



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

IAN COLIN CAMPBELL

Grievor

and

**TREASURY BOARD
(Canadian Radio and Television Commission)**

Employer

Before: Yvon Tarte, Deputy Chairperson

For the Grievor: No one appearing

For the Employer: Roger Lafrenière, counsel

Heard at Ottawa, Ontario,
February 19, 1996

DECISION

On October 28, 1993, the employment of Ian Colin Campbell as a Senior Regional Financial Analyst (CO-2) with the Canadian Radio and Television Commission (CRTC) was terminated for cause pursuant to paragraph 11(2)(g) of the Financial Administration Act.

The letter of termination dated October 28, 1993, was signed by Keith Spicer, Chairman of the CRTC (Exhibit E-20). It reads as follows:

Since May 1993 you have had the opportunity to decide whether or not you would follow a recognized treatment program for your chronic medical illness which would render you capable of returning to work. In your October 12th and 18th letters to me you stated that you will not follow a treatment program and have asked for more time.

The medical information made available to me from Health Canada is clear. You are "fit with limitations", which means that you are capable of performing your duties only when following a recognized medical treatment designed for your specific chronic medical illness. Your refusal to follow such a treatment program renders you unfit to perform the duties of your position.

This matter has been ongoing since mid-1991. With the position you have taken in your most recent letter to me I do not perceive a willingness on your part to resolve this matter. Therefore, under my authority pursuant to the Financial Administration Act, I am obliged to terminate your employment for cause. Your last day of employment in the Federal Public Service will be Monday, November 1, 1993.

This is an action that I take most reluctantly and only because of your unwillingness to adhere to a prescribed medical treatment program.

You have the right to grieve this decision within 30 working days to me at the final level. The redress procedure allows you to refer this matter to adjudication should you not be satisfied with the response at the final level.

On December 2, 1993, Mr. Campbell presented the following grievance against his termination:

DETAILS OF GRIEVANCE WHERE GRIEVANCE RELATES TO A COLLECTIVE AGREEMENT, AN ARBITRAL AWARD OR AN NJC ADOPTED DOCUMENT, QUOTE ARTICLE(S), CLAUSE(S) OR PARAGRAPH(S)

This grievance is filed for the purpose of requesting the withdrawal of the letter dated October 28, 1993, addressed to Ian Campbell, 10 Cornwall Street, Ottawa, Ontario K1N 7P8 and signed by Keith Spicer and the Federal Public Service employment is requested to be re-instated in such a manner that no break in the employment will have occurred and with full compensation for all lost pay and benefits.

Attachments to this document are an integral part of the document and accordingly the whole is to be considered the grievance filing. In addition, exhibit filings will be made subsequent to the filing of this document and these too are to be considered an integral part of the grievance filing.

The filing of this document is on friday (sic), December 3, 1993. The October 28, 1993 letter referred to above allowed for a "30 working days" time limit for filing, which time limit would expire on friday (sic), December 10, 1993 in accordance with verbal information provided to Ian Campbell by David Biggs of the C.R.T.C..

Exhibits, as referred to above, will be filed during the week ending friday (sic), December 10, 1993. Some of the exhibits, will be in the form of letters addressed to third parties, which letters will request a response or responses from the third parties. It is not anticipated that any of the third parties will have a chance of responding prior to December 10, 1993. Accordingly, additional time will be required after December 10, 1993 for the responses from the third parties to be received, considered, clarified or additional information requested, etc.. These matters will be discussed with David Biggs of the C.R.T.C. during the week ending friday (sic), December 10, 1993.

For the purposes of preparing some of the exhibits referred to above, Ian Campbell would need access to all of the contents of his office, including but not limited to, all of the contents of the data and programs on the computer in his office and such other information as may be included in files (or otherwise) in the Commission or in Commission archives, as well as access to Commission staff and Commissioners for the purposes of consultations. These information requirements

have been very generally expressed. The November 4, 1993 letter (page 2) from David Biggs of C.R.T.C. to Dougald Brown of Nelligan Power indicated that the Commission would not comply with such a request. The Commission's failure to comply with such a request would put Mr. Campbell in the position of being unable to prepare a proper defence to one or more of the allegations that may have already been made in connection with his employment situation or that may be made at a hearing or hearings to consider such matters. Accordingly, notice is given that the failure to provide the required access to information will be one ground on which appeal may be made should the response at the final level, the decision at adjudication or in the courts not be satisfactory.

In a letter from Ian Campbell to David Biggs of C.R.T.C. dated November 1, 1993 it was stated "At this time it would not be my intention to appear for the final level decision hearing, ...". It is confirmed that it is still not Ian Campbell's intention to appear for that hearing.

CORRECTIVE ACTION REQUESTED

The letter dated October 28, 1993 referred to in the first paragraph of "B" above is requested to be withdrawn and the Federal Public Service employment is requested to be reinstated in such a manner that no break in the employment will have occurred and with full compensation for all lost pay and benefits.

Mr. Spicer denied the grievance at the final level of the grievance process on February 22, 1994. He wrote:

I am writing in response to your final level grievance, on your termination for cause from the CRTC. I am aware of the material presented in support of your grievance outlining your active involvement in community organizations. While such activity is to be commended, it does not address the issue at hand: your ability to work at the CRTC.

As I indicated in my letter of October 28, 1993, the medical information made available to us from Health Canada is clear. You are "fit with limitations", which means that you are capable of performing your duties when following a recognized medical treatment designed for your specific chronic medical illness. With the greatest sympathy and patience, we have offered you several opportunities and more than enough time to undertake and follow such a program, which would have rendered you capable of returning to work. Your continued refusal to follow such an

unambiguously prescribed treatment program renders you -- on the medical evidence -- unfit to perform the duties of your position.

In light of your continuing refusal to follow a recognized treatment program I must, with genuine regret, deny your grievance at the final level.

The matter was referred to adjudication on March 17, 1994.

Chronology of Events -- March 17, 1994/February 19, 1996

In view of the fact that the grievor failed to appear at the hearing of his reference to adjudication on February 19, 1996 and considering the unusually long delay between the reference of this matter in March 1994 and the actual hearing in February 1996, it is important to set out the various twists and turns that this file has taken over a period of nearly two years.

At the time of the reference of his grievance to adjudication, Mr. Campbell indicated that he would be represented by counsel whose name was submitted.

The matter was initially set down for hearing from July 11 to July 13, 1994. Whenever a case is set down for hearing by the Board, the parties are advised in writing of the time and place of hearing well in advance. On May 13, 1994, the grievor's counsel wrote to the Board to request that the hearing be re-scheduled to September, 1994, in view of the fact that both he and Mr. Campbell were unavailable on the July dates. Counsel's letter further indicated that the grievor would be outside the country from mid-September to September 28, 1994. The case was therefore reset for hearing on September 5 to 7, 1994.

In mid-May, 1994, counsel for the grievor requested that the hearing be re-scheduled to October 1994 since it appeared that his client, Mr. Campbell, would also be out of the country in early September. On May 19, 1994, the Board proposed to hear the case from October 3 to 5, 1994.

On September 26, 1994, counsel for the grievor advised the Board that he would no longer be representing Mr. Campbell. On September 28, 1994, Mr. Campbell wrote to the Board to confirm that he was no longer represented by counsel and to request that his grievance not be heard on October 3 to 5, 1994. He wrote:

This letter is to advise you that Mr. Dougald E. Brown, Nelligan Power is no longer my representative in matters relating to my employment dispute with the C.R.T.C.. I enclose a copy of my letter to Mr. Brown dated September 26, 1994 informing him of this decision.

I am aware that Case 1. 166-2-25616: I.C. Campbell will be held on October 3 to 5, 1994 at 9:30 a.m. at C.D. Howe Building, 240 Sparks Street, West Tower, 7th Floor, Ottawa, Ontario.

For a number of reasons, I do not believe that the Board can hold a fair hearing of this case at this time. This letter has been prepared without benefit of legal Counsel and accordingly may contain misconceptions, omissions, etc. that may have been corrected had legal Counsel been consulted about this letter. The reasons I believe include: 1. that the C.R.T.C., and various health care professionals (including but not limited to Health and Welfare, Canada health care professionals) have not provided information in their possession (or information held elsewhere but to which they have been made privy) that is apparently directly relevant to the case before the Board; 2. that funding has not been made available for the "I.C. Campbell" side that would enable Counsel and witnesses to be paid for their time; 3. that legal actions to obtain "information" have not been taken in federal and provincial courts (the success of such actions could not be assured, their costs might be high, and the time frames for obtaining results from such actions could not reasonably be estimated); 4. that electronic note-taking (essential in view of the apparent complexities of the case) is not apparently acceptable to the Board (such note-taking could be done if both parties agreed to the arrangements, shared the notes between themselves and the Board, and the party requesting the service agreed to underwrite all costs); 5. that the Board would probably not see fit to conduct its hearing in a "non-continuous" manner as would likely be needed by the "I.C. Campbell" side so as to minimize costs for experts and Counsel (on the spot experts are very much more expensive and less effective than those consulted in their offices and given the time for reflection, research, study of the electronic notes, preparation of interrogatories, preparation of follow-up questions, preparation of rebuttals, etc.) and 6. other

reasons that would become readily apparent were an in-depth review of the "I.C. Campbell" side's needs for the hearing to be undertaken.

Because I believe that the Board cannot hold a fair hearing at this time, I am requesting postponement of the hearing.

By further correspondence dated September 28, 1994, Mr. Campbell requested that his case be referred to mediation. Again the hearing of Mr. Campbell's grievance was postponed and the matter sent to the Board's mediation services.

Attempts at mediation failed. The case was therefore set down for hearing on May 25 and 26, 1995. On April 7, 1995, the employer requested that the matter be postponed since its counsel in this matter had already been scheduled to argue cases in Edmonton during the May time period.

In June, 1995, Mr. Campbell's grievance was then set for hearing on September 28 and 29, 1995. Again, the employer advised the Board that its counsel was not available. The matter was then set down for hearing on October 12 and 13, 1995.

On October 6, 1995, Mr. Campbell requested a further postponement:

I am requesting a postponement of this case. Reasons for the request include: (1) lack of funding at this time; (2) lack of information at this time; (3) apparent major complexities of the case; (4) that an appropriate settlement of the case could be reached through mediation (still underway); (5) other reasons that would become apparent once the case got underway.

I will be out-of-town on October 10 and 11, 1995. I would suggest, however, that no immediate re-scheduling of the case take place.

Mr. Campbell's request was refused by the Secretary of the Board. The grievor was advised to address his request directly to the adjudicator at the commencement of the hearing on October 10, 1995.

The grievor failed to appear on October 10, 1995. Mr. Lafrenière presented a motion that the matter be heard in Mr. Campbell's absence. Somewhat grudgingly I adjourned the hearing and indicated that it would be reset for hearing at which time it

would proceed regardless. On October 10, 1995, this case was again set for hearing on February 19 to 21, 1996.

On January 12, 1996, the grievor presented the Board with a short memorandum and the discussion draft of a letter dated December 14, 1995 in which he reiterates his view that the Board cannot hold a fair hearing if one of the sides has no funds available to it to present its case. This latest correspondence from Mr. Campbell produced the following reply from the employer's counsel:

This will acknowledge receipt of your letter dated January 17, 1996. I have had an opportunity to review with my client the letter you received from the grievor and wish to provide the following comments.

At the last scheduled hearing date of October 10, 1995, I reviewed before Deputy Chairperson Y. Tarte the chronology of this grievance. According to our file, the matter had been referred to adjudication on March 17, 1994 and was initially scheduled to be heard from October 3 to 5, 1994. In a letter to the Board dated September 28, 1994, the grievor raised the issue of "funding" as one of his grounds for seeking a postponement of the hearing. The matter was postponed by consent and the parties agreed to submit the matter to mediation.

Subsequently, these attempts at mediation proved unsuccessful and new hearing dates were set down by the Board, initially in April 1995 and then on September 28 and 29, 1995. Because counsel for the employer was not available, the hearing was rescheduled for October 10 and 11, 1995. I personally spoke to the grievor prior to the hearing to discuss whether a postponement was likely to be sought by him since I had made arrangements to secure the attendance of a medical expert. I was assured that no postponement would be requested. In spite of that, a few days before the hearing was to commence, the grievor sought a further postponement. This was denied by the Board by letter dated October 6, 1995.

On October 10, 1995, the grievor failed to appear. Deputy Chairperson Tarte provided me with a copy of a letter to the Board dated October 6, 1995 in which the grievor was once again requesting a postponement of the hearing. Lack of funding was once more advanced as one of the reasons for his request.

Mr. Tarte reluctantly adjourned the proceedings and ordered that the matter be rescheduled immediately and peremptorily. On that same day, the Board sent out a letter to both parties confirming that the matter would proceed from February 19 to 21, 1996. Three months later, on January 17, 1996, the Board received the latest request for a postponement. Once again, lack of funding is referred to as a ground for seeking a further postponement. The grievor also alludes to the mediation process.

It should be noted that the issue of lack of funding has been raised by the grievor ever since he discharged his lawyer in September 1994. Nothing has changed since that time nor has the grievor indicated how a postponement will benefit him. The Board and the employer have neither the authority, nor an obligation, to provide financial assistance to a grievor.

My client advises me that mediation attempts failed fifteen months ago and that they have no interest in returning to the mediation table. A postponement will not serve any useful purpose in this regard.

Consequently, the employer respectfully requests that the postponement be denied. We also ask that the Board reiterate to the grievor the consequences of failing to appear on February 19, 1996. Should any new representations be made by the grievor, I would appreciate being afforded an opportunity to respond.

A copy of the employer's letter was forwarded to Mr. Campbell on January 26, 1996. The grievor was told by one of the Board's Registry Officers, in unequivocal terms, that the matter would proceed in his absence if he chose not to appear on February 19, 1996:

*This is furtherance to our meeting of **January 23, 1996** and your letter dated **December 14, 1995** concerning the above-cited reference.*

With respect to your claim regarding lack of funds, as I have explained to you previously, you may represent yourself or you may enlist the aid of a representative, including legal counsel. The responsibility for retaining a representative, the cost thereof and other incidental costs rests on each party. The Board has no authority to assume the costs of a party.

*If you seek legal advice, residents of Ontario can now get a half-hour of legal advice, free. This referral service is operated by the Law Society of Upper Canada. The toll-free number, from a 613 area code is **1-800-268-8326**. This*

service operates Monday through Friday from 9:00 to 5:00 p.m.

Further to your reference of resuming the mediation process, Mr. Lafrenière, in his letter of **January 18, 1996** clearly indicates that the employer has no interest in returning to the mediation table.

With regards to the Board ... reviewing its hearing procedures to determine where procedural changes need to be made to ensure the fairness of the process; and in other areas that the Board can be expected to be aware of ... the Board in administering the Public Service Staff Relations Act and the Regulations and Rules of Procedure enacted thereunder is required to do so in a fair, open and impartial manner.

Further to my letter of **January 22, 1996**, let me again reiterate that any further representations with respect to this matter should be addressed to the adjudicator selected to hear this grievance, which will proceed as scheduled on **February 19 to 21, 1996 in Ottawa**.

As enunciated to you at our last meeting of **January 23, 1996**, the adjudicator did indicate that you must be prepared to proceed on the resumption of this matter as the case will proceed regardless. Should you not appear, the adjudicator will dispose of the matter on the evidence and representations placed at the hearing without further notice to you.

On February 19, 1996, Mr. Campbell failed to appear at the appointed time and place for the hearing of his grievance. I allowed the employer to present its evidence in the absence of the grievor. Mr. Campbell was given every reasonable opportunity to appear, answer the employer's case and if necessary present his own. His refusal to attend at the hearing cannot be used to block the system in such a way that the matter can be held indefinitely in abeyance at his whim and discretion.

THE EVIDENCE

At the time of his termination, Mr. Campbell was a Senior Regional Financial Analyst (CO-2). His job description which generally requires the analysis of documents tendered to the CRTC by applicants and existing licensees was filed as Exhibit E-1.

Mr. Doug Wilson, now Senior Financial Policy Analyst at the CRTC, has known the grievor since 1980. Mr. Wilson was Mr. Campbell's supervisor from 1990 until 1993.

In late 1984, according to Mr. Wilson, the grievor had a breakdown as a result of which he disappeared from the office for a period of one week. A deterioration of Mr. Campbell's conduct and performance at work prompted Mr. Wilson to highlight his concerns in a memorandum to Mr. Horan, the Director General of Personnel at the CRTC (Exhibit E-2) as well as in a memorandum to file (Exhibit E-3) both dated April 11, 1985. Mr. Wilson stressed the fact that until the mid 1980's, the grievor received treatment at the Royal Ottawa Hospital for a period of approximately three months. He was placed on medication. Mr. Campbell was told that he would have to take his medication indefinitely. After his return to work in late November, 1985, Mr. Campbell resumed his work in a satisfactory manner until early 1990 when the problems which had occurred in 1984-85, resurfaced.

In order to understand what was happening, Mr. Wilson spoke to Mr. Wooles, a friend of the grievor, who told him that Mr. Campbell had stopped taking his medication.

In May, 1991, Mr. Wilson wrote a lengthy memorandum to Mr. Robert Tyre, then Director General, Industry Analysis at the CRTC, to point out the problems being encountered. Mr. Campbell was becoming more and more insubordinate.

Between May and October, 1991, various disciplinary sanctions, going from a letter of reprimand to a five-day suspension, were imposed on Mr. Campbell. The imposition of these disciplinary sanctions did not seem to have a salutary effect on Mr. Campbell's job performance.

In October, 1991, special terms and conditions of employment were imposed on Mr. Campbell (Exhibit E-8). Mr. Wilson testified that although this procedure was unusual, the gravity of the situation called for drastic measures.

On December 19, 1991, the employer imposed a ten-day suspension on Mr. Campbell for incidents amounting to a serious breach of his new terms and conditions of employment. In March, April and May, 1992, the continued behavioural

and performance problems of Mr. Campbell (Exhibit E-11) prompted Mr. Wilson to discuss with Mr. Tyre the possibility that the grievor be released under section 31 of the Public Service Employment Act as it then was.

Around this time, the employer became aware that Mr. Campbell had retained the service of counsel to represent him in his dealings with the employer.

On May 4, 1992, Mr. Campbell was advised by Mr. Tyre (Exhibit E-12) that he was being placed on leave without pay, and was denied access to the workplace until such time as he satisfied the following conditions:

1. *You will contact the Public Service Health Clinic run by National Health and Welfare (954-6583) and make an appointment and be medically and psychologically evaluated;*

or

2. *You will contact Dr. Lloyd-Jones directly (954-6579) and make such arrangements and undergo such evaluations as she and Dr. Carrier deem appropriate, to enable them to make an evaluation of your fitness to return to the workplace.*

*Until such time as NHW has made its evaluation and deemed you fit to return to work you are to stay out of any and all CRTC premises. You will be deemed to be on **leave without pay** for this period of time. However, should you wish to request sick leave with pay and this is accompanied by a medical certificate it will be favourable received.*

Should NHW deem you to be fit to return to work, either now or in the future, the matter of your absence without leave and other appropriate administrative measures will be addressed.

*Future contact with the Commission, **until this matter is resolved to our satisfaction**, will be through your lawyer Mr. D. Brown. He can contact Mr. D. Biggs, Chief, Staff Relations and Security at 997-4294.*

In mid-June 1992, at the request of the grievor's counsel and with the approval of Doctors from National Health and Welfare (NHW), Mr. Campbell was placed on certified sick leave as of May 4, 1992. Dr. Carrière (NHW) expressed the view that Mr. Campbell was suffering from psychiatric episodes. Mr. Campbell's counsel

advised the employer his client was ill. In early October, 1992, Mr. Biggs, Chief, Staff Relations and Security at the CRTC, wrote to Mr. Brown, the grievor's counsel, to indicate that Mr. Campbell had not yet provided the necessary medical assessment of his fitness to work (Exhibit E-22). The grievor was also advised that his sick leave would be liquidated by mid-November if he continued to use it. Finally, mention was made of the fact that Mr. Campbell was in a position to apply for Disability Insurance and possibly C.P.P.

On December 15, 1992, Mr. Biggs wrote to Mr. Brown (Exhibit E-23):

In my previous letter to you regarding Mr. Ian Campbell, a time of October 23, 1992 was set to comply with certain conditions. As I have not yet received a response from Mr. Campbell to that letter I must assume that one is not forthcoming.

Accordingly, by December 31, 1992 Mr. Campbell is to provide a letter from an attending physician declaring him fit. Should he be declared to be fit, he will provide a release to the NHW's Public Service Health Clinic's doctors to liaise with his physicians. It will be the NHW physicians who will determine if Mr. Campbell is capable of performing his duties.

If he refuses to sign a release or provide a letter declaring him fit, he will undergo a complete psychological testing by the NHW physicians. An appointment has been made for Mr. Campbell for January 24, 1992 at 3:00 p.m. with Dr. Carre, Suite 1602, 40 The Driveway.

Should Mr. Campbell fail to respond by December 31, 1992 the Department feels that it would have no other recourse but to take appropriate actions.

By January, 1993, Mr. Campbell had filed several grievances with his employer. The grievor however appeared in no hurry to resolve these matters, nor was he accepting to submit to a medical examination by Doctors at NHW. On January 11, 1993, both the grievor and his counsel were advised (Exhibits E-24, E-25) that Mr. Campbell would be deemed to have abandoned his position if he failed to appear for an appointment with Dr. Carre of NHW in the afternoon of January 14, 1993. Mr. Biggs explained that they were now trying this avenue to force a medical examination since nothing else seemed to work.

On the day set for the appointment, Mr. Brown wrote to the employer (Exhibit E-26) indicating that Mr. Campbell had provided Dr. Carre with a psychological assessment which had been prepared by a Dr. Taylor at the grievor's request. Mr. Brown also indicated that his client was only prepared to be examined by Dr. Carre in the presence of Dr. Sendbuehler, the grievor's treating physician.

On January 21, 1993, Dr. Mohanna, the Medical Director, Occupational and Environmental Health Services, Health and Welfare Canada (HWC) advised the employer that Mr. Campbell's condition that his treating physician be present during an examination at HWC, was unacceptable.

In early February, 1993, Mr. Biggs advised Mr. Brown (Exhibit E-30) and Mr. Campbell (Exhibit E-31) that the employer was prepared to make one final attempt to secure Mr. Campbell's attendance for a medical examination. The appointment was set for February 17, 1993. Failure to attend, the employer noted, would force it to take appropriate administrative actions.

On February 12, 1993, Mr. Brown wrote the following letter to Mr. Biggs (Exhibit E-32):

I am writing further to your letter to me of February 3rd, 1993, and your letter to Mr. Campbell dated February 8th, 1993.

With respect first to your letter of February 8th, 1993, to Mr. Campbell, I do not accept that Mr. Campbell imposed conditions which were deemed unacceptable to the examining MHW physician.

In your letter to me dated December 15th, 1992, you requested that Mr. Campbell provide a letter declaring him fit to work and a release authorizing physicians in the National Health & Welfare Public Service Health Clinic to liaise with Mr. Campbell's physicians.

On January 12th, 1993, Mr. Campbell provided Dr. Carre, the psychiatrist for the Department of National Health & Welfare, with a report prepared by Dr. Neville A. Taylor. That report is thorough and detailed. Dr. Taylor concludes that Mr. Campbell shows no signs of impairment in his ability to perform the requirements of his job. I consider that Dr. Taylor's detailed report and assessment comply with your

request that Mr. Campbell provide a certificate declaring him fit to work.

I enclose with this letter a release signed by Mr. Campbell in the form requested by you. I consider that this satisfies the second requirement established by the Department.

In your letter dated December 15th, 1992, you state that Mr. Campbell would be required to undergo complete psychological testing by NHW physicians only in the event that he refuses to sign a release or provide a letter requiring him fit. Inasmuch as he has now provided you with a signed release and provided a letter declaring him fit, there is no basis for requiring Mr. Campbell to attend an appointment with Dr. Carre on February 17th, 1993 and Mr. Campbell will accordingly not be attending that appointment.

With respect to the outstanding grievances, I am prepared to waive a hearing at the final level and would ask that the Department issue a final reply to all the grievances forthwith, following which we will refer the grievances to adjudication as appropriate.

I am deeply concerned at the threat in your letter dated February 3rd, 1993 to issue a declaration that Mr. Campbell has abandoned his position. In order to protect Mr. Campbell's legal position and to be able to demonstrate conclusively in any future legal proceedings that Mr. Campbell has not abandoned his position, I have instructed him to report for work on Tuesday, February 16th, 1993 at 10:00 a.m. If the Department intends to maintain its current position of denying Mr. Campbell entry to the workplace, I would ask you to have a senior officer of the Department present at the security desk and that this position be communicated to Mr. Campbell at that time. I will arrange to have one of our articling students attend with Mr. Campbell as a witness.

Mr. Biggs then contacted Dr. Mohanna on February 16, 1993, (Exhibit E-49) to inquire if Dr. Carre could make an assessment of Mr. Campbell by referring to Dr. Taylor's assessment and by talking to Dr. Sendbuehler but without actually examining Mr. Campbell. On March 15, 1993, Mr. Brown inquired as to the employer's position on his latest letter and further indicated that his client was ready and willing to work (Exhibit E-33).

On March 24, 1993, Dr. Carre advised Dr. Mohanna (Exhibit E-40) that, in his opinion, it would "*be unethical (...) to give an opinion without personally meeting the examinee*".

In view of Dr. Carre's position and the grievor's refusal to attend alone for a medical examination, Dr. Mohanna decided to refer the matter to another psychiatrist, Dr. Browne, who agreed to give an assessment on the basis of the contents of the grievor's file. That file contained amongst other documents: 1) a letter from Dr. Sendbuehler to Dr. Carrière dated June 15, 1992, (Exhibit E-41) in which the grievor is said to suffer from paranoia; 2) Dr. Taylor's assessment (supra) dated January 5, 1993 (Exhibit E-42); 3) a June, 1991, memorandum from Dr. Carrière to Dr. Mohanna (Exhibit E-43) and 4) a 1985 memorandum concerning Mr. Campbell written by Dr. Bennett, a consulting psychiatrist for HWC (Exhibit E-44).

Dr. Taylor's assessment of Mr. Campbell (Exhibit E-42) concludes:

(...)

The MMPI profile is within normal limits. Measures of symptomatology indicate that, at the present time, he is not experiencing significant levels of either anxiety or depression. The overall profile pattern suggests that this lack of subjective distress is achieved through repression and a lack of insight. Under stress, he would tend to develop physical symptoms and/or tend to blame others.

Results from the Edwards Personal Preference Record (EPPS) suggest a marked degree of inner conflict. On the one hand, he very much wants to be able to make his own decisions and act on his own without interference. He would also like to be in a leadership position where he could make group decisions and influence the activities of others. On the other hand, the profile indicates a strong need for recognition and acceptance by others, particularly by those in authority. Associated with this need is a strong desire to be cared for and treated with kindness. This test agrees with the others in indicating little insight into this conflict or its' underlying causes. It is expected that his behaviour would oscillate between deference and opposition with little real understanding of the reasons for either.

Mr. Campbell is adequately socialized; he is generally polite, considerate and willing to devote time to helping others, (e.g. his involvement as Secretary of the National Clan

Campbell Society). However, test findings suggest that he is cautious in his dealings with others and finds it difficult to establish close and intimate relationships.

Under stress, he can become confused and disoriented by the intensity of his emotions. At such times, his behaviour could become impulsive and poorly organized. For the most part, however, his feelings are well-controlled, and he responds to his environment in an essentially intellectual manner. When he becomes angry, he is most likely to resort to legalistic measures. Neither the test findings nor his personal history indicate a likelihood of violence.

OBSERVATIONS AND CONCLUSIONS

1. **Schizophrenia:** Test results and clinical interviews do not show evidence of bizarre thought content, formal thought disorder or any form of hallucination. He shows a clear sense of personal identity and is decidedly purposeful in pursuing what he considers to be right. Affect is normally varied and appropriate to topics under discussion. Taken together, these findings clearly counter-indicate a diagnosis of schizophrenia.
2. **Psychosis:** Mr. Campbell has a history made up of periods of fully adequate functioning, interspersed with briefer periods of dysfunction. Dysfunctional periods are known to have occurred in 1963-64 (possibly in 1974), 1977-78, 1980, 1985 and 1991-92. The reasons for and the seriousness of each of these occurrences is not entirely clear. However, there seems to be agreement among people who knew him in 1985 that he was suffering from some form of psychosis at that time.
3. **Delusions:** During the last 10 years, Mr. Campbell's thinking and actions have been based upon the fixed premise that he is a reasonable and cooperative person, whose current problems are due entirely to the unreasonable and persecutory actions of his employers. The premise is "fixed" in the sense that he has been unable/unwilling to entertain the alternative idea that at least some of his problems may have been due to misperceptions and/or inappropriate behaviour on his part. Thus, all day-to-day events, in any way connected to his relationship with his employers, have been interpreted in such a way as to ensure conformity with the fixed idea of his own correctness. He has been very detailed when presenting arguments in support of his position. When forced to confront ideas with which he did not agree, he either

became vague or inattentive to detail or his ignored the contrary evidence altogether.

Up to the present time, Mr. Campbell's beliefs concerning the manner in which he is being "persecuted" are so extreme as to be beyond the bounds of reasonable credibility. They are also impervious to any proof or evidence to the contrary. As such, they constitute a fixed (paranoid) delusional system.

- 4. Neurological Disorder:** *Dr. Stoddart's evaluation has raised the possibility of temporal lobe epilepsy. Such a diagnosis could explain both the paranoid ideation seen in the clinical assessment and the periodic decompensation evident in his history. Further neurological testing is being carried out in an attempt to resolve this question.*

DIAGNOSIS

On the basis of the available data, and in the absence of clear evidence of an organic condition, it is possible to make a provisional diagnosis of:

Delusional (Paranoid) Disorder, Persecutory Type
(DSM-III-R, No. 297.10)

If evidence of epilepsy can be clearly established, this diagnosis may be revised to Organic Delusional Syndrome.

SUITABILITY FOR WORK

Mr. Campbell is an intelligent, well-educated man who shows no signs of impairment in his ability to perform the technical requirements of his job. However, his delusions concerning the motives and actions of his employers have clearly affected his judgement when it comes to the manner in which he carries out his duties. If he is able to adopt a more conciliatory approach and refrain from arbitrary and unauthorized actions, there is no reason why he cannot become the valued employee that he has been in the past. I understand that Mr. Campbell does, in fact, wish to return to work at this time.

RECOMMENDATIONS

- 1. Medication:** *The possible benefits of medication should be assessed by a psychiatrist. In making this assessment, it should be noted that Mr. Campbell is not*

currently showing signs of anxiety, mood disorder or schizophrenic illness.

2. ***Psychotherapy:*** *It is believed that Mr. Campbell would profit from supportive psychotherapy aimed at helping him to: 1) re-examine his interpretations of the actions of others; and 2) re-assess the costs and benefits to himself of his actions. It would be essential that the therapist should be someone he respects and trusts even if he does not agree with him.*

It has been a genuine pleasure working with Mr. Campbell. If I can provide additional information or clarification of points made in this report, please contact me.

On April 13, 1993, Mr. Campbell's eleven grievances were referred to adjudication. All references were eventually withdrawn by Mr. Campbell the day before they were set for hearing in September, 1993.

Following a review of the grievor's file, Dr. Browne advised Dr. Mohanna on April 15, 1993, that he believed Mr. Campbell to suffer from a "*major psychiatric disorder*" which required ongoing treatment (Exhibit E-45).

Dr. Mohanna then advised the employer on April 22, 1993 (Exhibit E-21) that the grievor "*should be considered fit with limitations as long as he undergoes treatment indefinitely*" and that Mr. Campbell "*should be considered unfit for work if he does not follow treatment*".

Mr. Biggs wrote to Mr. Brown on May 3, 1993, (Exhibit E-35) to inform that the employer was prepared to accept Mr. Campbell's return to work "*upon receipt of a clear written statement that he is undergoing treatment for his chronic medical condition*". The grievor was given seven working days to produce the statement failing which the employer would commence action to have him released from the Public Service.

Mr. Brown replied on May 7, 1993, (Exhibit E-36) as follows:

I acknowledge receipt of your letter dated May 3rd, 1993.

Our position is that Mr. Campbell is fit to work. We have gone to considerable lengths and Mr. Campbell has been put to considerable expense in an effort to convince the CRTC of his fitness. I simply cannot understand why the CRTC would

not even allow him a trial period to demonstrate his fitness. It has long been my belief that Mr. Campbell has been stigmatized in the eyes of the Department as a result of his hospitalization many years ago.

*The requirement that Mr. Campbell submit to unspecified treatment for an indefinite period of time is unreasonable. Neither Dr. Mohanna nor your psychiatric consultant have specified the treatment which they consider Mr. Campbell should pursue on an indefinite basis. As you are aware, in order to find out the basis for the recommendation made by the psychiatric consultant who reviewed Mr. Campbell's file, it is necessary to proceed with a formal request under the **Privacy Act**. At a minimum, it will require 30 days to obtain production of the psychiatric consultant's report. In spite of this, you have seen fit to provide Mr. Campbell with only 7 working days to confirm that he will undergo indefinite treatment.*

I believe that on any dispassionate and objective review of this entire matter, the Department's position will be seen as an overreaction to a number of relatively trivial incidents, as a result of which the Department has simply jumped to the conclusion that Mr. Campbell is suffering from debilitating mental illness. I have no hesitation in saying that if Mr. Campbell were suffering from some sort of self-induced disability such as alcoholism or drug abuse, he would not have been dealt with in the manner in which he has been treated by the Department. I feel that if Mr. Campbell's managers were prepared to make even minimal efforts at accommodating him, he would be a productive and valued employee.

Despite our efforts to resolve Mr. Campbell's situation in a cooperative manner, we have now been put in the position where Mr. Campbell's fitness will be determined in an adversarial proceeding. In addition, we will have to take vigorous steps to enforce Mr. Campbell's claim for lost wages since May 4th, 1992, when Mr. Campbell was barred from the workplace.

In the meantime, could you please provide me with some confirmation as to the present status of Mr. Campbell's benefit coverage. I want to ensure that his benefits continue in good standing even if it is necessary for us to pay the premiums until his employment status is resolved.

On May 11, 1993, Mr. Biggs replied to Mr. Brown (Exhibit E-37) indicating that the employer was prepared to entertain a reasonable request for postponement. With respect to treatment for Mr. Campbell, the employer stated that it would accept any treatment that satisfied HWC.

Four months later on September 14, 1993, Mr. Tyre wrote to Mr. Brown requiring a decision on the grievor's intentions prior to September 28, 1993 (Exhibit E-13). That letter read in part:

In addition, I require an answer by September 28, 1993 on whether Mr. Campbell chooses to return to work while following an appropriate treatment for his chronic (sic) illness. If yes, please inform Mr. Campbell that he will submit to Dr. S. Mohanna, Director, Public Service Health Clinic, 301 Elgin Street, Ottawa, Ontario, K1L 0L3, the program of treatment he will follow and NH&W will review and determine its acceptability. If Mr. Campbell does not wish to return to work then we are available to assist him in applying for a medical retirement.

Mr. Campbell wrote to Mr. Spicer on September 28, 1993, requesting "whatever time is necessary to resolve medical issues involved in this labour-management dispute". (Exhibit E-15)

On the same day, the employer advised the grievor, through his counsel, that the matter would not be well served by further delays (Exhibit E-16).

On October 4, 1993, Mr. Spicer wrote to Mr. Campbell (Exhibit E-17) giving him another chance to meet the employer's requirements:

This is in response to your letter of September 28, 1993, wherein you request "whatever time is necessary to resolve the medical issues involved in this labour-management dispute".

I have read the documents you have provided and made myself aware of the complete file. I am disturbed that this matter has been unresolved since May 1991 and would like to see a resolution. The information provided to the Commission by NH&W regarding your chronic medical condition is clear: you are fit, with limitations, and could perform your work satisfactorily if following a prescribed and approved treatment program.

May I confirm again the Commission's eagerness to have you back in the best of health. Therefore, I am asking you to advise us before 4:00 p.m., Tuesday, October 12, 1993, of whether or not you have decided to follow a treatment program that would be found acceptable to NH&W.

I do not see the value of further delay and hope to bring this matter to a swift and amicable resolution. Therefore, I ask you to consider this matter seriously and respond affirmatively. Our goal, which I am sure you share, is to have you back on the job as soon as possible as a healthy and productive colleague.

On October 12, 1993, Mr. Brown transmitted his client's reply addressed to Mr. Spicer and dated October 8, 1993 (Exhibit E-18):

Last week I wrote you a very short letter (with attachments) in the hope that you would intervene in a very complex labour-management dispute between myself and the Commission. I thank you for your quick, very kind and warm response in the letter I received the day before yesterday.

I have now ruled out, at this time, any possibility of my following a treatment program that would be found acceptable to NH&W. In my opinion, NH&W has provided information to the Commission that I believe will be found to be erroneous. Accordingly, should the Commission decide to act on that information, legal consequences would flow.

I think that you should also know that the legal consequences of the termination of my employment could be significant both for the CRTC, the employer Treasury Board and for some of your and my colleagues. The CRTC, with its very light workload on the broadcasting side, is not significantly inconvenienced by my current unavailability to perform the functions of my Senior Financial Analyst's position. Should my employment be terminated for cause, as has been proposed in earlier Commission correspondence, I do not believe that I could expect to secure a comparable or better position in the federal government. The private sector also would want to know about my previous employment track record were I to apply for a position in industry or education. Legal action against the CRTC and others would be the most attractive option that I believe I would have. I think that the CRTC would be very unwise to put my back up against what might be termed a legal wall. I think that the CRTC can very well afford to wait until the medical matters are resolved.

Most people consider one's residence to be the most valuable asset that the average person can claim to own during their lifetime. I suggest that the right to receive regular monthly income in a secure employment situation far far outweighs the value of one's residence, particularly in these troubled economic times. My calculations indicate (disregarding the effects of inflation and normal salary increases) I would expect to receive a little over \$1.1 million in salary income before my presently planned retirement date. When this figure is added to potential litigation costs as well as other amounts that I would seek as tort damages, the potential liability to those I would propose to sue runs high. I think that the CRTC can very well afford to wait until the medical matters are resolved.

The value of further delay is that matters will hopefully be brought to an amicable resolution, significantly more quickly than were recourse made to litigation. My goal too is to be back on the job as soon as possible as a healthy and productive colleague, without recourse to litigation, and with no ill feelings towards any of my colleagues, either on their part or on my part.

In view of the grievor's refusal to undergo any treatment acceptable to HWC, Mr. Tyre decided to recommend Mr. Campbell's termination for cause on October 28, 1993 (Exhibit E-19). This recommendation was made with some reluctance since Mr. Campbell had, in the past, been a productive and valuable employee. Mr. Tyre repeated Dr. Mohanna's view that the grievor's refusal to follow a treatment program acceptable to HWC rendered him incapable of performing his job. It was Mr. Tyre's view that Mr. Campbell's "*medical condition made him ungovernable*".

Mr. Spicer terminated Mr. Campbell's employment for cause on October 28, 1993 (Exhibit E-20) (supra). Dr. Mahonna testified that, in his opinion, Mr. Campbell needs anti-psychotic medication in order to function properly at work. The nature and strength of that medication can only be determined through testing and interaction with the grievor. In Dr. Mohanna's opinion, Mr. Campbell was unfit for work at the time of his termination.

ARGUMENTS

In view of the grievor's absence during these proceedings, I suggested to Mr. Lafrenière that written arguments might be appropriate in this case since they could be forwarded to Mr. Campbell who would thus be given an ultimate possibility

of response. The employer submitted the following written arguments which were transmitted to the grievor for reply.

As requested by Mr. Tarte at the hearing of February 19, 1996, please find the following written submissions of the employer.

FACTS

The facts are not in dispute. Despite the failure of the grievor to appear at his own hearing, the employer called four witnesses and introduced through them forty-nine (49) exhibits. The employer called Doug Wilson, Robert Tyre, David Biggs and Dr. Samy Mohanna.

On October 28, 1993, the grievor's employment as a financial analyst with the Canadian Radio-television and Telecommunications Commission was terminated for cause pursuant to paragraph 11(2)(g) of the Financial Administration Act. The termination took effect on November 1, 1993. (Exhibit E-20). The letter of termination refers to the grievor's refusal to follow a medical program, thereby rendering him unfit to perform the duties of his position. It also indicates that this matter had been on-going since mid-1991.

The employer called Mr. Wilson as a witness to provide a chronology of events which transpired all the way back to 1985. In February 1991, problems were noted by Mr. Wilson, primarily involving the refusal of the grievor to comply with instructions (Exhibit E-4). These problems continued (Exhibits E-5 to E-12) and resulted in the grievor receiving progressively greater disciplinary suspensions up to ten (10) days on December 19, 1991. Mr. Wilson testified that the grievor's behaviour did not change, but actually deteriorated subsequently. He suspected that the problems were medical in nature because of the grievor's past medical history. The problems continued until May 4, 1992 at which point the grievor was denied access to the workplace pending receipt of a certificate of fitness from Health Canada.

The evidence discloses that the employer attempted through various means and on numerous occasions to have the grievor address his medical problems. At one point, the employer received a letter from Health Canada declaring the grievor fit with limitations. The limitations, testified to by Dr. Mohanna, were that the grievor follow a recognized treatment designed for his chronic medical illness (Exhibit E-21). The grievor's own medical experts recommend treatment (Exhibits E-41 and E-42). It should be noted that for

a period of almost five years, May 4, 1991 (date the employer denied the grievor access to the workplace) to February 19, 1996 (date of the adjudication hearing), there is no evidence that the grievor ever agreed to comply with this requirement. The evidence suggests the contrary (Exhibits E-41 and E-43).

The letter of recommendation to terminate the grievor's employment prepared by Mr. Tyre succinctly states the facts considered by the employer and reaching its decision (Exhibit E-19).

ARGUMENT

The termination of Mr. Campbell's employment was clearly for cause. The evidence demonstrates that the grievor was unable to work in May 1991. There was at the time the decision to terminate was made, and there continues to be, no reasonable prospect that the grievor would return to work.

The employer was faced with an identical dilemma in the case of William c. Funnell and Treasury Board (Department of Justice), PSSRB File No. (166-2-25762), August 18, 1995, Y. Tarte. On the one hand, the employer wants the grievor to take treatment to allow him to return to work. On the other hand, the employer has no means to compel the grievor to be treated, with the exception of warnings of termination.

The grievor's problems go back to 1985. His medical diagnosis is that he suffers from a delusional disorder which requires treatment. Unfortunately, the very illness which requires treatment prevents the grievor from recognizing his affliction.

The grievor was warned on many occasions that his bizarre behaviour at the workplace, although due to his illness, would not be tolerated. He was given progressive discipline to warn him of the potential consequences should he fail to address his medical problem. The employer sought throughout to provide assistance to the grievor. They referred him to Health Canada in a failed attempt to have him come to terms with his illness. The employer also showed great patience in allowing the grievor over two years to take tangible steps.

Unlike the situation in Funnell, supra, Mr. Campbell has never accepted to resume taking his medication. This is certainly unfortunate, however the employer cannot bear the blame for the grievor's misfortune. Please also refer to the decision in Michael J. McCormick v. Treasury Board (Transport Canada), PSSRB File No. 166-2-26274, September 18, 1995, Y. Tarte.

We respectfully request that the grievance be dismissed.

A copy of the employer's written submissions were forwarded to Mr. Campbell on March 18, 1996. The grievor was directed to file his response by no later than April 2, 1996.

On April 2, 1996, Mr. Campbell advised the Board that personal problems prevented him from filing his submissions on time. He asked to be given until April 23, 1996, to present his arguments in response to the employer's case.

On April 3, 1996, Mr. Campbell was advised in writing that he had until the close of business (16 h 00) on April 23, 1996, to submit his written response in this case. He was also told that this matter would likely be decided without the benefit of his comments, should he fail to meet the April 23rd deadline.

On April 22, 1996, Mr. Campbell provided the Board with a handwritten note indicating his decision not to provide a written response. He also expressed an interest in discussing appeal procedures should the Board issue any final decision in this case.

REASONS FOR DECISION

The evidence shows that Mr. Campbell was unfit to work on October 28, 1993. According to Dr. Taylor, the grievor's own psychologist, Mr. Campbell is known to have suffered periods of dysfunction in 1963-1964, possibly in 1974, in 1977, 1978, 1980, 1985 and 1991-1992.

It is also clear that Mr. Campbell has, since 1991, been unwilling to cooperate with his employer to find a suitable solution that would permit his return to work. It is unfortunate that the psychiatric disorder which afflicts him seems to prevent him from accepting treatment and moves him to take on an antagonistic and inappropriate behaviour towards his employer. The employer in this case has been extremely patient and humane in dealing with Mr. Campbell who could only see persecution and mistreatment.

An employer who has serious reasons to believe that the physical or mental condition of an employee is such that the employee cannot adequately perform the

duties of his or her position or who has reason to believe that the condition of the employee may affect the health and security of others, may require that the employee submit to a physical or psychiatric medical examination by a specialist of its choice as determined by National Health and Welfare Canada. In such circumstances, an employee who refuses to abide by the employer's request, does so at his or her risk and peril. The statutory framework in such matters is clear. The Minister of National Health and Welfare Canada is required by statute (The Department of National Health and Welfare Act) to promote and conserve the health of public servants and other Government employees.

To this day Mr. Campbell appears to be incapable of properly dealing with his chronic illness. Two years after his termination, the grievor continues to refuse to accept the reasonable request of his employer to follow a treatment program that would be acceptable to National Health and Welfare Canada.

At the time of his termination, there was no reasonable prospect that Mr. Campbell would be capable of performing the duties of his position in the foreseeable future. On October 28, 1993, the employer had every right to terminate the grievor's employment.

Accordingly, for all these reasons, Mr. Campbell's grievance is denied.

**Yvon Tarte,
Deputy Chairperson**

OTTAWA, May 13, 1996.