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*Federal Public Sector  
Labour Relations and  
Employment Board Act and  
Federal Public Sector  
Labour Relations Act*



Before a panel of the  
Federal Public Sector  
Labour Relations and  
Employment Board

BETWEEN

**VIVIENNE EDWARDS**

Grievor

and

**TREASURY BOARD  
(Department of Health)**

Employer

Indexed as

*Edwards v. Treasury Board (Department of Health)*

In the matter of an individual grievance referred to adjudication

**Before:** Catherine Ebbs, a panel of the Federal Public Sector Labour Relations and  
Employment Board

**For the Grievor:** Douglas Hill, Public Service Alliance of Canada

**For the Employer:** John Craig, Treasury Board Secretariat Legal Services

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Heard at Ottawa, Ontario  
March 5 and 6, 2019.

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## REASONS FOR DECISION

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### I. Individual grievance referred to adjudication

[1] Vivienne Edwards (“the grievor”) filed a grievance alleging that her employer, the Treasury Board (Department of Health) (“the employer”), discriminated against her on the basis of her race, national or ethnic origin, colour, and sex. The employer denied the grievance at both the second and third levels.

[2] The matter was then referred to the Federal Public Sector Labour Relations and Employment Board on September 15, 2015, for adjudication.

[3] For the reasons that follow, I find that the grievor did not establish that the employer discriminated against her on the basis of race, national or ethnic origin, colour, or sex.

[4] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act* and the *Public Service Labour Relations Act* to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act* (“the Act”).

### II. Background

[5] The grievor started her federal public service career in 2002. She held indeterminate positions as an analyst and an advisor at Public Services and Procurement Canada, the Treasury Board Secretariat, and Service Canada.

[6] On December 16, 2013, the grievor started in an indeterminate position at Health Canada as the director of the National Business Continuity Management Program (NBCMP) in the Corporate Services Branch. She reported to Louis Lahaie, the executive director and departmental security officer of the Security Management Division (as of the hearing, Mr. Lahaie was deceased). The NBCMP was in the Real Property and Security Directorate, for which Dr. Martin Tomkin was the director general.

[7] The grievor had five employees reporting to her, who were Marilou Ouellet, Michelle Lavigne, Diane Levesque, Cheryl Cameron, and Sharon Howard.

[8] The grievor was the only black person among her subordinates and superiors.

[9] From the very early days, the grievor's relationship with the NBCMP employees was not positive.

[10] In January 2014, the grievor approached Mr. Lahaie with her concerns. She felt that some employees were not suited for their positions. In addition, there had been several instances of employees being confrontational and disrespectful.

[11] Around the end of January 2014, the grievor was directed to the employer's Labour Relations section. She met with Daniel Aubry, a senior labour relations advisor, and Sabina Suljic, a labour relations advisor. She talked to them about problems she was having with the employees.

[12] After that meeting, the grievor regularly sought assistance from Ms. Suljic.

[13] During the same period, starting soon after the grievor's arrival, the NBCMP employees kept lists of what they considered her inappropriate actions. They consisted of allegations of abuse of authority and harassment as well as a number of operational issues. One of the employees, Ms. Cameron, spoke about some of them with another director, who shared them with Mr. Lahaie.

[14] Mr. Lahaie held private meetings with the NBCMP employees, and he then asked that they provide him their concerns in writing.

[15] On March 13, 2014, Mr. Lahaie met with the grievor and the employees. In an email sent the next day, he directed her to address the operational issues, and he advised that an administrative investigation would be launched into the employees' allegations of abuse of authority and harassment.

[16] Véronique Tremblay led the investigation. She was an advisor in the employer's Respect in the Workplace Office. On March 31, 2014, Gary Lacey signed the investigation mandate. At that time, he was the director general of the Real Property and Security Directorate. (By the time the final report was issued, Dr. Tomkin had replaced him.) The investigation mandate was "... to determine whether [the grievor]

misconducted herself or harassed the employees under her supervision in the workplace”.

[17] A preliminary report was issued on July 28, 2014, to which the grievor replied. The final report was issued on November 25, 2014.

[18] Ms. Tremblay found that the following 6 of 15 allegations were founded:

...

- ... *From December 2013 to April 2014, Ms. Edwards restricted employees' communication amongst themselves and their clients. (including withholding information that prevented her employees from doing their work)*
- ... *On February 13<sup>th</sup>, 2014, Ms. Edwards embarrassed Ms. Ouellet in front of her colleagues during a team meeting with regards to minutes taken.*
- ... *On December 31<sup>st</sup>, 2013, Ms. Edwards raised her voice and aggressively replied to Ms. ... Ouellet by saying: "that is not what I said, I said I will respond to all emails as soon as they arrived, don't put words in my mouth".*
- ... *On February 10<sup>th</sup>, Ms. Edwards rudely informed Ms. Ouellet to not use a kettle in the POD area [that had been placed on a filing cabinet].*

...

- ... *From December 2013 to April 2014, Ms. Edwards [made] negative comments about the program activities, training provided by the team members, client service structure, incomplete or incorrect deliverables.*

...

- ... *From December 2013 to April 2014, Ms. Edwards may [sic] have abused her authority by changing [Ms. Levesque's] roles and responsibilities ... and by preventing [her] from doing the duties of her position.*

...

[19] The nine allegations that she determined were not founded were as follows:

...

- ... *On February 10<sup>th</sup>, 2014, Ms. Edwards intervened in the disposal of a recycle bin.*
- ... *From December 2013 to April 2014, Ms. Edwards did not respect the approved training plans of her employees.*

- ... In February 2014, Ms. Edwards changed her employees training date on performance management without informing her employees.
  - ... From December 2013 to April 2014, Ms. Edwards repeatedly asked for urgent/meaningless requests for which no actions were taken.
  - ... From December 2013 to April 2014, Ms. Edwards did not respect employees work schedule by scheduling meetings and asking for deliverables during lunch hour or afterwork hours.
- ...
- ... On February 4<sup>th</sup>, 2014, Ms. Edwards falsely alleged that she received complaints from clients about [Ms.] Ouellet.
- ...
- ... On February 24<sup>th</sup>, 2014, Ms. Edwards [removed the team's] access to the L: Drive ... [denying them the tool to perform their work].
- ...
- ... From December 2013 to April 2014, Ms. Edwards often used the words "It's not that your are stupid" when speaking to [Ms.] Cameron.
  - ... On April 9<sup>th</sup>, 2014, Ms. Edwards degraded Ms. Cameron by mentioning to Ms. Cameron's client that [another employee] was the greatest to answer questions that the client may have.

[Sic throughout]

[20] On May 20, 2014, before the investigation was concluded, Mr. Lahaie moved the grievor from her position to work on a special project in another location.

[21] The grievor went on sick leave starting on November 27, 2014, which was extended several times. On June 16, 2016, she resigned from the public service.

### III. The nature of the grievance

[22] The grievor alleged that the employer discriminated against her because of her race, national or ethnic origin, colour, and sex, which she stated was contrary to both the collective agreement and the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; CHRA).

[23] The governing collective agreement is between the Treasury Board and the Public Service Alliance of Canada for the Program and Administrative Services Group that expired on June 20, 2014. Its clause 19.01 states as follows:

*19.01 There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practiced with respect to an employee by reason of age, race, creed, colour, national or ethnic origin, religious affiliation, sex, sexual orientation, family status, mental or physical disability, membership or activity in the Alliance, marital status or a conviction for which a pardon has been granted.*

[24] Section 7 of the CHRA states as follows:

*7 It is a discriminatory practice, directly or indirectly,*  
*(a) to refuse to employ or continue to employ any individual, or*  
*(b) in the course of employment, to differentiate adversely in relation to an employee,*  
*on a prohibited ground of discrimination.*

[25] Race, national or ethnic origin, colour, and sex are all prohibited grounds under the CHRA (s. 3(1)).

[26] Under the Act, in relation to any matter referred to it, the Board may interpret and apply the CHRA. Section 226 of the Act reads as follows:

*226 (1) An adjudicator may, in relation to any matter referred to adjudication, exercise any of the powers set out in paragraph 16(d) of this Act and sections 20 to 23 of the Federal Public Sector Labour Relations and Employment Board Act.*

*(2) An adjudicator or the Board may, in relation to any matter referred to adjudication,*

*(a) interpret and apply the Canadian Human Rights Act and any other Act of Parliament relating to employment matters, other than the provisions of the Canadian Human Rights Act that are related to the right to equal pay for work of equal value, whether or not there is a conflict between the Act being interpreted and applied and the collective agreement, if any;*

*(b) give relief in accordance with paragraph 53(2)(e) or subsection 53(3) of the Canadian Human Rights Act; and*

*(c) award interest in the case of grievances involving termination, demotion, suspension or financial penalty at a rate and for a period that the adjudicator or the Board, as the case may be, considers appropriate.*

#### IV. The test for discrimination

[27] To prove discrimination on the basis of race, national or ethnic origin, colour, or sex, a grievor must first establish a *prima facie* case. The Supreme Court of Canada (“the Supreme Court”) set out the definition of a *prima facie* case as follows in *Ont. Human Rights Comm. v. Simpsons Sears Ltd.*, [1985] 2 S.C.R. 536 at para. 28:

28. ... *The complainant in proceedings before human rights tribunals must show a prima facie case of discrimination. A prima facie case in this context is one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent-employer....*

[28] At paragraph 18, the Supreme Court confirmed that a *prima facie* case of discrimination depends on these three conditions:

- (1) the complainant must prove that he or she has a special personal characteristic that falls within one of the prohibited grounds of discrimination;
- (2) the complainant must have experienced adverse differential treatment; and
- (3) the complainant's special personal characteristic that falls within a prohibited ground of discrimination was a factor in the adverse differential treatment.

[29] If the grievor establishes a *prima facie* case, then the onus shifts to the employer to explain its actions. This is described in *Peel Law Assn. v. Pieters*, 2013 ONCA 396 at paras. 65 and 66, as follows:

[65] *As respondents' counsel submitted, the prima facie case test defines what is necessary to establish substantive discrimination. It is no different than in every other evidentiary context. Since a prima facie case involves evidence that, if believed, would establish the claim, a respondent faced with a prima facie case at the end of the claimant's case must call evidence to avoid an adverse finding.*

[66] *A respondent may avoid an adverse finding by calling evidence to show its action is not discriminatory or by establishing a statutory defence that justifies the discrimination.*

[30] In *Morin v. Canada (Attorney General)*, 2005 CHRT 41 at paras. 190 and 191, the Canadian Human Rights Tribunal set out the following key principles in discrimination cases:

- 1) Discrimination need not be the only reason for the adverse treatment. It is sufficient that it be one of the factors.
- 2) The standard of proof in discrimination cases is the civil standard of the balance of probabilities.

- 3) Discrimination is rarely displayed overtly. As the tribunal stated, “An inference of discrimination may be drawn where the evidence offered in support of it renders such an inference more probable than the other possible inference or hypothesis ...”.

[31] At paragraph 191, this tribunal stated as follows:

*[191] ... discrimination is not a practice that one would expect to see displayed overtly. In fact, rarely are there cases where one can show by direct evidence that discrimination is purposely practiced. A tribunal should therefore consider all circumstances in determining if there exists a “subtle scent of discrimination”....*

## V. Issues

[32] The following are the issues in this decision:

- A. Did the grievor establish a *prima facie* case of discrimination based on race, national or ethnic origin, colour, and sex?
- B. If so, did the employer demonstrate that its actions were not discriminatory or that the discrimination was justified?

**A. Did the grievor establish a *prima facie* case of discrimination based on race, national or ethnic origin, colour, and sex?**

### 1. Preliminary observations

#### a. Open Court Principle

[33] The Board has an open process, meaning that all decisions and case files are available publicly. For that reason, the Board is committed to referring to only that personal information that is necessary. In this case, certain exhibits contain personal information of the grievor that is not necessary, namely her home address and Personal Record Identifier. I would like to remind the parties that, unless the information is necessary to their evidence, they should exercise care to protect such information when they submit exhibits to the Board. Exceptionally, the Board will take steps in this case to order the Board Secretariat to redact the personal information from the exhibits; the redacted copies will be retained on file, and the originals will be sent back to the employer

#### b. Grievance

[34] In her grievance, the grievor alleged discrimination on the basis of race, national or ethnic origin, colour, and sex. As for discrimination on the basis of sex, her only evidence was that in May 2014, when Mr. Lahaie moved her to a special project in



another location, she was replaced by a white male. I cannot find discrimination on the basis of sex on that basis alone because there are other explanations for this action that are just as probable.

[35] As for the other grounds, the grievor did not distinguish between race, national or ethnic origin, or colour as separate grounds. Rather, she treated them as one entity. I will follow this way of proceeding in my analysis and will refer to the three prohibited grounds as discrimination on the basis of race.

[36] I note that in her grievance, the grievor made some discrimination allegations that she did not pursue at the hearing. I will deal only with those allegations for which she presented evidence.

[37] The parties presented a number of decisions in support of their positions. I read each one. However, I will refer only to those that are of particular importance to this analysis.

## **2. The grievor's testimony on differential adverse treatment**

[38] It was not disputed that the grievor is a member of a group protected by the *CHRA* on the basis of race, national or ethnic origin, colour, and sex.

[39] The grievor testified on her behalf. She had no other witnesses.

[40] After the grievor began her job, she never received an orientation session as a new Health Canada employee. She received no briefing materials. In other words, she was not introduced to the organization and made to feel part of it.

[41] The grievor formed opinions about the NBCMP employees early on in her days as the director. She said that from the first day, she recognized that her team did not have experience and that almost no employees had been trained. She also explained that they lacked understanding of the fundamentals of business continuity planning and that she would have to teach them.

[42] At the March 13, 2014, meeting with Mr. Lahaie and the NBCMP employees, the grievor learned for the first time that he had had coffee meetings with them. He had never approached her to talk about their concerns before the investigation was launched. Another director also spoke to Mr. Lahaie about the NBCMP employees' concerns about the grievor but never approached her to discuss them.

[43] The grievor believed that that was unfair. She felt excluded and marginalized. She was surprised that Mr. Lahaie had met with her employees without her knowledge and that she had not had a chance to be heard before the investigation was launched. In her view, this was proof of discrimination on the basis of her race. The directors and NBCMP employees were all white, and she was the only black person in the group.

[44] In January 2014, before the administration investigation was launched, the grievor met with Mr. Lahaie. She told him that her employees were exhibiting objectionable behaviour. She testified that he said that he had never received any complaints about the employees and that as the manager, she should deal with the concerns. She was told to speak to labour relations advisors.

[45] The grievor spoke with Mr. Aubry in the presence of Ms. Suljic. The grievor testified that Mr. Aubry told her that he was not aware of any issues with the NBCMP employees and that it was too early in her time with them for issues to have arisen.

[46] A week later, Ms. Suljic started to help her deal with the issues with her employees. She provided advice over the next 3½ months. Then, the grievor was sent for special conflict management coaching. She agreed that the labour relations advisors advised her, but she was not satisfied with that type of support. She felt isolated. Her supervisors neither supported her nor offered guidance. She believed that management should have done more to show the NBCMP employees that she was a valued member of the organization and part of their team.

[47] The grievor stated that when she raised her concerns about the NBCMP employees, she was told that it was too early to take action. Yet, the decision to launch an investigation into their allegations against her was made in March 2014, barely three months after her arrival.

[48] The release of the investigation's final report caused the grievor much stress. She was anxious and depressed. She was dumbfounded that Ms. Tremblay found that six allegations were established. The grievor believed that she encouraged communication in her team. For many of the allegations, she had just used her managerial authority, and she did not use an inappropriate tone with employees. On the contrary, they were rude and disrespectful to her.

[49] The grievor said that she was hired to improve and change the NBCMP, to create better processes and procedures, and to support and empower the employees to improve their client service. She talked about it with the employees in a respectful way. She was not negative for the sake of being negative. None of the employees told her that he or she perceived her comments as negative. The grievor was shocked that the employees saw the way she expressed herself as problematic.

[50] The grievor believed that the investigation was conducted unfairly. The investigator accepted unsupported statements from the employees over the grievor's assertions, which were supported by evidence. She attributed it to discrimination by Ms. Tremblay on the basis of race. Furthermore, the investigation began in March, but the period covered extended into April 2014.

[51] The grievor was surprised that Dr. Tomkin, Mr. Lahaie's superior, and not Mr. Lahaie wrote to her to tell her that he accepted the report's conclusions and that he would conduct a process to determine the appropriate corrective measures. Until she received that communication, the grievor did not know that Dr. Tomkin would be involved. She found it shocking, upsetting, and unfair. She further objected to the fact that he rendered the second-level decision, given that he was named in the grievance.

[52] In February 2015, the grievor's union representative, and Dr. Tomkin agreed to February 18, 2015, as the date for the grievor's disciplinary hearing. When she received the invitation to attend, she felt alone, targeted, and publicly humiliated. The disciplinary hearing never took place because she went on an extended sick leave and subsequently left the public service.

[53] The grievor testified that she suffered from the adverse treatment and toxic work environment starting soon after her arrival in December 2013. The experience took a serious toll on her health.

**c. The Board's analysis of differential adverse treatment**

[54] The grievor stated that the following acts or instances of a failure to act constituted discrimination on the basis of race by her employer:

- on her arrival, she was given no orientation and received no briefing materials;
- there were delays setting up her office;
- the investigation was conducted unfairly;

- Dr. Tomkin, and not Mr. Lahaie, was the manager who was to decide on corrective measures following the investigation report;
- when she, a black person, raised her concerns about the NBCMP employees, who were white, with Mr. Lahaie and labour relations advisors, no action was taken; however, when the NBCMP employees complained to Mr. Lahaie about her, he launched an administrative investigation; and
- Dr. Tomkin, who was named in the grievance, rendered the second-level decision on it.

[55] I find that the grievor did not prove differential adverse treatment with respect to the first four of her allegations. However, I find that she established that the fifth and sixth allegations constituted differential adverse treatment, on a *prima facie* basis.

[56] The grievor stated that she did not receive orientation briefings and that there were delays setting up her office. I find that such delays are not unusual, given that she arrived just before the Christmas week in 2013. In addition, I cannot say that the fact that she did not receive briefing materials was adverse treatment because there was no evidence on the normal processes for new employees.

[57] Much of the grievor's evidence was focused on how Ms. Tremblay conducted the investigation. I find no improper or adverse treatment in that conduct. I am satisfied that a trained investigator conducted the investigation, that she acted fairly, and that she respected the applicable policies. The grievor received full opportunity to be heard and to respond to others' testimonies, of which she took full advantage. Ms. Tremblay noted that in addition to being interviewed, the grievor provided her with documentation, including four large binders. The final investigation report refers to the grievor's responses for each allegation.

[58] The grievor stated that Ms. Tremblay was biased in that she always accepted the versions of the white employees over hers. I do not find that that was so. In the written report, Ms. Tremblay explained in depth how she had reached her conclusions on each allegation. She also stated that she was mindful that the grievor had argued that the employees had colluded. I further note that she did not always prefer the evidence of the employees over the grievor: of the 15 allegations, Ms. Tremblay found that only 6 were founded.

[59] The grievor believes that the investigation should have covered only December 2013 to March 2014, but instead, it also covered April 2014. The investigation's terms of reference did not specify a time frame. I have examined the information about the

founded allegations. It appears that almost all, if not all, the details recorded about the allegations occurred by the end of March 2014. More importantly, the grievor was not taken by surprise. She had full opportunity to respond to all the allegations. I further note that it does not appear that she mentioned her concern about the time frame to the investigator.

[60] The grievor found it discriminatory that the manager who was to conduct the disciplinary hearing was Dr. Tomkin, Mr. Lahaie's superior, and not Mr. Lahaie. I cannot find that it was adverse treatment. The grievor presented no evidence from which I could determine that it was different from the normal practice.

[61] However, I find that the grievor established that the fifth and sixth allegations constituted differential adverse treatment on a *prima facie* basis.

[62] Firstly, the grievor stated that she was treated adversely because when she, a black person, brought her concerns about the NBCMP employees' behaviour toward her to Mr. Lahaie, no support was provided to resolve the issues. Yet, when the white NBCMP employees brought their concerns, Mr. Lahaie launched an administration investigation into her actions.

[63] Secondly, although he was named in the grievance, Dr. Tomkin rendered the second-level decision. That was highly irregular. Without further explanation, it was differentially adverse.

### **3. The grievor's testimony about a link between race and the adverse differential treatment**

[64] The grievor stated that she did not experience offensive comments, racial slurs, or offensive actions based on race. Her conclusion that she was discriminated against was based on her extensive experience as a black woman interacting with non-black individuals and on the racism she has experienced in other venues.

[65] The grievor added that in her experience, the majority of racism does not come from overt acts. It comes from covert actions, such as the meetings held without her and the fact that she did not have a chance to address the concerns before the investigation was launched. In addition, her concerns were ignored.

**a. The Board's analysis of a link between race and the adverse differential treatment**

[66] As stated in *Pieters*, at para. 73, "Relatively 'little affirmative evidence' is required before the inference of discrimination is permitted. And the standard of proof requires only that the inference be more probable than not."

[67] The grievor alleged that she was treated in a differentially adverse manner because when she, a black person, raised concerns about the NBCMP employees, management did nothing. However, when the white NBCMP employees raised concerns about her, management launched an administrative investigation. The grievor believes that discrimination on the basis of race was the cause of the difference in response. Her belief is based on the fact that she is a black woman who has been the target of racism in the past.

[68] The circumstances described by the grievor raised a factual inference that adverse treatment occurred in that management did not treat her concerns in the same manner as it treated the NBCMP employees' concerns. Because very little is known about why management acted as it did, it is reasonable to infer that discrimination on the basis of race was at least a factor.

[69] I reach the same conclusion on the fact that although he is named in the grievance, Dr. Tomkin rendered the second-level decision.

**B. Did the employer demonstrate that its actions were not discriminatory or that the discrimination was justified?**

[70] As already stated, I found two instances in which the grievor made a *prima facie* case that she had received differential adverse treatment for which discrimination on the basis of race was a factor.

[71] However, after considering the employer's evidence, I find that management's actions were not differentially adverse and therefore that they were not discriminatory.

**1. The employer's testimony**

[72] The employer called four witnesses: Ms. Cameron, Ms. Suljic, Dr. Tomkin, and Ms. Tremblay.

[73] When the grievor met with Mr. Lahaie to inform him of her concerns with the NBCMP employees, she was referred to Labour Relations. Soon after that, she met with Mr. Aubry and Ms. Suljic. Ms. Suljic testified that at their first meeting, the grievor spoke about some challenges with her team. She had questions about employee performance, and she wanted advice on how to move some of them out of the NBCMP and on how to bring in new people.

[74] After the first meeting, Ms. Suljic continued to assist the grievor, when requested. She communicated with the grievor at least twice a week, sometimes many times on the same day. In her labour relations advisor role, she was to advise and guide managers at all levels in areas such as grievance support, performance management, accommodations, collective agreement interpretation, etc. Ms. Suljic sometimes prepared draft speaking notes and emails for the grievor. She suggested that the grievor explain to her team what she was doing, set expectations, and talk about issues. The grievor also received coaching on how to conduct difficult conversations and how to deal with workplace conflict.

[75] During the same period, the NBCMP employees went to Mr. Lahaie with concerns about the grievor. Ms. Cameron testified that the employees felt intimidated, bullied, and harassed. She said that when Mr. Lahaie learned that the NBCMP employees had concerns, he met with each of them individually and then asked for a list of their allegations in writing. As a result, he launched the investigation.

[76] Ms. Tremblay was chosen to conduct the investigation. She was a director in Health Canada's Respect in the Workplace Office, and she had considerable training in conducting investigations. She followed both the "Administrative Investigations Policy" from October 2010 of the Public Health Agency of Canada (PHAC) and the Treasury Board's "Investigation Guide for the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process". Where they differed, she followed the PHAC's policy, which Health Canada had adopted.

[77] Ms. Tremblay stated that she did the following in her investigation:

- reviewed the material on all the allegations and then met with each employee who had a concern;
- asked them and the grievor if there were other materials or witnesses;

- provided each employee with notes of the interview for their review and signature;
- wrote to the grievor and shared with her relevant materials, including a record of the allegations and each employee's interview statement;
- asked for the grievor's response by May 19, 2014;
- interviewed the grievor;
- shared the interview notes with the grievor after the interview, for her review and signature;
- prepared a preliminary report dated July 28, 2014, which was shared with the grievor, who provided her comments; and
- reviewed the grievor's submissions and prepared the final investigation report, dated November 25, 2014.

[78] Dr. Tomkin was not in his position when the investigation into the grievor's conduct was launched, but he received the final investigation report in November 2014. He concluded that the investigation had been conducted fairly, in accordance with the applicable policies. In particular, he was satisfied that the grievor had received a full opportunity to be heard. In a letter to her, he advised her that as the delegated manager, he accepted the findings, and that there would be a process to determine the appropriate corrective measures. His intention was to meet with her on her return to the workplace.

## **VI. The Board's analysis**

[79] I find that when she met with Mr. Lahaie and the labour relations advisors, the grievor asked for assistance dealing with employees who were exhibiting disrespectful behaviour. As the manager, it was her responsibility to performance-manage any employee shortcomings. Management responded by providing her with labour relations support, which she made full use of. Ms. Suljic answered her questions, provided advice, and provided her with suggested wording for emails and conversations. The grievor also received conflict management coaching.

[80] There is no evidence that the grievor complained to management about its response or that she conveyed that she could not carry out her supervisory duties and that she wanted more done. There is also no evidence that managers of another race would have received a different response from the employer.

[81] The employer also provided further evidence about the investigation launched about the NBCMP employees' allegations. This was in an entirely different context.



They provided lists to Mr. Lahaie of what they believed were examples of abuse of authority and harassment on the part of their manager. Management was obligated to act in the face of those serious allegations, which it did by launching the administrative investigation.

[82] I do not know why Mr. Lahaie did not speak to the grievor about what the NBCMP employees had told him before deciding to launch the investigation. I realize that his role was not fully explained before the Board because unfortunately, he had passed away by the time the hearing was held. Obviously, it would have been advisable for him to address these issues with the grievor as a first step. However, there is no evidence that how he acted in this instance was any different from how he dealt with issues with other managers. It is just as probable that it happened as a result of inadequate communication as from an act of discrimination on the basis of race.

[83] In the second instance of differential adverse treatment, Dr. Tomkin rendered the second-level grievance decision even though he was named in the grievance. The evidence demonstrated that the grievor's representative raised this concern with the employer before that decision was rendered and that the employer provided its rationale. Since the issue was not raised again, it appears that after that communication, it was agreed to continue that way. In any event, there is no evidence linking this to discrimination on the basis of race. In fact, according to correspondence between the employer and the grievor's representative, having Dr. Tomkin render the second-level decision was based on the employer's interpretation of the relevant collective agreement. Therefore, I find that discrimination was not a factor in this instance.

## **VII. Conclusion**

[84] The Supreme Court stated as follows in *Moore v. British Columbia (Education)*, [2012] 3 SCR 360 at para. 60:

*[60] ... The question in every case is the same: does the practice result in the claimant suffering arbitrary — or unjustified — barriers on the basis of his or her membership in a protected group. Where it does, discrimination will be established.*

[85] The evidence demonstrated that the working environment during the short time the grievor was the NBCMP director was very negative, and it substantiates her claim that at times, the NBCMP employees were disrespectful toward her.

[86] However, after considering all the evidence, I conclude that the grievor did not prove that the employer discriminated against her on the basis of race.

[87] For all of the above reasons, the Board makes the following order:

*(The Order appears on the next page)*

**VIII. Order**

[88] The grievance is dismissed.

[89] The Board Secretariat will redact the grievor's address and Personal Record Identifier from the following exhibits: E-1, E-23, E-52, E-69, E-79, E-88, E-89, E-98, E-101, E-103 and E-104. The originals will be returned to the employer.

December 19, 2019.

**Catherine Ebbs,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**