

IN THE MATTER OF AN ARBITRATION

B E T W E E N:

**ONTARIO COUNCIL OF REGENTS FOR COLLEGES OF APPLIED ARTS
AND TECHNOLOGY in the FORM of SENECA COLLEGE
(hereinafter called the "College")**

- and -

**ONTARIO PUBLIC SERVICE EMPLOYEES' UNION
(for ACADEMIC EMPLOYEES)
(hereinafter called the "Union")**

**GRIEVANCE of John MacBride
OPSEU FILE NUMBER 256011**

BOARD OF ARBITRATION:

Richard H. McLaren, C.Arb., Chair

Larry Robbins, Union Nominee

Bob Gallivan, College Nominee

COUNSEL FOR THE COLLEGE:

Craig Rix

COUNSEL FOR THE UNION:

George Richards

**A HEARING IN RELATION TO THIS MATTER WAS HELD AT TORONTO, ONTARIO,
on APRIL 23, 2003.**

A W A R D

At the time of the hearing Counsel for the parties agreed that the Board was properly appointed and that it had jurisdiction to determine the matter and render a final and binding decision. The Parties agreed to the facts set out herein.

John MacBride commenced work with the College initially doing some part-time teaching, which was at that time outside the scope of the bargaining unit. Later, he became a member of the College staff involved in the Employment Equity Program. In 1996, Mr. MacBride's position became redundant and he was offered a full time teaching position with the College.

On May 20, 1996, Mr. MacBride was employed as a Professor of Business. He commenced his employment at Step 5 of the Salary Schedule for full-time instructors (Exhibit #3). The terms of the Collective Agreement provide for the evaluation of an employee's relevant teaching and occupational experience and relevant formal qualifications in determining the starting Step of the Salary Schedule. In 1996, Mr. MacBride held both a University BA degree in Fine Arts from York University and a certificate in Interior Decorating from Seneca College. He was awarded a total of seven points for relevant teaching and occupational experience, and six points for relevant formal qualifications. There was no difference of opinion between the parties on the seven points awarded for Mr. MacBride's relevant teaching experience. However, with regards to the six points awarded for his relevant formal qualifications, the parties disagree. At that time the College gave consideration to both qualifications, but determined that the only relevant qualification was the highest qualification, the BA. Once values were assigned to the relevant teaching and formal qualifications, the formula of the Collective Agreement assigned Mr. MacBride a starting salary at Step Five (Exhibit #4). The Seneca College certificate would have been counted at 1.5 points if credited at the time of his hire in May of 1996. However, it was not

credited at that time. If it had been, he would have commenced his full time teaching position at Step Seven rather than at Step Five on May 20, 1996.

On August 28, 2000, Mr. MacBride was re-assigned from Business / Legal to Business / Fashion (Exhibit #8). At the time of this status change, the College recognized the Interior Decorator Certificate as being relevant, which had not been previously credited at the time of hire. As a result, the College adjusted his salary by a one step increment (Exhibit #9). If credit for the certificate had originally been given at the time of hire, it would have been worth 1.5 points which would have been rounded up to 2 points. This meant that the credit would have had a two step impact on the wage level. The higher base would have then had an ongoing effect throughout subsequent years.

In addition, the one step increment was not effective until October 18, 2002. However, the increment did have a retroactive effect to the re-assignment date on August 28, 2000. The effect of the retroactive change was to place Mr. MacBride at Step 13 as of August 28, 2000. Mr. MacBride felt that he ought to have received credit for his certificate at the time of hire rather than later when it was recognized. He filed the grievance now before the Board.

The grievance reads:

The College has improperly credited my formal qualifications and, accordingly, has placed me at the wrong step on the Salary Schedule.

The settlement requested at arbitration was that the Grievor receive a one step increase effective as of the date of the grievance, which was 21 November 2002.

In addition to all of the foregoing facts which were agreed by Counsel, the Grievor testified before the Board. He testified that the focus of the certificate course was on how to start a business as an interior decorator. The certificate course involved various elements of establishing a business, setting up the office, developing a business plan, client

management, time management and customer service. The Office Administration program was designed to train students to become administrators and executive secretaries in a business environment. The relevant parallel between the certificate and the teaching program, according to the Grievor, was the office procedure and processes associated with managing the office environment. In essence, the parallel between the two programs is that both programs focused on the managing of the daily operations of a business office.

The Grievor generally described the parallel as being one associated with communicating with clients and presenting ideas to clients verbally, visually and in writing. It is those skills that are directly related to the Office Administration program where building presentation and communication skills are also a focus. The Grievor also testified that all of his learning experiences including his acquisition of his Masters of Education through Brock University formed his teaching skills and were relevant.

In cross-examination, the Grievor agreed with the College's Counsel that a significant portion of the Office Administration program is centered on computer software skills. He also agreed that his application for the job emphasized his computer skills as relevant. Furthermore, his application did not emphasize what he now testifies about in regard to the certificate.

ARGUMENTS

Arguments on behalf of the Union were to the effect that the issue was the proper interpretation of "relevant" qualifications. It was submitted that the post secondary school certificate issued by this particular community college should have been recognized at the time of hire and would have resulted in 1.5 points which rounded up would have meant a two step higher starting salary. The dispute between the Parties is whether the certificate is relevant to the Office Administration program. It is now being conceded that the certificate is relevant with respect to the Fashion Design program.

It is argued on behalf of the College that it has discretion with respect to determining what the relevant qualifications are. It is submitted that the Union is arguing that all academic experience is relevant and should be given credit, while the College argues that only academic experience which pertains to the courses being taught is relevant and should be given credit. It was submitted that only the highest degree counts, which is the BA. The certificate, being a lesser qualification, is not counted. On its face, a BA in Fine Arts is different than that of a certificate in Interior Decorating. The certificate would only be counted if it was different and if it was also relevant to the job. The certificate became relevant on Mr. MacBride's transfer because his new job involved fashion. Therefore, it was appropriate to recognize the certificate in the year 2000, but it was not appropriate to recognize the certificate in May of 1996, the date of hire.

In support of this argument, the College counsel relied on the following arbitration decisions.

Re The Confederation College of Applied Arts and Technology and Ontario Public Service Employees Union, (Huggins grievance) (unreported arbitration award dated March 25, 1983) (P.J. Brunner);

RELEVANT PROVISIONS OF THE COLLECTIVE AGREEMENT

- 14.01A** **Determination of starting salaries and progression within the salary schedules shall be in accordance with the Job Classification Plans dated November 28, 1989 (see page 134-148). The application to certain present employees above the maximum step on the salary schedule shall continue as set out in 14.03.**

...

SECTION I

CLASSIFICATION PLAN FOR PROFESSORS AND
COUNSELLORS AND LIBRARIANS

FACTORS

1. APPOINTMENT FACTORS

A) Experience: Relevant Teaching/Relevant Occupational

...

B) Relevant Formal Qualifications

Formal qualifications are those which constitute the norm in institutions of post-secondary education in the Province of Ontario. Only full years of post-secondary education at successively higher levels, and leading to a diploma, professional accreditation or degree, are recognized. For example, a graduate of a three-year technology program in a College would be given 1 ½ points for each of the three years, regardless of the length of time actually spent by the individual in obtaining the diploma.

No credit is to be given for a year of study in which there was significant duplication of other studies. Therefore only the highest qualification will be used in computation unless the subject areas are from different disciplines and all relevant to the appointment.

{underlining that of the Board}

-CAAT Diploma or Post-Secondary Certificate-
per year (level completed: 1 ½ points
(Maximum of 4 years)

- University Degree - per year (level completed: 1 ½ points
(Maximum 6 years)

- Formal integrated work/study program such as
P.Eng., C.A., C.G.A., C.M.A. (Formerly

**R.I.A), Certified Journeyman* - per year
(level) completed: 1 ½ points
(Maximum 5 years)**

**(Note that years included herein are not also to be included
under Factor A)**

*** "Journeyman" to be replaced with appropriate term when the
Trades Qualification and Apprenticeship Act is amended.**

C) Computing Initial Placement

**i) The minimum qualifications requirement is a count of 8 points
based upon the appointment factors. Since this is the minimum
requirement, a total of 8 points corresponds to the minimum
rate. (This is not intended to preclude a College from hiring an
individual whose qualifications and experience total less than 8
points. In such cases, however, the individual would be hired at
a minimum of the scale.)**

**ii) Computation of the initial salary is, therefore, $A + B - 8$.
The product is rounded to the next higher number, e.g.**

$$\begin{aligned} A &= 8 \text{ points} \\ B &= 4 \frac{1}{2} \text{ points} \\ A + B &= 12 \frac{1}{2} \text{ points} \end{aligned}$$

$$12 \frac{1}{2} - 8 = 4 \frac{1}{2} = 5$$

The starting position is the corresponding step (Step 5) on the scale.

**iii) No individual will have a starting salary of less than the
minimum on the salary scale. Nor will an individual's maximum
starting salary exceed the specified maximum starting salary on
the scale.**

...

DECISION

Effective 28 August 2000, the College recognized that the certificate in Interior

Decorating had become relevant to the Grievor's teaching as a result of the Grievor's transfer to the Fashion Department of the Business program. Therefore, a retroactive change was paid, effective at the time of transfer, of a one step increase in the grid. The Union submits that this qualification ought to have been recognized at the time of hire in May of 1996. If the qualification had been recognized, it would have meant a two step change because of the different weighting of the qualification at the time of hire versus the weighting at a subsequent date.

The essence of the grievance is a claim of one additional step which would make the change a total of two steps. However, it is recognized that the grievance cannot refer back to the date of the transfer of 28 August 2000, or even earlier to the date of hire in 1996. Since the grievance was not filed until the 21st of November 2002, the claim is limited to that date. Therefore, the requested remedy in the proceedings is a change of one step in salary level, effective only from the date of the grievance on 21 November 2002. The Parties in effect are agreed that the qualification is relevant from 28 August 2000 onwards.

The issue before the Board is whether the college certificate in Interior Decorating is a relevant qualification at the time of hire. If the certificate was relevant, it would create a salary adjustment that would not have any effect prior to 21 November 2002. Therefore, the issue could be stated as: Was the Seneca College Certificate of Interior Decorating relevant to teaching the Office Administration program at the date of hire?

Article 14.01A indicates that the determination of starting salaries is to be in accordance with the job classification plan dated 28 November 1989. The plan is set out at the end of the Collective Agreement and the relevant provisions begin at page 135 and are quoted in this award. In subsequent pages, the factors to be considered are set out. The dispute here focuses on the relevant formal qualifications and, in particular, the second paragraph thereof.

The second paragraph commences with a negative or exclusion provision that there is to be no credit for studies where there is significant duplication. This particular sentence is not at issue in this proceeding. Having made the duplication statement, the next sentence states that only the highest qualification will be used. On the facts present, the BA was that qualification and, as such, it was used in the computation. The sentence then goes on to permit inclusions of further qualifications which would be of a lesser level on the following terms: "Subject areas are from different disciplines and all relevant to the appointment". There can be no dispute in this case that a BA in Fine Arts and a certificate from a community college in Interior Decorating, on the face of it, are from different disciplines. Indeed, on the evidence given by the Grievor, it is clear that the specific courses taken in the two programs were very much from different disciplines. Therefore, the dispute between the Parties is only on the question of whether the certificate is relevant to the initial appointment.

The implication of the inclusion sentence is that there may be some academic experience that does not warrant credit. Indeed, the College determined that the certificate did not warrant credit at the time of hire. Although upon moving to the School of Fashion and Merchandising, the College did see relevance in the course of study and at that point counted the credit. There is little doubt, and likely no debate, that any academic training is of benefit to the individual who has taken that training. In this sense, the Union argues to include all academic credit. However, the factor in the second paragraph stipulates that it must be relevant to the appointment. The appointment at the time being in the Business and Office Administration program.

The Board agrees with the College that the Grievor, in his own application for the Business and Office Administration position, chose to emphasize his computer and other particular training and not make any submissions with respect to his certificate in Interior Decorating. He did not draw to the College's attention the arguments now being made about its relevance to the appointment.

The College appears to accept that there was an intuitive relevant connection between the certificate and the program when the Grievor was transferred to the School of Fashion and Merchandising. The Grievor's testimony to the Board would also support this conclusion that the skills of the certificate had direct relevance to the topics being taught. The certificate developed both generic skills and specialized skills. As for the generic skills, they were credited at the time of the appointment with the use of the BA in the computation of the starting salary.

The focus of the courses in the Interior Decorating program may very well have been on the development of an interior decorating business. Therefore, the courses may have involved some informational skills, which might be transferrable to the Business and Office Administration program. However, it is the opinion of the Board that those skills are more of a generic nature than a specialized nature. The thrust of the position of the Grievor, as he said in his own words, is "a teacher as a learner studies and therefore learns to teach." The Grievor said: "I think how you learn and your experiences learning can have an impact on how you teach." He also suggests that "learning comes from the teacher not from the course of study." Such testimony indicates the global view which he is using to assess what is relevant to the appointment. The appropriate focus in this case is not to the global description, but to the particular appointment and the particular content to be taught at the time of the appointment. In that regard, it is noted that the case of *Confederation College, supra*, found that a Masters of Science of Biology degree was not relevant to the Automotive Merchandising program and the teaching of courses therein. What this case suggests is that there is no nexus between the position being applied for and the relevant academic experience. This also seems to be the case before this Board. There is no nexus at the specific level of content of the courses taught in the Business and Office Administration program with the certificate course on Interior Design. The Board finds that there is insufficient evidence that there are special informational or other skills arising from the certificate course that ought to have been recognized.

For all of the foregoing reasons, the Board finds that the College acted appropriately in its assessment at the time of hire within the relevant provisions for formal qualifications as set out in the Collective Agreement. Therefore, there is no breach of the Collective Agreement. It is ordered that the grievance be dismissed.

DATED at LONDON, ONTARIO THIS th 6 DAY of ^{June} MAY 2003.



Richard H. McLaren, C.Arb.

(I Concur/ I Dissent)

Bob Gallivan, College Nominee

(I Concur/ I Dissent)

Larry Robbins, Union Nominee

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IN THE MATTER OF AN ARBITRATION BETWEEN:

SENECA COLLEGE

and

O.P.S.E.U.

Re: Grievance of John MacBride (2002-0560-0011)

DISSENT

I have reviewed the Award of the majority in this matter and must dissent. In my view, the award takes too narrow a view of the meaning of the phrase "all relevant to the appointment" in the second paragraph of 1 (B) of Appointment Factors.

The chairperson finds that there is no nexus at the specific level of content of the courses taught in the Business and Office Administration program with the certificate course on Interior Design. In my view, the test should be whether the knowledge and skills arising from the certificate course could be shown to be applicable. There was in fact sufficient evidence particularly with respect to the grievor's course in Sales and Business Practice of applicable knowledge and skills that were helpful to the grievor. Some of this is referred to at pages 3 and 4 of the award. In addition there was considerable focus in his emphasis on presentation and communications skills.

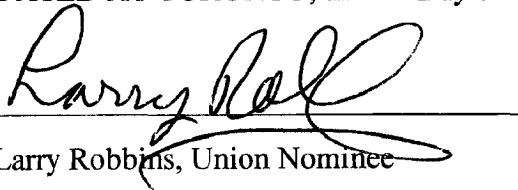
I agree that by the wording of the collective agreement it suggests that not all formal qualifications are going to be found to be relevant in a case where there is more than one qualification. Saying that "all learning is relevant" may indeed be too broad in terms of the language of the collective agreement. However I am concerned that the approach taken by the majority may be too narrow. Note that the subject areas have to be both from different disciplines and be relevant to qualify. To me this makes it very clear that qualifications from a variety of different disciplines can certainly be relevant. No one would dispute that Interior Decorating is a different discipline from Office Administration. But in my opinion the grievor demonstrated sufficient applicable knowledge and skills from the Interior Decorating course to qualify for the

additional step.

Finally I don't see much significance in the fact that the grievor didn't emphasize his Interior Decorating Course in the covering letter to his application. All of his experience was in his resume, and it is not surprising that he would focus more on experience than academic qualifications in the letter.

I would therefore have allowed the grievance.

DATED AT TORONTO, this 3rd Day of June, 2003.

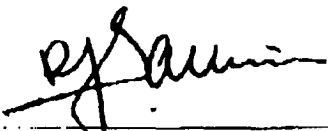
A handwritten signature in black ink, appearing to read "Larry Robbins", is written over a horizontal line. The signature is stylized and cursive.

Larry Robbins, Union Nominee

DATED at LONDON, ONTARIO THIS DAY of MAY 2003.

Richard H. McLaren, C.Arb.

(I Concur/ ~~I Dissent~~)



Bob Gallivan, College Nominee

(I Concur/ I Dissent)

Larry Robbins, Union Nominee

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