edmonton Institution.

B. Edmonton Institution (2010-2012) - grievor received $2200

[20] Prior to starting her new position, the grievor asked the chief of psychology, Eldon (Don) Bossin, if her education allowance could be increased to $2750. After a discussion, Mr. Bossin suggested that they "split the difference" at $2200 per year, the amount Appendix B provides for two years of university. Accordingly, for her four-year psychology degree, she received a larger, but still inexplicably discounted education allowance at Edmonton Institution. The employer offered no explanation for this.

[21] At Edmonton Institution, the grievor dealt with mental health assessments and medications. She facilitated the weekly psychiatric clinic staffed by contracted psychiatrists. She was part of the mental health team, which consisted of the chief psychologist, to whom the team reported, plus three or four other psychologists and later, a second mental health nurse. The second nurse did not have any additional education and therefore did not receive an education allowance. Later still, a social worker and an occupational therapist were added to the mental health team.

[22] The grievor explained that her educational background and understanding of developmental psychology was invaluable to her work assessing the needs of offenders with issues such as fetal alcohol syndrome, brain injuries, and self-injurious behaviour. She had to establish rapport and provide supportive counselling. She responded to crises and wrote reports. Apart from the clear benefit of her psychology, sociology, and criminology courses, her English and statistics courses were also helpful in this

position. Indeed, in her view, her education was not an asset but a necessity. She feels that she could not have properly done the job without it.

[23] At some point, a correctional officer told the grievor that he had found documents in a printer that contained her personal information. They turned out to be printed copies of emails that revealed ongoing internal management and human resources ("HR") discussions about her education allowance ("the printer emails"). The discussion was about whether her allowance should be $1650, $2200, or $2750. She had not been aware that this discussion was taking place. No one had asked her for any input or information.

[24] Upon seeing these emails, the grievor approached Peter Kosof, who had replaced Mr. Bossin as the chief psychologist. He agreed that she was entitled to the full allowance of $2750 and asked her when she felt that she should have started to receive the full amount. Apparently under the impression that only a specifically designated mental health position might be eligible for the allowance, she told him that at EIFW, she had rotated between floor nursing and mental health nursing. She had no record of the periods of time she had worked in each position. Mr. Kosof suggested that they "keep it simple" by using the date she had started as an official and permanent mental health nurse at Edmonton Institution.

[25] The first email chain found in the printer was dated October 17, 2011, about a year after the grievor had started at Edmonton Institution. Sonja Popp, Human Resources Assistant Generalist, asked for help determining whether the grievor should continue receiving $2200, as Mr. Bossin had recommended when the grievor had started there. The email notes that the grievor had received $1650 at EIFW but that she had a psychology degree as well as her nursing diploma, which Ms. Popp believed would entitle her to a higher allowance.

[26] On October 19, 2011, Ms. Popp directed her questions to Mr. Kosof. He responded, copying Jerilyn Robertson, Compensation and Benefits Advisor; Kelly Hartle, Warden; Bradley Sass, Manager of Assessments and Interventions; and Shansheng Zhao, Chief of Human Resources, as follows:

> *In accordance with the Current PIPSC Agreement:*
>
> *Appendix B, Educational Allowances, Nursing Group (p. 172), subsection c (iii) states:*

> *3 certificates (each representing one academic year university or 30 credits) allows for an education allowance of $2,750.*
>
> *The BA in Psychology Amanda Peterman earned is equivalent to 120 credits, or 4 academic years of university [$2,750]. Her Psychology BA Degree is very relevant to her position, duties and requisite knowledge as a Mental Health Nurse and she displays knowledge due to her coursework and application of the information well beyond the level normally expected for her position.*
>
> *Please note: The full baccalaureate degree amount ($3,300) is specifically for a Nursing degree and this is **not** applicable to Amanda Peterman.*
>
> [Emphasis in the original]

[27] On November 3, 2011, Ms. Robertson asked Ms. Popp if a revised letter of offer should be prepared indicating $1650 or $2750 or if the $2200 that Mr. Bossin had originally requested was correct and could be paid out.

[28] On December 15, 2011, Carey Allchurch, Human Resources Advisor, emailed Terri Wolkowski (title unknown), copying Ms. Popp and Mr. Kosof, regarding the effective date for the grievor's education allowance of $2750. She noted that the grievor was originally hired on January 2, 2007, and that she might have been paid at an incorrect rate at EIFW before coming to Edmonton Institution. Ms. Allchurch stated, "It isn't clear regarding if and when she should have been paid at the higher allowance rate."

[29] Apparently receiving no response, Ms. Allchurch followed up with Mr. Kosof on December 21, 2011, asking if he would follow up as to when the grievor "… should have been paid at the higher education amount …". She stated that if he could not advise, she would inquire with another source.

[30] Apparently receiving no response, on February 20, 2012, Ms. Allchurch did inquire with another source. She contacted the chief of health care and several others (titles unknown) at EIFW, as well as Mr. Kosof, asking if any of them had "… details regarding the effective date for Amanda Peterman's education allowance of $2750." She explained that the grievor had originally been hired at EIFW on January 2, 2007, and that she might have been paid incorrectly. She reiterated, "It isn't clear regarding if and when she should have been paid at the higher education allowance rate."

[31] On February 21, 2021, Mr. Kosof apologized for not responding to Ms. Allchurch's previous request and recommended that the effective date for the higher allowance be the grievor's start date at Edmonton Institution. Ms. Allchurch replied, "… We understand she was deployed in September 2010 but she may have been eligible to be paid at the higher level previous to that date as well."

[32] Mr. Kosof responded as follows, copying the grievor and thus including her for the first time in the discussion:

> ***1.*** *Excellent observation and It is my understanding the higher education amount came into force when Amanda Peterman* commenced *working as a* **Mental Health Nurse*.***
>
> ***2.*** *The agreement between the Treasury Board and PIPSC (expiry date 30 September 2011) attests to this (page162):*
>
> **Appendix "B" Education Allowances - Nursing Group**
>
> **Education Allowances**
>
> **Where the following post-graduate nursing training or nursing education is <u>utilized in the performance</u> of the duties of the position…**
>
> ***3.****When Amanda Peterman commenced working as a Mental Health Nurse in September 2011, the* post-graduate *education was being utilized and was then applicable to her position as Mental Health Nurse. Amanda Peterman deployed to the Mental Health Nurse position at Edmonton Institution from a nursing position at EIFW. Her post-graduate education was specific to mental health nursing. Prior to deploying, the* post-graduate *education was not directly being utilized in the performance of the duties of her former position as nurse.*
>
> ***4.*** *Amanda Peterman is deploying to a* **Community Mental Health Nurse** *position, accordingly the higher* **Education Allowance** *amount continues to be applicable to her position as a* **Community Mental Health Nurse*.***
>
> [Emphasis in the original]

[33] On April 26, 2012, having been copied into the discussion by Mr. Kosof, the grievor emailed Ms. Allchurch and Ms. Robertson, copying Mr. Kosof to ask what had been decided as she was still receiving only $2200. Ms. Allchurch responded, "Clarification has continued to be sought without any success thus far. If you could scan and send me your proof of education **from the time of initial appointment** along with any additional courses taken, it would be greatly appreciated. [emphasis added]"

[34] Mr. Kosof based his recommendation on his knowledge that the grievor used her psychology degree in her mental health position at Edmonton Institution and would continue to use it when she deployed to Edmonton parole as a community mental health nurse. However, the start date he recommended was based on his stated assumption that her education was not used in her floor nursing role at EIFW. There was no evidence that he turned his mind to the fact that the grievor had received an education allowance at EIFW, albeit an inexplicably discounted one. Nor was there evidence that he sought any further information before confirming his start date recommendation, despite Ms. Allchurch and Ms. Popp persistently raising the issue that it appeared she may have received less than she should have at EIFW.

[35] On May 28, 2012, the grievor asked her compensation and benefits advisor, Ryan Slywka, if there was any news as she was still receiving only $2200. Mr. Slywka, in turn, asked the same of Ms. Allchurch, copying the grievor. Ms. Allchurch advised that further clarification from National Headquarters was expected and that she would advise when it was received. She apologized for the continuing delay.

[36] The grievor continued to wait, as instructed, and continued to receive an education allowance of $2200. During this time, she also worked toward her certificate in psychiatric and mental health nursing from the Canadian Nurses Association. She received it just prior to leaving Edmonton Institution and deploying to Edmonton parole.

C. Edmonton parole (2012-present) - grievor received $605 until June 2019 then $0

[37] Jason Mackenzie testified that he started with the CSC in 2007 as a clinical social worker. From 2010 to 2015, he was the acting regional director of Community Mental Health which provides mental health services to released offenders through the Alberta/Northwest Territories District Parole Office. The witnesses referred to both the mental health service and its location by the short-hand term “Edmonton parole”. This decision will do the same.

[38] Mr. Mackenzie said that he actively recruited the grievor as he was aware of her reputation as a strong nurse and a solid staff member. He had previously run a selection process but had been unable to find appropriately qualified nurses that would take the job. He said that Edmonton parole was a notorious site and that there was a pay discrepancy with other services that made it difficult to staff with qualified

people. He had hoped that the grievor would come in the spring of 2012 but was frustrated by a delay of several months because Edmonton Institution, citing operational concerns, would not let her go. Mr. Mackenzie explained that his interest in the grievor's resume lay in her recent mental health experience and, as he put it, "obviously, a BA in psychology — any education relating to mental health would be a benefit."

[39] He explained that her letter of offer did not mention an education allowance because HR advised him not to commit to one, as it was awaiting an imminent interpretation from National Headquarters. Ms. Popp asked Mr. Mackenzie if she should leave the allowance out of the grievor's letter of offer and then amend it once a decision was made. He responded, "That is fine. We'll leave the education allowance off for now until we hear a response from LR [Labour Relations]".

[40] On July 16, 2012, Mr. Slywka wrote to Ms. Allchurch and Ms. Popp as follows:

> *I am still waiting direction/interpretation from NHQLR (through Carey) on Amanda's Educational Allowance. I will be stopping it effective July 30, 12 as it is not in the letter of offer.*
>
> *It would be helpful if we could get clarification on Amanda's Education Allowance b/c she has been inquiring/patiently waiting on the outcome for some time now. She feels it should be $2,750 instead of $2,200.*

[41] On July 30, 2012, the grievor deployed to Edmonton parole as a community mental health nurse at the NU-CHN-03 group and level, which position she still holds. Not only was her education allowance not raised to $2750, but the $2200 she had been receiving at Edmonton Institution ended abruptly, as Mr. Slywka had indicated that it would, should no word be received from National Headquarters. To recap, for her four-year psychology degree, the grievor received $1650 at EIFW (the amount for one year of university), $2200 at Edmonton Institution (the amount for two years of university), and nothing at all once she went to Edmonton parole.

[42] Mr. Mackenzie explained that the grievor had a wide variety of duties; the main ones were to assess clients, develop and continually reassess treatment plans with the aim of ending services at some point, when the clients were able to reintegrate into the community. This entailed a good deal of effort to advocate for offenders and build community capacity, as some community services do not want to work with offenders.

It also means training community partners, such as halfway-house staff and parole officers. It is important to integrate mental health services into the existing structures; for example, parole officers who did not deal with mental health in the past. Nurses are an important part of a multidisciplinary team.

[43] Mr. Mackenzie was adamant that the grievor's psychology degree is an important asset that adds significant value to how the work is performed. It equips a staff member with an understanding of the history and theories of psychology and its different specialities, such as cognitive functioning and forensic psychology. The theories of developmental psychology directly relate to developing treatment plans. The grievor had also gained sociological knowledge from her degree, which provides a broader view of the social cost of crime and an understanding that the focus should be on social factors rather than individual deficits. The research component of her studies was also helpful. In general, her psychology degree made her a better, more qualified nurse.

[44] Mr. Mackenzie described the grievor as stellar. She settled in quickly to a difficult workplace, took a leadership role, and was one of his stronger staff. Working closely with the psychologists, she was a leader in integrating the social workers into an expanding multidisciplinary team. She took on the weekly psychiatric clinic. She acted for Mr. Mackenzie several times, a role for which a staff member must be solid all around. In Mr. Mackenzie's view, the grievor's education equipped her to carry out her job duties at a high-performance level.

[45] Mr. Mackenzie's testimony picked up the story told in the printer emails as it continued through 2013, involving a number of regional employees, all still trying to get an answer so that they could do their jobs, none of them understanding why there was a hold-up getting the grievor her proper education allowance. Regional HR employees repeatedly advised that they were still waiting for an interpretation, that they followed up with National Headquarters monthly, and that they would let everyone know as soon as they heard anything.

[46] Frustrated with the lack of response, Mr. Mackenzie told his manager Heather Thompson, then Regional Director, Health Services, Prairie Region, that the grievor was considering filing a grievance. They discussed asking her to hold off doing so, to give Ms. Thompson time to push the matter at a higher level. He provided Ms. Thompson

with a written account of the background. On April 25, 2013, he told the grievor that he had stopped communicating with HR and that Ms. Thompson would try to move it forward. He added, "I'm asking you to hold off on the grievance for a little while longer to give us a chance to push at a higher level."

[47] Ms. Thompson emailed Katherine Kesslering, Regional Administrator, Human Resources, Prairie Region, advising that the matter had been outstanding for two years. Ms. Kesslering looked into it and got back to Ms. Thompson with this:

> *An interpretation has been sought from NHQ for quite some time … I am told that the interpretation is expected very soon… Once the interpretation is received, it is anticipated that the appropriate Education Allowance to pay Ms. Peterman will be applied.*

[48] This created a flurry of misplaced optimism in the region. Both the grievor's manager and her compensation advisor told her that something should come very soon. The correspondence reveals that everyone involved with this file was happy to hear it. However, if Ms. Kesslering ever spoke to National Headquarters, it was not in evidence. The only evidence available shows that she communicated with Barbara Banks, Regional Manager, Labour Relations, and was simply told the same thing - they were waiting on National Headquarters and an interpretation was expected soon.

[49] The grievor continued to raise the issue with Mr. Mackenzie. She brought it up regularly at their supervision meetings. On September 19, 2013, she asked him if he thought she should raise it at the upcoming regional labour management consultation meeting instead of via the grievance route. He said that he "would not bother".

[50] On November 5, 2013, she told him that the grievance was ready to go, but that she was double checking as to whether any decision had been received from National Headquarters before filing it. Mr. Mackenzie understood that she did so because they had agreed that they wanted it resolved at the lowest level possible, and she had held off filing her grievance at his request. Mr. Mackenzie, who said that he now realizes he was naive to think that the matter could be resolved without a grievance, responded, "I haven't heard anything further for quite some time…. proceed as you will." She filed the grievance the next day, November 6, 2013.

[51] After the grievance was filed, the grievor asked Mr. Mackenzie if she could at least have an education allowance for her Canadian Nurses Association certificate in

psychiatric mental health nursing, as she had received no allowance at all since starting at Edmonton parole in July 2012. To obtain this certificate, a nurse had to work 1950 hours in the specialization, complete course work, and write an exam, which entailed a significant amount of evening and weekend study time.

[52] Mr. Mackenzie discussed it with Ms. Thompson and with HR. It was agreed that they should at least pay the grievor something if they could, although they knew she should be receiving $2750. They considered it a stopgap measure while they continued to wait for the interpretation. Mr. Mackenzie described his frustration. He considered it “completely out of line that she was receiving nothing — she had done the work, got the certificates.” He was pleased to be able to at least get her the small allowance of $605 for this certificate but was well aware that it was not what it should have been.

[53] On December 18, 2015, two-and-a-half years after coming to Edmonton parole, the grievor’s letter of offer was amended, and she began to receive an education allowance of $605 per year, the amount accorded for a specialty course of three to six months, retroactive to her July 30, 2012 start date there.

[54] Epilogue: This small allowance too was stopped during the grievor’s extended parental leave in June 2019 and was not reactivated upon her return to work in January 2021. She has received no education allowance since then. The employer offered no explanation for this.

D. The employer’s normal practice

[55] Cory Simon has been the grievor’s direct supervisor since April 2017 as the regional manager for Community Mental Health, the same position Mr. Mackenzie had held on an acting basis until December 2015. In the interim, the previous incumbent of that position had returned to it, and Mr. Mackenzie had returned to his substantive job. When the incumbent left, Mr. Simon became the new regional manager. He manages staff in three prairie provinces and in Thunder Bay, Ontario.

[56] Mr. Simon has been a registered psychiatric nurse (“RPN”) for 30 years and has worked for the CSC for 20 years, 17 or 18 of which were at the Regional Psychiatric Centre in Saskatoon, Saskatchewan. Besides being an RPN, he holds a Bachelor of Science (BSc) degree in nursing. He has worked as a line nurse and has held several management positions. He was a nursing shift supervisor for 7 years, which involved

running the schedule, hiring, and ensuring that each unit at the Regional Psychiatric Centre had appropriate staff. He was chief of the mental health services rotation of 16 nurses, as well as social workers and psychologists. He acted as a program manager of several different units, managing about 40 nurses, social workers, and programming staff. He estimated that he has supervised about 100 nurses over 10 years. He also took one year's leave to manage a psychiatric nursing program.

[57] In Mr. Simon's management roles, he has often had to recommend or approve a nurse's education allowance. He said that whenever new nurses are hired, if they have education that meets the collective agreement criteria of being relevant to the job, they receive an allowance from the start. He said that managers "always look at it" when nurses first start with the CSC.

[58] He explained that he is from an older generation when many nurses started with only their nursing diplomas. Over time, the practice developed that if they had some other education relevant to the job, it would count toward the education allowance. He gave his own history as an example. When he started at the Regional Psychiatric Centre, he was an eight-year RPN and had completed half (two years) of his BSc in nursing. The CSC gave him half the applicable education allowance, paid for some of his education and when he completed his degree, he began to receive the full education allowance.

[59] It is not as common now because the vast majority of nurses, but not all, have a nursing degree when they start. For example, the RPN program in Calgary is moving in that direction, but so far, it is still possible to be an RPN without a degree. All three mental health nurses he currently supervises have additional education relevant to their positions, including the grievor. The nurse who works in Winnipeg, Manitoba, has a master's degree in nursing and so receives an education allowance of $3850, while the nurse working in Calgary receives $3300 for her BSc in nursing.

[60] Mr. Simon explained that if the CSC hires a nurse with an additional degree relevant to their position, it does not matter if they obtained it before or after their nursing diploma. However, typically, they would have obtained it before, because it would likely have been the reason they were hired. Additional, related education is utilized as an important screening tool; the employer looks to hire nurses that will

bring broader knowledge. It is important to have nurses that understand the clients. The education allowance assists the employer to recruit and retain qualified nurses.

[61] He confirmed that many other CSC employees who, like the grievor, already had degrees besides their nursing diplomas, receive educational allowances. Many people go to university first, obtain their degree in something relevant to the position they want, and then take a more practical or applied program, such as nursing, to gain employment. The prior degrees are not always nursing degrees and do not have to be, as long as they are relevant to the job.

[62] Asked if he had ever seen the employer refuse to pay an education allowance for a previously acquired degree, Mr. Simon responded no, that he had only ever seen this if there was an issue with relevance to the job. For example, in one case, it was determined that microbiology was not relevant, so an education allowance was denied on that basis. However, anything like psychology or mental health was always considered relevant.

[63] Asked if he would consider the grievor for the role of community mental health nurse if she came in today with a nursing diploma and a prior BA in psychology, Mr. Simon said that he would, that her BA would be relevant and an asset working anywhere in corrections, especially in community mental health and that he would, therefore, recommend that she receive the education allowance.

[64] He further noted that Appendix B, paragraph (c)(i) lists the different fields considered pertinent to the job. The list includes mental health and, in his view, psychology comes under mental health. Because it is not a nursing degree, he would not recommend $3300 but would definitely put $2750 in her letter of offer because it meets the requirements.

[65] Mr. Simon described what the grievor does in her current role. She participates in biweekly triage meetings with psychologists and a social worker to review referrals from institutions of offenders about to be released. The review is to determine whether they meet the criteria — they must have diagnosed mental health issues with moderate to high mental health needs to access the service. She runs a weekly psychiatric clinic and stays in touch with the clients, assesses any need for medication adjustments, and approves payment for medications. She carries a caseload of clients and meets with them regularly. She also has other duties, such as teaching sessions with parole

officers, who come to her for a better understanding of the offenders - where they are coming from and how they are managing.

[66] She must have a firm understanding of the clients' complex mental health needs, such as low functioning, personality disorders, fetal alcohol syndrome, substance abuse, ADHD, brain injury, bipolar disorder, self-harm, and suicide ideation. Most have comorbidities. Mr. Simon confirmed Mr. Mackenzie's view that a psychology degree is extremely beneficial in all these situations. It also offers an understanding of the functioning of society and the hardships of the clients, the majority of whom are Indigenous, so that they can be helped to transition to the community and avoid returning to an institution. Such an education, he said, is beneficial to any nurse working in corrections.

[67] Asked on cross-examination what "nursing education" is, Mr. Simon said that it could be anything learned and applied that assists with job duties. Someone working in nursing must look at the whole client, including mental health and social factors. It is also an interdisciplinary practice. Nurses work with psychologists, social workers, priests, and elders, to name a few. The scope of nursing education is very broad as can be seen in all the fields listed in Appendix B, paragraph (c)(i) that can attract an education allowance. For those working as nurses in corrections or mental health, a degree in psychology will certainly help them perform the duties of the job; therefore, it is nursing education. Mr. Simon said that he is fortunate to have three very good, well-educated nurses with backgrounds in mental health and that the grievor stacks up absolutely equally to the other two, who both hold advanced nursing degrees.

[68] Mr. Simon also stated candidly that although he is the grievor's supervisor, he only recently became aware of this situation due to the scheduling of this hearing. He said that he was likely speaking out of line but that he was very surprised to hear about it and that he does not understand why the grievor is not receiving her education allowance. He also said that Carson Gaudet, Manager of Health Services, called to ask for his opinion when the hearing was scheduled. They discussed it, and neither of them could understand why there was an issue; they both felt that the grievor should certainly be receiving her education allowance. The employer did not call Ms. Gaudet or otherwise challenge this evidence. I accept Mr. Simon's testimony in all respects, including Ms. Gaudet's view of this situation, as he described it.

[69] In keeping with its submission that this was a language interpretation issue and not a factual dispute, the employer called no witnesses. Both management witnesses were called by the grievor. Employer counsel cross-examined the grievor and each of her witnesses briefly but did not seriously seek to challenge their evidence. The bulk of the documentary evidence was entered on consent in a joint book of documents.

III. Union submissions

[70] The union provided the Board with the case law that has interpreted Appendix B of the collective agreement. It submitted that the strict interpretation offered by the 1986 decision in *Bainbridge v. Treasury Board (Health and Welfare)*, PSSRB File No. 166-02-16132 (19861229), (1986) 10 PSSRB Decisions 47 (Digest) (to attract an allowance, additional education had to be nursing education, defined as education taught in nursing schools to nursing students) had been considerably softened by several subsequent decisions.

[71] Interpreting Appendix B to mean that only education acquired after a nursing diploma (post-graduate) and in a nursing school would attract an allowance, would lead to the absurd result that a four-year degree would attract no allowance while a two-year diploma plus a three-month specialty course would. This would be inconsistent with the whole structure of Appendix B and its clear intent that more education should result in a higher education allowance.

[72] The employer knew about the post-*Bainbridge* cases before the grievor came to work for the CSC. It already had an interpretation, which it simply did not like. Furthermore, it called no evidence as to its interpretation of Appendix B, which shows that it knows full well that the interpretation for which it argued is not the one it applies in practice.

[73] The union also noted that the cumbersome language of the Appendix B preamble, which had remained the same in the three collective agreements at issue had since been revised and somewhat clarified in the subsequent collective agreement (expiry 2018). Since 2018 the preamble has read, “As a registered nurse, where the following additional nursing education is utilized in the performance of the duties of the position….”

[74] With respect to timeliness, the grievor raised the issue within five days of noticing that the allowance was not on her paycheque when she started at Edmonton parole, well within the timeline to enter into good-faith discussions with the employer to attempt to resolve the issue without need for a grievance. The matter should have been resolved long before that. By at least late 2011, the employer was concerned that the grievor might have been entitled to a higher education allowance as of her original start date. She was told that her supervisor was looking into it, that they had to wait for an interpretation, and that her letter of offer would be adjusted once the interpretation came through. She was asked to hold off on a grievance, waited patiently and relied to her detriment on the employer's promises.

[75] The employer's second level reply denied the grievance because it was premature. A grievance cannot be premature and untimely at the same time. The grievance reply stated:

> *…*
>
> *Regrettably I am unable to uphold your grievance at this time. However please note that interpretation on Education Allowance (Appendix B of the Health Services Collective Agreement) is forthcoming. Once a decision regarding this interpretation is received from Corporate Labour Relations and Corporate Health Services, the region will implement the decision accordingly.*
>
> *Consequently, your grievance is denied and your corrective action cannot be granted.*

[76] In the alternative, the grievor requested an extension of time within which to file the grievance, pursuant to s. 61 of the *Act*. No application was filed as is the Board's normal requirement, the request was made orally at the hearing. It was submitted that the grievor met the criteria set out in *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1. There was a clear and cogent reason for any delay, that is, the grievor's detrimental reliance on the employer's promises and its request that she hold off on grieving. As well, the grievor demonstrated due diligence. She had regularly raised the matter, verbally and in writing, and had never let it fall off the radar.

IV. Employer submissions

[77] The employer began its closing submission by withdrawing its timeliness objection, stating that the grievance was a continuing grievance and, therefore, timely

but that *Coallier v. Canada (National Film Board*) [1983] F.C.J. 813 should be applied such that any retroactive remedy should be restricted to the 25 days prior to the filing of the grievance.

[78] The employer submitted that this matter is not a question of disputed facts but rather of language interpretation and that the words of the collective agreement are clear; therefore, their plain and ordinary meaning must be applied, according to the principles of contract interpretation. It argued that the grievor bore the burden of proving her case on a balance of probabilities (see *Arsenault v. Parks Canada Agency*, 2008 PSLRB 17) and that when a right to a monetary benefit is asserted, a grievor must show the precise language that imposes such an obligation on the employer (see *Wamboldt v. Canada Revenue Agency*, 2013 PSLRB 55 and *Allen v. National Research Council of Canada*, 2016 PSLREB 76).

[79] Simply because a provision may seem unfair does not mean one can ignore what it says. (See *Chafe v. Treasury Board (Department of Fisheries and Oceans*), 2010 PSLRB 112, *Ontario Power Generation v. Society of Energy Professionals*, 2012 CanLII 90054 (ON LA), *Delios v. Canada Revenue Agency*, 2013 PSLRB 133, and *Delios v. Canada (Attorney General)*, 2015 FCA 117.) As the Board said in *Delios*, one must give effect to an interpretation based on the plain and ordinary language even if it leads to an inequitable and unfair situation. Any perceived unfairness or inequity should be resolved at the bargaining table.

[80] The employer acknowledged that its interpretation might seem simplistic but argued that nevertheless, it had determined that the grievor was not entitled to an allowance because her BA in psychology was not a post-graduate degree to her nursing diploma or otherwise. Further, it was not a degree in nursing training or nursing education and it was not in an acceptable field of study as listed in Appendix B, paragraph (c)(i). It relied on the previous interpretation of this language in *Bainbridge*, which decided that a degree in education was not nursing education as required by Appendix B and submitted that although *Bainbridge* is an old decision, it remains relevant as there are not that many cases on topic.

[81] The employer further argued that if the intention was to provide an education allowance for general training, the Appendix B preamble would not have specified nursing training or education. If a general degree were acceptable, it would be very

hard to draw a line between a degree that is used in one's job duties and one that is not; therefore, we must abide by the negotiated language.

V. Reasons for decision

A. Review of prior jurisprudence interpreting Appendix B

[82] The employer provided the Board with the *Bainbridge* decision, upon which it relied, but not the much more recent decisions that have interpreted the language of Appendix B on these very issues, including one that is on all fours with this matter. Worse, they are all CSC decisions of which the employer must have been aware.

1. The *Bainbridge* decision (1986)

[83] The employer relied on this decision of the former Public Service Staff Relations Board ("PSSRB"), which dealt with a community health nurse who worked in a remote northern community employed by the Medical Services Branch of the Department of National Health and Welfare. As well as being an RN, she also held a BA, a Bachelor of Education degree, and an Ontario teachers' certificate. She sought an education allowance for her teaching degree as her duties included teaching regular curriculum health classes to school children as well as prenatal, first aid, nutrition, and other health-related classes to members of the community.

[84] *Bainbridge* interpreted Appendix B of an earlier version of the same HS agreement, which expired on January 2, 1985. The disputed language in the preamble was the same; it referred to "… post-graduate nursing training or nursing education [that] is utilized in the performance of the duties of the position …". The adjudicator found that to attract an education allowance, the additional education had to be nursing training or nursing education, which he defined as education specifically for nurses. Although he appreciated that an education degree was likely beneficial to the grievor's teaching role, he found that it was not nursing training or education.

[85] No issue was raised in *Bainbridge* as to whether the grievor's Bachelor of Education degree was a post-graduate degree or whether she had acquired it before or after her RN certification. The only thing *Bainbridge* decided was that an education degree was not nursing education. That was more than 35 years ago, and such a determination might well be different today, as the view of nursing has evolved and broadened considerably since then. As Mr. Simon testified, nursing is a holistic profession that involves looking at the whole client and that often entails a wide range

of duties and a multidisciplinary approach. I agree with his view that any education that is used in a nurse's job duties and that adds value to the performance of those duties is nursing education.

[86] In any event, *Bainbridge* dealt with a teaching degree in a remote community and does not provide specific guidance with respect to a psychology degree in a correctional environment. However, it did provide some helpful guidance that was later adopted in both *Gervais v. Treasury Board (Solicitor General - Correctional Service)*, PSSRB File No. 166-02-28207 (19980909), [1998] C.P.S.S.R.B. No. 84 (QL), and in *Sumaling v. Treasury Board (Correctional Service of Canada)*, 2005 PSLRB 32, via the following comment: "The allowance has been made available for those who have acquired a nursing-specific, job-related education which is then put to use in the fulfillment of those particular duties attached to specified positions." In my view, on the unchallenged evidence provided by three witnesses, a nurse working in corrections with a BA in psychology meets this test.

2. The *Gervais* decision (1998)

[87] Twelve years later, *Bainbridge* was followed by *Gervais*, a CSC decision about an RPN who subsequently became an RN. The two nursing training programs leading to these qualifications were distinct two-year programs at the same level. They offered the same first-year curriculum and diverged in the second year, when the RN program continued to focus on physical illness (with some mental health training) while the RPN program focussed on mental illness. The grievor was given credit for her RPN program courses in pharmacology, psychiatry, and biology but had to take an additional 16 months of the RN program focussed on obstetrics and medical surgical rotations to become an RN.

[88] She was denied an education allowance for her RPN certification because the CSC argued that the two certifications were at the same level; therefore, neither was post-graduate in relation to the other.

[89] The PSSRB's deputy chairperson noted that the French version of the collective agreement (equally official, pursuant to article 3 of the agreement) was considerably clearer than the English version, stating as follows at page 9:

> *The issue is whether the R.P.N. training of the grievor constitutes "post-graduate nursing training or nursing education" within the*

> *meaning of paragraph B. The employer takes the position that the education must not only be nursing education but also post-graduate nursing training. The grievor's position is that it can be one or the other.*
>
> *The intent of the parties in drafting paragraph B becomes very clear when one reads the French version:* Lorsque les éléments suivants de formation en sciences infirmières ou d'instruction post-scolaire en sciences infirmières sont utilisés dans l'exercise de leurs fonctions.
>
> *In the French version the expression "post-graduate" was not intended to qualify all of nursing education and training but is included in what must be considered.…*

[90] The *Gervais* decision concluded that although the RPN program was on the same level and not considered "post-graduate" to the RN program, the 16 additional months of training were separate and, therefore, attracted an education allowance. It stated this at page 10:

> *… The grievor's training in psychiatric nursing contained 16 months of training which was not considered to qualify for an R.N. certificate. As the grievor submitted proof of registration of her training in Psychiatric Nursing she therefore has proven that she has what is considered in British Columbia to be a year or twelve months of psychiatric nursing separate or above her Registered Nursing certificate. She is therefore entitled to the education allowance under subparagraph B (b) in the amount of $475.*

[91] The Deputy Chairperson distinguished the case before her and the issue in *Bainbridge* as follows:

> *Adjudicator Young was not called upon to determine whether nursing training or nursing education had to be post-graduate to the basic Nursing Registration and I don't take as determinative of the current issue his sentence:* It is post-graduate nursing training or post-graduate nursing education which then must be utilized in the performance of nursing duties to be compensable. *What he had to determine was whether a Bachelor's degree in education constituted nursing education or nursing training and he found that it did not.…*

3. The *Krenus* decision (2003)

[92] Five years later, *Krenus v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2003 PSSRB 62, dealt with a grievor who came to the CSC with

dual registrations as an RPN and an RN. She was not given an education allowance when she started, but following the *Gervais* decision, she grieved and received her allowance, retroactive to the start of her employment.

[93] She was also pursuing a bachelor's degree in nursing and asked if an allowance for each "One-year university course" pursuant to Appendix B, paragraph B(c) (as it then was) meant that she could receive an allowance as she finished each segment of her studies (typically called courses). Her managers said that it would have to await the completion of her degree. The PSSRB agreed and denied her grievance, finding that the allowance would be payable only upon the completion of her degree.

[94] However, there was no issue in *Krenus* that the three years of university leading to the degree would not be eligible for the allowance, once completed:

> *[28] A more reasonable interpretation of the provision is that it is intended, like the other parts of paragraph B, to reward employees for achieving an additional professional qualification. In the case of paragraph B(c), this would be one-year university courses, in the sense of programs which would lead to a certification or diploma in one of the listed areas. Such a program might include a number of individual university "courses."*
>
> *[29] This interpretation seems more in keeping with the escalating size of the allowances and the nature of the other kinds of training and education for which the allowances are given.*

4. The *Sumaling* decision (2005)

[95] This CSC decision is on all fours with the grievance that is before me. It provides an interpretation of Appendix B in the context of a virtually identical fact situation and deals with the same arguments put forward by the employer in this matter. It was issued two years before the grievor began her employment with the CSC.

a. A prior psychology degree is nursing education; "post-graduate" is included only in what must be considered

[96] The grievor in *Sumaling* worked at the Regional Treatment Centre in the CSC's Pacific Institution in Abbotsford, British Columbia, a facility for inmates with mental illnesses and behavioural problems. He was an RPN who had previously obtained a BSc in psychology. (The grievor in this case is an RN who had previously obtained a BA in psychology. Appendix B makes no distinction between the two nursing certifications

(RN/RPN) or between the two bachelor degrees (BSc/BA) for the purpose of an education allowance.)

[97] The grievor in *Sumaling* sought an education allowance for three university years pursuant to Appendix B, paragraph B(c)(iii) (as it was then), but instead was given the lesser amount that applied to a recognized specialty course of three to six months. The adjudicator requested submissions on the interpretations of the English and French versions of Appendix B, considered the prior jurisprudence, and concluded as follows:

> *[20] From this review of previous cases I conclude that the phrase "post-graduate nursing training or nursing education" includes training or education that was obtained before the nursing education or nursing training that is the primary aspect of an employee's position. In* Gervais, supra*, training in psychiatric nursing was held to justify an allowance for a Registered Nurse, even though the psychiatric training took place before the training as a Registered Nurse. As for the application of "post-graduate" I conclude that the approach in* Gervais, supra*, is the only way to reconcile the English and French versions of the preamble to section B. That is, "post-graduate" was not intended to qualify all of nursing training or nursing education, but it "is included in what must be considered". The test is whether an employee has acquired nursing-specific training or education, as explained in* Bainbridge, supra*.*

b. Mental health as a field of study includes psychology

[98] The adjudicator further noted that to meet the requirements, the grievor's education also had to be in one of the fields of study listed in Appendix B, paragraph B(c)(i), about which he said this:

> *[38] One of the fields of study listed is "Mental Health (« santé mentale »)". Since Appendix "B" is for allowances for nurses, and the grievor is a Psychiatric Nurse, I think it is reasonable to conclude that the reference to mental health is, among other things, aimed at psychiatric nursing. The above definition describes psychology as the science dealing with mental processes, both normal and abnormal, and their effects upon behaviour. I think it is also reasonable to conclude that education in psychology is education in mental health. The latter is a broad term that is capable of including psychology.*

c. More education should attract a higher education allowance

[99] Finally, at paragraphs 39 to 45, the adjudicator addressed the absurd result to which the employer's interpretation would lead, commenting at paragraph 41 that the approach "… does harm to the idea of education allowances generally." He concluded as follows at paragraphs 44 and 45:

> *[44] … the objective is to interpret the language in a manner that is consistent with the agreement as a whole… when a degree obtained after completion of numerous university courses is given, at best, minimal recognition compared to a certificate based on a one-year university course, the result harms one of the important elements of education allowances. On the other hand, a conclusion that a degree (or other certificate, diploma) obtained after several courses is equivalent to "Three one-year university courses" is consistent with the idea that increases in allowances are based on increases in education.*
>
> *[45] I conclude that section B should be read as it is written and then interpreted by the* Krenus, supra*, decision. That is, when an employee has completed three one-year university courses and has completed the degree (diploma or certificate) that includes those courses, he is entitled to the allowance in section B(c)(iii).*

B. Appendix B is awkwardly worded but has already been interpreted

[100] The employer's insistence that the language of Appendix B is clear and unambiguous does not make it so. Indeed, it is a cynical argument for the employer to make, given its inability over an exceedingly long time to produce a promised interpretation of it. As well, this is the fourth time the CSC has asked the Board to interpret Appendix B. In that context it makes little sense to argue that the language is clear and unambiguous. In fact, Appendix B is ambiguous or at least very awkwardly worded. However, the salient point is that it has already been interpreted. I have little to add to the interpretation of Appendix B that has not already been said in the previous cases.

[101] As such, I adopt the comment from *Bainbridge* mentioned earlier, "The allowance has been made available for those who have acquired a nursing-specific, job-related education which is then put to use in the fulfillment of those particular duties attached to specified positions." This has already been applied in *Gervais* and *Sumaling*, the latter case dealing with a psychology degree in a corrections environment.

[102] I agree with *Sumaling* that as a bachelor's degree in nursing is included in the list of what is described as "… post-graduate nursing training or nursing education …", and as it attracts the second-largest education allowance, the term "post-graduate" must mean something broader than its typical meaning of a higher-level academic degree following an undergraduate academic degree.

[103] I am also of the view that interpreting the term post-graduate as restricting eligibility to a degree acquired after, rather than before a diploma, is not a rational interpretation.

[104] I agree with *Gervais* and *Sumaling* that the French and English versions of the collective agreement offer several possible and conflicting interpretations of the term "post-graduate". The only way to reconcile them is to accept that the term was not intended to strictly qualify both nursing training and nursing education but rather that it "… is included in what must be considered."

[105] I also note that Mr. Simon testified that, in his view, post-graduate in this context meant any education received after secondary school. This could be seen to accord with the term used in the French version – post-scolaire.

[106] I agree with *Krenus* and *Sumaling* that despite the awkward use of the term "courses" to refer to academic years, three years of university study leading to a relevant degree, diploma, or certificate entitles a nurse to an education allowance.

[107] I agree with *Sumaling* that interpreting Appendix B, paragraph (c), such that a one-year university course attracts an education allowance and a four-year degree does not, does harm to the purpose of education allowances in general and to the structure of Appendix B, which was clearly intended to offer higher allowances for more education.

[108] And I agree with *Sumaling* that the broad term "mental health" obviously includes psychology.

[109] In *Georgian College of Applied Arts & Technology v. O.P.S.E.U.* (1997), 59 L.A.C. (4th) 129, the arbitration board dealt with a similar situation, in which earlier jurisprudence had already determined the issues. It states as follows at page 135:

> *So, two different arbitration boards have held that "length of service" for the purpose of calculating seniority under the first sentence of art. 14.3 is the total period of time from the date of the employee's hire, even if as a part-timer. Apart from all else, that is a reading by the two other boards of contract language substantially identical in words and precisely identical in meaning to what art. 11.1 contains.…*
>
> *While we are not bound by the interpretation done by the two boards, we should not disagree unless we are convinced they were wrong. To the contrary, we agree with them.*

[110] The same applies in this case. The Board's predecessor has already interpreted the language of Appendix B. While the Board is not strictly bound by previous decisions, the employer made no serious attempt to distinguish them or to argue that they were wrong and should not be followed. To simply try the same arguments again seems a wasteful exercise for all concerned.

[111] This is especially so given that the language of the preamble was changed in the collective agreement that was signed after these events. It is not unreasonable to assume that the changes took place because of the PSSRB's decisions; they are certainly consistent with them. The changes appear to eliminate most of the ambiguities, at least the ones in the preamble, such that Appendix B now more accurately conveys both the Board's interpretation and the employer's actual practice. The current preamble now reads, "As a registered nurse, where the following additional nursing education is utilized in the performance of the duties of the position…."

[112] The new language eliminates the problematic term "post-graduate" and replaces it with the straightforward term "additional". It seems clear on this language that "additional" nursing education need not be post-graduate in the traditional sense and that it might be acquired either before or after a nursing diploma. As well, the dated distinction between "nursing training" and "nursing education" has been eradicated, and only the broader term remains.

[113] Again, it seems a wasteful exercise for the employer to bring forward the same previously rejected arguments, but this is especially so with respect to historical language that no longer exists. It was changed years ago, apparently in accordance with the former Board's decisions.

C. The relevance of the grievor's degree to her job

[114] The grievor does not hold a "general" degree, as the employer would have it. She holds a baccalaureate in psychology, with a minor in sociology and a focus on criminology. It is hard to imagine a degree more relevant to the job of a nurse working in a corrections environment.

[115] And, it is not at all hard to draw a line between a degree used in one's job and one that is not. The employer clearly accepts that the grievor uses her degree in her job and that she has always done so, as on several occasions it has given her an education allowance for it, including when she was a floor nurse.

[116] Nothing in Appendix B allows for gradations of allowance amounts based on anything other than the number of academic years, to a maximum of three. Why did the employer pay her $1650 and then $2200 for a degree it now claims does not meet the requirements for an education allowance? Had it really thought that her degree was not eligible because it was not "post-graduate", "nursing training or education", or in an acceptable field of study, then she would have received nothing.

[117] The testimony provided by the grievor and two of her managers explained that her degree provides her with a broader and deeper understanding of her clients and the mental health issues and social factors with which they struggle, that her education is put to good use every day in virtually every aspect of her current job as a mental health nurse; and that it would be relevant and useful to any nurse working in corrections.

[118] The grievor was given the mental health portfolio at EIFW **because** of her recognized knowledge of mental health issues, which she acquired by studying for her degree in psychology. She was recruited and hired at both Edmonton Institution and Edmonton parole **because** of her mental health knowledge and expertise. Asked what was attractive about the grievor's resume, Mr. Mackenzie responded that it was her mental health experience and "obviously, a BA in psychology." Both Mr. Simon and Mr. Mackenzie testified that the employer specifically seeks candidates with this kind of additional education. It is used as a screening tool to find qualified candidates. It is important for recruitment and retention purposes.

[119] The testimony revealed that the employer's normal practice is that any nurse who comes in with additional education, whether post-graduate in any sense of the word and whether acquired before or after a nursing diploma, receives an allowance, as long as the education is relevant to the role and adds value to the performance of the job. Mr. Simon said that anything to do with mental health is always considered relevant to the job. The employer typically applies the allowance proactively in the letter of offer. As Mr. Simon explained, when a new nurse starts, "we always look at it". The employer offered no explanation as to why this grievor was treated differently.

[120] The grievor received an allowance at EIFW, albeit an inexplicably discounted one, when she was in a "floor nurse" position. When the sometimes on/sometimes off mental health position was eliminated for lack of funding, the grievor's mental health responsibilities were distributed back to the whole nursing staff. This makes it abundantly clear, as does the work description, that dealing with mental health issues is a frequent, expected and important part of a floor nurse position, as well as a mental health nurse position.

[121] Indeed, psychology degrees have been recognized as relevant to nursing positions outside the corrections environment as well. See, for example, *St. Boniface General Hospital v. St. Boniface Nurses, MONA Local 5*, [1991] M.G.A.D. No. 51 (QL), in which the arbitration board commented as follows as to the degree to which psychosocial aspects of care are now embedded in the standard requirements of the nursing profession:

> *The psychology courses she had taken were of considerable assistance in performing her duties under that Act which considered many aspects other than simply physical care. Reference was made to the standards of nursing care established by the Manitoba Association of Registered Nurses … that the registered nurse was to "perform nursing interventions to modify the individual's emotional, vocational or social functioning". A nurse was to alleviate a patient's concern about their health and one of the criteria was "health problems including physiological, psychological and educational problems". It may suffice to say that* [the standards of nursing care] *refers throughout, not only to physical considerations or needs, but also to psychological and social considerations.…*

VI. Timeliness and retroactivity of remedy

[122] The employer maintained its timeliness objection throughout the hearing, although it did not offer any evidence, challenge the grievor's evidence or even explain the basis upon which it took that position. It withdrew the objection only in closing argument, taking the position that this was a continuing grievance, grievable at each new violation, and was, therefore, timely but that any retroactive remedy should be limited to the 25-day period preceding the grievance based on the principle set out in *Coallier*.

[123] For its part, the bargaining agent submitted that a fair and reasonable remedy should start on the grievor's first day of work at EIFW in 2007 or, in the alternative, should at least begin with her deployment to Edmonton Institution on November 29, 2010.

[124] While I agree that this is a continuing grievance, in that the education allowance is either paid or not paid on each pay cheque, I do not agree that that is the only reason that it is timely.

[125] Firstly, I accept the grievor's submissions that she raised this with the employer a few days after noticing that the allowance was missing on her pay cheque at Edmonton parole, that it had been under discussion since 2011, some of which she was privy to, that she was told repeatedly it would be dealt with and that she was asked not to grieve. She relied to her detriment on all of this. Had the employer not withdrawn its timeliness objection I would have found that it was estopped from raising a timeliness argument.

[126] Secondly, the employer denied the grievance at the second level because it was premature. A grievance cannot be both untimely and premature.

[127] Thirdly, I accept the grievor's arguments in the alternative that she had clear and cogent reasons to delay filing a grievance and that she demonstrated due diligence in regularly raising the matter and thus met the criteria set out in the *Schenkman* decision. Accordingly, had I found the grievance to be untimely I would have granted the requested extension of time within which to file it.

[128] I find that the grievance was timely for these reasons as well, and not only because it is a continuing grievance. That being said, I will address the employer's

argument that while a continuing grievance can be filed after each violation, any retroactive remedy should be restricted to the time period during which a grievance could be filed in a timely way, in respect of the last violation, in this case 25 days.

A. The *Coallier* principle

[129] The purpose of the *Coallier* principle is to ensure that parties do not sit on their rights for lengthy periods and surprise the opposing party with significant liability for monies owing. The way it was used in this hearing seems to me to be contrary to its purpose. It was used as a sword, and a surprise one at that, not as a shield against unreasonable liability. The employer made no submission as to why it would be appropriate to apply in this case. *"Coallier"* was tossed out at the last minute as a principle of black letter law that should simply be applied without question.

[130] In my view, the employer does not come before the Board with clean hands. It chose to provide no information, no explanation for any of its treatment of the grievor over the years. It simply put forward the disingenuous argument that the grievance was simply a matter of interpreting the plain language of the collective agreement, while at the same time ignoring the jurisprudence that had already interpreted that language.

[131] I further note that the facts of this case are similar in several respects to the facts outlined in *Macri v. Treasury Board (Department of Indian and Northern Affairs),* PSSRB File No. 166-02-15319 (19871016) (upheld in *Canada (Treasury Board) v. Macri,* [1988] F.C.J. No. 581 (C.A.) (QL)). In *Macri* the employer made representations to the grievor that the duties of a higher classification that she had performed would be recognized. She did not think that she had to grieve to bring about the recognition that management agreed she should have. The *Macri* decision made the following observations about the applicability of the *Coallier* principle in those circumstances:

> *51 I can not close without saying that situations such as this are most disturbing. It should not take two or three years and the lodging of a grievance in order to bring about a conclusion to a request for reclassification no matter how unusual. If any doubt now exists about the actual level at which Macri worked for three years the employer has only itself to which to turn. The grievor was obviously disheartened and disturbed by the events which took place and by having to maintain a grievance to achieve something which she believed had been held out to her as an incentive long ago. She performed well above expectation. It is to be hoped that*

> *her disenchantment will not cost the Public Service the kind of employee it should be striving to keep.*
>
> *52 No issue or argument was raised before me as to the timeliness of the grievance or as to the question of whether Macri could seek to claim acting pay for a period more than 25 days prior to the lodging of her grievance. This question might have seemed relevant because of the decision of the Federal Court of Appeal in Coallier (Court file A-405-83; Board file 166-8-13465) and because of clause 39.10 of collective agreement 503/82. However, I do not feel the Coallier decision prevents Macri from pursuing her claim for the following reasons.*
>
> *53 In the first place, it was accepted by both parties that Macri's proper classification was and had been under review for some time. This work had not been completed but through no fault of the grievor. Secondly, the employer has already conceded a willingness to retroactively compensate Macri to the AS-1 level as far back as August 1982. While the employer believed that the AS-1 level was high enough, there was no suggestion that any other level which I might find more appropriate should not apply to the same period (given that there are of course, facts sufficient to support such a finding). Thirdly, Macri finally demanded an answer to the inconclusive state of her proper classification in March 1985. Her supervisor, seemed to indicate, then, that her case was not as solid as she had previously been led to believe. Within 15 working days thereafter she filed her grievance. I believe the grievor to have acted reasonably and within the time limits available to her in that it was not until 14 March 1985 that she was given an indication that she might have cause to feel aggrieved.*

[132] In the case before me the grievor had the full support of regional management. Mr. Kosof definitively stated in writing that she was entitled to her full education allowance from her start date at Edmonton Institution on November 29, 2010. For her part, Ms. Allchurch repeatedly raised that it appeared that she should have had the higher allowance right from the start of her employment at EIFW.

[133] For more than two years representations were made to the effect that her situation would be resolved just as soon as National Headquarters provided its promised interpretation. Mr. Mackenzie made it clear that making no provision for an education allowance in the grievor's offer letter at Edmonton parole was a strictly temporary situation and that her offer letter would ultimately be amended to include it. Retroactivity to her start date was assumed.

[134] Ms. Thompson tried to engage higher levels of management to move the matter forward and Ms. Kesslering made inquiries as well. Mr. Mackenzie and Ms. Thompson

together decided to ask the grievor to hold off on a grievance, so sure were they that the matter would be appropriately resolved. The HR specialists and compensation advisors repeatedly apologized to the grievor for the inexplicable delay and indicated that they would implement her allowance immediately upon receiving word from National Headquarters. The grievor had every reason to believe that the matter was being worked on and that her allowance would be retroactively reinstated at the appropriate level.

[135] In *Baker v. Treasury Board (Correctional Service of Canada)*, 2008 PSLRB 34 the former Board considered whether the *Coallier* principle should be applied to restrict the remedy and decided that it should, as there was no evidence in that case of the employer delaying the grievance procedure. However, the Board said this about the notion of an automatic application of the principle to any continuing grievance:

> *18 … I also note that the decision in* Macri v. Treasury Board (Indian and Northern Affairs Canada)*, PSSRB File No. 166-02-15319 (19871016) (upheld by* Canada (Treasury Board) v. Macri*, [1988] F.C.J. No. 581 (C.A.) (QL)), declined to follow* Coallier*. This was on the basis that a strict limitation of twenty days for a remedy would be an incentive for an employer to delay the grievance procedure.* ***I acknowledge that policy concern, but there is no evidence of that situation in this case.***
>
> *19 In summary, where there is a continuing grievance under the collective agreement there may not be a timeliness issue as a result of the late filing of the grievance. However, any remedy under that grievance is limited to the twenty-five-day period prior to the presentation of the grievance at the first level of the individual grievance process.* ***I agree with the bargaining agent that this admittedly technical approach should not be applied in extreme ways. For example, situations involving waiver, estoppel and other equitable considerations may require deviation from this approach (see* Public Service Alliance of Canada v. Treasury Board*, PSSRB File No. 161-02-703 (19931220), and* St. Raphael’s Nursing Home Ltd. v. London and District Service Workers’ Union, Local 220 *(1985), 18 L.A.C. (3d) 430).***
>
> [Emphasis added]

[136] This analysis was adopted and applied by the Board in *Campbell v. Treasury Board (Correctional Service of Canada)*, 2016 PSLREB 42 a decision that, like *Baker*, also applied *Coallier* to restrict the remedy on the basis that there had been no evidence in that case to suggest that the employer had delayed the grievance process to minimize possible damages.

[137] In *Barbour v. Treasury Board (Department of Transport)*, 2018 FPSLRB 80 the Board dealt with an issue of equitable distribution of overtime. The employer had told the grievors that it was looking into the issue, and it did not provide them with the necessary information regarding overtime distribution. The Board noted that:

> ***113*** *The employer had the information and should have provided it to the grievors. It could not come before the Board and hide behind a timeliness argument when its failure to act caused the delay.*

[138] In *Roy v. Treasury Board (Correctional Service of Canada)*, 2019 FPSLREB 49 the Board noted that the facts before it were very different from those in *Coallier*. As in this matter, the grievors in *Roy* expected that their instructors' allowance would be paid because it had been in the past and because their supervisor was looking into the matter. The Board noted that:

> ***84*** *In* Coallier*, the Federal Court of Appeal decided that the employee who waited 2 years to claim the salary he was due could claim the increase beginning only 25 days preceding his grievance because nothing would have prevented him from filing a grievance from the outset. The grievors' uncontested testimony is very different. Mr. Bercier had always received the allowance and had expected to continue receiving it. He suggested to Mr. Roy that it would be paid. According to the grievors' testimony, their immediate supervisor stated that he would look into it, suggesting that he also expected that the allowance would be paid as before.*
>
> ***85*** *It was not illogical to wait to see how things would be resolved. That has nothing to do with the inaction seen in* Coallier*. As soon as it was certain that the allowance would not be paid, at the end of the training, the grievors filed their grievances.*

[139] The *Macri* decision also states the following with respect to the application of the *Coallier* principle:

> *54 If the decision of the Federal Court of Appeal is to be read as barring Macri, or any grievor, from collecting what is alleged to be owed them for a period greater than the 20th or 25th day (as the case may be) preceding the lodging of a grievance and within which action must be initiated then surely this forces unfortunate consequences on both parties. It will force employees to demand that management take no longer than 20 or 25 days to resolve decisions lest grievances be automatically lodged to protect their positions. This could frustrate delicate negotiations at most inopportune times. It might well lead to an increase in unnecessary litigation before this Board. Conversely, if the rationale of Coallier*

> *is as I fear, then there will be every incentive for the employer to delay making decisions in the hopes that an employee will neglect to grieve before the 20th or 25th day, thereby failing to protect his/her interests and becoming barred from claiming what was alleged to be owed. That is to say, there would be an incentive for the employer to fail to act. Such a result would be unconscionable or inequitable.*

[140] I agree whole-heartedly. Applying the *Coallier* principle unquestioningly to every continuing grievance, regardless of the circumstances, would certainly force unfortunate consequences on both parties, including providing an incentive for an employer to delay making decisions, whether deliberately or not.

[141] The employer made no submission as to why such a remedial limitation would be appropriate in this case. As a general proposition an employer should certainly not be exposed to extended liability resulting from a potential grievor sitting on her rights and failing to grieve. However, surely that does not mean that a retroactive remedy for every continuing grievance must be automatically limited to a 20 or 25-day timeline. In my view, the circumstances of every case must be considered carefully to ensure that an unconscionable or inequitable result is avoided.

[142] In this case, the employer refused or neglected to act over a prolonged period, made repeated representations to the grievor upon which she relied that the amount of her allowance would be sorted out in time and specifically asked her to hold off on a grievance while the matter was being sorted. The region followed up with National Headquarters once a month for more than two years to inquire as to when the "interpretation" would be received. The grievor relied on the employer's many representations that it was working to resolve the matter and acquiesced to its request that she not file a grievance.

[143] Given the employer's failure to challenge the grievor's evidence, or to provide any response or explanation for its actions or inaction, I can only draw the inference that any information it could have provided would not have been helpful to its case. Therefore, I conclude on the evidence available to me that the employer demonstrated wilful blindness, inaction, misfeasance, or all of the above, in its treatment of the grievor. As the Board put it in *Barbour*:

> ***116*** *The employer cannot shield itself behind its willful blindness, inaction, or misfeasance. The evidence clearly disclosed that the*

> *grievors asked for information because of their concerns. Only the employer could have provided it.*

[144] Given all these circumstances, limiting the grievor's retroactive remedy to the 25 days preceding her grievance would clearly be an unconscionable and inequitable result.

B. How far back should the remedy go?

[145] Accordingly, I will not limit the grievor's remedy to the 25 days prior to the filing of her grievance. However, given the years that have passed since the original error was made in determining the amount of her education allowance, I will now address the issue of whether the grievor's remedy should be limited to any degree.

[146] It seems that in her early years with the CSC, the grievor's education allowance was granted at the whim of her supervisors. First, her EIFW supervisor said, "Let's just go with this" ($1650). Then, Mr. Bossin at Edmonton Institution said, "Let's just split the difference" ($2200).

[147] His successor, Mr. Kosof, said that she was entitled to the full amount of $2750 but only as of her start date at Edmonton Institution, to "keep it simple". It does not seem that he sought any information about her duties at EIFW or consulted the floor nurse work description before advising HR that her education was not utilized in her work there. He said, "… It is my understanding the higher education amount came into force when Amanda Peterman commenced working as a **Mental Health Nurse.** [emphasis in the original]**"** Nor, did he turn his mind to the fact that she had received an allowance at EIFW and, therefore, must have utilized her education in her work there. Further, he failed to truly consider the issue repeatedly raised by the HR specialists - that it seemed that a mistake had been made at the point of hire.

[148] What emerges from the evidence is a pattern of three supervisors, all of whom made arbitrary recommendations based on incomplete information, assumptions, and mis-readings of the collective agreement. None of them seemed to be aware of the employer's practice as described by Mr. Simon, and none gave the matter the consideration it was due. In each case, the grievor described a "discussion" with her supervisor that ended with her acquiescing to whatever amount the supervisor suggested.

[149] A collective agreement is not to be interpreted and applied by a "discussion" between a supervisor and an individual employee followed by the employee's acquiescence. This is negotiating with an employee and, like asking an employee to hold off on a grievance, is an unfair labour practice.

[150] It is the employer's responsibility, first and foremost, to have proper systems in place and to ensure the transparency and efficacy of those systems by seeing to it that those responsible for its administration are properly instructed, in order to give full effect to the collective agreement (see *Royal Ottawa Health Care Group v. OPSEU (Kwizera)*, 2015 CarswellOnt 18458, *Royal Ottawa Hospital v. ONA* (1990), 19 C.L.A.S. 553, and *Haldimand-Norfolk (Regional Municipality) v. Health, Office & Professional Employees, Local 175*, 1991 CarswellOnt 6501).

[151] In *Schlegel Villages v. SEIU, Local 1* (2015), 259 L.A.C. (4th) 225 at para. 39 the arbitrator commented on the Supreme Court of Canada's statement at para. 63 of *Bhasin v. Hrynew*, 2014 SCC 71:

> *39 The Supreme Court of Canada has recognized …the principle long accepted in labour law that: "parties generally must perform their contractual duties honestly and reasonably and not capriciously or arbitrarily" (per Cromwell J. in* Bhasin v. Hrynew, supra*, at para. 63)….*

[152] The arbitrator in *Canadian Pacific Forest Products v. IWA-Canada, Local 1-85*, 1991 CarswellBC 2612 found that a lengthy failure to include premiums in the job rate for statutory holiday pay purposes was not a matter of interpretation but a sustained administrative error. When brought to its attention, the employer corrected the problem prospectively, but the issue of retroactivity remained. The decision states as follows at paragraph 13:

> *13 I agree with the arbitrator in* B.C. Forest Products Limited (Hammond Division) *that the initial responsibility for adherence to the terms and conditions of the collective agreement — especially those respecting the calculation of employee earnings — rests with the employer. Bringing that lofty proposition down to earth,* ***the obligation which rests upon an employer … is to have in place the systems necessary to give full effect to the substantive content of the agreement; and to ensure that the persons responsible for the day-to-day administration of the agreement are properly instructed in that regard.***

[Emphasis added]

[153] The grievor should not have had to discover the existence of an education allowance by chance 10 months after starting her employment. She should not have had to request it or “discuss” it with her supervisor, beyond providing any information that was not already on her resume. It should have been in her first letter of offer and on her first paycheque as is the employer’s practice, according to Mr. Simon’s evidence.

[154] The grievor was not denied her rightful education allowance because the employer had a different interpretation of Appendix B, as it alleged. She was denied it because the employer did not have a proper system in place to ensure that all employees were treated equally and fairly, in accordance with the collective agreement language and the employer’s normal practice.

[155] By at least late 2011, regional HR realized that a mistake had been made at the point of hire at EIFW. It was the employer’s responsibility to correct it retroactively to the date of hire and that is exactly what regional HR was trying to do. Unfortunately, for whatever reason, they could not get approval, or any kind of an answer, from National Headquarters. Instead of correcting the error, the employer doubled down, stopped the grievor’s allowance altogether and refused to follow through with its promised ‘interpretation’ that was to resolve the issue.

[156] Both Mr. Mackenzie and Mr. Simon testified that it was hard to attract and retain qualified staff and explained the importance of the education allowance to recruitment and retention efforts. It is hard to fathom the employer’s response to the grievor’s legitimate request that her entitlement under the collective agreement be respected. It could serve only to demoralize a highly valued employee. As the Board said of the grievor in the *Macri* matter, “It is to be hoped that her disenchantment will not cost the Public Service the kind of employee it should be striving to keep.” Ms. Peterman testified that she still loves her job. Many employees would not be able to separate their passion for the work from such disrespectful treatment. Her ability to do so is admirable.

[157] In my view, there is no question that the grievor was entitled to an education allowance of $2750 from her first day as an indeterminate employee at EIFW. However, I am constrained by her failure to challenge the discounted allowance she received there. Although her representative requested remedial payment from her original date

of hire at the hearing, the employer had no notice that such a request would be made. The grievance as filed only requests the full allowance retroactive to November 29, 2010 when she started at Edmonton Institution.

[158] Accordingly, I will order that the full allowance be paid from November 29, 2010 but, in addition, strongly encourage the employer to make things right by voluntarily paying the grievor her full entitlement of $2750 from January 2, 2007, her original start date as an indeterminate employee at EIFW.

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

(The Order appears on the next page)

VII. Order

[160] The employer is to pay the grievor her appropriate education allowance in the amount of $2750 per year, including any subsequent increases to that amount, beginning on her November 29, 2010 start date at Edmonton Institution, minus any amounts already paid.

[161] I will remain seized for 60 days should the parties encounter any difficulties implementing this order.

December 21, 2022.

Nancy Rosenberg,
a panel of the Federal Public Sector
Labour Relations and Employment Board