

- Negligent Misrepresentation
- Damages

FINDINGS AND DECISION IN A DISPUTE

BETWEEN: NEWFOUNDLAND AND LABRADOR TEACHERS' ASSOCIATION
(hereinafter called the "Association")

AND: HIS MAJESTY THE KING IN RIGHT OF NEWFOUNDLAND AND
LABRADOR, as represented by NL Schools-Department of
Education
(hereinafter called the "Employer")

GRIEVOR: PAULA ENNIS

FOR THE UNION: IAN S. PATEY, KC

FOR THE EMPLOYER: BERNADETTE COLE GENDRON, LL.B.

BOARD: DAVID G. L. BUFFETT, KC – Chair
JANET VIVIAN-WALSH – Employer Nominee
DON ASH – Association Nominee

MAJORITY DECISION

INTRODUCTION

1. The arbitration was held virtually on June 15th, 2026 and July 16th, 2026.

NATURE OF THE GRIEVANCE

2. The grievance filed on behalf of the Grievor took the form of a grievance letter dated November 4th, 2025. That letter reads:

"I am a teacher with NLSchools. I write at this time to file grievance relating to lost opportunity and lost personal funds in my efforts to become a fully qualified English as an Additional Language (EAL) teacher under your employ. Specifically I am contending that NLSchools has violated Articles 6 and 39, specifically Clause 6.03(a) and Clause 39.01 of the Provincial Collective Agreement. My reasons are outlined below.

Ms. Sainsbury, in my quest to become trained as a qualified EAL teacher, I have spent \$3000 following a program that I was told would qualify me for a permanent position with NLSchools. On February 25th, 2025, I emailed Mr. Sheldon Barry to seek some advice to ensure that I was on the right path. In that email, in relation to CONT890 TESL Part 1 program, I specifically asked, "Would this be comparative to the 3-course program you shared or do you think I should plan to complete those courses when my current program is complete?" Mr. Barry's response was, "Hi Paula, Yes it is. Take care."

On April 7th, 2025, I emailed again and said, "I was just looking over the information for the Sponsored EAL program at MUN. I'm currently completing the TESL 1 through Queen's and I was wondering if the programs are comparable or if I should also apply for the MUN cohort. I know there is a Google Meet on April 16th, but my situation may be a little different as I am a current EAL Program student." Mr. Barry replied, "They are comparable yes. Hope this helps."

Ms. Sainsbury, in each email, I was seeking not only confirmation that I was on the right track, but also advice, if that was not the case. The responses provided by Mr. Barry, while I believe they were not intentionally misleading, were certainly devoid of the guidance I sought at that time. In fact, I later learned that the three combined courses through Queen's University that could have rendered me qualified for a permanent EAL position would have been easier to complete without a practicum and would have been less expensive at \$2600 total. In the April 7th, 2025, email noted above, I even asked "if I should apply for the MUN cohort", but that was not suggested as a possibility when the response that came back to me was "they are comparable yes." Ms. Sainsbury, I think it is more than evident, as someone who was willing to spend thousands of dollars on professional development and to explore a passion of teaching young children with as many tools in my toolkit as possible, that I was and am committed to being the best teacher and educator I could and can be. But, today, I feel defeated and let down by NLSchools, an organization along with its predecessor school districts, to which I have given many dedicated years of exemplary service.

I mentioned earlier that I do not think I was intentionally misled, but I will submit that the way in which my queries were handled is a classic example of *estoppel by silence*. By definition, estoppel by silence is:

"a legal doctrine where a person is prevented from asserting a claim or right because their silence, when they had a duty to speak, misled another party to their detriment. It occurs when a person has a responsibility to correct a misunderstanding but remains silent, and the other party relies on this silence to their disadvantage. This can happen in situations where a statement is made that becomes false later due to a change in circumstances, and the person with the knowledge has a duty to update the other party."

Ms. Sainsbury, I reached out to Mr. Barry on not one, but two occasions to seek either affirmation or advice on my best path forward. While I realize that all of us involved in education are often untenably busy and frequently left with little time to respond to the high number of requests and demands placed on us, I believe it is incumbent upon us all to provide complete and accurate responses to any queries that come our way, and if we become aware that we have erred in any direction, information or advice that we have given, as per the estoppel of silence concept, we are duty bound to correct our error. I do not think it is unreasonable of me to expect a full and thorough response to my questions, especially whereas there is a significant cost associated with becoming a qualified EAL teacher. Again, I hasten to add, I don't believe there was any malicious intent, but the effect of a less than full response has cost me more than the cost of a full program and yet I remain unqualified as per NLSchool's requirements for a permanent EAL position.

Ms. Sainsbury, I now want to dig a little deeper into my email of April 7th, 2025. In that email, I mentioned the MUN cohort program. The very reason I did not apply for that program was a direct result of being given the belief that the program in which I was already enrolled would be sufficient to be fully qualified as an EAL teacher. But, when I asked about this in case I needed to consider the MUN cohort program, I was told the TESL 1 program was comparable, and I therefore decided against applying. So, I additionally missed out on that opportunity. Not only am I out \$3000 for a program that I did quite well at and have only the practicum to complete, at more expense to myself as I have to travel to St. John's to do so, my opportunity cost is potentially the loss of that chance to join with 19 others to become qualified as per NLSchools "new" protocols for EAL teachers. I would have absolutely jumped at the chance to hopefully be selected for the cohort had I thought for a moment I would need to do so.

Therefore, in accordance with Clause 31.02 of the Provincial Collective Agreement, I hereby file a grievance against NLSchools. I respectfully contend that NLSchools has violated Clauses 6.03 (a) and 39.01 of the Provincial Collective Agreement. Ms. Sainsbury, my NLTA representative, Mr. Gabriel Ryan, has arranged with you to extend the grievance timeline for this grievance until 11:59 PM this evening, November 4th, 2025, so we are in compliance with that extension.

The relief sought is the proper application of the Provincial Collective Agreement to my circumstances. More specifically, I respectfully request:

1. That my case be reviewed and my experience and education be considered for equivalency towards the MUN cohort.

2. That NLSchools arrange for me to complete any remaining courses, at no expense to me, through the MUN cohort program.
3. Damages, including reimbursement of \$400, the difference between the \$3000 I have already paid and the \$2600 I would have paid in another program that would have seen me exit that program completely qualified for a permanent EAL position.
4. All other appropriate redress.

Or

1. Damages of \$3000 for the TESL 1 Program that I paid for out of pocket and was assured, twice, that it would be comparable in my pursuit of a permanent EAL position.

As per Clause 31.03 of the Agreement, I hereby request a meeting with you to discuss my grievance and hopefully come to a satisfactory resolution. I will be accompanied by an NLTA Administrative Officer, Mr. Gabriel Ryan.

I look forward to your reply.”

3. It is signed by the Grievor, copied to Gabriel Ryan, NLTA and addressed to Alicia Sainsbury, Senior Director of Human Resources, NLSchools – Department of Education, 3rd Floor West Block, Confederation Building, St. John's, NL.
4. During the course of the hearing, counsel for the Association clarified that what is being alleged is negligent misrepresentation on the part of the Employer and that what is being sought is relief in the nature of damages.

PRELIMINARY MATTERS

5. The parties agreed:
 - (1) This Board was properly constituted and had the authority to hear the matter.
 - (2) The Chair of the Board would take notes and in the event of a dispute as to the evidence or what transpired during the hearing, his notes would prevail.
 - (3) All parties likely to be affected by the outcome of the hearing had received adequate notice and been informed of their right to appear.
 - (4) All matters pertaining to the grievance procedure and all time limits, whether statutory or those prescribed by the Collective Agreement, had been properly observed or were waived.

- (5) Any time limits for publication of the Award were waived.
- (6) There were not any issues of arbitrability or other preliminary objections.
- (7) Quantum would be dealt within the hearing and not bifurcated.
- (8) The Board would remain seized of the matter for 60 days after publication of the Award to deal with any matters of interpretation should they arise.
- (9) Witnesses would be excluded until their testimony had been heard.
- (10) Any limits for publication of the Award were waived.

THE ISSUES

6. The issues are:
 - (1) Whether on the evidence the Association has proven on a balance of probabilities that there has been negligent misrepresentation on the part of the Employer and whether the Grievor is entitled to damages as a result of negligent misrepresentation on the part of the Employer.
 - (2) If so, what is the damages entitlement?

RELEVANT SECTIONS OF THE COLLECTIVE AGREEMENT AND THE CANADA LABOUR CODE

7. The relevant section of the Collective Agreement are:

ARTICLE 6: EMPLOYMENT OF TEACHERS

- 6.03 (a) The basic criteria for the selection of teachers shall be competence, suitability and qualifications as assessed by the School Board.

ARTICLE 39: MANAGEMENT RIGHTS

- 39.01 Except as specifically abridged, delegated or modified by this Agreement, management functions, rights and powers now existing are recognized by the Association as being retained by the School Boards and the Government as the case may be.

EVIDENCE

8. A number of items were received into evidence either as consent exhibits or through the viva voce evidence of witnesses. The consent items are referenced as Consent followed

by a number and those entered through witnesses are labelled using the initials of the person through whom they were entered followed by a number.

9. The exhibits entered are as follows:

1. Consent 1 - the Collective Agreement;
2. Consent 2 – the Grievance Letter;
3. PE1 – a string of emails between the Grievor and Sheldon Barry commencing with an email from the Grievor dated January 13th, 2025 and ending with an email from Sheldon Barry on February 25th, 2025;
4. PE2 – a string of emails between the Grievor and Sheldon Barry commencing with an email dated April 7th, 2025 from the Grievor and ending with a email from Sheldon Barry on the same date;
5. PE3 – an email string in May, 2025 commencing with an email from the Grievor to Lynne Sheppard and Sheldon Barry on May 21st, 2025 and ending with an email from Lynne Sheppard to the Grievor on May 23rd, 2025;
6. PE4 – a string of emails between the Grievor and Sheldon Barry commencing with an email from Sheldon Barry on May 21st, 2025, 9:21 am and ending with an email from Sheldon Barry on that date at 1:52 pm;
7. PE5 – several email strings, one containing an email to the Grievor from Kelly-Ann Kinden dated March 26th, 2024 at 11:38 am, a reply from the Grievor to Kinden on March 26th, 2024 at 1:19 pm, an email from the Grievor to Kinden and Joan at 1:20 pm on October 1st, 2024, an email to Kinden from the Grievor at 2:07 pm on November 2nd, 2024, one from Kinden to the Grievor at 4:34 pm on November 4th, 2024, an email from the Grievor at 9:10 pm on March 20th, 2025, an email from the Grievor to Sheldon Barry on March 31st, 2025 at 3:49 pm, an email on May 21st, 2025 at 12:04 pm from Lynne Sheppard to Sheldon Barry and the Grievor, an email from the Grievor on May 21st, 2025 at 12:08 pm to Lynne Sheppard, an email from the Grievor to Lynne Sheppard on May 21st, 2025 at 12:35 pm, an email from Lynne Sheppard to the Grievor on May 21st, 2025 at 12:56 pm, an email from the Grievor to Duane on June 18th, 2025, an email from the Grievor to Duane on August 12th, 2025, an email from the Grievor to Sheldon Barry on September 5th, 2025 at 7:09 am, an email from the Grievor to Kelly-Ann Kinden on September 5th, 2025 at 8:38 pm, an email from the Grievor to Kelly-Ann Kinden on September 19th, 2025 at 9:41 am, an email from the Grievor to Kelly-Ann Kinden on

September 21st, 2025 at 12:42 pm, an email from the Grievor to Kelly-Ann Kinden on November 26th, 2025 at 12:24 pm, an email from Kelly-Ann Kinden to the Grievor, Gabe and Kim dated January 5th at 10:51 am, an email from Kelly-Ann Kinden to the Grievor and Kim on May 12th at 2:33 p.m., an email from the Grievor to Kelly-Ann Kinden on May 12th at 7:14 pm, an email from the Grievor to Kelly-Ann Kinden on May 13th at 11:55 am as well as a email from Kelly-Ann Kinden to Kim and the Grievor on May 13th, 2026 at 12:08 pm;

8. PE6 – a document about the Queen’s University TESL 890 (Part I) course and the Queen’s TESL 891 (Part II) course;
 9. PE7 – a document about the Queen’s University course Teaching English Language Learners Part I (CONT539), Part II (CONT540) and specialist course (CONT541);
 10. PE8 – an Adult ADHD Centre document dated October 6th, 2025 respecting the Grievor;
 11. SB1 – a document entitled Viewing Job Posting for the Position of 1.0 EAL Itinerant;
 12. AS1 – an email from Alicia Sainsbury to Darlene Johnson dated May 27th, 2025.
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10. The Association called one witness, the Grievor and the Employer called two witnesses, Sheldon Barry and Alicia Sainsbury.

The Grievor’s Evidence

11. The Grievor is a teacher who had been teaching for approximately 17 years. She said she taught in Manitoba after graduation and qualifying as a teacher and subsequently returned to Newfoundland and Labrador and specifically to Gander.
12. Her university training to become a teacher did not involve her majoring in or any course work related to teaching English as an additional language.
13. She became a permanent teacher at Riverwood Academy in Gander Bay and in her last year there served as Assistant Principal with classroom duties in a contract/term position. This was in 2023-2024.

14. Beginning in the 2024-2025 school year she moved to a permanent classroom position at Smallwood Academy, Gambo and taught Grade 1. This is her current permanent position.
15. She applied for and was granted the position of an Itinerant English as an Additional Language (EAL) Teacher in November, 2024 but started in that role in January, 2025 and was in that role from January, 2025 to June, 2025. It was not a permanent position but a temporary one and she continued to hold a permanent position at Smallwood Academy as a classroom teacher.
16. Her EAL position was itinerant in the sense that she was required to move from school to school as needed.
17. The Grievor applied for a permanent EAL Itinerant position in May, 2025 for the 2025-2026 school year and accepted the position as a Term position. She stayed in that position from from September, 2025 to December, 2025. During this time she used a lot of sick leave.
18. As a result of an accommodation which she sought and was afforded by the Employer she moved into a curriculum position in January, 2026 developing courses for senior high school and at the time of the hearing was still in that position as the school year was not then over.
19. That position no longer exists after the end of the 2025-2026 school year in June of 2026. At the time of the hearing the only position she could be accommodated into was another EAL position which she reluctantly accepted while actively seeking and hoping for another position since she asserts being in another EAL position is not going to work.
20. The Grievor states that her problem with EAL is the way she believes she was unjustly treated in her attempt to obtain the qualifications for a permanent position in EAL. She states that she is neurodivergent and has a justice sensitivity. This condition and the way she was treated are inconsistent with her being able to continue in EAL.
21. Specifically she feels that she was the victim of unjust treatment by the Employer when she sought advice from it as to whether a course of study satisfied the equivalencies

required for a permanent EAL position and was misled as a result of the advice she received.

22. She testified that she was advised by Lynne Sheppard to contact Sheldon Barry to get advice and information concerning what would satisfy the equivalencies for the position if one did not have a major in EAL.

23. As a result she sent Mr. Barry an email on January 13th, 2025. It read:

"I am interested in doing some further education surrounding ESL and Lynne suggested I contact you for information."

24. She did not hear back from Mr. Barry.

25. She enrolled in an online course offered by Queen's University called TESL Part I with the course number 890. She stated that she chose this course because she thought its content would offer her more knowledge to help her students even though the course was more expensive than the Queen's three part program.

26. She did receive an email from Mr. Barry on February 21st, 2025 saying:

"Did I already respond to the below email."

27. She wrote back in an email on February 21st, 2025 saying:

"I hadn't heard from you regarding the last email...I'm looking forward to learning more so that I can help my students and staff in whatever way I can."

28. On February 25th, 2025, Mr. Barry replied:

"Queen's has a three course program, considered AQ. Additional qualifications. The third being the specialist course, [https://coursesforteachers.ca/on/courses/CONT 539](https://coursesforteachers.ca/on/courses/CONT%20539)."

29. The Grievor replied to Mr. Barry shortly thereafter on the same day. Her email read:

"I'm currently signed up for the CONT 890 TESL Part I program listed below. When I was looking through the courses I thought this one would be a good one to start with...would this be comparative to the three course program you shared or do you think I should

plan to complete those courses when my current program is complete. I appreciate the guidance.”

30. Mr. Barry replied one minute after the Grievor’s email was sent. His email was:
“Yes it is. Take care.”
31. The Grievor replied to his email three minutes after Mr. Barry’s reply was sent. Her email read:
“Perfect. Thank you.”
32. The Grievor claimed that she paid \$2,995.00 to enroll in the TESL Part I course and also had the cost of books beside that. She said she had until the end of February to withdraw from the course and receive a full refund of the money she paid to enroll.
33. She said that she relied on the advice of Mr. Barry to remain enrolled in the TESL Part 1 890 course. She said that she completed at least 80% of the course work which left her with a further 20% or less of the course work to complete plus a practicum.
34. She said that she did not complete the course work or do the practicum because of what she eventually found out in May, 2025.
35. In the meantime a program had been set up at Memorial University to train Newfoundland and Labrador teachers in EAL and which would qualify persons seeking to satisfy the equivalencies to an EAL major.
36. This prompted the Grievor to send Mr. Barry an email on April 7th, 2025. Her email read:
“I was just looking over the information for the sponsored EAL program at MUN. I’m currently completing the TESL I through Queen’s and I am wondering if the programs are comparable or if I should apply for the MUN cohort.”
37. Shortly after on April 7th, 2025 Mr. Barry replied. His email read:
“They are comparable yes. Hope this helps.”

38. The Grievor applied in May, 2025 for a permanent EAL position. Her application was successful however she said she was surprised when the position was offered as a temporary position versus a permanent one. This prompted her to send an email to Sheldon Barry and Lynne Sheppard on May 21st, 2025. That email read:
- "I received an offer today on the EAL position but is only listed as term. It was permanent when I applied. I know I don't have my EAL program completed yet but I can send you an update of my current assessments with my completion date being in June."
39. Mr. Barry replied on the same date one minute later saying:
- "It's offered as term because you don't have the qualifications for a perm job at this point."
40. Three minutes later the Grievor again wrote Mr. Barry by email saying:
- "Is there any way to have a permanent offer conditional on my completion of my program in June..."
41. Mr. Barry replied one minute afterwards and asked:
- "The Queen's one? Do you have the proof of enrollment that you are working on this."
42. One minute later came the Grievor's response. It was:
- "I can update my program and send a screen shot of my current grades. There shouldn't be an issue with my completion according to my progress."
43. A minute after that Mr. Barry replied:
- "Do that and message me when it is uploaded."
44. One minute after his last email Mr. Barry sent another email to the Grievor asking:
- "Will you have done all three by the end of August? Or just the first one?"
45. Nine minutes later the Grievor sent a response:
- "I'll have the TESL I Program completed. I didn't do the single courses available."

46. Five minutes later Mr. Barry sent his response at 12:00 saying:
"So they would want all three courses completed prior to September 2nd to consider this for perm."
47. The Grievor's reaction to this email came quickly at 12:05. Her email back to Mr. Barry read:
"I emailed before about it being comparative to the new cohort being put in place at MUN and was told it would be. It was my understanding that it would be. It was my understanding this this program was inclusive of three courses being offered. It was certainly priced that way."
48. Mr. Barry replied at 12:12:
"The Queen's course once completed is equivalent to the MUN program once completed."
49. At 12:18 the Grievor sent a further email to Mr. Barry. It read:
"So the 890 TESL I is comparative to the program they will be completing at MUN? Isn't that enough to have it offered to me as perm then?...I understood the TESL I would have certified me to teach."
50. Mr. Barry then sent a reply at 12:22 saying:
"You need to complete Part I and II, 890 and 891."
51. At 12:33 the Grievor sent a further email to Mr. Barry expressing her disappointment. She said in that email:
"That's a little disappointing Sheldon. From our communication I understood the TESL I would qualify me for the role...."
52. She sent a further email to Mr. Barry at 1:34 saying:
"I went through my emails because I was confused with how the information was lining up and why I thought it was different. I was told that the TESL I was comparable to the new MUN cohort, which should make me qualified if the new MUN is considered enough

for teachers....I have been acting on information provided to me and now it seems I am being told something else."

53. Mr. Barry replied to that email at 1:42 saying:

"The programs are comparable Part I and II. Part I is not by itself."

54. One minute later at 1:43 the Grievor responded saying:

"But I was told in April that it was. That is where it doesn't line up...."

55. Mr. Barry then replied at 1:52 saying:

"There is a Part I because there are two parts to complete the entire program where for the other stream there are three."

56. In May of 2025 there was an exchange of emails between the Grievor and Lynne Sheppard.

57. Sheppard sent an email to the Grievor congratulating her on the offer of the EAL position and saying she was happy that the Grievor would be back with them in September.

58. The Grievor responded on May 21st:

"Hi Lynne, Unfortunately I'm waiting to hear about it being offered as permanent so it may be a little early on the celebration. I'll let you know when I know. Thanks for the kind regard though."

59. The Grievor sent a further email to Sheppard on May 21st saying:

"I decided to accept the term position but I think it is in my best interest to continue looking for other positions over the summer."

60. She expressed her feelings in a further email to Sheppard on May 21st saying:

"Unfortunately, I was told that the TESL I program at Queen's was equivalent to their three courses or the cohort at MUN, both of which would have gotten me permanent. Now I am being told that I would need another \$3,000.00 program to be considered qualified. I've confirmed that I was making the right choices each step of the way and

now I'm being told it's not enough. It's very disappointing as I was really excited about continuing with EAL."

61. The Grievor said she was floored when informed by Barry in May that both 890 and 891 together was what would qualify her.
62. She said that prior to Barry's email that both 890 and 891 were needed, she thought that 890 once completed would meet the equivalencies requirement just as would the MUN cohort program.
63. She was asked what she meant by her email words that though she accepted the temporary EAL position that she was looking for other positions. Her response was that she accepted it and lived in hope that the misunderstanding would be sorted out.
64. She said she had given away her classroom teaching material thinking she would not need it in the future.
65. She said she did not have a good feeling about accepting the term itinerant EAL position. She said she felt uncomfortable and that she had wasted her time and money. She said her thought once she got the email from Sheldon about both 890 and 891 being needed was that it would have been nice to have been told that before she had committed to 890. She said 891 would cost another \$3,000.00 and the MUN cohort would have cost her nothing and the three part program at Queen's would have cost her less than the \$3,000.00 she paid only for the Part I.
66. She said she was disappointed and would not be able to stay at EAL.
67. She expressed that she felt she was the victim of an injustice and mentioned an experience she had at Riverview School where a student was unjustly treated and his parents were unable to fight back and expressed how this had had a profound impact on her.
68. She said that her feeling was one of being defeated and let down.

69. She said she did not believe that Mr. Barry intentionally misled her but he did set her on the wrong path and there should be some accountability.
70. She referred to the Grievor's letter and the options of 1, 2 and 3 set forth therein and how she felt about getting a remedy that would allow her to be in EAL. She said she no longer believed it was an option and could not see herself going back to EAL.
71. She claims she was accommodated out of EAL in February, 2026 to the curriculum position. She claimed she enjoyed her time in the classroom but did not feel challenged by Grade 1 at Smallwood Academy.
72. She said she really enjoyed EAL up until she got accepted into a temporary position as opposed to a permanent one and said that EAL was the path that she had intended to follow. This is no longer the case.
73. She said she was accommodated out of EAL because in November she was just existing and in survival mode.
74. The curriculum position was the position she was moved into. She said that she loved that work. She said unfortunately it is not available for the coming school year of 2026-2027.
75. She is scheduled to return to an itinerant EAL position in September, 2026 and it is not what she wants. She said that position was basically the same job as she claimed that she was accommodated out of into the curriculum position.
76. Documentation was introduced from the ADHD Centre in the nature of an assessment of the Grievor dated October 6th, 2025. It also contained a diagnosis for Attention Deficit Hyperactivity Disorder signed by a Nurse Practitioner and PHC whose role was ADHD Consultant. This person was Lindsay Bruce. It was signed as well by Dr. A. Parhar, an Educational Director. It set forth a list of workplace accommodations that were recommended.
77. During cross examination the Grievor confirmed that at the time of her first email to Sheldon Barry on January 13th she had registered for the TESL 1 890 course at Queen's.

78. She was asked what she did to inform herself as to what courses would satisfy the equivalencies requirement. Her response was that there was talk at schools and she heard Queen's mentioned. She said online was better for her. She was aware of the three course program and the TESL I and TESL II offerings.
79. Her understanding was that TESL Part I satisfied certification and that TESL Part II was simply a higher certification.
80. She admitted the ones initially recommended by Mr. Barry were the ones described in PE7 with Part I, Part II and specialist components.
81. She confirmed that she had looked at both the TESL courses and the three part stream. She said that TESL Part I was more expensive than the three part program but she was okay with this if it was a better course.
82. She was adamant that she relied on Sheldon Barry as a source of information.
83. It was pointed out to her and she admitted that in her email to Mr. Barry when she told him that she was registered in TESL Part I that she used the words "I thought this would be a good one to start with."
84. It was put to her that this is suggestive of the fact that you would be doing more.
85. She denied that was her intention.
86. She was asked if she was aware of the number of applicants for the MUN cohort. A number 300 was put to her. Her response was "I did know that there were a lot of applicants."
87. The Grievor maintained that as of 2025 she would have had 15 years seniority and that she now has 17 years seniority.
88. She said she understands she might not have gotten into the program but that opportunity was taken away from her.

89. The Grievor said that if Sheldon Barry had informed her in February of 2025 that she needed Parts I and II of TESL, she would have withdrawn from Part I and enrolled in the three course program he had initially suggested.
90. It was put to her that it was always an option to return to her permanent position at Smallwood Academy. She said while it's an option on paper in reality it isn't because she has given away her teaching materials.
91. In cross examination the cross examiner took issue with whether the Grievor's accommodation was out of EAL and suggested to her that it was out of her permanent position.
92. The Grievor maintained that it was EAL as she was in that position when the accommodation putting her in the curriculum position occurred.
93. She maintained the accommodation she needed was out of EAL.
94. She maintained that she let Ms. Kinden know if there was anything else she'd pursue it because EAL was not for her.
95. She said all EAL jobs fall under the purview of Sheldon Barry. She said she knows working in EAL will not work for her.
96. On redirect she said she sought accommodation out of EAL and referred to PE8. She was insistent that she had never sought accommodation out of a classroom position.
97. The Grievor said she was moved to the curriculum position but the only accommodation she was afforded once that position ended was another EAL position.

Sheldon Barry's Evidence

98. The first of the Employer's two witnesses was Sheldon Barry. He holds the position of Provincial Lead for Multiculturalism and in that role oversees EAL itinerants and programming for EAL students.
99. EAL itinerants report to him.

100. Mr. Barry spent many years as a school administrator and is in his fourth year as Lead in EAL having started in that role in September of 2022.
101. He testified that he knows the Grievor. He knows her as someone who worked in EAL on two different occasions out of Central NL in Gander.
102. He acknowledged remembering the emails contained within PE1 and PE2 and said there were no other discussions outside the emails.
103. He said PE7 refers to the three part course to which he was referring and consists of Part I, Part II and Specialist. He said this is something they have accepted as an equivalent to a major in EAL.
104. Mr. Barry said that the Grievor signed up for TESL Part I and those two courses, the TESL Part I and TESL Part II, were together comparable to the three he had suggested.
105. He said that the Grievor said she was completing Part I and Part I has never been accepted for permanent qualifications. He said there was an assumption on his part that she'd be doing Part II as well.
106. Mr. Barry said TE6, the TESL Part I and Part II program, was familiar to him. In looking for program equivalencies they had 300 hours which was the equivalency in terms of the hours they wanted for something to be considered as equivalent.
107. SB1 was the job posting for the position of a Permanent EAL Teacher. He said the minimal qualifications have never changed and a major is required and equivalencies are considered. The Queen's programs both satisfied the equivalencies.
108. The question was asked how does one find out what programs are considered as equivalencies. He said if it is one they are first encountering he will review it with Martha Trahey at the Department of Education. However he was familiar with the Queen's ones and didn't have to consult with anyone concerning the Queen's ones.

109. PE2, the April email, was the subject of questioning while Mr. Barry testified. He said his answer, that they are comparable yes, referred to the comparability of TESL Part I and Part II, to the courses persons were registered for at Memorial.
110. He said Ms. Sainsbury could better answer as to how many applicants there were for the MUN program but there were a couple of hundred for sure.
111. He was asked about the May emails in PE3 and PE4. He said his use of three as opposed to two in the email sent on May 21st, 2025 at 9:21 am and in the email sent at 12:00 pm on May 21st, 2025 were typos and should have read two. He said I meant two, not three. It was probably just a typo. TESL was just Part I and Part II and TESL I and II were comparable to the MUN cohort.
112. He said he thought he had been clear that both Part I and Part II were needed.
113. What he said in his 12:22 email on May 21st, 2025 is actually the case, "you need to complete Part I and Part II, 890 and 891."
114. Regarding the Grievor moving from the itinerant EAL position in January, 2026 most of the communications were with Lynne Sheppard, not with Mr. Barry.
115. Mr. Barry confirmed that he had no concerns about the Grievor's work or conduct while she was in an EAL position and no issues were brought to his attention. He had no concerns with her returning to the EAL position in September, 2026.
116. During cross examination, he was asked if he was the first point of contact in EAL. His response was I do hiring, I do evaluations of teachers, I deal with their travel expenses and I deal with issues that coaches like Ms. Sheppard can't deal with.
117. He recalled all the email threads of which he was part and confirmed that there was to his recollection no phone conversations or other interactions apart from the emails.
118. He said that his email of February 21st, 2025 answers hers of January 12th.
119. He understood which course she was referring to when she referred to the TESL CONT which consists of Parts I and II and thought she was referring to both parts.

120. Counsel put to him that her email indicates only that she is signed up for Part I and did not indicate she was going to be doing Part II. He confirmed what he meant was Part I and Part II together were comparable to the cohort.
121. Mr. Barry said there are a shortage of persons with majors in EAL so they have to look for equivalencies. He said they do not have a list of equivalencies and the practice is for them to review the equivalencies that people bring to them for evaluation. It is not only him and there are people who are in HR who are familiar with what satisfies the equivalencies requirement. He believed the Grievor was not referring to just Part I but also Part II, the entire TESL program.
122. He reiterated in PE4 his use of the words "all three" was a typo. It was pointed out to him that he made the mistake not once but twice. He still maintained that it was a typo because the emails reveal what was being talked about was course 890 and course 891 and he knew there were only two parts.
123. When asked it if was possible he did not know which program she was involved in, the three part one or the TESL which consisted of only Parts I and II, his answer was "I would say that would be incorrect." He continued on saying that he made the same typo twice and meant two not three. He said he knew that the program she was involved in involved only 890 and 891.
124. Mr. Barry said he had no involvement in the Grievor's accommodation or move to the curriculum position and no involvement in the selection of students for the MUN program.

Alicia Sainsbury's Evidence

125. Alicia Sainsbury testified. She is a Senior HR person with the Employer. She said she is familiar with SE1, the job posting for the EAL itinerant position. She says the Employer was forced to look for equivalencies because there were so few English as a second or additional language majors. Various programs at the Canadian University Educational Departments change so frequently that they were forced into constantly reviewing what people were bringing forward to them for evaluation as equivalencies.

126. She was familiar with the Queen's program and said the one described in PE7 is the cheaper three course program that is tied to the OCT or Ontario College of Teachers and is intended specifically for educators. She was asked if Sheldon Barry had consulted with her about the emails that he sent. She said he definitely did not with respect to the first ones and she does not recall if he did or did not with respect to the second ones. She knows that she and Sheldon did speak about the cohort.
127. She said she usually leaves responses to such inquiries to Sheldon.
128. The MUN program was created because they did not have a strong pool of applicants for EAL positions. A four course program was created at MUN at the Employer's expense. The Employer selects the persons, not Memorial. Twenty seats were the maximum for the cohort.
129. She said she hosted an informational session about the cohort which was also attended by Sheldon Barry.
130. She said the cohort was originally open to anyone who wanted to apply but they had over 300 applications to be evaluated by only four persons including herself so they needed to reduce the number of persons who would be considered down from 330 to 120.
131. To do so they established 15 years seniority as the cutoff for consideration of admission into the MUN cohort. She said the Grievor did not have 15 years seniority at the time and would not have qualified for consideration for the cohort. Ms. Sainsbury referred to AS1 as describing accurately the reduction from the 330 applicants by means of allowing only tenured teachers who had at least 15 years of experience to qualify for consideration. They also looked for representation throughout the Province and for people with varied experiences, qualifications and teaching methods. They were limited to 20 seats.
132. Ms. Sainsbury had no direct involvement in the Grievor's accommodation. It was Kelly-Ann Kinden. Kelly-Ann Kinden would have consulted with her.

133. She was not directly involved when the Grievor was placed in the curriculum position at CDLI.
134. As to what Ms. Sainsbury referred to as her second request, Ms. Sainsbury said the restrictions were primarily related to a classroom position and she was accommodated to an EAL position in Central for the Fall.
135. The curriculum position was not available.
136. Ms. Sainsbury was of the view that the restrictions outlined in the medical documentation related to duties involved in the classroom.
137. Ms. Sainsbury said that the position the Grievor is going into in September is essentially the same as the one she came out of to go into the curriculum position. She said there may be some differences because the students may vary.
138. Everyone who got into the MUN cohort had 15 years seniority or more as of the Spring of last year.
139. Ms. Sainsbury was asked if there were other medicals apart from PE8. She said PE8 was likely the one used for movement into the curriculum position.
140. Ms. Sainsbury said the MUN cohort started in July of last year and was scheduled to finish in August of this year.
141. Ms. Sainsbury said there is no formal process for getting programs approved as meeting the equivalency requirement in the job posting.
142. She said the Queen's programs had been reviewed by the Employer multiple times.

ASSOCIATION ARGUMENT

143. Counsel for the Association argued that the case is all about the written word and its capacity to mislead.
144. He said the case is all about negligent misrepresentation and Mr. Barry's negligent use of the written word when he communicated with the Grievor in answering her questions

about whether the program she was enrolled in satisfied the equivalencies necessary for a permanent EAL itinerant position.

145. Counsel said it is about qualifications, qualifications in the absence of a major and about how the Employer is using its residual management authority in interpreting Article 6.03 of the Collective Agreement when dealing with qualifications.
146. While bad faith and discrimination are not being alleged, arbitrariness is being alleged, arbitrariness in how the Employer exercises its residual management authority.
147. Counsel submitted that how the Grievor assesses qualifications is "all over the map". The Employer must be responsive to employees and this reality has serious implications for the Employer's response.
148. In corresponding with employees who are inquiring about qualifications and inquiring as was the Grievor, the Employer has to make its answers, as to what meets the needed qualifications, crystal clear.
149. Counsel argued that the Employer is the only source as to what constitutes equivalency. It argued that the only source of information and the fountain of information is the mouth of Sheldon Barry.
150. Counsel submitted that Mr. Barry made a mistake and his mistake cost the Grievor money.
151. Counsel said it is clear that the entirety of the communications between the Grievor and Mr. Barry are the emails contained within the email exhibits.
152. The email thread between Mr. Barry and the Grievor reveals that an error was made and it reveals that the source of the error was Mr. Barry.
153. In the February email thread the Grievor advises Mr. Barry of the course that she is enrolled in and asked him whether or not it satisfies the equivalencies requirement, whether it qualifies as an equivalency. He responds "Yes, it is. Take care".

154. There is a second series of email communications between the two when she asks if the course she is doing at Queen's is comparable to the MUN program and whether she should apply to MUN. His response is "They are comparable, yes".
155. Then there are the emails threads at PE3 and PE4 where the errors made are discovered.
156. Counsel submitted that it all falls on Sheldon Barry.
157. Counsel submitted that all that is available to applicants from the job posting is that they must have a EAL major or equivalencies. That is it.
158. Counsel submits that this placed an additional level of responsibility on the Employer and the only way a person knows if they have or are on the road to obtaining an equivalency comes from Sheldon Barry.
159. Association counsel submitted that the case is not properly characterized as one of estoppel but more properly framed and characterized as a case of negligent misrepresentation.
160. Association counsel submitted that the Employer made an inaccurate statement which the Grievor relied on. It does not have to be intentional on the Employer's part. It is critical that the Grievor relies on it and she did so in this case.
161. Counsel submitted that the law with respect to negligent misrepresentation is accurately set forth in the 1993 case of *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87.
162. Counsel submitted that all the elements or criteria as specified by the Supreme Court of Canada in *Cognos* are present in this case.
163. He submitted that not only is the requisite relationship satisfied because it is a relationship between an Employer and an employee but it is also a situation where the seeker of information who is entitled to seek it and expected to seek it is seeking it from the only source that exists, namely the Employer. A communication is made by that source which is misleading or untrue.

164. When the Grievor asks him whether the course she is enrolled in is comparable to the three part course she is obviously and clearly referring to TESL Part I and his response is that it is. TESL Part I was all that she was enrolled in. She was not enrolled in Part II and did not indicate to him that she was intending to enroll in Part II. This is where his initial mistake occurred. She relied on his advice and information to stay in TESL Part I and to not drop that course and do instead the three part Queen's course.
165. His second mistake occurs when she asks him whether what she is enrolled in is comparable to the MUN program and he replies to the effect that it is.
166. Counsel submitted that she relied on that statement to remain in the TESL program Part I at Queen's and not to apply for a cohort spot at MUN.
167. Counsel submitted that if there is any ambiguity in the communications it is incumbent on Mr. Barry not the Grievor, to clarify things. Mr. Barry said he "assumed". Someone in his position can't assume. Assuming amounts to negligence if clarification is called for and required. He is required to take special care if something is ambiguous or subject to more than one interpretation and needs to clarify things.
168. The Grievor did not do two things as a result of his communications. She did not seek placement in the cohort and she did not switch from the TESL program to the three part program at Queen's. She made the decision to remain in TESL Part I and the only reason she did so because she was relying on what Sheldon Barry had said.
169. She relied on him twice.
170. If there was any ambiguity associated with her questions or communications it was incumbent upon him to get clarification.
171. As for a remedy counsel for the Association said it is crystal clear that what she was accommodated out of was the EAL program when she went into the curriculum position and it is crystal clear that it is absurd to put her back in the EAL position and that she cannot go back into such a position.

172. Counsel submitted that we do not need to deal with the accommodation issue and the only issue is what is her damage entitlement as a result of being the victim of negligent misrepresentation.
173. Counsel submitted that damages are an available remedy as she was the victim of a tort, and in this case the damages are not too remote. She clearly had the loss of the \$2,995.00 she spent on the TESL Part I course.
174. Counsel submitted she is entitled to recover that plus the sick leave that she was forced to take as a result of her difficulties in EAL after the misrepresentation by Mr. Barry had been discovered. He submitted that she lost six days of leave and seeks reinstatement of that as well.
175. In addition to *Queen v. Cognos*, the Association referred us to *Canadian Labour Arbitration Fifth Edition, Brown and Beatty, 2023 Thomson Reuters Canada Limited* and specifically Topics 2:13 Basic Measure of Damages for Breach of a Collective Agreement and Topic 2:17 Damages for Torts Committed in the Collective Agreement Context.

EMPLOYER ARGUMENT

176. Counsel for the Employer submitted that this case is not at all about Article 6.03 as it does not involve challenging the qualifications which the Employer put in place.
177. She submitted that instead it is all about the tort claim and whether there has been arbitrariness on the part of the Employer in terms of how it exercised its residual management rights. That is what this Board must determine.
178. Employer counsel takes issue with Association counsel assigning any blame to the Employer because "it is all over the map" in terms of how it deals with equivalencies. She submits that is the nature of equivalencies and by their very nature evaluations have to take place on a case by case basis.
179. The Employer said it does not dispute that the Employer has a duty of care and agrees that the only way an employee can find out if a particular program or certificate satisfies the equivalencies requirements is to ask.

180. The main issue is whether a statement made by Mr. Barry is inaccurate, untrue or misleading and whether the Grievor relied on it to her detriment.
181. It all centers on the email correspondence and whether Barry's information was inaccurate.
182. The Employer submitted that the onus is on the Association to demonstrate that it was.
183. The Grievor simply says I am interested in doing further education surrounding EAL and that Lynne suggested that I contact you for information.
184. Mr. Barry's initial response is to alert her to the three course program at Queen's which was considered additional qualifications. The evidence showed that completion of that program would have qualified her for a permanent position.
185. The Grievor then replies that she signed up for TESL Part I at Queen's and states she thought it was a good place to start. She then asks if this is comparative to the three course program you shared or do you think I should plan to complete those courses when my current course is complete.
186. His reply was "Yes it is."
187. The Employer submitted that there was no ambiguity for Mr. Barry to clarify and that it was completely reasonable for him to have assumed that she was also going to be doing Part II. Her use of the word "start" certainly signifies that and that she will be going on to Part II afterwards.
188. The Employer submitted that the Grievor acknowledged that she had done research on her own as to her options before reaching out to Mr. Barry and that she chose to participate in the TESL Part I program because of its shorter hours and she felt the course material would better allow her to help her older students even though she knew it was more expensive.
189. On the accommodation issue, the Employer submitted that we are not being asked to deal with the accommodation.

190. Counsel submitted that the Grievor submitted that the sole reason EAL is not suitable for her is the alleged misrepresentation made by Mr. Barry and the subsequent denial of her grievance together with her justice sensitivity.
191. There is no material or other expert evidence dealing with the nature of her condition or her justice sensitivity and no evidence that she was accommodated out of EAL.
192. The reason the Board found the evidence concerning accommodation confusing is because it was not clear that she was. The evidence does not show that the Employer knew about her justice sensitivity so how could it be argued that her accommodation occurred because of that.
193. The restrictions set forth in PE8 relate to classroom teaching.
194. The Employer also asks why if the Grievor cannot go back into EAL did she accept a position in EAL.
195. The Employer submitted that we have a very incomplete picture as to the accommodation and are not in a position to make any rulings on it.
196. Nowhere in correspondence does one see that the Grievor can't work in EAL or can't work under Mr. Barry. Justice sensitivity is not mentioned in documentation.
197. Much earlier than any interaction with Mr. Barry concerning the Queen's course, the Grievor is experiencing classroom issues.
198. She was offered a tenured administrative position but declined.
199. The Employer submitted that the Grievor has a disapproving animus towards Mr. Barry stemming from an earlier incident where she was not successful in getting another position.
200. As for an appropriate remedy the Employer submitted that the MUN cohort is not an issue. The Grievor would not have gotten in regardless because of the seniority cut off.

201. The Grievor's course is at least 80% complete. The Employer submitted she could still complete it and do the practicum and it is not appropriate to reimburse her for her course enrollment costs.
202. The Employer submitted that the only way we could order reimbursement is if we are satisfied that there was a negligent misrepresentation and evidence which we accept that she can't continue in EAL because of Sheldon Barry's actions.

REPLY

203. In reply the Association counsel said that PE5 could not be more clear. The Grievor was in an EAL position, not a classroom position, when she was accommodated into the curriculum position. It asks why would she have to be accommodated out of a place that she was not in.
204. As for Mr. Barry's interpretation of her email in February, he cannot assume that she's going to do Part II. If assumption is required he needs to clarify things.
205. The very fact that he would have had to have assumed simply signifies that he had to take more care. He was uncaredful in terms of how he came to the understanding that he did.
206. The Grievor is not done with the accommodation piece and all that is being asked of the Board at this point is to award the dollar amount equivalent to the cost of her enrollment in the TESL I course 890 and reinstatement of her leave.

REASONS FOR DECISION

207. It is clear and not disputed that the law with respect to the elements of the tort of negligent misrepresentation is that set forth in *Queen v. Cognos*. There needs to be:
1. A duty of care based on a special relationship between the representor and the representee.
 2. The representation in question must be untrue, inaccurate or misleading.
 3. The representor must have acted negligently in making the misrepresentation.

4. The representee must have relied, in a reasonable manner on the negligent misrepresentation.
 5. The reliance must have been detrimental to the representee in the sense that damages resulted.
208. The Employer agrees that the Employer had a duty of care and that a special relationship existed between the Grievor and the Employer. We agree and Mr. Barry as the face of the Employer had a duty of care.
209. Not only was this an Employer and its employee that we are concerned with but it was also someone seeking information who was entitled to do so and was expected to do so by the Employer. This was implicit from the situation that the Employer had created and from how it operated in terms of dealing with equivalencies. Furthermore the Employer was the only source of the information.
210. The only issues before us are firstly, whether the Employer breached its duty of care by making a misrepresentation or by making one that was untrue, inaccurate or misleading, whether it was negligent in doing so, and secondly whether the Grievor relied on the said representation to her detriment resulting in a loss to her.
211. It is also clear that even though the Employer is exercising its residual management rights, it is not free to make a negligent misrepresentation to an employee which she could reasonably be expected to rely on, which reliance results in a detriment and a loss to the employee.
212. *Cognos* is clear that an action in tort for misrepresentation may lie even though the parties are in a contractual relationship.
213. *Brown and Beatty* also noted that in some instances damages in tort based on an employer's negligent misrepresentation may be awarded. They cite *Health Employers Association of British Columbia*, (2008) 180 LAC 4th 266 as an example.
214. The Association argues that there were two instances of negligent misrepresentation by the Employer, one in February, 2025 and one in April, 2025.

215. They claim that as a result of the February misrepresentation the Grievor relied on what Mr. Barry was saying to remain enrolled in TESL 890 and to not withdraw therefrom and receive a full refund of the course cost. It says she also relied on this misrepresentation to not instead become enrolled in the Queen's three part program which would have fully qualified her.
216. The second instance was in April, 2025 when the Grievor asked about the MUN cohort and whether the program at Queen's was comparable to the one at MUN and whether she should apply for MUN and Mr. Barry responded to her inquiry.
217. The Association says that the Grievor relied on Mr. Barry's misrepresentation in April to refrain from seeking a seat within the MUN cohort.
218. As we see it, the key series of communications and the only ones to be considered in terms of deciding whether or not they amount to an actionable misrepresentation were the ones made in February.
219. The ones in April the Grievor claims prompted her to not apply for a seat at MUN.
220. We are satisfied that the Grievor would not have been successful in getting a seat at MUN in any event even if she had applied. This was because she did not have the requisite 15 years seniority at that point. We accept Ms. Sainsbury evidence that the Grievor did not meet the cut off of 15 years seniority and that all the persons who were successful in getting into the cohort met that threshold.
221. Whatever the nature of Mr. Barry's April misrepresentations to her were they did not give rise to a loss on her part or any damages. The reliance she placed on what was communicated in April did not give rise to a loss.
222. The only possible significance we see with respect to the communications that were had in April is that they are deserving of examination to see to what degree, if any, they inform us in terms of our assessment of the communications that took place in February.

223. Counsel for the Association made clear that it was not asking us to deal with or make any pronouncements or orders dealing with accommodation.
224. The evidence with respect to accommodation was confusing and did not provide us with much of a basis to make any findings.
225. Therefore we shall not do so and will confine ourselves to the issues of whether a negligent misrepresentation has occurred and if so, what, if any are the damages that flow therefrom.
226. The Grievor enrolled in the TESL Part I 890 course before there was any interacting with Sheldon Barry. She sent an email in January but he did not reply to it until February and then simply asked her if he had replied.
227. The first issue we must consider was whether there was an untrue and inaccurate or misleading communication made in February by Mr. Barry to the Grievor on which she relied to her detriment and which resulted in a loss to her.
228. Her January email sends the message to Mr. Barry that the Grievor is interested in doing some further education surrounding English Second Language and that is her purpose in contacting him.
229. In her February 21st email she tells him it is not time sensitive and that she likes the EAL field and is looking forward to learning more.
230. Barry's reaction is to respond informing her of the three part Queen's course and the fact that it is considered AQ, Additional Qualifications.
231. Barry's instinctive reaction was to inform her about this course which he knew would qualify her as meeting the equivalencies requirement.
232. The Grievor then tells him what she is enrolled in, CONT 890 TESL Part I, and says she thought it would be a good one to start with.
233. She makes no reference to Part II. She then asks him if this would be comparative to the three course program he had shared. She also asks him if in the alternative he thought

she should plan to complete the three course program when her current program was complete.

234. His answer is simply "Yes, it is."
235. We are of the view that any reasonable person reading her email would believe she was asking him if something was comparable to the three course program and if not should she register for the three course program once that something was finished.
236. His answer is simply "Yes, it is."
237. Though she used the word comparative, we are satisfied that and believe it would be obvious that she intended to use the word comparable meaning on a par with.
238. We are of the view that any reasonable person would believe she was asking if something was comparable to or on par with the three course program he had shared earlier. The confusion arose over what that something was.
239. Any reasonable person would believe that his answer states that the thing she asked him about is comparable and would conclude that he did not answer her alternative question because that required answering only if he answered her first question in the negative.
240. It would be wrong to look at these communications in isolation. In order to truly assess them and to assess what the communicator would reasonably be thinking and intending, one needs to examine PE6, the description of the TESL courses Part I and Part II and PE7, the description of the three part course.
241. PE6 reveals that successful completion of TESL Part I would allow candidates to apply for Standard I Certification with TESL Canada. It reveals the Standard I Certification acknowledges that a certificate holder has the knowledge and skills required for teaching English to adult learners in non-publicly funded programs in Canada, in both private and publicly funded programs, and in a variety of contexts abroad.
242. TESL Part I has 145 hours of instruction and involves a practicum of 20 hours, 10 of observation and 10 of supervised practice teaching. It costs \$2,995.00.

243. TESL Part II recognizes that a certificate holder has the knowledge and skills required for teaching English to adult learners in public and private programs in Ontario, other Canadian Provinces and Territories and abroad. It has 155 hours of instruction plus a practicum.
244. The cost of Part II is a further \$2,995.00.
245. Part I of the three course program is 125 hours and costs \$690.00.
246. The Part II portion of the three course program is 125 hours and costs \$690.00.
247. The third part, the Specialist part, is also 125 hours and costs \$690.00.
248. In other words, the cost of Part I 890 which the Grievor was doing was hundreds of dollars more than the cost in total of the three parts of the three part course that Barry had shared with her.
249. If she was required to do the Safe and Accepting Schools pre-requisite as well that would have cost an additional \$690.00. The difference between Part I 890 of TESL and all parts of the three part program including Safe and Accepting Schools would still be over \$200.00.
250. The Grievor said that she had been satisfied and was prepared to pay a few hundred dollars more for a course that she thought might be better for her older students. That is a far cry from spending an additional \$2,995.00 for course 891.
251. We are satisfied that had she realized Barry was saying 890 and 891 together are comparable to the three part program, she would have likely dropped 890 and recovered her enrollment costs by the drop out date at the end of February and instead have enrolled in the three part program.
252. The Grievor had a reasonable basis for thinking that Barry was saying to her that the TESL Part I course was comparable to the three part course. TESL I did provide one with a level of certification as an Additional Language Teacher. A certificate followed successful completion of Part I. It might be different if no certification was issued after the

completion of Part I. In addition the cost of TESL Part I itself was more than the cost of the entire three part program so that from a pricing perspective one might view Part I itself as comparable to the three part program.

253. Thirdly, the Grievor asked Mr. Barry simply about the course she was enrolled in, TESL Part I 890 and never referenced or mentioned Part II. The course she was asking about was 890 and not both 890 and 891.
254. Her belief that Part I provided the level of certification necessary and Part II simply provided a higher level of certification is one that a reasonable person could hold and we believe her when she says that was her belief.
255. We further believe that she relied on what Mr. Barry said to remain enrolled in 890 and not to withdraw from it, reclaim her enrollment costs and register instead for the three part program. Had he said it was not comparable or that 890 together with 891 is what would be comparable in our view she would not have incurred the cost of enrollment in 890.
256. She believed he was saying that 890 was comparable. There was a reasonable basis for her belief.
257. Looking at the February communications in their totality we conclude that she had a loss of \$2,995.00 and that her expenditure in that amount was for naught. Had she switched to the three part program she would have had something or been on her way to being qualified for a permanent position. As it stands she has nothing for that expenditure. We are satisfied that this is a loss that she would not have incurred but for the misunderstanding she got from Mr. Barry. Her misunderstanding resulted from what he said to her and from his lack of care with respect to his responses.
258. His responses were anything but fulsome and were surprisingly brief.
259. In our view a reasonable person in his position informing the Grievor would have taken the time to point out that what was comparable to the three part course was Part I and Part II of TESL and together 890 and 891 were comparable as opposed to simply 890.

260. His general lack of attention when communicating with her is further revealed by his responses in April and May. In April she says she's completing the TESL Part I through Queen's and asks if the program is comparable to the one at MUN. His reply again is short and simple. He replies that they are comparable, yes. Again he neglects to mention that what is comparable is TESL I and TESL II together. In May she questions why she can't be accepted as permanent and he replies on two occasions asking her if she will have all three courses completed by August when in fact there are only two courses in TESL, Part I and Part II. Mr. Barry claims it was a typo. We accept that it might be a typo once, but twice is harder to accept. Mr. Barry by his own admission knew that the TESL program was in two parts as opposed to three and the more likely conclusion is that he was not simply paying the degree of attention that was warranted, to her emails.
261. It would be easy for the Employer to post what it has currently assessed as programs meeting the equivalencies requirement. The posting could be updated from time to time. Accompanying the posting could have been the admonition that parties are required to check with a certain individual to make sure that what is posted is current and still the case.
262. If instead of proceeding in that way the Employer is choosing to handle its equivalencies evaluations on a case by case basis by way of emails it is incumbent upon it to be more fulsome in its replies and detailed and careful in its email communications with persons making inquiries as to what qualifies as an equivalency and it should be taking pains to make sure that there is not misunderstanding.
263. We are satisfied that there is a loss that the Grievor would not have incurred but for the misunderstanding that she got from Mr. Barry. Her misunderstanding resulted from what he said to her and from his lack of care.
264. Employer counsel argues that she could still complete the TESL 890 course and do the practicum so it is not appropriate to reimburse her for her enrollment fee. We disagree. That money was spent for naught in the sense that for anything to have been achieved from it that would enable her advancement in EAL in Newfoundland and Labrador she would have to spend a further equivalent amount on 891. Her ability to continue with

the course is not a bar to compensation. All that she would achieve is the right to enroll in 891 at a further cost of \$2,995.00.

265. We do not have to be satisfied that she is unable to continue in an EAL teaching position in order to make that damages award as counsel for the Employer argued. We only need to be satisfied that she would not have spent \$2, 995.00 on 890.
266. We therefore find that she has incurred a loss and that the loss came about because of her reliance on a negligent misrepresentation made in February, 2025 by Sheldon Barry. We find that loss amounts to \$2,995.00, the cost of her enrollment in the TESL Part 1 890 course at Queen's. We find that the Employer should pay her damages in the amount of \$2,995.00.
267. We did not hear any evidence as to the cost of her books or reading materials and make no award in that regard. Indeed counsel in its closing argument did not make any request that we do so. Counsel did request that we reinstate the sick leave that he claims she was required to take as a result of being unable to cope with being in an EAL position in the period before she was moved into the curriculum position. We have had no evidence from health care practitioners regarding her condition during that period and the evidence before us is insufficient to allow us to make any findings as to the sick leave usage.
268. The grievance is allowed to the extent that we find the Grievor is entitled to a damage award from the Employer for the costs of her enrollment in TESL Part I.

ORDER

269. The Employer is ordered to pay the Grievor damages in the sum of \$2,995.00.

Dated at the City of St. John's, in the Province of Newfoundland and Labrador this 23rd day of September, A.D. 2026.


David G. L. Buffett, KC
Chair



Don Ash
Association Nominee

SEE DISSENT

Janet Vivian-Walsh
Employer Nominee

**Dissenting Opinion of Employer Representative, Janet Vivian-Walsh, in Grievance re:
Ms. Paula Ennis (P.E.)**

Following is my dissent from the majority decision in the matter of this grievance.

The majority report made the following decisions regarding damages:

- i. That the Grievor has incurred a loss of \$2,995.00, the cost of enrolment in the TESL Part I 890 course at Queen's University and that the Employer should pay damages to the Grievor in the amount of \$2,995.00.
- ii. Though not requested by Association counsel, that there be no award to the Grievor with respect to the cost of books or reading material.
- iii. That the evidence was insufficient to allow an award for sick leave to reinstate sick leave that was used during the period that the Grievor was experiencing difficulty coping in the EAL position during the fall of 2025 prior to being placed in a position in CDLI.

I concur with decisions ii and iii above (i.e. that there be no award to P.E. with respect to texts or resources related to enrolment in TESL Part I, and no award with respect to reinstatement of sick leave for P.E. during the fall of 2025). I respectfully dissent with respect to the damages to P.E. ordered by the majority decision in the amount of \$2,995.00 (the full cost of enrolment in TESL Part I, 890).

I will outline through evidence related to the timelines around, and communications of, enrolment and attendance of P.E. in TESL Part I 890, that the Grievor did her own research on

English as an Additional Language (EAL) courses at Queen's University and the Grievor's decision to enrol in TESL Part I occurred prior to any communication from Mr. Barry, and was a reasoned and deliberate action on the part of the Grievor. The Grievor's decision to remain in TESL Part I was also a reasoned and deliberate decision, despite knowledge of the less expensive Learners Program (3-course program) suggested by Mr. Barry. The Grievor indicated in her evidence that she was aware that she would have been able to receive a full refund of her course cost if the course was dropped by the end of February. In addition, the responsibility for clear communication is a shared responsibility between the parties and the Grievor has a responsibility of due diligence in researching, choosing, and completing professional development/training that would satisfy the Grievor's personal and career goals.

I will also outline how the misunderstanding that occurred through two email exchanges between Mr. Barry and the Grievor falls short of the criteria for Negligent Misrepresentation as defined by *Queen v. Cognos*.

Finally, I will outline that the Grievor has not incurred a loss of the full cost of TESL Part I. P.E. has not completed TESL Part I. Evidence indicated that the Grievor has completed 80% of TESL Part I with the 20% practicum not completed. Evidence also showed that the Grievor would have enrolled in the less expensive 3-course program had the misunderstanding with Mr. Barry not occurred, thus the Grievor would still have incurred course costs. P.E. has also received benefit from taking the course with additional knowledge in EAL and has the option to complete the course and receive credit for the course which would result in additional academic educational qualifications in EAL for the Grievor. Reimbursement of full course cost is not

justified nor appropriate. The result of fully reimbursing P.E. would basically mean that the Grievor would get to do Part I of the TESL course for free.

Timeline and Communications

The Grievor has a responsibility of due diligence on decisions regarding her own academic training/qualifications. P.E. did not inquire in either of the communications with Mr. Barry in January, February, or April 2025, about the qualifications or training that would be required to be fully qualified for a permanent job in EAL. In fact, the January 13th P.E. email states, "I am interested in doing **some further education surrounding ESL,...**". In evidence from the hearing, the Grievor confirmed that at the time of her first email to Mr. Barry on January 13th that she had registered for the TESL Part I course at Queen's University (paragraph 77 of majority decision).

Mr. Barry's first response to P.E.'s January 13th email did not come until February 21st. At that time, Mr. Barry is asking how things are going and asks if he had responded to the January 13th email. P.E.'s response on February 21st does not mention anything about courses or qualifications for permanent status. Her response indicated her enjoyment of the job and working with the kids, her positive transition to the job and about the growing numbers in EAL. P.E. states, "**I'm looking forward to learning more so that I can help my students and staff in whatever way I can.**"

The February 25th email exchange is initiated by Mr. Barry and is a response to P.E.'s original January 13th email about "doing further education surrounding EAL". In that email Mr. Barry informs P.E. of the 3-course, less expensive program, at Queen's and provides the link to the program. This is the only course that Mr. Barry suggests to P.E. with respect to her inquiry about

“further education.” The Grievor was aware that the TESL Program, which has two parts, was more expensive with each involving a practicum and she made her decision before the end of February to stay in TESL Part I. The information document on the TESL Program from Queen’s University (P.E. #6) states that it is specifically designed to train educators for teaching learners 16 years and older. P.E. was deliberate in her choice of the TESL Part I course and the reason for choosing such as noted below.

P.E. responds on the February 25th, saying, “I’m currently signed up for the CONT890 Part I program ,....” When I was looking through the courses, **I thought this would be a good one to start with,**” which indicated her intention to do more courses and was stating this was a beginning point. **“I hoped the program would help strengthen my English skills for older students (I currently have three in grade 9 and one in grade 10) to meet their needs”.**

P.E. does ask, “Would this be **comparative** to the 3-course program you shared, or do you think I should plan to complete these courses when my current program is complete””. Mr. Barry does respond, “Yes it is”. This is where the misunderstanding begins with the words ‘Program’ and ‘Course,’ however at no point is there communication on what were the requirements for a permanent position in EAL. Also, at no point in the January 13th email nor in the February 21st or February 25th email responses does P.E. mention the deadline to drop TESL Part I. The Grievor’s response speaks to her concern for the most helpful EAL training to support her older students and to strengthen her own English skills for older students. Though Mr. Barry’s communications were not detailed or fulsome, this is a case of misunderstanding where Mr. Barry’s responses were done with the TESL ‘Program’ in mind and P.E. understood the responses to mean her current TESL Part I ‘Course’.

The communications between the Grievor and Mr. Barry in April around the MUN cohort also does not mention requirements for a permanent position. The only time the term “permanent position” comes up is in May when P.E. was offered the term position.

As indicated, Mr. Barry did not respond to the Grievor’s January 13th email until February 21st. Being aware of the end of February deadline to drop the course for a full refund, one has to question why P.E. would not have contacted Mr. Barry again, prior to this end of February date, as she did not get a response to her January 13th email and she knew that she would need to make a decision on whether to stay in the TESL Part I course before the end of February, February 28th. There would have been only 3 days remaining after her last email in February (i.e. February 25th) before the deadline for refund and P.E did not initiate the February email exchange. It is also questionable why P.E. did not mention the deadline in either of the February exchanges with Mr. Barry.

It is important to note that the Grievor was hired in a term position in EAL beginning in January 2025. She did not have any formal education in EAL at that time. Thus, she was aware that it was possible to be hired to teach EAL in a **term position** without formal EAL credentials depending on the strength of experience and qualifications of applicants in a competition. She was also aware through evidence that it was difficult to get fully qualified EAL teachers. She was aware from the ad for the **permanent position** (SB #1) that a major in Teaching English as a Second Language was listed as the Major Required. At no point was the question asked about what satisfies a Major in EAL or what is needed for a permanent position in EAL at NL Schools. Regarding TESL Part I and Part II, P.E. in her testimony indicated that she was aware Part II was

certification at a higher level. (Paragraph 79). Completion of Part I is listed as a pre-requisite of Part II. At no point were these levels of certification aligned with a question on permanent status. The Grievor indicated in her testimony that she assumed that completing TESL Part I would qualify her to teach. The Grievor must take some responsibility in ensuring clarity on what credentials are necessary to satisfy her needs and goal of obtaining permanent status.

The word “equivalency or equivalencies” is not used in any of the email exchanges with P.E. and Mr. Barry in January, February, or April. The word **comparative** or **comparable** are the words used by P.E. in the February and April email exchanges. In the Association Argument (paragraph 153), the word equivalency and equivalencies is used. This misrepresents the exact wording in the emails. Equivalency/equivalencies are not mentioned until the May email exchanges when Mr. Barry states that the “Queen’s course once completed is equivalent to the MUN program once completed.” The words ‘Comparable’ and ‘Equivalent’ do not have the same meaning.

Meeting the Bar of Negligent Misrepresentation

The question remains as to whether the communications by Mr. Barry amount to Negligent Misrepresentation. It is agreed that the first criteria of Negligent Misrepresentation is present (i.e. There is a ‘duty of care’ and that there is a ‘special relationship between Mr. Barry as Provincial Lead - Multiculturalism for NL Schools and P.E. as EAL Itinerant’.

The second criteria of Negligent Misrepresentation is that the representation in question must be “untrue, inaccurate or misleading”. The emails, however, were “NOT inaccurate” if viewed through the lens of ‘Programs’ vs. ‘Courses’. The misunderstanding that occurred was agreed upon by the Grievor not to be deliberate, and it is important to note that the **only**

program information provided to the Grievor by Mr. Barry was the link to the 3-course less expensive Learners Program. The third criteria is that “the representor must have acted negligently in the making the misrepresentation”. This is where I feel that the scenario that occurred falls short of the legal definition of Negligent Misrepresentation. Mr. Barry knew the difference/comparison between the programs; there was no gain to Mr. Barry to give inaccurate information; Mr. Barry was responding to P.E. after she had already chosen TESL after her own research; and the misunderstanding occurred over a couple of short emails exchanges in February and April. In my opinion, this does not meet the high bar of Negligent Misrepresentation. In addition, the fourth criteria of Negligent Misrepresentation in *Queen v. Cognos* is that the “representee must have relied, in a **reasonable manner**” on the representation provided. I contend that it is **not reasonable** for P.E. to think that she would have obtained a Major in EAL or qualifications for a permanent position by completing one course (over one term). Though the responses by Mr. Barry could have been more clear, this does not negate the knowledge that the Grievor already acquired from her own research of the programs at Queen’s University that she had done prior to intentionally enrolling in TESL in January 2025 and prior to the representations in question by Mr. Barry.

Damages

P.E. would not be out \$2995 based on her own evidence and intention outlined in paragraph 89 of the Majority decision that states: “The Grievor said that if Sheldon Barry had informed her in February of 2025 that she needed Parts I and II of TESL, she would have withdrawn from TESL Part I and enrolled in the three-course program he had initially suggested”.

Therefore, the Grievor, in her own testimony indicated that she would have withdrawn from the course if the miscommunication had not occurred and she would have enrolled in the 3-course program. The Grievor would not be out the full \$2995 given that although she would have received the refund for TESL Part I, she still would have incurred cost in enrolling in the first course in the 3-course program.

Similarly, Paragraph 265 of the Majority Decision ignores the evidence that P.E. would receive her refund of \$2995 and subsequently enroll in the first course in the 3-course Learner program (each part at \$690). Thus, the Grievor would be out the difference, not the full cost.

There is no difference in teacher pay or years of seniority when a permanent teacher accepts a term position. P.E. continued to express concern about what her permanent position would be. Her permanent position at the time of the grievance/hearing was the classroom position at Smallwood Academy in Gambo. The Grievor indicated she had thrown out her resources for grade 1 and that she did not enjoy this level of teaching. It is questionable why the Grievor would have done this knowing that she was in a term EAL position.

Paragraph 202 of the Majority decision states "The Employer submitted that the only way we could order reimbursement is if we are satisfied that there was a negligent misrepresentation and evidence, which we accept, that P.E. can't continue in EAL because of Mr. Barry's actions." There is no evidence to support that Mr. Barry's actions were the reason for the Grievor's inability to continue in EAL or ability to work with Mr. Barry. There is no evidence submitted to support 'Justice Sensitivity.' The only assessment information provided (PE#8) was a psychological assessment dated October 6, 2025 from the Adult ADHD Centre, that listed

accommodations for a diagnosis of ADHD for P.E. but the assessment did not support P.E. coming specifically out of EAL, rather listed accommodations consistent with coming out of a classroom position. In the absence of any evidence to explain the Grievor's inability to continue in EAL, and the fact that the Grievor has decided not to finish TESL Part I or pursue a career in EAL, the Grievor shares the responsibility of any supposed loss.

To justify full reimbursement of the course costs, there would need to be shown a causal link between Mr. Barry's emails and the Grievor's inability to continue in EAL. This was not established. Evidence was provided during the hearing that P.E. was experiencing difficulty in the grade one classroom. (PE#5 October 1st, 2024 email to Kelly-Ann-Kinden where P.E. is inquiring about options to leave her permanent teaching position at Smallwood Academy and indicates that she is considering options of leave of absence or resignation.)

Even if the misunderstanding had not occurred and P.E. had enrolled in the 3-course program, at the time of the job offer in May 2025, P.E. would not have completed the requirements for a permanent position. She would have completed only Part I of 3 courses associated with the Learners Program. It is therefore only appropriate to look at the financial outlay of TESL Part I as P.E. would have enrolled in Learners Part I. It is also important to determine if TESL Part I gives advanced standing in the 3-course Learners Program, given that the TESL Program only has two parts. To look at the cost of TESL Part II or additional courses in the 3-course program is looking beyond the appropriate time period to determine remedy.

Although there is agreement that the evidence on the accommodation piece was confusing and that the panel was not being asked to deal with the accommodation of P.E. supposedly out of EAL, it is noteworthy that it was still provided as evidence in the hearing. Though we cannot discuss accommodation requests beyond what was provided in the fall of 2025 (i.e. whatever is provided for Sept. 2026), PE #5 and PE #8 were included as evidence in this hearing.

I do not think the point about future positions that Ms. Ennis could take is irrelevant. She is still able to apply for EAL positions and has been successful twice in being offered and accepted term positions. Her experience in EAL adds to her suitability for consideration for future term positions. P.E. has benefitted from enrolment in TESL Part I and can still complete the course. It is not a complete loss. Full Reimbursement of a course that is not complete is inappropriate. P.E. has a duty to mitigate her loss. The Association argument that the misunderstanding resulting from communications with Mr. Barry took away everything, including the Grievor's interest in EAL, is not supported by the hearing evidence including the lack of any relevant medical evidence.

Analysis

In conclusion, the evidence, as outlined above, does not support damages of full reimbursement of course cost of TESL Part I to the Grievor. The Grievor has not completed the TESL Part I course. In her own evidence she indicated that she chose TESL and remained enrolled in it despite knowledge of the 3-course less expensive program. Reimbursing P.E. the full course cost of \$2,995.00, is essentially giving P.E. TESL Part I for free.

The Grievor did not take any responsibility for ensuring shared clear communication. There are many questions unanswered as to the actions/communication/information provided by the Grievor related to this grievance (e.g. no mention of the course drop date in her communications with Mr. Barry; no follow-up email to Mr. Barry when no response received to her January email as February drop date approached; throwing out her classroom resources while still in a term position; not asking for more clarity from Mr. Barry when she was aware of both EAL Programs at Queen's; and no relevant information to support the inability to work in EAL or with Mr. Barry).

The two email exchanges that are being provided to support Negligent Misrepresentation are brief, where the misunderstanding occurs involving the words 'Program' and 'Course'. One can see how the misunderstanding happened and it falls short of the definition of Negligence.

Raising this to the level of Negligent Misrepresentation is not justified.

P.E. in her grievance letter of November 4, 2025, indicates the cost difference of the two Queen's University EAL programs as \$400 and suggests this as part of the remedy. Given that a misunderstanding did occur, I can support an award of damages of \$400.

As there is some confusion as to how the Grievor arrived at the course difference of \$400, I could support a further inquiry as to how the two programs can be compared (i.e. how completion of TESL Part I aligns with further completion of courses in the 3-course program (i.e. advanced standing in the 3-course Learner Program) which may determine the appropriate course difference amount).

Full Reimbursement of course costs are not supported by evidence at the hearing or supported by demonstrated financial loss and thus is neither warranted nor appropriate.

DATED this 23rd day of September, 2026

A handwritten signature in cursive script that reads "Janet Vivian-Walsh".

Janet Vivian-Walsh
Employer Representative