IN THE MATTER OF AN ARBITRATION
UNDER THE *LABOUR RELATIONS CODE*, RSBC 1996 c. 244

Between

HEALTH EMPLOYERS ASSOCIATION OF BC

("HEABC")

-and-

HEALTH SCIENCE PROFESSIONALS BARGAINING ASSOCIATION

("HSPBA" or the "Association")

(Compensation Bargaining Comparability or "Me Too" Grievance)

ARBITRATOR:	John B. Hall
APPEARANCES:	Ilan B. Burkes, for HEABC Anthony Glavin and Roberto de Luca, for the Association
HEARING DATES:	April 26, 2021 January 26, 27, 28 & 31, and February 1, 2, 3 & 4, 2022
WRITTEN SUBMISSIONS:	February 17 & 28, and March 7, 2022
FINAL ARGUMENT:	March 11, 2022
AWARD:	September 26, 2022

AWARD

I. INTRODUCTION

HEABC and the Association reached a Tentative Agreement in November of 2013 for the early renewal of their Collective Agreement which was scheduled to expire on March 31, 2014[1]. The new Collective Agreement had a five year term and an expiry date of March 31, 2019. As part of the settlement, it was agreed that wages could be increased if the net total compensation increase in the new Collective Agreement was exceeded by the net total compensation increase in a comparable collective agreement. This understanding was documented in a Letter of Agreement (the "LOA") regarding "Compensation Bargaining Comparability" that provided in part:

> 1. If the net total compensation increase in the 2014 collective bargaining settlement between the Public Service Agency and the BCGEU or HEABC and the NBA exceeds the net total compensation increase in the HSPBA settlement for the corresponding period, wage rates in the HSPBA collective agreement will be adjusted by an across-the-board percentage increase so that the net total compensation increase of the HSPBA settlement is equal to the net total compensation increase of the higher of the BCGEU or NBA settlements.

The LOA defined "net total compensation increase" to mean "… in each instance the amount calculated as such by the PSEC Secretariat and reported by the Secretariat to the Minister of Finance". Other provisions clarified the basis of the Secretariat's calculation and reporting.

A major change in the 2014-2019 Collective Agreement resulted from HEABC's insistence that the Association move from a defined benefits plan to a joint trust arrangement with fixed employer contributions for benefits. The Association's agreement to enter into a joint trust arrangement was based on assurances by HEABC that all health sector bargaining associations would be required to agree to such an arrangement or that they would be legislated in the absence of agreement.

[1] This Tentative Agreement was for all intents and purposes a conventional Memorandum of Settlement.

As events unfolded, the Nurses' Bargaining Association (the "NBA") avoided a joint trust and successfully retained its defined benefits plan with certain enhancements. When the Association learned of this development, it raised with HEABC the prospect of what the parties colloquially call a "Me Too" claim under the LOA.

Over the course of several months, HEABC and the Association, with the assistance of their respective actuaries, worked on a methodology for determining whether there might be a Me Too claim given the divergence between the HSPBA and NBA benefit plans. The question could not be answered definitively at the time because information required by the methodology would not be available until the end of the 2014-2019 collective agreements. However, anticipating that there would not be agreement on the appropriate sum of money owed by HEABC in relation to the LOA, the Association sought to refer the matter to arbitration in September of 2018. HEABC responded that the referral to arbitration was premature because the term "net total compensation increase" refers to the entire period of the agreement; that is, to March 1, 2019. The Association accordingly held the matter in abeyance until the final data became available.

Unfortunately, communications between the parties over any Me Too claim effectively broke down after the Collective Agreement expired and the difference was referred to arbitration in February of 2020. Settlement efforts were initiated by the Association's counsel, as were disclosure requests for information necessary to complete the methodology. There was no suggestion by HEABC throughout numerous pre-hearing sessions that the methodology developed by the parties and their actuaries for a retrospective determination of a Me Too claim did not apply. Then, in the Fall of 2020, newly appointed counsel for HEABC provided particulars indicating that his client was relying on the plain wording of the LOA which contemplated a prospective determination of net total compensation by the PSEC Secretariat at the time each of the collective agreements had been concluded.

The Association submits that any dispute between the parties could only arise after the 2014-2019 Collective Agreement because the Me Too agreement was concerned with actual compensation increases secured by the Association and the NBA. Further, the parties agreed that actual compensation could only be determined retrospectively; therefore, no settlement privilege

over the parties' discussions as claimed by HEABC could arise before March 31, 2019. Next, the Association maintains the parties' conduct must inform the Me Too agreement. In this regard, it maintains the parties reached a "mid-contract agreement" to calculate any Me Too claim according to the methodology developed by their actuaries. Alternatively, the Association argues that the doctrine of estoppel precludes HEABC from disavowing that methodology, and that HEABC's last-minute reversal over its interpretation of the LOA is precisely the harm and unfairness which the doctrine seeks to prevent. Based on two reports prepared by its expert, the Association advances a total Me Too claim of $21,458,000 comprised of "benefits loss" and "non-benefits compensation loss".

As indicated, HEABC relies on the plain wording of the LOA. It submits the parties agreed that the "net total compensation increase" for each collective bargaining settlement is limited to the amount determined by PSEC and reported to the Ministry of Finance. HEABC relies on several familiar principles of interpretation to support the position and says PSEC's good faith calculation is not open to review in the circumstances. HEABC additionally argues that the parties never reached an agreement on an alternate methodology and says their discussions are protected from consideration at arbitration by reason of settlement privilege. Further, the parties' conduct cannot be taken into account because it does not meet the test for the use of past practice evidence. In respect of the Association's estoppel argument, HEABC maintains there was no "unequivocal practice" and says the Association has not suffered "detrimental reliance". In the result, based on PSEC's costing and the report of its own expert, HEABC asserts that no Me Too amount was owing; accordingly, the grievance is "baseless" and should be dismissed.

The foregoing summary is intended only as a very high level sketch of the parties' primary positions. The extensive written submissions exchanged by counsel expand upon those positions and raise numerous sub-issues and arguments. The main objective of this precise has been to broadly frame the scope of the dispute in order to better appreciate the ensuing chronology of events.

II. CHRONOLOGY

Since 1994, public sector collective bargaining in British Columbia has taken place under various mandates established by the Public Sector Employer's Council Secretariat ("PSEC"). During the 2010-2012 round of negotiations, PSEC's Net Zero mandate required that any collective agreement improvements be offset by savings in other compensation areas. The Cooperative Gains mandate which applied to the 2012-2014 negotiations allowed public sector employers to negotiate modest wage increases in return for productivity increases within existing budgets.

During those rounds of negotiations, Jeanne Meyers was the Association's Chief Negotiator and the Legal Director with the Health Sciences Association (the primary union in the Association), while Dennis Blatchford was HSA's Pension and Benefits Advocate. They both testified that the Association was under pressure from employers to adopt cost containment measures for health benefits. Ms. Meyers stated the issue became particularly acute in the 2010 bargaining when HEABC first raised the prospect of a "defined contribution" form of benefits scheme envisaged by the Government. Benefits costs were again a major employer concern in the 2012 bargaining. Under a Letter of Agreement dated January 13, 2013, HEABC and the Association agreed to establish a Joint Benefits Review Committee which was required to identify "ongoing annual savings from current benefit plans equivalent to $3.8 million of the total compensation cost for HSPBA members for the fiscal year April 1, 2011 to March 31, 2012". The changes to achieve the ongoing annual savings were to be implemented by May 15, 2013. The Joint Committee did not reach agreement by that date, and the matter was referred to Vince Ready for adjudication.

Following this referral, and because of the pressures from what appeared to be constant negotiations under two-year contract cycles, HEABC and the Association looked to find a different approach for their next round of collective bargaining. On September 6, 2013, they signed a without prejudice document headed "Potential Negotiations Framework" which established conditions for early negotiations. What was to become PSEC's Economic Stability mandate had yet to be established but was captured by the framework:

- The mandate for negotiations has yet to be finalized. Any agreement must align with that mandate. *Total compensation changes negotiated with the HSPBA will not be less than those negotiated with in the BCGEU Master Agreement and/or the Nurses Provincial Agreement*. (italics added)

The sentence in italics was described by Ms. Meyers as the "genesis" of the Me Too concept which would later be formalized in the LOA. The Association was consciously aware that it was negotiating ahead of the other health sector bargaining associations and it did not want another association to secure a "more lucrative" agreement.

HEABC and the Association reached a Tentative Agreement on November 8, 2013 for a five-year renewal Collective Agreement having a term from April 1, 2014 to March 31, 2019. The new Collective Agreement included a Memorandum of Understanding which provided for a Joint Health Sciences Benefit Trust (the "JHSBT" or "Joint Trust") being established no later than March 31, 2015 unless otherwise agreed by the parties. Under this arrangement, employer contributions to the Joint Trust would be fixed and employee benefits would not be guaranteed as they would be subject to available funds. That is, there would be a cap on the employers' costs for extended health, dental, LTD and life insurance/accidental death and disability benefits -- as opposed to the pre-existing defined benefits scheme where there were no cost limitations. The fixed contributions were described in a confidential Letter of Agreement which the parties had signed on November 7, 2013:

1. HEABC and the HSPBA agree that employer contributions to the Joint Health Sciences Benefits Trust will be established as an annual fixed percentage of regular straight-time payroll effective April 1, 2016 through to March 31, 2019 and continuing unless and until changed through collective bargaining based on actual employer contributions to the Healthcare Benefits Trust for the period April 1, 2015 to March 31, 2016.

2. *The contribution rate must produce actual savings for health employers of at least $9 million during the period April 1, 2016 to March 31, 2019*. (italics added)

The uncontroverted evidence of Ms. Meyers and Mr. Blatchford was that the Association's agreement to a fixed funding joint trust was predicated on "very solid assurances" by HEABC that

all four health sector bargaining associations would be subject to the same arrangement through either negotiations or legislation if necessary. Ms. Meyers testified it was "unequivocally stated to us that all associations would be going into a joint trust model". Further, the Association's annual ongoing liability of $3.8M would be satisfied by the new benefits structure and the Tentative Agreement specifically addressed the subject:

> Satisfaction of Annualized Savings
>
> HEABC and the HSPBA agree that the Memorandum of Settlement satisfies the obligation of HSPBA to achieve $3.8 million in annualized savings pursuant to the Letter of Agreement between the HSPBA and HEABC dated January 31, 2013.

It was Ms. Meyers' uncontested evidence that the $3.8M commitment from the prior round of negotiations was "extinguished" by virtue of the Association's agreement to enter into the Joint Trust which would manage benefit costs in the longterm. Additionally, and consistent with the framework for early negotiations, the Tentative Agreement included Me Too language:

> Wages may be increased if net total compensation in a comparable collective agreement settlement exceeds the net total compensation increases agreed to in this settlement agreement consistent with Appendix A, "Compensation Bargaining Comparability".

Appendix A subsequently became Appendix 36 to the 2014-2019 Collective Agreement and it will be referred to in that manner throughout the rest of this award. The document followed a request by Ms. Meyers to Adrienne Hook, HEABC's chief negotiator, for written confirmation that the Association would receive the same general compensation as the BCGEU and the NBA. These associations had not yet started negotiations with HEABC. Ms. Hook provided the confirmation about 2:00 am on November 8 and, according to Ms. Meyers, there were no discussions between the parties over the language:

> Re COMPENSATION BARGAINING COMPARABILITY
>
> 1. If the net total compensation increase in the 2014 collective bargaining settlement between the Public Service Agency and the BCGEU or HEABC and the NBA exceeds the net total compensation increase in the HSPBA settlement for the corresponding period, wage rates in the HSPBA

collective agreement will be adjusted by an across-the-board percentage increase so that the net total compensation increase of the HSPBA settlement is equal to the net total compensation increase of the higher of the BCGEU or NBA settlements.

2. "Net total compensation increase" means in each instance the amount calculated as such by the PSEC Secretariat and reported by the Secretariat to the Minister of Finance.

3. For clarity, it is understood that the PSEC Secretariat's calculation and reporting of a net total compensation increase to the Minister of Finance:

(a) Will not include wage comparability adjustments, labour market adjustments approved by the PSEC Secretariat or adjustments to include LPNs within the NBA collective agreement; and

(b) Will be net of the value of any change to their collective agreements which were agreed by the BCGEU, the NBA or the HSPBA (as the case may be) to obtain a compensation adjustment.

The fact that compensation comparability would apply to all five years of the Association's new Collective Agreement was confirmed in a November 21, 2013 letter from Ms. Hook to Ms. Meyers:

> You have enquired as to whether, in HEABC's view, the Compensation Comparability Bargaining agreement applies in the event that either of those bargaining units negotiates more than one collective agreement for the period April 1, 2014 to March 31, 2019.
>
> In HEABC's view, the Compensation Comparability Bargaining agreement applies in the event that the comparator bargaining groups negotiate multiple agreements for the period from April 1, 2014 to March 31, 2019. That is, if one of the groups negotiated a four year agreement followed by a three year agreement, the comparison for HSPBA would be the four years of the first agreement and the first year of the second agreement.

Developments subsequent to resolution of the Association's 2014-2019 Collective Agreement were consistent with HEABC's representations regarding all health sector bargaining associations being required to enter into a joint trust. On or about November 30, 2013, the BCGEU (the primary union in the Community Bargaining Association) agreed to create the Joint Community Benefits Trust. On or about April 28, 2015, the HEU (the primary union in the

Facilities Bargaining Association) agreed to create the Joint Facilities Benefits Trust. And, in accordance with its commitment, the Association worked with HEABC to establish the new JHSBT although the start date was eventually extended by agreement to April 1, 2017 due to the magnitude of the task.

John Crouse was engaged as the Association's actuary for purposes of establishing the Joint Trust. He described in considerable detail the efforts of the joint Working Group to arrive at a fixed funding formula based on regular straight time payroll. The Working Group included Ms. Meyers and Ms. Hook, as well as HEABC's actuary, Jeremy Bell. It is not necessary to recount all of what was entailed in establishing the Joint Trust beyond noting it was a complex exercise which took about three years to complete. The final agreement setting out terms for the JHSBT was dated February 1, 2017. On February 10, Ms. Hook wrote to Ms. Meyers to confirm that all outstanding monies owed by the HSA had been resolved:

> Re: Resolve of Outstanding Monies
>
> This letter is to provide confirmation that all outstanding monies owed by the Health Sciences Association of BC (HSABC) resulting from the 2014 round of collective agreement negotiations have been resolved between the parties resulting in full payment of the amount owed. This includes any monies identified in the November 7, 2013 Letter of Agreement.

It will be recalled that paragraph 2 in the November 7, 2013 Letter of Agreement required the JHSBT to produce at least $9M of actual savings for health employers. Ms. Meyer's evidence was that the Association had no further obligations to HEABC at this point beyond having benefits delivered by the Joint Trust in accordance with the agreed upon funding formula. Both she and Mr. Blatchford testified that the new scheme created a significant risk for the Association's members (e.g., benefits might be reduced if the funding level proved inadequate) while it represented a significant advantage for health employers because there would be fixed containment on benefit costs.

HEABC reached Tentative Terms of Settlement for a 2014-2019 collective agreement with the NBA on April 13, 2016. The NBA successfully maintained its position that it would not agree

to a joint health benefits trust. The NBA further enhanced pharmacare benefits for its members by adopting Blue Rx from Blue Cross as an alternative to the standard drug formulary. These and other terms were contained in a Letter of Agreement between HEABC and the NBA regarding "Sustainability of NBA benefit plans". Those parties eventually signed another Letter of Agreement in March of 2018 (i.e., almost two years later) which provided that the NBA would make a "one-time full and final payment of $5,000,000 for Blue Rx" and would fund additional costs above a mutually agreed sustainable benefit growth rate to a "total maximum aggregate amount of $15,000,000 for the combined fiscal years of 2017, 2018 [and] 2019". The NBA ultimately paid the $5M for Blue Rx and also funded $15M for benefits.

Ms. Meyers and Mr. Blatchford both testified to being "shocked" when they learned of the NBA settlement. At the same time, it was not "an enormous surprise" given their many years of experience with the BCNU. Ms. Hook had been HEABC's lead negotiator in the Facilities and Community negotiations, but had not participated in the NBA negotiations. In respect of the latter settlement, Mr. Blatchford realized Ms. Hook was "embarrassed" because "she had the rug pulled out from under her".

Once the Association learned of the NBA settlement and it was evident that the NBA had not been required to enter into a fixed cost joint trust for benefits, the Association considered the prospect of a Me Too claim based on benefits cost comparisons. Its actuary, Mr. Crouse (who had been a member of the Working Group which established the JHSBT) was additionally engaged to consider whether there might be a claim. Mr. Crouse testified that, because wages and wage-related issues were set by the PSEC mandate, it was assumed the only basis for a comparison between the Association and the NBA was over the cost of providing benefits. That assumption aside, Ms. Meyers wrote to PSEC on April 19, 2017 to "request detailed costing information" regarding the NBA settlement. Among other items, she sought "[t]he costing of and the costing formulary used to determine actual cost *in each applicable area of compensation* increase in the collective agreement" (italics added) and identified the following areas:

- New classification for Forensic RPN (page 6)
- Increases to shift premium and on-call (page 8, pages 58, 59 for extended work week employees)

- Casual availability bonus pay (page 24)
- Casuals get credit for hours worked since last increment when attaining regular status (page 24)
- Telephone call-backs added (page 60)
- New language guaranteeing two hours pay if employee shows up and is not needed (page 61)
- Improved insufficient off duty hours language (page 62)
- Increased compassionate leave applicability (page 71)
- Increased special leave applicability (page 72)
- Portability of special leave (page 75)
- Employer to provide survival equipment in northern and remote communities (page 77)
- Community provisions of CA deleted and melded to CA (page 88)
- Change to backfill obligations (page 98 and 99)
- Education commitment to 850 FTEs (page 101)
- Healthcare office of arbitration established (page 103)
- Psychological health and safety commitments (page 107)
- Change to backfill obligations (page 98 and 99)
- Education commitment to 850 FTEs (page 101)
- Healthcare office of arbitration established (page 103)
- Psychological health and safety commitments (page 107)
- DTA/RTW cap on four weeks from date of acceptable medical and then EE placed on payroll (page 127)
- Job Security – commitment to retain and retrain HA staff if jobs lost (page 130)

Ms. Meyers sought this information "… in order to be able to conduct *a complete review* of the applicability of Appendix 36 …" (italics added). PSEC responded on June 15, 2017 and, among other things, attached a summary of all costs and savings projected by PSEC in relation to each negotiated change in the 2014-2019 NBA collective agreement. There was also an explanation of the methodology and a document summarizing PSEC's projected increase in net total compensation in each year for the Association, NBA and BCGEU collective agreements. On the other hand, Ms. Meyers testified that "no reporting [by PSEC] to the Ministry had been done as we thought".

The Association's counsel wrote to Ms. Hook on September 26, 2017 to request PSEC's report to the Ministry of Finance (and accompanying documents) respecting all three collective agreements. Ms. Meyers wrote to Ms. Hook on September 29, 2017 on the subject of disclosure and proposed the appointment of Vince Ready:

Re: Proposed Appointment of Vince Ready to Address Disputes on Compensation Bargaining Comparability

We are writing in regards to the HSPBA's current work in seeking to obtain and analyze information related to the "Me Too" agreement between HSPBA and HEABC.

As you know, the LOA regarding Compensation Bargaining Comparability permits HSPBA to compare the "net total compensation increase" of HSPBA's current collective agreement with that of both the NBA and BCGEU (PSA Master) collective agreements in force. In order to achieve this, we have asked for disclosure from HEABC; particularly, PSEC's reports to the Ministry of Finance on "net total compensation increase" for all three of the aforementioned collective agreements.

While we await your prompt response to these requests, it behooves the parties to seek agreement now on a dispute resolution process that is in place to address either requests for further disclosure and/or the appropriate claim that HSPBA *may have* in relation to asserting a "Me Too" pursuant to the LOA.

As Vince Ready is familiar with, and seized with jurisdiction on, several related issues to the "Me Too" LOA, we write at this time to request that HEABC agree to HSPBA's proposal to have Mr. Ready serve as arbitrator to address *any disputes that may arise in respect to the application, interpretation or alleged violation of the LOA.* While the Union reserves its right to appoint an arbitrator in accordance with the HSPBA collective agreement, we thought it prudent to seek to obtain your approval to his appointment at this time. In addition, the parties might consider whether we set aside a day or two in the coming months so that Mr. Ready can be available to hear any disputes we may have with respect to this matter.

Please advise at your earliest convenience whether HEABC is agreeable to Mr. Ready's appointment in the manner described above.

Ms. Hook responded to both letters on December 7, 2017:

Re: Compensation Bargaining Comparability – Disclosure

Further to your letter of September 26, 2017 and Ms. Meyers letter of September 29, 2017, we write to ensure that you have received the requested documents pertaining to the above captioned agreement.

* * *

> We confirmed with PSEC that HSPBA has already received PSEC's reports pertaining to "net total compensation" for the HSPBA, NBA, and BCGEU Master agreements, along with other detailed costing information, by way of email dated June 15, 2017 (enclosed, with attachments). We trust that this satisfies your requests. Should you have any further queries, please direct them to my attention.

As indicated, the Association engaged Mr. Crouse to consider whether there might be a Me Too claim under Appendix 36. It will also be recalled that HEABC had been using the actuarial services of Mr. Bell. Ms. Meyers and Ms. Hook asked their respective actuaries (the "Actuaries") to "put their heads together" in "a collaborative way" and develop an analytical framework for identifying the actual value of the competing plans. The Actuaries did not work alone. As Mr. Crouse explained at arbitration, he was part of "the HSPBA team" which included Ms. Meyers and others, while Mr. Bell was part of "the HEABC team" which included Ms. Hook and others[2]. This broader group "got together to talk about a possible Me Too" and the general direction of the discussions was to "come up with a methodology that could be used to determine if a value existed and how to calculate it".

The discussions began in the Spring of 2107 after the JHSBT had started operation. Mr. Crouse stated the methodology was largely developed by Mr. Bell "in concert with my reviews" and was "run by everyone" involved for approval. It was intended to determine "the cost of the difference between what each group received". Much of the deliberation was done by telephone and email, but there were also in-person meetings in Vancouver to review the results. The Actuaries initially did not have any "live data" to plug into the model and make projections. Then, as actual data became available, the figures were included and projections were updated.

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[2] Neither Mr. Bell nor Ms. Hook testified at the arbitration hearing. Ms. Hook has left HEABC but resides on Vancouver Island. HEABC's counsel advised that Mr. Bell requested to not be called as a witness because of his role as an actuary retained by the JHSBT. However, his retainer expressly allows him to "[d]etermine Nurse benefit costs in support of employer rights under the NBA agreement and *in respect of potential 'me too' issues*" (italics added). The Association argues at several junctures that an adverse inference should be drawn by reason of HEABC's failure to call these two key individuals as witnesses. HEABC resists such an inference and maintains they were "equally available" to the parties. I find the present circumstances almost certainly satisfy the requirements articulated by the Labour Relations Board in *Steele (Re)*, [2001] BCLRBD No. 77. Nonetheless, it is unnecessary to potentially complicate matters by drawing an adverse inference. The fact is that HEABC failed to call two "equally available" witnesses who were integral to the central matters in dispute. Thus, the testimony of the Associations's witnesses on all material aspects stands unchallenged and is accepted without qualification.

Explained in general terms, the parties agreed that a Me Too calculation would be based on the cost of funding benefits under the NBA collective agreement as if its members had gone into a fixed funding joint trust similar to the Association's members. According to Mr. Crouse, at no point was there any suggestion that the methodology, projections and actual costs were being discussed on a without prejudice basis. Nor did the subject of the Association's satisfied obligation to fund $3.8M in ongoing annual savings from benefits ever enter into the discussions over costing and development of the methodology. Ms. Meyers and Mr. Blatchford both testified that neither Ms. Hook nor Mr. Bell mentioned a $3.8M liability after it was agreed that the obligation had been "satisfied" under the Tentative Agreement.

Mr. Bell prepared a Briefing Note dated January 6, 2018 on the subject of "HSPBA Me-Too Clause: Benefits – Interim Calculation". The figures presented were expressly "preliminary" and included projections to March 31, 2018. It was noted that "actual claim figures" would be available after that date. Mr. Bell's second Briefing Note was dated May 25, 2018 and was headed "HSPBA Me-Too Clause: Benefits – April 1, 2017 to March 31, 2019". The figures presented were again preliminary but also had one year of actual nurses' costs and one year that was still based on projections. Various Me Too "obligations" were estimated which depended on the unknown NBA payments to employers for "Blue Rx and the benefit growth plan" (i.e., the NBA's cost containment commitments). Mr. Crouse testified that the model he and Mr. Bell had developed, as well as their projections, were conveyed to both sides during the ongoing meetings between the parties.

The Actuaries continued their discussions following the second Briefing Note using the agreed-upon methodology. Mr. Bell alone had access to the NBA data and Mr. Crouse had several questions regarding the figures Mr. Bell had used. An associate of Mr. Bell responded on his behalf and additionally uploaded certain files for Mr. Crouse to examine. Mr. Crouse emailed Mr. Bell on June 29, 2018 with revised calculations for a Me Too claim. He acknowledged that "Harmonization [of LPN] benefit costs may be subject to interpretation by the lawyers" and did not have a problem if Mr. Bell separated them for that purpose. Mr. Crouse updated the Association's legal counsel on his discussions with Mr. Bell by email dated July 3, 2018:

> …Here it is. Jeremy called me on Friday and we chatted for a few minutes. *He didn't take any exception to what I had sent*. Just figures we are narrowing down the range for what will turn out to be a negotiation between Jeanne [Meyers] and Adrienne [Hook]. He said he might talk again later this week. Now into July, the clock I expect is ticking. … (italics added)

The Association was increasingly of the view that a Me Too would be owed under Appendix 36. Ms. Meyers wrote to Ms. Hook on September 6, 2018 to refer the matter to arbitration:

> As you know, the parties have been in discussions for some time in regards to seeking agreement on the above-noted matter, colloquially referred to as "Me Too". Despite our collective best efforts it has now become evident that we will not achieve agreement on identifying the appropriate sum of money owed by the Employer in relation to the requirement of Appendix 36.
>
> Consequently, we are referring this matter to arbitration pursuant to Article 8 of the collective agreement. From among the list of arbitrators in our roster (Article 8.02), HSPBA suggests that Vince Ready would be appropriate and agreeable to hear this matter as a sole arbitrator.
>
> Please advise if this is acceptable to HEABC. …

The Association's counsel, at the request of Ms. Hook, wrote to the HEABC's General Counsel & Executive Director Legal, Ingrid Otto, to seek agreement on the appointment of Mr. Ready. Ms. Otto responded by email on September 26 and conveyed HEABC's position that referral to arbitration was premature:

> HEABC's position is that it is premature for the HSPBA to refer this matter to arbitration since "net total compensation increase" refers to the entire period of the agreement, namely to March 31, 2019. The information required to determine whether a breach of the Collective Agreement occurred or not will not exist until after March 31st. Consequently, since no arbitrator hearing the matter now could determine if a breach occurred, HEABC does not agree to remit this matter to arbitration at this time.
>
> Notwithstanding our position that the referral to arbitration is premature, it is HEABC's wish to continue to work collaboratively with HSPBA to definitively identify and narrow any issues that may exist between the parties and I am hoping we can meet to discuss how that might best be achieved. In the meantime, please

> let me know what document requests your client has (as referenced below) and HEABC will respond.

Ms. Meyers testified that she agreed with Ms. Otto's position that arbitration was premature and that the parties should continue their collaborative efforts. In order to calculate the Me Too claim, the Actuaries needed to have the actual benefits cost numbers for the NBA, as well as ascertain any NBA payments for Blue Rx and benefits cost containment. The Association accordingly deferred its referral to arbitration until the comparability period concluded on March 31, 2019 and a "retrospective" assessment of benefits costs could be carried out.

Mr. Crouse testified that the Association was expecting a third report from Mr. Bell in the weeks or months following expiry of the 2014-2019 collective agreements. He was dependent on Mr. Bell in terms of obtaining data for the reporting as Mr. Bell had direct access on behalf of HEABC through the Health Benefits Trust (the "HBT") to the benefits costs and other information for the nurses. According to Mr. Crouse, once the actual benefits numbers were received for the nurses, the only thing left was how much the NBA had repaid to HEABC; the Actuaries could then "formulate a [Me Too] number". However, there was "essentially no communication between [him] and [Mr. Bell] at this time" and it was "very quiet".

When a final report was not forthcoming from Mr. Bell, the Association made inquiries with HEABC's inhouse legal counsel. By May of 2019, Ms. Hook was no longer with HEABC and Ms. Otto had moved to her current Vancouver law firm. The Association's counsel wrote to HEABC's Acting Legal Director, Jennifer Perry, on May 14, 2019 to advise that "[n]ext steps on our end were to see where the numbers came in for NBA as of March 31, 2019". He wrote to her again on June 24 seeking the same information:

> If we can just get the financials for NBA ending March 31, 2019 that would be helpful. Jeremy Bell was working on this information for HEABC and John Crouse (HSPBA actuary) was working with me.

By July of 2019, HEABC had another Acting Director of Legal Services, David Hanacek. The Association's counsel sought to arrange a meeting to discuss a process for addressing the Me Too matter and it was scheduled for October 18, 2019. Just prior to the meeting, Mr. Hanacek

sent an email attaching "What we have for calculations as to the cost of NBA benefits *on a without prejudice basis*" (italics added). This was another Briefing Note from Mr. Bell dated October 17, 2019. It was captioned "NBA Cost of Benefits". Unlike the earlier Briefing Notes, it was marked "WITHOUT PREJUDICE". A further difference was that it did not contain any Me Too calculations. Rather, by its terms, the Briefing Note had been requested by HEABC to address three subjects:

> (1) The employer cost of benefits for the Nurses Bargaining Association ("NBA"), calculated using the same basis as the Joint Trusts' employer cost of benefits calculations;
> (2) The employer cost of benefits for the NBA, adjusted *assuming that LPN harmonization occurred prior to 2015*; and
> (3) The actual cost of NBA benefits recognized by employers for April 1, 2017 to March 31, 2019. (italics added)

Mr. Blatchford accompanied the Association's counsel at the October 18 meeting. It was his understanding that the "without prejudice" nature of the meeting and the third Briefing Note pertained to the "process" that the parties would discuss in moving towards conclusion of the Me Too claim. This was consistent with an email the Association's counsel sent to Mr. Hanacek the following day regarding a process to address the claim. The same email included the following points:

> 2. I have made a general request for documents and underlying data in support of the Bell Report dated October 17, 2019. You indicated you would see how and whether you can provide that data to me and would communicate (and hopefully deliver) the same.
>
> * * *
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> 4. I am confirming here *that you have indicated there is no reporting out by the PSEC Secretariat to the Ministry of Finance that has, or will, occur in respect of the net total compensation increase as is contemplated in paragraph 2 of Appendix 36* of the 2014-2019 HSPBA collective agreement entitled Letter of Agreement "Re Compensation Bargaining Comparability".
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> 5. You have indicated that presently HEABC and BCNU (on behalf of NBA) have agreed on the amount of NBA contribution to health employers for Blue Rx and the agreed benefit growth containment plan. You expect to have the "cheque"

> in hand in the near future and will advise us of same when you receive it. (italics added)

Mr. Hanacek provided the NBA Payroll and NBA Cost of Benefits information to the Association in early November.

Thus, by the end of 2019, the Association had received three reports produced for HEABC by Mr. Bell: the initial two Briefing Notes which had estimates for a potential Me Too claim, and a third report which did not include such a calculation. However, Mr. Crouse had received the spreadsheet that Mr. Bell had used to determine NBA benefits costing in his third Briefing Note about the time it was issued, although there was really no discussion about it with Mr. Bell. The data in the spreadsheet could be plugged into the methodology developed by the Actuaries. Thus, from the Association's perspective, the only pieces missing from the equation were the amounts of payments made by the NBA to HEABC on account of Blue Rx and benefits cost containment.

The Association's counsel wrote to Mr. Hanacek on November 20, 2019 seeking evidence of the NBA repayment on Blue Rx. He stated, "…this is really necessary for us to engage in this process *along with the basis upon which HEABC purports that any or no Me Too should be forthcoming*" (italics added). The Association's counsel wrote again on January 17, 2020 asking HEABC's counsel to advise if the BCNU "has made payment of funds". Mr. Blatchford testified that this was the only thing that was needed in order for the Association to finalize a calculation.

I was appointed as sole arbitrator to hear the Association's Me Too claim by letter dated February 5, 2020. As recounted, the collaboration between HEABC and the Association through the Actuaries had largely come to an end not long after the third Briefing Note was prepared. Mr. Crouse testified that it was no longer "business as usual". The Association through its legal counsel continued to press HEABC for disclosure regarding the amount of NBA payments. It eventually sought arbitral Orders and a conference call was scheduled for July 1, 2020.

One of the Orders sought by the Association was that HEABC provide "the amount of money the NBA is required to repay on the Blue Rx formulary and to particularize the basis for this". HEABC was represented on the conference call by Mr. Hanacek. My notes from the call

record him stating there was "no real dispute on the mechanism" (i.e., the methodology) for determining the Me Too claim, as opposed to the actual dollars involved. Mr. Hanacek understood the NBA payments would "factor in"; however, the only amount paid to date was $5M and there was not "a level of certainty" regarding any additional payment. There was absolutely no suggestion by Mr. Hanacek that the disclosure sought by the Association was inappropriate because the methodology developed by the Actuaries no longer applied or that HEABC's position would be based on PSEC's costing to the Minister as provided by Appendix 36. Indeed, Mr. Hanacek referred to Ms. Otto's email of September 26, 2018 and HEABC's position that it would be impossible to determine if a breach had occurred until after March 31, 2019.[3]

HEABC's current counsel assumed conduct of the file in late August of 2020. He provided particulars to the Association's counsel on October 20, 2020 which, for the first time, asserted that "[t]he PSEC Secretariat determines the net total compensation for a particular collective agreement prior to completion of the collective bargaining and/or ratification of that collective agreement", and maintained "[t]here is no basis to consider the costings from other sources". Relying on PSEC's costings of the two collective agreements, counsel contended the Me Too provision "as defined by [Appendix 36]", had not been triggered. The Association's Reply Submission describes this development in the following manner:

> …stunningly, [HEABC] took the view that PSEC was now the sole arbiter of the existence of any Me Too for [the Association] and PSEC had determined there [was] no Me Too two years earlier. (para. 18)

HEABC's new counsel then applied on November 25, 2020 to "bifurcate the hearing of this grievance". The application argued there was an essential question of collective agreement interpretation that could potentially dispose of the entire grievance; namely, whether net total compensation increase for each collective agreement is the amount determined by the PSEC Secretariat and not the actual costs for the collective agreements. The Association opposed the application in unmistakable terms. Among other things, it submitted HEABC was estopped from

[3] In response to a later request by the Association for further disclosure and particulars, HEABC's counsel advised on November 17, 2020 that his client "…does not have any documents in its possession or control to show the PSEC's reporting to the Minister of Finance"

resorting to the PSEC calculations because of its representations throughout the parties' dealings in respect of a Me Too claim. It maintained further that HEABC's "11th hour" application was an abuse of process. My preliminary ruling dated January 11, 2021 held "… it would be manifestly unfair to the [Association] if the [arbitration] process initially agreed to by the parties, and affirmed numerous times through arbitral Orders and directions, was derailed at this late stage by virtue of the Employer's application" (p. 5). The bifurcation request was denied for this and other reasons.

III. THE EXPERT REPORTS AND HEABC/PSEC COSTING

Three expert reports were entered into evidence. The first was prepared in December of 2020 by Mr. Crouse (the "First Crouse Report"). There is no challenge to his qualifications and, not surprisingly, he adopted the methodology which had been developed in conjunction with Mr. Bell on behalf of HEABC. Further, Mr. Crouse relied "almost exclusively" on Mr. Bell's third Briefing Note which, in turn, was based on detailed benefits costs information and payroll information provided by the Health Benefits Trust[4]. This information was provided to Mr. Crouse as a supplement to the third Briefing Note and he relied on the information for purposes of his First Report[5]. The manner in which Mr. Crouse assessed the Association's Me Too claim is described in a section of the First Report headed "Actuarial Opinion" (underlining in original):

> The essence of the determination of amounts owing relative to the Me-Too clause with respect to the NBA is two-fold:
>
> 1. Determining the value of additional plan benefits received by the NBA relating to the uncapped nature of these benefit costs over the final two years of the contract.
>
> 2. Expressing this value of benefits as a percentage of NBA payroll and then applying this percentage to the appropriate HSPBA payroll to determine an amount to be paid.

[4] The parties have agreed that this confidential data should not be included in my award.

[5] The only adjustment that Mr. Crouse made to any of Mr. Bell's final October 2019 calculations, including the detailed cost information in the accompanying spreadsheet, was Mr. Bell's "odd" addition of .06% to bring the Nurses costs to 8.91% of STP. That addition was based on the assumption, as stated in the third Bell Report, that LPN harmonization had occurred prior to 2015. Mr. Crouse did not include this additional sum because it was, in fact, erroneous.

After factoring in the $20M paid by the NBA for Blue Rx and cost containment, Mr. Crouse concluded that a Me Too of $9,442,000 was owing to the Association (rounded to the nearest $1000). His underlying steps are accurately captured in the Association's initial submission:

> Applying the parties' agreed upon methodology and relying on Mr. Bell's data, Mr. Crouse calculated conclusions on the HSPBA based on three calculations, which answer the three questions posed in the engagement letter:
>
> (a) The "value" of additional benefits received by NBA under its uncapped structure compared to that received by HSPBA under its capped joint structure, for the two years of operation under the trust: this was $38.296M (this is detailed at Appendix "E", Exhibit "C" to the Crouse Report);
>
> (b) Cost Impact to HEABC of LPN benefits harmonization and the provision of Blue Rx for the period preceding April 1, 2017 go live date of the trust: $1.162m (this is detailed as described at pp 25-26 of the Crouse Report);
>
> (c) Including the amount in (b), above, the value of the total amount owing to HSPBA for Me Too taking into consideration the $20m repayment by NBA to HEABC: $9.442m (this is detailed at Appendix "E" Exhibits "A", "B" and C" and Appendix "F" of the Crouse Report).
>
> In essence, Mr. Crouse calculated the difference in NBA actual costs (9.50% of NBA STP) and what NBA would have received to cover their benefits had they gone into a joint trust (9.07% of STP). As a percentage of STP, NBA received 0.43% more than HSPBA for their benefits in the relevant period.
>
> Thus, to calculate the claim for HSPBA, required applying the same 0.43% of STP to the HSPBA payroll. This calculation is done in Step #5 of the Actuarial Analysis in the Crouse Report (p.15). The HSPBA two-year payroll during the trust was $1.930+b. Multiplying the 0.43% differential to this STP obtains a sum of $8.280m. This is then added to $1.162m reflecting the Blue Rx and LPN benefits harmonization (detailed fully at Step #6) for a total of $9.442m in Step #7. (paras. 99-101)

The second expert report was provided on March 8, 2021 by Patti Daum (the "Daum Report"). She was asked to assess the Association's claim on a different basis, as explained in the Introduction:

Purpose

1. You (the "Client") have requested our expert, independent opinion in the form of a report with respect to:

   a What was the net total compensation increase (as a percentage of straight time payroll) under the 2014-2019 HEABC-HSPBA Collective Agreement as compared to under the 2014-2019 HEABC-NBA Collective Agreement (less estimated adjustments made to include the LPNs in the agreement)?

2. Subsequent to receiving the engagement letter, we have been instructed to calculate the net total compensation increase as a percentage of total labour cost rather than straight-time payroll because this is the measure consistently used by HEABC and the Public Sector Employers' Council (PSEC) to measure compensation increases.

The approach taken by Ms. Daum was to quantify the impact of each change to the 2014-2019 collective agreements, and then combine these individual changes to calculate the "net total compensation increase". HEABC says she undertook a retrospective analysis of the actual cost or savings to each collectively bargained change, just as PSEC had analyzed each such change on a prospective basis. The changes identified by Ms. Daum under the Association's Collective Agreement included the "extinguished" benefit liability of $3.8M in annual savings which was accounted for as follows:

Extinguished benefit liability

37 We have included $3,800,000 per year as a benefit to HSPBA in fiscal 2016 and 2017 (Schedule 1.1, line 1). For fiscal 2015, we have included $7,132,000, which represents the liability related to May 15, 2013 to March 31, 2015 period, which was extinguished as part of the HSPBA Collective Agreement.

38 In fiscal 2018 and 2019, the $3,800,000 amount is included at Schedule 2, line 40 as an adjustment to the JHSBT costs as we understand it was expected the JHSBT structure would generate those savings. The $3,800,000 per year at line 40 represents the annual cost of these anticipated savings that were not realized.

The fact that the NBA had not been required to enter into a joint trust "[did] not constitute a change in benefits to the NBA" (para. 30) and, accordingly, was not part of Ms. Daum's calculations. She found no Me Too compensation was owed to the Association:

Net total compensation increase

95 Schedule 1.1 summarizes the changes in net total compensation related to the HSPBA Collective Agreement and the NBA Collective Agreement based on dollar changes. The size of the unions, however, is different. We have been instructed to use total labour cost to make the changes in net total compensation comparable as this is the basis of comparison in bargaining as used by HEABC and PSEC.

96 Schedule 1.2 presents the changes in net total compensation as a percent of total labour cost for each respective union. The net total compensation increase over the period of the collective agreements as a percent of total labour cost of the respective unions is presented at column 6. The HSPBA net total compensation increase is approximately 0.4073% of total labour cost (line 5). The NBA net total compensation increase is approximately 0.1442% of total labour cost (line 15). The difference in the change in net total compensation as a percent of total labour cost between the bargaining associations is approximately (0.2631%) (line 17) for the entire collective agreement period.

97 The difference amount is negative, indicating that the HSPBA received a larger net total compensation increase as a percent of total labour cost than the NBA. As such, we conclude that the HSPBA is not entitled to compensation under the Me Too clause.

The Association takes issue with the Daum Report, particularly as it relates to the inclusion of $3.8M per year as a benefit to the Association. More generally, it objects to Ms. Daum's ability to opine as an expert on the costing of benefit plans. These and other differences between the parties respecting the expert reports can be set aside for the time being. It is abundantly plain that the First Crouse Report and the Daum Report were premised on entirely different methodologies. The question of which methodology should govern turns largely, if not entirely, on the fundamental issue of whether the Association's Me Too claim should be determined according to the strict wording of Appendix 36 (HEABC's position) or whether the parties agreed to calculate the claim on a different basis (the Association's position). That issue should first be resolved before embarking on a more detailed examination of the expert reports.

The third expert report was provided on April 14, 2021 by Mr. Crouse (the "Second Crouse Report"). He testified that "benefits costs" had been the sole basis for comparison in his First Report because of the set mandate for wages across the public sector. Mr. Crouse was asked to

reply to the Daum Report and to consider what, if any, non-benefits monetary compensation may arise for comparison. He adopted Ms. Daum's approach to this non-benefits compensation but ultimately disagreed with her approach to three specific compensation issues. The $3.8M extinguished liability was one of these issues. Mr. Crouse found an additional compensation loss to the Association of $12,016,000 resulting in a Me Too claim of $21,458,000 in total.

HEABC called three lay witnesses -- two from within the organization and one from PSEC. Their testimony was directed predominantly to explaining internal HEABC and PSEC costing of the HSPBA and NBA collective agreements. The Association maintains their evidence is "completely unhelpful" and "largely, if not wholly irrelevant" (Initial Submission at para. 75), and continues:

> … HEABC's evidence, which remarkably did not include Adrienne Hook or Jeremy Bell taking the witness stand, consisted of how they arrived at their costing of the HSPBA agreement, then the NBA agreement, and how in their view no Me Too was triggered. No evidence whatsoever is before the arbitrator to explain why neither Ms. Hook nor Mr. Bell were called as witnesses. HEABC counsel's assertions that Ms. Hook left HEABC under bad circumstances and that Mr. Bell may feel he is in a conflict of interest is not "evidence".
>
> * * *
>
> Thus, HEABC offered up two HEABC and one PSEC witnesses to explain their role without regard to the parties' agreed-to approach to tackling the question of HSPBA's Me Too claim with the NBA. The evidentiary basis of HEABC's case would beg the arbitrator to treat years of collaborative work between the parties and their actuaries as a moot exercise. (Initial Submission at paras. 76 and 78)

As with the expert reports, the relevance of HEABC's costing evidence depends on my determination regarding how the Association's Me Too claim should be calculated. The lay testimony can likewise be set aside for now and re-visited to the extent necessary later in this award. I note at this juncture, however, that it is exceedingly difficult to locate in the record at arbitration any contemporaneous PSEC reports to the Minister of Finance as contemplated by Appendix 36 (especially in respect of the HSPBA settlement) -- or at least reports in a form which would allow a third party adjudication under even the limited scope of review propounded by HEABC: see *Ivaco Inc.* (2007), 87 OR (3d) 561 (CA), leave to appeal refused at [2007] SCCA

No. 612; and other authorities cited at para. 161 of *Applied Industrial Technologies LP v. Sirois*, 2018 ABQB 818.

IV. ANALYSIS

The detailed written briefs filed by counsel raise numerous issues which were additionally explored during a full day of oral argument. I have thoroughly considered all of the parties' submissions in the course of my deliberations. However, they will only be identified and answered in this award to the extent required to dispositively address the Association's claim.

Reduced to the essential elements, the Association maintains that the Actuaries were working collaboratively (and with the direct involvement of their respective principals) to develop a methodology for ascertaining whether there was any basis for a Me Too claim. It says no claim could arise until the end of the 2014-2019 Collective Agreement and that any calculation would be made on a *retroactive* basis. Further, as there could be no dispute until the Collective Agreement expired, no settlement privilege attached to those discussions. The Association says more specifically that the initial two Briefing Notes prepared by Mr. Bell preceded any dispute between the parties and, unlike the third Briefing Note, they were not marked "without prejudice". Those two Briefing Notes contain the methodology which the Association characterizes as a "mid-contract agreement" on how to calculate its Me Too claim. As explained more fully in the Association's Reply Submission:

> In sum, … the parties reached a mid-contract "agreement" on how to calculate a Me Too. The parties' agreement to depart from the PSEC approach was informed by the unexpected event that occurred in 2016: the nurses were not required to adopt a fixed funding joint trust notwithstanding HEABC's initial promise to HSPBA that <u>all</u> health sector bargaining associations would be so required. The parties were to free to make this mid-contract agreement, without PSEC approval, because PSEC was never a party to the agreement. Further, the validity of this mid-contract agreement, memorialized in Mr. Bell's "me too" reports, is no different than the validity of the nurses 2018 mid-contract agreement on payment for Blue Rx and benefit cost containment, that was informed by post-bargaining events. The parties' valid agreement cannot now be undone. (para. 147; underlining in original)

HEABC maintains the Actuaries were engaged in an attempt to create an "alternative methodology" to what is set out in Appendix 36 and their discussions were aimed at helping to resolve the Association's policy grievance. That exercise ultimately failed and a settlement was never achieved because there were integral issues outstanding between the parties. HEABC submits the discussions between the parties (as well as any documentation such as the Briefing Notes) are protected by settlement privilege and should not be considered. Accordingly, the Association's claim must be assessed in light of the plain language in Appendix 36 which contemplates a *prospective* calculation by PSEC. HEABC argues further that the Association's case is fundamentally misdirected because it is premised on what would have occurred if the NBA had agreed to a joint trust and this has no bearing on whether the NBA received a compensation increase resulting from a change to its collective agreement.

As part of its submissions regarding settlement privilege, HEABC relies on testimony by Ms. Meyers in cross-examination that she believed a Me Too claim would arise after attending a presentation by PSEC and HEABC on May 24, 2016 where the discrepancy in benefit coverages between the Association and the NBA was disclosed. HEABC says the Actuaries were requested to assist with the "difference" between the parties in the Spring of 2017. The Association sought to have Mr. Ready appointed in September of 2017, and then referred the matter to arbitration on September 6, 2018 because "…it has now become evident that we will not achieve agreement on identifying the appropriate sum of money owed by the Employer in relation to the requirement of Appendix 36".

In my view, the parties had an obligation to work collaboratively once the NBA collective agreement was resolved to ascertain whether there might be any basis for a Me Too claim. Collaboration was required by the very nature of the provision, as well as by the fact that HEABC and Mr. Bell either had, or would be needed to access, much of the required information. Mr. Crouse and Ms. Meyers both testified that the parties and their actuaries were involved in a collaborative process to arrive at a methodology for determining any possible Me Too claim once it became known that the NBA would continue with a defined benefits plan. No difference had as yet arisen over whether a claim was owed because the methodology contemplated actual figures

based on experience during the term of the collective agreements; further the amount of any monies paid by the NBA was still unknown. The Association's attempt to involve Mr. Ready in September of 2017 was expressly for the purpose of having a dispute resolution process in place to address "either requests for further disclosure and/or the appropriate claim that HSPBA *may have* in relation to asserting an 'Me Too' pursuant to the Letter of Agreement" (italics added). I am unable to discern that any difference (or even an apprehended difference) had arisen between the parties at the time.

The Association's September 6, 2018 referral to arbitration was markedly different. This was *after* the initial two Briefing Notes had been issued by Mr. Bell. It is readily apparent that Ms. Meyers had determined there was, or would be, a difference between the parties. HEABC's response is nonetheless noteworthy in at least three respects. First, Ms. Otto stated that referral to arbitration was "premature" because the term "net total compensation increase" refers to the entire period of the Collective Agreement and the information required to determine whether a breach occurred would not exist until after March 31, 2019. This suggests a retrospective approach as maintained by the Association.[6] Second, Ms. Otto expressed HEABC's wish "…to *continue to work collaboratively* with HSPBA to definitively identify and narrow any issues that *may exist* between the parties …" (italics added). This statement is consistent with the view expressed above regarding the parties' mutual obligation to collaborate and evaluate the extent of any claim -- as opposed to ongoing settlement discussions in the face of an actual or perceived dispute. Third, there was absolutely no suggestion by Ms. Otto that Appendix 36 envisaged a calculation by PSEC or that the parties' collaborative discussions were not an appropriate method for comparing compensation levels.

These observations aside, the fact remains that the Association sought to refer the Me Too matter to arbitration on September 6, 2018. The Association confirmed and relied on this referral when responding to HEABC's bifurcation application. Thus, in the ordinary course, settlement

[6] I find no merit to HEABC's submission that Ms. Otto regarded referral to arbitration as premature because of the potential for some unspecified mid-contract agreement. Her response was not framed in those narrow terms and, had that been intended, there is no apparent reason why she could not have been called as a witness to explain her response. Further, HEABC's particulars of October 5, 2020 maintained that neither the Association's Collective Agreement nor the NBA collective agreement contained additional cost items to be pursued post-ratification.

privilege would apply to any discussions in furtherance of resolving the difference following that date. On the other hand, there is not sufficient evidence to find a dispute had crystalized any earlier. This means the parties' prior collaborative discussions, including the initial two Briefing Notes, are not subject to settlement privilege and are admissible.

In any event, the actual date of when a difference arose is somewhat academic. I deliberately wrote "in the ordinary course" above because there are exceptions to the privilege. A recognized exception is where one party maintains an agreement was reached and the second party contends otherwise. In those circumstances, communications which allegedly led to a settlement will cease to be privileged if disclosure is necessary to demonstrate the existence or the scope of the agreement. The general interest in promoting settlements (which is the purpose of the privilege) requires that parties be able to prove the terms of their agreement. If any authority is needed for this proposition, it can be found in *Dow Chemical Canada ULC v. Bombardier Inc.*, 2014 SCC 35.

These are precisely the circumstances before me; namely, the Association maintains that it reached an agreement with HEABC regarding a revised methodology for calculating any Me Too claim following the unexpected event of the NBA not being subject to a fixed funding joint trust. In response, HEABC disavows the agreement. To resolve this difference, it is necessary and appropriate to consider the parties' exchanges in their entirety.

The best evidence of whether the parties reached a consensus is the Briefing Notes. The Background Section to both the January 26, 2018 and the May 25, 2018 versions was worded almost identically. The second Briefing Note read:

> Background
>
> The current Health Science Professionals Bargaining Association ("HSPBA") Collective Agreement contains a "Me-Too" clause (see Appendix 36 of the Collective Agreement "Compensation Bargaining Comparability"). This clause states that if the total compensation increase for the Nurses Bargaining Association ("NBA") due to the 2014 collective bargaining settlement exceeds that of the HSPBA, then wage rate increases for the HSPBA shall be adjusted to account for the difference.

> *This briefing note provides a mechanism for comparing the employer cost of benefits under the NBA from April 1, 2017 to March 31, 2019 to the employer cost of benefits for the same period if benefits were provided to the NBA using the same vehicle as the HSPBA - the Joint Health Science Benefits Trust ("JHSBT").*
>
> As part of this exercise the employer contribution rate from April 1, 2017 to March 31, 2019 for the NBA is calculated using the same principles as the negotiated JHSBT contribution rate. (italics added)

Mr. Crouse testified that the second paragraph above in italics was the agreed methodology "at a high level". It is important to recall that the Briefing Notes were not developed by the Actuaries without the active participation of both the Association and HEABC. Ms. Meyers and others were regularly involved on behalf of the Association, while Ms. Hook and others participated on behalf of HEABC. Although Mr. Crouse could not pinpoint precise dates, he was certain the Briefing Notes were discussed while the representatives of both parties were present. There was never any suggestion from Ms. Hook that these sessions were without prejudice or otherwise off the record; nor did she ever indicate the methodology was not an appropriate way to calculate a Me Too claim. Further, both Briefing Notes were based explicitly on Appendix 36. That is, they were not intended as some "alternative" unrelated to the clause in the Collective Agreement as HEABC now suggests; rather, the parties were working towards an agreement on how to give effect to the intent behind Appendix 36 in light of the changed circumstances. Finally, and in relation to another contentious issue, there was no suggestion that the Association's extinguished liability of $3.8M annualized savings would somehow factor into the methodology.

The initial two Briefing Notes contained what were described as "Interim Calculations". The first figures were "preliminary" and included projections. Actual figures for the first year did not become available until March 31, 2018. The figures in the second Briefing Note were likewise preliminary and subject to change based on actual experience. There would also need to be an adjustment depending on what payments the NBA made for Blue Rx and "the benefit growth plan" (i.e., cost containment). But the material point is that the underlying methodology had been established and was consistent in both Briefing Notes.

The Association correctly observes that the parties were capable of reaching a revised agreement regarding how the Me Too would be calculated. The language of Appendix 36 obviously contemplated calculations being made by PSEC. However, that entity is not privy to the parties' Collective Agreement and its consent to a new method for determining any claim was not contractually required.

HEABC seeks to avoid a finding that the parties reached an agreement by arguing that "substantive issues" remained unresolved. In this regard, it maintains the question of how to treat LPN harmonization under the NBA collective agreement remained outstanding, and points to the June 29, 2018 email where Mr. Crouse suggested to Mr. Bell that "Harmonization [of] benefit costs may be subject to interpretation by the lawyers". The Association acknowledges the potential need to "iron out how to address LPN harmonization" and the prospect of "negotiations" between Ms. Meyers and Ms. Hook (Reply Submission at para. 20) However, it submits HEABC's contention that the parties' actuaries continued to work on establishing a methodology at this time is inaccurate. I concur. Apart from some minor issues (including how to account for LPN harmonization), the foundational "methodology" had been resolved prior to issuance of the first Briefing Note in January of 2018. The proper interpretation of Mr. Crouse's evidence in its entirety, which I accept without reservation, is that he always hoped the parties would come to an agreement on *the amount* of a Me Too claim but there was no outstanding disagreement over the *methodology or framework* for calculating a claim.

In summary to this point, I find the parties with assistance of their Actuaries reached an agreement for a revised methodology or framework for calculating any Me Too claim. Their agreement was reduced to writing in the first two Briefing Notes and represented a departure from what had previously been agreed to in Appendix 36. An overall agreement was not finalized in the sense of a specific dollar amount because a limited number of components were as yet unknown (primarily Blue Rx and cost containment). Mr. Crouse admittedly contemplated the prospect of a "negotiation" between Ms. Meyers and Ms. Hook at some stage. However, this was only in respect of the "figures" and not the underlying methodology. He was unwavering in his testimony that an understanding had been reached about how the Me Too would be determined in light of the NBA not being subject to a fixed funding joint trust. When it was suggested in cross-examination that

there was never a point when the Actuaries reached agreement on a methodology, Mr. Crouse was adamant, stating: "[There was] always an understanding as to how we would go about it".

Then, shortly after the final figures became available, Mr. Bell "went dark". His Briefing Note of October 17, 2019 did not include a Me Too calculation and was apparently prepared for a different purpose at the direction of HEABC. Mr. Crouse later spoke with Mr. Bell and learned the third Briefing Note "… was not meant to take any position on the impact of 'Me Too'". Rather, it was requested by HEABC "to tie up loose ends on NBA costs to March 31, 2019". Mr. Crouse subsequently received the spreadsheet which Mr. Bell had used to prepare the third Briefing Note and he adopted it for purposes of preparing his First Report.

Although the third Briefing Note in October of 2019 did not "take any position" or include any calculation regarding the Me Too claim, there was no communication from HEABC to suggest that the work of the Actuaries had been for naught. HEABC did not attempt to resile from the methodology until a year later when its new legal counsel delivered particulars which relied on the original language of Appendix 36. My preliminary ruling of January 11, 2021 regarding HEABC's subsequent bifurcation application acknowledged that the interpretative issue would become a threshold issue at arbitration. However, allowing bifurcation would have been patently unfair to the Association for a number of reasons. Having now heard all of the evidence and considered the entire course of conduct between the parties, I find HEABC should not be allowed to resile from the agreement which it reached with the Association regarding the methodology for calculating any Me Too claim. It would be antethical to sound labour relations and the orderly settlement of disputes to permit such a late and fundamental reversal in position.

The only expert report before me which follows the agreed framework is the First Crouse Report. This raises for consideration HEABC's contention that the report contains a "substantial deficiency" that undermines Mr. Crouse's conclusions. In this regard, HEABC notes there was no adjustment to the baseline NBA benefit costs to correspond with additional contributions received by the JHSBT in the first year of operations. In particular, Mr. Crouse did not add the 0.25% negotiated additional contribution and the 0.25% extended health risk sharing related to increased health costs in 2016 (for a total of 0.5%). These figures were included in the first and second

Briefing Notes prepared by Mr. Bell. They were not included in the third Briefing Note or the associated spreadsheet. HEABC faults Mr. Crouse for not reviewing the data himself to determine whether it was appropriate to exclude the additional contributions from the NBA's baseline costs and says he should not have made "an assumption to not make an assumption" about why they were excluded by Mr. Bell (Submission at para. 370). These relatively small percentages are of considerable import -- had they been included, Mr. Crouse would not have found a Me Too for benefits after the JHSBT began operation.

Contrary to HEABC's contention, and as the Association emphasizes, Mr. Crouse did review the data he was provided in support of the third Briefing Note. He relied on the data and Mr. Bell's decision to not include the combined 0.5% adjustment (which related to an increase based on benefit cost increases for the Association and not the NBA).[7] Mr. Crouse testified that there wasn't any data regarding the 0.5% and, had the figure been included by Mr. Bell, he would have needed to review the adjustment to see if it was appropriate. He also stated it was "too big a jump" to include the 0.5% for the nurses so he simply used what Mr. Bell had provided. Thus, the Frist Crouse Report was based on NBA data received from Mr. Bell (who, again, had access to the HBT data unlike Mr. Crouse) without any further or unfounded assumptions.

In the result, HEABC cannot be heard to complain about the "assumption" made by Mr. Crouse when he merely adopted the data provided by HEABC's own actuary. This was the same schedule which Mr. Bell had used at the request of HEABC "to tie up loose ends on NBA costs to March 31, 2019". If HEABC wanted to go behind or otherwise challenge this aspect of the First Crouse Report, it should have called Mr. Bell as a witness at arbitration -- someone who it maintains was "equally available" to both parties. Further, the Daum Report did not challenge or critique the First Crouse Report although Ms. Daum's October 5, 2020 retainer letter from HEABC's counsel expressly contemplated her commenting "on any relevant opinions expressed within that report" (p. 3). The Daum Report noted the First Crouse Report had calculated Me Too compensation based only on the difference in benefits received by the Association and the NBA.

[7] In reviewing the data, Mr. Crouse noted the spreadsheet referenced an additional 0.43% contribution in 2018/2019 but the figure was not part of the third Briefing Note. He spoke with Mr. Bell and decided to include the 0.43% in his calculations.

Ms. Daum "… reiterate[d] that we are not critiquing [the First Crouse Report]. We are highlighting *the difference in methodology* as this is a complex matter" (para. 36; italics added).

For the sake of completeness, I note HEABC also criticized the First Crouse Report over the treatment of LPN harmonization and Mr. Crouse's determination that the cost of benefits (as opposed to wages) should be included on the NBA side for the period May 11, 2016 to March 31, 2017. The argument was made by HEABC as one of three reasons why the Daum Report should be preferred; that is, HEABC did not identify the issue as a "fundamental deficiency" which undermined the First Crouse Report.

The Association answered this criticism in its written submissions. But those reasons aside, HEABC's argument proceeds from a faulty premise: the relevant inquiry is not whether LPN harmonization was excluded under Appendix 36, rather, the proper question in light of my determinations is whether the cost of LPN benefits harmonization should be excluded under the methodology agreed to by the Actuaries.

Mr. Bell included the cost of LPN benefits harmonization in his third Briefing Note when calculating the cost of NBA benefits. Mr. Crouse used that calculation in his First Report. I appreciate the third Briefing Note was prepared for a different purpose. However, this is another area where Mr. Bell's evidence might have been helpful and he was not called to testify by HEABC. And to repeat, Ms. Daum did not fault the methodology used by Mr. Crouse. In light of the record before me, I am not prepared to reduce the amount of Mr. Crouse's Me Too determination for benefits by the amount of the LPN benefits harmonization calculation; nor was I asked to make such an adjustment by HEABC in final argument -- undoubtedly due to HEABC's position that the Daum Report should be preferred to the Crouse Reports in their entirety if a retrospective approach applies.

The result of my determinations to this stage is that the Association has established a Me Too claim of $9.422M based on a cost comparison of the benefit plan in its 2014-2019 Collective Agreement with the cost of benefits provided under the NBA collective agreement having the same term.

The next question is whether the Association can additionally claim a further $12M on account of non-benefits compensation. In my view, for essentially the same reasons that HEABC should not be permitted to resile from the methodology developed by the Actuaries, the Association should not be allowed to expand the scope of the parties' agreement.

It will be recalled that Ms. Meyers sought full disclosure from PSEC of "detailed costing information for the purposes of collective agreement comparison across the NBA and HSPBA collective agreements in order to be able to conduct a complete review of the applicability of Appendix 36" on April 19, 2017. She had the NBA Settlement Agreement and made specific requests in relation to more than 20 items, along with seeking other information including FTEs and total payroll. PSEC responded on June 15, 2017. The Association's counsel followed up on the request from Ms. Meyers by letter dated September 26, 2017 to HEABC. Ms. Hook wrote to counsel on December 7, 2017 "to ensure that you have received the requested documents". She concluded by writing, "We trust that this satisfies your requests" and asked that any further inquiries be directed to her attention. There is no suggestion by the Association that it had not received the information necessary to at least begin a broader Me Too analysis by the end of 2017 (aside, of course, from the figures respecting Blue Rx and cost containment). This was over a year before the First Briefing Note was prepared.

Mr. Crouse testified that his initial decision to restrict his First Report to a consideration of benefits was based on the assumption that other compensation changes in the collective agreements had remained the same due to the Government's mandate. However, at the very latest (and most probably earlier), Mr. Crouse had the PSEC non-benefits compensation data for purposes of preparing his First Report. Once the Daum Report was received, he realized there were additional differences in non-benefits compensation which required assessment. This resulted in his Second Report providing a full analysis of "net total compensation increases".

The same assumption appears to have been made by the Association and its counsel. A claim for non-benefits compensation was not advanced until after the Second Crouse Report was prepared in April of 2021. By that time, the Association had been in possession of the information

required to assess a non-benefits claim for over three years. Moreover, the real substance of the dispute referred to arbitration, as well as the subject of extensive case management and interlocutary proceedings over many months, was unquestionably confined to compensation based on the different benefit plans and in accordance with the methodology developed by the Actuaries. Ms. Meyers candidly acknowledged in cross-examination that "… the crux of the claim is with respect to the discrepancy in the value of the benefits that remained available to the NBA [in comparison to] the requirement for HSPBA to work through the device of a joint trust with a fixed funding formula".

The Association notes that Appendix 36 speaks to "total compensation" and is not limited to a benefits comparison. That is undoubtably so; however, in seeking to rely on the plain language of the Letter of Agreement, the Association essentially seeks to achieve what is says HEABC should not be permitted to accomplish -- that is, disavow the mid-contract agreement and resort to terms in the parties' original agreement. HEABC aptly responds that the Association "can't have it both ways" (its counsel used a more pithy idiom in oral argument). I agree. The scope of the mid-contract agreement on a methodology for assessing a Me Too claim was restricted to comparing the cost of the Association's benefits to those provided under the NBA collective agreement[8].

Alternatively, if the parties' collaborative efforts and the work of their Actuaries did not result in a binding framework for calculating a Me Too claim, I find their discussions had at least reached the stage where HEABC should now be estopped from asserting a different methodology and the Association should likewise be precluded from advancing a broader scope of claim.

The Association submits that estoppel is an equitable doctrine of special significance in the labour relations context. It relies on the following passage in *Nor-Man Regional Health Authority Inc. v. Manitoba Assn. of Health Care Professionals*, [2011] 3 SCR 616, where the Court opined at paragraphs 49-50:

[8] It can fairly be stated as well that the Association's total claim of almost $21.5M represents something of a hybrid model outside of Appendix 36. The calculation adopts the Actuaries' methodology for benefits and grafts on Ms. Daum's approach to non-benefits compensation (aside from three areas where Mr. Crouse disagreed with her calculation).

Labour arbitrators are uniquely placed to respond to the exigencies of the employer-employee relationship. But they require the flexibility to craft appropriate remedial doctrines when the need arises: Rigidity in the dispute resolution process risks not only the disintegration of the relationship, but also industrial discord.

These are the governing principles of labour arbitration in Canada. Their purpose and underlying rationale have long been well understood by arbitrators and academics alike. More than 30 years ago, Paul C. Weiler, then Chairman of the British Columbia Labour Relations Board and now Professor Emeritus at Harvard University, underlined their importance in a dispute of particular relevance here. He explained in the following terms why the doctrine of estoppel must be applied differently in a grievance arbitration than in a court of law:

> ... a collective bargaining relationship is quite a different animal. The union and the employer deal with each other for years and years through successive agreements and renewals. They must deal with a wide variety of problems arising on a day-to-day basis across the entire spectrum of employment conditions in the workplace, and often under quite general and ambiguous contract language. By and large, it is the employer which takes the initiative in making operational decisions within the framework of the collective agreement. If the union leadership does not like certain management actions, then it will object to them and will carry a grievance forward about the matter. The other side of that coin is that if management does take action, and the union officials are fully aware of it, and no objection is forthcoming, then the only reasonable inference the employer can draw is that its position is acceptable. Suppose the employer commits itself on that assumption. But the union later on takes a second look and feels that it might have a good argument under the collective agreement, and the union now asks the arbitrator to enforce its strict legal rights for events that have already occurred. It is apparent on its face that it would be inequitable and unfair to permit such a sudden reversal to the detriment of the other side. In the words of the Board in [*Corporation of the District of Burnaby and Canadian Union of Public Employees, Local 23*, [1978] 2 C.L.R.B.R. 99, at p. 103], "It is hard to imagine a better recipe for eroding the atmosphere of trust and co-operation which is required for good labour management relations, ultimately breeding industrial unrest in the relationship -- all contrary to the objectives of the Labour Code" ... .
>
> (*Re Corporation of the City of Penticton and Canadian Union of Public Employees, Local 608* (1978), 18 L.A.C. (2d) 307 (B.C.L.R.B.), at p. 320)

It is palpably apparent that the bargaining relationship between HEABC and the Association would be detrimentally impacted if either party were permitted to disavow the

existence and scope of the methodology developed by their Actuaries and somehow take refuge in the wording of Appendix 36 (or, in the Association's case, resort to some hybrid method for calculating a Me Too claim). Such a reversal would be "inequitable and unfair [and] to the detriment of the other side".

The Association cites my award in *Insurance Corp. of British Columbia -and- Office & Professional Employees' International Union, Local 378* (2002), 106 LAC (4th) 97, where the elements for a successful plea of estoppel were explained:

> The purpose of the modern doctrine is to avoid inequitable detriment. An estoppel may arise where: (a) intentionally or not, one party has unequivocally represented that it will not rely on its legal rights; (b) the second party has relied on the representation; and (c) the second party would suffer real harm or detriment if the first party were allowed to change its position. The requirement of unequivocal representation or conduct is a question of fact, and may arise from silence where the circumstances create an obligation to speak out. The notion of reliance must be assessed from the perspective of the party raising the estoppel. In the labour relations context, the element of detriment may be satisfied by a lost opportunity to negotiate: *Versatile Pacific Shipyards*, *supra*, at pages 270-71. See more generally *Re Abitibi Consolidated Inc. and I.W.A. Canada, Local 1-424* (2000), 91 L.A.C. (4th) 21 (Blasina), at page 35. (para. 40)

Turning first to the basis on which HEABC should be estopped, the Association correctly submits that HEABC unequivocally represented throughout the entire 2014-2019 Collective Agreement that any compensation adjustment owed by reason of the Me Too clause could only be calculated after conclusion of the two bargaining associations' collective agreements. During this period, the immediate parties consistently and repeatedly engaged their Actuaries to develop a method for comparing benefit entitlements which would be relevant to a potential claim. At no point did HEABC suggest that a different methodology would apply if they failed to reach agreement on a precise number.

The Association accepted HEABC's representation that arbitration was pre-mature and agreed to delay the matter until after March 31, 2019. The parties entered into a renewal Collective Agreement before that date when a new Tentative Agreement was reached on November 8, 2018. Thus, the Association lost the opportunity to address the matter in collective bargaining because

HEABC did not seek to resort to the strict language of Appendix 36 until its current counsel delivered particulars on October 5, 2020. Throughout this period, the Association prepared for arbitration based on its understanding that the methodology developed by the Actuaries would govern. As the Association's counsel asked rhetorically in oral argument, "Why on earth did HEABC not just hold up the PSEC costing?" There is simply no satisfactory answer as to why HEABC did not raise its reliance on PSEC's calculations at an earlier stage. I accept the Association's submission that it would suffer a substantial harm or detriment if HEABC were now allowed to resile from its agreement and its consistently held position:

> …Among other things, HSPBA has borne legal and actuarial costs in the tens of thousands of dollars in reliance upon HEABC's representation that the parties had agreed to look to actual compensation that was realized through the full term of the collective agreements. Had HEABC initially represented that PSEC's prospective reporting out to the Minister of Finance was the dispositive PSEC accounting, the issue now sought to be resolved via HEABC's preliminary issue could have been adjudicated and settled in 2018, or even as early as 2016. This would include the right to litigate HEABC's claim (discussed below) that referral would still have been premature because PSEC's "prospective" analyses may take place until the very last day of the parties' collective agreement. HSPBA's detrimental reliance in this regard is sufficient to estop the HEABC from now reversing course and arguing for a prospective theory of compensation comparability. (Initial Submission at para. 204; underlining in original)

Whether intentionally or not, HEABC unequivocally represented that it would not defend a Me Too claim based on its legal rights under the language of Appendix 36. Indeed, its then counsel explicitly recognized the Actuaries' methodology during the July 1, 2020 pre-hearing conference call. The Association unquestionably relied on HEABC's multiple representations, and would suffer real detriment if HEABC were allowed to change it position and rely on PSEC costing and/or the Daum Report. The present circumstances are a classic illustration of when the modern doctrine of estoppel should be invoked to avoid unequitable detriment.

Much the same can be said regarding the Association's belated change of position and its attempt to advance a Me Too claim for non-benefits compensation. The Association had substantially all of the information necessary to determine whether there was an additional claim based on non-benefits compensation levels by December of 2017. As recorded above, Ms. Hook

wrote to the Association on December 5 to confirm this state of affairs. The fact that the Association and its Actuary "assumed" there would only be a claim based on a comparison of benefits is not an acceptable explanation. HEABC was fully entitled to rely on the Association's silence and proceed on the basis that only a benefits comparison was at issue. It is impossible to assess how the dynamics of the parties' collaborative discussions would have been affected had non-benefits compensation been added to the mix. The detriment to HEABC is likewise abundantly obvious: it similarly lost the opportunity to address the matter in the 2018 negotiations; moreover, it would be faced with an additional monetary claim which actually exceeds the amount of the Me Too benefits claim. The Association is thus estopped from expanding the scope of the claim which it advanced to arbitration.

As a consequence of the conclusions I have reached regarding the proper disposition of the Association's claim, there is no need to definitively answer several of the issues and arguments found in counsel's written submissions. These include HEABC's multiple arguments regarding the proper interpretation of the language in Appendix 36 and the use of past practice as an aid to interpretation. Those matters are not relevant as the parties moved beyond the terms of their original understanding and concluded a different basis for comparing compensation increases.

It is likewise academic to examine the testimony from HEABC's lay witnesses, particularly as it relates to costing of the two collective agreements. The parties' mid-contract agreement removed PSEC's role as initially envisaged in Appendix 36. The Daum Report is similarly of no assistance. In both of those areas, the evidence is not relevant to the applicable methodology for determining a Me Too claim.

Lastly, it is not necessary to explore the proper accounting treatment of the Association's prior obligation to find $3.8M in annual benefits cost savings. Regardless of whether it was "extinguished" for all purposes by virtue of the Memorandum of Agreement, the figure formed no part of the agreed-upon framework. This omission from the Actuaries' collaborative discussions regarding benefits is noteworthy because, if an offset each year had still been intended, one would have most logically expected the figure to be part of any comparison of benefits.

V. DECISION

The Association's grievance succeeds in part. It has established a Me Too claim in the amount of $9,442,000 which must be paid along with interest calculated in accordance with the *Court Order Interest Act*. I retain jurisdiction to address any challenges that might be encountered over implementation, including the manner and timing of payment to the Association's members.

DATED and effective at Vancouver, British Columbia on September 26, 2022.

JOHN B. HALL
Arbitrator