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File: 566-02-13909

Citation: 2022 FPSLREB 95

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

LOUISE LYONS

Grievor

and

DEPUTY HEAD
(Correctional Service of Canada)

Respondent

Indexed as
Lyons v. Deputy Head (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Bryan R. Gray, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Corinne Blanchette, Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN

For the Respondent: Caroline Engmann and later Marc Séguin, counsel

Heard via videoconference,
June 22 to 24, 2021.
(Written submissions filed September 20 and 29, 2022.)

REASONS FOR DECISION

I. Summary

[1] The Federal Public Sector Labour Relations and Employment Board ("the Board") previously ordered Louise Lyons ("the grievor") reinstated as a correctional officer at the CX-2 level (including a one-month suspension without pay) in *Lyons v. Deputy Head (Correctional Service of Canada)*, 2020 FPSLREB 122 ("*Lyons* 2020"). The concluding paragraph of that decision stated that I would reconvene the hearing to deal with the grievor's request for compensatory aggravated (moral) damages for her psychological harm and punitive damages. This decision concludes these and other outstanding remedial issues from the 2020 decision and the 2021 reconvened hearing.

[2] The grievor is awarded $150,000 (less a 10% discount for other contributing factors) as aggravated damages for the psychological harm she suffered.

[3] The grievor is also awarded an additional $175,000 as punitive damages.

[4] This amount is intended to punish the Correctional Service of Canada (CSC or "the employer") and to deter any future such deplorable misconduct that was so malicious that it offends the Board's sense of justice and decency.

[5] The punitive damages arise from the conduct of the employer, which, among other things, denied the grievor her right to natural justice ($75,000) and made a highly prejudicial and false accusation unsupported by any evidence whatsoever, amounting to an obstruction to the administration of justice, before the Board on the final day of the three weeks of proceedings ($100,000) that led to *Lyons* 2020.

[6] The employer either fabricated the false allegation itself, or, as it claimed, simply brought false gossip before the Board that was provided to an unnamed correctional manager (CM) by an unnamed correctional officer (CX).

[7] While it would be generous of me to accept the employer's explanation, it remains a completely reckless act if indeed it simply brought, as it claims, false and highly prejudicial gossip before the Board with no witness to testify to its source and veracity.

[8] No matter whether the employer fabricated the allegation or recklessly brought it forward with nothing but the claim that it arose from an unnamed CX, I must conclude that the employer intended to prejudice the grievor's case by seeking to link

her to the illicit drug trade, which *Lyons* 2020 concluded was the real reason for terminating her employment, despite the employer bringing virtually no evidence of anything related to such an allegation before the Board at the grievance adjudication hearing considering that matter.

[9] By doing this, the employer attempted to deceive and thus deter the Board from its duty to serve the interests of truth, fairness and justice at the hearing.

[10] Such a planned, deliberate, and malicious act must be seen as an affront to and an obstruction of the administration justice. The Board condemns this act of the Correctional Service of Canada in the strongest possible terms

[11] Additionally, the parties required that I issue a letter decision, on April 27, 2021 (unpublished; "*Lyons* 2021"), resolving several matters related to the grievor's reinstatement and the related delivery of the pay and benefits that the employer owed.

[12] For the reasons set out in detail in this decision, the award for psychological harm is justified by the clear and compelling evidence presented by the grievor, her family physician of many years, and a psychologist with specialized training in post-traumatic stress disorder (PTSD) in first responders, including correctional officers.

[13] This evidence clearly established that the employer's conduct was "by far" the primary cause of the grievor suffering severe symptoms of ill health. During the 2021 hearing, she continued to suffer those severe symptoms of stress, anxiety, and depression, which kept her largely detached from her former lifestyle. These symptoms became long-term and required her to take additional prescription medications and begin psychological counselling in 2021.

[14] At the hearing in 2021, the grievor's lack of well-being continued to prevent her from returning to her workplace, even though her grievance adjudication in 2020 resulted in her being reinstated in her position.

[15] The grievor's request for damages for loss of reputation is denied, as the relevant appellate jurisprudence states that such a claim rests upon harm that impairs the effort to find a new job. The grievor has been reinstated and compensated for all her lost income and benefits during the period before she was reinstated by order of the Board.

II. Summary of the decision in *Lyons* 2020

[16] The first 12 paragraphs of *Lyons* 2020 read as follows:

> *[1] Louise Lyons ("the grievor") worked as a correctional officer (CX, classified CX-02) at the maximum-security Kent Institution ("the institution") of the Correctional Service of Canada ("CSC" or "the employer") near Abbotsford, British Columbia. She maintained an unblemished performance record over her approximately 16-year career, and she received several written commendations for her good work.*
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> *[2] The employer became aware that an inmate had made very serious allegations against the grievor. The inmate was being held in segregation while facing drug possession charges under the* Corrections and Conditional Release Act *(S.C. 1992, c. 20;* CCRA*). He feared that his pending transfer out of the institution to a medium-security institution could be cancelled because he had been caught with drugs, and he wanted to offer information to ensure that his transfer went ahead as planned.*
>
> *[3] The allegations against the grievor included acts that could have formed the basis of at least one serious criminal offence, had the matter been referred to law enforcement authorities. The informant's information led to the discovery of a large quantity of the illegal drug fentanyl hidden in an inmate's cell at the institution and to the seizure of an encrypted cell phone and a security screwdriver that inmates use to access otherwise inaccessible areas of their cells to hide contraband, such as narcotics.*
>
> *[4] The informant's disclosure led to reviewing the video from the security cameras ("the video"), which constantly monitor the corridors (the range) outside the cells. The video showed the grievor passing items between cells. It also showed her taking a large bag of personal items from an inmate known as "Inmate W" in his cell and then putting it in a room for the CXs during a lockdown under s. 53 of the CCRA ("the s. 53 search"; the details shall be described later in this decision) to search for drugs.*
>
> *[5] The employer used the video to note the grievor standing close to the open food-tray slot of a cell door, where the inmate inside could possibly reach her. The employer suggested that she needlessly put herself at risk of harm from the inmate by doing so. She then looks over her shoulder in a suspicious manner towards where her partner had been and then pauses, possibly to ensure that her partner CX is not still there, to potentially observe her interacting with the inmate. She then removes her safety glove, takes items through the open slot, and briefly converses with the inmate inside. All this led the employer to conclude that she trusted the inmates, which was evidence that she had unacceptable relationships with them.*

> *[6] The employer also concluded that those actions of the grievor compromised the s. 53 search of the grievor's E ("Echo") unit due to the risk posed that drugs or other contraband, such as weapons, were hidden in the items she passed between the inmates. The employer determined that it amounted to serious violations of its code of ethics and that it violated its Commissioner's Directives (CD) 566-9 and 12.*
>
> *[7] The employer formed the view that the grievor's actions were deliberate and serious that together irreparably broke its bond of trust with her. They necessitated her immediate suspension with pay and later, after an investigation, the termination of her employment.*
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> *[8] In reality, the evidence established that the employer relied primarily upon the informant's information and that it decided early in the investigation that the grievor had been compromised.*
>
> *[9] However, the employer brought virtually no evidence forward at the hearing pertaining to these very serious allegations made by the informant. It became clear that the employer had acted on these allegations without ever having presented them fully to the grievor or giving her an opportunity to respond to the case being made against her.*
>
> *[10] That violated the most fundamental principle of Canadian administrative law, which is that natural justice requires that the grievor know the case against her and that she be able to respond and answer to the allegations. This is captured by the Latin maxim* audi alteram partem *or "hear the other side".*
>
> *[11] Based upon the evidence that was brought before me however, I conclude that the video showing that the grievor passed items between cells during a lockdown without searching them and her taking a large bag of items from a cell and placed it in the CX office outside the search area were contrary to established policy and procedures, were unacceptable, and were worthy of discipline.*
>
> *[12] Given all the relevant circumstances, including the grievor's excellent record of service and the employer's reliance on unproven information, upon which it acted without respecting principles of natural justice, I conclude that the termination of her employment was excessive. I substitute her termination of employment with a one month suspension without pay.*

III. Evidence

A. The grievor

[17] The grievor testified as follows:

- She has been through 4 years of hell since being escorted out of her workplace and then suspended and fired from her position.

- Due to being fired from her position, she lost her home and had to go to a local charitable organization's food bank for food to eat.
- She had enjoyed a great career and had received commendations for her work as a CX-2 in a maximum-security institution and then suddenly had no option but to sweep floors for minimum wage.
- She was forced to take such a job as sweeping floors at a retail establishment, as no employer would hire her in a field even remotely related to her career in corrections and security once she informed potential employers that she had been terminated for disciplinary reasons from her position with the employer.
- She was devastated due to losing her job and to not being able to find another position in the field of corrections, policing, and security work.
- Her father had enjoyed a career in policing, and she was devastated by the feeling of shaming his legacy to their family for what she was accused of by the employer.
- She had no income for several months.
- She felt terribly humiliated, as former co-workers and people she knew would patronize her new workplace and see her sweeping floors.
- Her health, along with workplace stress and anxiety that arose from how the employer treated her, has not allowed her to return to her position at the CSC's Kent Institution in Agassiz, British Columbia ("Kent"), despite her desire to return to her CX-2 work.
- She lost all her friends and acquaintances in the community. Her social media contacts cancelled her.
- Her co-workers heard and believed that she was fired for being a drug mule who smuggled fentanyl and other contraband into Kent, on behalf of organized crime.
- She was fired because of allegations involving illicit drugs, and then, on the last day of the hearing, the employer falsely stated that she had been admitted to an emergency ward at a local hospital for treatment for a drug overdose.
- Her co-workers shunned and would not speak to her.
- Her reputation has been destroyed.
- She was devastated by the employer's false claim of her suffering a drug overdose.
- That false claim is disgusting. It had no basis in fact; there was no evidence for it whatsoever.
- The false claim of her drug overdose spread through her community of Chilliwack, B.C., and it destroyed her reputation.
- Chilliwack is close to several CSC institutions, and the community is full of fellow guards, who heard the rumours and think that she was fired for being a drug mule.
- Friends and co-workers that she socialized with in her community now refuse to talk to her. They turn the other way and will not answer her if she tries to greet them.
- After her reinstatement, she went to Kent for a meeting. After that, she was walking in the courtyard toward the front gate when she saw a (named) co-worker, who was a CX trainer. He stared at her and walked toward her but passed without talking and then walked through a nearby door and slammed it behind him. He had 2 new CX staff with him, and she could see that after that, they spoke among themselves and then all stared at her.
- On her next visit to Kent, to deal with payroll papers, a CX she knew, who was in a vehicle on mobile patrol, drove by, just staring at her. When she left the

meeting and exited Kent 40 minutes later, he was waiting outside the main gate and just sat there watching her until she entered her car and drove away.
- The employer's allegations against her will never go away. They will follow her wherever she goes and will be there for the rest of her life.
- At the last day of the hearing, when the employer said that she had had a drug overdose, she felt devastated.
- She was so hurt by the false accusation that she felt ill and could not go to work, even though she had no sick leave.
- Her employer betrayed her.
- She can never again trust her employer.
- She was so ill through it all that she was on doctor-prescribed medications for anxiety and depression.
- She had stress attacks, which all triggered her PTSD from when she was caught up in a workplace riot several years earlier.
- The stress and anxiety from being off work impacts every part of her life.
- She cannot remember things.
- All her family relationships have been damaged.
- The stress and anxiety from everything attacks her body and makes her ill.
- She is not sure how she made it this far.
- She was in the darkest place she had ever been in and did not know how she could continue.
- She thought of suicide.

[18] I note that in her examination-in-chief, the grievor testified that she "just about tried to commit suicide" but that she sought help at the hospital after thinking about how much she loved her children. She said that it occurred after the employer suspended her from work and when she had no income.

[19] Later, when presented with detailed medical records from her physician, the grievor's memory was refreshed, and she clarified that in fact, she went to the hospital for help with her mental health before she was suspended from her position at Kent.

[20] When asked about the impacts of losing all her income, the grievor testified as follows:

- It was hell.
- She could not afford to keep her car.
- She lost her "dream home" with a beautiful mountain view that she had owned for several years and that had special accommodations so that her mother could reside there in a self-contained suite.
- She lost the huge increase in the value of her home as real property appreciated rapidly in the years after her suspension and termination of employment from Kent.
- She had to move to a different apartment every year as property values in the region soared and building after building was converted to condos or was closed to allow for the development of the property.
- She relied upon a food bank.

- She was forced to borrow tens of thousands of dollars to cover her basic cost-of-living expenses from small payday-loan-type businesses that charge outrageous interest rates.
- She was forced to borrow money from family members.
- Her husband was forced to find a second job and work back-to-back shifts.
- She thinks that her employer sought to destroy her, and she is hurt and angry as it can never be repaired in full.

[21] The grievor concluded her examination-in-chief by stating that she is a good person, was a good guard for her employer, was betrayed by her employer, and did not deserve any of the horrible things that happened to her since being suspended and fired from her job at Kent.

[22] During her cross-examination, the grievor stated that:

- Yes, the Board of Investigation's (BOI) report into the allegations made against her, including being a drug mule carrying fentanyl into Kent, was to be private and not circulated to all staff.
- Yes, the inmate's allegations against her were mentioned in *Lyons* 2020, at paragraph 369.
- Yes, in *Lyons* 2020, the Board concluded that a one-month suspension without pay was warranted for her on-duty conduct at Kent.
- No, she did not have anything from the employer stating that she was a drug addict.
- Yes, there was a list posted at Kent's front gate with her name on it as someone who had been suspended or fired and thus was not allowed to enter.
- She received medical and psychological counselling treatment at different times after her suspension and termination but did not contact the employer's employee assistance program (EAP).
- She did not apply for provincial workers' compensation benefits in the fall of 2016.

[23] The grievor was asked several questions about the dates on which she saw her family physician and her treating psychologist. She was unsure of the exact dates of several appointments that were being examined alongside documentary evidence from her medical files. However, when the medical records were examined, and after she later admitted to it, it was established that two months passed after her employment was terminated before she discussed it with her physician. In reply evidence on the matter of the two months, she stated that she tried to live her life, that she took her prescription medication, and that she tried her best not to see her doctor every week or month.

[24] It was also established that the grievor made 23 visits to her family physician between September 2016 and February 24, 2021, which she said were all related to the stress and anxiety that arose from the loss of her job.

B. Dr. Jeffrey Morley

[25] Dr. Morley was presented as a registered psychologist and an expert in trauma counselling with a speciality as an American board-certified expert in traumatic stress. He provided testimony about his counselling treatment of the grievor.

[26] Dr. Morley testified as follows:

- He treated the grievor from January 31 to May 24, 2021.
- She exhibited severe symptoms of depression, anxiety, and post-traumatic stress, which he said had a huge impact on her mental health, and it all flowed from her employment being terminated and the events that led to it.
- The severe symptoms included bouts of crying and shortness of breath.
- He was quite confident of his observations as her symptoms were quite evident, despite that he had not yet performed a detailed assessment that would have delved into her whole life experience.
- He doubted that she could ever return to work at Kent as she felt betrayed by her employer and so would feel quite unsafe at work.
- He said that a key part of her illness was due to the massive shame and humiliation she felt and the related shunning of her in the community due to the drug allegations made against her.
- He explained that this massive trauma was layered on top of previous PTSD from a workplace riot in which she had feared for her life.
- But he added that "by far", the problems related to her being fired from work and that how it was handled by her employer caused the problems she now faced, which would likely continue for years to come.

[27] I note that in his clinical notes that were tendered as exhibits at the hearing of this matter, Dr. Morley wrote this:

- On April 4, 2021, "So much shame and judgement from CSC people when she has gone to Kent for business. Feels reputation [is] damaged beyond repair and would be unsafe at CSC."
- On May 14, 2021, "Still feels cannot go back to CSC for physical and psychological safety concerns."
- On May 24, 2021, "Spoke more about her sense of betrayal by CSC".

[28] In cross-examination, Dr. Morley stated this:

- Yes, he based his observations upon information from the grievor, which he did not try to independently verify.
- No, he was not an advocate for the grievor.
- The first time he saw the grievor for treatment in his clinic was January 2021.

- He did not (and typically does not) take lengthy patient histories from new clients at his clinic.
- Yes, he treats many first responders for job stress and related illnesses.
- Yes, a CX is a first responder.
- Yes, he has presented to the CSC about resiliency with respect to how its staff could better cope with workplace stress.
- In the category of occupations including CXs, stress and anxiety are prevalent, and related illness occurs at a rate of 30% of people in those occupations, which is higher than the general population rate.
- He did not investigate and would not render an opinion about the grievor's previous PTSD related to the prison riot but stated that yes, such a previous condition could have arisen.
- No, there has not been any formal assessment or diagnosis of the grievor's illness that he is aware of since January 2021.
- Based upon his clinical notes that were before the hearing as an exhibit, which stated that the grievor told him of current domestic relationship challenges in her life, yes, this would contribute to her symptoms, which he had previously described, as also would years-earlier domestic abuse from a former spouse.
- Yes, his clinical notes also stated that the grievor described other long-standing family challenges in her life, which would add stress and contribute to her current symptoms.
- It would be nearly impossible for the grievor to ever return to Kent.

[29] In his reply testimony, he stated that having observed the grievor closely in his consultations, he had no reason at all to doubt the credibility of what she told him during their clinical sessions.

C. Dr. Martin Dodds

[30] Dr. Dodds has 30 years' experience as a family physician and first saw the grievor as a patient at his Chilliwack clinic in 2001. He had been her family doctor and saw her regularly since at least 2004.

[31] The employer did not challenge his credentials and testimony as to his opinions as a family doctor.

[32] Dr. Dodds testified as follows:

- Beginning on September 26, 2016, about when the grievor was first suspended from work, he saw her for the treatment of at times quite severe symptoms, including irritability, stress, anxiety, and sleep loss, all of which continue to this day.
- He said that her suspension and later firing caused a significant social disturbance (social phobia) for her in which for long periods, she could not leave her home, became isolated, could not sleep due to nightmares, and experienced suicide ideation.
- All her symptoms fit with an anxiety or mood disorder diagnosis and PTSD.

- Despite her previous work-related PTSD-causing event, he thought that what she had gone through with her suspension and firing from work would, on its own, qualify independently as an event causing PTSD.
- When asked about the grievor going to a local hospital for treatment for a drug overdose, he said that no such event occurred to his knowledge. He then reviewed patient health records from the regional health authority and found no record of the grievor attending a hospital for treatment for anything related to a drug overdose.
- However, he added that when the employer made this accusation, the grievor's stress and anxiety levels increased, and she became even more withdrawn.

[33] Clinical notes from Dr. Dodds, which, upon the grievor's application, I ordered redacted to avoid the disclosure of very personal information that was completely unrelated to matters before this hearing, were accepted as exhibits and included the following entries:

- On September 27, 2016, he wrote, "I think that she is now at a point in her mental state, PTSD that she will likely never be able to return to work." And later in that same memo to file, he wrote, "… it is extremely unlikely that she should return to work."
- On October 6, 2016, he wrote, "She has significant anxiety even thinking about returning to work or even going to that area."
- On January 19, 2017, he wrote, "There is 0 chance she is going be a little return to this employment [*sic*]." The patient chart entry on this date then notes details of an Ativan prescription, which I take notice of as commonly being used to treat anxiety disorder.
- On June 22, 2017, he wrote that the grievor was "… not coping very well recently", and "She is very much overthinking this [losing her job and trying to get it back] almost like a PTSD syndrome." The same patient chart entry then notes a prescription being given for Cipralex, which I take notice of as commonly being used to treat depression, anxiety, and obsessive-compulsive disorder.
- On February 21, 2019, he wrote of the grievor reporting dizziness, fatigue, and nausea. He then wrote, "I think a lot of this has to do with anxiety and stress."
- On September 24, 2019, he wrote this:

  > [The grievor] *presents very distressed, she has been involved in a legal battle with her employer, with regards to wrong full termination/dismissal. With the fallout of all of these events she is been having increasing difficulty sleeping, irritable, increased anxiety, decreased concentration and more withdrawn than previous.*
  >
  > *There is been some false allegations about some trips to the hospital which I will respond to.*
  >
  > [*Sic* throughout]

  The patient chart then states that an additional medication, Effexor, was prescribed, along with a renewed prescription for more Ativan, which was to be taken concurrently. I take notice of Effexor, which is commonly used to treat depression.

- On January 4, 2021, his patient chart notes that her grievance to get her job back was "100% successful" but that "… she is still overwhelmed by the ongoing emotions about this, PTSD around these events …" and then wrote that he would try to enroll her into a formal PTSD treatment program and that he had written a note about finding a psychologist to help her.

[34] Dr. Dodds testified in cross-examination as follows:

- He confirmed that his clinical notes from an appointment with the grievor on September 27, 2016, indicate this:

> …
>
> … [she was] *significantly distressed mostly related to her PTSD. There has been a multitude of problems. She has had PTSD since the prison riot 8 years ago. She amazingly did return back to work after this but has had increased stressors related to an assault by her ex-husband 2 years ago.…*
>
> …

- In his family medicine practice, he does not usually make diagnoses; rather, his notes mainly document symptoms observed, unless it is very obvious.
- He confirmed that this same note indicates that a return to work was unlikely, given the grievor's history of PTSD that arose from the riot and the assault by her ex-husband, who was a co-worker at Kent.
- He did not know what if any treatment she obtained for her 2008 PTSD.
- He did not see her in March 2017 in the weeks after she received her termination letter from the employer, but at that time, the wait for appointments was four to five weeks.
- He confirmed that his clinical notes continue through 2019 to 2021 and state that she continued to suffer overwhelming stress and anxiety related to her dismissal and then reinstatement after her adjudication.
- His clinical notes of June 23, 2020, indicate that no other external stressors were impacting the grievor, other than her workplace problems.
- He based his clinical notes and conclusions on the symptoms he observed and upon what she told him. He did not seek to independently verify what she told him, but after many years of treating her, he built knowledge about her.
- He did not see the termination letter or the Board's decision ordering her reinstatement.

D. Recall of the grievor

[35] I granted the grievor's request to testify again, to correct what she called her mistaken memory of her attendance at the local hospital. Dr. Dodds' testimony and the examination of his hospital records had refreshed her memory. The employer neither objected to it nor claimed that any prejudice to its case arose from it when I inquired of its counsel on this point.

[36] The grievor explained that she mistakenly testified in-chief that she sought treatment at the local emergency ward for psychological treatment related to her ideation of suicidal thoughts after her suspension from work. She clarified in recall examination that this had occurred before her suspension from work.

[37] I also allowed the employer to then introduce a "Statement Observation Report" (SOR) written by Correctional Manager (CM) Julia Lakey, who had been a co-worker of the grievor, to be included in the cross-examination of the grievor's recall testimony. Ms. Lakey was a CM as of her testimony.

[38] In her recall cross-examination, the grievor stated this:

- She and her husband, also a CX at Kent, went to a local casino and lounge one evening and saw her co-worker and friend, Ms. Lakey, whom the grievor said hello to. She repeated the greeting as she had received no reply.
- After the second greeting, Ms. Lakey replied with, "You know what you did …".

[39] The employer's counsel then advised the grievor that Ms. Lakey would testify to a completely different version of this event as was memorialized in the SOR dated November 25, 2019. The grievor then stated that she was aware of the SOR as it accused her of threatening Ms. Lakey, which in turn resulted in a police investigation that she said amounted to nothing.

E. The grievor and Ms. Lakey's interaction at the casino

[40] The grievor testified that her home community of Chilliwack, is "guard central", as many federal penal institutions are nearby, and many CXs live in that community. She explained how one evening, after her employment was terminated, she went to a local casino, to enjoy an evening out, with dinner.

[41] She explained that shortly after her arrival, she walked past a former co-worker (later identified as Ms. Lakey) and said hello to her in passing. The grievor said that she received no reply. The grievor then tried to say hello again, and this time, according to her, Ms. Lakey turned to her and said, "You know what you did; you're f***ing dirty … you're crazy."

[42] Ms. Lakey was called to testify. Very helpfully, she went to considerable effort to make herself available during a leave from work. She testified that she was a CX-2 during the times at issue and that since then, she was promoted to a CM position. She

confirmed that the SOR filed on November 25, 2019, and titled, "Incident on the weekend involving CX Louise Humphrey", about the noted casino interaction with the grievor, was of her writing. She said that she wrote and filed it as she was a peace officer and that she felt that it was her duty to report the incident in addition to filing a report with the local police authorities.

[43] Ms. Lakey testified that a bit later, while seated at her table, a woman who had been seated with the grievor walked up to her and started speaking to her in a loud, profane manner. Ms. Lakey testified that the people at the next table looked over and said, "What was that all about?" A short time later, after the profane woman had left, Ms. Lakey said that her husband had left the table to get more beer, and then, her eyes met the grievor's. The grievor then yelled something about Ms. Lakey not wanting to talk to her. Ms. Lakey said that she replied by saying, "No, you're crazy."

[44] Ms. Lakey then explained that the grievor became agitated and began waving her arms wildly; she then said, "The Corrections [*sic*] Service of Canada f**ked up", adding that she would get 1 million dollars, and then, "Kent management can f*** off". She then called Ms. Lakey a "fat b*tch". The grievor said that she would "kick [Ms. Lakey's] ass" and tried to bait Ms. Lakey to go outside with her. Ms. Lakey testified that she remained seated and that she just kept repeating to the grievor, "Your crazy is showing."

[45] When asked in her examination-in-chief if she called the grievor "dirty" during the exchange in the casino, Ms. Lakey denied using that term and said the following: "I don't talk about it. I don't know what that's about."

[46] Much more testimony was adduced at the hearing about this interaction, which was almost exclusively related to the grievor's request for an award related to her loss of reputation.

[47] This brief capture of the interaction with Ms. Lakey is being noted out of respect for the efforts that the witness made to participate in the hearing and due to this event being a foundational piece of the grievor's request for damages for harm to her reputation, which shall be addressed later in this decision.

IV. Issues and analysis

[48] This decision must resolve whether the evidence presented to the Board fits within existing jurisprudence, to allow granting financial compensation for psychological harm to the grievor, and whether the employer's actions justify granting punitive damages to serve as punishment for its behaviour during the disciplinary and grievance processes and before the Board.

[49] The grievor submitted that the Board has the authority to award damages for psychological harm and harm to reputation and to award punitive damages, relying upon s. 228(2) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*").

[50] The employer did not challenge this submission of the grievor with respect to jurisdiction to make an award but submitted that on the evidence before me as applied to the relevant jurisprudence, if any award is ordered, it should be very modest.

[51] The employer cited Supreme Court of Canada authority for the caution and restraint that is to be exercised when considering any such award as well as the high threshold that must be met to justify punitive damages.

[52] The grievor cited jurisprudence that awarded a wide range of damages and pointed to $50,000 as a minimum for each of the three heads of damages that she requested. In later written submissions (September 2022) invited by the Board, the grievor increased her request for the punitive damages aspect of this decision to a minimum of $100,000, thus arriving ultimately at a minimum requested total quantum for the combined damages of $250,000.

[53] The grievor stated that the facts before me are unique, that they do not squarely fit within any existing jurisprudence, and that fixing an appropriate quantum would be a nearly impossible task and would be more art than science.

[54] When upon the conclusion of its arguments, I asked the employer if I understood correctly that it denied all liability for such damages and that nothing was owed the grievor, it responded in the negative. It argued that no punitive damages should be awarded but made no such definitive submission with respect to psychological damages.

[55] The employer pointed to evidence before the hearing that it said established little or no causal connection between its actions and the grievor's alleged harm, and it also disputed the severity of the harm she claimed.

A. Aggravated (moral) damages for psychological harm

[56] The grievor submitted that the several findings of inappropriate employer conduct in *Lyons* 2020 and the harm it caused to her health, as documented at the hearing, should result in a significant award of aggravated damages.

[57] The jurisprudence presented on this topic refers to both aggravated and moral damages for psychological harm. I see no distinction or consequence arising from the use of either term in the cases before me and therefore accept both as interchangeable.

[58] In its submissions on this matter, the employer did not deny all responsibility or submit that no harm was suffered by the grievor; however, it argued that the evidence showed that other factors, unrelated to her suspension and termination of employment, were responsible for her being unwell.

[59] These factors shall be analyzed later but include previous harm that arose from a workplace riot and domestic abuse by a co-worker. The employer also challenged the medical evidence related to the grievor being unwell, suggesting that it was mostly based upon her subjective statements.

[60] The employer also noted that the grievor was found deserving of a significant disciplinary sanction of a one-month suspension without pay in *Lyons* 2020, thus making her an author of her own misfortune. And finally, the employer cited cases that found that some level of stress, anxiety, and disappointment in life and career are unavoidable and as such are non-compensatory.

[61] As a preliminary matter of the employer's liability for some or all of the grievor's post-employment harm, I note the that both parties cited the Supreme Court of Canada's decision in *Honda Canada Inc. v. Keays*, 2008 SCC 39, as the leading authority on the matter of damages for psychological harm. It stated this:

> …
>
> *[57] Damages resulting from the manner of dismissal must then be available only if they result from the circumstances described in* Wallace*, namely where the* ***employer engages in conduct during***

> ***the course of dismissal that is "unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive"*** *….*
>
> …
>
> [Emphasis added]

[62] And it stated this at paragraph 59:

> *[59] … Thus, if the employee can prove that the manner of dismissal caused mental distress that was in the contemplation of the parties, those damages will be awarded not through an arbitrary extension of the notice period, but through* ***an award that reflects the actual damages. Examples of conduct in dismissal resulting in compensable damages are attacking the employee's reputation by declarations made at the time of dismissal, misrepresentation regarding the reason for the decision,*** *or dismissal meant to deprive the employee of a pension benefit or other right, permanent status for instance ….*
>
> [Emphasis added]

[63] I agree with the grievor's submission that my findings in *Lyons* 2020 meet the criteria as just noted in *Honda Canada Inc.* My conclusion that the employer denied the grievor her right to natural justice by misrepresenting the real reasons for terminating her employment is clear and compelling evidence of it acting in bad faith by being untruthful and misleading.

[64] I concluded in *Lyons* 2020 that the employer accepted the allegations from the informant being held in segregation and that it quickly decided that the grievor was compromised. It then ventured on a course of action to find other reasons to justify its decision to terminate her employment.

[65] The Board found the evidence supporting these other reasons insufficient to justify terminating the grievor's employment. This same evidence was also found insufficient to prove any mal-intent or nefarious motivation on the part of the grievor, as the employer alleged.

[66] *Lyons* 2020 concludes that the employer made repeated statements at the hearing that used bald conjecture unsupported by evidence to impugn motives and mal-intent in support of its allegation that the grievor had been compromised by organized crime.

[67] Such personalized attacks upon the grievor were buttressed in its concluding arguments by the employer citing jurisprudence in which a CX had been found to have had close relationships with known members of organized crime.

[68] The employer went so far as to call a co-worker CX who testified that he could never work with or trust the grievor again due to her being compromised.

[69] These actions of the employer were consciously premeditated and unfolded over months and years of the investigation, grievance, and finally adjudication processes. The evidence as outlined in this decision established that the denial of the grievor's right to natural justice and the repeated attempts to attack her in a very personal manner made the employer liable for damages for psychological harm to her.

[70] The grievor noted cases that awarded a range of damages for psychological harm. At the lower end of her range stands the Board's decision in *Mattalah v. Treasury Board (Department of Foreign Affairs, Trade and Development)*, 2018 FPSLREB 13, involving a foreign services officer who was unfairly subjected to a performance improvement plan without first being given performance objectives, which was in contravention of the collective agreement. Ultimately, it led to him being denied advancement. He alleged that his overseas assignment ended prematurely and that he was then sent back to Ottawa, incurring what he said were significant financial and emotional costs. He testified to becoming exhausted, anxious, and depressed and to obtaining medication and counselling for these ailments. He also claimed that his career advancement path had been permanently harmed by his employer's failure to abide by the collective agreement requirement to deal with his annual performance objectives and evaluation (see paragraphs 155 and 156).

[71] The Board awarded $20,000 in damages for his psychological harm arising from the breach of the collective agreement and stated the following:

> …
>
> ***159*** *Thus, I am satisfied that the grievor is entitled to a compensatory remedy in this regard. I find that there are at least four elements in this case that argue in favour of awarding him aggravated damages.*
>
> ***160*** *Firstly, contrary to clause 9.03(a) of the collective agreement, the employer did not provide the grievor with written objectives at the beginning of his assignment. I agree with the grievor that it would have been difficult for him to be assessed negatively against*

criteria that were not clearly identified at the start of his assignment.

161 *Secondly, contrary to clause 9.03(b), the employer was not forthright about the fact that the grievor's second assignment was being reconsidered in December of 2014 for performance reasons. As described by the grievor, these events had a direct effect on his life and welfare.*

162 *Thirdly, contrary to clause 9.03(b), the employer hid the truth behind the PIP from the grievor, which did not help him improve his performance and was only a test of his potential to fill the FS-03 position. The whole PIP process was very difficult on the grievor. Given the employer's conduct, these difficulties went beyond the normal difficulties an employee might experience in being subject to a PIP. He requested feedback on his report writing but was provided with none. He worked hard to meet the employer's extra reporting requirements under the PIP, in addition to doing his regular work. His health deteriorated as a result.*

163 *Fourthly, the employer's lack of forthrightness and clarity negatively affected the grievor's corridor reputation.*

164 *In sum, during this period, because of the employer's breach of the collective agreement,* ***the grievor experienced a lack of confidence, hurt feelings, low self-esteem, humiliation, stress, anxiety, and a feeling of betrayal. He sought medical treatment as a result. Based on the evidence presented, I find that his pain and suffering were significant and long-lasting and are ongoing.***

…

169 *While the present case is not about a dismissal but a breach of a collective agreement, the principles outlined in* Keays *are instructive. That is,* ***damages are not available to the grievor for any normal pain and distress suffered as a consequence of being subject to a PIP or being reassigned. Rather, it is any unfair, bad faith, untruthful, misleading, or unduly insensitive conduct on the part of the employer*** *in implementing the PIP or reassigning the employee, in breach of the collective agreement, which needs to be considered when awarding any aggravated damages.*

170 *The intangible collateral damage in terms of pain and suffering and of loss of reputation and morale is difficult to quantify in the present case. However, in my view, it is appropriate that the respondent pay the grievor a reasonable amount of damages for matters that cannot be objectively assessed —* ***pain and suffering, loss of reputation and morale, hurt feelings, and other similar matters (including the complainant's pain of seeing his family suffer emotionally).*** *In consideration of the evidence and argument noted earlier, I find that $20 000 is reasonable compensation.*

…

[Emphasis added]

[72] While obviously, the Board was moved by the unfortunate circumstances that befell Mr. Mattalah and the frustration and concern he was caused by what he perceived as a roadblock being unjustly put in his career path, he suffered no loss of income, and his concerns over career advancement appear to have been mostly speculative. I distinguish that case as having none of the very serious and long-term impacts upon the grievor's health in the matter before me or the hardship she suffered from losing her job and the shame she suffered in her community by having her reputation ruined by being labelled a drug mule despite being a peace officer.

[73] The harm that the grievor suffered in the matter before me is, on the evidence, many, many times worse than that in *Mattalah*.

[74] The grievor also cited a B.C. human rights tribunal decision that ordered an award as what she referred to as the upper end of the scale of $220,000 (less a 20% contingency) for injury to dignity arising from race-based discrimination in the workplace (see *Francis v. BC Ministry of Justice (No. 5)*, 2021 BCHRT 16).

[75] While Francis arose in a provincial jurisdiction and under the authority of human rights legislation it nevertheless stands as an interesting comparator as it related to serious harm to health suffered due to workplace events.

[76] My careful reading of this case showed that Mr. Francis suffered many of the same ill effects and harm to his health and well-being as did the grievor before me. However, the evidence presented in *Francis* showed that approximately seven years post-employment, his medical practitioners declared him totally disabled and unable to ever work again. He shared many of the same symptoms as did the grievor before me; however, additional evidence from his physician of many years added a pre-injury comparator of him being active, fit, and athletic, while after his workplace harm, he became very ill and largely inactive. Some additional evidence was also adduced in *Francis* as to his symptoms of anxiety and depressive disorders that caused severe indigestion such that even eating became difficult for him (see paragraphs 207 to 211).

[77] Similar to the evidence before me, Mr. Francis showed a continuing deterioration in his health years after he was forced to cease his employment (see paragraph 24).

[78] The evidence before me showed a worsening of symptoms and additional medication prescribed, along with highly specialized trauma therapy, even after the grievor was awarded reinstatement to her job (*Lyons* 2020) as her family physician documented the spectre of returning to the workplace as exacerbating her anxiety symptoms.

[79] Having carefully read and considered *Francis* and compared it to the evidence before me in this matter, I conclude that the evidence in *Francis* shows very similar but more severe harm. The additional evidence as to Mr. Francis's pre-harm vibrant health and perhaps the benefit of additional years post-harm, when he was declared totally disabled and unable to work in any job and had difficulty eating and digesting, are important distinguishing features of *Francis*.

[80] Addressing what it suggested were psychological symptoms experienced by the grievor that were insufficient to attract an award of damages, the employer cited the British Columbia Court of Appeal's (BCCA) decision in *Lau v. Royal Bank of Canada*, 2017 BCCA 253, which found as follows:

> …
>
> *[50] As noted in* Mustapha [*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27]*:*
>
> > *9 This said,* ***psychological disturbance that rises to the level of personal injury must be distinguished from psychological upset. Personal injury at law connotes serious trauma or illness****: see* Hinz v. Berry*, [1970] 2 Q.B. 40 (C.A.), at p. 42;* Page v. Smith*, at p. 189; Linden and Feldthusen, at pp. 425-27.* ***The law does not recognize upset, disgust, anxiety, agitation or other mental states that fall short of injury*** *…* ***Quite simply, minor and transient upsets do not constitute personal*** **injury*****, and hence do not amount to damage.***
>
> …
>
> *[69] To receive aggravated damages based on mental distress, the employee is required to show that the manner of dismissal caused injury rising beyond the normal distress and hurt feelings that arise from the fact of dismissal.…*
>
> …
>
> [Emphasis in the original]

[81] I agree with the grievor's reply that there is no question that the employer's conduct caused her mental distress beyond the ordinary psychological upset arising from the loss of a job.

[82] The grievor explained how ill she became, to the point that she was unable to do any work. She needed doctor-prescribed medications for anxiety and depression, experienced bouts of crying, shortness of breath, and stress attacks, which in turn triggered her PTSD symptoms. Her memory was impacted, and she had suicidal thoughts. All these effects on her health were compounded by the huge financial impact on her and her family from the unwarranted dismissal, not to mention her treatment as a pariah by others within the tight-knit corrections community in her region. The evidence of the significant and at times debilitating harm suffered by the grievor was supported by the evidence of Dr. Dodds and Dr. Morley.

[83] The employer largely focused in its closing submissions on the evidence that it stated suggests that other factors at least partly contributed to the grievor's state of unwellness, which should lessen any finding of its responsibility and its exposure to any award of damages. It pointed to Dr. Morley's testimony, in which he said that past stressors, trauma, and post-employment stressors that the grievor mentioned in their sessions and that were documented at the hearing would all contribute to her current problems. It also highlighted Dr. Dodds' statement in cross-examination that a return to work was unlikely, given the grievor's history of PTSD that arose from the riot and the assault by her ex-husband, who was a co-worker at Kent.

[84] The employer noted the following passages of *Younesi v. Kaz Minerals Projects B.V.*, 2021 BCSC 614, in this respect:

> …
>
> *[78] It is important to note that, for the purposes of wrongful dismissal cases, "the test for mental distress damages is, in principle, the same in contract and in tort":* Lau *at para. 48. Hence, just as in a tort case and as recognized by the Supreme Court of Canada in* Saadati v. Moorhead*, 2017 SCC 28, while proof of a recognized psychiatric illness is not required and medical evidence is not strictly necessary, there must still be at least some reasonably compelling evidentiary foundation for the serious and prolonged impact of the manner of termination upon the plaintiff's mental condition.*
>
> *[79] In these cases, it is also important to keep in mind the distinct principles of causation applicable to (a) liability and (b) the*

> *assessment of damages. With respect to causation for liability purposes, the basic principles are found in the seminal case of* Athey v. Leonati, *1996 CanLII 183 (SCC), [1996] 3 S.C.R. 458 at paras. 13-20, repeated many times since, and which include:*
>
> 1. *The general, but not necessarily conclusive test for causation is the "but for" test requiring the plaintiff show his injury and loss would not have occurred but for the negligence of the defendant.*
> 2. *This causation test must not be applied too rigidly. Causation need not be determined by scientific precision as it is essentially a practical question of fact best answered by ordinary common sense.*
> 3. *It is not necessary for the plaintiff to establish that the defendant's negligence was the sole cause of the injury and damage. As long as it is part of the cause of an injury, the defendant is liable.*
> 4. *Apportionment does not lie between tortious causes and non-tortious causes of the injury or loss. The law does not excuse the defendant from liability merely because causal factors for which he is not responsible also helped to produce the harm.*

[85] The employer also relied upon *Younesi* for the analysis it provides for a pre-existing condition and what the Court described as the "thin skull" rule, as follows:

> *[89] I referred above to certain principles underlying the assessment of damages for mental distress. In this case, I have found that Mr. Younesi had certain "thin skull" personality features which made him inordinately susceptible to insult and mental distress and that the manner of his termination was indeed at least one cause, if not the only cause, of the prolonged distress he has since suffered. This is sufficient to affix Kaz Minerals with liability for aggravated damages. However, the quantum of those damages must also reflect the fact that other factors that are unrelated to the termination of his employment have also significantly contributed to that distress. I refer in particular to the fact that, despite diligent efforts, Mr. Younesi has not been able to secure further employment since his dismissal by Kaz Minerals.*
>
> …
>
> *[91] I have no expert evidence or indeed any medical evidence supporting the extent to which Mr. Younesi would have experienced mental distress because of prolonged unemployment following any "proper" termination by Kaz Minerals. However, the same "robust and pragmatic approach to causation" applied at first instance also permits me to draw an inference of contributory causation by prolonged unemployment using the proverbial "common sense approach" to the facts even in the absence of scientific proof. It is perhaps a somewhat arbitrary exercise but one which, in the result, must be fair to both parties.*

> *[92] Awards for aggravated damages in wrongful dismissal cases are generally in the range of $25,000 to $35,000. This reflects an appropriately cautious approach to such awards*
>
> *[93] Mr. Younesi's mental distress has been substantial and prolonged but it has been significantly exacerbated by current market conditions and his continued inability to find replacement employment. If I were awarding damages reflecting the entirety of the distress, it would likely be in the amount of $25,000. In the circumstances of this particular case, after applying a "discount" to reflect the substantial contribution of prolonged unemployment for which Kaz Minerals is not liable, I award Mr. Younesi aggravated damages in the amount of $12,500.*
>
> …

[86] The employer submitted that Dr. Dodds' evidence should be discounted and alleged that he presented it as an advocate for the grievor. I disagree.

[87] At all times, his testimony was of a professional tone, with direct answers at times guided by his clinical notes. None of his comments strayed into anything that could be seen as advocating for the grievor.

[88] The employer also challenged Dr. Dodds' observations as he described the grievor's ill effects from being suspended and then removed from her employment, as well as the stages of her BOI hearing, the termination letter, the Board's adjudication hearings, and finally her being accused of having had a drug overdose.

[89] The employer pointed out that most of the doctor's testimony was a mere recitation of what the grievor told him about her symptoms. The employer suggested that the doctor should have done more to test the information the grievor gave to him. I note that the employer cited no jurisprudence for discounting a physician's clinical notes based on them relying to some extent upon the patient's reported symptoms.

[90] I also note that Dr. Dodds testified that he had been in practice for 30 years and that he had provided family medical care to the grievor for "a long time", and the patient chart he had before him at the hearing about his clinical notes for the grievor dated to 2004.

[91] I decline the employer's request to place less weight upon Dr. Dodds' testimony. He presented as a consummate professional and answered every question in his examination-in-chief and in cross-examination directly and succinctly. At no point did

any of his testimony suggest or leave any room for inference that the grievor might have misstated or exaggerated her reported symptoms as she sought treatment from him following the suspension and termination of her employment.

[92] The employer also sought to raise doubt about the grievor's unwell state by making speculative inferences from the dates of her appointments with Dr. Dodds. It was pointed out in argument that the grievor saw Dr. Dodds in September 2016, before the BOI interviewed her, thus suggesting that her stress was triggered by prospective concerns. I note that she was already suspended at that point.

[93] The employer also noted that the grievor did not see Dr. Dodds for two months after receiving her termination letter. The employer submitted that there was no explanation for what it saw as a delay in her seeking a consult with Dr. Dodds. In fact, Dr. Dodds testified to this approximate eight-week period and said that the grievor was already on prescribed medication during that period and further that it could have simply been the waiting period required to secure an opening in his busy calendar.

[94] I draw no conclusions from this two-month period with no doctor appointment. The grievor said that she was at home then, trying to live her life, and that she was taking her medication during that period. It is idle speculation and conjecture on the part of the employer to submit that the lack of a doctor appointment was proof of anything relevant to my determination of the matters before me.

[95] The employer argued that I should draw few conclusions from and place little weight upon Dr. Morley's testimony. It said that he simply accepted all the self-described reports of symptoms and causes from the grievor without studying or researching her to verify anything she brought to him. It pointed out that he did not have her full medical history and that he provided no evidence to support his opinion that she had suffered much more than the normally elevated levels of work-related stress that all first responders and law-enforcement officials experience.

[96] The employer also submitted that being terminated from a job is stressful for anyone but that as found in *Younesi*, it does not necessarily justify a finding of aggravated damages.

[97] The employer also pointed to Dr. Dodds' testimony and clinical notes, to show that the grievor suffered significant stressors in both her work and home lives, with resulting anxiety and possibly depression.

[98] The employer pointed again to *Younesi* and its findings of the "thin skull rule", in which the grievor's pre-existing conditions and traumas must have contributed to her post-employment condition, and it stated that it should not be held liable for the cumulative total of all these factors contributing to her being unwell.

[99] And finally, the employer pointed to the fact that at the outset, the hearing was told that the grievor's mother would testify. Later, when the grievor closed her evidence, we were told that the grievor's mother would not testify as she was very upset at the thought of it and was feeling unwell. The employer suggested that an adverse inference should be drawn from that change in plans. Its submission was bald conjecture as it had no rationale or justification for it.

[100] Parties are free to call or not call whatever witnesses they wish. Plans for witnesses sometimes change during the course of a hearing. The Board will make no such speculative inference to the detriment of the grievor's credibility and case.

[101] The grievor submitted that it is well established that her testimony can be relied upon as proof of the harm she has suffered. She noted as follows, from the decision of Justice Pinard of the Federal Court in *Canada (Attorney General) v. Robitaille*, 2011 FC 1218 ("*Robitaille FC*"):

> …
>
> *[36] The applicant is challenging the adjudicator's finding that the respondent suffered harm to his health because of the stress of an unjustified investigation. The applicant attacks the text in paragraph 337 of the adjudicator's decision in particular:*
>
> > *The grievor testified that, due to the length of the proceedings and the stress related to the investigation, he became seriously depressed, and he exhausted his bank of sick leave. His partner left him because of the family stress caused by this matter. At the time of the hearing, the grievor was living in a rooming house. He is ruined. Although medical evidence may be useful in establishing a physical or psychological disorder, it is not necessary to establish the serious and detrimental nature of the employer's conduct or the damage to the grievor's dignity. The grievor was entitled to a workplace free of malice and bad faith, in other words,*

> *to a healthy and productive environment, as the employer advocates.*
>
> *[37] On that point, the medical evidence the applicant found unsatisfactory was completed by the respondent's clear and direct testimony that he suffered from a major depression between March and September 2005, which the adjudicator was entitled to take into account, as she did.*
>
> *[38] In the recent decision* Attorney General of Canada v. Tipple*, 2011 FC 762, my colleague Justice Russel W. Zinn specified that only the victim's testimonial evidence can suffice to find that the victim suffered a moral injury such as distress. This weighing of the evidence is left up to the adjudicator. The lack of medical evidence does not deny the damage suffered by the victim as long as the causal link between the moral injury suffered and the wrongful conduct alleged is nevertheless demonstrated.*

[102] The grievor added that in the evidence, I have not only her detailed testimony but also the clear testimony of her family physician and a psychologist who deals with PTSD suffered by first responders and CXs.

[103] The grievor submitted that it is well established that her pre-existing PTSD should not preclude or reduce her right to compensation for the harm caused to her by the employer's actions.

[104] She cited the judgement in judicial review of a Board decision that given the facts, unsurprisingly perhaps ruled in favour of the applicant, who suffered harm from what the employer admitted was a sexual assault by co-workers while on duty. The issue was whether harm can be compensated (in that case, pain-and-suffering damages for discrimination) only if the alleged actions were the sole cause of the harm. From *Jane Doe v. Canada (Attorney General)*, 2018 FCA 183:

> *[24] In the present case, the Board did not engage in the required analysis and did not explain why harm suffered by the applicant could only be compensated if the actions of the co-worker were the sole and only cause of the harm.*
>
> *…*
>
> *[27] By requiring a discriminatory practice to be the sole and only cause of resulting harm the Board has unreasonably added words to the text of paragraph 53(2)*(e) *to the effect that compensation may be paid in respect of a discriminant practice only where that practice is the sole cause of harm.*
>
> *[28] Second, as previously stated, the purposes of non-pecuniary damages include providing a remedy to vindicate a claimant's*

> *dignity and personal autonomy and to recognize the humiliating and degrading nature of discriminatory practices. The Board's restrictive interpretation of "compensate" results in a denial of compensation when degrading conduct exacerbates a pre-existing condition or contributes to harm caused by another source. This is contrary to the purpose of the remedy and unreasonable.*

[105] In response to the employer's argument about significantly discounting any award of damages due to the grievor's pre-existing condition, she replied that while indeed she experienced many significant challenges in her past, both at work and at home that impacted her health, she persevered and overcame all of them and continued to perform well at work, with good attendance and good performance until her suspension and termination. She pointed to this evidence of her good performance at work, as documented in *Lyons* 2020:

> *[34] The BOI Report notes that the grievor began her career as a CX I at the institution on August 26, 2000, and that her most-recent performance reports described her work as proficient. It also notes that in 2005, 2008, and 2011, she received memos "in appreciation of her work."*
>
> *[35] The BOI Report notes that on November 12, 2014, the grievor received a written commendation for her efforts dealing with a problematic inmate. And finally, it notes that she had no discipline on her file.*

[106] In rebuttal of the employer's reliance upon previous conditions (the thin skull rule) lessening any of its responsibility for worsening the grievor's health post-employment, she argued that despite the many challenges and resulting harm she experienced before losing her job, she had always had the strength and ability to overcome each challenge. She also noted her good performance record and the complete lack of any evidence from the employer as to her having any attendance problems.

[107] I find the grievor's submission persuasive. Her resiliency is demonstrated by the evidence showing that she sought emergency psychological treatment at a local hospital before her employment was suspended and then terminated. Despite this, she continued to attend and perform her work in a satisfactory manner. Despite having PTSD that arose from the workplace riot and having survived and overcome domestic abuse, the evidence is clear that she continued to perform well at work and that no performance or attendance problems were documented in evidence.

[108] On the clear and compelling evidence before me related to the grievor's condition, and consistent with the Federal Court of Appeal's (FCA) findings in *Jane Doe*, I reject the employer's request to significantly reduce the award of damages due to a pre-existing condition.

[109] The employer also made submissions on the matter of the grievor's post-employment and post-*Lyons* 2020 worsening of health.

[110] In light of Dr. Morley testifying to the grievor's worsening symptoms in 2021, the employer submitted that his testimony also pointed to other contributing causal factors that should reduce if not eliminate any damages arising from her harm suffered in this period. It submitted that this evidence should be seen as consistent with what the Court concluded in *Younesi*.

[111] The employer noted that Dr. Morley testified in cross-examination that the grievor told him of current (2021) domestic relationship problems in her life and agreed that they would contribute to her worsening (2021) symptoms. He also testified that she described other long-standing and ongoing family challenges in her life, which would add stress and contribute to her current symptoms.

[112] For greater clarity, I note that all Dr. Morley's interactions with the grievor began in late January 2021 and were independent from and subsequent to Dr. Dodd's previously mentioned clinical notes of June 23, 2020, which indicate that no external stressors were impacting the grievor other than her workplace problems.

[113] I am persuaded by the clear and compelling evidence of Dr. Morley who, when questioned on this exact point, stated that "by far", the harm and state of being unwell experienced by the grievor were related to being fired and to how the employer handled it. He added that the problems she faced with her health would likely continue for years to come.

[114] For these reasons, which I have just documented, I accept the employer's submissions on the existence of other post-employment domestic causal factors that contributed to the grievor being unwell. Given the clear and compelling evidence on this point by Dr. Morley, as just noted, I will discount the award for aggravated damages by 10%.

[115] Despite the employer not making any detailed submission on the matter of quantum, I note that in *Younesi*, the B.C. Supreme Court addressed the quantum and stated as follows:

> *[89] I referred above to certain principles underlying the assessment of damages for mental distress. In this case, I have found that Mr. Younesi had certain "thin skull" personality features which made him inordinately susceptible to insult and mental distress and that the manner of his termination was indeed at least one cause, if not the only cause, of the prolonged distress he has since suffered. This is sufficient to affix Kaz Minerals with liability for aggravated damages. However, the quantum of those damages must also reflect the fact that other factors that are unrelated to the termination of his employment have also significantly contributed to that distress. I refer in particular to the fact that, despite diligent efforts, Mr. Younesi has not been able to secure further employment since his dismissal by Kaz Minerals.*
>
> *[90] Kaz Minerals was not bound to employ Mr. Younesi, whether indefinitely or for any fixed term. Absent just cause for terminating the employment without notice, they were entitled to terminate the employment at any time by providing Mr. Younesi with the appropriate notice or pay in lieu thereof as required by the common law, here a period of four months (before inducement considerations). Had such notice been given, Mr. Younesi would have been unemployed in any event and subject to the same market forces that have made it difficult for him to secure new employment. Kaz Minerals did not create those market conditions and they are not liable for the difficulties Mr. Younesi has experienced in that regard, including their contribution towards the prolonged mental distress which he has experienced and continues to experience. The assessment of aggravated damages must reflect this reality.*
>
> *[91] I have no expert evidence or indeed any medical evidence supporting the extent to which Mr. Younesi would have experienced mental distress because of prolonged unemployment following any "proper" termination by Kaz Minerals. However, the same "robust and pragmatic approach to causation" applied at first instance also permits me to draw an inference of contributory causation by prolonged unemployment using the proverbial "common sense approach" to the facts even in the absence of scientific proof. It is perhaps a somewhat arbitrary exercise but one which, in the result, must be fair to both parties.*
>
> *[92] Awards for aggravated damages in wrongful dismissal cases are generally in the range of $25,000 to $35,000. This reflects an appropriately cautious approach to such awards.*
>
> *[93] Mr. Younesi's mental distress has been substantial and prolonged but it has been significantly exacerbated by current market conditions and his continued inability to find replacement employment. If I were awarding damages reflecting the entirety of*

> *the distress, it would likely be in the amount of $25,000. In the circumstances of this particular case, after applying a "discount" to reflect the substantial contribution of prolonged unemployment for which Kaz Minerals is not liable, I award Mr. Younesi aggravated damages in the amount of $12,500.*

[116] And while the employer did not specifically point to these paragraphs of *Younesi* in its closing submissions on this point, my reading of the case notes an important statement that should be highlighted: "Awards for aggravated damages in wrongful dismissal cases are generally in the range of $25,000 to $35,000. This reflects an appropriately cautious approach to such awards."

[117] While neither party made submissions on this statement of the B.C. Court in *Younesi*, out of an abundance of prudence and caution, I will address it and the cases the Court noted in *Younesi*, without it citing any specific page or paragraph as an authority for this finding of the general range of wrongful dismissal cases.

[118] In its introduction to considering aggravated damages, the Court stated:

> *[52] The leading case respecting aggravated damages in the context of wrongful dismissal claims is of course* Honda Canada Inc. v. Keays*, 2008 SCC 39. In BC, another leading case is* Lau v. Royal Bank of Canada*, 2017 BCCA 253. I also attempted to summarize the relevant principles in* Ensign v. Price's Alarm Systems (2009) Ltd.*, 2017 BCSC 2137, where an award of aggravated damages in the amount of $25,000 was made.…*
>
> …

[119] In *Ensign*, the Court stated this:

> *[63] In the present case, there is no evidence from Mr. Ensign's family doctor or any other physicians. Mr. Ensign deposes that although his wife has urged him to see a doctor about his stress symptoms, he has hesitated to do so because he was worried about the impact of such consultations on eligibility or increased premiums for life and mortgage insurance. I accept that evidence.*
>
> *[64] In his affidavit, Mr. Ensign deposes that the manner in which he has been treated by Price's Alarms "throughout the process of terminating my employment" has been devastating. He acknowledges that it is always difficult to be terminated from a job, something that had happened to him once many years ago, but he accuses Price's Alarm Systems of being dishonest, as a result of which he has experienced stress, anxiety and worry. He accuses the defendant of "playing games" and making "sham job offers", which he says feels like the Company is trying to "bully me*

> *into dropping my case". Instead of "simply providing me with proper severance", the way he has been treated by the Company just does not feel fair and "is very distressing to me to this day". He has lost his self-confidence, is "always stressed", does not sleep well because of the upset and "his marriage has suffered as a result".*
>
> …
>
> *[66] Mr. Ensign's evidence is to some degree corroborated by his wife's affidavit in which she confirms that her husband has become stressed, irritable and withdrawn. She has encouraged him several times to see his doctor but he refuses. She observes that Mr. Ensign is far more upset about the way Price's Alarms has treated him than he was about the idea of his job coming to an end.*
>
> …
>
> *[68] The defendant agrees with Mr. Ensign's submission that awards for aggravated damages in wrongful dismissal cases are generally in the range of $25,000–$35,000. The mental distress caused to Mr. Ensign has been substantial and prolonged. I award him aggravated damages of $25,000 on that account.*

[120] I firstly make note of the fact that with all the cases cited in *Younesi* and with Mr. Younesi himself, the courts were dealing with a private-sector common law contract of employment, in which the plaintiff had varying degrees of problems finding a new job after being terminated.

[121] Again, without submissions of the parties on this point, I note that the case at bar, as in nearly all such cases before the Board, deals with a person employed in the federal public service whose employment may (with some exceptions, such as terminations under s. 12(1)(f) of the *Financial Administration Act* (R.S.C., 1985, c. F-11; "*FAA*"), along with rejections on probation under s. 62 of the *PSEA*) be terminated only for cause (see s. 12(3) of the *FAA*) and would otherwise have no expectation of being terminated without cause.

[122] Furthermore, it is obvious that contrary to the mobility of the plaintiffs in the cases cited in *Younesi*, the grievor before me is far more captive in her position. She possesses highly specialized skills, those of a CX in a maximum-security federal corrections facility. Her testimony clearly showed her anguish in being so harmed by her employer's actions that she cannot return to her job, where she worked for years and built-up seniority and where she had wanted to continue serving. That is contrary to the cases cited in *Younesi*, in which the plaintiffs had moved on after being

discharged from their employment and were left only to present to the court how difficult it was for them to find a new job with a different employer.

[123] I will address the relatively modest harm noted to the plaintiffs in the *Younesi* cases later in this decision.

[124] As for the final step of assessing the quantum of damages, the grievor focused her submissions on quantum on this part of the FCA's decision in the *Tipple v. Canada (Attorney General)*, 2012 FCA 158, case:

> *[33] In this Court, Mr. Tipple has succeeded in defending his award of damages except the* ***$125,000 awarded for psychological injury*** *which was set aside by the Federal Court and was not in issue in this appeal. However,* ***some or all of that amount may yet be restored*** *after the rehearing ordered by the Federal Court.…*
>
> *[34] I would allow the appeal in part, with costs in this Court and in the Federal Court fixed at $12,000 inclusive of disbursements and tax. I would vary the judgment of the Federal Court so that paragraphs 1 and 2 read as follows:*
>
> > *1. The application of the Attorney General in Court File T-1295-10 is allowed in part. The award of damages of $125,000.00 for psychological injury is set aside and the quantum of such damages is referred back to the Public Service Labour Relations Board for re-determination.*
>
> [Emphasis added]

[125] The Board's determination in *Tipple v. Deputy Head (Department of Public Works and Government Services)*, 2010 PSLRB 83, and the judicial review of it by the Federal Court, provide the most detailed analysis of the matter of aggravated or moral damages for psychological harm in the federal public service.

[126] However, the Board's decision on quantum does not stand as a precedent since the Federal Court struck it down on judicial review. The Court stated this at paragraph 61: "… I find that the award of $125,000.00 is not 'within a range of possible, acceptable outcomes which are defensible in respect of the facts and law' and it must be set aside."

[127] But again, on its review, the FCA did not leave the Federal Court's decision entirely intact. Despite the matter of moral damages for psychological harm not being appealed, the FCA stated that some or all of that award might yet be restored after the Board's rehearing of the matter, as follows:

> *[33] In this Court, Mr. Tipple has succeeded in defending his award of damages except the* ***$125,000 awarded for psychological injury*** *which was set aside by the Federal Court and was not in issue in this appeal. However,* ***some or all of that amount may yet be restored*** *after the rehearing ordered by the Federal Court.…*
>
> [Emphasis added]

[128] The Board's record of decisions does not show this case ever being ruled upon again, so what remains is the award of $125,000 being struck down with a highly detailed analysis at the Federal Court and then the FCA stating without analysis or reasons that this same amount might yet be restored by the Board in a rehearing of the matter, which in the end never occurred.

[129] All such efforts to understand the appellate reviews of the Board's decision are mere speculation, however, as the Board did not revisit the matter. Presumably, the parties resolved the matter on their own.

[130] That renders the Board's award in *Tipple* of $125,000 for psychological harm as a zombie precedent at best; neither dead nor alive. It was struck down by the Federal Court but had the door to it returning at the Board opened by the FCA.

[131] I note the evidence before the Board setting out the harm that Mr. Tipple experienced. The Board found as follows:

> *326 Mr. Tipple testified that his unlawful termination has been very stressful and that it has affected both his and his family's mental and physical health.* ***Mr. Tipple explained that, as a result of his unlawful termination, he has suffered from a lack of confidence, hurt feelings, low self-esteem, humiliation, stress, anxiety and a feeling of betrayal.*** *Mr. Tipple testified that this ordeal has been very emotional and traumatic and that* ***it has affected his personal mental and physical health.***
>
> *327 I am satisfied that Mr. Tipple has met the test found in* Keays *and that the respondent's failure of its obligation of good faith and fair dealing in the manner of termination caused him psychological injury that was in the contemplation of the parties. Therefore, I find that Mr. Tipple is entitled to damages for psychological injury.*
>
> *328 In determining the amount of compensation to award, I must take into account Mr. Tipple's position within the executive community. It is true that* ***Mr. Tipple did not adduce medical evidence of a specific condition or treatment administered as the result of his termination****. However, I accept that, had Mr. Tipple adduced such evidence, it would likely have affected his*

> *ability to successfully market his senior executive skills with potential employers and business relations. In such circumstances,* ***and without specific evidence justifying a larger award, I find that an amount of $125 000.00 reasonably compensates Mr. Tipple for loss of dignity, hurt feelings and humiliation resulting from the manner of his termination****. Therefore, I find that Mr. Tipple is entitled to damages for psychological injury in the amount of $125 000.00.…*
>
> [Emphasis added]

[132] I note the Board's finding of "… without specific evidence justifying a larger award …". In writing that passage of not being able to award any more due to lack of evidence, the Board was anticipating a case such as the one before me.

[133] Despite what the evidence showed in *Tipple* as being unfortunate ill effects of the harm that Mr. Tipple suffered, I find that nearly none of his testimony comes close to describing the virtually debilitating symptoms that the grievor in this case suffered as evidenced by the medical witnesses in the matter before me.

[134] In reading the judicial review of the Federal Court quashing the Board's award for psychological harm, the Court found as follows:

> *[47] The Attorney General does not dispute the jurisdiction of the Adjudicator to award damages based on the principles set out by the Supreme Court in* Honda*; however, it* ***submits that the award of $125,000.00 in this case was excessive****, unreasonable, not in accord with previous cases where such damages were awarded, and* ***unsupported by the evidence****.* ***Further, it is submitted that the Adjudicator failed to provide any reasons to support the quantum of damages awarded other than reducing by half the $250,000.00 Mr. Tipple had claimed due to a lack of medical evidence.***
>
> [Emphasis added]

[135] The Court then stated this:

> *[53] I agree with the Attorney General that $125,000.00 is not a "nominal amount"; however,* ***there was evidence supporting some award.*** *This was a case where* ***Mr. Tipple's testimony about the impact of his former employer's actions on his psychological state was the only evidence*** *of psychological injury.*
>
> *…*

> *[57] The award of the Adjudicator is a significant amount; it appears to be almost three times as much as has previously been awarded by a court for the specific loss which it is said to compensate. I do not accept the submission of Mr. Tipple that the Adjudicator is not bound to mimic the common law, if by that it is meant that the Adjudicator may make whatever award he chooses. Damages must be awarded and the amounts determined on a principled basis, even when the calculation is difficult.…*
>
> *…*
>
> *[60] Although the Adjudicator is entitled to considerable deference, I cannot find on the facts before the Adjudicator and the Court that the award of $125,000.00 as damages for psychological injury "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" for the following reasons. First, there is* ***no explanation given by the Adjudicator as to the basis for determining that the appropriate award was $125,000.00 rather than any other amount****, other than, as the Attorney General notes, it is one-half the amount that was claimed. Second, there* ***was no evidence offered by Mr. Tipple other than his own evidence that he experienced a lack of confidence, hurt feelings, low self esteem, humiliation, stress, anxiety and a feeling of betrayal****. Specifically, there was* ***no evidence that Mr. Tipple was required to obtain medical treatment or was provided with a psychological diagnosis that was premised on the employer's conduct in the manner of termination, other than the mere fact of the termination of his employment****. Third, unlike the facts in* Zesta Engineering*,* ***there is nothing in the decision to suggest that the psychological injury to Mr. Tipple was "significant, long lasting, and ongoing."*** *Fourth and finally,* ***the size of the award is significantly disproportionate to previous awards, in circumstances where the effect on the terminated employee's psychological condition appears to have been less significant than in those cases****. Here, Mr. Tipple described the effect on him to be a "loss of dignity, hurt feelings and humiliation."*
>
> [Emphasis added]

[136] In applying the several authorities on quantum that I have noted to the facts at bar, I conclude that the range of $25,000 - $35,000 cited in *Younesi* and the cases it relies upon all present evidence of very modest harm that pale in comparison to the evidence before me.

[137] Those cases are simply not helpful as they each set out levels of frustration, hurt feelings, and stress that include none of the long-term serious harm to health as was documented by the medical professionals before me.

[138] *Francis* is much closer to the evidence before me, but it illustrates more severe and longer-term permanent disability. I also note that the grievor acknowledged in her submissions that it was at the upper end of the range of damage awards. I therefor conclude that the award in this matter should appropriately be less than in *Francis*.

[139] I also note the grievor's mention of the fact that *Francis (2021)* was decided approximately 11 years after The Board's decision in *Tipple (2010)*. While I don't place any significant weight upon this observation, I accept the submission that *Francis* may represented somewhat of a trend over the past decade in increased awards of damages.

[140] In perhaps the most relevant authority compared to the matter at bar, *Tipple* presents much less harm and completely lacks medical evidence and related diagnoses of mental disorders, medications, and long-term prospects for recovery. The Board in *Tipple* concluded as follows: "… I find that an amount of $125,000.00 reasonably compensates Mr. Tipple for loss of dignity, hurt feelings and humiliation resulting from the manner of his termination." Such concerns as these cited in *Tipple* are but the tip of the iceberg for what the medical evidence before me shows the grievor suffered.

[141] Secondly, as just noted, the matter before me does present all the clear and compelling evidence of medical evaluation and testimony that *Tipple* lacked.

[142] Thirdly, the evidence before me did clearly establish significant, long-lasting, and ongoing harm to the grievor, who in the months leading up to the hearing in fact showed worsening symptoms rather than an amelioration of them.

[143] After review of the submissions of the parties on this matter and after very careful analysis of the pronouncements of the Federal Court and Federal Court of Appeal, I conclude that that $150,000 is an appropriate award.

[144] This award is in accordance with the *Tipple* appellate decisions given the compelling medical evidence before me and the grievor's testimony as to the far more severe, long-lasting, and ongoing harm to her health and quality of life caused by the employer's actions than was present in *Tipple.*

[145] These are significant differences from what was before the Board in *Tipple* compared to the matter at bar that answer much of what the Federal Court noted as problems in that decision as has been analyzed in detail previously in this decision.

[146] My conclusion on this quantum of damages for psychological harm is also in accord with the previously noted conclusion of the Federal Court of Appeal in *Tipple* that, "… some or all of that amount may yet be restored …" upon the Board's re-determination of the matter, which as noted never occurred.

[147] As noted earlier, the employer submitted that any award for psychological harm should be discounted due to other factors contributing to the grievor's symptoms. In recognition of what I have noted previously was stated in Dr. Morley's cross-examination, a discount of 10% will be applied to the $150,000 award due to the modest contribution of other stressors present in the grievor's post-employment domestic life.

[148] Thus, the result is an award of $135,000 for aggravated (moral) damages arising from the psychological harm to the grievor caused by the employer's actions.

B. Punitive damages

1. The employer's actions during the investigative and grievance processes

[149] The grievor submitted that at times, the employer's conduct through the unfortunately lengthy saga from 2016 to 2020 was malicious, reprehensible, deliberate, and shameful in its relentless efforts to harm her.

[150] The employer replied that none of its conduct can reasonably be found to justify the very high standard required to award punitive damages and that no award should be made under this head of damages.

[151] The grievor cited *Robitaille v. Deputy Head (Department of Transport)*, 2010 PSLRB 70 ("*Robitaille PSLRB*"), in which the Board awarded $50,000 in punitive damages, as follows: "With respect to the wrongful acts by the deputy head, namely, malicious, reprehensible and harmful conduct toward the grievor, I order the deputy head to pay the grievor the amount of $50,000 in punitive damages."

[152] The grievor noted as follows the Federal Court's support for the proposition that the Board has the authority to award punitive damages in its judicial review of the Board's declaration of it in *Robitaille FC*:

…

> *[51] It is undisputed by the parties that the adjudicator had the authority, in accordance with section 228 of the Act, to order the payment of punitive damages. The issue is whether the adjudicator, in this case, was right to award them.*
>
> *[52] The applicant reiterates jurisprudence cited by the adjudicator that it is only when the impugned act constitutes in itself an independent actionable wrong that punitive damages may be awarded (see* Honda Canada Inc. v. Keays, *[2008] 2 S.C.R. 362 at paragraphs 62 and 68). The applicant contends, in particular, that, in* The Attorney General of Canada v. Bédirian, *2007 FCA 221, at paragraph 24, it is indicated that a duty of good faith and fair dealing does not constitute an independent wrong giving rise to punitive damages. However, in my view, the Federal Court of Appeal does not go as far as saying that bad faith by an employer can never constitute an independent civil wrong. In my opinion, it is fairer to say that the decision teaches us that evidence of bad faith does not necessarily constitute an independent wrong giving rise to punitive damages.*
>
> *[53] In this case, the adjudicator properly weighed the principles applicable to the matter:*
>
> > *[344] The concept of punitive damages is well documented in common law. The conduct must be harsh, vindictive, reprehensible, and malicious. However, there is no specific test for determining what constitutes malice. In* Honda Canada Inc. v. Keays, *2008 SCC 39, para 62, the Supreme Court stated that damages are restricted to "… advertent wrongful acts that are so malicious and outrageous that they are deserving of punishment on their own." Thus, punitive damages are awarded in the case of a wrongful act that, on its own, gives recourse to legal action. In* Keays, *the Supreme Court cautioned that the discretion to award such damages should be exercised most cautiously and only in exceptional cases. I am also conscious of the fact that the Federal Court of Appeal refused to award such damages in* Bédirian v. Canada (Attorney General), *2007 FCA 221.*
>
> …

[153] The employer noted these statements of the Supreme Court of Canada in *Honda Canada Inc.*:

> …
>
> *[68] Even if I were to give deference to the trial judge on this issue, this Court has stated that punitive damages should "receive the most careful consideration and the discretion to award them should be most cautiously exercised" (*Vorvis, *at pp. 1104-5). Courts should only resort to punitive damages in exceptional cases (*Whiten, *at para. 69). The independent actionable wrong requirement is but one of many factors that merit careful*

> *consideration by the courts in allocating punitive damages. Another important thing to be considered is that conduct meriting punitive damages awards must be "harsh, vindictive, reprehensible and malicious", as well as "extreme in its nature and such that by any reasonable standard it is deserving of full condemnation and punishment" (*Vorvis*, at p. 1108).…*
>
> …

[154] The employer also noted the intellectual-property case of *Bauer Hockey Corp. v. Sport Maska Inc. (Reebok-CCM Hockey)*, 2014 FCA 158 ("*Bauer*").

[155] *Bauer* states that punitive damages are exemplary and that they should be found only when there is clear evidence of deliberate, high-handed conduct so malicious that it offends the court's sense of decency and is the exception to the rule.

[156] The employer submitted that the criteria in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 (as the FCA noted in *Bauer)*, should guide my analysis and lead to the rejection of the request for punitive damages. The FCA stated this:

> …
>
> *[19]* ***Punitive damages****, as the name indicates, are designed to punish. As a result they constitute an exception to the general rule, in both common law and civil law, that damages are designed to compensate the injured, not to punish the wrongdoer. Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency. Punitive damages bear no relation to what the plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant. It is the means by which the court expresses its outrage at the egregious conduct of the defendant where the defendant's conduct is truly outrageous. Punitive damages are in the nature of a fine, which is meant to act as a deterrent to the defendant and to others from acting in the impugned manner:* Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at paras. 196 to 199 (*Hill*);* Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595 (*Whiten*) at para. 36.*
>
> *[20] The level of blameworthiness of the defendant's conduct leading to punitive damages may be influenced by many factors, which include (a) whether the misconduct was planned or deliberate; (b) the intent and motive of the defendant; (c) whether the defendant persisted in the outrageous conduct over a lengthy period of time; (d) whether the defendant concealed or attempted to cover up its misconduct; (e) the defendant's awareness that what it was doing was wrong; (f) whether the defendant profited from*

> *its misconduct; and (g) whether the interest violated by the misconduct was known to be deeply personal to the plaintiff:* Whiten *at para. 113.*
>
> …
>
> [Emphasis in the original]

[157] The grievor noted that *Lyons* 2020 pointed out 23 problems with the employer's conduct in the course of the disciplinary investigation, hearing, and termination of her employment. She stressed the importance of the Board finding that she was denied natural justice as she has never seen and been able to rebut the evidence of the true case that the employer used against her. I shall analyze the most significant of these findings later.

[158] The employer replied to this submission by suggesting that whatever *Lyons* 2020 found was its poor conduct has already been addressed. I disagree. This hearing and decision on remedial matters would not have occurred if such were the case.

[159] I note with emphasis the following findings in *Lyons* 2020, which I find are the more relevant of the 23 noted by the grievor:

[160] The employer accepted the allegations from an offender-informant and based upon this decided very quickly that the grievor was compromised, effectively sealing her fate before the BOI even had a chance to gather evidence and interview her.

[161] The grievor was never given access to the real reason for being suspended and terminated, which thus violated her right to natural justice.

[162] Having acted prematurely to decide that the grievor was compromised, the employer then conducted an effort to find evidence of some other wrongdoing that it could share with her in an effort to justify its decision to terminate her.

[163] This other evidence amounted to several brief video surveillance clips, to which the employer's witnesses testified to the Board at the grievance adjudication hearing to impugn mal-intent to the grievor's actions shown on the surveillance video.

[164] The employer repeatedly sought to ascribe very serious mal-intent to the grievor's actions. However, no clear, cogent, or compelling evidence was presented to me at the hearing upon which I could make such a grave determination, which would damn her character.

[165] The many points of testimony from the employer trying to ascribe mal-intent were not supported by evidence and were found to be bald conjecture.

[166] The employer had several opportunities to use investigatory methods to find physical evidence linking the grievor to the alleged drug courier allegations of the offender-informant but did virtually nothing to follow up on each of those opportunities.

[167] As noted by the grievor, in *Lyons* 2020, I concluded as follows that the employer deliberately made its wrongdoing investigation and grievance adjudication strategy very personal and that it attacked her character:

> …
>
> *[392] I note that the employer's counsel presented me with the Board's decision in* Lapostolle v. Deputy Head (Correctional Service of Canada)*, 2011 PSLRB 138, in which the grievor, who was a CX II, had close ties to associates of organized crime.*
>
> *[393]* Lapostolle *did not deny it at his adjudication hearing but rather said that he should not be punished for his private life and business with Mafia associates. In its reasons for upholding the termination, the Board noted that the grievor publicly associated with individuals involved in organized crime and thus had tarnished the employer's image (at paragraph 93).*
>
> *[394] In* Lapostolle*, the Board also noted the* a posteriori *evidence of the grievor's public activities with persons linked to the Mafia.*
>
> *[395] I find it troubling that the employer presented me with* Lapostolle*, given that that I had no evidence whatsoever placed in front of me at the hearing about any contact or involvement by the grievor with anyone associated in any way with the Mafia or organized crime.*
>
> *[396] The BOI relied upon the informant, who made allegations of personal relationships of that nature, but the employer specifically distanced itself from this issue. However, it continually tried to bring the alleged relationships back before me.*
>
> *[397] The employer cannot have it both ways.*
>
> *[398]* ***The only way I can understand the employer's efforts to link the grievor to the Mafia and illicit drugs is that it wished to attack her character in order to infer a link to the informant's allegations.***
>
> …
>
> [Emphasis added]

[168] As documented in *Lyons* 2020, the employer even declined to use what could have been obvious investigatory means readily at its disposal at Kent to add physical evidence to the jailhouse informant's allegations. Its justification for terminating her employment focused upon some unusual and what I found was the procedurally improper handling of inmate property, passing it between cells, and removing a bag of it from the range. In detailed questioning on these actions that were captured on security video, management's witnesses went to great lengths to opine on the horrendous risks posed to staff and inmates by the grievor's improper handling of those personal effects (clothing, a hat, shoes, compact disc cases, etc.). They explained how such items are used to conceal and transport illicit drugs and other contraband within an institution.

[169] However, when asked if any or all of these items were subjected to drug testing (either by the on-site ion-scanning drug-detection equipment or by a trained drug-detecting dog), the witnesses were momentarily at a loss, as if they had never thought of such an investigation.

[170] Finally, after reviewing notes and records, CM McCoy was able to answer that no such tests were ever done to ascertain if in fact any other personal items handled by the grievor had even a trace amount of illicit drugs on them. From *Lyons* 2020:

> …
>
> *[206] While the employer argued that on its own, simply contravening this CD is serious, it is important to note that the concern that contraband such as fentanyl was hidden in the bag was proven only to be a matter of the grievor engaging in risky behaviour.*
>
> *[207] In cross-examination, when he was challenged on this point, corrections manager (CM) McCoy confirmed that upon discovering the bag in the CX office, he searched it and found nothing other than inmate clothes, shoes, hat, watch, video games, and compact discs that presumably contained music.*
>
> …
>
> *[209] He testified that he did not test the items for drugs as he found nothing in the bag that suggested that they were present.*
>
> …
>
> *[212] CM David Mardell, who served as a special investigations officer (SIO) during the events at issue, testified that he did not think that any of the items in the large bag were for drugs after the bag being located in the CX office.*

[213] When CM Mardell was challenged on this point again, he testified that he most certainly would have been told had a positive test occurred for any drug or had a weapon been discovered in the bag.

…

[226] I also agree with the grievor's submission that the mal-intent that the employer attempted to ascribe to her taking the bag out of the search area was mitigated by the fact that she did it while her partner stood beside her and watched her take it and carry it off the range.

…

[245] I will note again that in the end, the search produced no evidence of drugs being passed to the inmates during the time viewed on that segment of the video.

…

[293] Despite the sinister gloss the employer added when it summarized the grievor's act of taking the bag out of the search area, it admitted that no drugs or contraband was found in the bag when it was recovered in the CX room just off the range.

[294] Earlier, I noted that no drugs or contraband was found in any of the cells in which the grievor was observed passing items. In fact, no such discoveries were made during the s. 53 search on the entire Echo unit where she worked.

[295] The employer further admitted that no personal-property card search was done to reconcile the property to its owner and to charge the inmate seen on the video for violating the CD for possessing property other than his own.

[296] In the end, these statements as to a guilty mind are bald accusations unsupported by evidence.

[297] As I concluded earlier in this decision, the informant told the employer that the grievor was a paid drug courier for known criminals. The employer accepted this allegation as truth. The rest of its case was spent reviewing video evidence where the grievor had admitted her fault and error.

[298] I am left with my conclusion that the employer failed to adduce clear, cogent, and compelling evidence upon which I could find that on a balance of probabilities, its allegations of the grievor having a guilty mind and any other mal-intent beyond what she admitted to. Which, as I have noted does show her inappropriate conduct in passing items between inmates and taking a bag of personal items.

…

[*Sic* throughout]

[171] Similarly, the grievor gave uncontradicted testimony that when she was summoned to the Warden's office, confronted, and eventually escorted off the property, she deduced that given that Kent was in the middle of a lockdown for a drug and contraband search, related accusations might be made against her. Accordingly, she invited the Warden to search her purse, workplace locker, car, cell phone, and banking information. Again, the uncontradicted testimony is that the employer did none of those things.

[172] Given the terrible gossip that I will not dignify by repeating that the staff submitted through SORs about the grievor being in financial difficulty and the tawdry allegations about her personal life and connections to organized crime that the employer's disciplinary BOI reviewed, one would have thought that accepting her invitation to look for evidence related to any of those things might have been useful in possibly producing some real evidence.

[173] While none of those SORs was officially relied upon by the BOI and none was adduced in evidence before the Board, the lack of interest in investigating the alleged misdeeds is yet another example that the grievor noted in her arguments on this subject that points to the high-handed and unfair manner in which the employer pursued her termination.

[174] The employer argued in closing that if the grievor suffered harm through the entire process of investigation, discipline, and grievance adjudication, it was of her own doing as a consequence of being found to be deserving of a one-month suspension without pay, as was decided in *Lyons* 2020.

[175] While I concluded in *Lyons* 2020 that the grievor's previously noted actions merited a one-month suspension without pay, this was as much a denunciation intended to deter other such mistakes on the job as opposed to it being a moral condemnation, such as the employer sought in defending its actions in *Lyons* 2020, as follows:

> …
>
> *[424] Passing items between inmates during the s. 53 search was a serious error of judgement on the grievor's part. It posed serious risks to the inmates and staff at the institution.* ***A strong denunciation of such errors is needed to serve as a deterrent*** *to*

> *other CXs and to ensure that the grievor understands the gravity of her errors.*
>
> …
>
> [Emphasis added]

[176] That decision concluded that the grievor gave credible testimony in describing her impugned actions on the video surveillance as mistakes and errors in judgement. They occurred in part due to her being extremely fatigued after working several very long shifts and in part due to her trying to treat long-serving inmates as humans by responding to their requests for basic assistance while in total lockdown. She did so in the hope that it would create an atmosphere of more civility in what was otherwise a near-hopeless existence for these long-serving inmates living their lives in a maximum-security institution.

[177] In making my determination of an award of punitive damages in this matter, I rely as follows upon the Supreme Court of Canada's findings in *Honda Canada Inc.* at paragraph 68, as noted previously:

> *… The independent actionable wrong requirement is but one of many factors that merit careful consideration by the courts in allocating punitive damages. Another important thing to be considered is that conduct meriting punitive damages awards must be "harsh, vindictive, reprehensible and malicious", as well as "extreme in its nature and such that by any reasonable standard it is deserving of full condemnation and punishment" ….*

[178] The employer committed independent and actionable wrongs by its denial of the grievor's right to natural justice as it concealed the true source and evidence from her that it relied upon to quickly decide that she had been compromised and that she had to be terminated from her employment.

[179] In my review of the employer's submission on this matter, I can confirm that the *Whiten* criteria from the Supreme Court of Canada as noted previously are satisfied, namely:

> (a) the misconduct was planned and deliberate;
> (b) the intent and motive of the employer was to ensure that the grievor's career was ended with no chance of her being reinstated and to avoid the true case against her being subjected to scrutiny;

(c) the employer persisted in the outrageous conduct over a lengthy period comprising several years ultimately up to and including the Board's adjudication of the matter in 2019;
(d) the employer concealed and attempted to cover up its denial of the grievor's right to natural justice;
(e) the employer was aware that what it was doing was wrong;
(f) the employer profited from its misconduct in the way that it achieved its goals of ending the grievor's career; and
(g) the interest violated by the misconduct could not have been more deeply personal to the grievor as the employer ascribed criminal motives to her impugned acts illustrated on security video despite having virtually no evidence and in fact doing virtually nothing to seek physical evidence in support of the devastating allegations that were the true cause of her employment being terminated: (see *Whiten* at para. 113).

[180] In arriving at my conclusion that $75,000 is a reasonable award under the particular circumstances of this case, I have given careful note to the facts of the employer's wrongdoing before me being far more serious than was found in the evidence in *Robitaille PSLRB*. The Board in *Robitaille PSLRB* concluded that the following objectionable acts of the employer justified the award in that case of $50,000 in punitive damages:

> …
>
> *346 After reviewing the submitted case law, particularly* Bédirian, *I find that the facts in this case establish that the employer's representatives acted deliberately and with malice toward the grievor in the following actions:*
>
> • ***launching an investigation without verifying the facts*** *and without explaining to the grievor why the investigation included incidents that were (a) not part of the original complaint (16 incidents, when the complaint contained 5); (b) excluded from the definition set out in the* policy *(such as abuse of authority); (c) untimely under the* policy *(that is, occurring more than one year before the complaint was filed); (d) clearly excluded from the investigative authority (sexual assault); and (e) occurring before the* policy *came into force (incidents occurring before June 1, 2001);*
>
> • ***not informing the grievor of the key elements of the complaint*** *until just a few days before the start of the investigation and* ***not informing him of Ms. Belliveau's complaint*** *or of the document containing a chronology of events prepared by Ms. Deslauriers in support of her allegations;*
>
> • ***favouring Ms. Deslauriers*** *by meeting with her union representative before she filed a formal complaint; by meeting with Ms. Deslauriers and her union representative in September 2004 to agree to investigate allegations of sexual assault; by meeting with Ms. Deslauriers on three occasions to help her*

> *prepare a complaint that met the investigator's expectations; and by asking the investigators to interview Ms. Belliveau on the ground that her statement could support Ms. Deslauriers' allegations, despite the employer dismissing Ms. Belliveau's complaint;*
>
> *• **deciding to conduct an investigation** of the entire "organizational climate" of the section managed by the grievor**, without informing him** accordingly and without allowing him to offer explanations;*
>
> *• **considering the grievor guilty of acts of harassment** without fully reviewing the case;*
>
> *• trying to **persuade the grievor to accept a demotion** by threatening him with an exclusion order that the employer knew was illegal, and then, when the grievor refused to be intimidated, by removing him from his managerial duties and assigning him to demeaning tasks;*
>
> *• retaining in the grievor's personnel record an outdated disciplinary action and using it to **impose a "remedial plan" on the grievor,** the success of which depended entirely on Ms. Gagnon's goodwill, all without explaining to the grievor the deficiencies that he was alleged to have shown;*
>
> *• **reassigning the grievor to a work location more than two hours' travelling time from his home**, with the threat of disciplinary action if he did not report to work and without consulting him or attempting to mitigate the effects on his personal life; and*
>
> *• **trying to extinguish the grievor's right to adjudication** by replacing a 15-day suspension with a letter of reprimand.*
>
> *…*
>
> [Emphasis added]

[181] While each of the objectionable acts in *Robitaille* and most certainly all of them cumulatively show a deceitful and malicious mind on the part of the employer, they do not approach the level of wrongdoing exhibited in the evidence at bar. The grievor in *Robitaille* undoubtedly had his work life made miserable, but he continued to work, and the Board's findings do not suggest that his employer attacked him in a personal manner such that it deprived him of his honour and dignity by inferring that he was guilty of very serious criminal activity.

[182] Unlike in *Robitaille*, the evidence before me shows how the employer decided very quickly to accept allegations that could have amounted to a serious criminal offence involving harmful illicit drugs and organized crime and formed the opinion that the grievor was guilty of these alleged offences without ever showing her the true

case against her and allowing her to test the evidence and respond to it. This allegation was then used to end her career, which left her unemployed for a time, impecunious, and relying on food banks to eat.

[183] And more so, the evidence at bar shows that the employer made it all very personal about the grievor in a manner that destroyed her character such that she was left with long-term illness and was unable to find work other than menial minimum-wage chores. This left her humiliated in front of former co-workers and community members, who knew her and saw her sweeping floors.

[184] And perhaps most importantly, the actions of the employer were of such a harmful personal nature that by alleging that she was involved in serious criminal activity, it caused what the evidence shows is very long-term if not permanent harm to the grievor's character as she has not been able and most likely will never be able to test the true evidence against her with an opportunity to prove herself innocent of the employer's allegations against her. That leaves her name and place in the community in a suspended state of purgatory and the allegation of being a drug mule for organized crime hanging over her indefinitely.

[185] For these reasons, which are all supported by clear and compelling evidence, I find the deliberate and malicious actions of the employer far more serious and requiring a much more significant award to penalize the employer than in *Robitaille*.

[186] My conclusion is to award $75,000 to the grievor as punishment and as a deterrent for the employer's actions given that it purposely hid the true case against the grievor from her, denied her right to natural justice, and finally, attacked her in a personal and vitriolic manner.

2. The employer's false allegation on the final day of the hearing

[187] The proper administration of justice demands that I also address the conduct of the employer on the final day of the *Lyons* 2020 hearing as an additional matter under the heading of punitive damages.

[188] The Board had concluded nearly three weeks of hearing days plus many case-management sessions dealing with many contested motions for the disclosure of information and finally many days of testimony and hours spent in review of several brief security video clips. Upon the commencement of the Friday morning of the third

week of the hearing, the evidence had been closed, and both parties were to appear and present their closing arguments on the merits of the case. The hearing was to then conclude.

[189] However, the morning was lost when the day began with the employer's counsel rising to request a discussion in chambers, where she disclosed that her written instructions directed that she make a motion to amend the reasons for the grievor's termination because the employer had just learned that the grievor had been admitted to a local hospital emergency ward to treat a drug overdose.

[190] The employer's counsel presented the allegation. When I asked counsel if she had a witness present to testify to it or if she intended to testify herself, the look on her face indicated that there was no witness or affiant willing to swear to the allegation. Counsel declined the opportunity to testify to the allegation herself.

[191] Given the fact that counsel presented the allegation without any evidence, I indicated that the hearing would recess for 90 minutes for the Warden and the employer's informant with personal knowledge of the allegation to appear before the Board to testify to the allegation.

[192] Of course, no witness appeared to testify to the allegation that the employer's counsel had delivered. In hindsight, no witness could have appeared, given that it was a fabricated and false allegation.

[193] The remainder of the morning was spent discussing the employer's motion to amend the reasons for terminating the grievor's employment. Ultimately, given the fact that no evidence existed to support the motion, I gave the employer's counsel the opportunity to withdraw it.

[194] After a considerable argument from the grievor requesting time to reconsider her request for aggravated and punitive damages, given the events of the morning, a lengthy lunch break was granted.

[195] Closing arguments finally commenced mid-afternoon. Flights departing Vancouver, B.C., early that evening were missed, and the hearing concluded in Abbottsford, B.C., at 9:20 p.m. Pacific time on that Friday evening in August.

[196] However, the parties were unable to make proper preparations to address the morning's events; thus, the Board granted the grievor's request to make further submissions on remedy at a later date.

[197] Written submissions, as addressed in *Lyons* 2020, to this effect were received in the following weeks. When the decision was rendered in *Lyons* 2020 ordering the grievor's reinstatement, the Board also ordered that oral arguments be convened to allow testimony and argument on the matter of aggravated damages for psychological harm and punitive damages.

[198] To be clear, and to the contrary of recent submissions of the employer that shall be detailed later, none of these later written and oral submissions and frankly this separate Board decision should have been required but for the conduct of the employer, on the final morning of the hearing into this matter, of presenting the fabricated allegation about the grievor overdosing.

[199] While it would be generous of me to accept this explanation of gossip provided by the employer, it remains a completely reckless act if as the employer claims, it (innocently in its own submission) brought false and highly prejudicial gossip before the Board with no witness or other evidence to testify to its source.

[200] Having carefully reviewed the evidence and submissions on this matter and concluding as noted earlier in this decision that the act of the employer of bringing highly prejudicial, false information to the Board necessarily meant that the employer fabricated the allegation or alternately was completely reckless by bringing false unattributed gossip to the Board, I invited written submissions to explore this matter further. The outcome of these submissions has been noted earlier in this decision and shall be analyzed later in this decision.

[201] While the highly offensive conduct of the employer of bringing a fabricated allegation against the grievor before the Board occurred long after the termination of her employment, I note as follows the FCA's finding in *Tipple* related to employer conduct during a hearing:

…

> *[29] As a general rule, courts and adjudicative decision makers have the inherent authority to control their own process and to remedy its abuse. This inherent authority includes, in an*

> *appropriate case like this one, the right to require the reimbursement of expenses necessarily incurred by a party* ***as the result of abusive or obstructive conduct by an opposing party****.*
>
> …
>
> [Emphasis added]

[202] While the present award does not focus upon the reimbursement of expenses, the FCA in *Tipple* nevertheless opened the door for abusive or obstructive conduct before the Board to be sanctioned by a financial award.

[203] The actions sanctioned by the FCA in *Tipple* were of a procedural nature in that they cost the grievor additional litigation expenses and seem to have been designed more to frustrate the grievor, possibly out of spite or to, at worst, slow the litigation.

[204] In its *Tipple* decision, the Board stated at paragraph 362: "I further declare that Mr. Tipple incurred additional legal costs caused by the deputy head's continued failure to comply with the disclosure orders issued in this case and that the deputy head is liable for those additional costs."

[205] The FCA endorsed this conclusion and concluded as follows:

> …
>
> *[30] In this case, the adjudicator found that PWGSC had engaged in obstructive conduct by failing repeatedly to comply with orders for the disclosure of information, causing Mr. Tipple to incur unnecessary legal expenses to enforce the adjudicator's orders. PWGSC argued in this Court that it did comply, and so it did, eventually. However, the record justifies the adjudicator's conclusion that PWGSC displayed a pattern of late and insufficient compliance, which was remedied only after constant pressure from Mr. Tipple's counsel.*
>
> *[31] In my view, it was reasonable for the adjudicator to find as a fact that the failure of PWGSC to comply on a timely basis with the adjudicator's disclosure orders resulted in an unwarranted financial burden on Mr. Tipple, and to conclude that the burden should in fairness be borne by PWGSC.* ***In the highly unusual circumstances of this case, the adjudicator's award of damages for obstruction of process was a lawful and reasonable exercise of the adjudicator's authority to control the adjudication process.***
>
> …
>
> [Emphasis added]

[206] As noted by the grievor, the Board already followed the path outlined by the FCA in *Tipple* when it awarded punitive damages for employer conduct in *Markovic v. Parliamentary Protective Service*, 2021 FPSLREB 128 at para. 409.

[207] If unacceptable conduct by a litigant before the Board in *Tipple* was found by the FCA to justify a sanction essentially to reimburse costs, then surely the Board must be able to sanction by financial penalty the far more serious, unacceptable conduct before it that sought to, thus causing an obstruction of justice.

[208] In contemplating how best to respond to such an unprecedented situation of an employer either fabricating a highly prejudicial allegation and bringing it before the Board or doing so in a completely reckless manner after having received false gossip fabricated by others in its employ (the employer's submissions stated that a CSC employee brought the information to its attention), it became apparent that what the employer had done necessarily sought to mislead the Board.

[209] I take notice of the following definition of "obstructing justice" specifically as it relates to the administration of justice, see Black's Law Dictionary, Abridged 6th Ed., at page 742:

> *… Any act, conduct, or directing agency pertaining to pending proceedings, intended to play on human frailty and to deflect and deter court from performance of its duty and drive it into compromise with its own unfettered judgment by placing it, through medium of knowingly false assertion, in wrong position before public, constitutes an obstruction to administration of justice.*

[210] The Board invited written submissions from the parties on the matter of the request for punitive damages as related to the matters of obstruction of process and obstruction of justice. The Board's invitation to comment stated this:

> …
>
> *The Member of the Board assigned this matter, Mr. Gray, has requested that the parties to this matter be extended an invitation to comment in writing upon the concept of obstruction of justice as it might relate to the Board's findings in* Lyons, *2020 FPSLREB 122, concerning the employer's conduct on the final day of that hearing as it made an allegation that was later proven to be false that the grievor had recently suffered a drug overdose.*

> *The Board also invites* ***both*** *parties' submissions on the application, if any, of the Federal Court of Appeal's decision in* Tipple v. Canada (Attorney General)*, 2012 FCA 158, at paras. 20–31, with respect to damages for obstruction of process.*
>
> …
>
> [Emphasis in the original]

[211] The grievor replied in the affirmative that the conduct of the employer did indeed amount to an obstruction of justice and an abuse of process and that it merited a stronger repudiation to deter any such further acts. She requested a minimum $100,000 award ordered against the employer related to this (September 2022 written submission).

[212] The grievor also noted the Board's recent decision in *Markovic*, in which it concluded that the employer was a federal institution that should act as a role model for other employers (see paragraph 412).

[213] I agree. A party, *a fortiori*, (even more so) an agent of the Crown, which either fabricates false information itself or recklessly relies upon fabricated information propagated by one of its employees and puts such highly prejudicial lies before a quasi-judicial hearing seeks to deter and obstruct the administration of justice.

[214] In particular, the grievor noted the arbitral decision in *Doug's Heating Co. v. UAW, Local 170*, 1988 CarswellBC 2135, which admonished the employer in that case for its obstructionist tactics meant to thwart the arbitration and concluded that it amounted to an attack upon the rule of law (see paragraph 23).

[215] The grievor concluded her written submissions (September 2022) by stating, "The takeaways from all these decisions are a conduct that brings discredit to the administration of justice or tends to pervert it [and] amounts to obstruction of justice."

[216] The employer argued that the impugned action of raising the spectre of a drug overdose was justified as it sought to alter the grounds of dismissal, which is an accepted method in labour law to address post-discipline facts (see Brown and Beatty, *Canadian Labour Arbitration*, 3rd Edition, at 7:2200).

[217] I accept this submission by the employer as a broad statement of labour law. But when I reminded the employer during oral arguments in June 2021, of the manner

in which the motion was brought, namely, with no evidence but simply by the employer's then-counsel presenting very prejudicial and unattributed gossip, counsel replied that for example, there could be defective affidavits that render the motion to amend unsuccessful but that the allegation was made *in camera* and so should in no way be seen as justifying an award of punitive damages. She added that since the allegation was made that way, no harm should be ascribed to the employer as it was intended to be confidential.

[218] When I reminded the employer's counsel of the details of the overdose allegation and of how obviously, the alleged drug overdose was meant to reinforce the alleged drug mule and organized crime allegations, given that she did not represent the employer at the hearing of the merits of the grievance, she then replied that since the motion was ultimately withdrawn, it should not be seen as problematic.

[219] In its September 2022 written submissions, the employer stated as follows:

> *Correctional Service of Canada (the "Employer") terminated the Grievor's employment based on allegations by an inmate informant that she was bringing drugs into the institution and video footage that showed her passing items between cells. The hearing took place from October 30 to November 2, 2018, and January 8 to 11 and August 6 to 9, 2019.*
>
> *On or about August 6, 2019, the Employer received information that the Grievor had been recently admitted to hospital for treatment of a drug overdose following a 911 emergency call. A correctional officer reported this information to CSC's management.*
>
> *On August 7, 2019, the Employer advised the Board and the Bargaining Agent of this* in camera *(that is, before the Board member, Employer counsel, Bargaining Agent representative and CSC representative) and sought the Board's guidance as to amending or supplementing the grounds for termination. The Board directed the Employer to bring evidence to support this allegation.*
>
> *The Employer was unable to obtain such evidence since it was not within its possession or control, such that it was contemplating whether a production order would be required. The Employer did not further pursue a motion to amend/supplement the grounds of termination.*
>
> …

[220] I note the curious admission that the "Correctional Service of Canada (the "Employer") terminated the Grievor's employment based on allegations by an inmate informant that she was bringing drugs into the institution ...."

[221] While it is old news at this stage of the proceedings, this statement concedes the Board's findings in *Lyons* 2020 that the employer denied the grievor's right to natural justice by concealing the true reason for terminating her employment. There was, of course, no mention of and no evidence brought before the Board in *Lyons* 2020 about the grievor and any drugs.

[222] In its summary of submission to the matter of obstruction of justice, the employer wrote this:

> *The Employer did not engage in any conduct that could on any reasonable interpretation meet the very high threshold for awarding damages for obstruction of justice. The Employer neither hindered nor delayed the hearing process, nor generated additional costs for the Grievor. Accordingly, the Board should not order any damages for obstruction of justice.*
>
> *...*
>
> *The concept of obstruction of justice is reserved for highly unusual circumstances where one party has hindered or delayed the hearing process, resulting in additional unnecessary legal costs to the other party. The Board in* Tipple *found that the employer engaged in obstructive conduct by failing repeatedly to comply with orders for the disclosure of information, and a pattern of late and insufficient compliance, which caused Mr. Tipple to incur unnecessary legal expenses to enforce the adjudicator's orders.*
>
> *A common thread in* Tipple *and other decisions considering the concept of obstruction of justice is that there is a high threshold for such a finding, which is appropriate only in rare circumstances and requires evidence of factors not present in this case; namely:*
>
> *a) Obstructive or abusive conduct by a party in the adjudication process;*
>
> *b) Expenses necessarily incurred by one party as a result of such abusive or obstructive conduct by the opposing party; and*
>
> *c) An unwarranted financial burden that should, in fairness, be borne by the party that engaged in the obstructive conduct.*
>
> *...*

[223] The employer noted several cases in support of these submissions, including *Sheet Metal Workers' International Association Local Union #8 v. Dr. Cool Industrial Inc.,*

2014 CanLII 67645 (AB GAA). In that case, the union requested aggravated damages, relying on the concept of "obstruction of process" in *Tipple*, based on, in part, the efforts required to bring the matter to arbitration, the absence of the employer's representatives, and their obstructionist behaviour throughout the pre-hearing process. Arbitrator Moreau declined to order either aggravated or punitive damages, commenting as follows:

> …
>
> *… The Employer's representative did demonstrate on several occasions leading up to the arbitration hearing a lack of cooperation in trying to resolve this matter. I do not find, however, given the monetary amount involved as well as the other steps taken in this matter by all concerned, that the Employer's actions fall within the ambit of obstructionist behavior. That is a very high threshold and one that the evidence does not support in this case. Accordingly, I do not believe that an award for either aggravated or punitive damages is appropriate.*
>
> …

[224] Arbitrator Moreau also declined to order that the employer pay the entire cost of the arbitration proceedings, despite noting that it had failed on several occasions to cooperate with the grievance arbitration process.

[225] The employer then proceeded at some length to defend its efforts to compel the local health authority to disclose documents about the non-existent emergency admission of the grievor for a drug overdose, which she called a "fishing expedition".

[226] The employer also submitted that the cases cited in this matter of obstruction of justice or process are distinguishable as they deal with matters of procedure, failed or delayed production of documents (*Tipple*), and frivolous litigation process and uncooperative behaviour (*Doug's Heating Co.*).

[227] The employer also noted that in *Markovic*, the Board found that the damages ordered in *Tipple* were distinct in nature and should not be seen as relevant to the matter now before the Board. The passage cited in this respect states as follows:

> …
>
> *[391] Although in* Tipple*, at the adjudication hearing, Mr. Tipple claimed damages for abuse of process based on his employer's conduct at that hearing, and although the damages that the employee seeks in the case before me are punitive damages, the*

> *fact remains that in both cases, the damages are at least in part for conduct at the adjudication hearing. Therefore, I find that in these circumstances, I have the authority to decide the employee's claim for punitive damages.*
>
> …

[228] I prefer the grievor's submission on this passage in *Markovic* and agree that it adopts the FCA's ruling in *Tipple* by which objectionable conduct during the hearing can be censured by an award of damages.

[229] And finally, the employer states in its written reply submissions as follows:

> …
>
> *The Grievor confuses the concept of obstruction of justice with contempt of court and punitive damages. There is no legal basis for the Grievor's claim for "punitive damages for obstruction of justice." Tipple did not establish a new or additional head of punitive damages.*
>
> …

[230] I see no need to determine whether the award in *Tipple*, which arose from employer conduct during an adjudication hearing, is new. It clearly stands for the proposition that such objectionable conduct during a hearing before the Board can properly be censured by an award of damages.

[231] While the circumstances and findings in *Tipple* were concerned with an unwarranted financial burden on the grievor in that case, I find that the situation in this case goes beyond the question of additional costs and more appropriately merits a separate or additional award of punitive damages.

[232] Considering the foundational issue to this matter of additional punitive damages for employer conduct during the final day of the hearing requires a determination of the level of wrongdoing. As noted in the employer's submissions, a very high threshold exists to determine liability for an award of punitive damages.

[233] Having carefully considered the evidence before me and the thoughtful submissions on this matter from both parties, including both oral arguments in 2021 and written submissions in September 2022, I must conclude that it is hard to conceive of conduct on the part of an employer before the Board that would be more offensive to the Board's sense of justice and decency than what occurred in this case.

[234] It is hard to conceive of another false allegation brought forward by the employer that could have been more prejudicial to the Board's hearing on the final day of receiving closing submissions than trying again to connect the grievor to illicit drugs by accusing her of being a drug user and suffering an overdose.

[235] The employer must be brought to understand that what it did on the final day of the hearing into the merits of this matter, which was to falsely accuse that the grievor had been hospitalized with a drug overdose, was shocking in how brazen and completely wrong it was.

[236] I do not agree with the employer's suggestion that the fact that this false and highly harmful allegation was made in chambers should free it of responsibility for it.

[237] Whether the employer fabricated the allegation or recklessly brought it forward with nothing but the claim that it arose from an unnamed CX, I must conclude that the employer intended to prejudice the grievor's case by seeking to link her to the illicit drug trade, which *Lyons* 2020 concluded was the real reason for her being terminated from her employment.

[238] This is despite the employer bringing virtually no evidence of anything related to such an allegation before the Board at the grievance adjudication hearing considering the matter. By doing so, the employer sought to deceive, deflect and deter and ultimately cause an obstruction to the administration of justice at the Board's hearing.

[239] The FCA in *Tipple* speaks to exactly the situation the Board now finds itself in as it must strongly denounce and seek to deter any further such acts by the employer, to control the adjudication process before it; from paragraph 31: "In the highly unusual circumstances of this case, the adjudicator's award of damages for obstruction of process was a lawful and reasonable exercise of the adjudicator's authority to control the adjudication process."

[240] I find that the actions of the employer in the matter before me were an obstruction to the administration of justice. Such an act must be considered more serious than the obstruction of process found in *Tipple.* Therefore, I conclude that it must attract an appropriate and more significant award of damages as compared to *Tipple*.

[241] The employer's misconduct was so malicious, oppressive, and high-handed that it offends the Board's sense of decency (see *Bauer*, at para. 19). As outlined in the preceding paragraphs, I find the employer's misconduct on the last day of the hearing to meet many of the factors outlined in *Whiten* for an award of punitive damages, including that it was deliberately intended to prejudice the grievor's case in a similar but distinct continuation of the employer's misconduct during the investigation and grievance processes.

[242] Again, I specifically note at this juncture the employer's submission in which it reminded the Board of the Supreme Court's finding in *Honda Canada Inc.*, as follows:

> …
>
> *[68] Even if I were to give deference to the trial judge on this issue, this Court has stated that punitive damages should "receive the most careful consideration and the discretion to award them should be most cautiously exercised" (*Vorvis*, at pp. 1104-5).…*

[243] After careful consideration and with cautiously exercised discretion in mind, I conclude that $100,000 is a reasonable award of punitive damages solely intended to punish the employer for its conduct on the final day of the hearing into this matter and to deter it from any such future shockingly unacceptable behaviour as has been documented in this case.

[244] No hearing before this Board should ever again be presented with false and extremely prejudicial information, possibly fabricated by the employer and intended to obstruct the administration of justice in a grievance adjudication. The deliberate act of the employer of bringing such false information to the Board is highly offensive to any reasonable sense of justice and decency.

[245] At the hearing of this remedial matter, the employer submitted that the Board should be restrained with respect to any awards of damages, out of concern for taxpayer funds.

[246] The CSC's concern for Canadian taxpayers will be far better served if it avoids further such violations of employees' right to natural justice and ensures that it never repeats its brazen act of bringing a false harmful allegation, completely unsupported by any evidence, before the Board to prejudice the adjudication of a grievance.

[247] In its written submissions (September 2022), the grievor's bargaining agent requested financial compensation of $5000, presumably for its additional costs in staff time and legal counsel to respond to this matter of employer conduct.

[248] This request is denied, as the award granted by this decision is sufficient to punish and deter the employer from any further such conduct.

C. Interest payable on the award, and Canada Pension Plan adjustment

[249] The grievor wrote to the Board on February 17, 2022, seeking direction on the payment of interest on the monies owed arising from my decision in *Lyons* 2020. The parties were unable to agree on the interest rate and on whether the interest should be calculated on the gross or net amount owed. The grievor requested that the award of interest be paid on the gross amount of the monies owed rather than the net amount and that the interest rate ought to be the monthly rate in February of each year. The submission suggested that the difference in interest to pay was close to $20,000.

[250] The grievor cited the Board's decision in *Tipple*, at paras. 307 to 309, as being related to the payment of interest on the award in that case.

[251] The grievor also requested in her closing submissions in this matter that any order of damages include payment of pre and post judgement interest. The grievor noted the Board's decision in *Gagné v. Deputy Head (Correctional Service of Canada)*, 2020 FPSLREB 114, and requested a similar award of pre- and post-judgement interest on the awards arising from this decision. The Board ordered as follows in that case:

> …
>
> *[173] The grievor shall be entitled to interest on the net amount owed him under paragraphs 170 and 171 of this decision at the appropriate rate of interest in accordance with the laws of Alberta, as provided for at s. 36(1) of the* Federal Courts Act *(R.S.C., 1985, c. F-7). Prejudgement interest is to be calculated from the date of the termination to the date of this judgement, and then from the date of this judgement until the date of payment, interest is to be calculated at the post-judgement rate.*
>
> …

[252] I accept the employer's response on this issue and its reliance upon the wording of the Board's initial order.

[253] As noted by the employer in its submissions on this point, it would be an unjust windfall for the grievor to have interest paid on gross amounts that themselves are subject to the usual payroll deductions. Pursuant to the "amounts owed" aspect of the order, the interest owed on the awards in *Lyons* 2020 and 2021 shall be net of the usual deductions from employment income.

[254] The award in *Lyons* 2020 was for "simple interest" (paragraph 452). As the employer submitted, the amounts owed to the grievor were paid in February, March, and July 2021. It calculated the interest rate for that period at 0.50%. This percentage was obtained by using the "monthly series" on the Bank of Canada's website and by inputting the period between February 1 and July 30, 2021.

[255] I accept that this calculation accords with the wording of the Board's 2020 order. The monies owed to the grievor arising from this decision shall be calculated in a manner consistent with *Lyons* 2020.

[256] The grievor also wrote in her February 2022 submission that she requested that damages be paid in lieu of reinstatement for what she said was a loss to her Canada Pension Plan (CPP) benefits caused by her loss of salary before her reinstatement in *Lyons* 2020. According to her, this arises from the Board's order at paragraph 450 of *Lyons* 2020 that she be "… reinstated as a CX-02 with full salary and benefits, effective the date of termination …." She has confirmed that her pension rights under the Public Service Superannuation Plan have been restored.

[257] The grievor cited *Pelletier v. Canada Revenue Agency*, 2019 FPSLREB 117 at para. 175, and *Gill v. Deputy Head (Correctional Service of Canada)*, 2019 FPSLREB 102, as authorities in support of this request.

[258] I note that in *Pelletier*, the Board refers only to "pension" in its order (see paragraphs 175 and 176) directed at the employer. As noted on this point by the employer, the CPP is a complete statutory scheme, separate from the Public Service Pension Plan, and is not administered by the employer.

[259] In *Gill*, at para. 233, the Board makes specific reference to the "public service pension" of the grievor in that case. Again, this is separate and distinct from the CPP. As such, neither of those cases is helpful as an authority for me to grant a CPP award or the reinstatement of those benefits.

[260] The grievor also noted *Toronto (City) v. Canadian Union of Public Employees Local 79*, [1985] O.L.A.A. No 14 (QL), as an authority for her CPP request to me. That decision specifically references the CPP of the grievor in that case as well as his employer's pension plan and states that they are both to be "… restored as fully as possible … and to the extent that it is impossible he is to be compensated by additional money [*sic*] payment." I conclude that that case is unhelpful to the grievor's request in the matter at bar as CPP restoration was not specially included in the language of the Board's order related to the grievor's reinstatement, and unlike the Public Service Superannuation Plan, the grievor has not established that CPP can be contemplated under the order to restore her salary and benefits.

[261] I expect the lack of Board authorities related to the restoration of CPP benefits is related to this matter being beyond the control of the employer, as it noted. Given this statutory scheme, I also expect that the value of such a reinstatement of CPP benefits, or any loss of them, is not able to be ascertained in advance and would be purely speculative.

[262] The grievor's request for an award to restore her future CPP benefits is denied for these reasons.

D. Loss of reputation

[263] The grievor briefly, and with little legal analysis of the precedents, noted the Board's award in the FCA's *Tipple* decision for harm to reputation and suggested that a floor quantum of at least $50,000 be awarded under this head of damage.

[264] Both parties availed themselves of and focused upon the rich evidentiary record in this matter by relying both on the findings in *Lyons* 2020 and the witnesses' testimonies.

[265] The employer cited that passage and noted that in the matter at bar, the grievor's actions were found to justify significant discipline in the form of a one-month suspension without pay, and further that it had no role in disseminating any public knowledge of the matter. It added that it had no ability to control employees gossiping about the grievor.

[266] The employer also noted the fact that the Board's decision in the *Tipple* case found objective evidence of public harm to the grievor's reputation. It then submitted

that there was no such evidence in the matter before me as the exchanges with Ms. Lakey showed only that she had heard of the grievor being suspended from work for passing goods between inmate cells.

[267] The employer argued that the evidence that the grievor was able to find employment, even if it was just sweeping floors, showed that her reputation received little, if any, harm.

[268] The employer pointed out the fact that the grievor had already been reinstated in *Lyons* 2020 and that she had her salary and benefits reinstated in *Lyons* 2021 such that she was made whole. But it did not directly address the specific finding in the Board's decision in the *Tipple* matter related to loss of reputation.

[269] The employer noted the FCA's findings in *Tipple* (at paragraph 16), and as the BCCA also relied upon as follows in *Lau* (at paragraph 62):

> *[62] Where the damages are sought for loss of reputation, the manner of termination must be accompanied by three additional conditions: "(a) the employee's reputation is damaged by public knowledge of false allegations relating to the termination, (b) the employer fails to take reasonable corrective steps and offers no reasonable excuse for such failure, and (c)* ***the damage to the employee's reputation has impaired his ability to find new employment"*** *….*
>
> [Emphasis added]

[270] I note that in both the Board's decision in *Tipple* and the Supreme Court of Canada's decisions in *Wallace v. United Grain Growers Ltd.*, [1997] 3 SCR 701, and *Honda Canada Inc.*, upon which *Tipple* relied, the grievors (plaintiff) were discharged from their employment and were not reinstated in that employment in the course of their litigation. I also note that while the grievor relied upon *Robitaille,* it did not deal with the issue of an award of loss of reputation at all.

[271] While the grievor led evidence that suggested that she had indeed suffered a loss of reputation due to the employer's actions, I cannot conclude that any of this harm was related to an impairment to her ability to find new employment.

[272] In a written submission dated September 30, 2019 (at page 4), the employer's counsel wrote that any claim for which the employer is responsible for a loss of

reputation that has impaired the grievor's ability to find new employment is unfounded and unsupported by the evidence.

[273] I have just noted that all the relevant authorities that both parties relied upon require that the award for the loss of reputation be linked to an impairment to the ability to find new employment.

[274] While the grievor testified to the difficulty she faced finding and to being turned away from all the career-related job opportunities she pursued after being suspended and terminated from her job, and she explained how she finally found work sweeping floors for a wage that was less than half her CX-2 salary, all these difficulties have already been compensated by the award to her in *Lyons* 2020.

[275] That decision reinstated her employment, less one month of pay, and directed that the disciplinary investigation, suspension, and termination of employment be erased from her record. After the employer sought to avoid responsibility for some of the grievor's benefits, I specifically wrote in *Lyons* 2021 that "[t]he grievor was awarded her grievance and she was to be reinstated as if the termination of her employment did not occur" (at page 3).

[276] The grievor cannot enjoy being reinstated and put back in the place she would have been in had her termination never occurred and then also be paid damages by the employer for its harm causing impairment of her ability to find new employment. That would be double compensation for the same loss.

[277] Additionally, the grievor reminded the Board in her closing submissions that Ms. Lakey, a former co-worker, testified and admitted to making rude comments to the grievor and to shunning her in public. The grievor also pointed to *Lyons* 2020, which quoted CX-2 Sean White in his testimony, as follows at paragraph 419: "The employer went so far as to call CX-02 White to testify that he could not work with the grievor again as she was compromised by criminals. He said that he would have no trust in her."

[278] While the grievor argued that this and other evidence showed that her reputation was harmed and that she suffered shame at being shunned and stigmatized by the many CX staff who work and live in or near her community, I conclude that

compensation for any ill effects of such poor treatment is included in what I have already set out as an award for the psychological harm she has suffered.

[279] Although I do not place any significant amount of weight on this point due to neither party speaking to it in argument, the Board stated in *Lyons* 2020 (see paragraph 456) that it would reconvene a hearing for oral arguments with respect to the request for awards for moral damages for psychological harm and for punitive damages. Harm to reputation is not mentioned in what the Board reserved jurisdiction over to address in this remedial decision and order.

[280] After carefully reading the authorities, and after carefully applying those decisions to the facts before me, I find that for the reasons stated, the grievor is not owed damages for the harm to her reputation.

V. Board Member's note

[281] While the analysis and ruling upon punitive damages necessarily considered the employer's conduct during the investigation, at the adjudication hearing, and for two years after that, none of my comments in this decision or my previous two written decisions in this matter are in any way directed personally to the conduct of the now three counsel who, at different times, had conduct of the file in their representation of the employer.

[282] Additionally, the fact that the second legal counsel, who represented the employer in matters related to my 2021 decision on some aspects of the salary and benefit determination and in the matter currently at bar, is now my colleague at the Board had no impact whatsoever on my decision. Ms. Engmann and I have never discussed this file beyond our case management meetings and her hearing advocacy as counsel, both done in the presence of the grievor's representative, and all of which took place before her appointment to the Board.

VI. Sealing order

[283] I granted an employer request for the production of tax documents and highly personal information in the form of the grievor's medical and psychological clinical notes. I also considered and granted a redaction request of the grievor to ensure that the medical documents did not allow highly personal information completely unrelated to the matter before me to be included in those documents. The grievor then

requested that the remaining documents be ordered sealed. The employer did not oppose this request.

[284] The Board has very recently considered such a request to seal documents in *Miller v. Treasury Board (Correctional Service of Canada)*, 2022 FPSLREB 10, in which it found as follows:

> *[64] In* Basic v. Canadian Association of Professional Employees*, 2012 PSLRB 120 at paras. 9 to 11, the Public Service Labour Relations Board stated as follows:*
>
> **9** The sealing of documents and records filed in judicial and quasi-judicial hearings is inconsistent with the fundamental principle enshrined in our system of justice that hearings are public and accessible. The Supreme Court of Canada has ruled that public access to exhibits and other documents filed in legal proceedings is a constitutionally protected right under the "freedom of expression" provisions of the *Canadian Charter of Rights and Freedoms*; for example, see *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 S.C.R. 480; *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835; *R. v. Mentuck*, 2001 SCC 76, *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 (CanLII).
>
> **10** However, occasions arise where freedom of expression and the principle of open and public access to judicial and quasi-judicial hearings must be balanced against other important rights, including the right to a fair hearing. While courts and administrative tribunals have the discretion to grant requests for confidentiality orders, publication bans and the sealing of exhibits, it is circumscribed by the requirement to balance these competing rights and interests. The Supreme Court of Canada articulated the sum of the considerations that should come into play when considering requests to limit accessibility to judicial proceedings or to the documents filed in such proceedings, in decisions such as *Dagenais* and *Mentuck*. These decisions gave rise to what is now known as the *Dagenais/Mentuck* test.
>
> **11** The *Dagenais/Mentuck* test was developed in the context of requests for publication bans in criminal proceedings. In *Sierra Club of Canada*, the Supreme Court of Canada refined the test in response to a request for a confidentiality order in the context of a civil proceeding. As adapted, the test is as follows:
>
> …
>
> (a) such an order is necessary in order to prevent a serious risk to an important interest, including a

> commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
>
> (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

[285] I order sealed tabs 7, 10, and 12 of Exhibit BA-1, the grievor's bargaining agent's book of documents. Tab 7 contains tax, financial, and personal information. Tabs 10 and 12 contain treating medical doctor and psychologist clinical notes with highly personal information about the grievor and her state of medical health.

[286] This order is consistent with the Supreme Court of Canada's recent pronouncement on the test in *Sierra Club of Canada v. Canada (Minister of Finance),* 2002 SCC 41, in *Sherman Estate v. Donovan*, 2021 SCC 25. The Court went on to recognize that an aspect of privacy is an important public interest for the purposes of the test, namely, highly sensitive personal information that would result not just in discomfort or embarrassment but in an affront to the affected person's dignity.

[287] The medical and other personal issues relevant to the hearing and to understanding this decision have been outlined in the earlier pages of this decision. The Board is normally extremely cautious to not disclose personal matters such as detailed medical information. However, parts of this decision largely rest upon these very details, and justice requires them to be confirmed to satisfy the need for transparency in the rendering of this decision and award.

[288] Otherwise, maintaining the openness of other sensitive personal information found in the documents requested sealed by the grievor is not necessary and poses a serious risk to her privacy. The importance of protecting this other highly sensitive personal information outweighs the right to free expression and the related public interest in open and accessible court proceedings.

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

(The Order appears on the next page)

VII. Order

[290] The employer is ordered to pay the grievor $135,000 in aggravated damages for psychological harm.

[291] The employer is ordered to pay the grievor $175,000 in punitive damages.

[292] The employer must add simple interest to the $310,000 owed to the grievor, calculated at the annual rate based on the Bank of Canada's official rate (monthly data).

[293] The grievor's request for damages for loss of reputation and CPP is dismissed.

[294] Tabs 7, 10, and 12 of Exhibit BA-1, the grievor's bargaining agent's book of documents, are ordered sealed.

November 21, 2022.

Bryan R. Gray,
a panel of the Federal Public Sector
Labour Relations and Employment Board