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Citation: 2025 FPSLREB 148

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

ANNE MICHELE MCCORMICK

Grievor

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

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

In the matter of an individual grievance referred to adjudication

Before: Guy Giguère, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Pénélope Enault, Charlie Arsenault-Jacques, counsel

For the Employer: Alexandre Toso, counsel

Heard by videoconference,
January 10 to 12, October 28 to 31, and November 14, 2024.

REASONS FOR DECISION

Introduction

[1] Despite challenging labour relations in the past, the parties were able to reach an agreement after the Federal Public Sector Labour Relations and Employment Board ("the Board") rendered a decision on a collective agreement issue affecting employees injured at work. Unfortunately, an error was made drafting the template ("Annex A") for the individual agreements. That error led to a significant overpayment to the grievor in this case, which reignited the parties' tensions and resulted in the employer attempting to recover the overpayment and this grievance being filed.

[2] On April 21, 2021, Anne Michele McCormick ("the grievor") files a grievance after receiving a letter from Nick Fabiano, Assistant Commissioner of Human Resources of the Correctional Service of Canada (CSC). In the letter, the CSC advises that it intends to recover a substantial amount that was paid to her after a settlement of a case of injury-on-duty leave (IODL).

[3] The grievance proceeds to the third level without a response from the CSC. On September 15, 2021, the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN ("the bargaining agent") refers it to the Board for adjudication.

[4] At the argument stage of the hearing the CSC submitted for the first time that the Board lacked jurisdiction to hear it under s. 209(1)(a) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"). The grievor replied that the subject matter of the grievance concerns pay, which is a matter that falls squarely within the Board's jurisdiction. She argued that the Board has implicit jurisdiction to enforce a settlement.

[5] The CSC pleaded that the grievor and bargaining agent acted in bad faith as they knew that there was an error in the grievor's Annex A. Therefore, the grievor and bargaining agent were precluded from relying on promissory estoppel. The CSC also argued that the Board has jurisdiction to apply the equitable remedy of rectification, which should be done to rectify the error in Annex A.

[6] The grievor responded that she and the bargaining agent were unaware of the error in her Annex A. The grievor claimed that her Annex A and its amended version

("Amended Annex A") are binding agreements that cannot be modified. She argued that promissory estoppel applies, as she relied on her Annex A to her detriment.

[7] As explained in this decision, I find that the Board has jurisdiction to hear this grievance under the *Act*.

[8] This could have been argued by CSC as a simple overpayment case where the Receiver General of Canada has the authority to recover any overpayments from Annex A. Therefore the issues of rectification and enforcement of the Annex A as well the Amended Annex A become irrelevant. As the grievor is not disputing that there was an overpayment, the remaining matter of promissory estoppel has to be determined by the Board.

[9] However, I have to determine the key issues as argued by the parties. I conclude from the preponderance of evidence that the grievor and bargaining agent were unaware of the error in her Annex A and that they acted in good faith.

[10] I find that the grievor's Annex A constituted a binding and final agreement, while her Amended Annex A did not. I conclude that the equitable remedy of rectification should be applied to correct the drafting error in her Annex A. Finally, I find that the doctrine of promissory estoppel applies, as the grievor relied on the Annex A to her detriment. The equitable outcome in this case is that she be only required to reimburse the amount of $20 000.

Context

[11] In 1987, the grievor begins working for the CSC as a correctional officer (CX) classified at the CX-1 group and level at the CSC's Grande Cache Institution ("the Institution") in Grande Cache, Alberta. In 1989, she is promoted to a position at the CX-2 group and level and works full-time.

[12] On June 26, 2006, the CSC and the bargaining agent conclude the *Global Agreement*. In November 2006, the CSC issues a bulletin ("bulletin 2006-05") to clarify the terms of the *Global Agreement* pertaining to IODL. The bulletin explains that effective June 26, 2006, the 130-day guideline to terminate IODL no longer applies to CXs injured at work. Under the *Global Agreement*, those CXs are entitled to IODL with their full normal pay for as long as the relevant workers' compensation authority considers them unable to work, but they are expected to return eventually.

[13] On May 13, 2013, the grievor suffers a serious workplace accident and subsequently goes on IODL.

[14] In October 2014, the CSC issues another bulletin ("bulletin 2014-04"), limiting IODL pay to 130 days. After that period expires, affected employees are to receive direct compensation from their provincial workers' compensation board (WCB). Those benefits correspond to a percentage of the maximum insurable earnings, which varies by province. In Alberta, it is 90%.

[15] On October 29, 2014, the bargaining agent makes an unfair-labour-practice complaint against the employer for violating the statutory freeze provision, s. 107 of the *Act*, which prohibits making changes to terms and conditions of employment after notice to bargain has been served.

[16] After she makes unsuccessful attempts to go back to work in her CX-2 position, in December 2014, the grievor begins working as a librarian at the EC-01 group and level at 15 hours per week. On December 17, 2014, the Alberta WCB confirms her temporary total disability in her CX-2 position. It starts issuing her wage-loss benefits for the hours that she would have worked as a CX-2, reduced by the hours she works as a librarian at the institution.

[17] On January 20, 2015, the bargaining agent also refers a policy grievance to adjudication, alleging that bulletin 2014-04 breaches the collective agreement by unilaterally limiting IODL pay to 130 days.

[18] On July 10, 2017, the Board issues its decision on the complaint and the policy grievance in *Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN v. Treasury Board (Correctional Service of Canada)*, 2017 FPSLREB 6 ("the 2017 IODL Board decision"). The Board finds that the complaint is substantiated, concluding that bulletin 2014-04 unlawfully altered terms and conditions of employment after notice to bargain was given, contrary to s. 107 of the *Act*. However, it dismisses the policy grievance for lack of jurisdiction, when it finds that the *Global Agreement* is not part of the collective agreement.

[19] The Board declares in its decision that the respondent must reinstate bulletin 2006-05 and deal accordingly with affected employees until a new collective agreement

is signed. After that, the CSC and the bargaining agent enter negotiations to implement the 2017 IODL Board decision.

[20] On December 12, 2017, a few months after the 2017 IODL Board decision, the CSC's IODL payments are restored, and the grievor stops receiving payments from the Alberta WCB.

[21] On May 23, 2019, the parties conclude a framework memorandum of understanding ("MOU") by which approximately 300 CSC employees affected by the Board's decision are retroactively reinstated to IODL pay. The CSC agrees to pay each affected employee damages as a taxable lump sum representing the difference between the amount that they would have received under IODL and the WCB benefits that they received. The CSC also agrees to credit sick leave, annual leave, and lieu hours that would have accrued had each employee remained on IODL. The MOU applies to all affected employees, regardless of whether they filed a grievance.

[22] The parties draft the Annex A template as part of the MOU, which is for individual settlements and outlines the payments and leave credits for each affected employee. Corinne Blanchette, an advisor for the bargaining agent, is actively involved in drafting it, along with John Kearny, Director, Human Resources Modernization and Compensation, CSC.

[23] Under the MOU, the bargaining agent first provides the relevant information for each affected employee. This includes the benefits received from the WCB, the amount paid for medical premiums for affected employees in British Columbia, the amount paid by Sun Life-Industrial Alliance, and a completed *Direct Deposit Request Form*.

[24] The CSC then calculates, for each affected employee in their Annex A, the difference between what they would have received under IODL and the WCB benefits that they received. The CSC also calculates all sick leave, annual leave, and lieu hours that would have been earned had the employee remained on IODL In case of disagreement regarding individual entitlements in the Annex A, the parties agreed at paragraph 12 of the MOU to submit it to the Board mediation-arbitration process.

[25] The calculations are complex and require adjustments for salaries, union dues, CX allowances, and accrued sick and annual leave. Unfortunately, the CSC cannot

count on much assistance from the federal government's Pay Centre as it is focused on the transition to the Phoenix pay system ("Phoenix").

[26] Mr. Kearny is tasked with finding alternative options for implementing the settlement. He proposes developing an Excel spreadsheet to make the individual calculations. That option is retained for the calculations as the CSC's best estimate of the amount and the leave credits that each affected employee would have received on IODL. The CSC shares the Excel spreadsheet estimate formula with the bargaining agent.

[27] After the MOU is signed, the CSC and the bargaining agent begin completing the individual settlements under Annex A. On March 22, 2019, Ms. Blanchette sends to the CSC the wage-loss benefits that the grievor received from the Alberta WCB.

[28] On June 12, 2019, Ms. Blanchette writes to the CSC about an affected Ontario employee ("the Ontario employee"), requesting that he be included in the MOU, as his name does not appear in the settlement. He had grieved the CSC's decision not to continue granting him IODL, as he was injured and returned to work in 2006 with physical restrictions and reduced hours. Subsequently, he received IODL for the days that he missed. When the IODL stopped in 2014, the WCB paid him benefits for the days that he missed.

[29] On July 15, 2019, the CSC sends Ms. Blanchette a list of employees, including the grievor, whose information is considered complete. The CSC indicates that this first batch of files has been sent to its remuneration branch, to complete their Annex As. The CSC further notes that the Annex A for each of those employees will be provided for their signatures, and that of the bargaining agent, by August 7, 2019.

[30] At the end of July 2019, Ms. Blanchette signals to the CSC that errors might have occurred in the leave calculations for the first batch of Annex As.

[31] On July 30, 2019, the CSC sends the grievor's Annex A. It indicates that for the three years between 2014 to 2017, she would have been paid a total of $242 090 on IODL and that she received $131 135.51 in wage-loss benefits from the WCB. On August 7, 2019, the grievor signs it. Ms. Blanchette signs it and sends it back on August 12, 2019.

[32] On July 30, 2019, Ms. Blanchette writes to the CSC, stating that the annual leave calculation on the grievor's Annex A appears incorrect as it indicates 0 hours while it should be at least 360 hours. She asks for an explanation and requests that the calculation be adjusted if necessary.

[33] On July 31, 2019, Ms. Blanchette asks the CSC for the calculation sheets. She expresses concerns about the annual leave calculations on the individual Annex As. On August 15, she requests that Mr. Kearny share the calculation sheets, as several members are concerned about the accuracy of the calculations in their Annex As.

[34] On August 15, 2019, the CSC sends Ms. Blanchette the grievor's Annex A, signed by all the parties.

[35] On August 19, 2019, Mr. Kearny responds to Ms. Blanchette, stating that the CSC shared some information with the bargaining agent about how the estimated adjustments for vacation accruals were calculated. He further explains as follows:

> …
>
> *… we are proposing a settlement amount based on the spreadsheet estimate formula shared with the union and we assumed that if the employees believed it was not a sufficient settlement offer in comparison to their claim records they would provide the amount of adjustment they would be seeking ….*
>
> …

[36] On September 13, 2019, the CSC confirms that the payment to the grievor was issued. She receives $91 268.75 a few days later. She repays about $71 000 of her loans. The rest is used to financially help her daughter, as gifts to her family, and to make some basement repairs.

[37] On September 13, 2019, the CSC sends the Annex A for the Ontario employee. It shows that he received approximately $160 000 while on IODL and that the WCB paid him about $21 000 for over two years, from November 2015 to December 2017. His Annex A shows that after tax, the Ontario employee was to receive a lump sum of over $106 000.

[38] On September 16, 2019, Ms. Blanchette asks for a breakdown of his annual leave calculation, as the Ontario employee cannot confirm that the number is accurate. On September 18, 2019, she sends the Annex A, which the Ontario employee signed. Still,

she specifies that a breakdown of the annual leave calculation is required. She concludes by indicating that she hopes that it can proceed for payment and be adjusted later.

[39] Between June 2019 and September 2019, the first batch of Annexes A are completed.

[40] On September 23, 2019, the CSC and the bargaining agent meet to discuss the errors in the leave calculations that Ms. Blanchette identified in the first batch of files. The parties agree to suspend preparing and implementing the second batch of Annexes A for a few weeks, to discuss revisions to the calculations.

[41] On October 30, 2019, Ms. Blanchette sends the CSC the Ontario employee's signed Annex A. Sophie Boulanger, Acting Director, Workplace Wellness and Employee Wellbeing, verifies his Annex A for approval so that Mr. Fabiano can sign it. She observes that it does not make sense that the Ontario employee received only $21 000 in wage-loss benefits from the WCB for over two years, from November 2015 to December 2017.

[42] On October 31, 2019, Ms. Boulanger further notes that in an earlier email, the bargaining agent indicated that the Ontario employee was working reduced hours with the CSC and that the WCB made up the difference. She questions whether the amount that the Ontario employee earned was considered when his Annex A was calculated.

[43] On November 5, 2019, the CSC sends Ms. Blanchette the grievor's Amended Annex A, showing a total reimbursement of $96 271.34, with a balance of $5002.59 to be reimbursed.

[44] On November 6, 2019, Ms. Boulanger writes to Monik Amyotte, Corporate Compensation Manager, to verify if the Ontario employee's earnings while he worked reduced hours were taken into account when his salary under IODL was calculated. She also asks the same thing for another affected CX from Quebec, who she notes received only $19 000 from the WCB for nearly 2.5 years, from July 2015 to December 2017.

[45] After the September 23, 2019, meeting, the CSC produces a chart entitled, "IODL Files Revised- Additional Amount to Be Reimbursed or Overpaid". It identifies 18 files in the first batch of Annex As in which calculation errors were found. It details the amount that was initially reimbursed, along with the credited annual and sick leave. It

also indicates the amended amount that was reimbursed, along with the credited amended annual and sick leave. Finally, it shows the balance to be reimbursed or the amount that was overpaid. The chart shows a balance to be reimbursed to the grievor.

[46] The CSC prepares the Amended Annex As for the corrected first batch of files and sends them to the bargaining agent for signature. However, the bargaining agent refuses to sign any Amended Annex A showing an overpayment or credited excess annual or sick leave.

[47] On November 26, 2019, Ms. Boulanger discusses with Ms. Blanchette the fact that the Ontario employee worked reduced hours. She informs Ms. Blanchette that the CSC will confirm the amount he earned and whether it was taken into account when his Annex A was calculated. Ms. Blanchette responds that the 80-day deadline for payment is December 7, 2019, and that she is considering going back to the Board because the MOU was not respected.

[48] On December 12, 2019, Ms. Boulanger proposes to Ms. Blanchette a change to the procedure if she detects an error in an Annex A such as missing salary or leave. Instead of having the member sign it and Ms.Blanchette ask for a verification, she would write an email, and the CSC would verify and respond within 48 hours.

[49] On February 21, 2020, Constantina Gountoussoudis, National Manager Workplace Wellness and Employee Wellbeing, writes to Ms. Blanchette about an error identified in the Ontario employee's Annex A, which she sent in October 2019. The Annex A did not take into account the Ontario employee's salary earnings on reduced hours. The error occurred before Mr. Fabiano's approval was obtained. As it is a significant amount, an Amended Annex A is attached for signature.

[50] On March 11, 2020, Ms. Blanchette sends the CSC the grievor's signed Amended Annex A. She notes that the deadline to pay the balance is May 30, 2020. Ms. Gountoussoudis verifies with Marie-Ève Lanois, Acting Compensation and Benefits Manager, whether the CSC paid the grievor some salary between December 2014 and December 2017. Ms. Lanois replies that the grievor received about $75 000 of salary on reduced hours for that period. Ms. Gountoussoudis notes that that amount was not subtracted when the grievor's Amended Annex A was calculated in September 2019 and that an overpayment occurred.

[51] On March 19, 2020, Ms. Gountoussoudis writes to Ms. Blanchette and states that some of the Annex As discussed show underpayments and some show overpayments. She provides a list of the files and indicates that the final calculations may vary, as the amounts are rounded and are gross values. She indicates that if an error is noted in a received and signed Annex A, it will not be approved for payment, to allow time to make the correction. Finally, she notes an overpayment of $75 000 to the grievor.

[52] On April 15, 2020, Ms. Blanchette asks Ms. Gountoussoudis about the new line added to the Annex A form, which states, “Actual salary and CX allowance received during the period”. She wants to know if the salary is an estimate or the actual amount paid.

[53] Between December 2020 and January 2021, the CSC offers a position of EC-01 to the complainant. She accepts the position even if it is a demotion as she had not been successful in the past in her attempts to return back to her previous position.

[54] On February 23, 2021, Meghan Provost, Director, Workplace Wellness and Employee Wellbeing, writes to François Énault, a bargaining agent representative, and Ms. Blanchette. She informs them that the CSC is ready to send a letter to the grievor to inform her of the overpayment. She asks them to confirm whether they have discussed it with the grievor.

[55] Mr. Énault replies that Ms. McCormick will not repay it unless the Board orders her to. Ms. Blanchette responds that earlier, it was premature to worry the grievor, as it was uncertain whether the CSC would pursue recuperating the overpayment. However, she would inform her in the coming days.

[56] On March 5, 2021, Mr. Fabiano writes to the grievor. He informs her that the lump sum that she received as the settlement for her IODL pay contained an overpayment. He explains that the salary that she received as an employee was overlooked when the amount paid to her for the IODL was calculated and that it resulted in an overpayment of $42 090.05, which the CSC would like to recover, as soon as possible. He invites the grievor to contact the CSC to make mutually suitable arrangements for the repayment and points out that options are available to mitigate any potential financial hardship.

[57] On April 20, 2021, the grievor files her grievance. She explains that in Mr. Fabiano March 23, 2021 letter, the employer seeks to recover a substantial amount paid to her from the IODL settlement without providing background information. She grieves the employer's claim to recover an overpayment is unfunded and it's failure to implement the amended Annex A.

Analysis

[58] Both parties agree that the case law has recognized the Board's broad jurisdiction to enforce settlement agreements. However, the CSC raises as a preliminary objection, several arguments challenging the Board's jurisdiction to hear this grievance. The grievor argues to the contrary. It is therefore useful to review first the interpretation principles applicable to the *Act*, the caselaw interpretation of section 209 of the *Act*, and then answer the objections raised by the CSC.

Interpretation principles applicable to the *Act*

[59] The following three principles guides us in the interpretation of the *Act* and the Board jurisdiction to enforce settlement agreements.

[60] First, the *Act*'s preamble guides in its interpretation and supports a broad jurisdiction for the Board. It defines its legislative objective by underscoring the importance of dispute resolution and the Board's collaborative role in achieving effective labour relations. See section 13 of the *Interpretation Act*, R.S.C., 1985, c. I-21. The following excerpts are particularly relevant:

…	[…]
*effective labour-management relations represent a cornerstone of good human resource management and that **collaborative efforts between the parties, through communication and sustained dialogue**, improve the ability of the public service to serve and protect the public interest;*	*que des relations patronales-syndicales fructueuses sont à la base d'une saine gestion des ressources humaines, et que la collaboration, grâce à des communications et à un dialogue soutenu, accroît les capacités de la fonction publique de bien servir et de bien protéger l'intérêt public;*
…	[…]
*the Government of Canada is committed to **fair, credible and efficient resolution of matters***	*que le gouvernement du Canada s'engage à résoudre de façon juste,*

arising in respect of terms and conditions of employment *…*	*crédible et efficace les problèmes liés aux conditions d'emploi;*
…	[…]

[Emphasis added]

[61] Second, it is trite law that the grievance procedure provided in the *Act* constitutes a complete code to the exclusion of any other common law remedy. The Federal Court of Appeal upheld the principle of exclusive recourse in labour relations matters pursuant to the Supreme Court decision in *Weber v. Ontario Hydro* [1995] 2 SCR 929 in the decisions of *Johnson-Paquette v. Canada,* [2000] 253 NR 305, [2000] ACF no 441 paragraph 10; *PSAC v Canada (Treasury Board)*, 2001 CFPI 568; *PSAC v Canada (Treasury Board)*, 2002 FCA 239.

[62] Third, it is also well established that the Board, as an administrative tribunal, must interpret its enabling statutes as including, in addition to the powers expressly conferred, all powers that are necessary to achieve its legislative objective. Its jurisdiction on labour relations comes from two sources: an express grant in the *Act* (express powers); and the common law through the application of the doctrine of implied jurisdiction (implied powers). See *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4; *R. v. Cunningham,* 2010 SCC 10; *R. v. 974649 Ontario Inc.* (2001 SCC 81).

[63] The interpretation principle of implied jurisdiction has been codified by the legislator and can be found at s.12 of the *Act.* To determine whether the matter falls within the Board's implied jurisdiction, the following essential character test is used: taking into account the factual context, is the essential character of the dispute expressly or implicitly within the scope of *Act*?

[64] To answer this question, the *Act* as the Board's enabling statute must be interpreted broadly. See *Weber* and *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners* [2000]1 SCR 360.

Caselaw interpretation of section 209 of the *Act*

[65] The parties agreed in the MOA to refer to the Board mediation-arbitration process any disagreement regarding individual entitlements in the Annex A. However, the Board cannot assume authority by the parties' agreement, there must be a

statutory basis. Specifically, a grievance must relate to the interpretation or application of a collective agreement or an arbitral award under s. 209(1)(a) of the *Act*, which reads as follows:

209 (1) *An employee … may refer to adjudication an individual grievance … that has not been dealt with to the employee's satisfaction if the grievance is related to*	***209 (1)*** *Après l'avoir porté jusqu'au dernier palier de la procédure applicable sans avoir obtenu satisfaction, le fonctionnaire,* […] *peut renvoyer à l'arbitrage tout grief individuel portant sur :*
(a) *the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award ….*	***a)*** *soit l'interprétation ou l'application, à son égard, de toute disposition d'une convention collective ou d'une décision arbitrale;*

[66] In *Amos v. Deputy Head (Department of Public Works and Government Services)*, 2008 PSLRB 74, adjudicator Butler applied the three mentioned interpretation principles to determine if the enforcement of a settlement agreement was within the Board jurisdiction. He noted that the preamble emphasizes voluntary settlement by the parties through mediation at paras. 63 to 68. He pointed out that the legislator at s. 236 incorporated in the *Act*, the principle that the grievance procedure was a complete and excusive remedy at para. 69 to 89.

[67] The adjudicator also applied the essential character test to determine whether the enforcement of a mediated agreement is within the authority of the Board. He concluded that it did as disputes over a settlement agreement are linked to the original grievance, as long as the original grievance is itself a matter that is adjudicable. See *Amos* at paras 99 to 116.

[68] In *Amos v. Canada (Attorney General)*, 2011 FCA 38, the Federal Court of Appeal confirmed the *Amos* decision and recognized that the Board had the implied power to enforce a mediation agreement even though this matter is not listed as arbitrable in sections 208 and 209 of the *Act*. See at paras. 66 to 72.

[69] Following the *Amos* decisions the Board's jurisdiction under s. 209(1)(a) has been interpreted broadly in the case law. The caselaw recognizes that the Board has an implied jurisdiction to enforce the terms of a settlement agreement if doing so fulfils

the *Act*'s legislative purpose. See *Kennedy v. Deputy Head (Department of Citizenship and Immigration)*, 2023 FPSLREB 118.

[70] In *Kennedy*, the Board highlighted the effect of s. 223(2.1) of the *Act* which came into force on November 1, 2014 (see paras. 40 to 52). As a result of this amendment, a Board member adjudicating a grievance now exercises all the powers of the Board for this matter. Prior to this amendment, the member hearing a grievance only exercised the more limited powers conferred to an adjudicator by the *Act*. This change aligns with sections 37(1) and 39 of the *Federal Public Sector Labour Relations and Employment Board Act*, which provide that matters which the Board is seized are heard by a panel of one Board member who exercises all of the Board's powers in relation to the assigned matter.

[71] This also confirms that a Board member adjudicating a grievance can also apply s. 12 and interpret the Board's powers that are implied to the attainment of the objects of the *Act*.

[72] **Question 1a**): Does the Board have jurisdiction under s. 209 to hear this grievance since the grievor did not initially grieve the change to the IODL policy?

[73] The CSC argues that the Board does not have jurisdiction because the grievor did not file a grievance after the CSC changed its policy in 2014 to reinstate the 130-day limit to IODL. In support, the CSC relies on *Wray v. Treasury Board (Department of Transport)*, 2012 PSLRB 64 at paras. 23 to 30; and *Cossette v. Treasury Board (Department of Transport)*, 2013 PSLRB 32 at paras. 28 and 30.

[74] I reviewed the *Wray* and *Cossette* decisions and conclude that they do not apply to this case. Contrary to them, the grievor was affected by the CSC's policy change in 2014 and could have initially filed a grievance under s. 209(1)(a) of the *Act*.

[75] Since the *Amos* decisions, the Board's jurisdiction has been interpreted as broader and extends to duty-of-fair-representation and unfair-labour-practice complaints, as the nature of such disputes fall under the *Act*. The Board's jurisdiction applies even if the grievance has been withdrawn or the grievor is no longer an employee. See *Fillet v. Public Service Alliance of Canada*, 2013 PSLRB 43; *Tench v. Treasury Board (Department of National Defence)*, 2013 PSLRB 124; and *Kennedy*.

[76] Limiting the Board's jurisdiction on the grievor's settlement, as the CSC claimed, would go against the legislative purpose of the *Act*, notably, the fair and efficient resolution of the issues raised in the grievance. Under s. 12 and s. 209 of the *Act*, I find that the Board's power to enforce this settlement agreement is consistent with the fair and efficient resolution of this grievance.

[77] The MOU and the individual Annex As did not follow a decision on employees' individual grievances but instead the bargaining agent's unfair-labour-practice complaint. In the 2017 IODL Board decision, all affected employees were covered by the Board's order, whether or not they had grieved. Therefore, it would not make sense that recourse to the Board be limited to only those who grieved the IODL policy change in 2014.

[78] The grievor stated in her grievance: "… *the Correctional Service of Canada seeks to recover a substantial amount of the lump sum payment paid to me more than eighteen (18) months ago without providing any background information. I grieve that the employer's claim is unfounded in facts and law …*". It is clear from the wording of the grievance itself that the grievor was contesting having the overpayment recovered.

[79] I conclude that the grievor not initially grieving the IODL policy change has no impact on the Board's jurisdiction. It is clear from caselaw that the Board has jurisdiction on overpayment grievances.

[80] **Question 1b)**: Does the issue raised by the grievance fall under the Board's jurisdiction?

[81] The CSC claims that the grievance is about an overpayment and the enforcement of a settlement, which do not fall under the terms of s. 209(1)(a) of the *Act*.

[82] The grievor submits that the Board has jurisdiction, as this grievance is about pay under clause 49.01 of the collective agreement and because the CSC is attempting to recover an overpayment. She also submits that the Board has jurisdiction to enforce the settlement terms.

[83] The grievor was included in the settlement and received a lump sum as a result of the 2017 IODL Board decision. In the 2017 IODL Board decision, the Board determined that the collective agreement continued to apply to all affected employees

during the statutory freeze, irrespective of whether they had grieved. As the Board stated at paragraph 125, "Until a new collective agreement is signed, the respondent must reinstate bulletin 2006-05 and **must deal accordingly with affected employees**" [emphasis added].

[84] In *Ménard v. Canada*, [1992] 3 F.C. 521 (C.A.), an error was made calculating the overtime rates for two nurses, which led to an overpayment. The employer in that case also argued that the adjudicator had no jurisdiction to consider the recovery of an overpayment, as it was not an interpretation or application of the relevant collective agreement. The Court dismissed that argument, as it determined that the recovery attempt led to the grievance, and there was a direct cause-and-effect relationship between the recovery and the collective agreement's application.

[85] The parties came to a settlement following the 2017 IODL Board decision. Had it not been for the error calculating the grievor's salary under the settlement, there would not have been an overpayment, and the CSC would never have tried to obtain a reimbursement. The CSC's attempt to recover the overpayment led to the grievance.

[86] The Board has implicit jurisdiction under the *Act* to broadly determine whether the terms of a settlement agreement resolving a grievance have been breached. Likewise, it can determine whether the terms of a settlement agreement reached after it made a decision on an unfair-labour-practice complaint have been respected. The Board has jurisdiction to enforce the settlement's terms because it has jurisdiction over the underlying dispute, the unfair-labour-practice complaint, and the implementation of the 2017 IODL Board decision.

[87] After the 2017 IODL Board decision, the parties reached a settlement without the Board's help. In the past, the Board has enforced a settlement agreement's terms when a mediator or an adjudicator had been involved. However, I do not find that involvement essential, if the underlying dispute falls within its jurisdiction. Requiring the Board's involvement in a mediation would unduly restrict its ability to fulfil the *Act*'s purposes. See *Kennedy*, at para. 59.

[88] The Board's role, as emphasized by the *Act*'s preamble, is to support the parties' collaborative efforts as well the fair, credible, and efficient resolution of matters and to promote mutual respect and harmonious labour-management relations between the parties.

[89] The parties came to a settlement agreement without the Board's assistance. Now that they have a dispute on its enforcement, I conclude that the Board's role is to resolve this matter, under s. 12 and 209 of the *Act*.

[90] The Board has jurisdiction to decide whether the grievor's Annex A, the individual settlement that was concluded as a result of the 2017 IODL Board decision, was final and binding on the parties, whether either party complied with it, and, if not, the appropriate order under the circumstances.

[91] Moreover, it is obvious from the language of the grievance itself, that this is an overpayment grievance where there are numerous decisions confirming the Board's jurisdiction. An employee has the undisputed right to grieve either pay issues or leave status. To allow the employer to deny access to the grievance process in response to its own administration of the collective agreement or its implementation of a Board decision would be inconsistent with the object and purpose of the Act.

[92] For all those reasons, I conclude that the Board has jurisdiction under the *Act* to hear this grievance.

[93] **Question 2a)**: Is the grievor's Annex A a final and binding agreement?

[94] All the parties signed the grievor's Annex A on August 14. Mr. Fabiano signed it for the employer. Given that fact, the employer proceeded to payment, as provided at paragraph 9 of the MOU, within 80 calendar days of receiving a signed Annex A. On September 13, 2019, the payment to the grievor was issued. She received $91 268.75 a few days later.

[95] I find that once all the parties signed it, the grievor's Annex A was a final and binding agreement. The employer issued the payment. Therefore, the terms of the agreement were respected.

[96] **Question 2b)** Is the Amended Annex A signed by the grievor and the bargaining agent but not the employer, a final and binding agreement**?**

[97] The grievor submits that her Amended Annex A that the CSC sent was an offer and that it became a binding and final agreement once she and the bargaining agent signed it. She argues that the employer's signature was not necessary to make it a binding and final agreement.

[98] The grievor submits that in the majority of its decisions, the Board has decided that once both parties reach a settlement agreement, it is binding and final. According to the grievor, a signed settlement agreement is not necessary to have a binding agreement. Once an agreement is struck, a party cannot change its mind, as doing so would taint labour relations. She relies on several decisions of the Board and its predecessors. See *Godbout v. Treasury Board (Office of the Co-ordinator, Status of Women)*, 2016 PSLREB 5; *Skandharajah v. Treasury Board (Employment and Immigration Canada*), 2000 PSSRB 114; and *Bergeron v. Treasury Board (Department of Fisheries and Oceans)*, 2021 FPSLREB 132.

[99] The decisions that the grievor cited involve agreements in principle reached during mediation and later, the grievors changed their minds and refused to withdraw their grievances or sign the mediation agreements.

[100] The facts of this grievance are quite different, as there was no mediation but an MOU concluded after the parties had discussions. They agreed under the MOU to a general settlement agreement that entailed preparing hundreds of Annex As for the affected employees. The Annex As were completed through an administrative process rather than a discussion between the parties.

[101] Under the MOU, the grievor's file was closed, and she was considered made whole when she received the payment and credited leave. As paragraph 14 of the MOU indicates, once the lump-sum payment and credited leave are confirmed, the bargaining agent would consider the affected employee whole and would withdraw any grievance, if applicable.

[102] However, after meeting on September 23, 2019, the CSC and PSAC agreed that the CSC was to review its calculations of the files that had been paid and closed under the MOU and to issue Amended Annex As. This was not contemplated by the MOU. When this agreement was made, the parties had no knowledge that some overpayments might have been made.

[103] On November 5, 2019, the CSC sent a letter to Ms. Blanchette and the grievor that contained the grievor's Amended Annex A. The letter indicated that the implementation section would be filled in once the grievor and the bargaining agent signed the Amended Annex A and that a copy signed by the employer would be sent back to them.

[104] After that, in late November 2019, when the CSC found that some overpayments had been made, the bargaining agent refused to sign the Amended Annex A whenever the affected employee had to reimburse sums paid out via their Annex A or credited leave. The bargaining agent considered that the new agreement was unilateral from the CSC and that it was not bound by any obligations under it.

[105] However, the bargaining agent had no objection to the changes if this meant that the employee would receive an increased amount. It agreed to sign out the Amended Annex A whenever it was beneficial to the employee.

[106] On March 19, 2020, the CSC confirmed to Ms. Blanchette that as discussed, when an error was noted in a signed Annex A, it would first be verified before being approved for payment.

[107] The bargaining agent did not express its opposition to that change of procedure, which would have avoided overpayments. Furthermore, if it considered that it had no obligation under the unilateral agreement, it was fair for the CSC to modify its implementation when an error was noted.

[108] Annex A required the signatures of the grievor and the bargaining agent representative before it could be signed by the employer's representative, Mr. Fabiano. Since the parties chose to structure the Annex A this way, that sequencing must have meaning. In labour arbitration, the interpretation of a written settlement follows the same principles as contract and statutory interpretation.

[109] The modern interpretation principles require that not only the words of a clause be considered in their usual and ordinary meaning, the context as a whole of the MOU must be considered, otherwise the ordinary meaning would conflict with other provisions or lead to an absurd result. See *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 SCR 601 at para 10, *Taticek v. Canada (Border Services Agency)*, 2014 FC 281 at para 57 to 59; *Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112 at para. 51; *Genest v. Treasury Board (Correctional Service of Canada),* 2021 FPSLREB 31 at para 51to 54.

[110] Federal government procedures require that once a payment is verified, the person with the delegated authority approve it before it is issued. A fair assumption is that the Annex As would de facto proceed accordingly since the employer was making

payments to employees. The employer would verify one last time the accuracy of the information before it made the payment, especially since it relied on a spreadsheet to calculate the employee's salary under IODL and did not have access to the Pay Centre's resources because of Phoenix implementation issues.

[111] Later, when errors were uncovered in the calculations, due diligence required Mr. Fabiano to have the amounts verified before he signed the Annex As.

[112] Moreover, the parties agreed that the amounts specified in the Annex A were subject to change. The evidence discloses that they were too much in flux to consider that the amounts set out in the Annex A were in fact final and binding.

[113] For all these reasons, I find that the Amended Annex A that the grievor and the bargaining agent signed is not a binding and final agreement.

[114] **Question 3)** Did the grievor and the bargaining agent act in bad faith?

[115] The CSC argues that the grievor and the bargaining agent acted in bad faith and therefore would not be allowed to invoke promissory estopel. It pleads that it would have been obvious to them that an error was made in calculating her salary on IODL, as it did not take into account that she continued to work on reduced hours.

[116] Both counsel agreed that the parties to an MOU have a duty to act in good faith. It includes a general duty of honesty when performing their obligations under the MOU. Both counsel referred to *Bhasin v. Hrynew*, 2014 SCC 71 at paras. 60 to 73.

[117] As the Supreme Court explained at paragraph 73 of *Bhasin*, "… there is a general duty of honesty in contractual performance. This means simply that parties must not lie or otherwise knowingly mislead each other about matters directly linked to the performance of the contract."

[118] The Supreme Court further explained as follows in *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45 at para. 91:

> *… whether or not a party has "knowingly misled" its counterparty is a highly fact-specific determination, and can include lies, half-truths, omissions, and even silence, depending on the circumstances. I stress that this list is not closed; it merely exemplifies that dishonesty or misleading conduct is not confined to direct lies.…*

[119] A party's general obligation to act in good faith in an MOU means that it must not lie or knowingly mislead the other party about the performance of its obligations under the MOU. The general obligation to act in good faith goes beyond not lying and includes failing to correct the other party's misapprehension.

[120] As agreed under the MOU, the bargaining agent had only to provide the amount of the WCB benefits that the employees received on the applicable dates. Once that information was received, the CSC calculated the difference between the salary that the employee would have received on IODL and the WCB benefits that they received. Its calculation was based on an Excel spreadsheet template, which produced an estimate of what the affected employee would have earned in salary and leave.

[121] The CSC did not share its calculations with the bargaining agent and the employees. It made no verifications with the Pay Centre when it prepared the first batch of Annex As.

[122] When Ms. Blanchette asked Mr. Kearny to share his calculations for the Annex As, he wrote back on August 19, 2019, as follows:

> …
>
> *Our assumption was that the reported settlement document provided was sufficient information for the employee to manage their damage claims assessment and identify any issues or concerns they may have with the offer. Provision of a detailed explanation for each estimated leave amount is work we did not anticipate to be necessary for the discussions flowing from the settlement offers as we believe the employees would have visibility on the damages they would be seeking to claim out of their grievance actions.…*

[123] It was only in November 2019, that the CSC first became aware that it had failed to account that some affected employees had returned to work on a gradual basis or with reduced hours. In the grievor's case, the CSC only realized it in March 2020 during its review of her Amended Annex A before Mr. Fabiano signed it.

[124] The grievor explained that when she first received the Annex A, she did not understand why she was to receive the money. She asked someone from the bargaining agent to confirm that it was correct. She had a bad experience in the past, when the Pay Centre clawed back her salary because of overpayments. She could not afford to

reimburse such a large amount and was in shock when she received the CSC's recovery letter. She has severe post-traumatic stress disorder, and the letter affected her entire mental well-being.

[125] In cross-examination, the grievor testified that she did not realize that the CSC had not considered the amount that she earned part-time as a librarian when it calculated her IODL salary in her Annex A. She relied on the amount that it calculated and did not discuss it with the CSC or the bargaining agent.

[126] In cross-examination, when questioned about her income between 2014 to 2017, the grievor indicated that she received a large sum in 2014 as compensation from the CSC after her work accident. Her testimony in general was that she had limited knowledge of her personal finances and that she relied on her accountant to prepare her income tax returns.

[127] Ms. Blanchette testified that she was unaware of an error in the calculation of the salary that the grievor received on IODL. She did not discuss with employees if they were on a gradual or partial return to work. It never was an issue before Ms. Boulanger found the error in November 2019.

[128] In fact, the bargaining agent's early concerns about the leave calculations led in part the CSC to review with its Corporate Compensation branch its calculations of the Annex As and Amended Annex As. Had it not been for those concerns, the CSC might not have found the error in the calculation of the grievor's IODL salary.

[129] I find no evidence that the grievor or the bargaining agent lied or misled the CSC on the Annex A calculations. There is no indication that they knew that the CSC made a mistake when it calculated the grievor's Annex A. Ms. Blanchette asked it to provide its calculation, which Mr. Kearny refused. Neither the grievor nor the bargaining agent had an obligation to verify the accuracy of the CSC's figures as under the agreement the responsibility for calculating amounts owed was given to the employer, for obvious reasons.

[130] As for the Amended Annex A, I find that the preponderant evidence does not establish bad faith of the grievor or the bargaining agent.

[131] The grievor explained that she signed the Amended Annex A when she received it from Ms. Blanchette. She believed it meant that she was entitled to this additional

amount and then waited for the deposit in her bank account. She did not receive it and was informed that the CSC had made an error in its calculations.

[132] Ms. Boulanger had informed Ms. Blanchette in late November that the Excel spreadsheet calculating the lump sum did not account for what employees earned while working reduced hours. She had prepared an Amended Annex A representing the corrected amount that was due to these employees.

[133] The bargaining agent took the position that the Annex A was a binding agreement even it was not signed by Mr. Fabiano. It refused to sign the Amended Annexes A for the employees whenever they were to be paid a smaller amount or had to reimburse sums or credited leave. The bargaining agent considered that the new agreement was unilateral from the CSC and that it was not bound by any obligations under it.

[134] Ms. Blanchette testified that when she signed the grievor's Amended Annex A and sent it for payment on March 11, 2020, she knew that the grievor had worked reduced hours. She explained that she signed it because she did not know what the grievor's overpayment amount would be.

[135] The bargaining agent took the position that once the affected employee and the bargaining agent signed the Annex As and Amended Annex As, the settlements were binding and final. Even if a calculation error occurred, the lump-sum amounts were due, and leave had to be credited.

[136] The signing by Ms. Blanchette of the grievor's Amended Annex A, on the bargaining agent's behalf, was in conformity of this position. While this position was disputed by the CSC, it was expressed repeatedly by the bargaining agent from the start. There was no subterfuge in taking this position, lying or misleading of the CSC. The CSC, rightfully, did not accept this position and the amount specified in the Amended Annex A was not paid out to the grievor.

[137] For all these reasons, I cannot find that taking this position demonstrated that the bargaining agent acted in bad faith by signing the Amended Annex A.

[138] Therefore, I find that the bargaining agent acted in good faith with respect to the grievor's Annex A and Amended Annex A.

[139] **Question 4**: Does the equitable remedy of rectification apply to the overpayment to the grievor?

[140] The CSC argues that the parties' intention was that an affected employee would receive a lump sum as damages equivalent to their salary under IODL minus WCB benefits. It was not the intention that the employee would receive more. The CSC contends that rectification applies to correct this situation.

[141] The grievor claims that rectification does not apply, as it was not the parties' mutual error. The error was solely the CSC, as Mr. Kearny did not share his calculations for the salary and leave under IODL.

[142] I agree with the CSC that the Board has jurisdiction to rectify this error. Under the circumstances, an equitable remedy of rectification applies, as the Supreme Court of Canada explained as follows in *Canada (Attorney General) v. Fairmont Hotels Inc.*, 2016 SCC 56 at para. 14:

> *… when both parties subscribe to an instrument under a* common *mistake that it accurately records the terms of their antecedent agreement. In such a case, an order for rectification is predicated upon the applicant showing that the parties had reached a prior agreement whose terms are definite and ascertainable; that the agreement was still effective when the instrument was executed; that the instrument fails to record accurately that prior agreement; and that, if rectified as proposed, the instrument would carry out the agreement ….*

[143] The evidence demonstrates that both parties made a mistake when they drafted Annex A as they did not include a line for the salary that employees earned while on IODL. As Mr. Kearny and Ms. Blanchette explained, the parties did not consider whether some employees might have returned partially to work. It was not an issue before Ms. Boulanger found the error in November 2019. The parties did not think of that possibility when they drafted Annex A. It was an exception, and there were only a few of those cases among the 300 affected employees.

[144] The parties' intention is also indisputably expressed at paragraph 2 of the MOU as follows:

> *2. CSC will pay damages via a taxable lump sum payment that is equivalent to the difference of pay between what the affected employee would have received had they remained on IODL and*

> *the Worker's Compensation Board (WCB) wage-loss benefits the affected employee received.…*

[145] It is clear from the text of paragraph 2 of the MOU that the parties never intended that the income earned by the affected employees who had returned partially to work would not be considered when calculating the lump sum.

[146] The CSC pleads that rectification would still apply if the mistake was unilateral. As the grievor pointed out, a unilateral mistake is difficult to prove, as it would require evidence of fraud or that she or the bargaining agent would have to had known of it. See *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19 at para. 31.

[147] However, this is not necessary, as both the bargaining agent and the CSC acted in good faith when they drafted Annex A. They simply forgot to include that possibility by adding a line for salary earned while on IODL.

[148] When a settlement agreement does not reflect the parties' true agreement because some terms were omitted, unwanted terms were included, or some terms incorrectly express the parties' agreement, the Board may exercise its equitable jurisdiction to rectify the settlement agreement, to make it accord with the parties' true agreement.

[149] I find that rectification applies to correct the grievor's Annex A, as both parties made a mistake when they drafted the Annex A template. It did not reflect their true agreement in paragraph 2 of the MOU. The parties forgot to add a line in the first batches of Annex As for the income that the employees earned while on IODL.

[150] **Question 5:** Does promissory estoppel apply to recovering the overpayment?

[151] In labour relations, an employee may invoke promissory estoppel under the following circumstances: the employer makes a promise or provides assurance to the employee with the intention of affecting their legal relationship and with the expectation that the employee will rely on it. If the employee relies on it and makes some detrimental changes to their position, the employer cannot subsequently go back on that promise. See Brown and Beatty, *Canadian Labour Arbitration*, 4th ed., at paragraph 2:2211, and Online Edition, Canadian Labour Law Library, at paragraphs 2:2200 and 2:2211; *Combe v. Combe*, [1951] 2 KB 215 (C.A.) at para. 220; *Bolton v.*

Treasury Board (Indian and Northern Affairs Canada), 2003 PSSRB 39; *Lapointe v. Treasury Board (Department of Human Resources and Skills Development)*, 2011 PSLRB 57 at paras. 29 and 30; and *Prosper v. Treasury Board (Canada Border Services Agency)*, 2011 PSLRB 140.

[152] Detrimental reliance occurs when the error is made and arises when the employee relying on the employer's promise incurs financial liabilities or expenses that because of the error become detrimental to the employee's financial situation or lifestyle. For example, it could be the purchase of a house or its renovation, buying a car or a caravan, going on a special vacation, or giving a substantial sum or gifts in an out-of-the-ordinary manner. See *Molbak v. Treasury Board (Revenue Canada, Taxation)*, Board File No. 166-02-26472 (19950928) (upheld in [1996] F.C.J. No. 892 (T.D.)(QL)); *Conlon v. Treasury Board (Public Works and Government Services Canada)*, Board File Nos. 166-02-25629 to 25631 (19970604); and *Murchison v. Treasury Board (Department of Human Resources and Skills Development)*, 2010 PSLRB 93.

[153] The grievor bears the burden of proving promissory estoppel. As the Supreme Court of Canada set out in *Trial Lawyers Association of British Columbia v. Royal & Sun Alliance Insurance Company of Canada*, 2021 SCC 47 at para. 15, these three conditions must be established for promissory estoppel to apply:

> 1) the parties must be in a legal relationship when the promise is made;
> 2) the promise must be intended to affect that relationship and to be acted on; and
> 3) the party invoking estoppel must have relied on the promise, which must have caused detriment to the party.

[154] The grievor submits that promissory estoppel applies to her case, as she relied to her detriment on the CSC's promise to pay her $91 000 in her Annex A.

[155] The CSC disputes that the first condition is met, arguing that it and the grievor have no legal relationship. It contends that the collective agreement and the MOU are between it and the bargaining agent. Therefore, promissory estoppel cannot apply to the grievor, as it requires that the parties be in a contract when the promise is made.

[156] A similar argument was raised and rejected in *Tuplin v. Canada Revenue Agency*, 2021 FPSLREB 29. The employer claimed that promissory estoppel could not be applied because the grievor in that case was not a party to the collective agreement.

The Board rejected that argument, as the alleged estoppel arose from the grievor's undertaking to return to work after maternity leave.

[157] Likewise, the CSC's argument is flawed, as both it and the grievor are in a legal relationship through her Annex A. The individual settlement agreement in her Annex A is a tripartite agreement between the CSC, the grievor, and the bargaining agent. Any estoppel would arise from the grievor's reliance on the terms of her Annex A.

[158] The CSC also submits that the third condition for promissory estoppel has not been met. The grievor did not act to her detriment by repaying her loans. She has not been paying interest on those loans since the overpayment in September 2019 and in fact has benefitted from the error.

[159] The grievor testified that shortly after receiving the $91 000 payment in September 2019, she repaid approximately $71 000 in personal loans and lines of credit and provided as evidence bank records of these. She also gave $10 000 to $15 000 to her daughter, to help her buy a house. In cross-examination, she explained that there was nothing in writing for this gift and she did not lend her this amount. Her daughter has since passed away and she cannot recover these amounts.

[160] She explained that as a result of getting the lump sum, she spent between $5000 to $10 000 in gifts to her children and grandchildren for all sorts of occasions. She also had a special Christmas celebration that year. She had some repairs done to her basement after some water damages. She testified that she spent in total between $15 000 to $25 000 that absent the overpayment, she would not have done.

[161] I find that repaying her loans was not detrimental to the grievor. She reimbursed about $71 000 in debt in 2019 and saved a substantial amount in interest for all the years since. She incurred these loans on her own in the absence of any overpayment. Had she incurred the loan and debts because she thought that she had the financial ability to do so, it might be different and proving detrimental reliance would be possible. This is not the case here. Repaying these loans was always her responsibility.

[162] As well, I find that the basement repair was not detrimental to the grievor. The repair necessitated by water damage is an ordinary home maintenance expense. Had the grievor used the funds to build a recreational room, believing she could afford it,

might have supported a finding of detrimental reliance. However, using the money for essential repairs arising from water damage reflects a normal responsibility of homeownership and does not constitute detrimental reliance.

[163] Unlike the repayment of her debts, or the basement repairs, I find, based on the grievor's testimony, that she relied to her detriment on the overpayment by giving and spending for her family. I find that her testimony was consistent on this, in chief and cross-examination and that as she believed that she had no debt any longer, she decided to spoil her family without keeping precise records of what she spent. I conclude that the evidence discloses that had she not received the overpayment, she would not have made these gifts.

[164] She testified that she gave and spent between $15 000 to $25 000 which included repair for water damage in her basement. It is unfortunate that she did not have records to establish more precisely the amount she spent or gave to her family. It makes it difficult to assess the amount given or spent to her detriment. However, aside from estoppel, adjudicators have also reviewed whether it was reasonable for an employer to seek a recovery. This can be helpful in determining the reasonable amount that can be recovered and that the grievor should repay.

[165] Under s. 155(3) of the *Financial Administration Act* (R.S.C., 1985, c. F-11; *FAA*) the Receiver General may recover any overpayment; however, it does not state that it must or that it shall. The provision is not restrictive, and the employer must exercise its discretion to recover the amount in the grievor's specific situation.

[166] Therefore, there are also grounds by which an adjudicator can determine whether the employer's recovery is reasonable under the circumstances of the case. See *Lapointe*, at paras. 34 and 35; *Murchison*; *Therrien v. Canada Revenue Agency*, 2009 PSLRB 171; *Larose v. Canada Revenue Agency*, 2009 PSLRB 170; and *Conlon*.

[167] In this case, the employer seeks to recover just over $42 000, which is not reasonable under section 155(3) of the *FAA*. The grievor relied on *Annex A* to her detriment and is approaching retirement. She testified that repaying the full amount would cause her financial hardship, a claim I find credible and uncontradicted.

[168] An informed person looking at the facts of the case would find it reasonable to limit recovery to $20 000—a balance that reflects both the overpayment and the

employer's discretion, mitigated by the grievor's detrimental reliance and financial vulnerability.

[169] The grievor is close to retirement and reimbursing a reduced amount will lessen any financial hardship that she might face. It is reasonable that the amount to be reimbursed of just over $42 000 be reduced by $22 000 which leaves a total sum $20 000 that the grievor must pay back.

[170] Considering the circumstances of this case, I find it equitable for all parties that the employer recovers the sum of $20 000.

[171] As Mr. Fabiano indicated in his March 2021 letter to the grievor, I also trust that the CSC can provide the grievor mutually suitable arrangements for repaying the balance of $20 000 and that options will be available to minimize any remaining financial hardship to her.

Confidentiality of personal information in the evidence

[172] In *Sherman Estate v. Donovan*, 2021 SCC 25, the Supreme Court of Canada set out a three-part test to guide the exercise of discretion in restricting the open court principle. The *Sherman* test is as follows:

- Does the openness of the proceedings pose a serious risk to an important public interest?
- Is the order sought necessary to prevent that serious risk, because reasonably alternative measures will not do so?
- Do the benefits of the order outweigh its negative effects, from a proportionality standpoint?

[173] At the hearing the grievor asked that the notices of assessment and other Revenue Canada documents presented in evidence by the CSC be sealed. The CSC did not oppose the request. These documents were ordered to be sealed as their disclosure pose a serious risk to an important public interest—namely, the protection of the personal information. The disclosure of the grievor's personal information is not necessary to the substance of the grievance and the benefits of the order outweigh any negative effects it might have.

[174] In reviewing the documents entered as evidence, I found that there is additional personal information that meets the *Sherman* test. There is the personal information of other employees who were part of the settlement agreement.

[175] Disclosing the names and other identifiers such as their addresses, personal record identifier (PRI) of the other affected employees with the amounts received, due or overpaid as part of the settlement agreement does pose a serious risk to an important public interest—the protection of their privacy. Moreover, this personal information is irrelevant to the substance of this grievance.

[176] Instead of ordering the sealing of the documents with this personal information, redacting the names and other identifiers such addresses, PRI of the other employees who were part of the settlement agreement, constitutes a reasonable means of mitigating the risk. From a proportionality perspective, the benefits of an order requiring the redaction, a less restrictive measure, of the names and other identifiers of the other employees outweigh any negative effects. As noted above, this information is not relevant to the determination of the issues in dispute.

[177] In light of the above, the grievor and the CSC will have 30 days from the date of this decision to provide the Board with redacted copies of their books of documents. Only the names and other identifiers of the other employees must be redacted.

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

(The Order appears on the next page)

Order

[179] The employer can proceed with recovering the $20 000 overpayment to the grievor.

[180] The grievor's notices of assessment and other Revenue Canada documents are sealed as ordered at the hearing.

[181] The grievor and the CSC shall have 30 days from the date of this decision to provide the Board with redacted copies of their books of documents.

[182] The Board remains seized of this matter for 120 days, to deal with issues arising from the issuance of this order

November 7, 2025.

Guy Giguère,
a panel of the Federal Public Sector
Labour Relations and Employment Board