Date: 20151110

File: 566-02-5925

Citation: 2015 PSLREB 86

Public Service Labour Relations Act Before an adjudicator

BETWEEN

SINDEE TCHORZEWSKI

Grievor

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

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

In the matter of an individual grievance referred to adjudication

Before: Beth Bilson, adjudicator

For the Grievor: Steven Welchner, counsel

For the Employer: Karen Clifford, counsel

Heard at Saskatoon, Saskatchewan,
May 13 to 16, 2014.

I. Individual grievance referred to adjudication

[1] This decision relates to a grievance filed by Sindee Tchorzewski ("the grievor") against the Treasury Board (Correctional Service of Canada) ("the employer" or CSC). The grievor was employed as a nurse at the Regional Psychiatric Centre (RPC) in Saskatoon, Saskatchewan. She has been on leave from that employment since April 7, 2007. In her grievance, she alleged that the employer did not appropriately accommodate her for the post-traumatic stress disorder (PTSD) she suffered following a series of events at the RPC.

[2] The event that triggered the change to the grievor's situation was a correctional manager's use of force on an inmate on March 24, 2007. Along with another correctional officer, the grievor reported this use of force to the employer. As a result, the correctional manager was disciplined and then ultimately terminated. Criminal charges were also brought against him. He was eventually acquitted of those charges, and a settlement was reached with respect to his termination.

[3] Counsel for the employer requested that the correctional manager and the inmate not be identified in this decision, as this triggering event was not directly relevant to the question of whether the grievor received appropriate accommodation for her medical condition.

[4] Counsel for the grievor, on the other hand, requested that these two individuals be named in the decision. He pointed out that the inmate's mother, who was present at the hearing, has not only permitted her daughter to be publicly identified but has also favoured broad public attention to her daughter's imprisonment and suicide. Although the correctional manager, who is also deceased, is not as widely known, the local press covered his case, and his identity was made public at that time.

[5] When considering a request to disguise individuals' identities, it is necessary to balance the sensitivities surrounding certain kinds of information and the right of individuals to privacy with the values represented by the open court principle and the need to maintain transparency in the proceedings of statutory tribunals.

[6] On a number of occasions, the Public Service Labour Relations and Employment Board and its predecessors has adopted the principles set out by the Supreme Court of Canada in *Dagenais v. Canadian Broadcasting Corporation*, [1994] 3 S.C.R. 835, and in *R. v. Mentuck*, 2001 SCC 76. The "*Dagenais/Mentuck*" principle suggests that placing

limitations on the information related to public proceedings requires a case to be made that there is some compelling reason to depart from the open court principle.

[7] The fact that the names of these two individuals were made public because of certain events and that the circumstances of this inmate have been the basis of significant national debate on the confinement and treatment of offenders who suffer from mental illness does not necessarily lead to the conclusion that their names are in the public domain for all purposes. This case does not involve the broad issues of public policy alluded to by counsel for the grievor, although the grievor's employment environment at the RPC and some of the actions she took were certainly related. However, the case I have to determine is limited to assessing the employer's response to the medical consequences the grievor experienced as a result of these events.

[8] On the other hand, it is somewhat difficult to understand all the dimensions of the interaction between the employer and the grievor without referring to the identities of the inmate and the correctional manager. The well-publicized events in which they were involved are not directly relevant to the question of whether the employer satisfied its duty to accommodate, but they do help illuminate the responses of the players in the case. Therefore, I have concluded that the correctional manager, John Tarala, and the inmate, Ashley Smith, will be identified by name in this decision.

[9] Although the grievor's observation of the use of force by Mr. Tarala was undoubtedly stressful, it was the reaction of other employees at the RPC to her decision to make a report to the employer that was primarily responsible for the medical consequences she suffered. Their characterization of her and her fellow whistle-blower as "rats" and their conduct following her reporting of Mr. Tarala precipitated a medical crisis for her. In her grievance, the grievor alleged that the employer failed to provide reasonable accommodation for the ongoing disability she suffered as a result of this abrupt change to her employment environment.

[10] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board ("the new Board") to replace the former Public Service Labour Relations Board ("the former Board") as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in sections 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to

section 396 of the *Economic Action Plan 2013 Act, No. 2*, an adjudicator seized of a grievance before November 1, 2014, continues to exercise the powers set out in the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2) as that *Act* read immediately before that day.

II. Summary of the evidence

A. For the grievor

[11] The grievor testified in support of her grievance. In addition, Janet-Sue Hamilton, who at the time of her retirement was the warden at the Edmonton Institution for Women, was called as a witness on the grievor's behalf.

[12] The grievor was hired in 2000 for a position as a day nurse at the RPC. In 2005, she became a night nurse, classified NU-HOS-03. Part of the compensation she received in this position was a penological factor allowance of $2000 due to the association of her position with the RPC. When she was hired, she had a nursing diploma; she then obtained her Bachelor of Science in Nursing in 2007. Throughout her employment, she was a member of the Health Services bargaining unit represented by the Professional Institute of the Public Service of Canada (PIPSC).

[13] On March 24, 2007, the grievor witnessed an incident involving the use of force by Mr. Tarala against Ms. Smith. The grievor, along with a correctional officer, thought Mr. Tarala had used excessive force, and they reported the incident to the employer. The employer appointed a three-person disciplinary investigation team, chaired by Ms. Hamilton, to investigate the incident. The grievor met with the team and provided a written statement, which she signed (Exhibit G-1).

[14] The grievor testified that she was shocked by the correctional officers' reactions after the beginning of April, when the release of the investigation report made her report broadly known. They called her a "rat,"' told her that her career at the RPC was "done" and told her she would "pay for it."

[15] When Mr. Tarala was dismissed, the correctional officers took numerous actions to support him, including growing beards to demonstrate solidarity, distributing wristbands with his name on them and holding fundraising events to support his legal defence. The grievor said that although she knew her decision to report would be criticized, she also expected she would receive some support. She said that the RPC's

warden at the time, Peter Guenther, assured her that he wanted her to continue to work there and said that he would deal with the threats against her. She said that she trusted him to do that.

[16] Instead, the grievor said that she became frightened for her safety because of the threats she received from RPC employees. She became afraid to go out, even in her own neighbourhood, because she was apprehensive about meeting other employees. She received some phone calls during which the person at the other end of the line did not speak but hissed at her, and other phone calls in which the callers said she would be "sorry." Although she took leave because of the stress in early April, the telephone calls continued for several months.

[17] At the Workers' Compensation Board's (WCB) request, a psychiatrist, Dr. Jo Nanson, assessed the grievor on May 22, 2007 (Exhibit G-3). Dr. Nanson diagnosed mild work-related PTSD. The assessment indicated that Dr. Nanson's expectation was that the grievor would eventually be able to return to work at the RPC if the conditions were right. However, she did suggest that the grievor ought to start thinking about the possibility of "alternative employment within the CSC."

[18] The grievor began seeing a counsellor, Dennis Coates, and a number of his reports to the WCB were filed with me (Exhibits G-4, G-6, G-13, G-17, G-19 and G-36). The reports indicate that although the grievor made considerable progress coping with her PTSD symptoms, she continued to suffer lingering effects of the disorder. The grievor reported to Mr. Coates that she continued to have concerns about her safety if she returned to the RPC. On one occasion, she told him that she was afraid the officers responsible for providing security to the nurses when they were dealing with inmates on the ranges would "abandon" her (Exhibit G-6). In cross-examination, she said she was not specifically aware of any instances of abandonment.

[19] That the atmosphere at the RPC continued to be characterized by a strong reaction from the correctional officers to the steps taken against Mr. Tarala was confirmed for the grievor in an email from a nurse at the RPC to a staff member at national headquarters, which was passed on to the grievor in October 2007 (Exhibit G-5). Before that, the grievor had been hopeful that the RPC situation would be resolved and that she would be able to return there. She testified that at around that time, she came to the conclusion that she would not be able to go back to that setting. Her primary-care physician, Dr. Julianna Balaton, provided her with a note

(Exhibit G-8), dated October 29, 2007, indicating that she was "not to return to RPC [emphasis in the original]" and that she would require more time off. In a further note dated November 6, 2007 (Exhibit G-11), Dr. Balaton stated that ". . . it would be detrimental to her mental health to return to her previous place of work." Neil Harden, a PIPSC representative, provided the original note (Exhibit G-8) to the employer.

[20] The grievor also provided Mr. Guenther with a detailed chronology (Exhibit G-12) of events up to December 22, 2007, which included a reference to a picture of a bomb that had been emailed to her on June 7. The image self-destructed when she opened it, so she was unable to forward it. The statement also included an account of a meeting on September 13, 2007, at which Mr. Guenther had been present, along with the then-chief human resources officer and return-to-work co-ordinator. Mr. Guenther said at that meeting that he had held an assembly at the RPC to deal with harassment issues. After he left the meeting, the human resources officer told the grievor that Mr. Guenther was thinking of placing her in a position as a methadone nurse, which would have been a 9-to-5 job carried out when management personnel would be present in the institution.

[21] In cross-examination, the grievor said that she was not aware of any members of management who had taken part in the staff actions in support of Mr. Tarala. Mr. Guenther had asked her to provide any documentation or notes she had about these actions. She said at the time she was not well and could not say why Mr. Guenther wanted this material from her.

[22] In his report dated January 7, 2008 (Exhibit G-13), Mr. Coates said that he thought the grievor had made progress and would be able to return to work, if that work were at regional headquarters and not "in security." The grievor said that by then she was concerned not only about working at the RPC but also about working at another institution, as she felt the reports about her would travel to other places.

[23] In February 2008, the grievor did return to work in a term project officer position at regional headquarters, where she worked until August 31, 2009, when she was off work again for a period. This position, then called Regional Nursing Professional Development Co-ordinator ("PD Co-ordinator"), was considered a temporary position, and it had not yet been formally classified. The grievor acknowledged that the form she signed when she was assigned to this position (Exhibit E-15) indicated that the initial term was from February to May 2008 and that

her substantive position continued to be at the RPC. She also acknowledged that she continued to receive the compensation associated with her substantive position, including the penological factor allowance, during her time at regional headquarters.

[24] The assignment to regional headquarters was extended several times, the final occurring on October 5, 2010, to March 3, 2011. In the extension forms the grievor signed (Exhibit E-19), her "home site" was listed each time as the RPC; regional headquarters was shown as the "host site."

[25] The grievor said that she enjoyed the work associated with the position. Her performance was evaluated twice, and no concerns were expressed about her work. In the personal development plan she submitted in connection with one of these reviews (Exhibit G-62), she expressed the hope this position would become permanent. She said under cross-examination that she felt supported and positive while she was in the PD Co-ordinator position at regional headquarters. Before August 2009, she was able to work steadily and did not have to take much time off for medical reasons. She said she understood that the position was not indeterminate, and she conceded that her supervisor, Jan Nachtegaele, had encouraged her to apply for other positions. In fact, she did apply for an NU-HOS-05 and an NU-HOS-06 position; she was screened in for one of them, but was unsuccessful in obtaining it.

[26] In cross-examination, the grievor said that while she was in the PD Co-ordinator position, she had an employee in a clerical classification reporting to her, which was her first experience supervising any employees.

[27] In August of 2009, the grievor was called to testify at Mr. Tarala's criminal trial. She found it very stressful, and she experienced a recurrence of her PTSD. On August 31, 2009, she felt it necessary to take more time off work. Ms. Nachtegaele told her not to worry and that her PD Co-ordinator position would be "waiting for her."

[28] In cross-examination, the grievor said that testifying in court took a lot out of her. She attended only on the days when she was required to testify and was not otherwise present at the trial, although her son attended. She agreed that the stress associated with the court proceedings continued to be a factor for some time; both Diana Campbell, the case manager at the WCB, and a psychological consultant who reviewed the file alluded to the effect of the court proceedings on the grievor (Exhibit G-58, pages 124 and 135).

[29] In reviewing the WCB file for this hearing, the grievor said that she discovered that in April 2010, Caleigh Miller, the chief human resources officer at the RPC, had sent the case manager at the WCB a newspaper clipping about Mr. Tarala's acquittal. The grievor said she reacted strongly and thought it represented an attempt by the employer to discredit her. Many newspaper articles had alluded to the fact that the judge had found her testimony not credible. In cross-examination, she was asked to review the particular article forwarded to the WCB; she admitted that it did not portray her negatively and did not mention her testimony. She said she still felt it was a provocative gesture on the employer's part to send the news story to the WCB.

[30] The grievor said that she was not expecting to be off work for as long as it turned out to be. She had several conversations with Ms. Nachtegaele, who at one point informed her that a temporary replacement would be appointed to the PD Co-ordinator position. Tracey Edmonds, who was appointed, filled the position, as far as the grievor knew, until sometime in 2012; all that time, the position was considered temporary. The grievor had some contact with Ms. Edmonds by email (Exhibit G-15).

[31] On December 8, 2009, the grievor received an email from Ms. Nachtegaele (Exhibit G-16) advising that the leave with pay permitted under the relevant collective agreement would expire on December 11. The grievor said that this made her very angry. She said that no one had explained to her that she was not still being covered by workers' compensation benefits or that her leave would expire. She contacted the WCB case manager who said that the employer had not filed the appropriate paperwork, which had led to the termination of her benefits. Once this was cleared up, the WCB benefits were reinstated. At the hearing, the grievor said she still did not know who had been responsible for this lapse but that it was very stressful for her at the time.

[32] Under cross-examination, the grievor confirmed to counsel for the employer that she had been given to understand that the employer had been responsible for the delays responding to her situation. She was asked to examine a number of documents in the WCB file (Exhibit G-58). One, at page 104, was her "Initial Report of Injury," which was dated September 24, 2009. She acknowledged that the document on page 103, which was the counterpart form filed by the employer, was dated September 28, 2009. She also agreed that the notes to file on pages 100 and 101 appeared to indicate that the case manager was awaiting an updated medical report and was not attributing any delay to the employer. She further conceded that a note to

file on page 177, dated April 28, 2010, suggested that the case manager was still waiting for confirmation from Mr. Coates that the grievor was cleared to return to work.

[33] Counsel for the employer also asked the grievor whether she understood that the RPC was managing her return to work because her substantive position was there. She said she did understand it and that she understood that Ms. Nachtegaele was not a human resources specialist.

[34] Ms. Nachtegaele's email advising the grievor that her paid leave was coming to an end triggered a further email exchange (Exhibit G-16) on December 9 and 10, 2009. The emails appear to refer to a verbal discussion between the grievor and Ms. Nachtegaele, on which the emails were following up.

[35] The exchange began with Ms. Nachtegaele advising the grievor that she should commence discussions about her return to work with Ms. Miller, the chief of human resources at the RPC and with Ed Succorab, the employer's return-to-work co-ordinator. Ms. Nachtegaele also said that she would be away until March.

[36] In reply, the grievor said that she would ". . . give them a call when [her] doctor and therapist give [her] the okay to return to work." She also asked for clarification as to whether the PD Co-ordinator position would not be available to her.

[37] Ms. Nachtegaele sent a further message, indicating that ". . . it is undetermined where you will be accommodated when you are ready to return to work." She advised the grievor that she should begin to ". . . pursue what might be available on an indeterminate basis."

[38] In cross-examination, the grievor clarified that she had never contacted either Ms. Miller or Mr. Succorab. She said she did not have any specific problem with either of them, but she understood that the CSC and the WCB were working together and did not think she needed to initiate contact. She conceded that nothing was written down anywhere that indicated that she should not have contact with anyone at the RPC even by telephone, but she thought that it was understood. She also said that although she had been in contact with the bargaining agent, she did not ask it to pursue contact with Ms. Miller or Mr. Succorab.

[39] Also in cross-examination, the grievor said that she had received the letter reproduced on page 6 of the WCB file (Exhibit G-58). In it, Ms. Campbell, the case manager, indicated: "You are responsible to remain in regular contact with your employer, your treating physician and myself." She did recall receiving a copy of the "Worker's Handbook" referred to in the letter but said at the time reviewing it was "not a priority."

[40] The grievor said that she did have a discussion with Ms. Nachtegaele on the phone that covered the same subject matter as the emails. Ms. Nachtegaele told her that perhaps she should look for jobs elsewhere in the public service. Ms. Nachtegaele said that her understanding was that the employer was required to accommodate the grievor only for a year, and she would then be expected to go back to her substantive position (which was at the RPC) unless she found an opportunity elsewhere.

[41] The grievor said the conversation left her unclear as to what would happen. It was the first time she had been told it was expected that she would look for options outside Saskatoon. She said she felt unable to leave Saskatoon because her children were there and her father was ill, and her partner, a correctional officer at the RPC, had responsibility for an elderly mother. She said that she thought it odd that Ms. Nachtegaele suggested she should contact human resources at the RPC, since she knew that the grievor was medically unable to return to the RPC. She said she felt this was a sign that the employer did not take her concerns seriously.

[42] The grievor said she did not follow Ms. Nachtegaele's advice to call Ms. Miller. She said she understood that the CSC was working with the WCB, and she had contact with the WCB case manager. She said she was feeling better by January of 2010, and she agreed with a statement from the WCB case manager (Exhibit G-26) that she was able to return to work as of January 26, 2010.

[43] The grievor said she spoke to Michelle Beyko, who was acting in Ms. Nachtegaele's place, at the beginning February. Ms. Beyko said she was not sure whether any options existed for the grievor in Health Services at regional headquarters. Ms. Beyko said she would consult with the WCB to consider what could be done.

[44] As of February 8, 2010, it became clear that the PD Co-ordinator position had finally been classified NU-HOS-05, which confused the grievor because she understood that she had been extended in that position until early March (Exhibit E-21).

[45] In March 2010, when Ms. Nachtegaele returned to regional headquarters, she telephoned the grievor to tell her that no opportunities existed for her in Health Services. She advised the grievor that her paperwork had been sent back to the RPC because her substantive position was there and that it was the RPC's responsibility to decide what further steps should be taken to accommodate her. The grievor said she did not understand because she had been working in the PD Co-ordinator job and was ready to go back to working in it. Although the position had been classified NU-HOS-05, she said she would have been willing to have her salary red-circled at the NU-HOS-03 level. She said she had understood that Ms. Edmonds was a temporary replacement. She stated that she "could not believe" that the employer was sending her back to be dealt with by the RPC when they knew she was unable to work there.

[46] In a report dated April 15, 2010 (Exhibit G-19), Mr. Coates confirmed that the grievor would not be able to return to work at the RPC. He also alluded to the "requirement" that she be placed in a health services position because of the need to keep her nursing license current. The grievor confirmed that she felt unable to return to work at the RPC and that she in fact did not think she could work in any correctional facility, although the reports filed by Mr. Coates did not specify it as a medical limitation.

[47] The grievor said that the WCB case manager she met with advised her that through early 2010, she was not getting co-operation from the CSC to develop a return-to-work plan. This led to the WCB referring her to a vocational rehabilitation counsellor. She said she met with the counsellor in June.

[48] The grievor said that in May 2010, she received an email from Ms. Nachtegaele that had attached a number of internal CSC job postings (Exhibit E-26). She said some did not seem at all related to her qualifications or experience, like an aboriginal liaison officer position. She was unable to open some other links because access to the departmental intranet was restricted. She told Ms. Nachtegaele she was unable to open some links, and Ms. Nachtegaele advised her she should try to access them through the website, which she was also unable to do. The grievor said she thought a manager should have known she would be unable to open the documents from her home computer. She agreed that she did not seek help from the bargaining agent or from Mr. Succorab to find out if she could obtain access to the postings.

[49] In cross-examination, the grievor explained that she felt she was being devalued when Ms. Nachtegaele sent her inappropriate postings. She understood that she had a responsibility to make efforts to find a job, and she agreed that the postings met her only medical restriction at that point, which was that she not return to the RPC. Nonetheless, she thought the employer ought to have known how important it was to her to be a nurse. She had a good relationship with Ms. Nachtegaele, and she conceded that Ms. Nachtegaele might have been trying to be helpful.

[50] The grievor said that she sent an email to Ms. Nachtegaele (included in Exhibit E-26) asking whether one of the jobs referred to was the regional PD Co-ordinator position. Ms. Nachtegaele suggested she call, and they had a telephone conversation. Ms. Nachtegaele said the posting she had sent referred to a comparator position at national headquarters in Ottawa. She advised the grievor that she would not be placed in the regional PD Co-ordinator position, as it was going to be used in a different manner, as a developmental position occupied by a series of employees.

[51] The grievor said this whole exchange indicated a lack of respect for her and a failure to support her. She said she felt that she was being made to pay for doing the right thing at the RPC. She said she understood from the WCB case manager that the employer made no efforts during the period from January to June 2010, which frustrated her very much. Her health deteriorated again, although she said she was still ready to go back to work.

[52] In fact, the grievor testified that she was functioning fairly well over the summer of 2010, and Mr. Coates reported, referring to that period (Exhibit G-36), that her functioning "genuinely improved," although he cautioned that stress was associated with the possibility that she would have to testify at the Ashley Smith inquest sometime in the future.

[53] While off work, the grievor worked towards obtaining her master of science in nursing degree. She said she could not believe that the employer did not think she was qualified for the PD Co-ordinator position.

[54] Sometime in September of 2010, the grievor said that she received a call from Brenda Lepage, who was Regional Deputy Commissioner, CSC. Ms. Lepage began by informing the grievor that a settlement had been reached on the grievance concerning Mr. Tarala's termination, including paying severance. The grievor said that she had a

problem with the settlement, and Ms. Lepage said that it was not something the grievor could be concerned about. Ms. Lepage went on to say that if the grievor and her partner, who also worked for the CSC, wished to move to another location or another institution, she would ensure that it could happen. The grievor said that she responded that neither she nor her partner was prepared to leave Saskatoon. She said that Ms. Lepage did not ask about her state of health or her readiness to return to work.

[55] In cross-examination, counsel for the employer referred the grievor to her notes of this conversation (Exhibit G-64). She agreed that part of the purpose for the call, as stated by Ms. Lepage, was to tell the grievor that she would not have to testify at the adjudication of Mr. Tarala's grievance. She acknowledged that preparing for that adjudication had been stressful for her and that it was good news that she did not have to testify. She could not explain why the notes did not refer to Ms. Lepage's offer to facilitate a move to another institution for the grievor and her partner.

[56] The grievor completed her master's degree in the fall of 2010. She also successfully applied for a term position in the Faculty of Nursing at the Saskatchewan Institute of Applied Science and Technology (SIAST, now called Saskatchewan Polytechnic) and entered into a contract to work there until June 2011. The documents from the WCB (Exhibits E-45 and E-48) filed by the employer indicate that the WCB assisted her with finding this position, but the grievor testified that she found the position herself. She said she did not want to stay at home anymore and that she needed to get back to work. The term position became permanent in the fall of 2011, and the grievor was still working at the SIAST at the time of the hearing.

[57] In August 2010, the grievor told Ms. Campbell, the WCB case manager, of her appointment to the SIAST job. The case manager's notes (Exhibit G-58, page 217) indicate that the case manager told the grievor ". . . to advise her employer of her current situation and that she still requires a permanent accommodation with them." In cross-examination, the grievor said she did not remember that part of her conversation with the case manager and that she did not tell the employer of her SIAST appointment.

[58] On October 19, 2010, the grievor filed her grievance. She said that she was reluctant to take this step but that she felt she was not getting anywhere with the employer and simply wanted to move things along.

[59] In an email dated November 16, 2010, Sherry Fast, who introduced herself as the acting chief of human resources at the RPC, invited the grievor to apply for an NU-HOS-04 position, titled Regional Co-ordinator, Health Programs. In fact, the grievor did apply for the position and was scheduled for an interview in December (Exhibit E-56). She said that no one informed her that the position entailed occasional visits to the RPC, and when she heard that, she declined to go to the interview. She said she felt that it was a "poke" at her and that it was another sign that the employer did not care about her, as it should have been clear she could not have anything to do with the RPC. She said she was also annoyed by the request from the employer (Exhibit E-60) that she record her withdrawal from the competition in writing.

[60] Near the end of November 2010, the grievor and the employer, with the assistance of Mr. Harden, became engaged in a discussion about placing her on priority status under the *Public Service Employment Regulations* (SOR/2005-334; "the *Regulations*"). Section 7 of those regulations reads in part as follows:

> ***7.*** *(1) An employee who becomes disabled and who, as a result of the disability, is no longer able to carry out the duties of their position is entitled to appointment in priority to all persons, other than those referred to in section 39.1 and 40 and subsections 41(1) and (4) of the Act, to any position in the public service for which the Commission is satisfied that the employee meets the essential qualifications referred to in paragraph 30(2)*(a)*) of the Act if*
>
> *(*a*) within five years after the day on which the employee became disabled, the employee is certified by a competent authority to be ready to return to work on the day specified by the authority; and*
>
> *(*b*) the day specified is within five years after the day on which the employee became disabled.*
>
> *(2) The entitlement period begins on the day on which the employee is ready to return to work, as certified by a competent authority, and ends on the earliest of*
>
> *(*a*) the day that is two years after the day on which the entitlement period begins;*
>
> *(*b*) the day on which the employee is appointed or deployed to a position in the public service for an indeterminate period; and*
>
> *(c) the day on which the employee declines an appointment or deployment to a position in the public service*

> *for an indeterminate period without good and sufficient reason.*
>
> . . .

[61] Although some efforts were made to arrange a meeting between the grievor and Ms. Fast, they did not meet face-to-face. Instead, they spoke over the telephone. It was agreed that the grievor would be placed on the priority list. Ms. Fast sent an email to the WCB case manager dated January 17, 2011 (Exhibit E-67) that requested confirmation of the date on which the grievor had been able to return to work. Considerable confusion arose about what start date should be entered for the beginning of the priority period. In an email to the grievor in February 2011 (Exhibit G-31), an employer representative indicated that she would be registered as of April 12, 2010, which would mean the priority period would expire in April 2012. The grievor responded as follows in the email chain: "Thanks for your reply. It is much appreciated." Despite the positive tone of this exchange, the grievor said she did not understand why her priority registration had been made retroactive to April 2010, when the registration did not occur until January 2011. She said she felt this was such a crucial mistake that it must have been intentional conduct on the part of the employer.

[62] Counsel for the employer reviewed with the grievor the material sent to her (Exhibit E-79) concerning the priority process, and she agreed that the documents indicated that she would be referred to NU-HOS-03 positions. She did not recall any discussion with Ms. Fast about what kind of positions she might be referred to.

[63] In cross-examination, she said that she had seen the information about the priority system and that she agreed that she had not followed the instruction in that document to forward a list of skill codes that would apply to her. She also agreed that she had sought no advice about how to access the website to look for suitable postings, as advised in the document. She said that, in fact, she had never really read the documentation; she assumed that it was the CSC's responsibility to find her a job and that it would be in touch with her. She did not recall whether she had mailed her current resumé, as specified in the document.

[64] The grievor was also asked to review two printouts (Exhibits E-105 and E-106) of positions in the NU-HOS classifications that had been available from January 2009 to March 2014, and she agreed that no NU-HOS-03 vacancies had been listed in the area

covering Saskatoon, except for CSC positions. She said that she had ruled out positions outside Saskatoon because it was important to her to remain with her children, who were in their twenties.

[65] On January 7, 2011, the grievor received an email from Keith Gareau, the return-to-work co-ordinator, bringing to her attention a posting for a position as a regional co-ordinator (Community Mental Health Initiative) (Exhibit E-63). The email indicated that the deadline for applications was midnight of that day. Mr. Gareau sent his email at 09:16, but the grievor did not open it until the evening. She concluded that it was too late for her to apply and that the employer had deliberately delayed notifying her of the posting so that she would not be able to apply. She said this position would have been of interest to her, as she was interested in the mental health field, and she thought the position offered opportunities for advancement.

[66] In cross-examination, the grievor reviewed the posting (Exhibit E-63) and conceded that it seemed like it had appeared only on January 6. She said she found it unlikely, however, that Mr. Gareau had not been aware of this job vacancy. She said Mr. Gareau was always kind to her, and she did not hold this against him; her quarrel was with the CSC as a whole.

[67] In December of 2010, Mr. Gareau had brought to the grievor's attention a Regional Co-ordinator Quality Improvement position (QI Co-ordinator). This position was classified AS-05. The grievor said that she was concerned from the position's title that it would not be in health services and that she might not be able to retain her nursing license. She said that she eventually phoned the Saskatchewan Registered Nurses Association (SRNA). She gave the person who answered the phone the name of the position, and that person said it "didn't sound like" it would support the nursing license. The grievor said that keeping her professional qualification was important to her, which was the main reason she ultimately declined the position in June 2011.

[68] Counsel for the employer asked the grievor whether she had discussed the QI Co-ordinator position with Ms. Campbell at the WCB. She said that two positions had been mentioned around the same time — the QI Co-ordinator position and the position of Regional Co-ordinator, Accreditation. She agreed that she met with the case manager on January 18, 2011, and she thought the case manager had copies of the position descriptions for the two positions. She thought that she might have been given copies of the descriptions, but she did not have them later and did not read

them. She wondered if she might have left them in the case manager's office. She did recall that the case manager asked her which position she might prefer, and she raised the issue of her contractual obligations to the SIAST, which would continue until June. She agreed that it might have helped in her conversation with the SRNA to have a copy of the job description. The case manager seemed to think she already had it, and she did not ask to have it resent. The grievor said that the vocational rehabilitation counsellor to whom she had been referred told her the employer was not responsible for making sure she could keep her license. However, she did not make further inquiries with the SRNA; she said she assumed that "Keith [Mr. Gareau] was looking into it."

[69] The grievor declined the position on January 19 in a telephone conversation with the case manager. Ms. Campbell's notes (Exhibit G-58, page 266) indicate that the case manager outlined for her the possible implications of not accepting the position. The notes indicate that the grievor said she ". . . wants to do something with her nursing license as she has her Master's now." The grievor said this was not quite an accurate rendering of what she said but agreed that she had said she wanted to keep her nursing license.

[70] The employer and the grievor had continuing contact about this position for some time. On February 22, 2011, for example, Mr. Gareau sent an email indicating that the grievor's security status had been updated to clear the way for her to accept the position (Exhibit G-30). Mr. Gareau made inquiries in March about whether she would accept the position (Exhibits E-80 and E-81), referring to sending the job description to the bargaining agent in February. In April, Mr. Gareau sent confirmation that the SRNA would in fact recognize the position as supporting the professional license (Exhibit E-83).

[71] The grievor said that she felt the employer was not seriously pursuing this position. She was frustrated and angry, and her health had continued to suffer. Her counsel asked her whether this was inconsistent with the impression she apparently conveyed to Mr. Coates, who said in a report dated April 27, 2011 (Exhibit G-36) that "Sindee is not faulting therapy, union, management or collaborating bodies. She knows her situation is the result of due process following being in the wrong place at the wrong time." In response, she said that she did not think she was letting the employer off the hook for failing to accommodate her, and she did feel the employer was to

blame for not placing her in a satisfactory position. In cross-examination, she agreed that Mr. Coates's report did not suggest that she was being discriminated against on the basis of her PTSD.

[72] In a series of emails (Exhibits G-37 and E-88), employer representatives asked Mr. Harden for a formal response from the grievor about whether she would accept the QI Co-ordinator position. In an email dated May 3, 2011, Mr. Harden quoted from a letter from Mr. Coates dated May 3, 2011, written at the WCB's request. In it, Mr. Coates suggested that further employment at the CSC would result in the "re-victimization [*sic*]" of the grievor. The grievor also saw a psychiatrist, Dr. Prasad, on May 19, and she emailed Mr. Harden (quoted in Exhibit E-88), stating that the psychiatrist agreed with the assessment that the CSC was not a good place for her to work.

[73] In her testimony, the grievor said that by that point, she did not want to have anything to do with either the CSC or the WCB. The WCB had referred her to Dr. Prasad because it did not think Mr. Coates was qualified to perform the thorough assessment required. Dr. Prasad referred her to Dr. Lana Shimp, a registered Ph.D. psychologist, who provided a report dated June 16, 2011 (Exhibit G-40). The grievor testified that she was upset that she had to go through the whole story again with a new therapist. The failure to accommodate her, or to take her seriously, was a factor in a further decline in her health.

[74] A representative of the employer emailed Mr. Gareau on June 22, 2011, copying Mr. Harden (Exhibit E-95), indicating that at that point the employer was contemplating that the grievor might return to work on July 4. She indicated that she was still waiting for medical advice about returning to work at the CSC.

[75] On June 24, Mr. Harden sent an email (Exhibit E-97) with a note attached stating that it would be inadvisable for the grievor to return to work at the CSC.

[76] After it was conveyed to the employer that the grievor was restricted from returning to the CSC, Ms. Fast sent a message to Mr. Harden dated October 21, 2011, asking for help identifying any options that might be suitable accommodations for the grievor.

[77] In cross-examination, the grievor agreed that the bargaining agent had never made any suggestions to her about possible positions and had not identified any positions to the employer.

[78] The grievor said that she thought her demeanour when speaking to Mr. Gareau on the phone was always respectful. She did not really know what his role was, but she knew he was looking for job opportunities for her.

[79] The grievor was subsequently informed that the employer considered that no further options remained for accommodating her and that her separation from the public service would have to be considered (Exhibit E-100). Mr. Harden responded that the employer continued to have an obligation to accommodate the grievor and that it should look for opportunities for her in other departments (Exhibits E-101 and G-47).

[80] Counsel for the employer alluded to the payment of $2200 that the grievor received from the WCB in 2012 for permanent functional impairment. She said she did not think this amount was adequate. She appealed the award, in part because of her lawyer's advice that it would give her access to the WCB file. The appeal was denied in June 2012, and she did not take the matter any further.

[81] The second witness called on behalf of the grievor was Ms. Hamilton, who retired from the CSC in 2010. Ms. Hamilton had held a number of positions there and at her retirement was the warden of the Edmonton Institution for Women.

[82] Ms. Hamilton was appointed to chair the investigation team looking into the grievor's allegations. The other two members of the team were Kathy Dafoe from the Women's Section at the CSC's national headquarters and Heather Thompson from Regional Health Services. The team submitted its 30-page report at the end of May 2007 (an excerpt from the report was filed as Exhibit G-2). During the investigation, the team interviewed the grievor two or three times and found her credible.

[83] Ms. Hamilton said that both the grievor and the correctional officer who had also reported Mr. Tarala were emotionally upset. They were fearful for their jobs and their well-being. They described threatening phone calls and other instances of intimidation against them. They talked about the actions taken by the correctional officers in support of Mr. Tarala. Ms. Hamilton said it was somewhat unusual for

correctional officers to express support for a correctional manager. Ms. Hamilton said that the team concluded that these concerns were reasonable. She said that her experience was that intimidation was part of correctional officer culture.

[84] Ms. Hamilton said that when reviewing the material before them, the investigation team found three other instances of use of force against Ashley Smith, which they reported to Mr. Guenther, and action was taken against several correctional officers, in addition to Mr. Tarala. She said she thought there were inconsistencies in the way the CSC dealt with female offenders. For example, a protocol had been developed requiring that only female emergency response teams (ERTs) be deployed when intervention was necessary with female offenders; ERT members from the Edmonton Institution for Women had been sent to train female staff. Yet, correctional managers were still involved in interventions, which was contrary to the protocol. She also pointed out that although the distribution of wristbands in support of Mr. Tarala had not been prevented, staff at the Edmonton Institution for Women had not been allowed to distribute wristbands sent to them by the Elizabeth Fry Society to show support for Ashley Smith.

[85] Ms. Hamilton testified that she was familiar with the "rat code" that prescribed that correctional staff close ranks and not report colleagues who behaved improperly. She said this is entrenched in institutional culture.

[86] The investigation team concluded that the grievor should not return to the RPC, and it advised senior managers of that conclusion in its report. Ms. Hamilton said her advice to Ms. Thompson was that she should "do the right thing" and ensure that the grievor had permanent employment at regional headquarters; Ms. Thompson said she would follow up on it.

[87] At Ms. Hamilton's retirement dinner in May 2010, Ms. Hamilton received a phone call from the grievor, who was very upset. The grievor said Ms. Nachtegaele told her that she might have to return to the RPC. Ms. Hamilton said she contacted both Ms. Thompson and Ms. Lepage, who said they would follow up but apparently never did.

[88] In cross-examination, Ms. Hamilton acknowledged that she did not know specifically what positions might be available in Health Services. She said she offered

the grievor a job at the Edmonton Institution for Women, but the grievor said that she did not want to leave Saskatoon.

B. <u>For the employer</u>

[89] The employer called three witnesses: Ms. Nachtegaele, the grievor's supervisor in her position at regional headquarters; Diana Campbell, the case manager from the WCB; and Keith Gareau, the regional return-to-work co-ordinator for part of the period at issue.

[90] Ms. Nachtegaele said that she began her employment with the CSC in December 1985 as a staff nurse. She has held a variety of supervisory and managerial positions. She testified that at one point she was a unit manager, which position was classified AS-07. She said that she provided the SRNA with the position description and had no trouble maintaining her nursing license.

[91] Since 2008, her substantive position has been Manager of Clinical Services for the CSC's Prairie Region. In this capacity, she oversees 14 institutional health centres and supervises their chiefs of health services. She is responsible for any legal correspondence, responses to boards of investigation, staffing and budgets. She is a member of a national group of clinical services managers who attempt to maintain consistency across regions.

[92] When referred to the email chain filed as Exhibit E-9, Ms. Nachtegaele confirmed that discussions took place in January and February of 2008 about how the grievor might be accommodated at regional headquarters. Ms. Nachtegaele said that she identified some activities the grievor could work on related to recruitment, work plans for employees and career fairs. Ms. Nachtegaele said that she understood that it would be an interim assignment so that the grievor would not have to work at the RPC, and she was willing to take the grievor on that basis. The grievor was assigned as a project officer.

[93] Ms. Nachtegaele explained that the assignment was not to an actual position; no full-time indeterminate job encompassed its activities. She confirmed as much with Ms. Thompson, who was a human resources officer, in April 2008 (Exhibit E-16). The assignment was initially for three months (Exhibit E-13), although it was extended

several times (Exhibits E-18 and E-21). Ms. Nachtegaele said that she tried to fulfill the responsibility of accommodating the grievor as well as she could.

[94] In cross-examination, Ms. Nachtegaele said that she had read the "Return to Work Program Guidelines" (Exhibit G-67). She was asked if she understood it was her responsibility to look for a full-time permanent position for the grievor. She replied that her understanding was that she should try to identify appropriate accommodated work. She said that she did keep an eye out for possible opportunities that might be suitable for the grievor but that she could not be sure whether she began to watch for positions earlier than May of 2010. Counsel for the grievor asked her whether she really thought that a position in the parole service, an administrative assistant position and an aboriginal liaison position would be suitable for the grievor. Ms. Nachtegaele replied that she did not think it was up to her to make that judgment. She thought she should send the grievor information and let her decide what to pursue.

[95] Ms. Nachtegaele said she was supportive of the grievor and encouraged her to apply for indeterminate positions, as she understood the grievor might not be able to return to the RPC. She also said she understood that the RPC restriction might be permanent. Under cross-examination, she said she could not recall specifically if she was ever told the RPC restriction would be permanent, but she did at some point conclude that the grievor would not return to the RPC. Ms. Nachtegaele said that she was willing to assist the grievor but thought the grievor should be actively seeking an alternative position. She said that her understanding was that accommodation was a "team effort," and that the individual seeking accommodation has to take some initiative.

[96] When the grievor was called to testify at the Tarala trial in August 2009, Ms. Nachtegaele said the expectation was that she would be gone for one or two weeks. She did not expect the grievor to be off work as long as she was.

[97] In December 2009, Ms. Nachtegaele became aware that the grievor would use up her sick leave by December 11 (Exhibit E-23). The manager with whom she was in contact, Rose Slade, indicated that she had sent an urgent message through Labour Canada to the WCB to find out if it would approve the grievor's claim for further benefits. If it were denied, Ms. Slade indicated that the grievor would have had to be placed on leave without pay.

[98] Ms. Slade sent a subsequent message (Exhibit E-25) indicating that apparently some confusion had arisen over which of the grievor's claims had been at issue. Although Ms. Nachtegaele had no specific recollection of a conversation, she said she was sure she would have called the grievor to tell her of these developments.

[99] An email Ms. Nachtegaele sent to Ms. Thompson on December 9 (Exhibit E-27) appears to confirm that she did talk to the grievor. In it, she said that she outlined the options to the grievor in the event the WCB claim was denied. Ms. Nachtegaele said in the email that she had again counselled the grievor to apply for other positions. She said she suggested considering a different work location. When the grievor responded that she was unwilling to leave Saskatoon, Ms. Nachtegaele said that that was her choice but that it would limit her options.

[100] In cross-examination, Ms. Nachtegaele said that she did not mean to suggest that accommodation was necessarily time limited but that she realized that the resources in her office were limited. She would have been willing to consider a further extension for the grievor had the configuration of duties in the office not changed. The grievor's substantive position was still at the RPC, although she was not going to return there, and Ms. Nachtegaele said that the normal procedure was for the home site to manage the accommodation for its employees. Ms. Nachtegaele said that although she knew the grievor was unable to return to work at the RPC, she was not aware of any issue that would have prevented the grievor from interacting with human resources personnel at the RPC.

[101] Under cross-examination, Ms. Nachtegaele said that she had discovered on December 1 (Exhibit E-23) that the grievor's paid leave would come to an end on December 11. Ms. Nachtegaele said she spoke to the grievor as soon as she could, although she acknowledged that she apparently did not speak to her until December 8 (Exhibit E-27). Although she checked her records, and was recalled later in the hearing, she could find no record of having sent an email notification to the grievor earlier than December 8. She could only guess that she had been waiting to hear the results of the WCB adjudication before speaking to the grievor.

[102] Counsel for the grievor asked Ms. Nachtegaele about a telephone conversation with the grievor on December 9 or 10 about return-to-work issues. He asked whether she had told the grievor that once she had been on assignment as an accommodation for a year, she would have to return to her substantive position. Ms. Nachtegaele said

she could not recall saying that. She said she did not imagine she would have said that, as that was not her understanding of how the return-to-work system functioned. She agreed that she might have pointed out that the grievor had been in the regional headquarters assignment quite a long time. She thought it was relevant because it was clear by then that the grievor would not return to the RPC, and Ms. Nachtegaele thought she should be seeking a long-term solution by looking for an indeterminate position.

[103] Ms. Nachtegaele recognized the request she received in September 2009 to complete the "Employer's Initial Report of Injury" form (Exhibit G-14). She said that she completed it very shortly after she received it and that it was submitted on September 28.

[104] Ms. Nachtegaele said that she was not a human resources specialist and that it was not her responsibility to co-ordinate an employee's return to work. Her understanding was that if an employee was off work for 30 days, a return-to-work committee would be set up comprising the return-to-work co-ordinator, the employee and a manager.

[105] Ms. Nachtegaele was on leave until March 2010. She said that the grievor's assignment at regional headquarters was extended until March, and if she had been well enough to return to work, she could have finished that extension. She did not give any instructions that the agreement to extend the grievor's assignment should not be honoured. In cross-examination, she said that she might not have specifically told the grievor that she would not have the opportunity to return to complete the assignment until the end of March.

[106] Ms. Nachtegaele testified that the PD Co-ordinator position that was eventually staffed at the NU-HOS-05 level did not represent the same set of activities that the grievor had been doing. When the grievor was assigned to do some of the PD work, a submission had been made at the national level to the Treasury Board of a proposal for a position in the PD area. A national working group was established to consider curriculum and other issues for Health Services staff across the country. CSC national headquarters had a strong interest in succession planning and leadership development for Clinical Health Services staff (CHSs).

[107] The position that was eventually created and that was staffed at the NU-HOS-05 level was conceived as a developmental position for those CHSs experienced at the NU-HOS-05 classification. The idea was that they would occupy the position sequentially and not permanently.

[108] Ms. Nachtegaele said mentoring was seen as part of the responsibilities of this position. The CHSs normally have responsibility for managing a unit of 16 to 18 people and have been involved in labour relations, staffing, budgets and quality assurance.

[109] The position was staffed in different ways in the regions for a time until it was eliminated in 2013 as part of a national cost-cutting strategy. The intention in the CSC's Prairie Region was to staff it as a temporary assignment, and Tracey Edmonds, an NU-HOS-05 at the RPC, agreed to do it for three months. In fact, there was an NU-HOS-03 shortage in the region, and it was decided not to pull any NU-HOS-05s out of the institutions to fill the position.

[110] The position was never posted as an indeterminate NU-HOS-05 position; it was posted internally only on an assignment basis. Ms. Nachtegaele identified a note in her handwriting (Exhibit E-31) indicating that she had told the grievor that the work she had been doing would not be staffed as an indeterminate position, and she testified that she told the grievor the position had evolved into a different position.

[111] Although the grievor had been assigned to some of the activities related to curriculum planning, and there was some overlap with the responsibilities of the position that was eventually created, it was expected that once the new position was in place, and the curriculum had been finalized, the activities associated with PD would be mostly clerical and would be done on a less than full-time basis. That work could be done by someone in a CR-04 classification and would not be done by a nurse.

[112] The other duties associated with the position — managing contracts, chairing hiring boards and drafting grievance responses — were things the grievor had no experience with, and in any case, the person in the position was expected to go to institutions, including the RPC, to provide advice to new CHSs.

[113] Under cross-examination, Ms. Nachtegaele said she tried to communicate to the grievor that the "position" she had been in before she went back on leave would not be staffed, although she understood it might have been the grievor's preference to return

to doing the same work at regional headquarters. Ms. Nachtegaele said that she would have read the grievor's personal development plan (Exhibit G-62) in which she mentioned returning to regional headquarters.

[114] Ms. Nachtegaele said that she sent the grievor the bundle of postings in May 2010 (Exhibit E-29) in an effort to be helpful. She thought the grievor ought to know what was available. She said it never occurred to her that the grievor would not be able to open the internal postings links or she would have printed them or invited her to come to regional headquarters to apply.

[115] In cross-examination, Ms. Nachtegaele conceded that she probably should have realized the grievor would not have access to the intranet postings. Ms. Nachtegaele also made inquiries (Exhibit E-33) about other possible positions in the Health Services area; she had no vacancies in her own area, and was unfamiliar with what might be available elsewhere. She knew that there were NU-HOS-03 positions in a number of institutions in the region but understood the grievor did not wish to leave Saskatoon.

[116] Ms. Nachtegaele said that the idea of red-circling a salary is normally applied only when a position is classified down or when someone at a higher classification is displaced because of a workforce adjustment. It would not have applied in the grievor's circumstances.

[117] The second witness called by the employer was Diana Campbell, the WCB case manager who had primary responsibility for the grievor's file. This witness appeared in response to a subpoena and counsel for the employer asked that she not be identified by name in this decision. Earlier in this decision, I outlined the requirements of the *Dagenais/Mentuck* test, which contemplates that a party seeking to maintain the anonymity of a witness must demonstrate that the factors supporting that request outweigh the values represented by the open court principle. On the basis of that test, I made the decision to use the names of Mr. Tarala and Ms. Smith. I have concluded in relation to the request not to name Ms. Campbell that the employer has failed to satisfy the burden of showing why this would be required. Though giving testimony in a proceeding of this kind is no doubt stressful, the consideration that Ms. Campbell would rather not have her statements on processes within the WCB open to scrutiny does not, in the final analysis, counteract the interest of having these proceedings conducted in a transparent manner. The witness stated that as a case manager, she was involved in return-to-work plans for employees making compensation claims. The

plans relied heavily on medical assessments. A number of parties would have to be consulted about a return-to-work plan — physicians, psychologists, employer representatives, WCB officials, and sometimes, specialized medical consultants. The WCB does not have the final say as to where or how an employee will be accommodated; it acts as a facilitator, although the ultimate responsibility to accommodate rests with the employer.

[118] When referred to a WCB publication indicating that the employer is to "lead" the return-to-work planning (Exhibit G-70), the witness said that this could mean many things. In some cases, an employer will have a very well-developed return-to-work process, and in other cases it is necessary for the WCB to be more involved. In any case, it is important for all parties to remain in regular contact.

[119] In some cases, medical restrictions are temporary, and the plan will be directed to returning the employee to his or her previous job, but if the restrictions are permanent, a long-term alternative needs to be found. The WCB communicates with the employer about the results of medical assessments, providing information about the nature of any restrictions and whether they are permanent. In the grievor's case, it was clear in May of 2007 that, fairly soon after her injury, her medical condition was permanent.

[120] Ms. Campbell testified that she is responsible for claims involving federal government employees covered under the workers' compensation legislation of the province where they work. The grievor made an initial claim shortly after her injury, and the file was reopened in September 2009 (Exhibit G-58, page 100). The case manager's notes indicate that she was waiting for medical reports to determine whether the WCB had ongoing responsibility; she said that it was not the employer's responsibility to obtain such reports. She did not recall communicating to the grievor that the delay processing the claim between September and December 2009 was attributable to the employer. On reviewing the documentation in the file (Exhibit G-58), the witness said that it appeared that the delay was connected with waiting for the medical reports. Indeed, at page 126 of that exhibit, there is a letter dated December 9, 2009, asking Mr. Coates to send all his medical assessments from August 2009 on.

[121] In a letter to the grievor dated December 9, 2009, Ms. Campbell introduced herself and described the WCB's role. She said the WCB would have sent the grievor a

copy of the "Worker's Handbook" at the time of her initial claim in 2007, but she enclosed another copy to make sure the grievor had it. She said the handbook described the responsibilities of the worker, the employer and the WCB, and she tried to make it clear in the letter that the grievor was expected to stay in touch with both the employer and the WCB.

[122] Ms. Campbell sent Mr. Coates a letter on December 14, 2009 (Exhibit G-58, page 135), asking for answers to specific questions, including when would be a good time to conduct a mental health assessment of the grievor, when she would be able to return to work and whether she would be able to return to the RPC. The letter referred to the grievor "attending court." Ms. Campbell said she had the impression from her conversation with the grievor that she was involved in court proceedings; in fact, the grievor was not at that time required to be in court.

[123] Mr. Coates responded on December 23 (Exhibit G-17) but did not answer all of Ms. Campbell's questions. He did not specifically state when the grievor would be able to return to work. With respect to the mental health assessment, he said he thought it was ". . . more for your [the case manager's] procedure than her [the grievor's] need," but he did not directly answer the question about timing. Ms. Campbell said she asked whether the grievor would be able to return to the RPC in case any changes to her status had not been reported.

[124] Mr. Coates sent a further communication to Ms. Campbell on April 15, 2010 (Exhibit G-19), which was fairly brief and attested to continued progress by the grievor. The case manager's notes indicate that she called Mr. Coates on April 28 (Exhibit G-58, page 177) and left a message asking him when the grievor might be able to return to work.

[125] Under cross-examination, Ms. Campbell commented on the fact that an employer representative had sent her a newspaper clipping about the outcome of the Tarala trial in April of 2010 (Exhibit G-64). She said that when she took over the file in late 2008 or early 2009, she thought it odd that there was no information in the file about the actual events that had occasioned the grievor's PTSD. She said that she was not the one who would ultimately determine whether the grievor's claim should be allowed, and the WCB did not take any position on issues arising between a claimant and an employer. Nonetheless, she thought the information in the newspaper story did provide a better understanding of the grievor's circumstances.

[126] In early 2011, Ms. Campbell exchanged emails (Exhibit E-76) with Mr. Gareau about what date should be entered in the priority system as the date on which the grievor had been able to return to work. Ms. Campbell originally gave a date of January 6, 2010, but later gave April 12, 2010, as the date, which was recorded in the registry system. In her evidence, she said that she did not really understand the priority system but that she thought the April 12, 2010, date was the most accurate. She relied on the medical reports and did not recall having any information that would have indicated that the grievor was ready to return to work in January 2010.

[127] In cross-examination, Ms. Campbell acknowledged that some of the material in the file indicated that the grievor thought she was ready to return to work (Exhibit G-58, page 272). Counsel for the grievor asked about the following statement in Mr. Coates's December 23, 2009, letter (Exhibit G-17): "I am very eager to get Ms. Tchorzewski to return to work." Ms. Campbell said that she could not recall interpreting that as an indication that the grievor was ready to return to work as of that date.

[128] The witness did not recall the circumstances under which she wrote a letter dated February 17, 2010 (Exhibit G-58, page 166), indicating to Mr. Coates that the employer was ready to accommodate the grievor's return to work. In any case, she said that her interpretation of the material in the file at that time was that she was waiting for information from Mr. Coates, not from the employer. Counsel for the grievor asked her what she was referring to in the letter when she said. "I have finally gotten in touch with Ms. Tchorzewski's employer." She said she could not be sure, but she did recall being somewhat frustrated at the pace of developments on the file. She acknowledged that an employer can always ask for updates on a file, although there are limits to the medical information that the WCB can share with the employer. Ms. Campbell said that there seemed to be a long wait for medical information in this case, although she also said that this is not unusual in cases involving psychological issues.

[129] The case manager said in cross-examination that it is open to an employer to ask for a review of a file if an appealable issue arises. According to a note in her file (Exhibit G-68), Mr. Gareau did ask to have the file reviewed on January 6, 2011. Ms. Campbell could not recall exactly why he asked for one but said it was an informal conversation, not a formal request for a review. The notes indicate that she agreed to set up a meeting with the grievor to discuss the position at regional headquarters.

[130] In May of 2010, Ms. Campbell referred the grievor to a vocational rehabilitation counsellor. She said there was a difference of opinion within the WCB about when such a referral should take place. The current policy is to make the referral as soon as possible after a claim is made. However, at the time the prevailing view was that the referral should await a later determination of whether the medical restrictions would be permanent. The grievor's referral to the counsellor had nothing to do with a lack of co-operation from the employer; all employees with permanent restrictions are referred. In cross-examination, Ms. Campbell said the actual date for the referral might have been chosen to try to move things forward on the file; many parties were involved.

[131] Ms. Campbell said she had received information about two positions that might have been options for the grievor (Exhibit G-58, pages 241 to 267), and she vaguely remembered talking to the grievor on January 19, 2011. Her notes of this conversation (Exhibit G-58, page 266) indicate that the grievor said she declined the positions because she wanted to ". . . do something with her nursing degree." Ms. Campbell said that she always records these notes to the file immediately after any conversation, to ensure that they are accurate. She said that the letter to the grievor dated January 21, 2011 (Exhibit G-58, page 278), captured the main points of the conversation. The letter read in part as follows:

. . .

> *On January 19, 2011, you advised me you will be declining the accommodated offer by the Government of Canada because you want to pursue a career in nursing…*
>
> *Please be advised that your employer only has a duty to accommodate you within your work restrictions. The accommodation, as a Quality Improvement Regional Co-ordinator was within your work restrictions.*
>
> *As you have declined this accommodated position, your claim will be closed as of January 19, 2011, as you are currently working full time [sic].*

. . .

[132] Ms. Campbell said that she would have relied on an assessment by someone in vocational services that the position represented an accommodation within the grievor's medical restrictions. When asked whether it was a suitable accommodation

because of the questions surrounding the nursing license, Ms. Campbell said that a wish to maintain professional standing is the employee's choice, not a restriction that dictates what kind of accommodation is acceptable. The goal of the accommodation is to find the employee meaningful work, not necessarily the work he or she would most like to do. She said that she felt the employer had met its obligation to accommodate in this case. She said it is often difficult to find a suitable accommodation for federal employees, given the small size of the federal establishment in Saskatchewan, but in her experience, the employer is always willing to accommodate employees.

[133] With respect to the award for permanent functional impairment, the caseworker said that the amount is awarded once the worker is considered to have reached the maximum extent of recovery from the injury. In this case, the award was 5% of the amount representing a total permanent disability ($2200), and it was upheld on appeal. If the grievor's condition changed, it was open to her to raise the question again.

[134] The employer's final witness was Keith Gareau, Return-to-Work Advisor for the CSC's Prairie Region. He assumed this position in July 2010 and became involved with the grievor's file in the fall of 2010. His role was to help management identify vacancies that might be appropriate for the grievor. The only restriction identified at that stage was that she could not work at the RPC (Exhibit E-53).

[135] In November 2010, Mr. Gareau exchanged emails with Ms. Fast and with human resources officials from the CSC's national headquarters (Exhibit E-48) concerning the grievor's status at that time. The WCB had ceased to pay her benefits in September, as she was working full-time at the SIAST, which meant that her earlier status — injury-on-duty leave — was no longer appropriate. It was decided that she should be placed on leave-without-pay status.

[136] Mr. Gareau reminded Health Services management of the duty to accommodate (Exhibit E-54) and identified a number of postings that seemed possible for the grievor. The posting for Regional Co-ordinator, Institutional Mental Health Initiative, a term NU-HOS-04 position (Exhibit E-57), seemed promising, but the grievor was advised that the position might involve occasionally visiting the RPC, and she withdrew from the competition. He sent a series of postings to the WCB on December 13, 2010 (Exhibit E-58), so that they could be presented to the grievor. One referred to "on site [*sic*]" training, but he advised the WCB case manager, Ms. Campbell, that the training would have to be done elsewhere than the RPC.

[137] Mr. Gareau said the QI Co-ordinator position was not brought to the grievor's attention earlier because although it had been created in the fall, its description was not completed until December, and it could be considered only on an indeterminate basis at that point.

[138] In cross-examination, Mr. Gareau said that a temporary assignment into the position had been made in June 2010 but that it was not classified until the fall (Exhibit E-29). The temporary assignment lasted only until July 31, and he was not aware of the reasons for that. He said that he was not involved when the temporary assignment was made in June 2010 and that he did not know if the grievor was ready to go back to work at that time. He knew at the time of the hearing that April 12, 2010, had been confirmed as the date the grievor was ready to go back to work, but he had had nothing to that effect in writing.

[139] Mr. Gareau said that he thought it would be a suitable position for the grievor in part because it could be done as a deployment and she could just transfer in. The position was classified AS-05. The salary was slightly higher than her substantive nursing position, with a similar education allowance. When he sent the position description to the WCB in December, along with the Regional Co-ordinator, Accreditation position description, he pointed out that the AS-05 positions were in a different bargaining unit (Exhibit E-59B). He also noted that the employer was in the process of creating a patient safety position, which was not yet finalized, which would be in a nursing or AS classification.

[140] In cross-examination, Mr. Gareau said he thought the QI Co-ordinator position was a good opportunity for the grievor, even though she would have had to change bargaining units. He sent the position description to the WCB, as the case manager had asked that all information go to her, but he recalled mentioning the position to the grievor in one of their telephone conversations.

[141] Mr. Gareau said that when he took over the file, the preoccupation was with clarifying the appropriate leave status for the grievor. He did not begin to identify suitable positions for accommodation until later in November. He knew that Ms. Miller at the RPC was working with the WCB and was trying to obtain confirmation that the grievor was fit to work.

[142] Mr. Gareau said he received an email from Ms. Campbell (Exhibit E-70) after her January 18, 2011, conversation with the grievor, indicating that the grievor was interested in pursuing the QI Co-ordinator position. Ms. Campbell noted that the grievor would not be able to begin until June 2011 because of her commitment to the SIAST. Mr. Gareau forwarded this to his manager so that the paperwork could be prepared to put the grievor into the position. Shortly after that, the WCB informed him that the grievor was no longer interested in the position because she wanted to pursue a "career in nursing." Mr. Gareau said that the grievor had brought up the issue of the nursing license with him in December; he had mentioned it to Ms. Campbell at the WCB and suggested she follow up to see whether the grievor could keep her nursing license given the position description. He said that he knew it was a concern for the grievor, but he did not consider it a medical restriction.

[143] In cross-examination, Mr. Gareau said that in an email to Ms. Thompson on April 6, 2011 (Exhibit E-83), he referred to the issue of whether the SRNA would recognize the position for registration as "crucial" information. He said that he did not mean it was crucial in terms of the employer's duty to accommodate but that he did think it would be important to inducing the grievor to accept the job. He did not want to see her lose the opportunity. When Ms. Thompson said she could not see why the SRNA would refuse the registration, he thought it important to follow up; he thought he and Ms. Thompson had gone beyond their responsibility by doing what they had done.

[144] In an email dated February 22, 2011, Mr. Gareau told the grievor he was sending her the letter of offer for the position (Exhibit E-78). He said that if she was still inclined to decline the position, she should send him written confirmation. He had updated her security clearance so it would still be open to her to accept the position.

[145] On February 23, 2011, Mr. Gareau responded to a request from Mr. Harden for a copy of the position description (Exhibit E-80). Mr. Gareau followed up to ask Mr. Harden if the grievor had arrived at a decision. Mr. Gareau said he was not contacted by Mr. Harden or anyone else from the bargaining agent during that time, and no one asked him any questions.

[146] On March 17, 2011, Mr. Gareau received an email from the grievor (Exhibit E-81) in which she said that the position "may meet [her] medical restrictions" but did not "meet [her] professional requirements." Mr. Gareau said that his understanding was

that the employer was required to accommodate the grievor's medical restrictions and not to comply with her personal preferences. This was confirmed for him in a conversation with the WCB case manager, Ms. Campbell. He said he was very frustrated when the grievor declined the position; in his view, it was exactly what she was looking for — a job in the health services field that did not entail working at the RPC.

[147] Mr. Gareau said he asked to meet with Ms. Thompson. She said she could not understand why the grievor could not be registered as a nurse. Ms. Thompson forwarded the information about the position to the SRNA and was assured that the position supported professional registration.

[148] Mr. Gareau passed this information to the grievor on April 20, 2011 (Exhibit E-83). He had requested that the manager who would be responsible for the position put any hiring on hold until May 2, to see if the grievor would be willing to move into the position. On May 2, at the grievor's request, he forwarded a copy of the letter received by Ms. Thompson (Exhibit E-87).

[149] Mr. Harden emailed Mr. Gareau on May 3, 2011 (Exhibit E-88), to advise that a report from Mr. Coates suggested that it might be problematic for the grievor to continue to work for the CSC. Mr. Harden indicated that a psychiatric assessment had been arranged for the grievor for May 18. It was ultimately agreed that the QI Co-ordinator position would be kept open until June 30 to allow the grievor to make a decision, although the manager put up some resistance to a further extension (Exhibit E-89). Mr. Gareau urged patience on the grounds that this was a "complex case," and ultimately, Mr. Harden advised him that the grievor declined the position, as a restriction had been put in place related to her working anywhere in the CSC.

[150] Mr. Gareau said that while he was responsible for this file, he spoke to the grievor a number of times. He said that she was clearly frustrated and angry at the CSC. She seemed agitated and sometimes spoke loudly. He did not think her anger was directed at him. He referred to notes of a conversation he had with her in January 2011 (Exhibit E-108). In the course of this conversation, he tried to explain to her that the new PD position was several levels above her classification and that she could not be deployed into it.

[151] With respect to the grievor's registration on the Public Service Commission (PSC) priority list, Mr. Gareau said that he had asked the WCB case manager, Ms. Campbell,

for the date on which the grievor had been able to return to work at a meeting on January 6, 2011 (Exhibit G-68). He knew that Ms. Fast was working on it, and he left it to her to meet with the grievor and obtain the necessary forms. He understood from Ms. Campbell that April 12, 2010, was the date on which the grievor was fit to return to work. On another occasion, Ms. Campbell told him the date was January 6, 2010, but then confirmed the April date. Mr. Gareau said that he passed this information to the PSC. In March 2011, he emailed the grievor (Exhibit E-79) and stated that the PSC could not adjust the date in the priority system unless it had written confirmation from the WCB that a different date should be used.

[152] Mr. Gareau said that the PSC priority registry was based on disability in the sense of some kind of permanent restriction of function. The PSC did not consider geographical location as a restriction, and he thought the PSC had erred by placing the grievor on the list based on her geographical preference. He reviewed the lists of positions (Exhibits E-105 and E-106) and said that he could not identify any positions that satisfied the grievor's wish to remain in Saskatoon.

[153] In September 2011, Mr. Gareau took the initiative to inquire of managers in other federal departments with offices in Saskatoon whether they would have anything suitable and discovered no available opportunities.

[154] In cross-examination, Mr. Gareau said that the CSC has no power to make staffing decisions in other departments and that he did not think he had an actual responsibility to look for positions outside the CSC, which would normally be taken care of through the operation of the priority registry system. He said that he did check the Publiservice site for possible postings into 2012. He said that his understanding was that the registry would provide the grievor only with postings in the classifications she had asked for. He said that he thought the PSC encouraged employees to request a broad range of postings to consider. He also understood that Ms. Fast had met with the grievor to encourage her to consider groups and levels other than NU-HOS-03, although he had no direct knowledge of that conversation.

[155] Mr. Gareau said in cross-examination that he thought the delay registering the grievor on the priority list was unfortunate; he described it in an email in February 2011 (Exhibit E-79) as an "injustice to Sindee." He said he did not know the explanation for the delay, although he knew that there was some issue about providing a medical assessment to the PSC. Mr. Gareau said he had made efforts to clarify the

date that should be used to indicate when she was ready to return to work (Exhibits E-75 and E-76).

[156] Mr. Gareau spoke of the Community Mental Health Co-ordinator position, of which he informed the grievor on January 7, 2011 (Exhibit G-63). He said that the initial description of the position had been up for two weeks but that that version referred to being based at the RPC. The second version of the posting — referring to regional headquarters instead — came out on January 6. He happened to see the revised posting and thought the grievor might be interested.

[157] Mr. Gareau was aware that Ms. Fast had sent the grievor information in November 2010 about an aboriginal health services co-ordinator position (Exhibit E-44).

[158] On November 29, Mr. Harden emailed Ms. Fast and stated that the grievor had said she would send the employer an updated resume, but she was unwilling to go to regional headquarters to fill out an application (Exhibit E-49). Mr. Gareau said that he was never advised in any of his contact with or about the grievor of any restriction that would have prevented her from going to regional headquarters. He said that he thought the employer had offered her reasonable accommodation. He thought it had made efforts to meet her concerns, and it had offered her a position in the health field, where she could maintain her nursing registration, and to which a higher salary was attached. He did not think there had been any discrimination against her.

[159] In cross-examination, Mr. Gareau was asked whether he knew the grievor was ready to return to work at regional headquarters in July 2010. He said that that was before he was involved, but he had never had any information confirming it. Referred to a note in the WCB file (Exhibit G-58, page 197), he said it could be interpreted as indicating the grievor was ready to return to work, as it asked about her work at regional headquarters and other positions, but he was not aware that there was anything concrete from the WCB during this period about the grievor's medical restrictions. He could not say what discussion might have taken place between Ms. Fast and the WCB.

[160] Counsel for the grievor asked Mr. Gareau whether he had paid attention to the grievor's possible entitlement under subsection 41(1) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*), which reads in part as follows:

> ***41.*** *(1) When an employee on leave of absence is replaced, pursuant to the appointment or deployment of another person for an indeterminate period to the employee's position, priority for appointment shall be given over all other persons to*
>
> *(*a*) the employee on leave of absence, for the duration of the leave of absence and a further period of one year; or*
>
> *(*b*) if the employee on leave of absence returns to his or her position, the person who replaced that employee, for a period of one year after that employee returns to the position.*
>
> . . .

[161] Mr. Gareau responded that he did not inquire as to whether the grievor's substantive position had been filled while she was on leave. He thought this was basically a staffing issue, and he was focused on a return-to-work strategy for the grievor. He said that although he did make some inquiries about positions in other departments, he did not interpret it as his responsibility to find her a job beyond the CSC. His understanding was that the CSC did not have the authority to require a different department to arrange an accommodation for the grievor.

III. Summary of the arguments

A. For the grievor

[162] Counsel for the grievor reminded me of the basic prohibitions against discrimination contained in article 43 of the collective agreement between the Treasury Board and the bargaining agent for the Health Services Group that expired on September 30, 2011, and in section 3 of the *Canadian Human Rights Act* (R.S.C. 1985, c. H-6; *CHRA*). These prohibitions, like others in human rights legislation, have been interpreted to impose on employers a duty to accommodate employees who may be differentiated on the basis of one of the enumerated grounds. He said that the PTSD that the grievor experienced constituted a disability that the employer was required to accommodate.

[163] The extensive jurisprudence on the duty to accommodate makes it clear that once an employee has established a *prima facie* case of discrimination, the onus rests on the employer to demonstrate that it accommodated the employee to the point of

undue hardship. The responsibility of a federally regulated employer in this respect is reinforced by section 15 of the *CHRA*, as follows:

> ***15.*** *(1) It is not a discriminatory practice if*
>
> *(*a*) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer to be based on a* bona fide *occupational requirement . . . .*
>
> . . .
>
> *(2) For any practice mentioned in paragraph (1)(*a*) to be considered to be based on a* bona fide *occupational requirement … it must be established that accommodation of … an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.*
>
> . . .

[164] Counsel for the grievor referred me to *Cyr v. Treasury Board (Department of Human Resources and Skills Development)*, 2011 PSLRB 35, in which the adjudicator, citing the Supreme Court's decision in *British Columbia* (*Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3, spoke at paragraph 45 of an employer's obligation to make "sustained and prolonged efforts" to accommodate an employee. Counsel also referred to the requirement set out by the Supreme Court in *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868, at para 42, that a respondent must show that it ". . . considered and reasonably rejected all viable forms of accommodation." He argued that the employer in this case did not make those efforts.

[165] Counsel for the grievor said that while he did not wish to minimize the obligation of an employee to co-operate with efforts to find an accommodation, it must be remembered that the duty to accommodate rests essentially on an employer. He argued that it was incumbent on the employer to look broadly for options, including assignments as well as appointments, in an effort to identify an appropriate environment for the grievor. An employer should also consider going outside the literal boundaries set in a collective agreement, by, for example, considering whether a position representing a "promotion" might be appropriate. While it is true that an

employer may have other obligations such as those under workers' compensation legislation, they cannot eclipse the responsibility to accommodate.

[166] In this case, the employer failed from the outset to make robust efforts to find a permanent accommodation for the grievor, even though it was clear from Dr. Nanson's reports that the grievor would be permanently restricted from returning to the RPC. Other evidence, including that of Ms. Hamilton and the grievor, confirmed the existence of the "rat code" with its accompanying risks to the grievor's welfare should she return to the RPC.

[167] Her counsel argued that while the grievor was working at regional headquarters, there was no evidence that any attempt was being made to find a permanent solution, other than the postings for unsuitable positions Ms. Nachtegaele sent to the grievor. Only when Mr. Gareau came on the scene in 2010 were any systematic or concentrated efforts made.

[168] Throughout this period, the grievor's situation was made more difficult by such things as the short notice the employer gave that her paid leave was coming to an end in December 2010 and by it ignoring the statement that she was ready to return to work in December 2009, thus denying her the opportunity to return to the work she had been doing at regional headquarters, which was slated to go on until March 2010.

[169] Counsel for the grievor alluded to the note made by the WCB case manager, Ms. Campbell, that she was frustrated with the employer's lack of responsiveness, which he argued confirmed the grievor's evidence that the employer was not contacting her or taking any meaningful steps to accommodate her during this period. Counsel argued that the evidence shows that the employer was aware the QI Co-ordinator position was available as an assignment opportunity in the spring of 2010 and that it should have placed her in that position. The grievor's testimony indicated that she would have accepted this position had she been assured that she could retain her nursing license. Had that happened, it is likely the grievor would still be working for the CSC; instead, the delays and uncertainty aggravated her PTSD symptoms.

[170] Counsel argued that it was incumbent on the employer to ascertain whether the grievor would be able to keep her nursing license. Although Mr. Gareau eventually did check into it, it did not happen until the further medical restriction of not working at

the CSC had been put in place. The nursing license was not, as the employer argued, irrelevant to the accommodation process; it was essential to the grievor's identity, and the employer was required to make greater efforts than it did to find an accommodation that would best suit her, which would have included allowing her to use her professional skills.

[171] Counsel for the grievor further argued that since the employer did not call Ms. Miller to testify, the inference must be drawn that she intended to prejudice the grievor's WCB claim when she sent the newspaper clipping about Mr. Tarala's trial to Ms. Campbell. This was just one example of employer conduct that indicated a reckless disregard for the grievor's interests. Another example was Ms. Fast's suggestion that the grievor consider the position of Regional Co-ordinator, Health Programs, a position that Ms. Fast knew would involve being at the RPC from time to time. The employer declined to consider the possibility of promoting or red-circling the grievor and was not proactive in offering her a position but rather encouraged her to apply to competitions when they arose.

[172] Counsel for the grievor alluded to the priority system described in section 7 of the *Regulations*, reproduced earlier in this decision, as well as the other priority regime under section 41 of the *PSEA*, also discussed earlier. While, as Mr. Gareau's testimony indicated, no effort was made to apply the latter regime, the grievor was eventually placed on the priority register under section 7.

[173] The evidence showed that different people had different understandings of the date on which the grievor was prepared to return to work. Her testimony was that she had indicated that she was ready to work in December 2009 and that she had certainly confirmed this in January 2010. Ms. Campbell understood the appropriate date to be April 12, 2010, which was the date recorded in her notes. For reasons no one was able to explain, the grievor was not placed on the priority register until January 2011. The register indicated the date she was ready to go back to work as April 12, 2010, and since the priority status lasts two years, according to the *Regulations*, it would have expired on April 12, 2012. The effect was to rob the grievor of approximately nine months of priority status because her status did not become active until she was registered.

[174] Whatever the PSC's position was two years later with respect to geographic location as a restriction, the fact, according to counsel for the grievor, was that it had

registered her on the basis of a location restriction, and the employer at that time understood she was entitled to priority. That priority entitled her to be considered for positions outside her classification. Although she did not formally request the notification of jobs outside the NU-HOS-03 classification, it was incumbent on the employer, as part of the duty to accommodate, to ensure that she was made aware of positions for which she might have been qualified, including positions in other parts of the public service outside the CSC.

[175] With respect to remedies, counsel for the grievor argued that the grievor is entitled to be compensated for lost opportunities for positions and promotions, a remedy that was recognized in *Grover v. Canada (National Research Council)*, [1992] C.H.R.D. No. 12 (QL), and in *Morgan v. Canada (Canadian Armed Forces)*, [1989] C.H.R.D. No. 5 (QL). Although the grievor received her full salary while she was on leave and mitigated her damages for loss of income by retaining her SIAST position, she is also entitled to compensation for the difference in pension benefits between the public service pension and her SIAST pension.

[176] Counsel for the grievor further argued that the grievor is entitled to damages for pain and suffering on the basis that the employer's actions exacerbated her PTSD. Although the grievor's counsellor warned the employer of the risks to her fragile health, it still failed to act effectively to accommodate her. Counsel emphasized that he was not arguing that she was entitled to damages related to the initial whistle-blowing but instead for the subsequent effects of the employer's failure to accommodate her with respect to her mental health.

B. <u>For the employer</u>

[177] Counsel for the employer said counsel for the grievor erred by arguing that the sole responsibility for finding an accommodation rested with the employer, which was at odds with the established principles from cases like *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970, which make it clear that the accommodation process involves multiple parties, including the bargaining agent and the employee.

[178] Counsel for the employer also argued that the case as presented on behalf of the grievor went beyond the scope of the grievance filed. Throughout the grievance process, the focus had been on the spring of 2010, when the grievor asserted that she

was ready to return to work. The grievance was filed in October 2010 and raised the employer's failure to accommodate her in the spring of that year. Although events that occurred in 2008 and 2009 provide useful context, at the hearing the grievor could not claim remedies covering that period. Counsel referred me to *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813 (QL). She conceded that the accommodation issue has less precise boundaries than some issues raised in grievances, but she argued that it would be unfair to hold the employer responsible for things that took place during a completely different period than that referred to in the grievance.

[179] Counsel for the employer said that from the employer's point of view, this case hangs on several straightforward questions. The first is whether in the fall and winter of 2010 the employer offered reasonable accommodation to the grievor. She pointed out that in September of 2010, Ms. Lepage personally telephoned the grievor and offered to arrange a job for her at a different institution. The grievor testified that by then, she was not only afraid to return to the RPC but was also afraid that the "rat code" would follow her to other institutions. Counsel for the employer suggested this was inconsistent with Ms. Hamilton's evidence, who was the grievor's witness, who said that she and the grievor had discussed the possibility of moving to another institution. Counsel said that it was clear that the real reason the grievor would not entertain the possibility of going to another institution was that she was reluctant to leave Saskatoon and argued that her geographical preference was not a factor the employer was required to consider. By insisting on remaining in Saskatoon, the grievor tied the employer's hands and limited her options.

[180] Counsel for the employer said that it was understandable that the grievor was sensitive about matters connected with the incidents that had precipitated her departure from the RPC, which often led her to impute bad faith to the employer. Counsel said that the evidence did not support any allegation of bad faith.

[181] By offering the QI Co-ordinator position in December 2010, the employer met the requirements of the duty to accommodate. According to the grievor, the stumbling block was the question of her ability to retain her professional license, but counsel for the employer argued that the employer was required only to ensure that the position was compatible with the grievor's medical restrictions, not to satisfy her wishes concerning her professional status. In her inquiries to the SRNA, the grievor did not

provide a job description, although the WCB case manager, Ms. Campbell, had provided it, and she did not follow through with retrieving the job descriptions from the WCB.

[182] The second question that counsel for the employer said must be considered was whether the grievor co-operated with the employer in identifying an appropriate accommodation. In this respect, she argued the grievor had fallen short of what might be expected. For example, Ms. Nachtegaele provided her with two points of contact, Ms. Miller, the human resources officer at the RPC, and Mr. Succorab, the return-to-work co-ordinator for the region. Although the grievor told Ms. Nachtegaele that she would call them when she was ready to return to work, she never did. Even if the grievor's reluctance to have anything to do with anyone at the RPC explained her unwillingness to deal with Ms. Miller, there was no explanation for failing to contact Mr. Succorab. In any case, as far as the employer knew, the only medical restriction was that the grievor could not be physically present at the RPC, which did not indicate that she could not deal with human resources staff over the phone or by email.

[183] The employer could not be expected to read the grievor's mind or to guess what kinds of positions might interest her. In the case of the QI project officer position that was being considered at one point, it was determined that it could be adjusted to eliminate any expectation of going to the RPC. Had the grievor indicated an interest in any positions, the employer could have considered what adjustments or options might have been possible.

[184] Although Ms. Nachtegaele conceded that some confusion arose about the grievor's ability to access job postings, counsel for the employer noted that the grievor never followed up on it or explained the problem. When she was offered an opportunity to use the computer at regional headquarters, she declined. At one point, Mr. Harden, the bargaining agent representative, said that she was reluctant to go into regional headquarters to use a computer, although her medical restrictions did not include an absence from regional headquarters.

[185] The third question, from the employer's point of view, was whether the evidence supported an allegation of discrimination. Counsel for the employer argued that this question must be answered in the negative. The employer showed a willingness to work towards accommodating the grievor. She was placed on injury on duty leave at full salary. From February 2008 to August 2009, she was placed in a position at headquarters, which thus met her medical restrictions; furthermore, it gave

her an opportunity to supervise another employee and gain some managerial experience.

[186] In the fall of 2009, when the grievor experienced a recurrence of her PTSD symptoms, the employer extended her term in that position. Although she filed a WCB claim in October, nothing prevented her returning to the job at headquarters when she was ready. There was conflicting evidence about when exactly she was ready to return to work, and the April date used by the WCB would have been later than the date to which her term at headquarters had been extended, but nothing suggested that the employer was being uncooperative or that it was unwilling to allow her to finish her term. According to Ms. Campbell's testimony, part of the confusion arose from the delays receiving medical reports from Mr. Coates, not, as the grievor suggested, from unresponsiveness on the employer's part.

[187] In any case, the grievor was not receiving therapy from Mr. Coates after July of 2010, and the fact that she took up employment at the SIAST indicates that she was capable of working. From the time she was offered the QI Co-ordinator position in December 2010 until the spring of 2011, she was being given a chance to take a position that met her medical restrictions. The employer held this position open for some time to give her a chance to consider it, and the employer was willing to delay the start date to allow her to finish her contract with the SIAST. None of this gave any indication of discrimination or harassment on the part of the employer.

[188] With respect to the dating of the grievor's priority status, counsel for the employer argued that there was no evidence that placing her on the priority register at an earlier time would have made any difference. The only jobs being referred to the grievor were NU-HOS-03 jobs, as she had made no indication that she wanted to receive information about other classifications, and the evidence did not show that any such positions had been available during the period of her priority status.

[189] Counsel for the employer also responded to the argument that the "employer," for the purposes of considering the adequacy of the accommodation, should be considered as not the CSC but the Treasury Board as the overseer of the public service as a whole. Counsel referred me to *Jolivet v. Treasury Board (Correctional Service of Canada)*, 2013 PSLRB 1, in which the adjudicator discussed the complexities of labour relations in the federal public service. The statutes with implications for labour relations include the *Financial Administration Act* (R.S.C. 1985, c. F-11), the *PSEA* and

the *Public Service Labour Relations Act*, S.C. 2003, c. 22. Under these statutes, for example, the Treasury Board can create and classify positions but not hire employees into them, which is the function of the PSC. Collective bargaining relationships are often defined on a departmental basis. The statement that the Treasury Board should be considered the employer is accurate only if its specific functions and jurisdiction are taken into account.

C. Reply on behalf of the grievor

[190] In reply, counsel for the grievor argued that the grievor had been willing to co-operate throughout and that it must be recalled that she was dealing with a significant health issue. In the context of her medical situation, it was reasonable for her to wish to remain in Saskatoon with her family. It was also reasonable to expect the employer to provide accommodation that would permit her to keep her nursing license, and the employer was responsible for following up on the question of whether the SRNA would recognize any particular position as the basis for continued licensure. The primary responsibility for working out a suitable accommodation lies with the employer, and it is not up to either the employee or the bargaining agent to initiate a solution.

[191] I should note that I have not given much detail about the respective parties' arguments concerning remedies. Even had I come to a different conclusion about the substantive issues, it would still have been necessary, in my view, to ask the parties to make more extensive submissions on remedies.

IV. Reasons

[192] In some respects, as counsel for the employer argued, this case involves some very straightforward questions. Was the grievor discriminated against? Did the employer make the necessary effort to accommodate her? Did she co-operate sufficiently with the search for a suitable accommodation?

[193] On the other hand, the complexities of the factual circumstances and the uncertainties created by the nature of the grievor's medical situation have made it far from easy for me to come to a decision. Counsel for both parties provided me with several volumes of case authorities drawn from the extensive accommodation jurisprudence and from others addressing the employment framework in the public

service. Although I do not cite all these cases, I found them helpful when working my way through the issues.

[194] The story of the difficulties the grievor endured is tragic. In response to a dramatic event, she chose to do the right thing and report what she had seen. Many of her co-workers responded by treating her with a level of hostility and menace that one can only describe as appalling. She has made admirable efforts to repair the psychological damage done to her, and her search for ways to resume her career is one such component.

[195] This grievance relates to one limited set of issues of the many the grievor has had to deal with, the issue of whether the employer discriminated against her by failing to make adequate efforts to accommodate her disability.

[196] It is common ground for the parties that the PTSD that the grievor experienced as a result of the events following March 24, 2007, is a disability, which the employer has never denied that it has an obligation to accommodate. What is disputed is whether the efforts the employer made to accommodate her satisfied that obligation.

[197] I do not see it as controversial to accept that once the grievor outlined a *prima facie* case of discrimination, it was incumbent on the employer to demonstrate that it took adequate steps to accommodate her disability. The question is whether, on the facts as established through the evidence, the employer has satisfied that onus.

[198] A number of things complicate assessing the sequence of events in this case. One complicating factor is, of course, the nature of the medical condition on which the request for accommodation was based. The grievor's medical restrictions were not framed in terms of particular job components or competencies but in terms of the setting for the employment relationship itself. Throughout most of the relevant time, the employer understood the restriction to relate to the inadvisability of having the grievor work at the RPC, although her testimony was that she would have found it difficult to work in any correctional institution. Ultimately, the medical advice was that she should not work for the CSC at all. Like many psychological conditions, it was characteristic of the PTSD that it was more severe at some times than others, and the grievor's ability to be at work or to return to work changed from one point in time to another.

[199] It should also be noted that the definition of the grievor's medical restrictions in relation to a particular workplace narrowed the number of positions that the employer had available to it to consider as accommodations. Most of the people employed by the CSC work in institutions. Of the remaining limited number of employees, some are required to have regular contact with institutions, even if they are based at regional headquarters.

[200] A further complicating factor arises from the accountability structure for employment in the public service. A collective agreement may cover employees from more than one department, and statutory provisions and administrative units such as Treasury Board and the PSC govern the public service as a whole. On the other hand, for practical purposes, the administration of most human resources and labour relations issues is carried out at the departmental level. Also relevant to this particular situation is the system in place for dealing with workplace injuries, under which responsibility for workers' compensation claims for federally employed or federally regulated employees is turned over to provincial workers' compensation boards.

[201] A consequence of both of these factors — the definition of medical restrictions in terms of workplace and the range of statutory and administrative accountabilities — there seems to have been confusion about who was responsible for what. Although the grievor could no longer work at the RPC, her substantive position continued to be there, pending her formal transfer somewhere else, and the human resources officer at the RPC continued to have some responsibility for her file. Her supervisor at regional headquarters during the time she was placed there, Ms. Nachtegaele, and the return-to-work co-ordinator for the region, Mr. Gareau, also played a role. At different times, the primary responsibility for assessing her progress towards returning to work laid in the hands of Ms. Campbell, the WCB case manager. Since these events took place over a period of years, and there were some changes in the individuals who played different roles, considerable potential arose for misunderstanding and miscommunication.

[202] It should also be noted that the grievor was unwilling to consider a position that would not permit her to maintain her nursing license or that would require her to move from Saskatoon. One of the primary points of contention between the parties is the extent to which the employer was required to provide an accommodation that would respect these restrictions. In argument, counsel for the grievor attempted to

underplay the significance of these factors, but it was clear from the grievor's testimony that they were important considerations, and in my view, they did contribute to the difficulty in arranging an accommodation.

[203] The duty to accommodate places a heavy responsibility on an employer, which is expected to explore a wide range of possibilities for accommodation, to consider modifying the duties connected with positions and to display flexibility. The jurisprudence makes it clear that the duty to accommodate may require an employer to incur cost and inconvenience, and that, in appropriate circumstances, a departure from the ordinary operation of a collective agreement's provisions may be justified.

[204] It must be said that before Mr. Gareau arrived in the summer of 2010, the employer's efforts to arrange a long-term accommodation could not be viewed as ideal. Even taking into account the factors I mentioned earlier — the fact that the grievor was working at headquarters while her file remained at the RPC for human resources purposes, the changes to her medical circumstances from time to time, and the WCB's intermittent involvement in assessing her medical status and the feasibility of any return-to-work plan — the employer's attention to accommodating the grievor cannot be described as completely focused or systematic. It might have been an instance of too many cooks, but there seem to have been a number of instances of misunderstanding or lack of clear communication not only between employer representatives and the grievor but also between employer representatives.

[205] When Mr. Gareau took responsibility for the file, he approached the accommodation issue with new vigor, and the essential question is whether his actions satisfied the requirements of the duty to accommodate.

[206] Although the employer has the primary and the heaviest responsibility for accommodation, its duty is not unlimited. Nor is it the employer's exclusive responsibility. The most often quoted formulation of this idea comes from the decision of the Supreme Court in *Renaud*, at page 994, as follows:

> *The search for accommodation is a multi-party inquiry. Along with the employer and the union, there is also a duty on the complainant to assist in securing an appropriate accommodation….*
>
> *To facilitate the search for an accommodation, the complainant must do his or her part as well. Concomitant*

> *with a search for reasonable accommodation is a duty to facilitate the search for such an accommodation. Thus in determining whether the duty of accommodation has been fulfilled, the conduct of the complainant must be considered.*

[207] The duty that rests upon the employee and the bargaining agent, of course, differs from that resting on the employer. The bargaining agent's role is to support the employee as the search for accommodation proceeds and, if necessary, to consider any relaxation that might be necessary of the usual application of the collective agreement. The employee's role is to co-operate with the employer by considering any options that may be put forward and to communicate a clear response to any suggested accommodations.

[208] I am not in a position to draw any conclusions about the role the bargaining agent played in this case, as it was not a particular focus of the submissions made by either party. I would say that I am puzzled by the apparent absence of advice or assistance from the bargaining agent at a number of crucial stages of the discussions. It is true that some emails were put in evidence showing that Mr. Harden, the bargaining agent representative on the file, occasionally raised issues and occasionally admonished the employer. However, those interactions were quite limited, and the grievor's testimony did not indicate that she was in regular contact with the bargaining agent. Counsel for the grievor suggested that it was because the bargaining agent's nearest offices were located in Winnipeg, Manitoba. Given the gravity of the representational responsibility of the bargaining agent, and given the availability of modern means of communication, this does not seem on its face a sufficient explanation.

[209] Since this case does not directly raise the question of the adequacy of bargaining agent representation, however, the information placed before me was limited, and I cannot assess how this factor might have affected the course of events.

[210] However, I did receive considerable evidence concerning the grievor's views on the accommodations that were offered and how she responded at successive stages of the process. Counsel for the grievor argued that it was unrealistic to expect the grievor, given her psychological state, to have responded other than how she did. She received confusing and conflicting messages. The employer did not seem to take seriously the things that were important to her in any long-term arrangement, and its insensitivity

had the effect of exacerbating her PTSD, making it difficult for her to make judgments or keep track of detailed information.

[211] At this point, I should note that I do not think the evidence established any malice or ill intent on the part of the employer, although the grievor interpreted a number of management actions as indications that it was trying to undermine her. For example, the grievor saw the dispatch of the newspaper clipping about the Tarala trial to the WCB case manager as a sign that the employer was trying to prejudice Ms. Campbell against her. However, the clipping did not contain any comments critical of the grievor, and there is no question that the trial, and the requirement that the grievor appear as a witness, was relevant to developments in her medical condition.

[212] Although the employer can certainly be criticized for not always moving the issue forward in the most efficient way, I do not interpret its actions as displaying any hostility to the grievor or any denial of the difficulties facing her. Indeed, the grievor acknowledged that Ms. Nachtegaele, Mr. Gareau and Ms. Campbell had treated her with civility and even kindness.

[213] In considering whether the grievor was sufficiently co-operative in seeking and facilitating accommodation, one must certainly give considerable weight to the PTSD's impact on her state of mind. On the other hand, she is a highly intelligent person with professional qualifications. During the period most critical to the grievance in 2010, she completed a master's degree and undertook a job as an instructor at the SIAST. Both achievements indicate that the PTSD did not impair her judgment, her ability to process complicated material or her willingness to take the initiative in some contexts.

[214] In light of these professional accomplishments, which are especially noteworthy because she was coping with her disability, it is difficult to understand her passivity when dealing with the accommodation issues. For example, she was better placed to ascertain whether she could retain her nursing qualification if she accepted the QI Co-ordinator position than the employer was, as she was a member of the nursing profession and could have been expected to know something about the standards associated with a nursing license. Yet she accepted the somewhat offhand response of someone who answered the phone when she called the SRNA and did not follow up by sending a job description or attempting to make the case for a link between nursing practice and this job. When Ms. Nachtegaele advised her to telephone Ms. Miller or Mr. Succorab to discuss her return to work, she did not show any resistance to that

advice — indeed, she said that she would follow up — but she failed to call either person. She said she assumed that Ms. Campbell at the WCB and the employer would work out her return to work, but she conceded that she had not read the material the WCB supplied setting out an employee's responsibilities when a WCB claim is filed. When she was on the priority register, she did not ask to be referred to any jobs other than those classified NU-HOS-03, although she had already discussed jobs classified otherwise.

[215] While it is true that neither the employee nor the bargaining agent is expected to take on the primary responsibility of finding out what jobs are available, it is reasonable to expect an employee to consider job options that are put forward and to provide input on those options.

[216] The duty to accommodate an employee's disability is defined in terms of the medically certified limitations on the employee's ability to perform a job. As far as the employer knew, the only restriction it needed to take into account was that the grievor should not work at the RPC. There was no medical report indicating that she should not work at any institution, that she should not be expected to deal in any way with personnel who worked at the RPC (such as the human resources officer) or that she should not be expected to go to regional headquarters to use the computers there. Several times, she indicated that she could not or would not do these things, but they were never part of the formal medical restrictions.

[217] With respect to her unwillingness to consider a position outside Saskatoon, I have concluded that the grievor placed this restriction on herself and that the employer was not bound by this preference. She indicated that she did not wish to leave her adult children and that her partner also felt tied to Saskatoon by family responsibilities. It is perfectly understandable that an employee will place weight on family ties when making an employment decision, and the grievor was certainly entitled to decide that she placed a high priority on being in Saskatoon. However, this was not a circumstance in which she had the kind of child-care responsibilities that an employer is expected to accommodate, and the employer cannot be faulted if she limited her available options by deciding that a job option outside Saskatoon was unacceptable.

[218] I do not accept counsel for the employer's argument that the conversation with Ms. Lepage about the possibility of the grievor moving to another institution should be

viewed as integral to the accommodation process; I have no doubt that Ms. Lepage was serious about being able to "make it happen" if the grievor and her partner wished to move elsewhere in the CSC system. However, I interpret it as a gesture on Ms. Lepage's part when she was delivering the grievor news she knew would be unwelcome and as a sign of management sympathy for her. However, it was an example of the grievor's reluctance to consider a move that would have taken her away from Saskatoon.

[219] I have also concluded that it is not incumbent on an employer to ensure that, as part of an accommodation, an employee will be able to maintain professional standing. Hard-won professional qualifications are understandably important to the people who have them and may be expected to be a factor in any decisions they make about what they are willing or unwilling to do. However, it is not part of the employer's duty to accommodate to guarantee that such an employee aspiration can be met. The employer is expected to make significant efforts to identify a position that is within the employee's medical restrictions, which requires work the employee is qualified to do and that does not represent a more significant change than necessary for the employee in financial terms. By identifying the QI Co-ordinator position and offering it to the grievor, the employer met its responsibilities with respect to these factors.

[220] In this case, Mr. Gareau ultimately determined that the grievor would be able to retain her nursing license in the QI Co-ordinator position, but this was beyond what was required of him. In my view, that demonstrates that the employer was making sincere and extensive efforts at that point to provide a durable long-term accommodation. Unfortunately, it coincided almost exactly with the medical report stating that it would be undesirable for the grievor to continue to work for the CSC in any capacity whatsoever.

[221] Counsel for the employer argued that it was not incumbent on the employer to search for positions outside the CSC that would constitute an appropriate accommodation. I cannot accept this argument as a general proposition. In *Zhang v. Treasury Board (Privy Council Office)*, 2005 PSLRB 173, the predecessor to this Board rejected that argument and found that the employer had not met its duty to accommodate when the only alternatives it considered or offered to the employee were within the employee's home administrative unit. In this case, however, as I have noted, the grievor made it clear that she would not consider positions outside Saskatoon, which placed limits on the options available. Mr. Gareau did canvas other federal

departments in Saskatoon to see if they had any positions that might be suitable, and these inquiries failed to turn up any possibilities.

[222] I have concluded that identifying the QI Co-ordinator position satisfied the employer's duty to accommodate, and I would dismiss the grievance in this respect. The employer, as represented by Mr. Gareau, arranged to have this position kept open for a number of months to give the grievor full opportunity to consider it. He showed himself ready to answer questions about the position and followed up on the question of whether she would be able to keep her nursing license. This position constituted a suitable accommodation opportunity for the grievor, and it is perhaps unfortunate that it was placed out of reach by a new medical opinion.

[223] The outstanding issue is whether the grievor should have recourse with respect to her status on the priority register. In argument, her counsel raised the question of whether she was entitled to the broad priority outlined under section 41 of the *PSEA* based on the fact that she had been replaced in her substantive position. In his argument, counsel did not explain how this provision fits with other parts of the statute or what the implications might be for defining the scope of the term "employer" for purposes of the duty to accommodate. Therefore, I do not really have any basis on which I could find that the grievor is or is not entitled to be given priority status under this provision.

[224] The priority register under section 7 of the *Regulations* is a different matter. In the case of that provision, the employer accepted that the grievor was entitled to be placed on the priority list. Whatever the employer's current position is on geographical location as a stated criterion, it did include it, and the grievor became entitled to be notified of employment opportunities according to the priority system under section 7. As I have noted, the grievor did not seek to expand the range of opportunities for which she would be notified and thus perhaps failed to take full advantage of the priority system.

[225] Nonetheless, being listed on the registry was something to which she was entitled under section 7 of the *Regulations*, which means that the discrepancy between the return-to-work date that was set for her, April 12, 2010, and her actual inclusion on the registry, sometime in January 2011, had the effect of abridging the time when the registry could be of any use to her. Although she suggested that she had actually been ready to work in December 2009, and although the January 10, 2010, date was

mentioned by both Mr. Gareau and Ms. Campbell, there was insufficient evidence to establish either of those times as the accurate return-to-work date. I accept that April 12, 2010, was the appropriate date.

[226] It is always difficult to assess whether a lost opportunity would have resulted in any change to subsequent events. Counsel for the employer presented lists that purported to show that in fact no positions during the period from April 2010 to January 2011 could have been the basis for accommodating the grievor. Given the small number of public service positions in Saskatoon for which she might have been qualified, and her reluctance to leave Saskatoon, it is possible that an additional nine months on the registry would have made no difference whatsoever. However, the grievor never had the opportunity to find that out, and the gap between the date chosen as the return-to-work date and her appearance on the registry was never explained.

[227] Therefore, I order that the grievor be reinstated to the priority list under section 7 of the *Regulations* for a period equivalent to that between April 12, 2010, and the date in January 2011 on which she was entered on the list. I will remain seized of this issue for a period of 90 days from the date of this decision to permit the parties to negotiate the terms on which this reinstatement to the priority list will occur.

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

(The Order appears on the next page)

V. Order

[229] The grievance is allowed in part.

[230] The grievance is dismissed with respect to the allegation that the employer failed to meet its duty to accommodate the grievor's disability.

[231] The grievance is allowed with respect to the allegation that the grievor's registration on the priority list under section 7 of the *Regulations* was delayed in error. I order that the grievor be reinstated on the priority register for a period equivalent to that from April 12, 2010, to the date on which she was registered in January 2011.

[232] I remain seized of the grievance for a period of 90 days from the date of this order in the event the parties are unable to agree on the terms of reinstating the grievor to the priority list.

November 10, 2015.

Beth Bilson,
adjudicator