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

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

BETWEEN

UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN (UCCO-SACC-CSN)

Bargaining Agent

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as

Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN) v. Treasury Board (Correctional Service of Canada)

In the matter of a policy grievance referred to adjudication

Before: Amélie Lavictoire, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Bargaining Agent: Franco Fiori, counsel

For the Employer: Karl Chemsi and Mathieu Cloutier, counsel

Heard at Ottawa, Ontario,
September 18 to 21, 2023, and September 24 and 26, 2024.
[FPSLREB Translation]

REASONS FOR DECISION **FPSLREB TRANSLATION**

I. Background

[1] This decision is about the recoveries of overpayments and emergency salary advances (ESA) that were paid to correctional officers in 2016 and 2017 after the Phoenix pay system was implemented.

[2] In August 2022, the Union of Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN; "the bargaining agent"), the bargaining agent for the employees in the Correctional Services group, filed a policy grievance about a Treasury Board decision made in 2021 that led it and the Correctional Service of Canada (the CSC) to take steps in 2022 to recover ESAs and overpayments that had been made to correctional officers in 2016 and 2017.

[3] The Treasury Board is the legal employer of CSC correctional officers. For that reason, in this decision, the term "employer" refers to the Treasury Board, while "the CSC" describes the department for which the correctional officers work. While the Treasury Board made the impugned decision and, through Public Services and Procurement Canada, took the contested action to recover the overpayments, the CSC, for its part, took the contested steps to recover the ESA amounts that it paid out to correctional officers.

[4] It is undisputed that the Phoenix pay system's implementation impacted many federal employees' pay. The parties agree that sometimes, the Phoenix pay system's issues resulted in overpayments to correctional officers; i.e., they received one or more pays that were higher than their entitlements. The parties also agree that some officers did not receive one or more pays but received an ESA from the CSC.

[5] An overpayment made as salary to a correctional officer constitutes a debt owed the Crown; i.e., a debt to the federal government. It is undisputed that the employer and the CSC (as agents of the Crown) have the right to take steps to recover such an amount from a correctional officer's pay, provided that the amount recovered is accurate and that the debt is not statute-barred due to the passage of time.

[6] The parties' dispute is primarily about a change that the Treasury Board made to its recovery process in October 2021. It was done to protect the employer's right to

recover overpayments that implementing the Phoenix pay system caused, which would soon be statute-barred, due to the passage of time.

[7] The change made can be described generally as abandoning an earlier procedure through which steps to recover Phoenix pay system overpayments were not initiated until the payroll file of the employee in question had been reconciled. "[Translation] reconciling" a payroll file is an accounting exercise through which a compensation advisor reviews the employee's entire payroll file, to ensure that all necessary transactions have been carried out correctly and that none are still pending.

[8] The change made in 2021 led the employer and the CSC to begin sending recovery letters in 2022 to correctional officers who had received overpayments and ESAs in 2016 and 2017 for which a recovery agreement had not already been reached. The recovery letters were sent without first reconciling the affected employees' payroll files.

[9] In addition to challenging the changes to the recovery process more generally, the bargaining agent made allegations that encompass two themes.

[10] Firstly, the bargaining agent claimed that the Treasury Board and the CSC attempted to recover overpayments and ESAs in 2022 that had been paid to correctional officers in 2016 and to which the Treasury Board and CSC were no longer legally entitled due to the time elapsed; i.e., six years.

[11] I will take a moment to address the issue of the time that elapsed between the overpayments and ESAs and the contested recovery measures.

[12] A limitation period (also known as a prescription period) is the time that a party has to recover a debt. There is a provincial limitation period that varies by province and a federal period of six years, set out in s. 32 of the *Crown Liability and Proceedings Act* (R.S.C., 1985, c. C-50).

[13] In this case, the parties asked me to not rule on the applicable limitation period for recovering the Crown debts; that is, they asked me not to determine whether a two- or a six-year limitation period applies to the Phoenix pay system overpayments.

[14] The hearing took place in two phases, about a year apart. As of the hearing, an earlier Federal Public Sector Labour Relations and Employment Board ("the FPSLREB",

which, in this case, also refers to its predecessors) decision on the issue of the limitation period applicable to recovering an overpayment made to a federal government employee was the subject of a judicial review application before the Federal Court of Appeal (see *St-Onge v. National Research Council of Canada*, 2023 FPSLREB 57; "*St-Onge FPSLREB*").

[15] The parties presented this case to me as if the applicable time limit was six years. According to them, were I to conclude that the employer's and the CSC's efforts to recover debts that were subjected to a six-year time limit constituted a violation of the collective agreement, my conclusion would be the same if the Federal Court of Appeal confirmed that the applicable limitation period was two years. The evidence that the bargaining agent presented at the hearing was primarily about recovery letters sent approximately six years after overpayments or ESAs were made.

[16] I agree with the parties that since the evidence presented to me was about the recovery efforts made for amounts paid about six years earlier, it is not necessary for me to decide the issue.

[17] The issue of whether the federal or provincial limitation period applies to recovering overpaid wages paid to a federal employee will have to be definitively resolved in a future case. In December 2024, the Federal Court of Appeal referred *St-Onge FPSLREB* back to the Board for redetermination (see *Canada (Attorney General) v. St-Onge*, 2024 FCA 207). However, the parties withdrew the grievance before the Board could rule anew on the applicable limitation period.

[18] I now return to the second theme in the bargaining agent's allegations, which is that by making the change to its recovery process, the employer and the CSC rushed to send recovery letters to correctional officers who had received overpayments or ESAs in 2016 and 2017.

[19] According to the bargaining agent, the letters pressured the correctional officers to acknowledge an overpayment or an ESA, to access flexible repayment options, without providing them with accurate and complete information on the overpayments and without first reconciling their payroll files, to account for possible ongoing payroll problems in their files.

[20] In the context of this decision, "[translation] recognizing an overpayment" means to acknowledge the existence of a debt, which can constitute a commitment to repay it and may have the effect of extending the period available to the Crown to recover the amounts in question.

[21] At the hearing, the bargaining agent indicated that the recovery letters misled the employees by making them believe that they were required to acknowledge the debt, to avoid the overpayment's full and immediate recovery. It described the recovery letters as "[translation] unreasonable, misleading, and deceptive." As the payroll files had not been reconciled, the bargaining agent argued that the letters shifted the burden onto the correctional officers to prove within a very short time that they were not liable for the amounts in question.

[22] This case involved a hearing that lasted six days over the course of a year. In its final arguments, the employer raised an objection to the Board's jurisdiction to hear it. First, I will address the objection, and then, I will then examine the issue of the policy grievance's merits.

II. The objection to the Board's jurisdiction is unfounded

[23] The employer argues that the grievance does not meet the different criteria set out in s. 220 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"), which deals with filing policy grievances and constitutes a prerequisite for a referral to adjudication under s. 221.

[24] Section 220(1) provides that a party to a collective agreement or an arbitral award may file a policy grievance about the interpretation or application of a provision of the agreement or award. At first glance, a grievance with allegations that are not about interpreting or applying a collective agreement or an arbitral award does not constitute a proper policy grievance, and the Board does not have jurisdiction to hear it.

[25] It is unfortunate that the employer waited until the last possible moment to raise its objection, which is not a good practice. Raising an objection to the Board's jurisdiction at the last moment can catch the opposing party by surprise and thus may deprive the Board of the most comprehensive observations possible on the issue.

[26] Regardless, for the following reasons, I conclude that the objection to the Board's jurisdiction is unfounded. My reasons follow.

[27] The grievance states the following:

> *UCCO-SACC-CSN grieves the decision of the employer to recover emergency salary advances (ESA) and overpayments that are prescribed by Section 32 of the* Crown Liability and Proceedings Act *and contrary to the Collective Agreement.*
>
> *Moreover, the employer is abusing his managerial rights by pressuring employees into recognizing an overpayment without providing accurate, timely and comprehensive information about the overpayment, without resolving or taking into account the problems related to the Phoenix pay system still present in the employees' files and by threatening employees to withdraw their flexible payment options if they do not recognize the overpayment within a short delay.*
>
> *The employer is acting recklessly, unfairly, in bad faith and in contravention of the collective agreement.*

[28] Note that in its grievance, the bargaining agent used the term "[translation] employer" to describe both the Treasury Board and the CSC. As indicated earlier, in fact, the Treasury Board took the contested actions to recover overpayments, while the CSC took the contested actions to recover the ESAs.

[29] The grievance does not expressly reference a provision of the collective agreement between the Treasury Board and the bargaining agent for the Correctional Services group (CX).

[30] It is a good practice to state the collective agreement provisions in question clearly when drafting a policy grievance, to help avoid confusion about the grievance's basis and the Board's jurisdiction. However, failing to is not decisive if, "… from the grievance's wording, the employer can be reasonably expected to understand that a particular collective agreement provision is in play" (see *Wepruk v. Treasury Board (Department of Health)*, 2016 PSLREB 55 at para. 38). A grievance should not be dismissed for a defect in form or irregularity (see *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, 2003 SCC 42 at para. 68; see also s. 241(1) of the *Act*, which provides that a defect in form or an irregularity does not invalidate a proceeding).

[31] To determine if a policy grievance is adjudicable under s. 221 of the *Act*, I must ask myself whether its subject involves interpreting or applying a provision of a collective agreement or an arbitral award (see *Association of Justice Counsel v. Canada (Attorney General)*, 2013 FC 806 at para. 50). The important thing is to determine whether the grievance implies an allegation about applying or interpreting the collective agreement. If so, given the nature of the employer's objection, the conditions set out in s. 220(1) are met, and the Board has jurisdiction to hear the grievance.

[32] In this case, the grievance alleges that the employer abused its management rights, also known as residual management rights. Thus, the grievance implicitly, but clearly, invokes article 6 of the collective agreement, namely, the one entitled "managerial responsibilities".

[33] Article 6 states as follows:

Article 6: managerial responsibilities	***Article 6 : responsabilités de la direction***
6.01 *Except to the extent provided herein, this agreement in no way restricts the authority of those charged with managerial responsibilities in the public service.*	***6.01*** *Sauf dans les limites indiquées, la présente convention ne restreint aucunement l'autorité des personnes chargées d'exercer des fonctions de direction dans la fonction publique.*

[34] Unlike some other collective agreements, the collective agreement in question in this case does not have a clause that requires the employer to act reasonably and in good faith when it administers the collective agreement.

[35] Article 6 recognizes the employer's residual right to, among other things, exercise the human resources management powers provided by law, particularly in ss. 7 and 11.1 of the *Financial Administration Act* (R.S.C., 1985, c. F-11; *FAA*).

[36] Generally, it is recognized that the employer can unilaterally impose workplace policies. However, the residual management right must be exercised reasonably, and consistently with the collective agreement (see *Association of Justice Counsel v. Canada (Attorney General)*, 2017 SCC 55 at para. 20; "*Association of Justice Counsel 2017*"). Every policy that an employer adopts, whether or not it is incorporated into the collective agreement, is subject to adjudication, if the dispute about the policy concerns its compliance or consistency with the collective agreement (see *Public*

Service Alliance of Canada v. Treasury Board (Canada Border Services Agency), 2008 PSLRB 84 at para. 55; "*PSAC 2008*").

[37] Generally, the Board has interpreted collective agreement provisions that are about the residual management right and that are worded as is article 6 as constituting a broad statement rather than a source of an enforceable duty that is subject to the Board's authority (see *Pepper v. Treasury Board (Department of National Defence)*, 2008 PSLRB 8 at para. 100; and *Roediger v. National Research Council of Canada*, 2024 FPSLREB 88 at para. 18). In other words, generally, an allegation solely about interpreting or applying a management-rights provision cannot, on its own, serve as a basis for the Board's jurisdiction.

[38] If I conclude that the grievance is only about article 6, then I must allow the employer's objection and dismiss the policy grievance for a lack of jurisdiction. However, if I conclude that either implicitly or explicitly, the grievance also involves applying or interpreting a different collective agreement provision or that the allegations in it constitute claims that the employer exercised its residual management right in a manner inconsistent with another collective agreement provision, then the Board would have the jurisdiction to hear the grievance, and the employer's objection would have to be dismissed.

[39] My conclusion with respect to the Board's jurisdiction must be based on the grievance's essential nature, namely, whether it involves interpreting or applying the collective agreement.

[40] The bargaining agent argues that the grievance contests the employer's change to its procedure for recovering Phoenix pay system overpayments and ESAs. The change would have been made to expedite the recovery process, to protect the Crown's right to recover the overpayments and ESAs before the debts became statute-barred. At the hearing, the bargaining agent argued that the change and the steps that the employer took to implement it constituted the exercise of the residual management right in a manner that was incompatible with the collective agreement as a whole, but specifically, article 49.

[41] Article 49 is the collective agreement provision that deals with pay administration. It is in part 5 of the agreement, which deals with employee pay. Among other things, The article discusses the pay rates for a position's classification and their

implementation, how pay increases should be carried out, the procedures that must be followed when implementing new classification standards, and compensation for performing the duties of an employee at a higher classification level, in an acting capacity.

[42] Clauses 49.01 and 49.02 of the collective agreement are the provisions most relevant to this grievance.

[43] Clause 49.01 states that unless otherwise indicated elsewhere in article 49, the collective agreement does not have the effect of modifying the conditions governing the application of pay to employees.

[44] Subject to certain nuances that are not relevant to this case, clause 49.02 of the collective agreement states that employees are entitled to be paid for services rendered at the pay that corresponds to the classification of the position to which they were appointed.

[45] Although the bargaining agent invoked two collective agreement provisions in its final arguments, namely, one about pay (article 49), and one about management rights (article 6), the employer argues that they are not mentioned in the grievance and that they cannot base the Board's jurisdiction. According to the employer, article 49 deals only with pay administration, meaning that it involves how a correctional officer is paid. The collective agreement is silent about overpayments and their recoveries.

[46] The employer argues that the contested decision was made under the *Directive on Terms and Conditions of Employment* ("the *Directive*"). It argues that the *Directive* is not part of the collective agreement and that it is not included by reference. According to the employer, it is an instrument separate and independent from the collective agreement. As the collective agreement does not have provisions about overpayments or their recoveries, it is not possible to claim that recovery measures arising from the *Directive* violate or are incompatible with the collective agreement.

[47] Recently, in *Xu v. Canada Revenue Agency*, 2025 FPSLREB 17, the Board addressed — and rejected — similar arguments. It concluded that a provision similar to clause 49.01 had the effect of incorporating the *Directive* into the collective agreement. That decision was rendered after the hearing in this case was held. I have read it, but I will not deal with it further. In my view, I have no need to. The two routes,

which include the one that will be described in the following paragraphs and the one that the Board took in *Xu*, lead to the same result. My conclusion that the Board has the jurisdiction necessary to hear this grievance is based on the grievance's wording and the nature of the bargaining agent's allegations. I will explain.

[48] As the *Directive* is at the heart of the parties' debate about the Board's jurisdiction, I will describe it briefly.

[49] The *Directive* outlines the mandatory requirements to apply and administer the employment terms and conditions that are not covered under collective agreements (see subsection 3.2 of the *Directive*). When a conflict or incompatibility arises between a collective agreement provision and the *Directive*, the collective agreement provisions apply (see subsection 3.3).

[50] The terms and conditions of employment are described in an appendix to the *Directive*, which has five parts. One (Part 2) deals with remuneration, and another (Part 3) deals with pay administration.

[51] Among other things, Part 2 provides that core public administration employees are entitled to be paid for services rendered at the rate of pay in the collective agreement for their classification group and level. It is similar to what clause 49.02 of the collective agreement in question provides.

[52] As for Part 3 of the *Directive*, it has several provisions on the calculation, frequency, and payment of pay. However, primarily, subsection A.3.15 is relevant to the circumstances of this case. It deals with recovering amounts owed the Crown, including the Receiver General's powers under the *FAA* and the responsibilities of people with delegated authority to ensure that overpayments that were made to a core public administration employee are recovered (see subsection A.3.15.1).

[53] In 2017, after the Phoenix pay system was implemented, Part 3 of the *Directive* was amended, to include provisions specifically addressing recovery measures associated with the Phoenix pay system's pay problems (see subsection A.3.15.4).

[54] It is true that the *Directive*, and not the collective agreement, expressly addresses overpayments and ESAs and recovering Crown debts after the Phoenix pay system was implemented. However, I do not agree with the employer's argument that

the Board does not have jurisdiction simply because the collective agreement does not explicitly address recovering overpayments and ESAs.

[55] This grievance is set in a specific factual context in which the accuracy of correctional officers' pay was an issue for several years. Three bargaining agent representatives testified at the hearing about the high number of interventions that they were required to carry out for inaccurate pay, overpayments, or missing pays to correctional officers in the years after the pay system's implementation. The grievance's wording refers to that context when it alleges that the employer abused its management rights by taking steps to recover the overpayments and ESAs without considering existing payroll issues in the correctional officers' payroll files.

[56] As indicated earlier, the grievance is about the employer's change to its recovery process, specifically its decision to send recovery letters without first reconciling the affected employees' payroll files and without considering any payroll issues that might still have been in progress. It is also about the employer's alleged failure to provide the affected employees with precise and complete information on the overpayments that were the recovery letters' subjects.

[57] It is clear that the bargaining agent questions the ability of a correctional officer who was subjected to recovery measures in 2022 to know for certain whether they received the pay that they were entitled to for the services that they rendered in 2016 and 2017 as well as their ability to assess the accuracy of the pay that they would have received for the services rendered in 2016 and 2017, were the recovery described in the recovery letter carried out.

[58] The grievance's wording and that of the bargaining agent's allegations lead me to conclude that the grievance's essential nature is what I will refer to, for this decision's purposes, as the principle of accurate pay for services rendered; namely, the principle that employees are entitled to be paid for their services rendered at the pay that corresponds to the classification of the position to which they were appointed. That principle is central to the employer-employee relationship. It is set out in clause 49.02 of the collective agreement.

[59] Other allegations that the bargaining agent made, namely, about the accuracies of the amounts claimed and the limitation periods, involve issues that arise from the principle of accurate pay for services rendered.

[60] At the hearing, the employer argued that the bargaining agent was incorrect when it attempted to connect recovering overpayments under the *FAA* and article 49 of the collective agreement. That article deals with pay administration.

[61] I note with interest that a document that was admitted as evidence at the hearing that is entitled *Overpayment Update* and that the Public Service Pay Centre ("the PC") prepared indicates that recovering overpayments "… is a normal and important part of pay processing" and that " … the generating and recovering of overpayments has always been a part of pay processing." As I will explain later in this decision, the PC communicates with employees who have received overpayments and takes the steps to recover them. At first glance, the document suggests that the PC seems to acknowledge the existence of a direct link between payroll processing (the process of calculating, among other things, pay for services rendered, to ensure accuracy) and overpayment recoveries.

[62] The employer's recovery measures are based on the premise that an employee is entitled only to their fair pay for their services rendered and nothing more.

[63] It is true that the collective agreement does not explicitly address overpayments. However, it addresses the pay of employees and provides that they are entitled to be paid for services rendered at the pay that corresponds to the classification of the position to which they were appointed, no more and no less.

[64] In *Dansou v. Canada Revenue Agency*, 2020 FPSLREB 100, the Board dismissed the respondent's objection to the Board's jurisdiction to hear an individual grievance about a salary overpayment recovery. It concluded that it had jurisdiction since the essential character of the dispute, within the meaning of *Weber v. Ontario Hydro*, [1995] 2 SCR 929, involved the collective agreement conditions on pay.

[65] I reach the same conclusion in this case. In my view, the essential character of the dispute involves the collective agreement pay provisions. The grievance falls under the part on pay and is about the interpretation or application of articles 6 and 49.

[66] As stated earlier, the employer argued that the Board does not have the jurisdiction required to hear this policy grievance, as the *Directive* provides for recovering overpayments, not the collective agreement. However, it made no arguments to me that could allow me to reconcile its position on this matter with the

case law of the Board and its predecessors on individual grievances against recovery measures taken for salary overpayments and involving collective agreements with wording similar to the one in this case (see, among others, *Lapointe v. Treasury Board (Department of Human Resources and Skills Development)*, 2011 PSLRB 57; *Dansou*; *Bolton v. Treasury Board (Indian and Northern Affairs Canada)*, 2003 PSSRB 39; *Conlon v. Treasury Board (Public Works and Government Services Canada)*, Board file nos. 166-02-25629 to 25631 (19970604); and *St-Onge FPSLREB*).

[67] During closing arguments, I addressed the issue of the remedies available to a bargaining agent that wishes to contest a decision like the one in dispute in this case were I to decide that the Board does not have jurisdiction to hear this grievance. The employer's representative identified four, namely, filing an individual grievance under s. 208 of the *Act*, filing a judicial review application before the Federal Court, referring an individual grievance to adjudication (likely under s. 209(1)(a) of the *Act*), and filing a policy grievance about the general direction taken by the employer with the Phoenix pay system. I will focus specifically on the third one.

[68] According to the employer's representative, the Board has jurisdiction to hear an individual grievance referred to adjudication that disputes the existence or accuracy of a Phoenix pay system overpayment that is the subject of a recovery letter. He argued implicitly that an individual grievance that raises allegations similar to those raised in this grievance would constitute a pay grievance that could be referred to adjudication. Thus, the employer acknowledged implicitly that allegations about the accuracies of overpayments and ESAs that an employer seeks to recover from an employee's pay involve interpreting or applying a collective agreement provision.

[69] I fail to understand how and why the Board could have jurisdiction to hear an individual grievance referred to adjudication under s. 209(1)(a) of the *Act* but lack the jurisdiction to hear the same types of allegations if they were presented as part of a policy grievance. Section 232 of the *Act* contemplates the possibility of a policy and an individual grievance filed on the same matter, with the remedies being specific for each grievance type (see *PSAC 2008*, at para. 51; *Professional Institute of the Public Service of Canada v. Treasury Board*, 2019 FPSLREB 7 at para. 92; and *Public Service Alliance of Canada v. Treasury Board (Correctional Service of Canada)*, 2020 FPSLREB 99). Either the interpretation or application of a collective agreement

pay provision is in play and may found the Board's jurisdiction, or it is not in play, and the Board has no jurisdiction.

[70] As I have already indicated, I have concluded that this grievance involves interpreting or applying articles 6 and 49 of the collective agreement. I conclude that the Board has jurisdiction to hear this grievance. The employer's objection is dismissed.

III. Summary of the evidence on the merits

A. What is and is not included in the summary of the evidence

[71] Since I have concluded that the Board has the jurisdiction to hear the grievance, I will now describe the evidence that was presented to me at the hearing. I will begin by describing the evolution of the procedures governing the recovery of Phoenix pay system overpayments and the October 2021 decision that led to this grievance. I will then describe the evidence from the employer's only witness, followed by a description of the testimonies of the bargaining agent's eight witnesses.

[72] First, I would point out that the bargaining agent filed its policy grievance on August 26, 2022, and that it is about the recovery letters sent on and just before August 26, 2022. At the hearing, it presented evidence on recovery letters sent in summer 2022. However, it also presented evidence on some that were sent as late as July and August 2023.

[73] It argues that the letters dated 2023 arose directly from the employer's decision that is the subject of the grievance, that they are relevant to the grievance's merits, and that they constitute evidence that demonstrates that the employer did not adequately modify or adapt its recovery methods after this grievance was filed.

[74] The employer argues that the letters dated 2023 are irrelevant to the grievance's merits and that I should not consider them.

[75] The Board must make a decision on the policy grievance that was filed in August 2022. In my analysis of its merits, first, I will address the employer's recovery process adopted in 2021, and then, I will discuss the recovery letters' contents as sent in 2022. The letters arose from the recovery process.

[76] In my view, the evidence about the letters sent in 2023, or about a year after the grievance was filed, is relevant to the bargaining agent's allegation that the employer exercised its management rights in a manner inconsistent with the collective agreement, when it changed its recovery process. This is relevant evidence on the effects of the employer's decision. However, in my view, this evidence is not relevant to the second part of my analysis, which is of the allegation that the letters are "[translation] unreasonable, misleading, and deceptive".

[77] The number of letters sent in 2023 presented to me at the hearing was not large, and some of them had significant differences from those issued in 2022, whether in their wording or in the options presented to the employees in question. Moreover, the evidence presented to me at the hearing indicates that in fall 2022, the PC might have made changes, to clarify communications on recovering the Phoenix pay system overpayments. The evidence presented to me is insufficient to allow me to conclude that a finding or conclusion about the letters sent in 2022 would be applicable to those that were sent a year later.

[78] In the circumstances of this case, in my view, the evidence on the contents of the letters that were sent more than a year after the grievance was filed is neither relevant nor necessary to the analysis that I must conduct.

[79] With a few exceptions, for the purposes of this summary of the evidence and the analysis that follows, I did not consider the evidence presented to me at the hearing about the content of the recovery letters that were sent long after the date of the grievance, notably those dated 2023, even though they were about overpayment recoveries made in 2016 and 2017. When I refer to the contents of letters that were sent well after the grievance's date in the evidence summary, they are about amended recovery letters or follow-ups to letters that were sent during the period covered by the grievance.

[80] At the hearing, the bargaining agent also presented me with a significant amount of evidence on the different types of pay problems caused by the Phoenix pay system's implementation and the difficulties that correctional officers faced obtaining information and aid from the PC. As I indicated at the hearing, a policy grievance is not a forum in which the bargaining agent can litigate the Phoenix pay system and the

employer's entire management of it since 2016. The issues that I must focus on are defined by the grievance itself, and on only those issues will I rule.

[81] The bargaining agent also presented a significant amount of evidence about the individual cases of correctional officers who received recovery letters or who were otherwise affected by pay issues once the Phoenix pay system was implemented.

[82] Counsel for the employer asked that I be cautious when I consider the individual cases that were presented to me, and rightly so. Several of the bargaining agent's witnesses referred individual grievances to adjudication before the Board that involve the same issues that I address in this decision. In addition, the bargaining agent represents several employees who have referred individual grievances to adjudication before the Board on those issues. The majority of those individual grievances are in abeyance pending this decision.

[83] That said, individual cases can still provide useful and important context and can inform the Board's deliberations when it analyzes a policy grievance. For that reason, the following summary of the evidence contains only the minimum amount of information about the individual cases that I deemed necessary to ensure an understanding of the issues and my analysis.

B. The evolution of the framework for recovering Phoenix pay system overpayments

[84] The Phoenix pay system was implemented in 2016. Shortly after that, payroll issues, sometimes minor and sometimes major, were observed. Some correctional officers received one or more overpayments, while others did not receive one or more pays and received an ESA from the CSC. However, overpayments are not unique to the Phoenix pay system and could have occurred before it was implemented.

[85] The employer's right to recover salary overpayments is also not new. It is a right that existed long before the Phoenix pay system's implementation and the pay issues that arose from it.

[86] At the hearing, Angelo Gatto, the director of the team responsible for the *Directive*, indicated that the *Directive* includes provisions on the employer's recovery of salary overpayments (see subsection A.3.15.1) long before the Phoenix pay system's implementation. It provided that overpayments were to be fully recovered from the

first amounts owed to the employee in question. In exceptional circumstances, the employer could allow the recovery to be spread over several pay periods or authorize a lower recovery rate.

[87] In 2017, Part 3 of the *Directive*'s Appendix A was amended to include provisions specifically involving recovery measures with respect to the Phoenix pay system's implementation. Those provisions, which were still in effect as of the hearing, provide that recovering a Phoenix pay system overpayment must occur over the number of pay periods equivalent to the number of pay periods over which the overpayment occurred, unless the employee asks that the recovery occur over a shorter period (see subsections A.3.15.4.1 and A.3.15.4.2 of the *Directive*), if the employer orders that the recovery occur over several pay periods according to a minimum recovery rate or if it authorizes a lower recovery rate (see subsection 3.15.3).

[88] In 2018, the *Directive* was amended again. The employer added a provision allowing it to establish, case-by-case, alternative timelines for recovering Phoenix pay system overpayments, including deferring repayments (see subsection A.3.15.4.4 of the *Directive*).

[89] The employer also issued directives addressed to the PC and other public service departments and agencies. The directives stated that no recoveries of Phoenix pay system overpayments or related ESAs should begin before the employee's payroll file is reconciled and "… namely, until the employee's pay problems … have been resolved", until the employee has received their correct pay for three pay periods, and until the PC and the employee, jointly, have developed a recovery plan.

[90] Those guidelines were included in an information bulletin dated March 2018 and entitled, *Additional Flexibilities with regards to the recovery of overpayments, Emergency Salary Advances and priority payments* ("the 2018 Bulletin"). Among other things, the bulletin communicated the changes made to the *Directive* that were described earlier. According to it, the changes had the goals of providing greater flexibility when recovering Phoenix pay system overpayments and ESAs, ensuring that the recoveries would not impose additional financial difficulties and stress on the affected employees, and ensuring that the recoveries were managed consistently. It also indicated that when the recovery began, departments and agencies had to be

prepared to provide evidence and explanations for the causes of overpayments to employees who were subjected to recoveries.

[91] On October 12, 2021, the employer issued another information bulletin, which replaced the 2018 Bulletin, entitled, *Additional information on the Recovery of overpayments, Emergency Salary Advances and Priority Payments* ("the 2021 Bulletin"). It was addressed to the PC and to several directors at federal public service departments and agencies.

[92] The parties agree that the 2021 Bulletin constitutes an employer decision to begin recovering overpayments made in 2016 and 2017 and to amend the recovery process to do it.

[93] The 2021 Bulletin indicates that the employer is changing its overpayment recovery process, to protect the Crown's right to recover overpayments caused by the Phoenix pay system's implementation. It describes the process for starting a recovery. In the following paragraphs, I will describe what the 2021 Bulletin provides.

[94] As of October 12, 2021, the PC was to begin contacting employees who had received overpayments in 2016 and 2017 and who did not yet have a repayment plan in place. The PC was to send a letter to those employees that was to detail the overpayment and the repayment options.

[95] According to the 2021 Bulletin, employees were not necessarily required to repay the overpayment immediately after receiving the letter.

[96] An employee could choose to acknowledge their overpayment in writing, which was to result in deferring the overpayment recovery until their payroll file had been reconciled and they had received their correct pay for three consecutive pay periods. As noted earlier, reconciling a payroll file is an accounting exercise that generally involves reviewing an employee's entire pay file, to ensure that all transactions were processed correctly. It may require matching and comparing the transactions recorded in the employee's payroll file, to ensure that the amounts claimed as overpayments are accurate and complete.

[97] The 2021 Bulletin indicates that an employee who acknowledges their overpayment has the option of developing a repayment schedule, in cooperation with

the CSC or the PC, which is flexible enough to avoid, as much as possible, adverse impacts on the employee.

[98] According to the 2021 Bulletin, employees were given four weeks to respond to the recovery letter.

[99] If an employee does not respond within four weeks, the 2021 Bulletin states that the process to recover the overpayment would be initiated under the *Directive*, meaning that the recovery would be spread over a number of pay periods equivalent to the number of pay periods during which the overpayment occurred. The 2021 Bulletin does not indicate that a payroll file reconciliation takes place before the recovery is carried out.

[100] The 2021 Bulletin also states that if an employee disagrees with the overpayment amount identified in the letter, they can dispute it, while acknowledging that it exists. In those circumstances, the PC initiates a "review of the transaction" and provides the employee additional details, as required. The employer's witness described the exercise that the PC carried out as a review of the file, to confirm the overpayment.

[101] Finally, the 2021 Bulletin indicates that recovering an ESA will be handled the same way as were the overpayments.

[102] The most significant difference between the 2018 and 2021 Bulletins is the removal, in 2021, of any indication that recovery efforts should not begin until the employee's payroll file has been reconciled and the employee has received their correct pay for three pay periods.

[103] In summer 2022, about six years after the first overpayments and ESAs were paid out, the PC began sending recovery letters about the overpayments that were made in 2016 and 2017.

[104] Both the bargaining agent and the employer presented as evidence examples of letters about overpayments and ESAs that were paid out to correctional officers in 2016 and 2017. There is no need for me to detail all the evidence that was presented to me with respect to the letters that the employer and CSC sent. At this point, a general description is sufficient. When I describe certain individual cases that were

presented to me, to contextualize the bargaining agent's allegations, I will come back to it.

[105] The majority of the letters about overpayments that were presented to me as evidence had certain points in common. They are as follows:

1) They include two appendices, namely, Appendix A, entitled "[translation] Details of the overpayment in 2016", and Appendix B, entitled, "[translation] Acknowledgement of the overpayment".

2) They inform the employee in question that the employer's or the CSC's files indicate that they received an overpayment.

3) They specify the total of the overpayments.

4) They inform the employee that they must acknowledge the overpayment to maintain their access to flexible repayment options aimed at ensuring that recoveries do not cause stress or financial difficulties.

5) They inform the employee that if they acknowledge the overpayments' total amount in writing, they may benefit from flexibility when determining a repayment plan and could defer repayment until they receive three consecutive accurate pays, until the employer or CSC as applicable pays all unpaid salary amounts, and until they have established a recovery agreement.

6) They inform the employee that if they do not dispute the overpayment amount, Appendix B must be completed by checking the box indicating that they acknowledge the overpayment. They must also specify the repayment terms and the repayment option.

7) They indicate that if the employee disputes the overpayment's validity or amount, they must complete Appendix B by checking the box indicating that they acknowledge receiving the recovery letter but dispute the overpayment's validity or amount. They are invited to state the reason for disputing the overpayment and to provide or attach more information.

8) They inform the employee that Appendix B must be submitted, along with a pay-action request on which they select the "[translation] Recovery of overpayment" box.

9) They specify the date by which the PC must receive the duly completed Appendix B, failing which the overpayment will be recovered by default, in accordance with subsection A.3.15 of the *Directive*. The indicated deadline is four weeks after the date on which the recovery letter was sent to the employee.

[106] I was presented with only two ESA recovery letters at the hearing that are almost identical to the overpayment letters, but they do not have an Appendix B. In addition, they explain the steps that an employee must take to acknowledge the ESA

and to benefit from repayment options, but they do not explain to the affected employee the steps that must be taken if they wish to dispute the ESA's validity or amount. The letter presents only two choices, which are either acknowledge the ESA by completing and returning a form entitled, "Emergency Salary Advance (ESA) / Priority Payment (PP) Request Form" (also known as a "Form GC-214") within four weeks of the recovery letter, or not respond, which results in a recovery being initiated in the next pay period.

[107] The evidence presented to me at the hearing sets out that correctional officers began receiving recovery letters in mid-2022 for overpayments and ESAs paid in 2016 and 2017. Many of them turned to the bargaining agent for help and information. Some reportedly acknowledged the overpayments and ESAs. As will be described in the summary of the testimonial evidence, others disputed the validity or amount of the overpayment.

C. The testimonial evidence

[108] The Board heard nine witnesses. It also received a significant amount of documentary evidence on the recovery letters that the Treasury Board and the CSC sent in summer 2022 to correctional officers that the bargaining agent represented.

1. The employer's witness

[109] Mr. Gatto was the employer's only witness. In 2021, he was the director of the Compensation Policy, Interpretation, and Pay Administration Directorate at the Office of the Chief Human Resources Officer (OCHRO). The OCHRO is responsible for the employer's compensation and terms and conditions of employment policies and directives. He led the team responsible for the *Directive* and developing the 2021 Bulletin. He was also involved in preparing the templates for the overpayment and ESA recovery letters.

[110] Mr. Gatto testified about the evolution of the framework that governs recovering Phoenix pay system overpayments and ESAs that was described earlier. He described the changes to the *Directive* in 2017 and 2018 that according to him, were intended to recognize the impact of the Phoenix pay system's pay problems on employees by easing that impact through allowing greater flexibility with respect to the period in which an overpayment could be recovered and providing the possibility of setting

individual timelines to reimburse those Phoenix pay system overpayments and ESAs or, in addition, by deferring the repayments.

[111] He also testified about the employer's consultations with the bargaining agents about Phoenix pay system recoveries, specifically with respect to the changes made to the *Directive* in 2017 and 2018 and the 2021 Bulletin's development. Mr. Gatto identified several documents that report on a consultation with members of a labour-management committee about the Phoenix pay system that took place from June to August 2021 and that were about the 2021 Bulletin's content and wording. He described the bargaining agents' feedback and the changes that were made to the 2021 Bulletin's wording in response to it.

[112] According to Mr. Gatto, the only change that the employer made in October 2021 was to decide to start recovering Phoenix pay system overpayments and to send the affected employees recovery letters. The letters asked the employees to acknowledge the overpayment before their payroll files were reconciled, which was to be carried out after they acknowledged the overpayment. No changes were made to the *Directive* or the collective agreement.

[113] At the hearing, Mr. Gatto indicated that in 2021, the Phoenix pay system was stable and reliable enough to allow the employer to consider starting to recover the overpayments. According to him, recovering overpayments from 2016 was a priority, due to *Crown Liability and Proceedings Act*'s application. Given the limitation period set out in that Act, the time that had elapsed since the 2016 overpayments, and the time and resources required to reconcile the files, the employer chose to request the acknowledgement of the 2016 and 2017 overpayments before proceeding with reconciliations. It did so to extend the time at its disposal to recover the debt, while deferring the overpayments' repayments and offering flexible repayment options. The 2021 Bulletin made that change.

[114] According to Mr. Gatto, the Phoenix pay system overpayments represented a significant debt to the Crown. The employer had to balance its fiscal duty to recover Crown debts when possible and the need to demonstrate the necessary flexibility to avoid unduly burdening the affected employees.

[115] Mr. Gatto described the recovery process initiated in 2021, as it was envisioned. Although he was involved in preparing the letter templates, he was not involved in preparing or sending specific recovery letters.

[116] According to him, the recovery process provides three scenarios, one in which the employee acknowledges the overpayment by completing and returning Appendix B to the PC with a pay-action request, one in which the employee disputes the overpayment's validity or amount by completing and returning Appendix B to the PC, and one in which the employee does not respond to the recovery letter within the time it sets out and sees the overpayment recovered on their next pay. With respect to the last scenario, Mr. Gatto indicated that if the overpayment resulted from a single excess salary payment, usually, it was recovered in full from the next pay. However, if the overpayment resulted from excess salary paid over several pay periods, it was to be recovered over the same number of pay periods.

[117] According to Mr. Gatto, Appendix A of the recovery letters contains all the details necessary to allow an employee to validate the overpayment's amount and existence. His testimony at the hearing indicated that he was unaware that certain information that could have been included in Appendix A was taken from the Phoenix pay system and that typically, no employee would have had access to it.

[118] In his testimony, Mr. Gatto stated that the process described in the 2021 Bulletin allows an affected employee who wants to dispute the overpayment's validity or amount to present evidence that that amount or validity is incorrect. A dispute leads the PC to carry out a review. According to him, if corrections are made to the overpayment after the review, the employee is notified. If the PC confirms the overpayment amount, the recovery is initiated under the *Directive*.

[119] Mr. Gatto acknowledged that it was possible for an employee to acknowledge an overpayment from 2016 but for a payroll file reconciliation to set out that there was no actual overpayment, once all the transactions had been done correctly.

[120] Mr. Gatto indicated that he was no longer in office in 2022, once six years had passed since the first overpayments were made, in 2016. He indicated that he participated in discussions about the limitation period. However, he did not remember what was discussed. He also did not remember whether he participated in discussions in which the participants would have spoken of the possibility of removing or the need

to remove any references to acknowledging overpayments in recovery letters with respect to statute-barred overpayments.

[121] Although it seems that Mr. Gatto left his position around summer 2022, nonetheless, he testified about a document entitled *Overpayment Update* that the PC prepared in October 2022, which he described as changes that the PC made in fall 2022 to clarify communications on recovering overpayments associated with the Phoenix pay system. The document indicates that the PC's bargaining agent and employee clients had raised concerns about the "lack of clear detail on … letters" and stresses the importance of including clear and precise information in them. Mr. Gatto described the different recovery-letter templates attached to the document, some of which included a reference to the *Crown Liability and Proceedings Act* and to the limitation-period concept.

2. The bargaining agent's witnesses

[122] The bargaining agent called eight witnesses.

a. Its representatives

[123] Three bargaining agent representatives testified about the impact that sending the recovery letters to many correctional officers across the country had on the bargaining agent.

[124] Jeffrey Wilkins, the bargaining agent's national president at the time; Frédérick Lebeau, its national vice-president at the time; and François Ouellette, a bargaining agent advisor and national coordinator, testified about their knowledge of the nature of the pay issues that correctional officers across the country experienced once the Phoenix pay system was implemented. Among others, they included one or more pays not being paid, union dues not being collected, one or more pays being made to correctional officers on unpaid leave, one or more overpayments made for overtime or acting appointments, and salaries being paid for performing unpaid acting duties.

[125] They also testified about the steps that the employer took in 2022 to recover the overpayments and ESAs from 2016 and 2017. They described the confusion, concern, and stress that the correctional officers involved communicated to them after they received one or more recovery letters. They described situations in which

correctional officers were unable to understand the source of the overpayment indicated in the recovery letter or to confirm the accuracy of the amounts being claimed from them. Mr. Lebeau and Mr. Ouellette described correctional officers reporting to them that the amounts claimed in the recovery letters were clearly incorrect. They described the different issues and challenges that they had to address on the correctional officers' behalf.

[126] Mr. Lebeau also testified about his personal situation. I will return to his testimony in my description of the evidence in the individual cases.

b. The correctional officers

[127] Six correctional officers testified about the recovery letters that they received. Five received overpayment recovery letters from the employer through the PC, while one received a recovery letter from the CSC, to recover an ESA.

[128] Two of the witnesses only received recovery letters dated 2023. As I indicated earlier, I will describe their testimonies to the extent that it is relevant to the employer's recovery process. I will not describe their testimonies on the letters' contents.

i. Pascal Lafontaine

[129] Mr. Lafontaine indicated that for a certain period in 2016, he received two deposits in his bank account per pay period; namely, his regular pay and another deposit that was described on his pay stubs with the word, "[translation] acting". According to him, he did not hold an acting position in 2016 and should not have received the second pay. He indicated that in 2016, he took steps to stop the second payment from being issued to him.

[130] In 2017 or 2018, he prepared a table using his pay stubs, to account for the overpayments that he received in 2016. He wanted to have a general idea of the gross and net overpayments that were made to him.

[131] On July 4, 2022, Mr. Lafontaine received a recovery letter that stated that according to the PC's records, his account showed an overpayment of more than $24 000 in 2016. The letter's subject read, "[translation] FLEXIBLE REPAYMENT OPTIONS - ACKNOWLEDGEMENT OF OVERPAYMENT FROM 2016 - active employee".

[132] The letter refers to the 2021 Bulletin and states that Mr. Lafontaine must do the following:

> [Translation]
>
> …
>
> *… acknowledge the overpayment, to continue to have access to the flexible repayment options for overpayments caused by Phoenix. The flexible options are to ensure that the recoveries do not cause you financial difficulties or stress.*
>
> …

[133] The letter states that if Mr. Lafontaine acknowledges the overpayment amount in writing, he will have "[translation] … a reasonable maximum discretion to establish a repayment plan and [will be able to] continue to defer repaying the overpayment …" until three conditions are met (the employer has paid all unpaid amounts owed him, confirmation that he received three consecutive accurate pays, and establishing a recovery agreement).

[134] The letter also indicates that if Mr. Lafontaine does not dispute the overpayment amount detailed in Appendix A (which is reproduced later in this decision), he must check a box to that effect in Appendix B of the letter, indicate whether he wants to repay the overpayment immediately or once the three conditions as set out are met, and select one of the three repayment options listed in Appendix B. Those options are making a repayment from the first available sums (through payroll deductions), repaying the entire overpayment amount, or "[translation] [a]ccessing flexible repayment options through a recovery agreement (payroll deductions), representing an amount of $322.16 per pay period." Appendix B states that section A.3.15 of the *Directive* has more information on the recovery options.

[135] It seems that after reading the letter, if Mr. Lafontaine disputes the overpayment's validity or amount, he must indicate it by checking the box in Appendix B that states, "[translation] I acknowledge receiving the letter… but I contest the overpayment's validity or amount for the following reason (please provide or attach further information) …". That appendix includes a space in which the employee can add information about the reason for disputing the overpayment.

[136] The letter also states that if the employee disputes the overpayment's validity or amount, a representative will contact them to answer any questions about the overpayment and to obtain further information.

[137] Finally, the letter states that Mr. Lafontaine has four weeks to complete and return two documents to the PC; namely, Appendix B and a pay-action request on which he has to select, "[translation] Recovery of overpayment". The letter states that if the PC does not receive the documents within four weeks, the overpayment will be recovered by default, starting on the pay period of August 17, 2022, under section A.3.15 of the *Directive*.

[138] Appendix A of the letter contains details about the 2016 overpayment. In Mr. Lafontaine's case, it states the following:

> [Translation]
>
> …
>
> *Details:*
> *OVERPAYMENT DATES: Start 2016-05-19 to 2016-11-02*
>
> *Period 2016-05-19 to 2016-06-01 in file number 3.*
> *Salary adjustment $ -612.50 Gross*
> *By cheque number 2539810 issued 2018-05-30*
> *This resulted in an overpayment of $532.94 Net*
>
> *Period 2016-05-19 to 2016-06-01 in file number 3.*
> *-80 hours x hourly rate $28.460403 = $-2276.83*
> *By cheque number 2215098 issued 2018-02-21*
> *This resulted in an overpayment of $1981.07 Net*
>
> *Period 2016-06-02 to 2016-11-02 in file number 1.*
> *-880 hours x hourly rate $28.460403 = $-25 045.15*
> *By cheque number 2215097 issued 2018-02-21*
> *This resulted in an overpayment of $21 791.77 Net*
>
> *Already recovered:*
> *By cheque number 2455243 issued 2018-05-02 $276.43*
>
> *Summary:*
> *Total overpayment: $24 305.78*
> *Total partial recovery: $276.43*
> *Balance due: $24 029.35*
>
> *Incumbent's gross salary fil. #0 for the current two-week period:*
> *3221.60 X 10% = $322.16*
>
> *Default repayment schedule:*

> *Overpayment amount is: $24 029.35*
> *Deduction amounts: $2002.45 per pay period for 12 pay periods.*
> *The 1st deduction will be made on August 17, 2022*
> *The deductions will continue until the amount is fully repaid.*
>
> …

[139] In Appendix B, Mr. Lafontaine chose the option that indicated that he acknowledged receiving the recovery letter but that he disputed the overpayment's validity or the amount set out in Appendix A. He indicated that he disputed it because the amount claimed was incorrect. He added, "[translation] See grievance". At the hearing, Mr. Lafontaine stated that in July 2022, although he completed Appendix B, he primarily disputed the accuracy of the overpayment claimed from him.

[140] At the hearing, he stated that as soon as he received the recovery letter and its two appendices, he noticed that the overpayment claimed from him was too high. The amount did not match the totals in the table that he had prepared. At the hearing, he stated that according to his calculations, the employer tried to recover almost $7000 more than it should have.

[141] In his testimony, Mr. Lafontaine described his confusion when he read Appendix A. For example, he indicated that he knew that he had received an overpayment on the pay for May 19 to June 1, 2016, but that the amounts listed in Appendix A did not match the amounts on his pay stub for that period. He also did not understand the references to files 1 and 3 or to the cheque numbers listed in Appendix A. At the hearing, he stated that he reviewed his pay stubs and bank statements, searching for the cheque numbers listed in Appendix A, without unsuccess. According to him, he also did not find any disbursement or payment for the amounts indicated on the specified dates. Mr. Lafontaine did not know what a "[translation] salary adjustment" meant.

[142] The evidence presented to me at the hearing indicates that the reference in Appendix A to cheque numbers and the dates on which the cheques were issued has nothing to do with cheques, as the word is commonly used and understood. Apparently, the so-called "[translation] cheque numbers" refer instead to numbers that the pay system generates when a pay-related transaction is entered. And apparently, the dates correspond to those on which a compensation advisor processed the transaction in the Phoenix pay system.

[143] According to Mr. Lafontaine, although he indicated in Appendix B that he disputed the overpayment's validity or amount, reportedly, no PC representative contacted him for further information.

[144] As of the date of his testimony in the hearing's first phase, no recovery measures had been taken for the 2016 overpayment.

ii. Olivier Roy

[145] Olivier Roy reportedly received overpayments during a parental leave in 2016.

[146] On October 26, 2022, he received a recovery letter that was dated August 19, 2022. Due to an error sending the letter in August 2022, Mr. Roy did not receive it until October 2022. It indicated that he had received overpayments in 2016 totalling just over $5500. It indicated that he was to respond within four weeks, failing which the overpayment would be recovered from his pay.

[147] The letter's title and contents are similar to those of the letter that Mr. Lafontaine received, which was described earlier. For that reason, I will describe only Appendix A's contents, specifically the details of the 2016 overpayment. I will also briefly describe the steps that Mr. Roy took and the overpayment recovery that reportedly occurred in fall 2022.

[148] The letter that he received lists five series of dates in Appendix A. The dates are followed by calculations, to reflect the total overpayment for the dates in question. In Mr. Roy's case, no cheque number is indicated for the calculations of the total of his overpayments.

[149] According to the "[translation] default repayment schedule" in Appendix A, which appears to have as a goal to indicate that the recoveries that will occur if Mr. Roy does not complete and submit Appendix B within four weeks, over $1000 would be withheld from his pay, for five consecutive pay periods.

[150] Mr. Roy had read a news article about the six-year limitation period being applied to the Phoenix pay system issues. He noted that the recovery letter's Appendix A set out a series of five periods between August 22, 2016, and October 7, 2016, followed by calculations to reflect the total overpayment for each period. According to him, the periods listed in Appendix A were more than six years

before the date on which he received the recovery letter. He emailed the PC, indicating that he disputed the overpayments, due to the limitation period.

[151] At the hearing, Mr. Roy described the options offered in the recovery letter as an ultimatum and a threat to recover the sums if he did not return Appendix B with a pay-action request within four weeks.

[152] He also testified about his lack of understanding of certain information items in Appendix A, particularly the deductions of several hundred dollars that the employer had made from the total overpayment. He did not understand which deductions were being referred to.

[153] Shortly after advising the PC that he disputed the overpayments, due to the limitation period, Mr. Roy received an email from it that stated that the total overpayments had been revised down and that an amount of just over $400 was being claimed from him as an overpayment. According to him, the amount corresponded to two dates that were more than six years before the date on which he received the recovery letter but for which the payment was apparently made within six years. As with the recovery letter that he received earlier, the PC's email indicated that he had to acknowledge the overpayment to be eligible for flexible repayment options and that if he did not respond to the email within the four weeks, the recovery process would be initiated.

[154] Mr. Roy did not respond. In November 2022, he received a final statement from the PC, indicating that an overpayment of more than $5000 would be sent to the CSC's financial services, for recovery. He understood nothing. A recovery had already taken place, and the email that he received a few weeks earlier had suggested that the employer would not try to recover overpayments that dated back more than six years.

[155] At the hearing, Mr. Roy indicated that apparently, a recovery of just over $400 was made from his pay in December 2022. As of the date of his testimony in the hearing's first phase, no further recovery efforts had been made.

iii. Maryse Perreault

[156] Maryse Perreault is a correctional officer who, in 2016 and 2017, reportedly received overpayments during two consecutive leaves, including a parental leave.

[157] In 2022 and 2023, she received recovery letters for overpayments that were made in 2016 and 2017.

[158] On May 30, 2022, she received a recovery letter that indicated overpayments totalling more than $24 000 for the 2016 calendar year. The letter's title and content are similar to those of Mr. Lafontaine's letter, described earlier.

[159] Appendix A of the letter contains details of the overpayments in 2016. It states that apparently, Ms. Perreault received her regular pay from June 30, 2016, to December 14, 2016, and that she reportedly received a correctional officer allowance that she was not entitled to from July 14, 2016, to February 8, 2017. The details of the overpayment provided in Appendix A are as follows:

> [Translation]
>
> …
>
> *From 30-06-2016 to 14-12-2016, you were overpaid for 849 hours*
> *35.928875 x 849 = $30 503.66*
> *Gross amount of overpayment: $30 503.66*
> *Net amount of overpayment: $22 815.95 (cheque #1310198 on 17-05-2017)*
>
> *From 14-07-2016 to 14-12-2016, you were overpaid for 55 hours*
> *$35.928875 x 55 = $1976.04.*
> *Gross amount of overpayment: $1976.04*
> *Net amount of overpayment: $1957.63 (cheque #2398481 on 18-04-2018)*
>
> *From 14-07-216* [*sic*] *to 08-02-2017, you received an overpayment of the correctional service officer allowance for 15 pay periods at a rate of $67.08 per pay period*
> *$67.08 x 15 = $1006.20*
> *Gross amount of overpayment: $1006.20*
> *Net amount of overpayment: $813.04 (cheque #1048659 on 08-03-2017).*
>
> *Total net amount overpaid: $22 815.95 + $1957.63 + $813.04 = $25 586.62*
>
> *Partial recovery: $986.80*
> *Overpayment amount after recovery: $25 586.62 - $986.8 = $24 599.82*
>
> …

[160] According to the default repayment schedule included in Appendix A, if Ms. Perreault did not respond to the recovery letter within 4 weeks, her pay was to be reduced by more than $1500 for 16 pay periods.

[161] At the hearing, Ms. Perreault indicated that she had been confused. The dates in Appendix A did not match the dates of her leave. She also did not understand how she could have received her regular pay in excess for overlapping periods; namely, the periods from June 30 to December 14, 2016, and from July 14 to December 14, 2016. She indicated that from reading Appendix A or her pay stubs, she was unable to understand whether the employer had paid the percentage of the parental leave benefit that she was entitled to in 2016.

[162] Ms. Perreault indicated that after reading the recovery letter, she felt that she had only four weeks to choose from the two options, which were to either acknowledge the overpayments, to avoid an immediate recovery and commit to repaying the claimed amount, or to not acknowledge them, in which case the recovery would begin with her next pay. According to her, no matter the option she chose in Appendix B, she was asked to fill out a pay-action request. She believed that filling one out would lead to a recovery. At the hearing, she indicated that she had felt stuck.

[163] Ms. Perreault took several actions. She wrote to her institution's warden and asked for help stopping the recovery. She hired an accountant. She called the PC and was told to check her pay stubs from 2016 for more details about the overpayment.

[164] According to her, on June 8, 2022, and even before the four-week deadline to respond to the recovery letter had expired, apparently, a recovery was made from her pay, without notice. She reportedly received a pay that was about half a normal one.

[165] On June 14, 2022, Ms. Perreault completed Appendix B. She indicated that she disputed the overpayment's validity or amount as described in Appendix A. She attached additional information that among other things stated that a recovery had already taken place, that adjustments had been made to her pay for certain periods listed in Appendix A, and that the PC did not provide her with the necessary documents or information, to allow her to verify the overpayment amounts. She asked that the PC contact her, which she claimed did not happen.

[166] At the hearing, she stated that she disputed the overpayment's accuracy because she did not have the information necessary to confirm that the amount claimed from her was correct.

[167] The PC communicated with Ms. Perreault twice. It asked her to complete and return Appendix B. Despite that she had already sent it, she sent it again.

[168] In September 2022, Ms. Perreault received an email from the PC. It indicated an overpayment of more than $25 500 in 2016, which to her did not seem to reflect the recoveries that had already been carried out. She did not understand why the total of the overpayment that the employer was trying to recover had become higher than the total indicated in the recovery letter dated May 30, 2022. The email included a table with a series of 27 transactions dated between July 27 and December 14, 2016, all associated with a cheque number. At the hearing, Ms. Perreault stated that the amounts in the table did not match the amounts indicated in her 2016 pay stubs. The cheque numbers did not match the information in her bank statements.

[169] On October 21, 2022, she received an email from the PC in which it indicated that because she did not respond to the recovery letter, the $24 652 overpayment would be recovered beginning on November 23, 2022, until it was fully repaid. It should be noted that the overpayment indicated in that email differs from those indicated in the recovery letter dated May 30, 2022, and the September 2022 email.

[170] In response to that email, Ms. Perreault again completed Appendix B. She checked the box that indicated that she disputed the overpayment.

[171] According to her, three overpayment recoveries occurred in November 2022, but the amounts recovered were different from the ones indicated in the documents that she received from the PC.

[172] Although this event took place well after the bargaining agent filed this grievance, it is relevant to note that in June 2023, Ms. Perreault received an amended recovery letter for the 2016 overpayment that indicated that that overpayment had grown to more than $29 000.

iv. Benoit Gervais

[173] Benoit Gervais is a correctional officer who works in Quebec. He is the only witness who received a CSC recovery letter for an ESA.

[174] He received the recovery letter dated July 18, 2022. It is entitled, "[translation] FLEXIBLE REPAYMENT OPTIONS - RECOGNITION OF EMERGENCY SALARY ADVANCE … - Active", and is about an ESA of over $1700 that reportedly was paid to him in May 2016 for the pay period from April 21 to May 4, 2016.

[175] As I have noted, the CSC paid the ESAs directly, and it managed the ESAs and their recoveries. That said, the recovery letter that Mr. Gervais received was very similar to those that the PC sent about overpayments, which were described earlier.

[176] The recovery letter stated the following:

> [Translation]
>
> …
>
> *… the existence* [of the ESA] *must be* ***acknowledged*** *to continue access to the flexible repayment options. The flexible options ensure that the recovery does not cause you stress or financial difficulties.*
>
> …
>
> [Emphasis in the original]

[177] It states that by acknowledging in writing the ESA amount, Mr. Gervais would benefit from "[translation] flexibility in determining the repayment plan and [could] continue to defer repayment" until the three conditions were met (the employer paid all the outstanding amounts owed the employee, confirmation that the employee received three consecutive accurate pays, and establishing a recovery agreement).

[178] Although the letter that Mr. Gervais received resembles the other letters described in this decision, it includes some important differences.

[179] The letter states that Mr. Gervais can request that the CSC send him a copy of the confirmation that he cashed the cheque for the ESA paid to him in 2016.

[180] The letter does not include Appendix B. To access the "[translation] flexible repayment options", Mr. Gervais had to complete a form entitled, "Emergency Salary Advance (ESA) / Priority Payment (PP) Request" (also known as a "Form GC-214"), which had boxes for the repayment conditions to be met and the ESA repayment

methods. It did not provide an option for an employee to dispute the validity or amount of the ESA that the recovery letter referred to.

[181] The letter states that if the CSC does not receive the Form GC-214 by August 15, 2022, or four weeks later, the ESA recovery would begin under section A.3.15 of the *Directive*'s Appendix A, and Mr. Gervais would not be entitled to the flexible repayment options.

[182] During his testimony, Mr. Gervais did not question the accuracy of the ESA amount. He stated that he received the ESA after receiving a pay of $0. However, he did not remember receiving the regular pay that he should have received for the services that he provided between April 21 and May 4, 2016, which was the pay that the ESA was supposed to replace temporarily.

[183] When he received the recovery letter in July 2022, he reviewed all his pay stubs since 2016. He wanted to confirm whether he had received his regular pay. According to him, there was no indication that he had received it.

[184] Mr. Gervais did not acknowledge the ESA. He did not fill out a Form GC-214. He testified that since he still had not received his regular pay for May 2016, he should not have had to repay the ESA. According to him, he had not been overpaid.

[185] In August 2022, Mr. Gervais received a second letter, identical to the one of July 18, 2022, except for an added note that stated that it was a final notice. He did not respond to the letter.

[186] As of the date of Mr. Gervais's testimony in the first hearing phase, no ESA recovery had taken place.

v. Rodney Swenson

[187] Rodney Swenson, a correctional officer working in Saskatchewan, received a recovery letter in August 2023 detailing overpayments that he reportedly received in 2016 and 2017. He received the letter almost a year after the grievance before me was filed. For the reasons stated earlier, I did not consider his testimony on the letter's contents; i.e., how it and its attachments are worded.

[188] At the hearing, Mr. Swenson stated that he received a recovery letter for an overpayment of more than $1000 for dates in April and September 2017. He stated

that when he received the letter, he had no recollection of having received an overpayment. When he read it, he felt that the employer was certain that he had received more than $1000 in an overpayment, which he had to acknowledge if he wanted to defer the repayment until he had received three consecutive correct pays, until the employer or CSC paid him all unpaid amounts as salary as applicable, and until he established a repayment agreement. According to him, if he did not acknowledge the overpayment, the recovery would have been taken from his next pay, by default.

[189] He researched in the CSC's "Scheduling and Deployment System" (SDS). At the hearing, he stated that the data recorded in that system showed that he had worked overtime on the dates listed in Appendix A of the letter. He reviewed his pay stubs that corresponded to the dates identified in Appendix A. By comparing the data in the SDS and his pay stubs, he concluded that he had been paid for overtime that he had worked but that he had not been overpaid.

[190] He sent his collected data and his pay stubs to the PC. He also sent Appendix B. He selected the option that stated that he disputed the overpayment's validity or amount.

[191] The recovery letter indicated the date on which the recovery would take place if he did not respond to the letter. Coincidentally, it was the date on which Mr. Swenson testified in the hearing's first phase.

vi. Frédérick Lebeau

[192] Mr. Lebeau testified about a recovery letter that he received in July 2023 for overpayments reportedly made to him in 2016 and 2017. Since he received his letter almost a year after the grievance was filed, I did not consider his testimony about how the letter and its attachments were worded.

[193] The letter that he received in 2023 stated that the total overpayments amounted to more than $2800.

[194] At the hearing, Mr. Lebeau stated that he reconciled his payroll file using his pay stubs. The reconciliation took him about four hours, during which he noticed that a partial recovery had already been deducted from his pay.

[195] He disputed the overpayment's validity by sending to the PC Appendix B, his pay stubs, and the results of his reconciliation of his payroll file.

[196] At the hearing, Mr. Lebeau stated that the employer reimbursed him a sum of several hundred dollars that had been recovered from his pay. He did not indicate when the refund took place.

IV. Summary of the arguments

A. For the bargaining agent

[197] The bargaining agent argues that under the collective agreement, an employee is entitled to expect accurate pay. A pay error can constitute a collective agreement violation.

[198] According to the bargaining agent, the employer is not required to recover overpayments or ESAs. It is a discretionary power (see *Murchison v. Treasury Board (Department of Human Resources and Skills Development)*, 2010 PSLRB 93). It argues that if the employer decides to exercise that discretionary power, the collective agreement requires that first, it and the CSC must ensure that indeed, there is an overpayment to recover and that the overpayment or ESA amount to recover is accurate. The employer must demonstrate that there was an overpayment or ESA, along with its accuracy, to recover it from an employee's salary.

[199] In the particular Phoenix pay system context, fearing that it would be unable to recover the amounts owed the Crown due to the six-year limitation period, the employer decided to abandon the earlier approach of not initiating recovery efforts until the affected employee's payroll file was stable and had been reconciled. Once it made that decision, it hurried to send letters to recover the overpayments and ESAs that had been paid to correctional officers in 2016 and 2017.

[200] The bargaining agent argues that the employer's change to its recovery process in October 2021 did not conform with the collective agreement. According to it, the employer and the CSC acted abusively by initiating steps to recover Phoenix pay system overpayments and ESAs without first reconciling the affected employees' payroll files, to ensure that indeed there were overpayments to recover and to demonstrate the overpayment's or ESA's existence and accuracy. It argues that that demonstration was necessary and reasonable, given the history of the Phoenix pay

system's errors and the uncertainty with the accuracy of the pay that correctional officers received.

[201] The bargaining agent argues that the employer's decision placed the burden of validating the existence and accuracy of overpayments and ESAs, or demonstrating that a recovery letter contained an error, on the affected employees' shoulders. According to it, the indications that the recovery efforts taken were abusive include among other things the small amount of time given to employees to acknowledge overpayments and ESAs, the complexity of the calculations required from employees to validate the existence or accuracy of overpayments from over five years before, and the fact that the employees in question would not necessarily have had easy access to the information required for the reconciliation process.

[202] It argues that if the Board concludes that the employer's recovery process complies with the collective agreement and meets the good-faith requirements, it should still conclude that the recovery letters are "[translation] unreasonable, misleading, and deceptive". In other words, the bargaining agent argues that even if I conclude that the process complies with the collective agreement, the evidence sets out that its implementation does not.

[203] It argues that in its haste, the employer prepared and sent confusing letters with contents and accuracy that were clearly insufficient to allow the employees in question to validate the existence and accuracy of the amounts set out in the letters. The letters contained information that had no meaning or relevance for the employees who received them, and they had little or no explanation about the meaning of the data in Appendix A.

[204] The bargaining agent also points out that the letters place the burden on the employees to prove within 30 days that they do not owe, in whole or in part, the amounts being claimed from them. The letters threaten the employees in question and make them feel obligated to acknowledge the overpayments, to avoid an immediate recovery. The letters suggest that all roads lead to recovery. If the employees do not respond to the recovery letters or indicate that they disagree with the overpayment's validity or amount, the letters imply that the employer will pursue the debt, even if it has not proven the debt's existence and accuracy.

[205] With respect to recovering an ESA, the letters do not indicate that an employee can dispute the ESA's validity or amount that the employer seeks to recover. The only scenarios addressed in those letters are acknowledging the amount being claimed or failing to respond, which are two scenarios that lead to recovering the entire amounts set out in the letters.

[206] The bargaining agent also points out that the recovery letters sent in 2022 were about debts from 2016 and 2017 that either were already statute-barred or soon would be. However, the recovery letters did not inform the employees in question that a limitation period was in place and that they might not be required to repay the debts if they were statute-barred. Instead of informing them, the letters invited them to acknowledge their debts. The legal consequences of an acknowledgement were not explained; specifically, the fact that acknowledging an overpayment could extend the period available to the employer to recover the debt.

[207] The bargaining agent also argues that the recovery letters are misleading in that they suggest that a correctional officer who acknowledges an overpayment or an ESA would benefit from new flexibilities and new repayment options, which is not so. The flexibilities and options existed well before that.

[208] It argues that this case is similar to the fact situation that the Board analyzed in *Association Justice Counsel v. Treasury Board*, 2018 FPSLREB 38 ("*Association of Justice Counsel 2018*"), and in which it concluded that applying a leave-reconciliation process retroactively violated the parties' collective agreement.

B. For the employer

[209] At the hearing, the employer significantly emphasized its position that the Board does not have jurisdiction to hear this grievance. I have already addressed that and will not revisit it. However, it also presented me with alternative arguments.

[210] It argues that if the Board decides that it has the necessary jurisdiction to hear the grievance and address the issue of whether the employer exercised its management rights in an "[translation] abusive" manner, it must consider the wording of the parties' collective agreement, specifically the absence of a clause that limits management's ability to exercise its management rights. According to the employer, the Board's

decision in *Association of Justice Counsel 2018* (on which the bargaining agent based part of its argument) can be distinguished for that reason.

[211] According to the employer, the Board must conduct an analysis based on a "[translation] balancing of interests". It argues that such an analysis sets out that the impugned decision constitutes a reasonable exercise of its management rights. It argues that it has a duty to recover amounts owed the Crown (see s. 155(3) of the *FAA*). In addition, it has a duty to Canadian taxpayers to recover Crown debts, including Phoenix pay system overpayments and ESAs.

[212] In the particular context of Phoenix pay system overpayments made in 2016 and 2017, which debts could have become statute-barred, it had to balance its interest in ensuring the sound management of public finances with the requirement to offer the affected employees flexibility in the recovery process. It argues that the method that it chose to recover the debts was reasonable, transparent, and balanced.

[213] The employer argues that since 2016 and the Phoenix pay system's implementation, it has consulted the bargaining agents. It amended the *Directive* to provide more flexibility for reimbursing Phoenix pay system overpayments and ESAs. In 2021, before it implemented its decision to send recovery letters before reconciling the affected employees' payroll files, the employer consulted the bargaining agents about the recovery method that it intended to apply, and it implemented some of their recommendations. It was transparent about the importance of it taking action to recover overpayments, given the time that was passing and the limitation period set out in the *Crown Liability and Proceedings Act*, which was approaching quickly.

[214] The *Directive* was not changed in October 2021. Recovering the Phoenix pay system overpayments was done in accordance with the *Directive* and in the same way as it would have been done before and after October 12, 2021. The only change from the 2021 Bulletin was that the employer decided to send letters to recover the overpayments and ESAs before reconciling the employees' payroll files. The 2021 Bulletin did not change the fact that no recovery would take place before an affected employee's payroll file was reconciled.

[215] The employer argues that the bargaining agent presented individual cases and examples of errors in recovery letters and then asked the Board to conclude that the entire recovery process is unreasonable and flawed. According to the employer, on

their own, individual cases cannot base a decision on a policy grievance, and they have limited relevance because the cases that the bargaining agent chose do not provide an accurate picture of the contested measures.

[216] The employer argues that the recovery letters contain adequate information to allow an affected employee to validate the amount of the overpayment or the ESA. Employees are not required to reconcile their payroll files. If they want to validate an overpayment or its amount, they can dispute it. The recovery letter informs them of that possibility.

[217] According to the employer, the bargaining agent did not present any evidence to support its assertion that correctional officers might have felt pressured to acknowledge a debt or to reimburse overpayments or ESAs. All the correctional officers who testified at the hearing disputed their overpayment or ESAs. Very few of them indicated that they had been subjected to a recovery.

[218] On the limitation-period issue, the employer argues that the sound management of public finances requires it to take steps to recover Crown debts whenever possible. A statute-barred debt is still a debt that the employer is responsible for collecting if doing so is possible.

[219] To avoid the limitation-period issue that applied to overpayments and ESAs paid out in 2016 and 2017, in the recovery letters, the employer asked the affected employees to acknowledge the overpayments. They were not required to acknowledge a statute-barred claim, and the evidence presented at the hearing set out that some correctional officers invoked a limitation period to support their efforts to contest their overpayment's validity.

[220] Finally, the employer argues that several recovery letters that the bargaining agent presented as evidence were about overpayments that were not statute-barred or that were not clearly statute-barred when the letters were sent. It would be unreasonable if the employer included in the recovery letters a statement indicating that the overpayment or the ESA could be statute-barred. Not only does the employer have no duty to inform employees targeted by recovery letters that the amount being claimed from them could be statute-barred, but also, doing so would be contrary to its duty to take steps to recover Crown debts when possible. It also argues that the Board cannot assume that an employee targeted by a recovery letter is unaware of the law on

limitation periods or that the employee would not ask their bargaining agent for more information on receiving a recovery letter for an overpayment or an ESA that was paid to them five or six years earlier. Some of the bargaining agent's witnesses did so; they consulted it and informed themselves.

[221] It argues that the disputed recovery process conforms with the collective agreement and that the contested decision constituted a reasonable exercise of its management rights.

V. Reasons

[222] In its closing arguments, the bargaining agent urged the Board to first and foremost decide on the recovery process that the employer adopted in 2021 and implemented in 2022. Specifically, it asked the Board to decide whether the employer's decision to take steps to recover the Phoenix pay system overpayments before reconciling the affected correctional officers' payroll files conformed with the collective agreement.

[223] Second, the bargaining agent argued that even were the Board to conclude that the employer's recovery process did not violate the collective agreement, it should still conclude that the employer violated the collective agreement by sending recovery letters that it described as "[translation] unreasonable, misleading, and deceptive".

[224] I will conduct my analysis in that order.

A. The recovery process does not conform with the collective agreement

[225] At the hearing, both parties referred to *Association of Justice Counsel 2017*.

[226] I briefly addressed that decision in my analysis on the objection to the Board's jurisdiction. I return to it now, as a reminder. Residual management rights are not unlimited. They must be exercised reasonably and consistently with the collective agreement (see *Association of Justice Counsel 2017*, at para. 20).

[227] First, I will examine the question of whether the employer exercised its management rights consistently with the collective agreement. Second, I will examine its argument that it exercised its management rights reasonably.

[228] The bargaining agent argued that the employer's decision to change its recovery process was not consistent with or that it "[translation] violated" the collective agreement. It argues that the decision take steps toward recovery without reconciling the files was "[translation] abusive". The test that I must apply is consistency with the collective agreement. The issue that I must decide is whether the contested decision was incompatible, or inconsistent, with the collective agreement (see *Association of Justice Counsel 2017*, at para. 20; and *Public Service Alliance of Canada v. Treasury Board (Canada Border Services Agency)*, 2025 FPSLREB 59 at para. 15 ("*PSAC 2025*")).

[229] The employer argues that it has a duty to recover amounts owed the Crown.

[230] Section 155(3) of the *FAA* states that the Receiver General "may" recover overpayments made out of the Consolidated Revenue Fund to any person as salary, wages, or allowances by withholding an equal amount from any sum due that person from His Majesty in right of Canada (see, among others, *St-Onge FPSLREB*; *Dansou*; *Lapointe*; *Genest v. Treasury Board (Correctional Service of Canada)*, 2021 FPSLREB 81; and *Poupart v. Treasury Board (Correctional Service of Canada)*, 2021 FPSLREB 13 (judicial review application allowed on other grounds in *Canada (Attorney General) v. Poupart*, 2022 FCA 77)).

[231] The parties do not dispute the fact that the employer has the authority to exercise that right, which existed long before the Phoenix pay system's implementation and has been the subject of several decisions by the Board and its predecessors.

[232] The employer also argued that the *Directive* provides a duty to recover overpayments. I acknowledge that section 3.15.1.2 of the *Directive* states that persons with delegated authority to recover overpayments must ensure that overpayments are recovered. However, the *Directive* also recognizes that they have discretionary power, which is the discretionary power to authorize a lower recovery rate (see section 3.15.3.2).

[233] The employer also argues that it has a duty to Canadian taxpayers to recover Crown debts, including overpayments and ESAs.

[234] I will return to the *Directive* and that employer duty later in my analysis.

[235] I now return to s. 155(3) of the *FAA*. The employer may carry out a recovery when certain conditions are met; notably, there must have been an overpayment, and

the overpayment must have been paid as salary, wages, or allowances. Only overpayments made as salary are relevant to this grievance.

[236] The fact that the overpayments were made to correctional officers and that they were made as salary is not contested. Although some of the bargaining agent's witnesses disputed the overpayment amount or the employer's right to recover a statute-barred or allegedly statute-barred debt, they all acknowledged that they received an overpayment as salary or as an ESA.

[237] Setting aside the limitation-period issue for the moment, the parties' dispute is less about whether the employer could recover overpayments and ESAs than it is about how it did so. In dispute is its decision to take steps to recover Phoenix pay system overpayments and ESAs that were paid out in 2016 and 2017 before reconciling the affected employees' payroll files.

[238] The bargaining agent had the burden of demonstrating that when it made that decision, the employer exercised its management rights in a manner that was inconsistent with the collective agreement or that it exercised its management rights unreasonably.

[239] In the section of this decision on the employer's objection to the Board's jurisdiction, I addressed the principle of accurate pay for services rendered. As I noted earlier, employees are entitled to be paid for services rendered at the pay that corresponds to the classification of the position to which they were appointed. That right is set out in clause 49.02 of the collective agreement.

[240] When it exercises its management rights, the employer must act in accordance with the collective agreement. The corollary requires that it ensure the accuracy of the amounts claimed in the context of its recovery process. It can seek to recover from an employee's pay only the amount that was overpaid as salary, and no more.

[241] Thus, an employer that takes steps to recover an overpayment or ESA or that proceeds with that recovery must make every effort to ensure that its actions do not result in a situation in which the affected employee could receive a lower salary than they are entitled to for the services that they provided during the period covered by the recovery measure. Any other conclusion would be incompatible with the pay protections offered in the collective agreement.

[242] Applying the principle of accurate pay is not as straightforward in this case as it might otherwise be. This case's uniqueness is closely related to the factual context of the pay system's implementation. It is impossible to analyze this grievance's merits without taking that into account.

[243] The bargaining agent presented evidence as to the number and complexity of the pay issues that arose from the Phoenix pay system's implementation, which included several types of pay issues over several years. Although the employer argued that evidence of individual pay problems generally was not relevant, it did not deny or contradict the evidence that the issues were numerous and complex.

[244] By amending the *Directive* to include more flexible terms for recovering Phoenix pay system overpayments and adopting the 2018 and 2021 Bulletins, the employer implicitly acknowledged that the Phoenix pay system's pay issues were significant and specific. They were not ordinary pay issues, and standard recovery measures had to be adapted to the Phoenix pay system's particular context. It amended the *Directive* to allow more flexibility with respect to the period during which an overpayment or ESA could be recovered. It granted those with delegated authority the discretion to authorize a lower recovery rate.

[245] Also emerging from both parties' documentary evidence is that the bargaining agent expressed repeatedly, by several means, its concerns about the accuracy of the pay that the correctional officers whom it represents received.

[246] When they described the recovery measures that the employer took, the bargaining agent's witnesses all linked their lack of trust in the pay system's reliability and the accuracy of its generated transactions with their concerns about the recovery measures, specifically with the validity and accuracy of the overpayments that the employer sought to recover from their pay. In the particular circumstances of this case, it is impossible for me to say that that lack of confidence in the overpayments' validity or accuracy was unjustified.

[247] One factor that complicates applying the principle of accurate pay in a case like this one is the time that elapsed between the overpayments and the recovery efforts.

[248] The pay system was implemented in 2016. Overpayments occurred a short time later. According to Mr. Gatto, only in 2021, five years later, was the pay system deemed

stable enough to allow the employer to consider taking steps to recover the salary overpayments.

[249] The disputed recovery process was adopted in 2021. It arose from the employer's decision to initiate steps to recover overpayments and ESAs linked to the Phoenix pay system that were paid out in 2016 and 2017 before the Crown's right to recover the overpayments became statute-barred due to the passage of time.

[250] The employer was very transparent about it. The 2021 Bulletin indicates clearly that the change to the recovery process was implemented to protect its right to recover overpayments caused by the Phoenix pay system's implementation.

[251] I will address the employer's approach to the issue of statute-barred recoveries later in this decision.

[252] At this point, I will simply state that the employer was entitled to take steps to recover the Phoenix pay system overpayments. The *FAA* allows for it. And the *Directive* states that persons with delegated authority, namely, the employer and the CSC, among others, must ensure that all salary overpayments are recovered (see section 3.15.1.2). I also accept that the employer has a duty to Canadian taxpayers to recover Crown debts, including overpayments and ESAs, when possible. In such a context, the fact that it amended its recovery process to protect its right to recover overpayments is not problematic in itself.

[253] The employer was also entitled to exercise its management right to amend its recovery process. However, its flexibility was limited by the other collective agreement provisions (see, for example, *Association of Justice Counsel 2017*, at para. 20; *PSAC 2008*, at para. 54; and *Canada (Attorney General) v. Lloyd*, 2022 FCA 127 at para. 50).

[254] But problematic and inconsistent with the collective agreement was the employer's decision to change its process to initiate steps to recover the overpayments and ESAs without first reconciling the affected correctional officers' payroll files. Reconciling a payroll file is an exercise that provides the affected employee with some degree of certainty about the existence of an overpayment to be reimbursed and the accuracy of the amounts that the employer wishes to recover. Reconciliation also provides the employer with some level of certainty that it is exercising its right of

recovery in accordance with the principle of accurate pay; i.e., consistent with the collective agreement.

[255] I now return to the specific circumstances of this case; i.e., the steps taken to recover overpayments made five to six years earlier. The recoveries in question were to be carried out based on information from a pay system that until recently, had been deemed too unstable to allow the employer to consider undertaking recovery measures and in a context in which the detailed information required to validate compliance with the principle of accurate pay was in the employer's hands, through the PC.

[256] In such a context, ensuring that a payroll file is reconciled before taking recovery measures becomes increasingly important.

[257] Although I can understand and accept the importance to the employer of ensuring the proper management of public expenditures and of protecting its right to recover the overpayments that were caused by the Phoenix pay system's implementation, this does not exempt it from its obligations under the collective agreement, specifically its obligation to exercise its management rights in a manner consistent with that instrument.

[258] Under the recovery process in effect between 2018 and 2021, the employer took steps to confirm the existence and amount of the salary overpayments before taking steps toward recovery. If it adopted a process in 2018 under which no recovery efforts would be initiated before the payroll file had been reconciled, it is likely because it concluded that it was prudent and necessary to proceed that way.

[259] The change made to the recovery process represented an unfortunate departure from the approach that the employer had favoured until 2021.

[260] The only reason that Mr. Gatto provided to explain the change to the recovery process was the need to protect the employer's right to recover overpayments.

[261] I acknowledge that the employer was in a difficult situation. The Phoenix pay system overpayments and ESAs represented a significant debt to the Crown. In his testimony at the hearing, Mr. Gatto suggested that the total for 2016 and 2017 amounted to millions of dollars. He stated that the debts were soon to become statute-barred.

[262] However, in the specific context described earlier, in my view, by abandoning its cautious approach in favour of a method that it deemed faster, the employer exercised its management rights in a manner inconsistent with the collective agreement.

[263] In its closing arguments, the employer argued that under the amended recovery process in 2021, if an employee targeted by a recovery letter acknowledged the overpayment, then the reconciliation of their payroll file was carried out before any recovery took place. It also argued that if they disputed the overpayment's validity or accuracy, a "[translation] review of the transaction" would have taken place before any recovery occurred. In his testimony, Mr. Gatto referred to a review of the overpayment.

[264] The employer did not explain to me the difference between reconciling a payroll file, a "[translation] review of the transaction", and an overpayment audit, but I conclude from it that an overpayment audit and a transaction review are narrower accounting exercises than a full reconciliation of an employee's payroll file.

[265] That does not change the fact that the employer took steps to recover overpayments and ESAs without first making a verification that confirmed that indeed an amount had to be recovered and that the amount was accurate. The objective of those steps was to ask an employee to acknowledge an overpayment and to commit to reimbursing it without a prior verification of its accuracy.

[266] I will address the recovery letters in the next section of my analysis. At this point, I would state that the letters presented to me at the hearing did not clearly state that a reconciliation would take place before a recovery in a situation of an employee choosing to dispute an overpayment's validity or accuracy. On reading the letters, the only scenario that clearly lead to a reconciliation was when an employee chose to acknowledge an overpayment or an ESA.

[267] I would also add the following with respect to a situation in which an employee does not respond to the recovery letter within four weeks of the date on which it was sent. Neither Mr. Gatto's testimony, the 2021 Bulletin, nor the documentary evidence presented to me at the hearing indicated that the payroll file is reconciled before the recovery occurs. Every indication is that a recovery is carried out without further verifications. Proceeding that way is an approach inconsistent with clause 49.02 of the collective agreement in that a recovery could take place without considering the principle of accurate pay.

[268] Before concluding on this matter, I will address a Board decision that, according to the bargaining agent, is highly relevant to this case.

[269] In *Association of Justice Council 2018*, the Board allowed in part a policy grievance that alleged that a reconciliation of data with respect to paid leave in two different, independent electronic systems, which were a timekeeping system and a human resources management system, was an unreasonable and unfair exercise of management's rights and discretion under the parties' collective agreement.

[270] The reconciliation exercise in question in *Association of Justice Counsel 2018,* specifically the requirement that employees had to reimburse the employer for leave discrepancies, was based on the assumption that the employer's data was accurate. Like the Phoenix pay system issues that have been described in this decision, in *Association of Justice Counsel 2018,* the Board found that there was evidence that could have raised doubts about the intrinsic reliability of the data in both electronic systems and that the employer was aware of a significant problem with the data's reliability. The Board also found that employees' access to the data, to allow them to reconcile their leave, was a real issue, and the evidence indicated that employees might have difficulty reconstructing their leave records over a period of almost six years.

[271] According to the Board, the requirement that employees had to retroactively deduct from their leave banks or reimburse the employer for leave that they could not be certain they took was not consistent with the collective agreement's leave provisions (see paragraph 240). At paragraph 243 of its decision, the Board stated that it was improper to require that employees repay leave "… based on the mere possibility that they owed the leave, rather than on the certainty that they did …".

[272] The Board concluded that the reconciliation exercise's design was seriously flawed, that its retroactive application (over a period of six years) placed an unfair burden on employees, and that the requirement that employees reimburse the employer for leave anomalies going back several years that could not be explained was unreasonable, unfair, and inconsistent with the collective agreement's leave provisions.

[273] I agree with the bargaining agent that *Association of Justice Counsel 2018* is relevant to certain issues raised in this grievance. The principle that management's rights must be exercised reasonably and consistently with the collective agreement still applies, even in the absence of a specific provision that "… also constrains

management's ability to exercise these rights …" (see *Association of Justice Counsel 2017*, at paras. 20 and 21, and *Association of Justice Counsel 2018*, at paras. 194 and 195).

[274] In this case, I see important parallels, notably an exercise based on an assumption that the employer's data is accurate and reliable, despite evidence that could have raised doubts in that respect, issues with the affected employees' access to the data relevant to the exercise over several years, and the employer's request that each employee acknowledge and agree to reimburse their overpayment based not on a certainty about its validity and accuracy but on a possibility that the overpayment being claimed was valid and accurate.

[275] As in *Association of Justice Counsel 2018*, the employer's recovery process placed a burden on the employees to demonstrate that they did not have an overpayment or ESA to repay or to establish the true overpayment amount.

[276] I conclude that the recovery process that the employer adopted and implemented was inconsistent with the collective agreement's pay provisions, particularly clause 49.02.

[277] Although my conclusion that the recovery process is not consistent with the collective agreement and the principle of accurate pay for services rendered is sufficient to decide the policy grievance, I have analyzed the reasonableness of the employer's approach, and I conclude that it did not exercise its management rights reasonably. At the hearing, the employer presented arguments to me on this subject. The bargaining agent did not respond to them clearly.

[278] The reasonableness of an employer's unilateral policy is determined using a "[translation] balancing of interests" approach that takes into account the nature of the employer's interests, any less-intrusive means to address its concerns, and the policy's or decision's impact on employees (see *Association of Justice Counsel 2017*, at para. 24, and *PSAC 2025*, at para. 13).

[279] I acknowledge that the employer had to balance its duty to ensure the proper management of public finances and to recover Crown debts, when possible, with its duty as an employer and its collective agreement obligations. I also acknowledge that it was in a difficult situation. The amounts in question were significant. The time that

had passed since the first overpayments and ESAs were paid out meant that some debts could have become statute-barred. I accept that the employer had legitimate and significant interests.

[280] However, the employer's interests are only one of three criteria. I must also consider the existence of less-intrusive means to address the employer's concerns and the decision's impact on the affected employees. I have already addressed the decision's impact on the employees. I will not repeat myself. I would simply add that the impact of a decision or policy that undermines a principle that is at the heart of the employer-employee relationship (in this case, the principle of accurate pay for services rendered) is, by that very fact, significant.

[281] The employer could have chosen a less-intrusive means of addressing its concerns, as it had done in the past. It opted for a cautious approach until 2021; specifically, until it made the contested decision.

[282] Mr. Gatto testified about the reason that the employer changed its recovery process. He indicated that the limitation period under the *Crown Liability Act and Proceedings Act* was approaching with respect to overpayments and ESAs that were paid out in 2016 and that reconciling the payroll files was time consuming and required significant resources. It emerges from his testimony that the decision to request acknowledging the overpayments and ESAs before a reconciliation would be carried out was made because it was quicker to proceed that way.

[283] Mr. Gatto did not indicate that it would not have been possible for the employer to fulfil its duty to ensure the sound management of public finances had it maintained the cautious approach that it opted for until 2021. Had that been the situation that the employer faced, Mr. Gatto would likely have said so.

B. The recovery letters were clearly inadequate

[284] In its final arguments at the hearing, the bargaining agent argued that if the Board concluded that the employer's recovery process was consistent with the collective agreement, nevertheless, it should conclude that the recovery letters that resulted from that process's implementation were "[translation] unreasonable, misleading, and deceptive".

[285] Since I have concluded that the employer exercised its management rights in a manner inconsistent with the collective agreement, I need not decide this matter or the bargaining agent's argument about whether the employer violated the collective agreement by attempting to recover overpayments to which it was no longer legally entitled due to the time that had elapsed; i.e., six years.

[286] However, in my view, under the circumstances, I should address an underlying theme in the bargaining agent's several allegations about the recovery letters; namely, whether the ones described in this decision allowed the affected employees to make informed decisions with respect to the recovery process, specifically about the request to acknowledge an overpayment. In other words, did the letters' contents allow the affected employees to fully and accurately understand what was being requested of them and why and the choices and options available to them?

[287] To make an informed decision, there must be, at minimum, clear information, to understand if an overpayment truly exists, if the amount claimed is accurate, and if there is an obligation to repay it.

[288] I am of the view is that the following comments will promote the economy of resources for the parties, as well as harmonious labour relations. The comments and observations on the recovery letters that the parties presented to me at the hearing could take up several pages if I detailed them all. However, I will limit my comments to certain specific themes. I considered the letter templates that the employer prepared and the recovery letters sent up to 2022 that the parties presented to me at the hearing.

[289] Before doing so, I wish to state that the employer consulted the bargaining agents when it developed the 2021 Bulletin. It considered some suggestions. However, it seems that the consultation was about principles. There is no indication that the bargaining agent was consulted on the recovery-letter templates or the specific nature of the information that would be included in them and in the attachments. Consulting the bargaining agent about the templates could have helped identify or avoid some of the issues with the letters that it raised in this grievance.

[290] Many overpayment recovery letters were presented to me at the hearing, including three by the employer.

[291] Two examples of ESA letters were also presented to me at the hearing. The employer presented one. I do not know the identity of its recipient. The bargaining agent presented the other one as part of its evidence. Mr. Gervais was the only witness who received an ESA recovery letter.

[292] Those two examples are insufficient evidence for me to comment and make observations on the ESA recovery letters at the policy level. For that reason, the following observations will focus exclusively on the Phoenix pay system overpayment recovery letters.

[293] The bargaining agent had the burden of proof. However, to address its allegations that the letters misled the employees or did not provide clear and understandable information to them so they could understand what was being asked of them and to have confidence that the amounts claimed were accurate, the employer could have presented more examples of letters. It presented very few.

[294] Disregarding the ESA letters and the recovery letters that Mr. Swenson and Mr. Lebeau received in 2023, my observations on reading the letters that were presented to me are as follows.

[295] The recovery letters presented to me at the hearing lack information important to making an informed decision.

[296] All the letters presented to me at the hearing asked the affected employee to acknowledge an overpayment. None explained what constituted acknowledging one. Apart from a letter dated October 14, 2021, which the employer presented to me at the hearing, none addressed the legal effect that such an acknowledgement can have; namely, acknowledging an overpayment can have the effect of restarting the limitation period, which extends the employer's time to recover the overpayment.

[297] The letters presented to me did not explicitly state that the overpayments referred to in them could have been statute-barred and that the employee might have no legal obligation to reimburse the overpayment, even if the letters were about overpayments made six years earlier or about that long ago. Only the letter dated October 14, 2021, mentioned earlier, alluded to the limitation period concept.

[298] That letter, which is the exception to the rule, includes a brief explanation that acknowledging an overpayment has the effect of restarting the limitation period. It is

the only letter sent to an employee that was presented to me that references the *Crown Liability and Proceedings Act* and the limitation principle.

[299] As I noted earlier, at the hearing, the employer argued that it would make no sense for it to include a statement in the recovery letters that indicates that the overpayment could become statute-barred, as it must take steps to recover Crown debts when possible. According to it, a statute-barred debt is still a debt that it must try to recover, if possible.

[300] However, it presented me with a letter that contradicts that argument and that refers to both the *Crown Liability and Proceedings Act* and the legal effect that acknowledging an overpayment can have.

[301] I accept that the employer may take measures to recover Crown debts and that the *Directive* states that it must make efforts to recover them when possible. For the purposes of my analysis, I also accept that that duty may include taking steps to voluntarily obtain a reimbursement of a statute-barred debt. However, I find it impossible to accept its argument that it would be unreasonable for it to include important information in the recovery letters, to allow for an informed decision.

[302] At some point, the employer likely realized that its communications about the overpayments were or were about to become statute-barred and were problematic. The evidence presented to me at the hearing indicates that in December 2022, it published a document entitled, *Guidance on Statute-Barred Overpayments* that among other things, stated that the concept of acknowledging overpayments should be removed from the letters sent before the limitation period expired and that in such circumstances, the letters should request a voluntary reimbursement of the overpayment, not the recovery of the amounts in question.

[303] In addition to omitting important information about the principle of a limitation period and the consequences that arise from it, the letters also leave much to be desired in terms of the clarity of the information that they provide. The following comments on the clarity of the information pertain to both the letters and their attachments. Together, they form a whole.

[304] There is a significant gap between the description of the recovery process in the 2021 Bulletin and Mr. Gatto's testimony on it and the implementation of the process, namely, the recovery letters that were presented to me at the hearing.

[305] Contrary to what the 2021 Bulletin indicates, the letters do not truly detail the overpayments. Most of the letters presented to me provide some information about the overpayments, but they do not do it in a clear, easy-to-understand, and sufficiently precise manner to allow an employee to understand the consequences of the available choices and to be certain that there is indeed an overpayment to reimburse and that the amount claimed is accurate.

[306] First, Appendix A of the letters that both parties presented to me contained data that although described as cheque numbers and the dates on which the cheques were issued had nothing to do with cheques, as the term is commonly used and understood. It was information about Phoenix pay system transactions, specifically information that would likely make sense only to PC compensation advisors. Two witnesses, Mr. Lafontaine and Ms. Perreault, stated that the data was of no use to them. The information did not help better equip the affected employees to make an informed decision. It led to confusion.

[307] In addition, the letters presented three choices or three possible paths, but they did so in a way that suggested that all paths led to recovery.

[308] One option offered was to not respond to the letter within four weeks and to have the overpayment recovered during the next pay period, without any apparent reconciliation of the payroll file or flexibility as to how the recovery would be carried out. I have already decided the question of the merits of a recovery measure for an overpayment that is not based on certainty. I will not repeat myself.

[309] The second option is to acknowledge the overpayment amount stated in the letter and indicate when and how the employee wants to reimburse it.

[310] Almost all the letters presented to me indicate that to access the flexible repayment options aimed at ensuring that recovery will not impose additional financial difficulties and stress, the employee must acknowledge the overpayment by checking the appropriate box in Appendix B and complete a pay-action request on which the

employee selects, "[translation] Recovery of overpayment". The letter suggests that the payroll file will be reconciled before any recovery takes place.

[311] The last available option is to acknowledge the recovery letter but to dispute the overpayment's validity or amount by checking the box for that purpose in Appendix B. I find the description of this option particularly problematic and confusing. I will explain.

[312] If the overpayment's validity or amount is confirmed after the dispute, there is no indication in the letter that the employee who made that choice will have access to the flexible refund options. There is also no indication that the payroll file will be reconciled before the recovery occurs.

[313] Although the 2021 Bulletin indicates that a choice to dispute an overpayment's validity or amount leads to the PC reviewing the transaction and that details will be provided to the employee, many of the letters presented to me at the hearing, if not almost all of them, suggest that the employee has the onus of providing evidence to support the reason for disputing the overpayment. The letters indicate that a compensation advisor will contact the affected employee to answer their questions and to obtain from them, rather than provide to them, more information.

[314] It is also important to note that Appendix B contains a space in which the employee disputing the overpayment is asked to provide, or attach, supporting details. Although the evidence presented to me at the hearing indicates that it might not have been strictly necessary for employees to provide evidence to support their reason for disputing the overpayment, to trigger the PC's review of the overpayment, the letters give the impression that the employee had that onus. Several correctional officers who testified at the hearing stated that they felt that they were required to carry out their own verifications and prove that the overpayment being claimed from them was incorrect or invalid. Most verified their pay stubs, in the hope of confirming whether the overpayment being claimed was accurate. Mr. Lafontaine made his verifications using a table that he prepared to account for the overpayments that he received. One witness, Ms. Perreault, stated that she had retained an accountant's services.

[315] Another thing that could likely be confusing to employees who wish to dispute an overpayment is the suggestion in the recovery letter that they must return

Appendix B along with a pay-action request on which they checked the box, "[translation] Recovery of overpayment".

[316] Some of the bargaining agent's witnesses stated that they were confused by the requirement to complete a pay-action request when they disputed the overpayment's validity or amount. They saw it as an indication that the outcome of their challenge was predetermined and that somehow, a recovery would take place.

[317] That might not have been the employer's intended meaning or effect when it prepared its letter template. However, according to the evidence presented to me at the hearing, the portion of the letter that explains the steps to take to submit Appendix B to the employer creates that impression. The explanation does not distinguish whether the employee chose to acknowledge the overpayment in Appendix B or to dispute it.

[318] I have already described the lack of clarity in the information in the letters. I explained that whether intended or not, the letters could give the impression that the affected employee had the burden of proving that an overpayment was invalid or inaccurate. In the last section of my analysis, I also discussed the time that elapsed between the overpayments and the recovery letters being received, along with the scope and complexity of the Phoenix pay system's pay issues. Taking the different factors into account, I should add that it would have been preferable to provide a longer deadline for employees to respond to the letters.

C. An option to consider for the future

[319] Finally, I must address the employer's argument that a policy grievance is not an appropriate mechanism for addressing the issues that the bargaining agent identified in this case. According to the employer, filing and referring individual grievances to adjudication about the recovery measures would have been more appropriate.

[320] I disagree. It is well established that a policy grievance can serve as an effective mechanism through which parties can submit a dispute to the Board about applying or interpreting a collective agreement provision for a resolution on a policy basis (see, for example, *Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN v. Treasury Board (Correctional Service of Canada),* 2021 FPSLREB 22 at para. 96; and *PSAC 2008*, at paras. 64 to 68).

[321] As already indicated, nothing prevents filing an individual and a policy grievance on the same issue. The fact that an employee can refer an individual grievance to adjudication does not change the fact that a policy grievance can serve as an effective mechanism for resolving a dispute on a policy basis.

[322] As indicated earlier, many individual grievances have been referred to adjudication about the issues addressed in this decision. Most are in abeyance, pending this decision. During a case management conference, the bargaining agent indicated that it hoped that if the Board upheld its policy grievance, the parties could engage in discussions aimed at settling the individual grievances amicably. However, its considered approach can be lengthy and costly in terms of time and resources.

[323] In a situation like this one, in which a large number of correctional officers would be affected by a single employer measure, the bargaining agent should consider the principle of the economy of judicial (and quasi-judicial) resources and the efficiency that a collective grievance involving many individual cases can represent. When there are faster and more efficient mechanisms for resolving individual cases, all parties have an interest in prioritizing them.

[324] The parties are strongly encouraged to use the Board's Mediation and Dispute Resolution Services, to help them resolve the individual grievances currently in abeyance before the Board. I hope that the reasons set out in this decision will allow them to quickly and effectively resolve the dispute that gave rise to those individual grievances.

VI. Remedy and conclusion

[325] The bargaining agent's grievance is allowed in part.

[326] I conclude that the employer exercised its management rights in a manner inconsistent with the collective agreement when it adopted and implemented a recovery process that allows it to take steps to recover overpayments and ESAs without making a prior verification to confirm that indeed an amount is to be recovered and that the amount is accurate. The recovery process is not consistent with clause 49.02 of the collective agreement. I will return to the corrective measure that I believe is appropriate.

[327] At the hearing, the bargaining agent asked that I issue declarations and orders, including a declaration that the employer's recovery actions during the period that the grievance covers and described in this decision were "[translation] abusive" and that they violated the collective agreement. It asked that I order the employer to stop sending recovery letters to employees before their payroll files are reconciled. It also asked that I order the employer to cease any efforts to recover statute-barred debts and to include in its recovery letters all the details of the amounts owed and the PC's calculations, to allow the employees to make informed decisions.

[328] Since I have concluded that the employer exercised its management rights in a manner inconsistent with the collective agreement, I have indicated that I need not decide the related issues; namely, whether the recovery letters that arose from implementing the recovery process were "[translation] unreasonable, misleading, and deceptive" or even to decide whether the employer violated the collective agreement by attempting to recover statute-barred overpayments and ESAs. Since the grievance is not upheld on those grounds, no corrective measures can be awarded.

[329] Some corrective measures that the bargaining agent seeks, as they were presented to me at the hearing, have become irrelevant because I did not follow an analytical framework focused on "[translation] violations" of the collective agreement and "[translation] abusive" actions.

[330] However, it appears from the bargaining agent's requests that it asks the Board to declare that the employer must change its practices when it seeks to recover overpayments and ESAs involving the Phoenix pay system. Due to the time that has passed since the contested decision was made and the evidence presented to me at the hearing that suggested that the PC has made changes in how it communicates with employees about overpayment recovery, the bargaining agent did not establish that such a declaration is necessary, under the circumstances. And, as noted earlier, the evidence presented to me about the ESA recovery process in 2022 was not exhaustive. The bargaining agent did not discharge its burden of demonstrating the need for such a declaration about the CSC's ESA recovery practices.

[331] Under s. 228(2) of the *Act*, after reviewing the grievance, the Board resolves it by the order that it deems appropriate. As applicable, s. 232 sets out the scope of the

Board's decision when a policy grievance is about an issue that was or that could have been the subject of an individual or a group grievance.

[332] Section 232 of the *Act* states that in a decision on a policy grievance about an issue that was or that could have been the subject of an individual grievance, the Board can provide only the accurate interpretation or application of the collective agreement, conclude that the collective agreement was contravened, and require that the employer interpret or apply it in the manner that the Board specifies.

[333] In the circumstances of this case, in my view, an order stating that the employer acted in a manner inconsistent with the collective agreement constitutes an appropriate and effective remedy. Such an order, accompanied by the findings and observations made in this decision, constitutes a complete and appropriate response to the parties' dispute.

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

(The Order appears on the next page)

VII. Order

[335] The policy grievance is allowed in part.

[336] Insofar as the recovery process involves taking steps to recover Phoenix pay system overpayments and emergency salary advances without a prior verification to confirm that there is indeed an amount to be recovered and that the amount is accurate, the process is inconsistent with clause 49.02 of the collective agreement and the principle of accurate pay.

November 19, 2025.

FPSLREB Translation

Amélie Lavictoire,
a panel of the Federal Public Sector
Labour Relations and Employment Board