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**File:** 166-02-32824

**Citation:** 2006 PSLRB 43



*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**MARY MORROW**

Grievor

and

**TREASURY BOARD  
(Correctional Service of Canada)**

Employer

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

In the matter of a grievance referred to adjudication pursuant to section 92 of the  
*Public Service Staff Relations Act*

**REASONS FOR DECISION**

***Before:*** Georges Nadeau, adjudicator

***For the Grievor:*** Edith Bramwell, counsel

***For the Employer:*** Neil McGraw, counsel

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Heard at Kingston, Ontario,  
November 14 to 17, 2005.

## REASONS FOR DECISION

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### Grievance referred to adjudication

[1] The grievor was employed by the Correctional Service of Canada (CSC) at Pittsburgh Institution as a Human Resources Assistant. On June 10, 2003, she grieved the termination of her employment, as communicated to her in the letter dated June 9, 2003.

[2] The letter of termination (Exhibit E-17) reads as follows:

...

*I have now completed a full review of the evidence surrounding your case including statements from you and your representative made at the May 26, 2003 meeting.*

*Based on the evidence gathered, and from your own admission, you have been submitting forged medical certificates for absences since 1999.*

*The essential elements of trust that must exist between the employer and an employee have been breached beyond repair. In view of the serious nature of your misconduct it is my decision that your employment with the Public Service of Canada be terminated for misconduct in accordance with Section 11(2)(f) of the Financial Administration Act and in accordance with the authority delegated to me by the Commissioner of the Correctional Service of Canada. This decision is to take effect at the close of business June 09, 2003.*

*Actions will be taken to recover sick leave days which were obtained in a fraudulent manner. Any final salary and/or entitlements due will be forwarded to you in the near future. Ms. Doreen Gregory, of the Compensation Section, will contact you shortly with respect to the administrative details related to this action.*

...

[3] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 (the "former Act").

Summary of the evidence

[4] The first witness called by the employer was Helen Ronan, Chief, Human Resource Management (CHRM), at Pittsburgh Institution. She started with the CSC in August 1993 and, after holding a series of clerical positions, she spent 12 years as a Pay Advisor and eight years in staffing. She held the position of CHRM at Frontenac Institution before being redeployed to the Pittsburgh Institution.

[5] Ms. Ronan testified that she assisted management in a wide range of duties related to human resources. They included the coordination of grievances, responsibility for hiring casual employees and responsibility for extra duties remuneration, such as overtime, shift premiums and various allowances. Leave administration is decentralized and the Human Resources section maintains the leave files for the Institution.

[6] The CHRM assistant is responsible for maintaining leave files, processing workers compensation claims, keeping an inventory of applications for casual employment and maintaining career files. The Human Resources section works with the managers in the Institution on career files and personal development plans and is responsible for coordinating training by developing, with managers, yearly training and return-to-work plans when they need assistance.

[7] At the time the witness arrived at Pittsburgh Institution, at the end of November 2001, the office had a full-time Human Resources Assistant, a part-time leave assistant and an extra-duty assistant. The part-time position was lost in the fall of 2002. The grievor, who was the Human Resources Assistant, then took on the duties of the part-time position.

[8] Pittsburgh Institution has a staff of 120 employees and overtime is minimal. The part-time assistant would input the overtime sheets into the computerized system and then run a report that would be signed by the Warden and sent for payment. The part-time assistant also processed daily shift reports prepared by Correctional Supervisors that recorded which staff members had worked, their whereabouts and whether overtime had been worked. The information was used to produce a spreadsheet that totalled monthly overtime and shift differentials on a quarterly basis. The grievor took on those duties when the part-time position was eliminated.

[9] The witness testified that she worked with the grievor on revising the grievor's work description and consideration was given to submitting it to classification. However, the submission was delayed pending the results of a classification grievance in another case. The witness testified that adding duties to a position does not necessarily result in a higher classification level.

[10] The witness testified that the grievor was a person who kept her professional life separate from her private life and did not socialize after work. The witness also indicated that, on a daily basis, she had a good working relationship with the grievor.

[11] Ms. Ronan reported to work on November 28, 2001, in her new position. The grievor returned from disability leave and reported to work on December 4, 2001. The recommendation from the rehabilitation specialist was that she be placed initially on a three-day work week and that she resume full-time work as of December 24, 2001. The grievor took annual leave during the Christmas holidays and commenced to work full-time early in January. The grievor seemed fine and performed her duties in a fully satisfactory manner.

[12] Issues related to her leave occurred during the first year after her return. She had come back to work with a negative leave balance after the employer had advanced her sick leave. In July and August 2002, she spent a lot of time away from the office. The witness had a discussion with her concerning her attendance. The grievor requested special leave and her request had gone to the Warden for approval. The Warden approved her leave as requested.

[13] Discussions occurred in the months that followed as the situation did not improve. In October 2002, as there was still no improvement, after discussion with Janet Clark, Assistant Warden, Management Services, and consultation with the Warden, Paul Snyder, a decision was made to place the grievor on an attendance management program.

[14] Information on the program is available to supervisors through a website. The information submitted in evidence (Exhibit E-4) describes the program, the roles and responsibilities of employees and supervisors and gives examples of letters to be used when placing an employee on such a program. This was designed as a tool to assist in managing attendance situations and is considered by the employer to create a "win-win" situation for the supervisor and the employee.

[15] The witness produced the Leave Balances and Status Reports for the grievor (Exhibit E-5), covering the period from fiscal 1999-2000 to 2003-2004 (inclusive). This report provides details of the type of leave used for each absence, whether the leave is with or without pay and the reasons for such leave.

[16] In October 2002, the grievor was called to a meeting along with her union representatives, Messrs. Rountree and VanDuvea. During this meeting, she was informed that she would be placed on a leave control program and would have to provide a medical certificate for all her absences due to illness. This was confirmed in a written letter (Exhibit E-6) given to her on October 22, 2002. The grievor indicated she had no problem with the request. The witness indicated that the letter had been prepared using a sample letter and that an initial reference to discipline had been removed from the final version given to the grievor. This letter also mentions that the grievor may be sent to a doctor at Health Canada for an assessment of her capabilities to assume the duties of her position.

[17] The grievor complied with the request and provided medical slips for her absences. However, her attendance did not improve and in February 2003, she was again called to a meeting, along with her union representative. A discussion took place regarding attendance and she was informed that a decision had been made to send her to Health Canada for an assessment. In order to proceed with the assessment, two consent forms had to be signed by the grievor and a letter was prepared by the employer giving a brief history of her attendance and requesting a determination as to the grievor's ability to perform the duties of her position.

[18] The grievor expressed some concerns with the inclusion of annual leave in the history. The witness indicated that she was not prepared to remove the annual leave dates, as they had been used to cover sick days.

[19] The Health Canada examination was to take place in the first part of May 2003. However, it was cancelled as a result of the decision to discharge the grievor.

[20] The grievor was away on sick leave on March 14, 2003, and provided a medical certificate upon her return to work the following day. Ms. Clark asked the witness to look closely at the doctor's slip that the grievor had left on her desk. The grievor had gone to the general office that morning to ask for blank medical certificates.

[21] The witness testified that she obtained the grievor's leave file and looked at the previous doctor's certificates. She observed that the signatures did not look the same. After consulting with staff relations, the Assistant Warden and the Warden, it was decided to send the certificates to the doctor for verification. Further discussions led to a review of the leave file back to 1999, and further certificates were sent for verification. The doctor was asked to provide confirmation in writing as to which certificates she had signed.

[22] Following receipt of a fax from the doctor (Exhibit E-9) indicating which certificates had not been signed by her, the Warden asked Glen Chambers, Unit Manager, to conduct an investigation.

[23] Ms. Ronan added that she had accommodated the grievor with regard to her hours of work by amending on a number of occasions her daily hours of work to assist her with child care arrangements. She also recalled that, in October 2002, upon her return from a one-week absence, she had been informed by Ms. Clark that the grievor had told her that her lupus had returned. Ms. Clark asked her to ascertain the procedures for reinstating disability benefits. Ms. Ronan contacted Linda Davidson, the return-to-work Coordinator, who contacted the grievor. Ms. Davidson later informed the witness that the grievor had told her that the information with regard to the lupus was incorrect.

[24] In cross-examination by counsel for the grievor, the witness testified that she believed that she had followed the procedure outlined in the Attendance Awareness Program, that she had no suspicion that the employee was malingering and conceded that she had not thought of contacting the doctor to see what could be done about the attendance problem. She only became aware of the existence of a letter to the grievor's doctor from the previous supervisor when she pulled the old leave file in March 2003.

[25] Further cross-examination revealed that the supervisor understood the lupus to be in remission, that the grievor's mother would assist in childcare issues but that, overall, it would have been difficult for the grievor to improve on her attendance. Ms. Ronan indicated that the grievor was never required to submit medical certificates within a five-day time frame although that time period had been mentioned in the investigation report. Although the grievor was unhappy about having to submit medical certificates from her doctor, Ms. Ronan was not aware of any concerns that the grievor may have had with her as a supervisor. The grievor had put in a request for a

deployment. The reason given was that she wanted to be closer to Kingston. Ms. Ronan understood that part-time work was not a possibility because of the grievor's financial situation. She was also of the view that she had been sensible and flexible by allowing changes in the grievor's hours of work, by allowing the grievor to pay back time off, by advancing sick leave and by allowing leave without pay to be recovered over a number of pay periods. The grievor was also provided with a list of Employee Assistance Program (EAP) contacts (Exhibit E-11).

[26] In re-examination, Ms. Ronan indicated that the grievor had never approached her to request that she contact her doctor.

[27] The second witness called by the employer was Paul Snyder, Acting Regional Administrator, Program and Reintegration.

[28] Mr. Snyder started at the CSC in 1977 and has held a variety of positions in the Ontario region. His previous employment included working as a hospital orderly in the psychiatric unit at Kingston Penitentiary, working as a Correctional Officer and a Parole Officer at Joyceville Institution and as a Parole Officer in the Kingston community. He had been Chief of case management at Collins Bay Institution, Unit Manager at Kingston Penitentiary, Deputy Warden at Warkworth Institution for eight years and Deputy Warden and Warden at Millhaven Institution. From 2002 until the summer of 2005, he had occupied the position of Warden at Pittsburgh Institution.

[29] Pittsburgh Institution is a minimum security institution that can accommodate 250 inmates with a staff of between 110 and 120. As a minimum security institution, it has no fences and no overt security measures. There are, however, Correctional Officers present and security routines to prevent escapes. It is a large complex of 1,400 acres with a variety of work and programs for offenders.

[30] The witness described his duties as Warden as largely administrative with a fair amount of interaction between himself, the staff and the inmates. There were regular management meetings to deal with population, personnel and finance issues as well as regular regional management committee meetings.

[31] The structure of the Pittsburg Institution is similar to that of many correctional facilities. There are three distinct divisions under the direction of a divisional head. One division is the correctional operations division, which is headed up by a Deputy

Warden. It is responsible for security, case management, health care and the psychology department. Another division, which is managed by an Assistant Warden, manages all inmate programs and social activities. The third division is Management Services and is also headed by an Assistant Warden. It is responsible for all administrative functions such as finance, personnel, food services and other institutional and technical services. Ms. Clark was the Assistant Warden in charge of that division. The witness also referred to another division that works for the Warden and Corcan, Partnership with Corrections, which relates to inmate employment.

[32] The witness has known the grievor since his arrival at Pittsburgh Institution. He described his relationship with the grievor as businesslike, friendly and cordial. Most dealings were of a business nature where the grievor would come to his office to obtain his authorization on leave applications from staff requiring his approval. She came to him on a few occasions with her own requests.

[33] Mr. Snyder explained that employees are entitled to a leave benefit package in accordance with their respective collective agreements. He indicated that in the Correctional Service, some employees use more leave than others and that if all employees used all their leave credits it would be difficult to manage. It was, therefore, important to identify problems. CSC has put in place a leave management program that places expectations on staff and managers. If an employee's absence affects the work of a department, the manager is responsible for applying the program. Scheduled leave is not an issue. It is the unscheduled leave that is addressed through the leave management program. The program puts in place measures to help balance the work and leave arrangements.

[34] Mr. Snyder added that employees who use a significant amount of leave may be at risk at work. The requirement to submit a medical certificate ensures that a doctor is aware of the time the employee is away from work, and ensures that the absence is for bona fide reasons and that the employee is fit to work.

[35] The witness testified that, a short time after his arrival, as part of management discussions, he was made aware by Ms. Ronan or Ms. Clark that the grievor's attendance was being scrutinized as she had used a significant amount of leave. It was his understanding at the time that the supervisor was monitoring the situation and working with the employee. He did not recall being involved in the actual decision to put the grievor on the attendance program but did recall a discussion about whether



she was to be referred to Health Canada for a fitness to work assessment. Around that time he was made aware by Ms. Clark that Ms. Ronan had found something peculiar about the doctor's signatures on the medical certificates. These findings triggered a discussion with staff relations, which resulted in the witness asking Mr. Chambers to conduct an investigation and provide a report as quickly as possible.

[36] Mr. Snyder then became aware of the document signed by the doctor, indicating which medical certificates she had signed. Following receipt of that document, further discussions with Staff Relations and local management resulted in a decision to suspend the grievor pending the outcome of the investigation. The local union was contacted and a meeting was called to suspend the employee. Once the report had been completed, a disciplinary meeting was held with union representatives present. During this meeting, the witness impressed upon the grievor the seriousness of the findings and the possibility that the discipline could be termination of her employment. Mr. Edmunds made representations on behalf of the grievor and she presented a letter (Exhibit E-16). The witness indicated to the grievor and her representatives that he would take their comments into consideration.

[37] Mr. Snyder, after taking into consideration the seriousness of the allegations in relation to the Code of Conduct, the fact that the doctor had contacted the police, that the investigation had established that the grievor had falsified documents, that she had control of and access to other employees' documents, that there was a "heavy burden of trust placed on public servants" and that the actions of the grievor were not those of a person who is trustworthy or acting in the public interest, decided to terminate the grievor's employment. The witness also took into consideration the representations made on her behalf and the fact that she had a serious illness. In the end, the witness concluded that the explanations provided by the grievor for the calculated act of falsifying signatures did not address the trust that the employer required of this employee. Consequently, the witness signed the letter of discharge.

[38] In cross-examination, the witness indicated that two groups of documents had been sent to the doctor for verification. He also said that it was his understanding that the grievor had admitted to falsifying some of the documents, but not all. He recalled the grievor's not being clear as to which documents were or were not falsified. When asked if the grievor had had an opportunity to respond to all the allegations of falsification with respect to the two groups of documents, the witness answered yes.

The witness testified that the second group of documents had been shared with the grievor's representative, Mr. Edmunds. By the time the disciplinary meeting of June 2, 2003, occurred, the grievor had been made aware of both groups of documents. The witness, in reply to questioning, indicated that he had considered the representations made by the grievor's representative as well as what the grievor had said. He indicated that the issue of trust was critical. He also considered the family support issues. He indicated that the decision to terminate an employee was not an easy decision to make, and not one made regularly. He considered the number of times that the conduct had occurred. The witness also indicated that, while the grievor's performance when she was at work was good, the attendance issue was a problem. He recalled that a referral process had been started to send the grievor for a medical assessment by Health Canada.

[39] The employer called Dr. Colleen Webster to testify. Dr. Webster said that she had graduated from the University of British Columbia in 1994. She trained in family medicine at Queen's University and obtained her certificate in 1996 with the College of Family Physicians. She has practised since November 1996.

[40] Around May 15, 2003, Mr. Snyder contacted the witness through his secretary regarding the signatures on the workslips that the grievor had presented. The witness testified that she was asked to have a look at 8 to 10 slips and determine whether the signatures on the documents were hers. Only two bore legitimate signatures. A week later, a second group of slips was also sent for verification. The witness identified both groups of slips that were produced in evidence (Exhibits E 7.1 to 7.8 and E- 8.1 to 8.19). The witness indicated that she had faxed back to Mr. Snyder a collated list (Exhibit E-9) indicating which signatures were legitimate. The witness also said that she had approached the Kingston City Police to file a complaint against the grievor. The complaint was later dropped.

[41] The witness went on to review each individual certificate of disability, explaining how she recognized a forgery from her own signature and relating those instances using her notes from the grievor's medical file.

[42] The witness indicated that the signature on the certificate marked Exhibit E-7.1 was not hers. The grievor was not seen that day at her office. The witness pointed out that the letter "W" in the true signature is the same size as the letter "C", the letter "B"

in the true signature is in a print format rather than a script format and the letter “R” does not have a loop on top.

[43] The witness indicated that the signature on the certificate marked Exhibit E-7.2 was not hers. The grievor was not seen that day at her office. The witness pointed out that the letter “C” is different in the true signature, the letter “W” on the certificate is too short, the letter “B” is in a script format rather than a typographical format. Also, the signature on this certificate is more drawn out, the letter “R” is different and the entire height of the word “Webster” is shorter.

[44] The witness indicated that the certificate marked Exhibit E-7.3 was signed by her. She noted however that the date of return had been changed and that this change had not been initialized. She also indicated that the top tick mark indicating she had seen the grievor on or after the date the absence began was not hers.

[45] The witness indicated that the signature on the certificate marked Exhibit E-7.4 was not hers. The grievor was not seen that day at her office. The witness pointed out that the letter “C” is different in the true signature, the letter “W” on the certificate is too short, the letter “B” is open and the letter “R” is fancier. The word “Webster” is too short.

[46] The witness indicated that the certificate marked Exhibit E-7.5 was signed by her. The grievor was seen that day at her office.

[47] The witness indicated that the signature on the certificate marked Exhibit E-7.6 was not hers. The grievor was not seen that day at her office. The witness pointed out that the letter “C” is too tall, the word “Webster” is too short, the letter “W” is too short and the letter “R” is fancier.

[48] The witness indicated that the signature on the certificate marked Exhibit E-7.7 was not hers. The grievor was not seen that day at her office. The witness testified that the word “Webster” is too short and the letter “W” is too short. Although the letter “B” is closed, it is too far from the letter “E”. The signature is too wide compared to the original.

[49] The witness indicated that the signature on the certificate marked Exhibit E-7.8 was not hers. The grievor was not seen that day at her office. The witness testified that the slash separating the dates is not something the witness would do. The letter “W” is

too small. The entire signature is not as compact or as vertical as the witness' signature.

[50] The witness indicated that the signature on the letter marked Exhibit E-8.1 was hers. It was a letter that the grievor had requested from the witness.

[51] The witness indicated that the note marked as Exhibit E-8.2 was from the appointment book. This note was written on a prescription form. The comment "ear infection" that appears on the document was not a comment written by the witness.

[52] The witness indicated that the notes, marked Exhibits E-8.3, E-8.4 and E-8.5, were all her notes. As for the note marked Exhibit E-8.6, the witness noted that her signature had been traced over but she had not done the tracing.

[53] The witness indicated that the signature on the certificate marked Exhibit E-8.7 was not hers. The grievor was booked for an appointment but cancelled it. The witness stated that the letter "W" is too short, the letter "B" is open, the word "Webster" and the letter "R" are different from her own.

[54] The witness indicated that the signature on the certificate marked Exhibit E-8.8 was not hers. The grievor was not seen that day at her office. The witness indicated that the letters "C", "W", "B", "R" and the word "Webster" were different from her own.

[55] The witness indicated that on January 2, 2001, the grievor attended at her office. However, she noted that it was not her signature that appeared on the certificates marked Exhibits E-8.9, 8.10 and 8.11 and that it would be unusual for her to sign multiple certificates rather than one certificate for multiple days. The witness pointed to the differences between her signatures and the others.

[56] The witness testified that the certificates marked Exhibits E-8.12, E-8.13 and E-8.14 were all signed by her and that the corresponding notes could be found in the medical file.

[57] The witness indicated that the note marked Exhibit E-8.15 was not signed by her. The grievor was not seen on that date and the signature had the same differences noted above. As well, the signature was too flat.

[58] The witness indicated that the certificate marked Exhibit E-8.16 was not signed by her and noted the same differences from her own signature mentioned above. She also noted that the signature was placed at the extreme left side, something she would not do.

[59] The witness indicated that the certificate marked Exhibit E-8.17 was not signed by her; the grievor was not seen at her office that day and she noted the same differences from her own signature mentioned in above.

[60] The witness indicated that both certificates, marked Exhibits E-8.18 and E-8.19, were signed by her.

[61] The witness testified that after she found out that the grievor had been forging her signature she was quite upset. The witness said that she had been quite supportive of the grievor. She had never refused to sign a medical certificate and had signed a letter of support (Exhibit 8.1). With this coming to light, she decided that the trust necessary for a patient-doctor relationship was gone and she dismissed the grievor from her practice. She informed the grievor of this on May 26, 2003.

[62] In cross-examination, the witness was asked about the comment she had noted on the grievor's file (Exhibit E-18) on May 26, 2003, which read: "...she says she photocopied the forms & traced my name through, not forged!!" She replied that she really did not pay much attention to the excuse given by the grievor. It did not matter to her how it had been done. The grievor had faked her signature and that was all that mattered. The witness repeated that she was angry. She had been supportive of the grievor for the five to six years that the grievor had been her patient. She had never refused a request for a note and felt that the grievor had taken advantage of her trust. She did not understand why the grievor would do that to her.

[63] The witness was asked whether the diagnosis of lupus and depression could explain her behaviour or whether the illnesses might have affected her judgement. The witness replied "not to this extent". The witness further indicated that the forgeries had started prior to the diagnosis of depression.

[64] Questioned with regard to a letter dated March 21, 2001 (Exhibit G-3), that she had received from the grievor's supervisor at the time, Cheryl Hogan, the witness indicated that she felt insulted by the letter since it implied that she was not taking the

appropriate actions to deal with the grievor's medical issues. The witness contacted Mrs. Hogan and became aware of the extent to which the grievor was missing work. She met the grievor again on March 27, 2001, and a decision was made to "take the grievor off work" until she could get back to work when she would have a "handle on things".

[65] The witness was questioned about a note made on November 7, 2000, that mentioned a long talk on legitimate absences and was asked if she remembered why the grievor did not want to take medication for depression. The witness replied that she did not know why. She speculated that the patient may have been reluctant because the depression was not too severe. She felt that, at the time, the grievor could make that decision and that she always tried to involve the patient in these types of decisions in order to get better compliance with the treatment. The grievor would eventually be referred to a psychologist in mid-November. The witness prescribed an anti-depressant the following January. The dosage of that medication was increased in March 2001 to improve the grievor's mood control.

[66] The witness indicated that she would not sign more than one medical certificate a day and preferred to include multiple dates on the same form. She indicated that she always dated her signature and, with the exception of one case, all certificates were noted in the medical file.

[67] Asked if she had seen the grievor for every absence, the witness said, "absolutely not". She did not need to see her every time on the day of the absence since she was well aware of the grievor's chronic illness and had no reason to question it. The witness indicated that she viewed her role as being that of an advocate for the health issues of her patient unless there were reasons to do otherwise.

[68] The witness, after examining the medical certificate signed by her on March 27, 2001 (Exhibit E-8.6), indicated that it was unlikely that she had checked all the boxes in the "B" section of the form as it was not necessary to do so.

[69] The witness did not recall when she had initialled some of the original medical certificates.

[70] The witness indicated that, following a phone call from Ms. Clark and after receiving some documents by fax, she herself made the initial comparison to determine whether the signatures were hers.

[71] The witness stated that, because there was no trust left in the relationship, it would have been irresponsible for her to continue to act as the grievor's physician. It was her view that the grievor, although suffering from a chronic illness, was not at that point in time acutely in need of immediate care.

[72] The grievor began her testimony by indicating that she had started work when she was 14 and had worked in the public service between 1974 and 1984, in Food Services. She resigned to raise her children and returned to the public service in 1993. She started as a temporary clerk at the CR-03 level at the Millhaven Institution and was there until November 1994, when her contract ended. Towards late February of the following year, she was accepted in the Correctional Officer training program and graduated in June 1995, among the top 10 candidates.

[73] She started working as a casual employee and, on August 14, 1995, she was offered a term position at the Prison for Women. She was there until January 12, 1998. At that point in time, because of problems between her ex-husband and daughter at home, she did not want to work shifts anymore.

[74] The grievor testified that she started work at Pittsburgh Institution on January 13, 1998, as the Assistant to the Chief, Administrative Services, Donna Shetter. She worked in that position until April 17, 2000, when she went down the hall to become the Human Resource Assistant. She reported to Ms. Hogan at that time.

[75] At home, the situation was not improving. She was afraid that her daughter would commit suicide because of badgering from her ex-husband. When she was working shifts, she would get 10 to 15 calls a night from her daughter and from her ex-husband. Her ex-husband was trying to evict her daughter from the house. She testified that, although he was not abusive to her daughter, he was abusive to her.

[76] In the early part of 1999, a lesion appeared on her skin the size of a quarter. After a biopsy, she was diagnosed with lupus. Lesions appeared on her upper body, on her legs and her face. The disease also caused severe fatigue and severe pain from swollen joints.

[77] The witness indicated that because of the lesion on her face, she was extremely embarrassed and wanted to hide. The lesions looked like open sores, the size of a dime, and they left severe scarring.

[78] The illness had profound effects on her family life. Her ex-husband would not accept the fact that she was ill. She had to rely on the older children to look after the younger ones. As time progressed, her illness became worse and her relationship with her husband deteriorated.

[79] The grievor indicated that going to work became very difficult. She found getting out of bed very difficult.

[80] The witness recollected talking to her doctor in November 2000. She indicated that she told the doctor about the “things that were going on, but did not tell her every thing”. The grievor indicated that her daughter had gone to live with her natural father in Nova Scotia because her relationship with her stepfather had deteriorated. This resulted in her marriage ending. The grievor indicated she would never allow somebody to make her choose between that person and her children. Asked if she had explained those concerns to Dr. Webster, the grievor indicated she told the doctor that she was planning to leave her husband. The grievor indicated the doctor was supportive of that decision but told the grievor she could not justify, at that point in time, sending the grievor on long-term disability.

[81] The grievor indicated that her supervisor at the time, Ms. Hogan, knew of her situation and it was at her suggestion that the grievor had requested a meeting with her doctor. Following that meeting, since the grievor was not coping well with the situation and was taking time off from work, Ms. Hogan wrote to the doctor. Dr. Webster initially found the letter insulting but two weeks later, the grievor was placed on disability.

[82] The grievor testified that she went to see Dr. Nogrady, a psychologist, because she needed someone who could be objective. She had obtained the psychologist’s name from the EAP.

[83] The grievor testified that, when she went on disability, she was bedridden for three weeks. With time, her health got better, although she was still experiencing symptoms from the lupus. She was also seeing another specialist, Dr. Walsh, for her



rheumatoid arthritis. Eventually, with medication, there were no new lupus lesions. The grievor indicated that she was supposed to go for six months without lesions before she could return to work. She went back to work in December 2001.

[84] At that time, her younger son became quite difficult. He was disruptive at school and was placed in a special program. At the age of six, he was suspended from school. The relationship with her husband was volatile. The grievor testified that she was still living at home, although she had filed for separation. She was living there while looking for a suitable place to live.

[85] Asked if her ex-husband was abusive to her, the grievor replied that he had tried to be but that her older son had intervened. By December 2001, no new lesions had appeared and, although she was not completely better, she felt that she had to get out of the house. The grievor also indicated that her ex-husband would not help her deal with the school.

[86] When she returned to work, it was initially on a part-time basis, three days a week. After three weeks, she began to work full-time. The grievor reported to Ms. Ronan since Ms. Hogan had transferred to another institution. The grievor indicated that, at their first meeting, Ms. Ronan had placed her leave record before her and estimated the time it would take for the grievor to pay back the leave that had been advanced. Her first impression of her new supervisor was not very good. The grievor indicated that she felt insulted by the supervisor's approach. Rather than being asked how she felt, she was being told what she had to pay back.

[87] The grievor testified that she soon realized that she had returned to work too soon. She was not feeling the way she should. She moved in February 2002 and her son was becoming more troublesome. His behaviour problems were escalating. She was being called three to four times a day by the school. She would have to leave work to pick him up. She used up her family-related leave and had to use annual leave and leave without pay to cover her absences. The grievor indicated that she explained her situation to her supervisor but was told that she had to separate her personal life from her work life.

[88] The grievor testified that she did not see her doctor between February 2002 and July 2002, and was feeling better during the spring and summer.

[89] During the first half of 2002, the grievor indicated that she would submit her leave application forms to Helen Ronan. She felt that she did not have a very good relationship with Ms. Ronan.

[90] She had meetings with Ms. Ronan with regard to leave. She had started not to feel well and had taken some time off. She also had to attend a meeting with the school board regarding her son. She received an e-mail on August 21, 2002 (Exhibit G-7), which outlined her absences, and in a memorandum (Exhibit G-8.1) she was informed that her pay was later docked for two absences in August 2002. Her pay was also docked for a half-hour absence on September 12, 2002, when she did not call into work to advise that she had to stop at the school.

[91] The grievor acknowledged receiving an e-mail on September 16, 2002, suggesting that she seek assistance through the EAP. She had not told her supervisor that she was already seeing a psychologist.

[92] The grievor indicated that her supervisor had denied her request to work during her lunch period in order to be able to leave work earlier as this was contrary to labour rules. Because she was not getting help from her immediate family, she hired a babysitter for her son. Eventually, in December 2002, her mother moved in.

[93] The grievor testified that, by September 2002, she thought that the employer believed that she was malingering. She was asked to let them know in advance if she would be absent. The grievor indicated that she could not predict when she would be sick or when she would need a day for her child. She went to her union for assistance. She obtained a letter from her doctor (Exhibit E-8.1) and told her employer that she would try to improve her attendance. The only thing that she could really do was to get somebody to look after her son.

[94] The grievor confirmed that she had been placed on attendance monitoring. She felt that this was unjust as it required her to produce a medical certificate for even short absences of 15 minutes. The grievor viewed her relationship with her supervisor as having severely deteriorated. She felt that she could not go to the restroom without being monitored.

[95] Asked if she had raised her concerns, the grievor replied that she had taken her concerns to Mr. Snyder. She tried to keep the relationship professional and only went

to her immediate supervisor for signatures on rare occasions. A meeting was held with Mr. Snyder, Ms. Clark and Ms. Ronan and her union representative and, as a result of this meeting, the threat that more severe administrative measures would be applied was removed from the letter advising her that she was being placed on leave monitoring.

[96] The grievor testified that she felt under the gun and had no choice but to produce a medical certificate for every absence and that she tried to do this. However she found it hard to get to the doctor's office. She did not have the energy or the time to go on every single occasion. She testified that she intended to refuse to get a report from the school unless they asked the same of other employees in the institution.

[97] Sometime in the fall, the grievor suggested to the employer in a meeting that she might have returned to work too soon and perhaps the best thing would be for her to go back on disability. She offered to go to Health Canada for an assessment. However, because she had just bought a condo, she was not in a situation that would allow her to go on part-time disability.

[98] The grievor indicated that in early January 2003, her situation had not improved; she was working three days a week, sometimes not full days. She had difficulty sitting in a chair, her joints were swollen and she had lesions on her back. She applied on January 9, 2003, for an advance of sick leave, which was denied. The consequence of that denial was that she would be on sick leave without pay.

[99] Her financial situation also deteriorated. She was not receiving any financial support from her ex-husband, she had to sell her car, the condo would later be sold and she was behind in her loan payments. The grievor also added that throughout the fall she became sicker as the stress level at work increased.

[100] The grievor also recalled asking Mr. Snyder if she could be transferred from the institution as she did not feel that she could work with Ms. Ronan. He reacted by encouraging her to work things out between the two of them. By the spring 2003, she had put in for a transfer. The grievor also asked Ms. Davidson for help.

[101] Asked about the background of her request for a Health Canada assessment, the grievor indicated that she had offered to go to Health Canada during a meeting where

her union representative was present. She felt that she was being placed in a corner with little alternative.

[102] With regard to the impact on her work, the grievor indicated that on occasion her supervisor had to input overtime sheets or performance evaluation reports because she was absent. However, she noted that in all that time she had never missed a deadline.

[103] Asked to comment about being placed in a corner, the grievor testified that she performed her duties well, but that she had the impression that the employer was waiting to catch her in a mistake. She wanted the employer to understand that the more pressure they put on her, the worse the situation became.

[104] With regard to the request for a Health Canada assessment, the grievor refused to sign the original document because it referred to her use of annual leave. She believed that she was entitled to annual leave. The assessment never took place as the termination occurred before it was scheduled.

[105] Asked what she had told Dr. Webster on her March 27, 2003, visit, the grievor indicated that she felt she was being placed under a microscope at work. She told the doctor that she felt there was an evil witch hunt to get her out of there. She recalled asking the doctor for a medical certificate and telling her about the Health Canada assessment.

[106] The grievor was asked how she had proceeded with the medical certificates. She replied that she had obtained the doctor's signature from a blank certificate with no dates that the doctor had signed for future use. The grievor said that she photocopied it on blue paper and filled out the dates.

[107] Asked when she started the process, the grievor replied that it was sometime in 2003; she said that she was not thinking clearly at the time and was not coping well with the situation.

[108] Asked why she had done this, the grievor replied that she did not know. She said that she was not thinking rationally at the time. She knew that, if she did not have a blue form signed by the doctor, her pay would be docked or she would face disciplinary action.

[109] The grievor testified that the employer's suspicion with respect to the medical certificates was brought to her attention in May 2003. She was called into the office with a union representative and was handed a letter saying that an investigation into the doctor's notes was taking place. She did not recall exactly what was said. She did remember that a package of six to eight doctor's certificates was placed before her and she said she had told them that she had not signed the doctor's name but had photocopied it. When asked why, she replied that she had been placed on the leave attendance program, had been backed into a corner and was not thinking rationally. She had photocopied a certificate and had written over the copies. The meeting did not last very long. Following the meeting, she was escorted off the premises and placed on suspension without pay.

[110] Following those events, she saw Dr. Webster. The meeting did not go very well. The grievor testified that she tried to explain and apologize to the doctor but did not get much of a chance. The doctor told her that this had been going on for five years and that was when the grievor found out that a second group of certificates had been brought to the attention of the doctor. She cut the conversation short and it was obvious to the grievor that she was not prepared to hear the grievor's apology. A month later, when she tried to get a prescription for pain medication, she was told by the doctor's office that she was not a patient any more. She has not been able to find a family physician since then.

[111] Following this meeting, the grievor testified that she called John Evans to obtain clarification about this second group of certificates. He confirmed there was a second group of certificates. The grievor indicated that she only saw the second group when she got a copy of the investigation report.

[112] The grievor indicated that a meeting took place on June 2, 2003, with Mr. Snyder in the presence of Mr. Evans and her union representatives, Messrs. Vanlewen and Roundtree. She was asked if she had anything to say about her conduct but the conversation never really focussed on the second group of certificates. She recalled explaining her actions with regard to the first group of documents. She had been backed into a corner, her life was a mess and her state of mind was not clear. She handed over a letter explaining her action and apologizing.

[113] Later on, she was visited by a police investigator who had been assigned to investigate a complaint filed by Dr. Webster for forging her signature. She had to go

down to the police station where she was asked to provide samples of her writing. Eventually, she was advised by the investigator that nothing further would occur as no indictable offence was involved.

[114] The grievor examined the medical certificate marked as Exhibit E-7.1 and indicated that she had photocopied this document on blue paper and traced over the signature.

[115] The grievor examined the medical certificate marked as Exhibit E-7.3 and indicated that she had altered it, changing the date from the 22nd or 23rd to the 24th. She indicated that she had not photocopied this document and she believed that she had told the doctor that she had changed the date.

[116] The grievor examined the medical certificate marked as Exhibit E-7.4 concerning an absence on February 26, 2003, and thought that she had photocopied this document.

[117] Asked how she proceeded when she did not photocopy the medical certificate, the grievor replied that she would fill out the top portion of the form in advance and leave it up to Dr. Webster to fill out the bottom part of the section marked "B". At times, she would go to the doctor's office and just tell the secretary that she was here to have Dr. Webster sign a blue form and the grievor would wait while the secretary took it to the doctor for her signature.

[118] The grievor examined the medical certificate marked as Exhibit E-7.5 and indicated that the estimated date of return was in her writing but that she did not photocopy this certificate.

[119] The grievor examined the medical certificate marked as Exhibit E-7.6 and indicated she had photocopied this document.

[120] The grievor examined the medical certificate marked as E-7.2 and indicated that she had photocopied this document.

[121] The grievor examined the medical certificate marked as Exhibit E-7.7 and indicated that she did not believe that she had photocopied this document.

[122] The grievor examined the medical certificate marked as Exhibit E-7.8 and indicated that she did not believe that she had photocopied this document.

[123] She indicated her recollection was not very clear. During that period, her thinking was not clear as she was facing fear every day. During that winter and spring, she had not been sleeping well.

[124] Asked what she knew for certain about the leave forms, the grievor replied that sometime during the six-month period before she left, she could not recall the exact date, she photocopied a signed medical form. She remembered doing it once. She could physically remember doing it only once. She added that she did not remember much from that period and at the time she recalled not remembering how she had got to work.

[125] The grievor denied photocopying the signature before the winter of 2002. She testified that she had never done so before as she was not as ill or as medicated. In December 2002, her lupus medication had been increased, she was still on an anti-depressant and she was also taking pain medication for her arthritis.

[126] The grievor was asked to comment on Dr. Webster's testimony with regard to her signature. The grievor replied that she did not know how people write. The grievor said that she wrote in a slanted and "scholarly fashion". To produce the medical certificate, she used a blank form that had the doctor's signature on it.

[127] The grievor was asked to examine the second set of medical certificates. After reviewing the documents, she testified that the only one she had changed was the document marked as Exhibit E-8.11 where she had altered the month. She denied altering or photocopying any of the other certificates.

[128] The grievor testified that the effect of the termination was devastating. She lost everything and she could barely afford her rent. Her son's lifestyle and privileges had been taken away from him. She could not afford to provide for him as she had done before. She sought other employment and, a year ago, she found a part-time job. She also received a supplement from Social Assistance. The grievor added that her health did not improve and she became very depressed.

[129] Asked if she had altered any other person's certificates, she replied she had not as her job was to input leave. She felt extremely ashamed and has had to live with the

guilt of doing “something like that”, of doing something morally wrong. She indicated she was not a dishonest person.

[130] In cross-examination, the grievor reviewed the codes used in the Leave Balance and Status Report provided in evidence. She confirmed that the employer had accommodated her return to work by allowing her to work three days a week. She confirmed that she had discussed with Dr. Webster, in July 2001, the possibility of returning to a correctional officer position, a position that she enjoyed. She said that Mr. Snyder was good about extending the repayment period for sick leave advances and superannuation when she returned to work after her disability.

[131] The grievor confirmed that she had given no indication to the employer that she would have difficulty in meeting the requirements of the attendance program with regard to the production of medical certificates. She thought that the requirement to produce a note from the school, when she went there for her son, was unfair. As a result, she provided her supervisor with a phone number for the school and also asked the school to call her supervisor to confirm that they had met. The grievor said that “they did not want to do that”. The grievor said that she had not been suspended but considered that it was a penalty to be placed on unauthorized leave without pay

[132] Asked about her relationship with Dr. Webster, the grievor confirmed that the doctor did not insist on seeing her on the same day and that she signed medical certificates after the fact. The grievor also confirmed that she used annual leave for health-related reasons but could not recall specific sick leave absences where she would have used annual leave credits.

[133] Since she was aware of the issue of the medical certificates, the grievor was asked why she had not come forward at the time of the investigation. She responded by saying that she did not know exactly what was being investigated. At the time, she was stunned and was not thinking clearly. She indicated that, at the time, she may have said that she altered the documents. The grievor reiterated that she did not alter the medical certificates in the second group of documents.

[134] Asked how she had altered the medical certificates, the grievor explained that she had photocopied a blank signed medical certificate. Asked if she still had the blank signed medical certificate, the grievor replied that it would have been in her personal file at her desk but that this file had not been returned to her. The grievor



could not remember when Dr. Webster had given her the blank signed medical certificate but said that the doctor gave it to her to be used for short absences from work ranging from five minutes to half-days. The grievor could not explain why the altered medical certificates covered absences of one to three days.

[135] The grievor said that to reproduce the signature she would trace over the photocopied signature. Asked to explain why all the “altered signatures” identified by the doctor were not identical, the grievor offered no explanation. She recalled that, on occasion, she would leave the medical certificates to be signed with the doctor’s secretary.

[136] Ask to explain why all the “altered” signatures appeared somewhat similar (although not identical), the grievor had no explanation other than that she had photocopied some documents in the first batch but for the second batch she had no explanations.

[137] The next witness was Dr. Heather Nogrady, who holds a Ph.D. in Clinical Psychology. The grievor became a patient of Dr. Nogrady on November 13, 2000. The grievor was feeling depressed because of a number of psychological issues in her life as well as a medical problem. Dr. Nogrady administered the Beck Depression Inventory and found that the grievor scored 33 points, which was within the range of 29 to 63 points indicating severe depression. Dr. Nogrady testified that, in general, individuals who are clinically depressed would have difficulty sleeping, loss of appetite, feelings of sadness and loss of pleasure in pleasurable activities. The person may have suicidal ideation and these symptoms would affect coping strategies and decision-making.

[138] Dr. Nogrady found that, over the course of 2001, the depression seemed to remain the same. She did not see the grievor in 2002. In June 2003, the grievor resumed her visits and said that she had done something stupid, that she had photocopied the doctor’s notes for varying periods for four to five years. The grievor was upset and agitated. The doctor’s notes from the meetings were produced in evidence.

[139] In cross-examination, Dr. Nogrady confirmed that at all times the grievor could differentiate right from wrong.

### Summary of the arguments

#### Employer's arguments

[140] The employer introduced its argument by indicating that this case had to be determined based on the credibility of two opposing witnesses, Dr. Webster and the grievor, and that I should not believe the grievor because her story was not plausible and because she was an avid forger.

[141] The employer reviewed the testimony of the grievor's immediate supervisor, Ms. Ronan, and that of Mr. Snyder. The employer took the position that there was no concrete evidence of harassment by the supervisor and although the supervisor's approach may not have been to the grievor's liking, it was a supportive approach in light of the grievor's situation. The employer argued that the Warden was, by the grievor's own admission, a good man. Clearly, the grievor could have gone to him if she had really felt harassed by anyone. The Warden gave the grievor and her representatives full opportunity to explain her actions.

[142] The employer argued that it was evident through her testimony as well as her 20 pages of notes that Dr. Webster is a caring family physician. Her testimony about which signatures were hers and which were not was unchallenged. The employer was of the opinion that in light of her testimony it was simply not believable that she would have signed a blank medical certificate for the grievor's use. The employer suggested that this type of behaviour would be unethical and perhaps criminal and may have put the doctor's practice at risk.

[143] As for Dr. Nogrady, the employer argued that her testimony had little probative value as she did not see the grievor at the time when the grievor claimed that her mental state was so clouded and she committed the forgeries to which she admitted. Furthermore, Dr. Nogrady's testimony disclosed no medical reasons that supported her actions.

[144] As for the position put forward by the grievor, although the employer sympathised with the grievor's situation, her illness and her difficulties at home, it was of the opinion that the grievor still does not accept the blame for the actions she committed. From the employer's interpretation of the grievor's testimony, the grievor

blames others for the actions that she took. Other employees who have gone through similar or worse situations do not commit fraud

[145] With regard to the attendance program, the employer is of the view that the issue here was not to determine if the employer was right or wrong in placing the grievor on such a program. In any event, there was ample evidence that the grievor had a high degree of sick leave use. Even if there is no evidence of malingering, the employer is entitled to require a medical certificate and is entitled to discipline an employee who fails to meet this requirement.

[146] The issue before this adjudicator is that the grievor forged medical certificates and that she did not object at the time with regard to her ability to obtain those certificates. The grievor admitted to only four of the 14 forgeries. She offered no explanation for any of the forgeries in the second batch of medical certificates, covering dates from April 1999 to November 2002.

[147] In discussing the reasonableness of the decision to discharge the employee, the employer reviewed the mitigating factors to be considered by an adjudicator in such circumstances. The employer argued that I should take into account the length of time over which these forgeries occurred. This was not a one-time aberration but repeated conduct over a four-year period. It was premeditated and the grievor did not come clean with the employer. Furthermore, the grievor's testimony at the hearing demonstrated continuing denial that she had committed a large number of forgeries.

[148] The actions of the grievor must be considered as serious because they involved the forgery of medical documents, a particularly grave matter for an employee in a position in Human Resource Management where a high degree of trust is required. The grievor's service is neither long nor short, and as such, should not influence the decision. Central to the issue to be determined, is the fact that the grievor has continued to lie in a case that is about trust. Her admission and apologies should not be given much weight since she has admitted to only four out of the 14 forgeries.

[149] The method that the grievor claimed to have used to forge the certificates is not plausible. The grievor asked us to believe that Dr. Webster would have given her a blank signed certificate, which is completely implausible. There is no shred of evidence to support such an action. If the grievor had a blank certificate, why would she not have given it to the investigator at the time she was questioned? If a blank

document had been photocopied, the forgeries would be perfectly identical; there would be traces of photocopying. A review of the four original forged certificates submitted to the employer show no such signs. It would require a leap of faith to believe that the grievor's tracing would be so precise that the photocopy underneath would not be visible.

[150] The employer argued that Dr. Webster's testimony was essentially unchallenged. She testified about each signature, identifying the forgeries and what was authentic. In reviewing them it can be seen that the doctor's authentic signatures are consistent but not identical in much the same way as the grievor's signature over the same period. However, looking at the forged signatures, it can be seen that they are all quite different and it does not take a handwriting expert to draw a conclusion. The employer is convinced that the grievor is lying about the method she used to forge the documents and, in these circumstances, it is reasonable to conclude that she is lying about the remaining 10 forgeries that she claims not to have made.

[151] The grievor's contention that she was in a terrible state in the winter and spring of 2003, to the point of not being able to say her name, is not supported by any of the medical evidence presented during the adjudication hearing. She claimed not to have missed any deadlines at work yet was unable, she said, to remember her name at the time.

[152] In the alternative, the employer suggested that, even if I considered only the four medical certificates that she had admitted to forging, I should still conclude that the acts committed warranted termination. There would still be four premeditated, carefully prepared forgeries. There is no excuse for this kind of behaviour since the grievor could have gone to her doctor to obtain the medical certificates.

[153] The employer relied on the decisions in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.), *Canada Safeway Ltd. v. Retail, Wholesale and Department Store Union* (1999), 82 L.A.C. (4th) 1, *Long v. Treasury Board (Department of National Defence)*, PSSRB File No. 166-02-16455 (1988) (QL), *Twiddy v. Treasury Board (Department of Human Resources and Development Canada)*, 2005 PSLRB 37, *Turner v. Canada Customs and Revenue Agency*, 2001 PSSRB 38.

[154] The employer concluded its argument by saying that the bond of trust had been broken beyond repair. The grievor's actions constituted fraud and forgery.

Furthermore, the grievor continued in her dishonesty even before this Board. Discharge was the only reasonable conclusion.

#### Grievor's arguments

[155] The grievor's representative argued that this was a case of admitted wrongdoing and what was really to be determined was the proper balance between the offence and the mitigating factors that must be examined in assessing the discipline to be imposed.

[156] The mitigating factors are well known and recognized, and although the Warden referred to them in his testimony, it is the representative's contention that little more than lip service was paid to these factors. Furthermore, the corrective nature of the discipline as well as the rehabilitative potential of the grievor were not considered at all.

[157] The representative indicated that there were two versions of the facts, one by Dr. Webster and one by the grievor. She argued that the grievor had been clear in her testimony as well as in private conversations with both Drs. Webster and Nogrady and during the investigation. The grievor recognized that she had altered medical certificates using photocopies. She had been consistent and would not have known that the doctor's note would eventually be tendered in evidence.

[158] On June 11, 2003, the grievor told Dr. Nogrady that she had done something stupid. This is consistent with what the grievor told the investigator and what she told this Board. The grievor was in a difficult personal situation. She is not proud of what she did. The fact that she cannot recall the exact number of certificates that were altered is not surprising considering she was asked to recall events which took place two and a half years ago. What the grievor told Dr. Nogrady on June 11, 2003, as recorded in the notes taken by the doctor, is consistent with her testimony at the hearing. Dr. Webster gave her a blank signed certificate.

[159] The grievor testified that she acted in fear and was not in good health. In these circumstances, her representative argued, it was not surprising that she could not say for sure how many certificates were altered. Her representative asked me to find that there were four to six alterations committed at the end of 2002 and the beginning of 2003.

[160] Having determined the basis for the discipline, the grievor's representative asked me to consider mitigating factors. By the winter of 2002, the grievor was having a hard time. She had no peace of mind at all. Her relations at work were not good; she had been taking too much time off. She was scared of what her supervisor thought. Her home situation was even more difficult, with a marriage that had ended and a son who was having serious problems at school. Furthermore, she was in poor health and did not have the financial resources to face the difficulties she was experiencing. This was the situation that the grievor was experiencing at the time she altered the medical certificates.

[161] The representative underlined how much the employer's counsel had emphasized that an avid forger cannot be trusted. This, according to the representative, is at odds with arbitral and judicial precedents. Although it does not speak well of the grievor's credibility, it does not dispose of all her testimony. The grievor's testimony is not truly at odds with the testimony of her supervisors, Mr. Snyder and Ms. Ronan, although it is quite apparent that they have a different interpretation of the relationship which existed in the office.

[162] The workplace history, according to the representative, can be described in the following fashion. The grievor was diagnosed with lupus and a concurrent depression. She went on disability leave and her depression continued. Her doctor was not especially sympathetic. It was only after the intervention of her previous supervisor that the doctor recognized a need for her to go on disability leave. The disability period ended and the grievor returned to work largely because she needed the money as she intended to leave her husband.

[163] Her representative argued that upon her return to work, she had tension with the supervisor, who was insensitive to the grievor's situation. It is not possible to imagine this supervisor writing the sort of letter that the previous supervisor had written to the doctor. In fact, the approach taken by Ms. Ronan made matters worse. This supervisor identified the leave problem and attempted to resolve it by imposing conditions that compounded the problem. She may have meant well but her approach was counter-productive. Workplaces function well when managers fashion appropriate solutions especially in special situations such as the grievor's. The attendance program was of no use in this case.

[164] The representative indicated that no inference should be drawn from the fact that the grievor did not file a harassment complaint. The grievor was not well. Already dealing with a number of problems, it was hard for her to deal with a harassment complaint. The threat of discipline found in the draft letter placing the grievor on the attendance program had a huge impact on the grievor. Her job was on the line if she did not produce medical certificates. The grievor was terrified. The situation can be summarized as taking an employee who desperately needed more leave and making it even harder for that employee to obtain leave.

[165] The attendance program is geared to deal with culpable absences and malingering. Whatever her sins may have been, the grievor was not malingering. She took time off because she was sick. The employer's attempt to improve her attendance is hard to understand.

[166] The representative argued that, by January 2003, the grievor's situation was desperate. The grievor had already obtained the preceding October a letter from her physician indicating that she would need more sick leave than her colleagues. The employer had not provided any real response other than to allow her to use her leave entitlement under the collective agreement. Furthermore, the representative underlined the Warden's statement to the effect that it would create problems if all employees took all their leave entitlements. The grievor's representative questioned why the employer would then sign the collective agreement that contained those entitlements.

[167] The representative pointed out that the grievor was getting the job done. The crisis was more about the supervisor's need for certainty and peace of mind. The representative questioned whether the proper balance had been struck between the supervisor's peace of mind and the needs of the employee.

[168] In the referral to Health Canada, the representative submitted that the supervisor went out of her way to paint the grievor in the worst possible light. The grievor's reaction of fear and insecurity are apparent in Dr. Webster's note of March 27, 2003 (Exhibit G-18).

[169] The representative argued that the mitigating factors to consider were the home situation with a marriage break down and the difficult situation with one of her children, her severe chronic illness of lupus and the concurrent depression, the

financial situation she was experiencing, her feeling of being trapped, the employer's role in creating her feeling of helplessness and being trapped, the fact the grievor admitted her guilt and was remorseful, that she had paid more than the offences warranted. The grievor has lost her family physician. She cannot obtain prescriptions for pain medication, nor can she get a referral to a psychologist. The grievor's action was not done for financial gain. Much of the leave taken was unpaid sick leave.

[170] If the employer took the grievor's health seriously they would not have cancelled the Health Canada assessment. As indicated in the e-mail exchange (Exhibit G-12), the employer was more concerned with jeopardizing their case at adjudication.

[171] The grievor was not given, at the time of the investigation, a chance to respond to the second batch of medical certificates. By the time the second batch was presented to the grievor, it was only one business day or so before the meeting with the employer. In the opinion of the grievor's representative, the time to make a submission had long passed.

[172] The representative brought to my attention what she believed to be a heartfelt and sincere letter of apology (Exhibit E-16) that the grievor had given to the employer at the disciplinary meeting.

[173] Turning to the case law, the grievor's representative cited *McNamara v. Treasury Board (National Defence)*, PSSRB File No. 166-02-18291 (1989), *Re Stelco Inc. (Hilton Works) and United Steelworkers of America (Currie) (1994)*, 40 L.A.C. (4th) 229 and *Re Canada Bread Co. and United Food and Commercial Workers Union*, Local 1518 (2001), 100 L.A.C. (4<sup>th</sup>) 244, all dealing with the falsification of records in one fashion or another and where the employee had been reinstated after a review of the mitigating circumstances.

[174] As for the cases cited by counsel for the employer, the representative argued that they could be distinguished on the facts and reviewed some of those distinctions.

[175] The grievor's representative added that the employer was much more interested in having predictable attendance than in the grievor's health. It is also in evidence that the doctor approved intermittent absences after the fact in 1999. The representative added that not everyone who gets into difficult circumstances commits fraud. The



jurisprudence clearly establishes that circumstances play a role in the degree of guilt and the extent of the rehabilitative potential.

[176] As for the fact that the grievor did not provide the blank signed medical certificate, her representative argued that there had been no need to do so since she had confessed to falsifying the medical certificates.

[177] The grievor's representative indicated that the grievor had suffered enormous financial consequences, had lost her condominium and has no access to the benefits that she previously enjoyed. Furthermore, she lives in a community where the job market is very competitive.

[178] The grievor's representative suggested that a lengthy suspension would be more than enough to show the employer's displeasure with the wrongdoing and to impress upon the grievor the severity of her infraction and the need for honest dealings with regard to her medical treatment in the future. Such an approach would be consistent with a corrective approach to discipline.

#### Reply

[179] Counsel for the employer replied that to imply that Dr. Webster would be willing to sign blank medical certificates because she had retroactively certified intermittent absences in 1999 is not consistent with the remainder of the doctor's testimony.

[180] With regard to *Romanik (supra)*, counsel for the employer commented that there was no difference between signing the name of an existing doctor and signing the name of a non-existent doctor. As for *Canada Safeway Ltd. (supra)*, he commented that, in the case before us today, there was no expert evidence establishing any type of nexus between the health condition of the grievor and the offence.

[181] As for the cancellation of the Health Canada assessment, counsel argued that there was no need to continue with this assessment as the grievor was no longer employed.

[182] Finally, counsel added that the Warden had put his mind to the mitigating circumstances and to say that he only paid lip service to them is contrary to the facts and an unwarranted attack on his integrity.

[183] Both parties indicated that, except for one or two events, all certificates cover periods of leave without pay and that a review of Exhibit E-5 would allow me to establish the days which she was granted leave with pay and leave without pay.

### Decision

[184] As in all disciplinary cases, the first question to address is whether the employer has established, on the balance of probabilities, the basis on which the discipline was imposed. In this particular case, the grievor is accused of submitting forged medical certificates for 14 different absences since 1999.

[185] A careful review of the original medical certificates, along with the testimony of Dr. Webster, leads me to conclude that the grievor engaged in falsification on 14 separate occasions dating back to September 1999, in the earliest case. Although all the forgeries are somewhat similar, they are sufficiently different from the signatures authenticated by the doctor that there is no doubt in my mind that they are not authentic. There are no visible marks of any tracing over the falsified signatures. This precludes the explanation provided by the grievor that she photocopied a blank signed medical certificate provided by Dr. Webster and traced over the signature. This explanation is also in opposition to the testimony of Dr. Webster who indicated that except in one circumstance all certificates were duly recorded in her notes and that all her signatures on certificates were dated. Furthermore, the falsified signatures appear to have been done by the same person as they all have similar graphic characteristics.

[186] A review of Exhibit E-5 in relation to the forged medical certificates leads me to observe that the grievor requested and obtained certified sick leave for a number of the days of absence for which forged medical certificates were presented.

[187] She fraudulently obtained certified sick leave for an absence on September 08<sup>th</sup>, 1999, for a similar absence on October 6<sup>th</sup>, 1999, for similar absences on October 13<sup>th</sup> and 25<sup>th</sup>, 1999, for similar absences on December 11<sup>th</sup> and 19<sup>th</sup>, 2000, for a similar absence on August 15<sup>th</sup>, 2000, for similar absences September 11<sup>th</sup>, 18<sup>th</sup> and 21<sup>st</sup>, 2000. Although she submitted a medical certificate for September 20<sup>th</sup>, 2000, there is no indication on this document that she was absent that day. From the end of September 2000, the leave record shows that the grievor started to use sick leave without pay to cover absences when it appears her accrued sick leave credits were insufficient to cover an absence. On the first of January 2001, she accrues 7.5 hours of sick leave

credits and is absent on a certified sick leave absence the following day, January 2<sup>nd</sup>, 2001. From January 17<sup>th</sup> until February 9<sup>th</sup>, 2001, she is absent 37.5 hours on a without pay certified illness. As well the certified sick leave absence of February 20<sup>th</sup>, 2001, is recorded as sick leave without pay.

[188] The grievor fraudulently obtained certified sick leave for 15 hours for December 12<sup>th</sup> and 13<sup>th</sup>, 2002. She received certified sick leave for December 11<sup>th</sup>, 2002, but was placed on sick leave without pay for December 27<sup>th</sup>, 2002. Although she provided a forged medical certificate for December 30<sup>th</sup>, 2002, there is no recorded absence on the document marked Exhibit E-5 on that date. She was placed on certified sick leave for absences on January 16<sup>th</sup> and 27<sup>th</sup>, 2003, as well as for her absence on February 5<sup>th</sup>, 2003. She was on sick leave without pay on February 26<sup>th</sup>, 2003. May 8<sup>th</sup>, 2003, is shown with 5.5 hours of sick leave without pay and 2 hours of sick leave certified. May 14<sup>th</sup>, 2003, is shown as sick leave without pay.

[189] I therefore conclude that the grievor was placed on certified sick leave for the vast majority of the days for which she presented forged medical certificates. Whether this resulted in her receiving pay when she should have been placed on leave without pay is more difficult to assess. Her doctor had consistently throughout the period in question supported her requests for leave. In October 2002, she had written a letter (Exhibit E-8.1) indicating that the grievor would continue to have recurrent symptoms due to her lupus and would need to take sick time more often than her peers. There was no specific claim by the employer that she was malingering. Had she gone to the doctor's office to obtain a certificate on the days in question, I am of the view that she would likely have received such a document. In the fall of 2002, she was advised of the requirement to provide medical certificates for each sick leave absence. Had she not submitted medical certificates she would have been considered on unauthorized absence without pay (Exhibit E-60). However, she chose another course of action and, in order to obtain leave and/or get paid she forged medical certificates.

[190] The essence of the case argued by the grievor is based on the premise that increasing pressure by the employer to provide medical certificates pushed the grievor, in light of her health and personal situation, into providing falsified medical certificates late in 2002. The evidence revealed that the attendance management program was put in place for the grievor in the fall of 2002. One could conclude from the evidence that the pressure had commenced in earnest when the grievor returned to

work after being away on disability. That pressure increased with the putting in place of the attendance management program and would eventually peak with the referral to Health Canada. Even if I accept that the relationship with her new supervisor may have created additional pressure as early as late fall in 2001, when she returned from disability, this does not explain why the grievor presented falsified medical certificates on eight occasions prior to that, particularly when the preceding supervisor was portrayed by the grievor as much more understanding and supportive than the later supervisor.

[191] I have been asked by the grievor's representative to consider a number of mitigating circumstances. I have done so with the following results.

[192] The forged medical certificates came to light in two groupings. The first group encompassed certificates issued in 2002 and 2003 and the second group certificates issued between 1999 and 2001. The grievor was made aware through her union representatives, prior to the disciplinary meeting, that a second group of medical certificates was also being questioned.

[193] Provided with an opportunity to explain her conduct, the grievor did not even acknowledge that she had falsified any of the certificates dated between 1999 and 2001. Although she did acknowledge falsification of the first group of certificates dated in 2002 and 2003, the grievor did not provide any explanation for the earlier falsifications to the employer despite having had that opportunity during the disciplinary meeting. During the hearing the grievor was provided with another opportunity to explain but was unable to do so or even to acknowledge them as falsifications. I cannot mitigate the penalty on the basis that the wrongdoing was acknowledged. Her acknowledgement is only partial and her explanation is not credible.

[194] While I have little doubt that the added pressure resulted in more circumstances when she would falsify certificates, the preponderance of evidence is clear that she had done this a number of times before, eight times to be precise. I cannot mitigate the penalty on the basis that this was an isolated incident.

[195] The grievor's inability to acknowledge these initial falsifications, the attempt to blame the last six on the employer and the contrived explanation that she provided of the process she used to forge those signatures underscores her inability to tell us what

really took place and undermines my assessment of her rehabilitative potential. I cannot mitigate the penalty on the basis that she has a good rehabilitative potential.

[196] The medical evidence as revealed by the doctor's testimony and notes presented in evidence and the dates when she forged the certificates does not seem to support her contention that she was sick to the point of not thinking straight at those times. I cannot mitigate the penalty on the basis that her health affected her judgement.

[197] Many persons go through very difficult periods in their lives but as the employer counsel pointed out in argument, few resort to falsifying signatures over a period of 4 years.

[198] After considering the testimony of the grievor, I share the employer's view that she has not come clean. Given the opportunity to present the complete picture at the hearing, she failed to do so.

[199] It is difficult in such circumstances not to conclude, as the employer did, that the grievor has unequivocally broken the bond of trust that is essential to the employer-employee relationship.

[200] Jurisprudence in similar cases is fact-specific and is not determinative of the course of conduct to follow in assessing the discipline imposed.

[201] Having found, on a balance of probabilities, that the grievor committed the alleged offence and considering all the mitigating circumstances argued by her representative and in light of the jurisprudence submitted by the parties, I have unfortunately come to the conclusion that I must dismiss her grievance.

[202] For all of the above reasons, I make the following order:

*(The Order appears on the next page)*

Order

[203] The grievance is dismissed.

April 19, 2006.

**Georges Nadeau,  
adjudicator**