

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

Dr. James A. Seager

Grievor

and

TREASURY BOARD
(Solicitor General Canada - Correctional Service)

Employer

Before: Ken Norman, Board Member

For the Grievor: James Bart, The Professional Institute of the Public Service of
Canada

For the Employer: Ronald Snyder, Counsel

Heard at Saskatoon, Manitoba,
December 14 to 18, 1998

DECISION

Dr. James A. Seager, Chief of the Psychology Department, Saskatchewan Penitentiary, was discharged by Warden Heather Bergen on December 15, 1997. The termination letter stakes out the following grounds

*It is clear to me that **serious misconduct** has occurred, **which** warrants termination for cause from the Correctional Service of Canada. The misconduct **includes** findings of **sexual harassment**, when you exceeded the boundaries of your position by relating personal sexual experiences which left staff feeling embarrassed, uncomfortable and abused. The misconduct also includes findings of **personal harassment** in that your treatment of staff varied depending on their educational level, and the nature of your relationship with them, which resulted in some staff feeling isolated and devalued. Your **comments** with respect to the Native Offenders and the Elders were **derogatory and offensive**.*

[Emphasis added]

I have emphasized Warden Bergen's categories of serious misconduct because, once I have outlined the run-up of investigative and consultative processes, I propose to deal with them serially. I have chosen this course in an effort to manage the adjudication of five full days of evidence, from 17 witnesses, which ranged through many events over the entire period of Dr. Seager's time in the Psychology Department at Saskatchewan Penitentiary - that is, from January 17, 1994 until his suspension and discharge nearly four years later.

Because of what hangs in the balance for Dr. Seager, in terms of professional reputation and career, as a consequence of his summary discharge and due to the nature of the harassing misconduct for which he has been condemned, my task is to determine whether the employer has presented proof of just cause for summary dismissal that is "clear and convincing and based on cogent evidence". See, *Re Bernstein and College of Physicians and Surgeons of Ontario* (1977), 15 O.R. (2d) 447. (Div. Ct., O'Leary, Steele and Garrett, JJ); *Re Board of School Trustees (Chilliwack) and Chilliwack Teachers' Association* (1990), 16 L.A.C. (4th) 94 (H.A. Hope, Q.C.) & *Satwinder Samra and Treasury Board (Indian and Northern Affairs Canada)* (PSSRB File No. 166-2-26543), (Vice-Chairman L.M. Tenace) [1996] C.P.S.S.R.B. No. 70, (1996) 30 PSSRB Decisions 11 (Digest). Against this standard, which as Vice-Chairman Tenace put it at para. 87 of *Samra*, "...requires more than a mere preponderance of proof" because, as he notes at para. 88, quoting *Gorsky's Evidence and*

Procedure in Canadian Labour Arbitration, "...the more unusual or objectionable some conduct is, the more convincing the proof of it must be before we believe it occurred.", I will divide this adjudication into segments in an effort to focus on this standard of proof, category-by-category, allegation-by-allegation.

Investigative and Consultative Processes

On August 4, 1997 Teresa Szmukier, Psychologist, Saskatchewan Penitentiary submitted a 13 page letter to Assistant Warden T.V. Taylor accusing Chief Psychologist James A. Seager of many things.. On August 22, 1997 Deputy Commissioner Remi Gobeil mandated Rob Tropak and Melanie Penner to conduct an harassment investigation . This process began on September 10 and ran until October 28. A report, confining itself to sexual harassment, was submitted on November 7, 1997 covering allegations and responses dating from January of 1996 (hereafter referred to as the *Tropak/Penner Report*). During the course of the investigation a list of "inappropriate comments" to persons other than Teresa Szmukier alleged to have been made by Dr. Seager was drawn up by the investigators and submitted to Warden Bergen. On October 10 she advised Dr. Seager that the sexual harassment investigation had revealed that "... you have used personal accounts of sexual behaviour and/or sexual fantasies when speaking to at least three staff at the Treatment Unit (examples attached)" and suspended him without pay pending the conclusion of a further investigation.

On October 20 Warden Bergen mandated Deputy Warden Brenda LePage and Senior Project Officer Barry Read to determine whether inappropriate comments were made to Linda Coombs, Debbie Taylor, Judy Unruh and other staff members. A report on the inappropriate comments was filed on November 3 (hereafter referred to as the *LePage/Read Report*).. This report raised the third category of inappropriate comments concerning Native Offenders and an Elder associated with the Aboriginal Sex Offender Program. On the question of whether the comments found by the investigators to have been made by Dr. Seager were unprofessional Warden Bergen sought and received opinions from Dr. Tim Leis, then Director of Programs and Operations at the Regional Psychiatric Centre in Saskatoon and Dr. Vince Roper, Senior Psychologist at Edmonton Max. By letters of November 12 and 16 respectively, they provided their opinions. (E-5 & E-7) On November 20 notice was provided to Dr. Seager of a disciplinary hearing to be conducted by the Warden on December 4 into "...allegations of harassment made by Ms. Teresa Szmukier and to review the disciplinary

investigation into allegations of harassment made by Ms. Debbie Taylor, Ms. Linda Coombs and Ms. Judy Unruh."

Sexual Harassment

Teresa Szmukier's 13 pages of accusations were boiled down to 9 allegations by the *Tropak/Penner Report*, of which 5 were substantiated, measured against the ordinary civil standard of proof, that is, a balance of probabilities (E-1, p. 12). Before me, these 5 were further reduced to 2. The facts of the first, Allegation #4 in the *Tropak/Penner Report*, were admitted by Dr. Seager. The incident occurred in May of 1997 in the course of a clinical discussion concerning a sex offender who had disclosed to Ms. Szmukier that he had enjoyed a sexual relationship with a 15-year old girl. Ms. Szmukier raised with Dr. Seager her moral judgment about this and asked what the age of consent was under the *Criminal Code*. Dr. Seager took out the *Code* and discussed its two categories of consensual sex with a minor. He gave examples, which did not satisfy Ms. Szmukier, that, as long as the youth was over the age of 14, and as long as the sex partner is not in position of authority, no crime is committed. He then asked how old Ms. Szmukier's daughter was. When told she was 16, he advised that it would be no criminal wrong for him to have consensual sex with the girl. Ms. Szmukier testified that, though she said nothing, she felt like slapping Dr. Seager's face. She said that she felt he was a jerk for saying such a thing. Dr. Seager's evidence was that this clinical discussion with Ms. Szmukier continued for about 10 minutes afterwards. He saw no sign of distress on her part. But, in his testimony, Dr. Seager was apologetic. He said that, on reflection, he had come to realize that his example was "... not the sort of thing a mother wants to hear."

The second, Allegation #9 in the *Tropak/Penner Report*, was cut in half before me. Counsel abandoned that part of this allegation which accused Dr. Seager of getting too close physically, staring into Ms. Szmukier's eyes and breathing on her. What remained were a number of comments which Dr. Seager was said to have made about his own sexuality and sexual experiences. These comments, as alleged by Ms. Szmukier, were not witnessed. But, they were the same or similar to comments which she told investigators he had made to a number of female Therapists in the Sex Offender Program.

When Dr. Seager was elevated to Chief Psychologist in October of 1994 he became, in effect, the entire Psychology Department at Saskatchewan Penitentiary. So, he was in a

position to make a very fresh start. Over the course of the ensuing two years, his Department was to grow to 6 Therapists, 4 Psychologists, a Technician, a Testing Clerk and a student.. It was Dr. Seager's testimony that he wanted to establish a university-like collegial relationship with his staff. So, he set out to make friends with them. The story of the negative consequences of this managerial choice, as practiced by Dr. Seager, begins in June of 1995 when Debbie Taylor and Judy Unruh transferred in as the first Therapists. Dr. Seager had been tasked by Warden Bergen with launching a Sex Offender Program and this was the first staffing step in that direction.

Neither of the two new Therapists had any therapeutic or clinical training. Dr. Seager provided them with reading materials and invited them to come to him with their questions. He also spent a good deal of time with them both on and off the job. Questions tended to be dealt with in a pattern similar to that which I set out above concerning Allegation #4. First, there would be a response to a question which was grounded in the literature. Then Dr. Seager would often throw in a story about his own sexual experience. Many of these stories came to be repeated. Dr. Seager's objective in doing this was one of two things, depending on the circumstance giving rise to the discussion. The first was to provide some insights into male sexuality, as opposed to the new Therapists' own female sexuality, because 95% of their work was going to involve talking with male offenders about deviant and normal sex. The second and much more profound objective was to prepare them for the negative impact on their own lives which their work as Sex Offender Therapists was likely to have.

Dr. Seager's testimony was that professors in his doctoral programme had shared their own sexual experiences with students in order to accomplish these objectives. Support in the literature for the second objective was provided to me by Dr. Seager in the form of a recent book of papers, edited by Stacey Bird Edmunds, *Impact: Working with Sexual Abusers* (Safer Society Press: Brandon, Vermont, 1997). In particular, reliance was placed on the introduction by Robert E. Freeman-Longo, MRC, LPC, CCJS, and the first chapter, by the editor, wherein both authors reveal personal experiences of secondary traumatization as a consequence of therapeutic treatment of a sexual abuser.

An example of the first type of comment is the situation which gave rise to Allegation #3 in the *LePage/Read Report* which states, "That you could not go three days without masturbating." As was the case with several other allegations of inappropriate personal sexual revelations on Dr. Seager's part, this was first said to both Ms. Taylor and Ms. Unruh, in a

clinical context, on the same occasion. A case was presented to Dr. Seager of a 26 year old sex offender who, as part of his disclosure in group, had asserted that he never had sexual fantasies and never masturbated. Ms. Taylor and Ms. Unruh asked if this could possibly be true. Dr. Seager responded by talking about the relevant research and then said that there was not a chance that this was true for this 26 year old man. He then tossed in the observation that he could not go more than 3 days without masturbating. Dr. Seager's testimony was that there was laughter in response. He was not advised that his comment was unwelcome nor did he see any evidence on the faces of Ms. Taylor and Ms. Unruh that it was. Ms. Taylor and Ms. Unruh testified that the comment made them feel uncomfortable and that it had been repeated on other occasions.

This and other similar such sudden revelations on Dr. Seager's part, made both in clinical contexts and sometimes "out of the blue" were discussed by Ms. Taylor and Ms. Unruh over the first few weeks. Neither of them found the examples to have provided them with any learning insights. This was a period when they and Dr. Seager constituted the entire therapeutic staff of the Psychology Department, were working at being buddies in accordance with Dr. Seager's experiment in collegial management and, as a consequence, were most exposed to one another. Both Ms. Taylor and Ms. Unruh testified that they felt embarrassed and upset by these repeated revelations. Ms. Taylor said she felt degraded. She said that she had told Dr. Seager that "We don't need to hear that". Judy Unruh corroborated this evidence and said that she could see by Debbie Taylor's body language that she was signalling just that to Dr. Seager. I heard testimony from Linda Coombs and Mona Rudyk, the second team of Therapists, that they too were made uncomfortable by Dr. Seager's sexual revelations and that they, like the first team, had not found them helpful to their work.

In sharp contrast to the evidence of the first four Therapists, I heard testimony from Alison Coleman and Shirlee Soulier, the third team of Therapists, that they found Dr. Seager's comments to be clinically appropriate and helpful. They regarded and still regard him as a mentor. I also heard evidence from Psychologist Gurmeet Dhaliwal to the same effects. Finally, Testing Clerk, Diane Buchanan testified, along similar lines, in support of Dr. Seager. In particular, she firmly corroborated his side of an incident which was one of Ms. Smukier's accusations. I will say more about this in my credibility discussion and findings.

I heard evidence from three Psychologists in the employ of the Correctional Service of Canada, Dr. Tim Leis, Executive Director of the Regional Psychiatric Centre in Saskatoon,

Dr. Vince Roper, Sr. Psychologist at Edmonton Max., and Dr. Terry Nicholaichuk, Regional Psychologist, Praire Region, each of whom were provided with the *Lepage/Read Report*. They were firmly of the view that this first type of revelation was unprofessional and unjustifiable. Drs. Leis and Roper had provided opinions upon which Warden Bergen relied. (E-7 & E-5) They took the same position with regard to the second type of comment. But, none of them were familiar with the literature in the field of "secondary traumatization" concerning working with sex abusers, in particular the work of Dr. Freeman-Longo.

An example of the second type of comment is Allegation #2 in the *LePage/Read Report*, which states, "You had fantasized, while returning by car to Prince Albert with Ms. Taylor, of forcing her into the bush and raping her and that no one would know." This disclosure was first made by Dr. Seager in a Psychology Departmental meeting in July of 1996. There were about a dozen people in attendance. Debbie Taylor's evidence was that she was "... shocked and upset by this". Judy Unruh testified that this remark "... blew me away." Alison Coleman and Shirlee Soulier were present at the meeting. They testified that they understood Dr. Seager to have used this example in the context of a discussion as to the vulnerability of women in our society. In the context of the Departmental meeting, neither of them took offence at this remark.

Dr. Seager acknowledged that he made this comment. But, he was adamant that it was not presented as a fantasy. Rather, it was offered as an illustration of a demon with which he had come to live because of listening to a sex offender tell the story of his crime. This happened four years earlier. The graphic story was one of a hitchhiker brutalizing and murdering a woman who made the mistake of picking him and his buddy up. In the aftermath of this therapeutic session, Dr. Seager has found that, being alone in a car with a woman serves as a "retrieval cue" causing a motion picture of this story to start running in his head. He derives no pleasure from this. Rather, it is traumatic again and again.

So, this was offered as an example of the impact which working with sex offenders had had on his life. He wanted his staff to realize that this sort of "retrieval cue" or "secondary traumatization" was a normal reaction to their abnormal work. His objective was to encourage staff to talk about such reactions when they occurred. And, to come to him with these issues. Dr. Seager's testimony was that six people who have worked with sex offenders have come to him and discussed just this sort of "secondary traumatization". Dr. Seager concluded his testimony on this point by saying that he sincerely regretted using Debbie Taylor's name in

the telling of this story as he has come to realize how she might have been hurt by this revelation.

I can go no further in this adjudication without making credibility findings. As I have noted, Teresa Szmukier's evidence about incidents of inappropriate comments were not witnessed. Second, I reject her accounts where they conflict with Dr. Seager's. I do so because I have come to have grave doubts about Ms. Szmukier's credibility on two grounds. First, I am persuaded that Ms. Szmukier initiated and pursued some sort of verbal sexual game with Dr. Seager, to which he was resistant. The incident in Edmonton concerning her playful attempt, in front of a witness, to drag Dr. Seager from a hotel elevator towards her room coupled with her admitted subsequent invitation to him to come to her room for tea is the first such example. The strange "I love you" followed by "I don't love you" WinPopUp e-mail message is the second. The third point I want to make in this regard has to do with just who seems to me to have an issue about personal space. Contrary to that portion of Allegation #9 which asserted that Dr. Seager took the occasion to stand too close to Ms. Szmukier, which was abandoned before me, I am persuaded that it is Dr. Seager whose personal space was interfered with by Ms. Szmukier.

This is brought out clearly by third party testimony concerning the first of two specific incidents in Ms. Szmukier's barrage of accusations which were denied by other witnesses who Ms. Szmukier acknowledges were present on the scene. This story involves Ms. Szmukier's remarkable account of Dr. Seager becoming visibly sexually aroused during the course of a confrontation, which Dianne Buchanan had been asked by Dr. Seager to observe. At one point in this meeting, Ms. Buchanan testified that Ms. Szmukier suddenly skipped over to where Dr. Seager was standing and put her face right in front of his. He recoiled. I had an opportunity during the course of cross-examination to observe Dr. Seager's reaction to such a tactic when counsel suddenly approached him. He recoiled and asked me if he had to accept this. I directed counsel to stay at some distance while he put his questions. I do not believe that this response was likely to have been contrived by Dr. Seager. Thus, I conclude that it is he, not Ms. Szmukier, who needs some personal space around him. As to the substance of Ms. Szmukier's account of visible sexual arousal, this is denied by Dr. Seager and Ms. Buchanan. Furthermore, given the meeting that was taking place entailed confrontations initiated by Ms. Szmukier, it was an unlikely setting for sexual arousal.

The second ground has to do with Ms. Szmukier's accusation that she overheard Dr. Seager asking three women in the department about the frequency with which they engaged in sexual intercourse. This allegation is denied by Dr. Seager and all other participants in the conversation in question. In sum, all of the above combine to shake my confidence in Ms. Szmukier's credibility.

With regard to the alleged inappropriate comments which were witnessed, my job of assessing credibility is made more difficult by a number of factors. First, though the primary alleged victims, Ms. Taylor and Ms. Unruh, testified in a credible manner, the truth is that neither of them ever intended to lodge a complaint against Dr. Seager of sexual harassment or anything else. They were identified by Ms. Szmukier and then given little choice but to speak to the investigators or submit a written statement. Second, their memories of these inappropriate comments were first tested by investigators over two years after the fact. Third, as a natural, though I think unintended, consequence of discussing their recollections of revelations and their reactions to them with each other, what they first told the sexual harassment investigators involved painting the very same picture of what happened. This is understandable. However, in one very clear case, this picture was a false composite, both vital components of which were denied by Dr. Seager, with justification, when the allegation was put to him by the investigators. This, though regrettable, is also understandable.

Allegation #6 in the *LePage/Read Report*, which stems from the earlier Szmukier sexual harassment investigation, states, "That the first time you had any sex was with a girlfriend while the song Brown Sugar was being played." In the evidence which I heard, there was no support for this allegation. After hearing from Ms. Taylor, Ms. Unruh and Dr. Seager about this allegation, I find the following facts. The two stories leading to the false composite are as follows. First, Dr. Seager did talk about "Brown Sugar", by the Rolling Stones, as something which the Sex Offender Program should have for use in group because it revealed much about young mens' often violent attitudes towards women. In "Brown Sugar" the Rolling Stones apparently celebrate the raping of black women on ships and plantations. Dr. Seager also said the Department should get a copy of "Shoot to Thrill", by AC/DC, because of its misogynous and murderous lyrics.

Second, in a clinical context, Ms. Taylor and Ms. Unruh had presented a case where an inmate had disclosed that he became aroused by a certain, apparently neutral, stimulus. Dr. Seager responded by noting that a professor of his had told a story involving a particular

brand of perfume and his own sexual experience. Thereafter, the smell of that perfume would arouse him. Dr. Seager then revealed that, when he was 17 years old he had delivered a pizza to a strip joint in Halifax. He saw a female dancer stripping to "Fame". As a consequence, whenever he heard "Fame" he would experience arousal.

I accept Dr. Seager's account and reject the composite picture falsely painted by Allegation #6 in the *LePage/Read Report*. Dr. Seager made personal sexual revelations but, it was in the clinical context of discussing and teaching around the example of a particular inmate's experience of sexual arousal from an apparently neutral stimulus. In a similar vein, Dr. Seager's responses to the rest of the list of allegations against him tended to impress me as being credible. He was forthcoming. Under aggressive cross-examination, he was not guarded. He was not defensive. He was not glib. Rather, he apparently and repeatedly searched his memory of his own life story as a test of whether a particular revelation allegation was entirely, or somewhat accurate or not at all true. In sum, I find Dr. Seager to have been a credible witness.

Warden Bergen's dismissal decision is grounded on Commissioner's Directive #255 on Sexual Harassment. (E-13) As I have ruled-out intention, the question, under this Directive and the Supreme Court's guidance on the matter provided in *Janzen v. Platy Enterprises Ltd.*, (1989), 10 C.H.R.R. D/6205, is whether Dr. Seager ought reasonably to have known that his sexual revelations **about himself** might cause offence or humiliation to any employee so as to detrimentally affect their work environment. In a recent award in *Re Western Star Trucks and I.A.M.* (1997), 69 L.A.C. (4th) 250, arbitrator Bruce cites, at p. 269, with approval, the following point made in *Re Hornsby and Paul's Restaurant Ltd.* (1994), 24 C.H.R.R. D/516 (Humphreys):

*... many factors must be considered when considering whether verbal comments amount to sexual harassment. Among these factors are the severity and frequency of the comments, whether the words are explicitly sexual or not, and to whom and **about whom the comments were made.***

[Emphasis added]

To begin, leaving to one side for the moment all of the evidence save that of the first four Therapists, the first type of comment alleged to have been made by Dr. Seager involved only himself. He was not saying anything about his listeners' sexuality. But, discomfort was experienced by them and I have expert evidence that these sorts of disclosures were

unprofessional. Hence, they were inappropriate. Does that factor alone make them into sexual harassment? I have my doubts. In *Bailey v. Village of Anmore* (1992), 19 C.H.R.R. D/369 (Patch), at para. 52, the British Columbia Council of Human Rights concludes that a finding that comments were "inappropriate" even "puerile" does not mean that a sexual harassment complaint has been proven. As for the second type of comment, I am not convinced that even inappropriateness has been established beyond that admitted by Dr. Seager.

In the end, on the sexual harassment count, I am left with proof that falls short of being "...clear and convincing based on cogent evidence". I find myself much in the same position as was occupied by Vice-Chairman Tenace in *Satwinder Samra* who had to assess a series of some 11 incidents of alleged sexual harassment. In paragraph 106, one finds the following conclusion:

The allegations are serious. So is the termination of one's employment. Even if only the more serious ones had been proved to have taken place, I would have no difficulty in upholding the termination of Mr. Samra's employment. Such behaviour is not to be tolerated. However, it was not proven to my satisfaction on the basis of the evidence adduced.

Accordingly, no case establishing just cause for disciplinary action based on sexual harassment has been made out. With regard to Allegation #4 in the *Tropak/Penner Report*, though this remarkable comment was admitted by Dr. Seager to have been inappropriate, it does not amount to sexual harassment. That it was offensive is beyond question. Offence was taken to it by a mother. But, surely it would have been offensive to a father as well. Again, it is a case of inappropriateness not sufficing when the charge is sexual harassment and a career is on the line.

Personal Harassment

I heard evidence from the first four Therapists, Debbie Taylor, Judy Unruh, Linda Coombs and Mona Rudyck to the effect that Dr. Seager was condescending towards them because they had no formal education beyond high school. A related aspect of their perception of treatment at the hands of Dr. Seager was that he "played favourites" amongst the six therapists. This amounted to praising the last two Therapists, Alison Coleman and Shirlee Soulier for their report writing skills. Both Ms. Coleman and Ms. Soulier were Registered Nurses with prior clinical/reporting experience. The upshot of all of was that the experience

of the first four Therapists in the Psychology Department did not end well. Each of them left the Department, by transferring out, in a diminished state, in terms of their self-esteem.

In contrast to the evidence of the first four Therapists, I heard testimony from Dianne Buchanan, the Testing Clerk, who worked just outside Dr. Seager's office. Ms. Buchanan had a Grade 12 education plus some secretarial schooling. She said that she was never treated in a condescending manner by Dr. Seager and that she had never heard him treat others in that way. I also heard testimony from Shirley Penner, an Aboriginal Addictions & Victim Empathy Counsellor, who said that she was treated as a colleague by Dr. Seager, just as she has been by other Psychologists with whom she has worked at the Riverbend Institution. She worked with Dr. Seager on the Aboriginal Sex Offender Program. Finally, Ms. Coleman and Ms. Soulier testified that they never found Dr. Seager to be condescending, to play favourites or indeed ever to stray from what was clinically appropriate in terms of commenting on the work of anyone in the Department.

Finally, there are Dr. Seager's responses. At the outset of his testimony, I was treated to the story of his scholarly Olympian journey leading from McMaster to Cambridge and then to and through Queen's University. All within a decade. No doubt his staff would not miss the point that he takes great pride in his rapid and stellar progress *en route* to his Ph.D.. That leaves him open to the charge of being an intellectual snob and perhaps not the ideal type of person to be mentoring trainee Therapists with no post-secondary education and no prior clinical experience. But, does this attitude make the man into an harasser? I am not convinced. Dr. Seager testified that there was no malice in his heart towards any of the first four Therapists. He wanted them to succeed. It was, after all, his program and his career that was involved. He admitted that he had made reference to the education levels of the first four Therapists. But, only to encourage them, give them positive feedback for what they were accomplishing and to convey to them the message that his expectations were not set unreasonably high. This explanation has the ring of truth to it. Unfortunately, the tone of what was heard by the first four Therapists was quite different from this.

Dr. Seager testified that he took no pleasure from the testimony of these four Therapists that their self-esteem had taken a beating during their time in his Department. But, the pressures of work were enormous. The Department was growing rapidly. And, the academic bar was being raised by the Correctional Service during this very period of time.

This latter issue had much to do with Linda Coombs leaving the Department in a state of unhappiness.

Taking all of the above into account, I am not persuaded that a case of personal harassment has been made out that is clear and convincing based on cogent evidence.

Derogatory and Offensive Comments

This third category emerged during the course of the *LePage/Read Report*, which concluded (E-3, p.14) by expressing the concern, relevant to my task, "... that Dr. Seager did make comments regarding Aboriginal culture and spirituality (bush Indians and blood sacrifice) which could be deemed inappropriate and demeaning or abusive." It was Debbie Taylor and Judy Unruh who raised these comments with the investigators. Each comment was made just the once. The "bush Indian" remark was made by Dr. Seager when he stated that he was not going to administer the pre-treatment PCLR (Psychopathy Check List Revised) to the Aboriginal sex offenders.

Dr. Seager's response to this allegation was that he used the term "bush Indians" as he had often heard Dr. Joe Couture, an Aboriginal Psychologist, use the term when speaking of Aboriginals who had come from a life on a trap line. Shirley Penner supported the use of this term as a descriptor which was not derogatory. She said that she found nothing offensive in it being used by Dr. Seager. Dr. Seager's reason for not using the PCLR was that it had not been validated for such people who lacked the experience of living an urban lifestyle. Ms. Dhaliwal testified in support of this point. She said that, as the current supervisor of the Aboriginal Sex Offender Program, she did not utilize the PCLR for just that reason.

The "blood sacrifice" comment was made in the context of Dr. Seager saying, in the midst of a stressful meeting with Ms. Taylor and Ms. Unruh. that he was not interested in what the Elder chose to do in his portion of the Aboriginal Sex Offender Program. Dr. Seager was setting a standard for the European portion of the program which he was insisting that Debbie Taylor and Judy Unruh meet. They took his comment about not caring whether the Elder engaged in "blood sacrifice" or "...ha[d] the offenders bite the heads off chickens and drink their blood" as being a racist remark. Dr. Seager's testimony was that he was not a racist. He conceded that he had made an outrageous and flippant remark in the context of this difficult meeting with the first two Therapists as to the demands which the new Aboriginal Sex Offender Program was placing on them. But, he meant only to say that what the Elder did

or did not do in the Aboriginal spirituality component of the program was none of his business.

As for the underlying allegation of racism, in support of Dr. Seager, I heard testimony from Shirley Penner, Alison Coleman, Shirlee Soulier and Dianne Buchanan. None of them had ever heard racist expressions being uttered by Dr. Seager. Indeed, the latter three all recalled Dr. Seager speaking to Alison Coleman when she used an inappropriate slang expression to refer to Aboriginal offenders.

Based upon this evidence and taking into account the fact that I heard no evidence from the Elder in question, indeed no evidence from any Aboriginal person that Dr. Seager had offended them by comments which they regarded as racist - quite the reverse in the case of Shirley Penner - no case warranting disciplinary action has been established on this count.

Arguments

It was agreed by the representatives of the parties that, like all harassment cases, this matter was fact specific. Everything would turn on my findings in this regard. There was no dispute before me as to the appropriate standards to be applied in assessing whether just cause had been established by the employer on the evidence. Accordingly, each representative went through the very complex and extensive evidence in order to cast it in the best light from the perspective of his side of the story. I will not set out what I heard in argument in this regard as it would serve no useful purpose. As I stated at the outset of this decision, in order to manage the wealth of evidence before me, stretching over many months, I have chosen to make my credibility findings and to deal with whether sufficient proofs have been forthcoming on each count in turn.

Conclusion

For the reasons which I have given this grievance is sustained. Within the frame established by Warden Bergen's dismissal letter of December 15, 1997, I have found that the employer has not presented proof of just cause for imposing discipline on Dr. James A. Seager that is clear and convincing and based on cogent evidence. What follows is that Dr. Seager is to be reinstated with full compensation, subject to the right of the employer to call for this hearing to be resumed on the question of mitigation. As I have heard no evidence on

this heading, I will remain seized in order to adjudicate the issue of compensation should the parties fail to agree on an appropriate amount.

Dated at Saskatoon this 15th day
of January 1999.

For the Board,

Ken Norman, Adjudicator