Date: 20251118

File: 566-02-44962

Citation: 2025 FPSLREB 151

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

MATHIEU LEMAY

Grievor

and

TREASURY BOARD
(Department of Public Safety and Emergency Preparedness)

Employer

Indexed as
Lemay v. Treasury Board (Department of Public Safety and Emergency Preparedness)

In the matter of an individual grievance referred to adjudication

Before: Christopher Rootham, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Meghan O'Halloran and Mathieu Delorme, Association of Canadian Financial Officers

For the Employer: David Perron and Larissa Volinets Schieven, counsel

Decided on the basis of written submissions,
filed August 1, September 12 and 26, and October 8 and 23, 2025.

REASONS FOR DECISION

I. Overview

[1] This decision is about the appropriate remedy in a grievance. As reported in *Lemay v. Treasury Board (Department of Public Safety and Emergency Preparedness)*, 2024 FPSLREB 175 ("*Lemay #1*"), I allowed a grievance by an employee who was placed on leave without pay because he was unvaccinated against COVID-19. I concluded that he was entitled to an exemption from having to be vaccinated because he had a sincere religious belief that he should not receive the vaccine. The parties asked to bifurcate the issue of entitlement from that of remedy, so I retained the jurisdiction to address any remedial issues that the parties were unable to resolve on their own.

[2] The parties were able to partially resolve the issue of remedy and jointly requested that the Board's reasons on the issue of damages reflect the employer's agreement to substitute the grievor's leave without pay with leave with pay pursuant to article 44.04 of the collective agreement between Treasury Board and the Association of Canadian Financial Officers for the Comptrollership Group (expiring November 6, 2026) for the period from March 18, 2022, to June 19, 2022, inclusive. In addition, the employer will issue all compensation owing and make all related adjustments to the grievor's leave balances and benefits. In other words, the period of leave without pay will be converted to leave with pay, and the grievor will receive the pay and benefits (including the bilingualism bonus, leave credits, and other applicable entitlements) associated with paid leave.

[3] As a result of this agreement, the only remaining issue to be determined by the Board is the amount of damages, if any, that may be awarded under sections 53(2)(e) or 53(3) of the *Canadian Human Rights Act (R.S.C., 1985, c H-6; CHRA)*.

[4] I have concluded that the grievor is entitled to damages of $5000 under s. 53(2)(e) of the *CHRA*. The grievor is entitled to damages for "pain and suffering" under that paragraph because of the loss of dignity and self-worth that he incurred by being placed on leave without pay. However, I have concluded that he is not entitled to damages under s. 53(3) of the *CHRA* because the employer's conduct was neither intentional nor reckless. My detailed reasons follow.

II. Facts leading to the grievance

A. The Vaccine Policy

[5] The grievor had worked in the federal public administration for approximately 15 years as of 2021, when the events leading to his grievance occurred. He had transferred to the Department of Public Safety and Emergency Preparedness ("Public Safety Canada") shortly before that time.

[6] As stated in *Lemay #1*, on October 6, 2021, the Treasury Board enacted the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* ("the Vaccine Policy"). The Vaccine Policy required all employees in the core public administration to be fully vaccinated against COVID-19. Employees who were not fully vaccinated were divided into three categories: partially vaccinated employees (i.e., employees who had received one dose of an authorized vaccine but who had not received a full vaccination series), employees unable to be fully vaccinated, and employees unwilling to be fully vaccinated. The Vaccine Policy defined an employee who was unable to be fully vaccinated as an employee who could not be fully vaccinated "… due to a certified medical contraindication, religion, or any other prohibited ground of discrimination as defined in the *Canadian Human Rights Act*."

[7] The Vaccine Policy required employees to provide an "attestation" by October 29, 2021, that they were either vaccinated or unable to be vaccinated. The Vaccine Policy required employees to inform their managers of their need for accommodation based on a certified medical contraindication, religion, or other prohibited ground of discrimination, "… at the earliest opportunity or by the attestation deadline, if possible." The Vaccine Policy stated that the "full implementation date" of the policy was on November 15, 2021, i.e., two weeks after the attestation deadline.

[8] The employer published a guide called the "Framework for implementation of the Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police" ("the Framework"). The Framework said that managers "… should request a sworn attestation (signed before a commissioner for taking affidavits) containing detailed information about the sincerely held religious belief that prohibits full vaccination." The employer also prepared a blank affidavit for employees who were seeking accommodation to fill out and have commissioned.

[9] The employer also prepared a "Manager's Toolkit" for the Vaccine Policy. There were at least five versions of the Manager's Toolkit, dated October 8 and 26, November 12, and December 17, 2021, and February 4, 2022. The Manager's Toolkit is clear that an affidavit is a sign of the sincerity of an employee's religious belief but that it is not a necessary condition for granting accommodation on the basis of religion. The grievor would not have had access to the Manager's Toolkit while preparing his application for accommodation.

B. Grievor's request for religious accommodation

[10] As I mentioned earlier, the grievor had recently changed departments when the Vaccine Policy was introduced. He received an email dated October 25, 2021, stating that according to Public Safety Canada's records, his attestation was still pending. The email appears to have been sent to a number of employees, not just the grievor. The email asked the grievor to provide a screenshot of his attestation by October 28, 2021.

[11] The employer never explains why the grievor received a deadline of October 28, 2021, while the Vaccine Policy gave him until October 29, 2021.

[12] The grievor responded on October 26, to complain about the fact that he was given one fewer day to provide his attestation and to say that he would provide it on October 29. He then emailed on October 29 to state that he completed his attestation but that he would not provide screenshots of it due to privacy concerns.

[13] The grievor did not prepare an affidavit as part of his attestation. In the afternoon of November 15, 2021, the employer requested that the grievor prepare a signed affidavit by the end of that day. At the grievor's request, he was given an extension to the end of the following day. He had an affidavit commissioned and sent it the following day. I set out the contents of that affidavit in *Lemay #1*.

[14] The grievor's request for accommodation was reviewed by a committee set up by Public Safety Canada to review such requests. That committee met on December 15, 2021. The day before, a director of labour relations sent an email to the grievor's manager with a list of questions to ask the grievor for the committee's review, which was scheduled to take place at 3:00 p.m. on December 15. That document was a generic list of template questions prepared for managers to address several possible requests for accommodation. As I stated in *Lemay #1*, most of those questions had

nothing to do with the grievor. The grievor answered those questions, pointing out the ones that were not applicable to him. One of the questions that he answered was, "Why is your belief differ [*sic*] from the religious leaders of your faith who are in favour of vaccines?"

[15] On February 17, 2022, the employer advised the grievor that his request for accommodation had been denied. The grievor was given until March 3 to attest that he was vaccinated, or he would be placed on leave without pay, effective March 17.

[16] On March 4, 2022, the grievor emailed management to request these three things:

> …
>
> *1. A written rationale clearly explaining why my request for exemption was denied;*
>
> *2. Confirmation from the committee that they recognize my religious beliefs are sincerely held;*
>
> *3. What information was missing for the committee to enable the organization's duty to accommodate based on the Charter protected right of freedom of religion.*
>
> …

[17] On March 11, 2022, the employer responded to that email, stating that the grievor did not demonstrate how his religious belief prevented him from complying with the Vaccine Policy and that the decision had been made based on the information that he submitted.

[18] The grievor was placed on leave without pay effective March 18, 2022. The employer suspended the Vaccine Policy on June 20, 2022, and the grievor returned to work.

III. Procedure followed to resolve the dispute over remedy

[19] In *Lemay #1*, I concluded that the grievor showed a nexus between his beliefs and religion and that he was sincere in his beliefs. In consultation with the parties, I decided to address the question of remedy in writing. As I stated in the overview to this decision, the parties were able to partially resolve the remedy in this case. The parties were given an opportunity to file additional evidence about remedy, but neither did. They both filed written submissions about remedy. They also referred to a number

of authorities in support of their arguments. While I do not cite each of them in this decision, I read them all.

IV. Outline of the statutory provisions governing this award

[20] The grievor seeks a remedy of $20 000 under each of ss. 53(2)(e) and 53(3) of the *CHRA*. The Board has the jurisdiction to award those two heads of damages (see the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2), s. 226(2)(b)). Those provisions read as follows:

53(2) *If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:*	***53(2)*** *À l'issue de l'instruction, le membre instructeur qui juge la plainte fondée, peut, sous réserve de l'article 54, ordonner, selon les circonstances, à la personne trouvée coupable d'un acte discriminatoire :*
…	[…]
(e) *that the person compensate the victim, by an amount not exceeding twenty thousand dollars, for any pain and suffering that the victim experienced as a result of the discriminatory practice*	***e)*** *d'indemniser jusqu'à concurrence de 20 000 $ la victime qui a souffert un préjudice moral.*
(3) *In addition to any order under subsection (2), the member or panel may order the person to pay such compensation not exceeding twenty thousand dollars to the victim as the member or panel may determine if the member or panel finds that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly.*	***(3)*** *Outre les pouvoirs que lui confère le paragraphe (2), le membre instructeur peut ordonner à l'auteur d'un acte discriminatoire de payer à la victime une indemnité maximale de 20 000 $, s'il en vient à la conclusion que l'acte a été délibéré ou inconsidéré.*

[21] I will address these two heads of damage separately.

V. Damages for pain and suffering (s. 53(2)(e) of the *CHRA*)

[22] As is clear on the face of s. 53(2)(e) of the *CHRA*, the Board can award up to $20 000 to compensate the grievor for the pain and suffering that he experienced as a

result of the discriminatory practice. The Federal Court of Appeal provided three useful principles about s. 53(2)(e) in *Jane Doe v. Canada (Attorney General)*, 2018 FCA 183, which I will follow in this case.

[23] First, the purpose of s. 53(2)(e) is to provide a remedy to vindicate a claimant's dignity and personal autonomy and to recognize the humiliating and degrading nature of discriminatory practices (see *Jane Doe*, at paras. 13 and 28; and *Barcier v. Treasury Board (Canada Border Services Agency)*, 2024 FPSLREB 103 at para. 113).

[24] Second, the discriminatory practice does not need to be the sole cause of the harm (see *Jane Doe*, at para. 27). However, the complainant must still "… provide evidence that the discriminatory practice actually caused pain and suffering …" (from *Barcier*, at para. 113). This requires that there be evidence of pain and suffering (see *Fang v. Deputy Head (Department of Industry)*, 2023 FPSLREB 52 at para. 154), such as "… emotional consequences, frustration, disappointment, loss of self-esteem and self-confidence, grief, emotional well-being, stress, anxiety and sometimes even depression, suicidal thoughts and other psychological symptoms resulting from the discriminatory practice" (from *Youmbi Eken v. Netrium Networks Inc.*, 2019 CHRT 44 at para. 71). Medical evidence is helpful but not necessary or mandatory to establish pain and suffering (see *Dicks v. Randall*, 2023 CHRT 8 at para. 50).

[25] Third, the Federal Court of Appeal outlined a "… principle, accepted in arbitral jurisprudence, that once pain and suffering caused by a discriminatory practice are established, damages should follow …" (see *Jane Doe*, at para. 29).

[26] The employer submitted that I should follow the approach in *Canadian National Railway v. Teamsters Canada Rail Conference*, 2025 CanLII 45301, *Island Health v. United Food & Commercial Workers Local 1518*, 2023 CanLII 2827 (BC LA), and *Island Health v. United Food & Commercial Workers Local 1518*, 2022 CanLII 127683 (BC LA), in which the arbitrators did not award any damages for pain and suffering to employees who were placed on leave or even dismissed because of their employer's version of the Vaccine Policy. Those cases are distinguishable. In the *Canadian National Railway* case, the employer was following the federal government's signal that exemptions should be narrowly construed. Since the employer in this case is the federal government, it cannot have the benefit of the same defence. In the *Island Health* cases, the employer believed that it was acting in accordance with a provincial

public health order that prevented it from exempting employees from a vaccine policy. In this case, the employer was acting under a policy it drafted, not under a mandate created by a third party. Therefore, I did not find those cases helpful. The employer cited other cases in which human rights violations were not made out; the employer conceded that those cases are distinguishable, and I agree that I can draw little about the quantum of damages for human rights breaches from cases with no human rights breach.

[27] In accordance with these principles, I will approach this matter in three stages. First, I will determine whether the grievor has provided evidence of pain and suffering. Second, if so, I will determine whether the pain and suffering was caused in part by the discriminatory conduct that I set out in *Lemay #1*. Third, again if so, I will set out the appropriate quantum of damages.

A. Evidence of pain and suffering

[28] The grievor's evidence in support of his claim is set out in an appendix to an affidavit that he filed in *Lemay #1*. The appendix is composed of 33 pages of the grievor's description of his career, his political beliefs, the events leading to the grievance, and why he claims damages. The remaining 64 pages are documents that he says support his claims. He was not cross-examined on his affidavit, including the appendix.

[29] In his submissions on remedy, the grievor made more focussed submissions about his pain and suffering. Rather than go through his appendix point by point, I will focus on his submissions instead. His submissions focussed on two things.

[30] First, he outlined that being placed on leave without pay deprived him of the dignity and meaning associated with work. The evidence that he filed supports that he suffered frustration and disappointment (which, as I set out earlier, are forms of pain and suffering) as a result of being on leave without pay and not at work. Specifically, he states this:

> …
>
> *My investment in my career was a commitment I made to public service. I value work as an important part of my life, it has a higher priority than hedonism that is a distraction from what matters in life. Work is objectively the only way to affect a situation positively or negatively, to change things. I embrace its ability to*

> *make my situation better by earning it. My employer perverted the nature of employment by reducing it to mere compliance to a policy that infringed on my beliefs. But it is the same beliefs that guided my work ethics and dedication towards modernization of the public service to honor Canadian taxpayers' fiscal efforts beyond saying it and being overpaid for repeating buzzwords. I learned programming languages and familiarized myself with technology related to my business line to fulfill my responsibility in being part of the solution.*
>
> *Being placed on leave without pay deprived me of my livelihood and its significance. I was now jobless, not for a lack or will or ability to provide business outcomes.*
>
> …

[31] The grievor also points out the acknowledgement in *McKinley v. BC Tel*, 2001 SCC 38, and other cases that work is a fundamental aspect of a person's life and an essential component of a person's sense of identity, self-awareness, and emotional well-being. I wholeheartedly agree. As the Federal Court of Appeal stated recently in *Matos v. Canada (Attorney General)*, 2025 FCA 109 at paras. 37 and 38:

> *[37] … it is important to first have regard to what the courts have had to say about the role of work in our lives and the non-monetary benefits that employees derive from their jobs.*
>
> *[38] Indeed, the importance of this interest cannot be overstated, and Canadian jurisprudence is replete with references to the crucial role that employment plays in the dignity and self-worth of the individual.*

[32] In response, the employer argues that the COVID-19 pandemic was highly unusual and involved unprecedented circumstances. On that point, I agree with the grievor's reply submissions that extraordinary circumstances do not displace the duty to accommodate.

[33] The employer also points out that the Board concluded in *Rehibi v. Deputy Head (Department of Employment and Social Development)*, 2024 FPSLREB 47, that the Vaccine Policy was non-disciplinary. Respectfully, I do not understand the relevance of the non-disciplinary nature of the policy to whether the grievor has submitted evidence of pain and suffering.

[34] However, the grievor undermines the impact on his sense of self-worth by being forced away from work in other parts of his appendix. He complains that the employer has not stayed up to date with technology at work, that as a result of the "lackluster

inputs to outputs ratio" of other public servants the private sector does not value him, that he has not gained the necessary experience to find alternative work in the private sector, that he was not given meaningful work to justify his wages throughout his career, and (most damaging to his argument) that his work was insignificant and "lackluster brain-numbing".

[35] I have concluded that the grievor has provided evidence of pain and suffering due to being placed on leave without pay. The fact that he has some contempt for his job does not mean that he cannot derive some emotional benefit and dignity from the fact of working.

[36] He also claims pain and suffering for having been forced into what he calls a dysfunctional adversarial relationship with the employer, for a sense of ostracization and exclusion from his colleagues, and for no longer being able to trust anyone in the workplace. I will deal with this in greater detail when addressing the causal link.

[37] Finally, he claimed pain and suffering because of the financial impact of his leave without pay. The employer points out that it agreed (after *Lemay #1*) to pay the grievor his actual financial losses for being on leave without pay for just over three months.

[38] I will begin by pointing out that s. 53(2)(e) of the *CHRA* is not about compensating the victims of discrimination for financial losses. As the Federal Court of Appeal said in *Jane Doe*, s. 53(2)(e) provides the Board with the jurisdiction to award non-pecuniary damages. Non-pecuniary damages are, by definition, not about financial losses. For example, the grievor states in his appendix that the loss of cash flow during his leave without pay led to additional interest being paid on his mortgage and other credit. Damages for pain and suffering cannot compensate for those interest charges.

[39] While s. 53(2)(e) of the *CHRA* cannot be used to compensate for financial harm, it can compensate a claimant for the stress, anxiety, or other adverse emotional or psychological effects of losing income for a time. The problem is that the grievor presented no evidence of such harm. His submissions state that he suffered financial stress and uncertainty; however, the evidence in his appendix does not say that and says nothing to indicate that the grievor felt stress, anxiety, or other emotional or psychological effects from being unpaid. While it may be reasonable to assume that that was the case, I cannot base my decision on my assumptions about how an

employee will react to being without pay. I must base my decision on the evidence presented by the grievor. The grievor never says that he suffered from being without pay aside from having to pay extra interest. In light of the lack of evidence, I cannot award damages on this basis.

B. Causal link between pain and suffering and the discriminatory conduct

[40] The second element is that the grievor must show that his pain and suffering was caused, at least in part, by the employer's discriminatory conduct.

[41] I have concluded that the grievor has shown that his loss of dignity and self-respect from being on leave without pay was caused by the discriminatory conduct. Frankly, the causal link here is obvious: pain and suffering from not working was caused by the employer's decision not to let him work.

[42] As for the rest of the grievor's claim, he has not shown any causal link between the discriminatory conduct and any pain and suffering that he is experiencing.

[43] The grievor says that the employer is in an adversarial relationship with him. His evidence of that adversarial relationship was that the employer defended this grievance. This is not evidence that his subjective feelings of being in an adversarial relationship with the employer were caused by the discriminatory conduct.

[44] The grievor also says that he has been marginalized and ostracized in the workplace. Bizarrely, as evidence of being ostracized, he provided a copy of a notice of a social barbeque at work that he was invited to. I am confused about how being invited to a social event with colleagues shows that the grievor is being ostracized. He accuses his co-workers of having "stabbed [him] in the back" by voting in favour of the politicians responsible for the Vaccine Policy and says that he is being harassed because his co-workers are "acting like nothing happened". This is not evidence of ostracization.

[45] As for being marginalized at work by management, his submissions state that since his return to work, he has been assigned work of lesser importance and denied access to important work promotions. However, his evidence is that he was given "… work experience that was not up to the value of [his] wages …" and "[i]nsignificant work experience" for years before he was put on leave without pay. He complains that "… being aware that [his] career perspectives towards ever addressing those problems

[of a siloed organization] that visibly no one else in a position to do anything about it is willing to, kills [his] motivation in that regard"; this has nothing to do with his being on leave without pay, and he does not ever say that it was. He asks me to assume that "[a]s the vaccine mandates were enshrined in policy, their application left a paper trail that can both be used before this board as well as to influence promotion decisions" without any evidence that this has happened.

[46] At its strongest, his evidence reads as follows:

> …
>
> *Since I returned to work following the suspension of the policy, I could see that I was handed work significantly below my objective abilities, considering the difficulty in obtaining a CPA designation, which the employer is aware of for paying for it. There was an observable reluctance of my peers to interact genuinely and positively with me that could explain the employer's difficulty to integrate me within operations that involve cooperation with folks that voted me out of a job. Yet, this is the result of reckless application of the policy which could only inevitably lead to a foreseeable inability for the employer to resume operations while ensuring a workplace free of harassment and discrimination as a consequence. The employer ought to know this would create a "hot potato" situation that would create operational difficulties. I should not be expected to pay the price for their lack of foresight and disregard for me.*
>
> …

[47] This evidence must be contrasted with the grievor's evidence that he was also not given interesting or challenging work before the Vaccine Policy. He has provided no concrete examples of any substandard or demeaning work that he was assigned.

[48] As I stated earlier, it is pretty clear that the grievor had contempt for his job before being on leave without pay and that that is still the case. He is also upset about being placed on leave without pay. However, he has not shown that being placed on leave without pay caused or contributed to any pain and suffering about how little he enjoys his job.

[49] Finally, the grievor argues that the employer is responsible for him not receiving employment insurance during his period of leave without pay. I agree with the employer's submission that it has no control over whether Service Canada denies

someone's application for employment insurance, for the same reason as the Board stated at paragraph 286 of *Rehibi*.

[50] In conclusion, the grievor has shown that his loss of dignity and self-respect flowing from being unable to work was caused by the employer's discriminatory conduct. The grievor has provided insufficient evidence linking other alleged pain and suffering with the employer's discriminatory conduct.

C. Quantum of damages

[51] The final step is for me to assess the quantum of damages for pain and suffering that the grievor incurred as a result of the loss of dignity and self-respect from being without work.

1. How to deal with decisions from uncapped jurisdictions

[52] There is no formula or fixed approach to determining the damages to award for pain and suffering. At times, the maximum amount of $20 000 has been said to be reserved for "the most egregious of circumstances" (see *Grant v. Manitoba Telecom Services Inc.*, 2012 CHRT 10 at para. 115). Both parties cited a number of decisions in which the Board or the Canadian Human Rights Tribunal awarded damages for pain and suffering. Many of those cases had awards of between $2000 and $5000 (such as *Barcier*, *Dicks*, and *Fang*), with others ranging up to $10 000 (such as *Kirby v. Treasury Board (Correctional Service of Canada)*, 2015 PSLREB 41; and *Santawirya v. Treasury Board (Canada Border Services Agency)*, 2018 FPSLREB 58).

[53] The employer brought three unreported cases to my attention, in which an arbitrator awarded human rights damages after allowing a grievance about religious accommodation and a refusal to be vaccinated: *Canadian Union of Public Employees, Local 129 v. City of Pickering (grievance of Josh Posteraro – award respecting damages)*, unreported, September 5, 2025 ("*Posteraro*"); *Canadian Union of Public Employees, Local 129 v. City of Pickering (grievance of Dan Flowers – award respecting remedial claim)*, unreported, August 31, 2025 ("*Flowers*"); and *Canadian Union of Public Employees, Local 129 v. City of Pickering (grievance of PG – award respecting remedy)*, unreported, September 5, 2025 ("*PG*"). The decisions on the merits in all three cases were cited and discussed in *Bedirian v. Treasury Board (Department of Foreign Affairs, Trade and Development)*, 2024 FPSLREB 58.

[54] In each case, the arbitrator awarded damages for lost pay and benefits (as the parties agreed to do in this case). The arbitrator also awarded human rights damages in each case. In *Posteraro*, he awarded $4500; in *Flowers*, he awarded $10 000; and in *PG*, he awarded $7500.

[55] These cases were decided on the basis of the Ontario *Human Rights Code* (R.S.O. 1990, c. H-19; "Ontario *HRC*"). The Ontario *HRC* is different from the *CHRA* in two important respects.

[56] First, the Ontario *HRC* has no equivalent to s. 53(3) of the *CHRA*. What are generally called "human rights damages" in Ontario are awarded under s. 45.2(1) of the Ontario *HRC*, which reads as follows:

45.2 *(1) On an application under section 34, the Tribunal may make one or more of the following orders if the Tribunal determines that a party to the application has infringed a right under Part I of another party to the application:*	***45.2*** *(1) À la suite d'une requête présentée en vertu de l'article 34, le Tribunal peut, s'il décide qu'une partie à la requête a porté atteinte à un droit d'une autre partie à la requête reconnu dans la partie I, rendre une ou plusieurs des ordonnances suivantes :*
1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.	*1. Une ordonnance enjoignant à la partie qui a porté atteinte au droit de verser une indemnité à la partie lésée pour la perte consécutive à l'atteinte, y compris une indemnité pour atteinte à la dignité, aux sentiments et à l'estime de soi.*
2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.	*2. Une ordonnance enjoignant à la partie qui a porté atteinte au droit d'effectuer une restitution à la partie lésée, autre que le versement d'une indemnité, pour la perte consécutive à l'atteinte, y compris une restitution pour atteinte à la dignité, aux sentiments et à l'estime de soi.*
3. An order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act.	*3. Une ordonnance enjoignant à toute partie à la requête de prendre les mesures qui, selon le Tribunal, s'imposent pour favoriser l'observation de la présente loi.*

[57] This means that awards under s. 53(2)(e) of the *CHRA* are not directly comparable to awards under s. 45.2(1) of the Ontario *HRC*. To the extent that a tribunal in Ontario considers deterrence or any other factors more usually relevant to punitive damages when making an award, that means that the award is not directly comparable to damages under s. 53(2)(e) of the *CHRA*.

[58] To give a hypothetical example, suppose an Ontario tribunal awards $15 000 in damages. In its reasons, it explains that the claimant experienced a loss of dignity and self-respect and that the conduct by the respondent was so egregious that it warrants some monetary consequence. This is not equivalent to a $15 000 award under s. 53(2)(e) of the *CHRA*; it is, instead, equivalent to an award split between ss. 53(2)(e) and 53(3) of the *CHRA*.

[59] Second, there is no cap on human rights damages in Ontario. In 2006 (in legislation effective in 2008), the Ontario Legislature removed what used to be a cap of $10 000 on damages for "mental anguish."

[60] The employer submits that the lack of a cap in Ontario means that the amounts of awards in that jurisdiction cannot be compared to awards under the *CHRA*. The employer submits as follows:

> …
>
> *… A damages award of $10,000 in the* Code *context, where there is no statutory maximum and significant damages can be awarded, is on the low to moderate end. In contrast, in the* CHRA *regime, $10,000 represents the midpoint of the maximum allowable award, signaling a far more serious finding on the remedial spectrum. As such, the damages in* Flowers *reflect a moderate outcome in a no-cap context.…*
>
> …

[61] The grievor filed a sur-sur-reply that disputed that contention and submits that when considering Ontario awards, they should not be prorated simply because the *CHRA* has a cap on damages.

[62] In respect of the parties' dispute over the use of decisions from other, uncapped, jurisdictions, I return to the basic principle that there is no formula to calculate damages. Assessing damages is not a mathematical exercise. In addition,

every case is going to be different. The appropriate damages in a given case are always going to turn on the particular facts of that case.

[63] With that said, I do not accept the employer's argument that I should, in essence, discount awards made in uncapped jurisdictions.

[64] I have a practical concern with the employer's approach about how I could go about doing this discounting. The high-water mark for human rights damages based on injury to dignity, feelings, and self-respect appears to be either the $200 000 awarded in *A.B. v. Joe Singer Shoes Limited*, 2018 HRTO 107, or $220 000, depending on how one reads *Francis v. BC Ministry of Justice (No. 5)*, 2021 BCHRT 16 (the tribunal calculated the damages at $220 000 but then reduced it by 20% to reflect that other events were 20% responsible for the harm suffered in that case). Does this mean that I should treat an award from an uncapped jurisdiction as if it were worth only 10% of its face value because the cap of $20 000 is 10% of the highest award in an uncapped jurisdiction? Or should I treat it as 20% because uncapped jurisdictions do not have separate heads of damages like in ss. 53(2)(e) and 53(3) of the *CHRA*? It would be bizarre to discount decisions from other jurisdictions like that.

[65] I also found the discussion around cross-jurisdictional comparisons of damage awards in *Parkdale Community Legal Services v. Canada*, 2025 FC 912 interesting. The plaintiffs in that case challenged the constitutionality of the damages caps in the *CHRA*. They submitted an expert report that opined that the *CHRA* damages caps serve to limit awards when compared to human rights damages in Ontario and British Columbia (see paragraph 35) in both average and extreme cases (see paragraph 177). The Attorney General of Canada submitted a reply expert report, which stated that the *CHRA* caps do not cause lower awards (see paragraph 38). The Court agreed with the Attorney General of Canada that it should not accept the findings of the plaintiffs' expert (see paragraphs 175 to 185). Yet, the employer in this case (represented by the Attorney General of Canada) asks me to do exactly what it argued in *Parkdale* was not happening — namely, make a smaller award in the federal regime than would be appropriate in an uncapped regime.

[66] In essence, the Attorney General of Canada convinced the Court in *Parkdale* not to accept that the cap in the *CHRA* depresses damages awards in average cases but

wants me to depress this damage award when compared to one in Ontario because of the cap.

[67] On the other hand, the reasons given by the arbitrator in those unreported decisions are noteworthy. In *Flowers*, the union sought $20 000 in human rights damages. The arbitrator concluded as follows:

> …
>
> *In all these circumstances, I find an appropriate amount of damages is $10, 000. I accept that a "normal" damage award might be in the range suggested by the Union. However, for the reasons discussed, there was nothing about the circumstances that were normal and that in, any event, this amount is appropriate compensation for the injury to the Grievor's dignity, feelings and self-respect which I find occurred as a result of the treatment he received.*
>
> …

[68] By contrast, I have already cited earlier some cases in the federal jurisdiction stating that the maximum award of $20 000 is reserved for the most extreme cases. Therefore, unlike arbitrators in Ontario, I cannot treat $20 000 as a "normal" damages award.

[69] When considering this issue, I found most persuasive the approach taken by the Newfoundland and Labrador Court of Appeal (NLCA) in *Hillyer v. Tilley*, 2024 NLCA 35. That case does not initially appear analogous to this one, but nevertheless, I found it helpful.

[70] *Hillyer* was about a bus accident. A bus carrying residents of Newfoundland and Labrador crashed into a bridge in Nova Scotia. The passengers claimed that the crash was the result of the bus driver's negligence. The bus was driven by someone who lived in Newfoundland and Labrador, was insured and licensed in Newfoundland and Labrador, and was owned by a Newfoundland and Labrador company. The passengers sued the driver and owner of the bus in Newfoundland and Labrador.

[71] Nova Scotia legislation, at the time of the accident, had a cap of $2500 for non-pecuniary damages sustained after an automobile accident that caused minor injuries. Newfoundland had no such statutory cap, so the common-law cap of $100 000 (adjusted for inflation back to 1978) applied. The NLCA had to decide whether the

Nova Scotia cap applied even though the claim was brought in Newfoundland and Labrador. The rules around conflict of laws are that the substantive law of a case is that of the jurisdiction in which the accident took place, but the procedural law is that of the jurisdiction in which the case proceeds. The issue for the NLCA was whether the cap was substantive or procedural. It concluded that the cap was substantive. Controversially, in doing so, it rejected the decision of the Ontario Court of Appeal in *Somers v. Fournier*, 2002 CanLII 45001 (ON CA), that came to the opposite conclusion.

[72] This question of whether a damages cap is substantive or procedural is irrelevant in this case. What is important for the purposes of this case is how the NLCA described the analytic approach to calculating damages when there are two jurisdictions with radically different caps. It stated:

> …
>
> *[48]* ***In this regard, there is little, if any, difference between calculating damages pursuant to the Nova Scotia cap or calculating damages pursuant to 2005 Newfoundland and Labrador law. Both calculations involve the application of law to established facts****. The only difference is that in Nova Scotia there is a legislated limit to the amount of non-pecuniary damages available to each Respondent who suffered minor injuries in the accident, whereas in Newfoundland and Labrador, there is no legislated limit. However,* ***it is not as if Newfoundland and Labrador damages law is limitless; it is limited by the jurisprudence****.…*
>
> …
>
> *[50]* ***I see no meaningful difference between calculating an award of non-pecuniary damages according to a maximum amount set out in legislation and an amount established in jurisprudence****. In Nova Scotia, the legislature set the maximum recovery of non-pecuniary damages for persons suffering minor injuries at $2,500.00.* ***The cap did not change the character of a non-pecuniary damages award*** *from a manifested right to something else, or remove the requirement for a court to apply law to facts to calculate the amount of a non-pecuniary damages award for a person suffering minor injuries in a Nova Scotia automobile accident. Neither does the cap set out a procedure or rules for how such an award is to be determined. The legislature simply limited the right to non-pecuniary damages for persons suffering minor injuries to a maximum amount.*
>
> …
>
> *[54] The process of determining the amount of a non-pecuniary damages award in Nova Scotia is the same as it is in Newfoundland and Labrador: the difference is not in the*

> *procedure, it is in the extent of the amount that can be awarded.* ***Whether the amount of a damages award is $2,500.00, $25,000.00, or $250,000.00, the determination still involves the application of law to established facts to determine the extent of an injured person's right in law****.*
>
> *[55] The Nova Scotia cap does not set out rules or methods to make the machinery of a court run smoothly.* ***It does not direct*** **how** ***a court must calculate a damages award or direct*** **how** ***a court can conveniently assess non-pecuniary damages****… Neither does the cap make the exercise of determining the amount of non-pecuniary damages in a Nova Scotia court easier or more convenient than the exercise of determining the amounts of damages in a Newfoundland and Labrador court.*
>
> …
>
> [Emphasis added]

[73] In other words, the approach to calculating non-pecuniary damages is the same in two regimes with wildly different caps and the existence of a cap (or its level) does not affect how a tribunal goes about calculating non-pecuniary damages. I believe that this approach also applies to comparing damages in a capped with an uncapped regime.

[74] I have decided that awards in uncapped jurisdictions can be useful precedents when calculating damages under the *CHRA*. Like all precedents on the calculation of non-pecuniary damages, they are useful signposts of the range of damages awarded for similar harms. I have not been persuaded that I should discount or prorate awards from uncapped jurisdictions. At most, in deciding damages under the *CHRA* I need to separate damages for pain and suffering from damages for intentional or reckless conduct in cases from jurisdictions like Ontario that combine those two heads of damage.

2. Factors in damages: seriousness of the employer's conduct and effect on the grievor

[75] In deciding the damages to award for pain and suffering, I have considered the objective seriousness of the employer's conduct and its effect on the grievor (see *Kapoor v. LTL Transport Ltd.*, 2025 CHRT 69 at para. 101).

a. Seriousness of the conduct

[76] On the objective seriousness of the conduct, the loss of dignity and self-respect that comes with working can be serious and can warrant damages at the higher end of

the spectrum. The "… loss of employment often warrants compensation at the high end of the range given the significance of employment to a person's identity, self-worth, and dignity …" (see *K v. RMC Ready Mix Ltd.*, 2022 BCHRT 108 at para. 238). However, this case involves a temporary loss of employment, not a permanent one. This makes it less serious than cases involving a discriminatory termination of employment.

b. Effect on the grievor

[77] On the effect on the grievor, he has filed little evidence to describe the extent of the pain and suffering that he incurred. There is no medical evidence. There is no evidence about the impact that his loss of dignity had on him, aside from him stating that it made him "reconsider [his] career choice" (and even then, he immediately goes on to say that this is because of other alleged "mismanagement" that he has seen).

3. Amount of damages awarded in this case under s. 53(2)(e) of the *CHRA*

[78] After balancing the seriousness of the conduct and the effect on the grievor, I conclude that the appropriate compensation under s. 53(2)(e) of the *CHRA* is $5000. This reflects that a leave of absence is serious (but less so than a termination of employment) and the lack of evidence I have about the psychological or emotional impact that this had on the grievor.

VI. Special compensation for wilful or reckless conduct

[79] Subsection 53(3) of the *CHRA* permits the Board to order the employer to pay up to $20 000 if it has engaged in the discriminatory practice wilfully or recklessly.

[80] Unlike s. 53(2)(e), this head of damages is not compensatory. It is intended to deter those who deliberately or recklessly discriminate. In *Canada (Attorney General) v. Douglas*, 2021 FCA 89 at para. 8, the Federal Court of Appeal affirmed the approach set out in *Canada (Attorney General) v. Johnstone*, 2013 FC 113 at para. 155, as follows:

> *[8] … As noted in* Johnstone FC*, subsection 53(3) "is a punitive provision intended to provide a deterrent and discourage those who deliberately discriminate. A finding of wilfulness requires the discriminatory act and the infringement of the person's rights under the* Act *is* [*sic*] *intentional. Recklessness usually denotes acts that disregard or show indifference for the consequences such that the conduct is done wantonly or heedlessly."….*

[81] The grievor submits that these five elements of the employer's conduct show that it acted wilfully or recklessly:

1) imposing unreasonable deadlines by which he had to respond to its requests;
2) interfering and attempting to influence his evidence or request;
3) requiring that he respond to a guidance document containing irrelevant and inappropriate questions;
4) acting in a manner contrary to well-established legal principles; and
5) refusing to provide any rationale or justification or to engage in an exchange with him on the matter at hand.

[82] I will briefly explain each of these elements.

[83] The first element complains that the grievor was asked to submit his attestation on October 28, 2021, instead of October 29. Then, he was not asked for an affidavit until November 15 and was given only to the end of the day to comply (until he asked for, and received, a one-day extension of time). The grievor also says that the message informing him of the extra time was insensitive because his manager ended the email with "Woot woot [*sic*]" (to celebrate the extension of time, presumably). Finally, the grievor was given only a day's notice to prepare answers to questions for the review committee, to explain his request for accommodation.

[84] The second element is that the grievor's manager, after sending him a blank affidavit to fill out, also sent him a link to a news article about religious exemptions to the COVID-19 vaccine. The grievor says that this article was sent to him to influence the evidence that he would give in his affidavit or that it was an attempt to make his affidavit invalid by suggesting that he use a rationale that was not his own.

[85] The third element is the list of questions that the grievor was sent shortly before the review committee met. I already described that the list of questions was not tailored to the grievor and that it contained irrelevant questions. The grievor says that this was a "trap" to influence him to provide rationales that were not his.

[86] The fourth element is that one of the questions asked was this: "Why is your belief different from the religious leaders of your faith who are in favour of vaccines?" The grievor says that this question is contrary to *Syndicat Northcrest v. Amselem*, 2004 SCC 47, and the Manager's Toolkit.

[87] Finally, the fifth element is that the grievor says that the employer failed to meaningfully respond to or grapple with the questions that he asked on March 4, 2022, which are set out earlier in this decision.

[88] I will begin by rejecting the second, fourth, and fifth concerns outright. I agree with the employer that there is no reasonable basis on which to believe that providing a link to a news article was an attempt to make the grievor's eventual affidavit invalid. Also, it is not contrary to human rights law to ask questions that may exceed what the Supreme Court of Canada found relevant in *Amselem*. Finally, the employer did respond to the grievor's questions of March 4, 2022. The fact that he did not like the response, or did not think it adequate, does not amount to wilful or reckless discriminatory conduct.

[89] On the first element, I have little concern about the email with a deadline of October 28, 2021, especially as the grievor responded immediately to say that he would respond on October 29 instead. As for the November deadline, he was immediately given more time to provide an affidavit, as he requested.

[90] I am more concerned about the December questions that he was asked for the review committee, which are part of the first and third elements of his claim. Many of the questions were irrelevant, which confused the grievor (and, as I said in *Lemay #1*, confused me as well). He was also given virtually no notice of these questions and no opportunity to prepare his answers. The questions are clearly a template sent to him without thought or any consideration of his specific application for accommodation.

[91] However, there is no evidence that the extra questions were sent to him intentionally, to discriminate against him. I also have concluded that sending those questions did not rise to the level of recklessness. I do not view sending a template that includes irrelevant questions (alongside relevant ones) as the employer showing disregard or indifference for the consequences such that the conduct is done wantonly or heedlessly. I agree with the grievor that the employer "… ought to have known the requirement to assess requests on a case-by-case basis based on the individual request." However, the duty is to **assess** each case on an individualized basis. The form with questions was sent before the review committee had assessed the grievor's request for accommodation. The grievor has no evidence that the **assessment** was not made on an individual, case-by-case basis.

[92] Finally, in his reply submissions, the grievor added that the employer failed to "reverse course" when it denied his grievance at the third level in May 2022 and then "… at any point before the Board's decision on the merits was rendered." I reject that submission. Just because an employer loses a case does not automatically make it reckless; similarly, just because an employer does not give up or change its mind before a case is decided does not make it reckless.

[93] In conclusion, the employer was sloppy and acted in haste by not sending more-tailored questions. However, its conduct did not rise to the level of recklessness.

[94] This case is similar to *Posteraro*, at pages 16 and 17, in which the arbitrator stated that the employer's failure to accommodate the grievor:

> *… was not based on malice or a misunderstanding of its legal obligation to accommodate … It was based on its factual assessment that the Grievor's beliefs were not protected under the Code. This was a mistake, not deliberate conduct. When the City believed that it was safe for the Grievor to return to the workplace it allowed him to do so. I do not accept the Grievor's evidence that he was ostracized on his return to work and, in any event, he never advised the City that fellow employees were mistreating him.*
>
> *…*

[95] I reach the same conclusion here.

VII. Concluding remarks

[96] I conclude by commending counsel for the employer in this case for providing me with copies of the unreported Ontario decisions I referred to earlier. Those decisions were issued very shortly before the employer filed its submissions, so there was no reason counsel should have known about them when it filed its submissions. Counsel sent them to me knowing that those decisions contradicted one of their arguments (that there were no existing human rights damage awards for religious exemptions to the COVID-19 vaccine) and that since they were unreported, there was very little chance I would find them on my own, without help. Their actions showed the highest ethical standard in bringing these cases to my attention, and I want to commend this publicly.

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

(The Order appears on the next page)

VIII. Order

[98] The employer will substitute the grievor's leave without pay with leave with pay pursuant to article 44.04 of the collective agreement between Treasury Board and the Association of Canadian Financial Officers for the Comptrollership Group (expiring November 6, 2026) for the period from March 18, 2022, to June 19, 2022, inclusive. In addition, the employer will issue all compensation owing and make all related adjustments to the grievor's leave balances and benefits. In other words, the period of leave without pay will be converted to leave with pay, and the grievor will receive the pay and benefits (including the bilingualism bonus, leave credits, and other applicable entitlements) associated with paid leave.

[99] The employer will pay the grievor the sum of $5000 under s. 53(2)(e) of the *CHRA* within 30 days of the date of this decision.

[100] The Board will remain seized to address any issues that arise with respect to the implementation of this order. The parties are directed to advise the Board within 45 days from the date of this decision whether there are any such issues that require the Board's intervention; otherwise, the Board will close its file.

November 18, 2025.

Christopher Rootham,
a panel of the Federal Public Sector
Labour Relations and Employment Board