Date: 20251219

File: 566-34-38864

Citation: 2025 FPSLREB 174

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

FAISAL KAISER

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as
Kaiser v. Canada Revenue Agency

In the matter of an individual grievance referred to adjudication

Before: John G. Jaworski, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Paul Champ, counsel

For the Employer: Christine Langill, counsel

Heard by videoconference,
June 4 to 6 and 14, 2024.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Faisal (Fai) Kaiser ("the grievor") was, at all relevant times, employed by the Canada Revenue Agency (CRA or "the employer") in the positions set out in this decision.

[2] At all relevant times, the grievor's terms and conditions of employment were partially governed by a collective agreement between the CRA and the Public Service Alliance of Canada ("the Alliance") for the Program Delivery and Administrative Services group, which expired on October 31, 2016 ("the collective agreement").

[3] On May 19, 2017, the grievor filed a grievance that stated as follows:

> …
>
> ***Grievance details:***
>
> …
>
> *1. That my Accommodation and Telework Agreement completed on April 26, 2017 remain unchanged until conditions change as informed by me.*
>
> …
>
> ***Corrective action requested*** *…*
>
> *1. That I be allowed to keep my substantive position in North York, while allowing me to work indefinitely(on assignment) in Toronto East BIQA;*
>
> *2. To reinstate, or be given leave-with-pay in lieu of, for all certified medical leave taken as a result of CRA's actions;*
>
> *3. To be made whole in every way.*
>
> …
>
> [Emphasis added]

[4] Attached to the grievance filed on May 19, 2017, was a separate printed page, which forms part of the grievance (I will refer to it as "the appendix"). It states as follows:

> *GRIEVANCE DETAILS*
>
> *I grieve, pursuant to article 19.01 of the CBA and any other applicable articles, that CRA management has discriminated against me by virtue of my family status.*

> *Since April 26, 2005 I have been accommodated to work from home due to my family status. In particular, I have been accommodated as a result of my wife being quadriplegic and the resulting caregiving needs required for my wife and family life.*
>
> *Rather than updating the Accommodation agreement every year, this agreement was ever so slightly revised on November 3, 2009, making it permanent. The onus was put on me to update my employer of any required changes.*
>
> *In addition to the Accommodation agreement, a Telework agreement was put into place which allowed my core full-time hours of work to be from 11:30 a.m. to 7:30 p.m., Monday to Friday. The covering letter to this agreement stated:*
>
> > *This agreement will be effective November 2, 2009. Since the prognosis of your wife's disability is permanent, the onus is on you to provide us with any change in this agreement so that we may review the plan accordingly.*
>
> *In late March 2016, the Toronto North CRA senior management started a review of my existing Accommodation and Telework agreements. This was started contrary to the conditions for such a review, as stipulated in the aforementioned agreement of November 2, 2009. This review was completed by the signing of revised Accommodation and Telework agreements on April 26, 2017.*
>
> *The new arrangements ultimately contained only minor changes of one half hour to my start and end time of work, 11:00 a.m. to 7:00 p.m., and changes to my reporting during the silent hours of 5:00 to 7:00 p.m.*
>
> *As a result of this inappropriate and unnecessary review I was required to provide a plethora of documentation regarding my wife and her care. This entire process has caused me a great deal of stress which culminated in my having to take certified stress leave.*

[5] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365), the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2), and the *Public Service Labour Relations Regulations* (SOR/2005-79) to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board", which in this decision also refers to any of the current Board's predecessors), the *Federal Public Sector Labour Relations and Employment Board Act*, the *Federal Public Sector Labour Relations Act*

("the *Act*"), and the *Federal Public Sector Labour Relations Regulations* ("the *Regulations*").

[6] On July 25, 2018, the grievor referred his grievance to the Board for adjudication. On that same date, he also gave notice to the Canadian Human Rights Commission under s. 210(1) of *Act* and s. 92(1) of the *Regulations*.

[7] Clause 19.01 of the collective agreement states as follows:

19.01 *There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practiced with respect to an employee by reason of age, race, creed, colour, national or ethnic origin, religious affiliation, sex, sexual orientation, family status, mental or physical disability, membership or activity in the Alliance, marital status, or a conviction for which a pardon has been granted.*	***19.01*** *Il n'y aura aucune discrimination, ingérence, restriction, coercition, harcèlement, intimidation, ni aucune mesure disciplinaire exercée ou appliquée à l'égard d'un employé du fait de son âge, sa race, ses croyances, sa couleur, son origine nationale ou ethnique, sa confession religieuse, son sexe, son orientation sexuelle, son identité et expression de genre, sa situation familiale, son incapacité, ses caractéristiques génétiques, son adhésion à l'Alliance ou son activité dans celle-ci, son état matrimonial ou une condamnation pour laquelle l'employé a été gracié.*

[8] The terms "Human Resources" (HR) and "Labour Relations" (LR) were often used interchangeably during the oral testimony.

[9] For the reasons that follow, the grievance is dismissed.

II. Summary of the evidence

A. Background

[10] The grievor married his spouse (referred to as "Mrs. Kaiser" in this decision) in 1999.

[11] In 1996, before their marriage, Mrs. Kaiser was involved in a motor vehicle accident and suffered a spinal cord injury at her C-6 and C-7 vertebrae. This left her paralyzed below the armpits. At several points in the evidence, the terms "quadriplegic" and "quadriplegia" were used by many different persons to describe

Mrs. Kaiser's situation; however, no medical evidence was tendered defining the correct meanings of those terms.

[12] The evidence before me from both the grievor and his spouse was that although she does not have movement in her lower limbs, she can move her arms and has limited control of her movements in her hands and fingers.

[13] Entered into evidence was a series of written and published articles about Mrs. Kaiser from several publicly available sources. That information in many ways mirrored the testimonies of both the grievor and Mrs. Kaiser about her disability and what she can and cannot do.

[14] Mrs. Kaiser also testified that due to the nature of her injury, she is susceptible to certain medical issues. Both she and the grievor testified that she receives assistance with certain personal-care functions, which are provided by a personal support worker (PSW) and a nurse. This assistance is provided daily, in the morning, for three hours. Both also testified that if the either the PSW or nurse does not show up, the grievor is the backup.

[15] At the time of the facts relevant to the grievance, the grievor and Mrs. Kaiser had an eight-year-old child. Mrs. Kaiser confirmed that with the birth of the child, they had adapted baby furniture, which helped her do some of the childcare, despite her restrictions and limitations. She confirmed that there were childcare tasks that she was fully independent in carrying out.

[16] The grievor testified that he provided training to PSWs and nurses. He stated that at times, the agency responsible for the PSWs and nurses sometimes sent new personnel, and he would have to train them. He said that he was on standby if a PSW or nurse did not show up. When asked how often he had to step in, he said hundreds of times.

[17] The grievor began his employment with the CRA in November of 2001 as a non-registrant officer at the PM-1 group and level. At the time of the facts that gave rise to the grievance, the grievor was working as an income tax auditor at the SP-05 group and level. At the time of the hearing, and since July of 2022, he was working as an SP-06 goods and services tax (GST) auditor-examiner.

[18] At the time of the hearing, John Tepelenas was the director of a tax services office (TSO). At the time of the facts relevant to the grievance, he was the assistant director of audit for the CRA's Toronto North TSO in Toronto, Ontario. He started his career at the CRA in 1990 as an auditor before moving to a team leader (TL) position and then becoming a manager, and later, being in several assistant director roles. At the time of the facts relevant to the grievance, he was responsible for approximately 300 employees, who reported to him either directly or indirectly.

[19] At the time of the hearing, Steven Tiessen was the director of Business Intelligence and Quality Assurance (BIQA) for the Ontario Region of the CRA. He testified that at the time of the facts relevant to the grievance, the BIQA in Ontario employed about 100 to 120 people.

[20] The evidence disclosed that from roughly 2005 to mid-2015, the grievor's position reported to the Toronto North TSO.

B. The Accommodation Agreements

[21] Entered into evidence was a letter dated April 26, 2005, from the employer to the grievor and signed by the grievor's acting section manager at that time, Anar Kara. The relevant portions of the letter state as follows:

> …
>
> *Further to our meeting of April 8, 2005, we hereby grant your request, pursuant to the Family Status Provision of the Canadian Human Rights Act, to work from home between the hours of 10:30 A.M. to 18:30 P.M. Your restriction is that you are unable to report to work prior to 10:30 A.M. due to your family obligations and responsibilities to accommodate your spouse.*
>
> *A formal telework agreement is being implemented to allow you to work from home on an official basis, commencing May 2, 2005.*
>
> …
>
> *Your hours of work will be from 10:30 A.M. to 18:30 P.M, Monday to Friday (37.5 hours per week). Your Team Leader(s) must approve any deviation from these hours. On those exceptional occasions when you have to work on weekends, you must request prior approval from your Team Leader.*
>
> *You will be required on occasion, to report to your Tax Services Office, located at 5001 Yonge Street, North York to discuss work related issues with your Team Leader, drop off files, meet with taxpayers, attend team meetings or training sessions and/or*

> *address other work related matters. In this regard, your hours may have to be adjusted accordingly.*
>
> *This plan will be effective on May 2, 2005 and will be reviewed in 6 months. If there are any changes in your situation, please notify me immediately so that we may review the plan.*
>
> …

[22] Entered into evidence was a letter dated November 2, 2005, from the employer to the grievor and signed by Ms. Kara. The relevant portions of the letter stated as follows:

> …
>
> *On April 8, 2005, we arranged an accommodation for you, to enable you to work from home as you are unable to report to work prior to 10:30 A.M. due to your family obligations and responsibilities to accommodate your spouse.*
>
> …
>
> *Per your request, a formal telework agreement was also implemented to allow you to work from home on an official basis effective May 2, 2005, subject to review in 6 months.*
>
> *We have reviewed your performance from May 02 to November 2, 2005 and are satisfied that you have met the stipulated requirements. Your hours of work continue to be from 10:30 A.M. to 18:30 P.M, Monday to Friday (37.5 hours per week). As previously indicated, your Team Leader(s) must approve any deviation from these hours.…*
>
> *You will be required on occasion, to report to your Tax Services Office, located at 5001 Yonge Street, North York to discuss work related issues with your Team Leader, drop off files, meet with taxpayers, attend team meetings or training sessions and/or address other work related matters. In this regard, your hours may have to be adjusted accordingly.*
>
> *This plan will be effective on November 2, 2005 and will be reviewed in on March 31, 2006. If there are any changes in your situation, please notify me immediately so that we may review the plan.*
>
> …

[23] Entered into evidence was an undated letter from the employer to the grievor and signed by Dave Rice (the grievor's section manager) on November 3, 2009, and the grievor on November 4, 2009 ("the 2009 accommodation letter"). The relevant portions of the letter stated as follows:

> …

> *On October 13, 2009, under the Canadian Human Rights Act, we arranged an accommodation arrangement for you on the grounds related to disability, family status and caregiving needs. This will enable you to work from home.*
>
> *Per your request, a formal telework agreement was also implemented to allow you to work from home on an official basis effective October 13, 2009, subject to review of satisfactory performance of your duties.*
>
> *As discussed, your core full-time hours of work will be from 11:30 A.M. to 19:30 P.M. Monday to Friday (37.5 hours per week). Minor daily fluctuations of these hours do not have to be reported provided you work a sum of 7.5 hours that day. Working at night has been authorized as needed. As previously indicated, your Team Leader(s) must approve any deviation from these working days.*
>
> *On a periodic basis, reasonable efforts will be made on your part to report to your Tax Services Office, located at 5001 Yonge Street, North York to discuss work related issues with your Team Leader, drop off files, meet with taxpayers, attend team meetings or training sessions and/or address other work related matters. These meetings will be held in the afternoon in order to accommodate your situation.*
>
> *This agreement will be effective November 2, 2009. Since the prognosis of your wife's disability is permanent, the onus is on you to provide us with any changes in this agreement so that we may review the plan accordingly.*
>
> …

[24] In short, the employer agreed to permit the grievor to work from home (commonly referred to as "telework"), initially, in 2005, between the hours of 10:30 and 18:30, and later, in 2009, between 11:30 and 19:30.

[25] The grievor was asked what information Mr. Rice had and what did the grievor share with respect to Mrs. Kaiser's physical situation. He answered that he assumed that Mr. Rice knew and said that Mr. Rice never asked but added that he did not know if Mr. Rice knew.

[26] Several telework agreements entered into between the grievor and the employer were entered into evidence, the first being signed in January of 2012. At the time of its signing, Gordon Baker was the grievor's supervisor.

[27] The most recent of the telework agreements entered into evidence was signed by the grievor in October of 2014 and the delegated manager in November of 2014 ("the 2014 telework agreement").

[28] The telework agreements appear to be in a standard format, identifying the grievor (as the teleworking party) and his supervisor or supervisors. The agreements also set out their durations, as well as the agreed-upon hours of work. The agreements also have clauses relating to health-and-safety matters, the working environment, and security issues.

[29] Clause 23 of the agreements provides that the grievor and his manager will review the telework arrangement together at least once every 12 months, and clause 24 provides that the agreement may be altered by mutual agreement between the grievor and the delegated manager but also that the delegated manager may at his or her discretion alter the agreement without notice, due to urgent operational requirements. Finally, clause 25 provides that the telework agreement may be terminated by either the grievor or the delegated manager in writing, with reasonable notice.

[30] Sometime in 2015, the work that the grievor was doing, which had until that point been done regionally in different offices, was consolidated and centralized to be done in the Sudbury TSO in Sudbury, Ontario. At this point, sometime in April of 2015, he stopped reporting to the Toronto North TSO and began reporting to the Sudbury TSO. His immediate supervisor was Beverly Aupin.

[31] Ms. Aupin has been with the CRA since 1985. Her permanent position at the time of the events that are relevant to the grievance, as well as at the time of the hearing, was as a TL in the Audit office of the Sudbury TSO. As a TL, between 10 and 12 employees reported to her, including, between April of 2015 and the spring of 2016, the grievor.

[32] In his examination-in-chief, the grievor was asked what his relationship with Ms. Aupin was like. He said that right from the beginning, it did not start off well. He said that on two specific occasions, she said, "you people", suggesting that she believed that he was demanding something. When his counsel asked him to tell the hearing about this, he said this: "If I had to take something to my wife, I would have to say why I was not available, so out of frustration, she said, 'you people'."

[33] The grievor spoke about how certain things worked before the move to reporting to the Sudbury TSO, with respect to correspondence, and how an arrangement existed so that printing and mailing could be done for him at the office, by his supervisor, because he was working from home and did not have the ability to print and mail correspondence. When he was asked by his counsel if he had any discussions with Ms. Aupin about this, his response was this: "No, I don't know what she was told." He then stated that he discussed it at the onset, saying what would take him away (from working), and then he said this: "It was almost like she was giving [*sic*] me a favour to be working from home."

[34] Entered into evidence was a copy of the *Use of Materials off Government Premises Agreement* signed by the grievor on May 28, 2015. This is a document that lists the equipment that an employee has in their possession off government premises and the rules with respect to the arrangement for doing so.

[35] The grievor reported to the Sudbury TSO for approximately one year. The evidence disclosed that he no longer reported to that office as of April 11, 2016.

[36] Entered into evidence were copies of the grievor's performance appraisals for the fiscal years 2014-2015 through 2022-2023. A CRA performance appraisal document is referred to as a "Y280 Performance Report" and is also called a "Y280". Of particular note are the grievor's Y280s for fiscal 2014-2015 ("the 2014-2015 Y280") and 2015-2016 ("the 2015-2016 Y280").

[37] The evidence disclosed that the grievor's assessment in the 2014-2015 Y280 was carried out by two different TLs, Ms. Monique Kwong-Chip for the period in which he was still reporting to the Toronto North TSO (September 2014 to March 2015), and Ms. Aupin for the period in which he was reporting to the Sudbury TSO (March 2015 forward).

[38] The grievor testified about his performance appraisal and about what he believed was an incorrect assessment of his performance. Ms. Aupin also testified from her perspective as to where the problems were. What appeared to be underlying the difficulties was the accounting of the time that the grievor had attributed to certain tasks, prompting Ms. Aupin to suspect that the amount of work being carried out compared to the amount of time spent raised a red flag of perhaps some wrongdoing.

She referred the matter to her manager and eventually to audit investigators in the Internal Affairs and Fraud Control Division (IAFCD) of the CRA.

[39] The audit investigation section closed its file; it did not find any evidence of wrongdoing, but it suggested that perhaps there was a performance issue and flagged that open-source information disclosed reference articles and information about the activities of Mrs. Kaiser. In an email on the topic, dated January 11, 2016, Michel Lafleur, a manager in the Investigation Support and Analysis section of the IAFCD, advised that it had closed its file and stated the following:

> …
>
> *On January 4, 2016, the internal investigator contacted management and provided them with a summary of the information gathered to date. The internal investigator reported that the review of open source information revealed numerous articles and information concerning Anita Kaiser, Faisal Kaiser's spouse, that could support the need to review the employee's telework agreement in light of their concerns.*
>
> …
>
> *During the teleconference with management it was agreed that the IAFCD would close their file as the matter concerned serious issues that should be addressed by management in conjunction with local and corporate labour relations.…*
>
> …

[40] Ms. Aupin testified that when she became the TL for grievor, she was provided with a copy of the telework agreement signed by the grievor and his supervisor in October of 2014. She stated that she did not recall being provided with a copy of an accommodation agreement. She confirmed that he worked Monday to Friday by telework and that his scheduled hours were from 11:30 to 19:30.

[41] Ms. Aupin testified that she attended a site visit at the grievor's home, which was his telework location, and she identified a document signed by her on May 28, 2015, which indicated that the health and safety guidelines were being dealt with and that the books and records were secured. When asked who was there at the time, Ms. Aupin indicated that it was her, the grievor, and a co-TL.

[42] Ms. Aupin testified that she understood that the grievor teleworked and that his hours were from 11:30 to 19:30, due to a disabled spouse. When asked if she was provided with any further details, she said that she was not, only that he was to

provide care for his spouse, to help her get ready for her day. When asked if she spoke to the grievor about this, she said that she tried to but that he was adamant that he did not want to divulge information; so, she said that she did not push it. She did state that she wanted him to let her know when he left work and when he came back. When asked if he did advise her as to when he left work and came back, she said that he did not, that he told her that he did not have to, and that he just had to put in 7.5 hours per day.

[43] When asked about the grievor's performance, she stated that he was not meeting expectations. She described the problem as being that the hours per file were higher than expected. She said that the hours did not reflect the work put into the files and that there were delays completing files. She said that she discussed it with the grievor and that his response was that he liked to stockpile cases that were to be closed and then close them all at once, saying that that was the way he worked. She said that she had a further discussion with him about it, but the situation did not change.

[44] Ms. Aupin was brought to the grievor's Y280 that she was responsible for completing, and she explained what she had written and what she had seen in the grievor's work. In short, she explained that the grievor's time recorded for files was hard to accept and that the amounts of time for certain tasks were too high. Again, when she spoke to him, his response was that this was the way he always did it. She said that based on her review of his work, she assessed him accordingly.

[45] Ms. Aupin testified that she brought to her manager, Pierre Messier, her concern about certain issues with respect to the time being charged to certain files. This led to the IAFCD being asked to look into things.

[46] Entered into evidence were copies of handwritten notes of meetings that took place in October of 2015 and that included LR, Ms. Aupin, and Mr. Messier. Additionally, there is an email dated October 28, 2015, sent by Ms. Aupin to Cindi Martin (from LR) and Pierre Messier. The email referenced the grievor's telework arrangement (the 2014 telework agreement) that had expired on October 8, 2015, as well as a telework inspection (of his home). The email was drafted and intended to be sent to the grievor; however, it never was. The email stated as follows:

…

> *As you are aware, your telework agreement (copy attached) has expired on October 8, 2015. Although Nicole Giroux and myself performed the telework inspection, you remained working under your telework agreement covering the period October 9, 2014 to October 8, 2015. Therefore, we need to prepare a new telework agreement.*
>
> *Since the telework agreement … was prompted by, and is directly tied to, the accommodation agreement arranged for you under the Canadian Human Rights Act pertaining to disability, family status and caregiving needs, we need to ensure that the new telework agreement covers all the needs that were identified and considered in the process of making the arrangement. To ensure all of your needs are being considered, and because it is incumbent upon management to ensure that this accommodation is documented, we are requesting you … provide … documentation to support your request for a family status accommodation, which can include but is not limited to the following:*
>
> *1. … Since you have indicated that this accommodation was implemented as a result of a Canadian Human Rights* [*sic*] *decision, any documentation regarding your case with … the Canadian Human Rights Commission, i.e., your submission, the summary or documents resulting from your case being heard by the Human Rights Commission, etc.;*
>
> *2. Any medical documents that validate … your spouse's current medical condition including the requirements for you to be available at home to attend to her needs.*
>
> *As with any accommodation, employees are obligated to co-operate in this process. Please provide this information as soon as possible to allow us to have a new telework agreement prepared for you.*
>
> *…*

[47] Ms. Aupin stated that the reason that the email was drafted and not sent was that he returned to the Toronto North TSO.

[48] Ms. Aupin was shown the articles about Mrs. Kaiser that were in the employer's brief of documents, and she identified those that she had seen. She said that they were provided by the IAFCD. She said that what she took from the articles was that Mrs. Kaiser was quite self-sufficient, and she was unsure why the grievor needed to maintain the hours that he was working. When asked if she asked the grievor about this, she said that she did not, as he had returned to the Toronto North TSO.

[49] Entered into evidence was a series of emails, totalling seven pages and dated between September 28 and October 22, 2015, between Ms. Aupin and Mr. Messier,

some of which also include Maura Butko, who is identified in the emails as an acting director in the IAFCD. The emails discuss Ms. Aupin's concerns about the grievor's performance. In the email dated October 15, 2015, which appears to have been sent by Ms. Aupin to Mr. Messier and then forwarded by him to the IAFCD, Ms. Aupin outlines her concern in the third paragraph as follows:

> …
>
> *The average hours per file for an office audit file should be approximately 25 hours per file depending on the complexity of the file. As his team leader, all his files are reviewed by me. Fai's files are worked within the integras system. He performs desk audits on small business files. During my review of his completed files, it is very evident that the hours charged on his cases are not reflective of the audit effort put into his files. The hours are excessive in relation to the work performed. Also, by charging all this time to closed cases, these hours charged would not be reflected in the hours per case since the files were previously closed. Furthermore, it raises the questions "What was the employee actually doing during this time that the hours were being charged to closed cases? And, why are his hours per file so high when the work is not reflective of these hours? Again, what is the employee doing during all those hours being charged?"*
>
> *I have been keeping a summary of all hours being charged to each case. For example, Fai charges 7.50 hours (his entire work day) to a particular case. When I review that case, there has been no activity in integras on the day he is charging the time. When you go into the cases in integras, you can review the history of the case. Any time any working papers and/or letters are modified in the case, a history of the case us updated. It should be noted that there are occasions where some auditors may complete working papers outside of integras while reviewing a set of books and records. However, this work will be kept on their H-drive. I have requested on several occasions with my auditors that if they perform any work outside of integras, the work be attached to integras at the end of every day.…*
>
> *Fai should be signed into integras at all times during his work day to facilitate the completion of his working papers for his review of any books and records he received or to prepare contact letters. He should also be signed into his email. If he is preparing a reassessment, he should also be signed into the online rap system. It should further be noted that I have called Fai during his work hours on several occasions and he has not answered his phone. He usually returns my call within the hour however, there has been occasions where it has taken him much longer to return my call – sometimes not until the following day.*
>
> …
>
> [*Sic* throughout]

[50] In cross-examination, it was put to Ms. Aupin that she was advised about the grievor being able to work beyond the 11:30 to 19:30 agreed hours if he could not get his work done. She stated she was not so advised and that the grievor told her that. When asked if she was told why, she confirmed that the grievor had told her that he might have to attend to his spouse, which she said was fine by her. She said that she did not need to know any specifics, just an email that he had stopped and restarted working at some point.

[51] In cross-examination, when it was suggested to Ms. Aupin that she and the grievor had bumps in the road at the outset of their working relationship, she said that she did not believe that they did. When it was put to her that while reporting to the Toronto North TSO, the grievor had an arrangement with that office for it to print and send his correspondence, she confirmed that this was the case. When it was put to her that she was not interested in that, she said that she was in Sudbury. She also stated that books and records were with the auditors (in the grievor's case, with him) and that he was responsible for his files, including printing and sending his letters.

[52] In cross-examination, when asked about other employees who reported to her, Ms. Aupin confirmed that she had one in Barrie, Ontario, and one in the Toronto North TSO, as well as those who were physically in the Sudbury TSO. When asked if these employees took lunch breaks or coffee breaks and had to report them to her, she said that they did not; however, she was provided with a schedule. When it was suggested to her that she would not allow deviations, she said that this was not true. When it was suggested that they had to ask, she said, "Not necessarily."

[53] Ms. Aupin testified that she had also teleworked, but not as a TL. She said that she did so for about five years. When asked if it was for an accommodation, she stated that it was not. She stated that she had exceeded expectations and that she was allowed to telework.

[54] In cross-examination, it was put to Ms. Aupin that some of her meetings with the grievor were frustrating. She agreed, stating that he was not receptive to her feedback. She confirmed that she was frustrated when she could not get hold of him. She did agree that her concerns over the discrepancies in the recording of time amounted to time theft.

[55] In cross-examination, it was suggested that Ms. Aupin and Mr. Messier were discussing Mrs. Kaiser. She confirmed that they were. She also said that they were not saying or feeling that the grievor did not need an accommodation but that they were discussing the particular hours and that they were trying to confirm the extent of the accommodation. When asked about the meeting of October 27, 2015, Ms. Aupin stated that Mr. Messier was concerned about the grievor's work and that he wanted to meet with her. She said that she felt that the grievor's replies to her in discussing the work performance issues were rude and belligerent.

[56] In cross-examination, the grievor agreed that performance issues were raised by Ms. Aupin with him. He confirmed that he received copies of the Y280s that Ms. Aupin had input on. They were reviewed with him in cross-examination, and he was brought to those parts where Ms. Aupin had set out her concerns about his performance. He confirmed that he did see them.

[57] In cross-examination, Ms. Aupin was taken to a portion of the 2015-2016 Y280, which contained comments about the grievor's performance. In that Y280, those comments were attributed to Ms. Aupin. She confirmed that she provided comments to the grievor's TL, who would have completed the 2015-2016 Y280. When asked if she was consulted on the assessment of the grievor as "meets", she said that she did not recall if she was consulted.

[58] There was no grievance filed about the portions of the Y280s that Ms. Aupin was responsible for completing.

[59] The grievor testified about a meeting that he believed took place in March of 2016 with Manish Goel. He identified Mr. Goel as the director of audit for the Toronto North TSO. He said that the meeting was in person, so he must have been back in the Toronto North TSO. He said that no one else was at the meeting and that they discussed accommodation. He said that all of a sudden, Mr. Goel started to demand background information on Mrs. Kaiser. He said that Mr. Goel referenced her taking part in wheelchair races and then stated that he did not know what Mr. Goel was getting at. When the grievor was asked how he took it, he used the term "level of privacy" and stated that he did not know why Mr. Goel asked him this. He said that he asked Mr. Goel why he was asking these questions but that Mr. Goel did not respond and that he deflected the question.

[60] There are no notes of the meeting that took place with Mr. Goel; nor are there emails that would identify when that meeting took place. Mr. Goel did not testify.

[61] Entered into evidence was an email from Ms. Aupin to Mr. Goel and others, dated April 7, 2016. The email references Ms. Aupin's discussion with the grievor and with Mr. Goel about the grievor's upcoming move from the Sudbury TSO back to the Toronto North TSO. The specific date was not set out.

[62] The grievor said that shortly after the meeting with Mr. Goel, he had one with Vince Pranjivan, who was at the time an assistant commissioner of the CRA. He said that the meeting was held in early April of 2016 and that it was arranged via email. There were no emails entered into evidence about the scheduling of this meeting; nor were there any notes or any other information to indicate where or when it took place.

[63] In the spring of 2016, Deborah Danis was the director of audit for the Toronto North TSO. Also at that time, Senthil Arumugam was a section manager for income tax audit for the Toronto North TSO.

[64] A meeting took place on May 18, 2016, between the grievor and Ms. Danis, as well as Lia Karlos, whom he identified as a manager ("the May 18 meeting"). The grievor testified about the May 18 meeting. When asked what he recalled, he said that he explained how his accommodation needs were not being met. He said that Ms. Danis told him that if his performance criteria were not met, he could be demoted. He said that he did not understand why she made a reference to that. He said that her strategy was not to make things work; she came out swinging and threatening. He said that all things hinged on performance. In response to a question about Ms. Danis rolling her eyes, he said that every time he spoke, she would show that she was not interested. He said that he could tell that she was disconnected. He said that she sighed after every sentence. She was questioning his credibility. He said that she had "Sudbury's bias".

[65] The grievor said that the CRA had no clue as to how many people he had to discuss his wife's situation with. He said that the TLs know nothing about accommodation and the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; *CHRA*). He said that he had to explain it over and over from 2003; he said that it was hell. He said that he had to explain it to so many people and that the story never changed.

[66] There are no notes from the May 18 meeting; however, the grievor did send an email on May 20, 2016, to Mses. Danis and Karlos as well as Messrs. Arumugam and Pranjivan and one other person, setting out some of his thoughts about the meeting. It states as follows:

> *If there was a supposed deemed issue, a rehabilitative strategy should have been taken to motivate and re-align an employee towards the objectives of the grand machine and not a consequential strategy which was laced with subliminal threats of terminology such as 'demotion' and 'termination'.*
>
> *I sat across Vince without a note pad and without any witnesses or biases and we just talked in good faith. Whereas, I sat across yourself and Lia (acting for John) having to defend every sentence as you both transcribed meticulously what you needed to recall later.*
>
> *Yesterday's meeting concluded one thing: that we see things through a different lens and it's normally the position that wields greater power that can unilaterally enforce their perspective upon a lower pawn by simply flexing their will.*
>
> *In your write-up, you have conveniently left out that during the midst of one of my sentences you rolled your eyes and, on another occasion, you huffed & puffed. These signs clearly showed you were either bored, agitated or unwilling to listen to what I have to say. Your sources have misled you and painted a picture of my wife to serve your objectives. Furthermore, the information you gathered from my tenure at Sudbury and accepted as being the unequivocal truth without hearing my prepared perspective was not entirely accurate, complete nor fair. In the end, you have done your write-up and conclusively proven that might has always been right and I have no choice but to bow.*
>
> *I am the same person who offered a part of my salary to another cognitively challenged yet equally brilliant colleague just so we can earn the same amount for the far greater work he does. Yet today I feel I am being greatly misunderstood.*
>
> *One's character is defined not by how we treat our superiors but rather how we treat the people below us.*
>
> *A very simple analogy comes to mind. When you admire and respect someone then the mind places the dominos to fall accordingly and even on their worst day they are still perceived still as a saint, whereas when you see that person through a negative prism then all the magical rationales come forth so that the same dominos can line up and dance accordingly to a different song and objective.*
>
> *I am the primary caregiver of my wife, my young daughter and my two elderly parents. I have a tremendous amount of responsibility to manage their care and perform my CRA duties to*

> *the best of my ability. This process and lack of understanding has caused a great amount of undue stress.*
>
> …
>
> [*Sic* throughout]

C. The June 2016 request for information

[67] On June 30, 2016, Mr. Arumugam wrote to the grievor ("the June 30 letter"), stating as follows:

> …
>
> *This letter is further to your meeting of May 18, 2016 with the Director, Deborah Danis, and the Acting Assistant Director, Lia Karlos. As you are aware, the Canada Revenue Agency (CRA) is committed to the accommodation process and working with employees to determine reasonable accommodation, as may be necessary.*
>
> *Presently, you are being accommodated by being able to work from your residence Monday to Friday from 11:30am to 7:30 pm. As care requirements may and do change over time, it is important that we reconfirm the present status of your family's needs… if you could provide responses to the questions in Appendix A attached.*
>
> *In addition, you will find a separate letter that is to be completed by your spouse's treating physician to provide some details around the type of care required along with the duration.* ***The doctor is not to include a diagnosis****; we only require information regarding the care to be provided to your spouse.*
>
> …
>
> [Emphasis in the original]

[68] Appendix A of the June 30 letter contained the following seven questions for the grievor to answer:

> …
>
> *1. During your meeting with the Director and the Assistant Director, you requested your current accommodation be continued. Please provide specifics (duration, time) of your request.*
>
> *2. Does your accommodation request permit you to work during regular business hours (i.e. 7:30am - 5:00pm)? If no, please provide details of your work schedule availability (i.e. Days available, Available start and end times).*

> *3. What type of care do you currently provide your spouse? How often and during what times?*
>
> *4. Can the care outlined in 2 above be provided at alternate times during the day? If not, please explain?*
>
> *5. Can care be provided by others throughout the day (i.e. community services, private caregivers)? If not, please explain why.*
>
> *6. Please describe any care that is currently provided by others (i.e. community services, private caregivers).*
>
> *7. What will be the duration of the support described above that you provide for your spouse?*
>
> …

[69] The grievor categorized the June 30 letter as more interrogation, stating that "they" (it is unclear if he meant Toronto North TSO management, CRA management in general, or who exactly) knew everything and that he had told them since 2003.

[70] By letter dated July 5, 2016, the grievor forwarded his response to the questions posed in Appendix A of the June 30 letter. I have redacted information that is personal and sensitive and that is not required for the purpose of understanding this decision. It is as follows:

> …
>
> *1. I request accommodation to continue indefinitely as indicated on the current Accommodation Agreement dated November 2, 2009 as my wife's condition is permanent and relatively stable although* [detailed information redacted] … *Her condition has not changed, therefore my current accommodation should not be altered in any fashion.*
>
> *2. No. I am unable to work during regular business hours as I need to be on standby to assist my wife with her activities of daily living in the event her nurse and personal support worker are unavailable. My current work schedule of 11:30am-7:30pm allows me to support my wife with the bulk of her care in the event her care providers are unavailable. Even within these work hours, there are times when I need to care for my wife and that work time will be made up later. The current Accommodation Agreement was constructed with the understanding that 7.5 hours will be worked in a day. The hours worked need not be sequentially. This was all previously explained in great detail in 2005 and subsequently granted. In practice, I was authorized to work the hours as need provided at the end of the day they would total 7.5. For formality purposes, I was given the hours of 11:30 am to 7:30 pm to be on paper. Anomalies are a regular occurrence, and I have to be on standby to react in an effective*

and efficient manner. There was no issue whatsoever for well over a decade as I was working on the various software applications at various times as need fit.

3. *I assist my wife with the majority of her activities of daily living including* [detailed information redacted] *when her support providers are unavailable. These days fluctuate and are random and unpredictable. I assist my wife outside of her caregiver hours when she is ill* [detailed information redacted]*. These days also fluctuate and are random and unpredictable. I also provide meal preparation on a daily basis and assistance* [detailed information redacted]*. Furthermore, if she is* [detailed information redacted]*, I assist my wife in accompanying her to various appointments as needed. On many occasions, if my wife has travelled alone in her wheelchair accessible van, I have had to go out to help her due to a malfunction with the modifications of her vehicle.*
4. *No. The care my wife receives is time specific and on a regulated schedule throughout the day. Her care providers have designated set times of when they provide service and her care is divided between 3 separate service providers which takes a lot of coordination. Altering her health care plan can affect her health by leading* [detailed information redacted]*.*
5. *Yes, my wife receives 3 hours of assistance in the morning which commences at 8am (depending on various variables such as - weather, scheduling conflicts, missed shifts, priority patient shuffling) and 1.5 hours of assistance in early evening on a daily basis from registered nurses and personal support workers from various agencies. This is the maximum number of hours allowed for her condition.*
6. *My wife's morning care includes* [detailed information redacted]*. Her evening care includes* [detailed information redacted]*.*
7. *In the event my wife's caregivers are unavailable due to inclement weather, illness, holidays, or scheduling errors, I have to be available to provide the support or care she needs immediately. I also need to be available outside of those hours to assist her* [detailed information redacted]*. As her disability is permanent the duration of her care is therefore indefinite.*

…

[*Sic* throughout]

[71] On June 30, 2016, Mr. Arumugam wrote a second letter and provided it to the grievor. It was addressed to "To Whom It May Concern" and was to be provided to Mrs. Kaiser's doctor and completed by them ("the June 30 doctor's letter"). It stated as follows:

…

The Canada Revenue Agency (CRA) is committed to the accommodation process and working with employees to determine reasonable accommodation, as may be necessary.

We are requesting information that will allow us to arrange a reasonable accommodation for Mr. Kaiser as he has indicated the need for an accommodated work arrangement for care of his spouse.

Please be advised that the CRA does not require a diagnosis of Mrs. Kaiser.

We would appreciate if you could provide responses to the following questions:

1. What type of care is required for Mr. Kaiser's spouse?

2. How often is the care to be provided and are there specific times?

3. Can care be provided at alternate times during the day? If not, please explain why.

4. Can care be provided by others throughout the day (i.e. community services, private caregivers)? If not, please explain why.

5. What will be the duration of the support, described above, for his spouse.

…

[72] Mrs. Kaiser testified that she drafted the June 30 doctor's letter for her doctor, Dr. Birnbaum, who reviewed it and placed her name and office address stamp on it and signed it. I have redacted information that is personal and sensitive and is not required for the purpose of understanding this decision. The response is undated and is as follows:

…

1 [detailed information redacted] *As a result, Mrs. Kaiser requires assistance with the majority of her activities of daily living (ADLs)* [detailed information redacted]. *Mrs. Kaiser suffers from* [detailed information redacted]. *Mrs. Kaiser also suffers from* [detailed information redacted].

2. Mrs. Kaiser requires care multiple times throughout the day with her ADLs [detailed information redacted].

3. No. Mrs. Kaiser's body relies on a regimented schedule in order to function optimally. She requires care multiple times throughout the day. Changes in her routine may lead [detailed information redacted].

> *4. Yes. Mrs. Kaiser currently receives the maximum number of hours of assistance allowed through community services. Any assistance she requires outside of those hours or in the event a caregiver is unavailable is supported by Mr. Kaiser. Mr. Kaiser is on constant stand-by of* [*sic*] *any unexpected health issues that may arise.*
>
> *5. Mrs. Kaiser's condition has been stable and permanent and the support she currently receives will be required indefinitely.*
>
> *…*

[73] In cross-examination, the grievor was brought to the June 30 letter, the response sent by him, and the June 30 doctor's letter. He confirmed that these letters were the first time that the CRA put to him in writing any questions about the issues surrounding his wife's situation and accommodation. He also confirmed that this was the first time that his wife's doctor had been asked any questions. He did state that he had previously talked to employer representatives about her condition in 2004 and 2005.

[74] Both the grievor and his spouse testified that she was at times outside the home, without the grievor accompanying her. In their testimonies the grievor and Mrs. Kaiser confirmed that she did the following things:

- while she uses a wheelchair, it is not electric but manually powered, which she often operates on her own, with no assistance;
- she independently drives a modified Dodge Caravan;
- she goes places on her own, usually places that are familiar to her;
- she started working on her master's degree in 2004 and completed it in 2008;
- at the time of the hearing, she was in her fifth year as a full-time student working on her PhD in rehabilitative studies at the University of Toronto (UofT);
- her PhD studies are research-based and include three or four courses, of which one was held in person at the downtown campus of the UofT;
- she drives herself to her class at the UofT in the Dodge Caravan;
- she did go to conferences and did present her research;
- between 2015 and 2018, she did part-time work at a hospital;
- she participated in the "Man in Motion" wheelchair races.

- volunteered outside the home;
- as part of some of her volunteering travelled to different parts of Ontario;
- worked as a research assistant; and
- did some modelling.

[75] The grievor further confirmed that none of the responses provided, either by him or Dr. Birnbaum, reflected how Mrs. Kaiser's needs for assistance were covered during these periods when she was outside the home; nor did they specify when she was outside the home. In a further response, the grievor said that if his wife was outside the home, she did not require care.

[76] In cross-examination, the grievor confirmed that he told Mr. Tepelenas that between 08:00 and 11:00, Monday to Friday, workers who provided care to his wife were at his home, but he did not trust them and wanted to be there.

[77] Entered into evidence was a copy of a letter dated July 27, 2016, and sent by the grievor to Mr. Pranjivan, who was at the time the assistant commissioner for the Ontario Region of the CRA. The relevant portions of that letter state as follows:

> …
>
> *The issues are two-fold and I recap again:*
>
> ***Firstly**, the redundant and constant bombardment inquiry about my wife's condition and care giving patterns and why I am being accommodated. This reached a pinnacle a few months back when i was asked to fill out detailed questionnaires about my wife's condition and healthcare. Even her medical specialist just shook her head as she read CRA's letter of not wanting her "diagnosis" but asked every other question regarding her health and care needs that it was easy to ascertain to her health condition. The required documents were a complete and utter demolition of her privacy. I was within my rights to just say: "Quadriplegia" and ask CRA to please Google the term to find the plethora amount of information. This would have led to a deeper understanding in its diagnosis, prognosis, secondary complications and lastly the enormous care and responsibility involved. Instead, I had to disclose minute details of helping my wife with respects to her personal bowel, bladder & menstrual management. This is very intrusive Vince. I had been asked verbally about this in early April 2016 by Manish. I had to wait until June 30, 2016 to finally get a formal letter from CRA to submit to her doctor - **3 months**. I got all the information together within 4 days and submitted my reply by July 5, 2016. As of today's date, I have not received a reply. The*

> *incredible delay caused by CRA has caused me much stress. The strange thing is my current & active Accommodation clearly states: "Since the prognosis of your wife's disability is permanent, the onus is on you to provide us with any change in this agreement so that we may review the plan accordingly." It sounds to me like CRA is on a mission here.*
>
> ***Secondly,** the area of concern is my job function. As stated before to you and to Deb, even though I wanted to go to GST with my other fellow Office Exam Auditor, I was advised by both herself and Manish to take up the Sudbury office exam position and try it out, after which she told me that if I did not like it she would look at different areas. I complied. Now I am back at Toronto North and would like to go to GST or Non-Filer and she has changed her tune because she was wrongfully influenced by Sudbury's conclusions on my performance for the past year. As stated before, I have never had a problem with my Performance over the past 15 years. I find it extremely vindictive and calculating that Deb is holding my last year's performance based on a mistake I made in filling out my timesheet. Yes, I also refused to comply with my TL's procedural demands as it contradicted Ottawa's training material. As articulated before, once you stand up for something despite your position or rank you are then in the negative books with your TL and Section Manager. It then became a witch hunt to spoil my character as they went back six months prior to look at my timesheets.*
>
> ***Resolution:***
>
> *For my sanity, I would like to humbly request to be transferred to Toronto East TSO where I started my career. I would like a fresh start where I don't constantly have to prove myself to Management and second guessing my accommodation requirements. A fresh beginning would enable me to hopefully break the negative stigma attached in working at Toronto North TSO.*
>
> …
>
> [Emphasis in the original]
>
> [*Sic* throughout]

[78] On August 2, 2016, Mr. Arumugam wrote to the grievor with respect to the June 30 letter and the July 5 letter with a response ("the Aug. 2 letter"). The following is the relevant portion of the letter:

> …
>
> *This letter is in response to our Accommodation Review letter that was issued to you on June 30, 2016. The Canada Revenue Agency (CRA) acknowledges receipt of your hand-delivered written response On July 5, 2016, at the Toronto North Barrie Tax Services Office.*

> *As you are aware, the CRA is committed to the Accommodation process and working with employees to determine reasonable accommodation. After reviewing your submission, the CRA has approved your Accommodation request and Telework Agreement, until further review is deemed necessary.*
>
> *As was previously arranged, in an Agreement dated October of 2009, your core full time hours of work will be from 11:30am to 7:30pm, Monday to Friday (37.5 hours/week). A formal letter to outline your new Accommodation Agreement will be sent under separate cover, along with an updated Telework Agreement.*
>
> *Thank you for your co-operation during the review of your accommodation request.*
>
> …

[79] In cross-examination, the grievor was brought to the Aug. 2 letter and was brought to the third paragraph that references that he confirmed that at that time, he had come to an agreement with respect to his core hours being from 11:30 to 19:30, Monday to Friday. In his evidence, he testified that it took a year for the paperwork to be completed.

[80] At a point that is not clear, the grievor applied for a position at the BIQA. Entered into evidence was a chain of emails with respect to the BIQA position, between the grievor and Terry MacLeod, a TL with the BIQA in the Ontario Region, which are as follows:

> [Mr. MacLeod to the grievor, August 5, 2016, at 11:26]:
>
> …
>
> *Congratulations on your success in your application for an SP05 position in BIQA.*
>
> *We would like to make you an offer for a 12-month temporary latter* [*sic*] *move to BIQA effective August 29th, with the potential of an extension. The start date is contingent on speaking to your current team leader and arranging the best start time with minimal disruption to your current program.*
>
> *Please let me know by end of day Tuesday August 9th of* [*sic*] *whether or not you will be accepting our offer.*
>
> …
>
> [The grievor to Mr. MacLeod, August 8, 2016, at 09:59]:
>
> …
>
> *I will gladly accept your offer. Start date is fine.*
>
> …

[81] On August 19, 2016, at 08:34, the grievor emailed Mr. Tepelenas, stating that he had spoken with his wife and adding this: "Considering all variables, my most feasible option at this point in time is 11:00am-7pm of work hours with a buffer commencing from 10am & concluding at 9pm."

[82] Entered into evidence was an email dated September 1, 2016, at 08:32, from the grievor to Messrs. MacLeod, Tepelenas and John Tsetsos, who at the time was a manager at the Toronto North TSO, which states as follows: "As per my meeting with John Tepelenas yesterday, it was concluded I will gladly accept the BIQA position."

[83] On September 12, 2016, at 08:19, Mr. Tepelenas emailed the grievor and stated as follows:

> …
>
> *As previously discussed we have reviewed your Accommodation Agreement and have agreed to continue with the existing provisions except that the hours will change from 11:30am – 7:30pm to 11:00am – 7:00pm. In addition, we would like to incorporate some procedures to follow should there be a security or health and safety incident during the "silent hours" of 5:00pm-7:00pm. Until that is done we will continue under the existing accommodation agreement.*
>
> …

[84] While exchanges with the grievor were taking place in August and September of 2016, internally, management representatives, including Messrs. MacLeod, Tepelenas, and Tsetsos and HR representative Marina Ross were discussing the grievor's move to the BIQA, the accommodation measures, and the issues related to his accommodation. The relevant portions of the emails are as follows:

> [Mr. MacLeod to Ms. Ross, Mr. Tiessen, Mr. Tsetsos, and others, August 25, at 15:17]:
>
> …
>
> *Further to our telephone conversation yesterday, we are looking for some guidance and assistance in understanding our obligations to an employee with these types of accommodation issues, especially with working outside of our core hours:*
>
> • *Is he entitled to speak directly with his team leader outside core hours? Or is his contact with an excluded manager?*
>
> • *Does BIQA need to staff a team leader between these hours?*

> *• Are there any health and safety responsibilities?*
>
> *• Does BIQA need to pay shift premiums for hours worked after 6pm?*
>
> *• Should the systems be down after core hours, are we responsible for finding alternate work for him this time?*
>
> *• How do we best manage the employee after core hours.*
>
> *• What is our requirement to arrange our team meetings, town hall meetings, and other events around his schedule (i.e. meeting is at 10?)*
>
> *• When, how often, and under what circumstances would he be allowed to extend his hours further to 9pm?*
>
> *• Does BIQA have to accept the accommodation in place when it is a temporary lateral move, or can we and/or should we review the accommodation request and prepare our own reasonable accommodation with the employee based on our operational requirements to ensure there is no undue hardship to BIQA?*
>
> *• How and/or when do we deal with other employees and the possibility of discrimination or harassment? How do we deal with questions of why he is being accommodated?*
>
> *I would like to set up a teleconference sometime next week with John Tsetsos, John Tepelenas, and yourself to discuss some of these issues/concerns so that we can be better prepared for this assignment.*
>
> …
>
> [From Ms. Ross to Messrs. MacLeod, Tsetsos, and Tepelenas, September 16, at 10:08]:
>
> …
>
> *I would like to set up a time to have a call regarding this case ….*
>
> *Also, I think we may need to discuss this with OHS* [Occupational Health and Safety] *and Security but it may be better to do that once we have had a chance to discuss next steps and narrow down the issues of concern – what do you think?*
>
> …

[85] On April 25, 2017, the grievor signed a new accommodation agreement, which was signed by his supervisor on April 26, 2017. On May 19, 2017 he presented his grievance.

D. The grievor's health

[86] In late June of 2016, the grievor went on sick leave with pay that lasted between three and four months, which he attributed to the review of his workplace

accommodation. Entered into evidence were a series of notes from the Enhanced Care Clinic, identified by the grievor. All these notes were signed by a Dr. Rudy Bromberg. The notes are all from 2016 and are specifically dated as follows:

- Sunday, June 19;
- Thursday, July 21;
- Thursday, August 25;
- Thursday, September 29; and
- Friday October 14.

[87] The notes of June 19, July 21, and August 25 all say roughly the same thing, which is that the grievor needs time off work for medical reasons. The specifics of the grievor's medical reasons were not set out in any of the June 19, July 21, or August 25 notes. The June 19 and July 21 notes both offer an estimated time to return to work for the grievor of four weeks. The August 25 note states that the grievor should remain off work for four more weeks and that he could return to work on October 3. The September 29 note states that the grievor could return to work on October 3.

[88] The October 14 note states that the grievor was seen that day and that he should be off work for acute medical reasons for two weeks. October 3 was a Monday.

[89] On Wednesday, April 11, 2018, a further note from Dr. Bromberg was provided that simply stated that the grievor was seen that day and that "[w]ith regards to the time off work Mr. Kaiser had in June of 2016, this was needed due to workplace stress related issues."

[90] Entered into evidence was a series of clinical notes, identified by the grievor. They were all dated in 2016, as follows: April 14 and 18; May 13 and 27; June 10, 19, 20, 23, and 29; August 25 and 26; September 20, 29, and 30; and October 10 and 13. To distinguish them from the notes written by Dr. Bromberg on June 19, July 21, August 25, September 29, and October 14, I will refer to them as "clinical notes". Some of these contain letters or reports written by other professionals, as well as test results. As neither Dr. Bromberg nor anyone from his practice testified, it is difficult to determine how some of the documents that came from external sources were entered into his medical records. On the face of the clinical notes, it is sometimes difficult to determine the exact nature of some of the issues that Dr. Bromberg was identifying.

[91] Included in the clinical note dated May 13 is what appears to be a letter from a Peter Bui. After his name are the letters "RN". I take this to mean that he is a registered nurse, as that is the usual acronym for members of that profession. There is nothing further about Mr. Bui's training or experience in the material. It is not clear if the letter from Mr. Bui was dated May 13 or another date and just entered into Dr. Bromberg's clinical record on that day. Mr. Bui's clinical notes and records were not included in the materials. The relevant portions of the letter from Mr. Bui state as follows:

> …
>
> *… Fai came in today to discuss his stress. I explained my role as an RN supportive counsellor and the basic theoretical concepts of CBT.…*
>
> ***Case Formulation***
>
> ***Diagnosis/Symptoms:***
>
> *?depression*
>
> *Anxiety- denies*
>
> *Stress, overwhelmed*
>
> ***Specific Triggers:***
>
> *Caregiver roles*
>
> *His job.*
>
> ***Formative Influences:***
>
> *He is of South Indian descent and states that in his culture, it is the duty of children to look after their parents when they age. This is something he believes in despite not following other cultural/religious (Muslim) traditions and beliefs.*
>
> ***Situational issues:***
>
> *He is the caregiver for his parents, shares this responsibility with his brother who lives in the same complex as them, but does not like to take time off work. Fai is the one to drive them to medical appointments and involved in all health-related issues. He would not consider admitting them to a senior home.*
>
> *Wife is a quadriplegic; had a car accident in 1996; paralyzed 80% from the neck down. They got married in 1999. She has nursing/ psw homecare but he is still very involved in her care and states that it can be very stressful at times. They have an 8 yo* [*sic*] *daughter.*
>
> *Under the human rights act, he was accommodated to work from home in 2004. Works for the federal government as an auditor. However, d/t* [*sic*] *the constant shifting of management, he always has to explain his situation and states it is not well accepted; sometimes feels interrogated or looked down upon for working from home; states they can be insensitive in their questions.*

…

[Emphasis in the original]

[92] The June 10 clinical note states the following, which is relevant to this proceeding:

…

As discussed last session, pt kept a stress log. Found that a common trigger was people in a position of authority who "wrongfully disciplines [him]".

Physically did not keep track of symptoms.

Emotionally felt agitated and "pissed off".

Admits to being impulsive in his responses, usually deals with issues head-on, will go straight to the top of the authority chain i.e. will go to VP instead of manager to complain. Understands he needs to take a step back to re-evaluate the situation before acting; how he feels in the moment will not be how he feels in an hour.

Other core stressors include his parents' health, and his wife not being supportive.

Feels she does not understand his issues since she is more passive in her approach and does not like confrontation.

…

Pt Recently assigned a union representative for work r/t stress, was advised to back off and let the representative deal with all issues.

F/u in one month.

…

[*Sic* throughout]

[93] In cross-examination, it was put to the grievor that the reference in the June 10 clinical note states that a core stressor was that his wife was not supportive, to which the grievor said "No", and added that he would not say that.

[94] The June 19 clinical note refers to a skin issue and a referral to dermatology as well as a respirology issue. The note also refers to "Sessions with Peter helpful". I have assumed that this is a reference to Mr. Bui; however, there is nothing that indicates how many sessions had been held to that point or the details of the discussions. The note also appears to have a copy of a reference to a doctor with respect to the dermatology issue. As a part of the clinical note for that day is a copy of the note provided to the grievor, which states that the grievor needs to take time off work due to medical reasons. Finally, there is the following reference:

…

> *Start Therapy: Psychotherapy for acute stress disorder/stress management.…*
>
> *Discontinue Therapy: Psychotherapy for acute stress disorder/stress management.*

…

[95] The June 20 clinical note appears to have attached a series of emails between Dr. Bromberg and the grievor. The emails appear to be discussing the grievor's health-plan coverage for psychological services and the potential cost for them. The June 20 clinical note also refers to an attachment being in reference to a referral for psychotherapy or counseling and appears to show an appointment scheduled for the grievor on July 26 at 10:15.

[96] The June 29 clinical note appears to have a reference to a psychology consult report from a Dr. Azoulay and has attached a copy of a letter dated June 24 from Dr. Deborah Azoulay, who is identified on the letterhead as a psychologist. The relevant portions of the letter state as follows:

…

> *… he currently feels stressed due to overwhelming responsibilities in caring for his disabled wife, his daughter and his parents. The greatest source of stress, he states, is his work. At work there has been much turnover of staff. Mr. Kaiser receives accommodation and works at home due to his wife's needs. With each new change of supervisor he finds he needs to once again give private information and fight for the accommodations.*

…

> *Mr. Kaiser was given some brief measures which showed that he does not experience much anxiety (according to his endorsement of items) but does have mild depression. He stated that he has some lightheadedness and at times finds it hard to relax. He feels sad much of the time, more discouraged than in the past, feels more that he has failed, feels guilty about what he has and has not accomplished… He discussed having issues with anger and trust.*
>
> *An underlying factor for Mr Kaiser is his history of being bullied in elementary and high school. He is keen to stand up for his rights and those of others as an adult. He is to be commended for his desire to do this but may find that his methods cause some difficulties, are not the most effective he could choose, and that this causes him stress.*

…

[97] In cross-examination, the grievor was brought to a reference to being bullied in school and to it being a stressor. He replied that this was the doctor's interpretation of what he had told the doctor.

[98] Although there was a note produced into evidence dated July 21 from Dr. Bromberg that indicates that the grievor was seen that day and that states that the grievor's estimated return to work was in four weeks, there were no clinical notes or records produced for the month of July 2016.

[99] The next clinical note is dated August 25 and has embedded in it the wording in the August 25 note that states that the grievor should remain off work for a further four weeks and that he can return to work on October 3. Also embedded are the results of some testing that was carried out.

[100] The next clinical note or record is from August 26. It references that the grievor was in for follow-up counselling; it references extending the grievor leave from work until October due to stress and health. It then references him having kidney stones. He states that his stress level is 7/10. It then states the following:

> …
>
> *One of his main stressors right now is the development of their new home. They will be moving in by the end of September so he is anticipating a reduction in stress level. He was offered a new position in "developmental work" in the East Toronto division, will start the assignment once he returns. States it is more fast paced and requires him to be more accessible; expressed feeling the stigma of being accommodated in the workplace.*
>
> …

[101] The August 26 clinical note also refers to a diagnostic imaging report and a CT scan; however, the report or reports are not embedded or attached.

[102] The next clinical note is dated September 20. It appears to reference blood test results, although it includes no actual report, as well as the grievor having abdominal pain and an issue related to kidney stones.

[103] The next clinical note is dated September 29, refers to the grievor being able to return to work with no restrictions on October 3, and refers to giving the grievor a note about him being able to return to work on October 3.

[104] The next clinical note is dated September 30 and states that the grievor was seen for follow-up counselling. It refers to the grievor starting his new position on Monday (October 3) and that they (he and his family) are moving into their new home within the next two weeks. In this respect, it states the following:

> …
>
> *… Has been experiencing situational anger d/t* [*sic*] *issues in their home development i.e. delay in the installation of the elevator. States he will blow up (re: yell, curse) and then quickly get over it. Questioned p/t* [*sic*] *whether he wants to work on controlling/ reducing his angry reactions but he denies it being an issue; states he would not react the same way in a corporate setting and that this is "the only language contractors understand".*
>
> …

[105] The last two clinical notes are dated October 10 and 13, respectively. October 10 was a Monday. In the October 10 note, there is an embedded email that is from the grievor. He references that the difficulties that he is having that are physical in nature and that they seem to relate to moving boxes "[f]rom Sunday onwards" and not being hydrated. They do not refer to stress at work. The end of the email states the following: "I'm lying in bed right now and don't have energy to go to a doctor. I have dictated this to my wife. please advise." The October 13 clinical note merely references an abdominal and pelvic ultrasound report and a paper clip indicating an attachment, although no attachment was provided.

[106] In cross-examination, the grievor was asked about the building of the new home, and he confirmed that it took less than a year to build it, that it was ready in October of 2016, and that there were delays.

[107] If clinical notes and records exist from Dr. Azoulay, none were provided to the hearing. There was no information provided as to how many times the grievor saw Dr. Azoulay; nor was any information provided as to her education, specialty, or experience.

[108] None of Drs. Bromberg or Azoulay or Mr. Bui testified.

[109] The grievor's leave records were entered into evidence. They disclosed that he was off work from June 19 through October 3, 2016, when Dr. Bromberg cleared him to return to work. The clinical notes indicate that on Monday, October 10, which was

the Thanksgiving holiday, the grievor notified Dr. Bromberg that he was having health issues related to moving boxes, likely related to the new home build and move that was scheduled to happen at or about that time. The records disclose that he was off on the balance of the week of October 10, except for 3.5 hours on the Thursday, and then for the balance of October, except for October 31, which was the day he returned to work.

E. The Grievance Replies

[110] The first-level grievance reply from the CRA was dated June 20, 2017 and stated as follows:

> …
>
> *During your grievance consultation, you and your representative reiterated and elaborated upon the issues that you had listed on your grievance presentation. In addition, you stated that the questions that management asked you and your physician in relation to your accommodation were too personal and invasive, and that your accommodation should not be subject to review unless you inform management that there has been a change in your spouse's condition. You further divulged that the accommodation process caused you sufficient stress that you were off on certified sick leave and that you want this time reimbursed to you and stated that your current accommodation related to your spouse's medical condition is not meeting your need for flexibility in your working day. Lastly, you shared that you want to remain in BIQA indefinitely as part of your accommodation, because you do not want to have physical taxpayer files in your home, as required by your previous position.*
>
> …
>
> *Though you feel that, due to the permanent nature of your spouse's medical condition, your accommodation should not be reviewed or revisited unless you communicate a change to management, management reserves the right to exercise its due diligence in monitoring your accommodation needs and reviewing the IAP at regular intervals (i.e. annually) to ensure that the accommodation remains appropriate for the needs of both the employee and the Employer. As it appears that, prior to the recent IAP of April 26, 2017, the last fulsome review of your accommodation was conducted in 2009, I do not feel that management has been unreasonable in this regard. It should be noted that revisiting your IAP at regular intervals (i.e. annually) does not necessarily entail you providing substantiating documentation at every review, (i.e. doctor's information, caregiving needs, etc.), but no accommodation plan should continue in perpetuity without periodic reassessment. Similarly, as you change positions or your management team changes, it is*

> *reasonable to expect that you may periodically be required to discuss your accommodation (i.e. working hours, etc.) with new team leaders and managers to facilitate their understanding of your arrangement.…*
>
> *…*

[111] On July 17, 2017, a second-level grievance hearing was held by Mr. Tiessen. The grievor was represented by Lazaros Gaitanis. The grievor did not attend. The notes were handmade and identified Mr. Tiessen by the initials "ST" and Mr. Gaitanis with the initials "LG". The following excerpt from the notes is relevant for this decision:

> *LG: TOO MUCH DETAIL, TOO PERSONAL.*
>
> *NOT EXPLANATION OF SICK LEAVE RATIONALE*
>
> *…*
>
> *LG: WIFES* [*sic*] *CARE AS A RESULT OF PERMANENT DISABILITY, BUT ASKED REPEATED QUESTIONS.*
>
> *ST: DIFFERENCE BETWEEN UPDATING MEDICAL RECORDS & UPDATING FAMILY-RELATED NEEDS, WHICH CAN CHANGE OVER TIME*
>
> *LG: NEGATIVITY, IT WAS THE TONE & INTENT*
>
> *ST: ANYTHING SHOWING THIS NEGATIVITY FROM MANAGER?*
>
> *LG: HE CAN WRITE IT UP & SEND ANYTHING.*
>
> *ST: NO DIFFERENT THAN YOU SAYING IT. NEED EMAILS OR OTHER EVIDENCE*
>
> *LG: OKAY, I WASN'T THERE, NOT SURE HOW IT HAPPENED*
>
> *ST: OKAY, NOT SURE WE HAVE DONE ANYTHING WRONG*
>
> *LG: PERMANENT CONDITION, NO NEED TO UPDATE.*
>
> *ST: EVERYTHING CHANGES ….*
>
> *LG: DON'T NEED MEDICAL REPEATEDCY* [*sic*]*. TOO MUCH DETAIL.*
>
> *ST: I DISAGREE, DIDN'T SEE EXCESSIVE DETAIL.*
>
> *LG: QUESTIONS TO INTRUSIVE, LEVEL OF DETAIL.*
>
> *ST:* [illegible]
>
> *LG: BOTH QUESTIONS TOO PERSONAL IN NATURE*
>
> *…*

[112] At the end of the notes of the second-level grievance hearing, it appears that Messrs. Tiessen and Gaitanis discussed a potential meeting between the grievor and Mr. Tiessen. Documents entered in evidence disclose a back-and-forth attempting to

arrange the meeting before Mr. Tiessen had to issue the second-level grievance response. Entered into evidence was a copy of an email sent by Mr. Tiessen to the grievor dated July 27, 2017, parts of which are relevant to the issues in this hearing. Those parts are as follows:

> …
>
> - *Regarding the work schedule that was prepared as a result of the accommodation review undertaken – are you OK with the hours? It was my understanding, and Lazaros' that the hours are working for you but I wanted to find out from your personal* [*sic*] *if that is the case.*
> - *I wanted to have a discussion to explain your BIQA assignment as part of a pilot and BIQA's organizational model and confirm that the duration of this assignment is not affected by your accommodation. We can and have made what I believe are acceptable arrangements for both you and BIQA. The only thing that could impact the assignment would be performance and I am not currently aware of any issues with that* [illegible] *funding changes that would impact you and everyone else that is part of the pilot. I just want to make sure we are on the same page on this one.*
>
> …

[113] Entered into evidence was an email from Mr. Tiessen to the grievor and copied to Mr. Gaitanis, dated August 17, 2017. The relevant portions of that email are as follows:

> …
>
> *It was nice to finally meet you in person. In addition to our discussion regarding your grievance, thank you as well for sharing some of the background regarding your personal situation, your employment with the CRA and your assignment in BIQA. The notes below focus on the issues relating to your 2nd level grievance and will be taken into account in my grievance response to you. Can you please take a look at these and let me know if there is anything that I have missed or that might have be misrepresented.…*
>
> *Management's Responsibility to Periodically Review Individual Accommodation Plans*
>
> - *During the original presentation of your second level grievance, your representative mentioned that from your perspective, since your wife's health condition is permanent, it was not necessary, and moreover inappropriate for management to continually revisit your accommodation*

- *We discussed this concern and I mentioned that in all accommodation situations management has an absolute responsibility to regularly engage staff on accommodation plans to see if they remain appropriate. While your wife's health may not get any better, it could get worse which would cause a change; the age of your children may change your demands and responsibilities related to their care; new technology or social services may become available that could again impact your responsibilities and family demands etc.*
- *You clarified that you understood and agreed that management needs to regularly engage staff regarding their accommodation; however, you stated that your concern was really with the degree to which your accommodation was being reviewed, the questions asked, excessive documentation being requested etc. It was your opinion that this could have been accomplished by a conversation with you to get confirmation that nothing had changed.*

Nature of Questions during the Accommodation Consultation Process

- *During the original presentation of your second level grievance, your representative mentioned that you felt questions posed by management were inappropriate, invasive and caused you undue stress.*
- *During our meeting you restated this concern and stated that the stress led to you being off on sick leave for a significant period of time (3 months).*

…

- *I asked if you had any documentation containing additional questions asked of you that you considered inappropriate. You stated that questions were asked during various meetings and that some were verbal and some provided in writing. You stated that you had documented discussions and concerns from all your meetings but preferred that I review your file to see the questions asked. From your perspective, you preferred not to provide anything further at this point in time and would save this for a higher level presentation should the 2nd level grievance corrective action be denied.*

…

Acceptability of Your Accommodated Work Schedule of 11am to 7pm

- *During the original presentation of your second level grievance, your representative suggested that I discuss with you as to whether your accommodated work schedule of 11am to 7pm worked or whether you were still requesting corrective action in regards of this schedule.*
- *We had a discussion regarding the work schedule and you stated that for the most part it worked and that if some personal*

> *responsibility arose that didn't allow you to complete your 7.5 hour work day within that period, you simply worked additional hours as needed later in the evening.*
>
> - *I stated that I was concerned about this and that arrangements had been put in place assuming your work day would end at 7pm and that you should not be working past this time. You stated that this had informally been discussed and agreed to during the accommodation process with your previous assistant director.*
> - *We then had a discussion about your work schedule and I stated that I did not want you working past 7pm given workplace healthy and safety concerns, management's supervisory responsibilities and your own personal health needs. We discussed an option to implement a flexible schedule of 7:30am to 7pm which would give you additional hours to ensure that your required work schedule of 37.5 hours a week was met without ever needing to go beyond 7pm and hopefully even to create a situation where you were not often required to work to 7pm. This could be accomplished by a simple daily email stating what your work hours would be/were.*
> - *You, your representative and I all thought this proposal had some merit and would require some further thought/discussion.*
>
> …
>
> [*Sic* throughout]

[114] The grievor responded to Mr. Tiessen's August 17 email by email on August 22, 2017, and the portions of it relevant to the grievance are as follows:

> …
>
> *I clearly voiced that this constant badgering and harassment from lower, middle and upper level management had commenced dating back to at least 2003. Over the course of time, concerns and issues were addressed, then the problem went dormant only to resurface months or years later.*
>
> …

III. Summary of the arguments

A. For the grievor

[115] The grievor referred me to *Adga Group Consultants Inc. v. Lane*, 2008 CanLII 39605 (ON SCDC), *Casper v. Treasury Board (Department of Citizenship and Immigration)*, 2023 FPSLREB 36, *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 SCR 970 ("*Central Okanagan*"), *Davis v. Revera Long Term Care (c.o.b.*

Sandringham Care Centre), 2015 BCHRT 148, *Grant v. Treasury Board (Canada Border Services Agency)*, 2021 FPSLREB 84, *Nadeau v. Deputy Head (Correctional Service of Canada)*, 2014 PSLRB 82, *Naraine v. Ford Motor Co. of Canada (No. 4)*, 1996 CanLII 20059 (ON HRT), and *Wintemute v. TFI international Inc. / TFI Transport 2 L.P.*, 2022 CIRB 1049, and to the following articles, from the Canadian Human Rights Commission, *Developing a Workplace Accommodation Policy* and *Workplace accommodation: A guide for federally regulated employers*, and from the Ontario Human Rights Commission, *Policy on ableism and discrimination based on disability*.

[116] There are not a lot of facts in dispute, and while there are some discrepancies, this is not a fact case.

[117] The grievor has been accommodated by the employer for most of his career with it on a family status basis from 2005 to the time of the hearing. The grievance is about the employer's adverse behaviour in the accommodation process in 2016 and 2017. The employer demanded wide-ranging and invasive information about Mrs. Kaiser's care, and it was driven by discrimination, stereotypical beliefs, and believing that Mrs. Kaiser's condition was fraudulent. The questions put to the grievor were inappropriate. There is a balance between privacy and the need to know. The questions were drafted by a lower-level manager and were unnecessary.

[118] It is clear what the grievance is about. Look at the grievance, and the grievance documents and submissions.

[119] The engaging of the IAFCD was an invasion of privacy.

[120] The employer tied the accommodation needs with performance.

[121] The grievance is about the employer discriminating because of family status. The issue for the grievor is why the accommodation agreement was revisited. He referred to a meeting in March (2016) that triggered the process. It was started contrary to the stipulation.

[122] The grievor submitted that he is the caregiver for Mrs. Kaiser and that daily, he manages all her personal care. He is relieved from providing care for a number of hours in the morning, when a nurse and PSW attend for 4 to 4.5 hours per day, 7 days per week, 365 days per week year. The grievor needs to be around and is always on standby.

[123] While Mrs. Kaiser does have a degree of autonomy, it does not mean that he is not needed.

[124] The fact that the employer tied performance to accommodation is a troubling theme.

[125] The grievor states that the 2009 accommodation letter makes it clear that the onus is on him to advise if something changes with Mrs. Kaiser's situation, which makes sense because her condition is permanent.

[126] The grievor submitted that there were several telework agreements entered into between 2005 and 2011, and they all reference the potential to terminate the agreement and job performance, the terms of which he did not agree with, although he did not make an issue about it, despite finding it inappropriate.

[127] The grievor submits that there was nothing that triggered the review of the accommodation; there was no undue hardship and nothing operational. Just suspicions.

[128] The grievor testified that his relationship with Ms. Aupin was troubled from the start. He said that she used the term "you people"; she denies it. She was not happy managing a teleworker. The grievor testified how his mail was done by the Toronto North TSO while Ms. Aupin was not interested in doing his administrative tasks.

[129] The grievor submitted that Ms. Aupin's home visit with respect to the telework situation and her not seeing Mrs. Kaiser "planted a seed" that the grievor was getting away with something. This led to her reviewing his timesheets in the summer of 2015, in which she found discrepancies. The concerns were sent to the IAFCD. These are tied to the accommodation. Ms. Aupin raised the issue of his failure to respond to her calls. She did not raise it with the grievor.

[130] Ms. Aupin did not like the grievor and did not like the accommodation that he was getting. The grievor was always assessed as "meets", and she knew it, and the inference should be to allay suspicions.

[131] The grievor met with Mr. Goel, who asked about Mrs. Kaiser and the things that she was doing. The grievor was upset with these questions and did not understand why Mr. Goel was concerned. The grievor met with Mr. Pranjivan and explained that

this was causing distress and hardship. Following the meeting with Mr. Pranjivan, the grievor had the May 18 meeting, in which he was threatened, and he characterized Ms. Danis as skeptical, rolling her eyes, and sighing. He said that the employer was not interested in his views. It referred to Mrs. Kaiser and her wheelchair events and studying. The grievor said that he found the meeting intimidating. From the grievor's perspective, this came out of nowhere, and understandably, it caused undue stress. He did not want to keep explaining himself.

[132] The grievor went on sick leave. The details of his issues are set out in the clinical notes entered into evidence. The June 30, 2016, letters arrived, and the grievor was offended. These were a culmination of the suspicions of Ms. Aupin.

[133] The grievor's performance rating, from 2001 to 2015, was always "meets". From 2015 to 2017, it was "mostly meets". His post-2017 performance appraisals were all "meets", and in 2022, he was promoted.

[134] The employer did not put the grievor on an action plan.

[135] The employer will submit that it can review the accommodation plan at any time; the grievor submitted that it can do so only when the employee asks. There was a lack of evidence from the employer that there was a problem with the grievor's telework. This was also true for the issues raised by Ms. Aupin; were they related to the telework? Where is the evidence of it? Why was there a need to revisit the accommodation that was working for everyone?

[136] The process took over a year and caused the grievor stress.

[137] The grievor submitted that the test for *prima facie* discrimination comprises these three criteria:

- there is a protected characteristic;
- there is adverse treatment; and
- the protected characteristic is a factor in the adverse treatment.

[138] The grievor submits that for a bona fide occupational requirement defence (BFOR), there is a three-part test, of which all three parts must be met. It states that an

employer may justify an impugned standard by establishing the following on a balance of probabilities:

- It established the standard for a purpose or goal that was rationally connected to the performance of the job.
- It adopted the standard in an honest and good-faith belief that it was necessary to the fulfilment of that legitimate work-related purpose.
- The standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer.

[139] The employer accepted the accommodation and that there was a need to accommodate. The grievor's wife required care. There was an adverse impact on the grievor of threatening his job and terminating his employment. This was totally inappropriate and had an adverse impact on him. The employer gathered information on Mrs. Kaiser in a secret investigation that it systematically searched for and put in a file, and the file was shared with different managers.

[140] The grievor submitted that people have privacy in public. If someone conducts surveillance on you and tracks your movements, it impinges on your privacy. Questions asked of the grievor and Mrs. Kaiser were invasive and probing. What is required is what is set out in the employer's guidelines, which is "relevant adequate information."

[141] The grievor referred to a Canadian Human Rights Commission article entitled, *Developing a Workplace Accommodation Policy*. With respect to requesting medical information, the article states that when considering asking for medical information, the consideration should be whether it is required. For example, if an accommodation is obvious, do you need medical information?

[142] Employers need to keep in mind their right to manage with the employee's right to privacy. It boils down to the fact that the employer knew that Mrs. Kaiser was a quadriplegic, and it knew that the grievor had to provide for her needs. This was obvious with her living at home versus living in a care home.

[143] The grievor referred to a second Canadian Human Rights Commission article entitled, *Workplace accommodation: A guide for federally regulated employers*. This

article provides some guidance, and the grievor submitted that the employer should accept information from the employee in good faith and ask questions only when required.

[144] The grievor referred to *Wintemute* and to its paragraphs 75 and 76. Paragraph 75 references the reasons for the termination of employment in that case, which were twofold. First, the claim was that the complainant falsely represented that she had the capacity to meet the requirements of her position, and second, she was unwilling to cooperate in the accommodation process, which prevented the employer from evaluating her proposed return to work. Paragraph 76 states that the employer relied on medical information from the complainant's insurance file and a report from a specific doctor to support the reasons for the termination, that it required additional information as part of the accommodation process, and that the complainant's refusal to consent led to the employer's decision to refuse a gradual return to work.

[145] At paragraphs 78 to 82, the issue of medical information and the employer's right to it is canvassed. At paragraphs 86 and 87, it states as follows:

> *[86] … employers have a legitimate right to request medical information from employees in appropriate circumstances where it is permissible under the applicable legislation, a contract of employment or a collective agreement. An employer may ask for additional information, but, in most instances, the employer cannot access the confidential medical information without the employee's consent. Moreover, an employer is entitled to the least information necessary as an integral part of the concept of reasonableness. In* Unilever Canada Inc. v. United Food and Commercial Workers Union, Locals 174 and 633*, 2022 CanLII 6822 (ON LA), Arbitrator Johnston described the nature of an employer's entitlement as follows:*
>
> > *158. … an employer is only entitled to sufficient medical proof of illness to satisfy a reasonable objective employer. In the context of medical privacy, what is reasonably objective is the least intrusive medical information necessary to support an absence or entitlement to benefits.*
>
> *[87] The CHRC has prepared a guide entitled "Developing a Workplace Accommodation Policy" to assist federally regulated employers in developing accommodation policies that are consistent with the CHRA. In this policy, the CHRC describes that an employer may require medical information about an employee's accommodation, and it explains that requests for medical information should balance the employer's right to manage the workplace and the employee's right to privacy.…*

…

[146] The is no evidence that anyone involved in the review of the accommodation measures spoke to any of the grievor's previous supervisors. The BFOR test has not been met.

[147] The employer suggested that the grievor was rude; sure, he was prickly. It is reasonable for victims to respond. The phenomena is that they are perceived to be angry, and it is masked as a personality problem. In this respect, the grievor referred me to *Naraine*, at para. 92, where the Ontario Human Rights Tribunal states as follows:

> *[92] Writing about the propensity to label those who complain of discriminatory treatment, Lynne Pearlman has noted (Lynne Pearlman, "Theorizing Lesbian Oppression and the Politics of Outness in the Case of* Waterman v. National Life Assurance*: A Beginning in Lesbian Human Rights/Equality Jurisprudence" (1994) 7:2 C.J.W.L. at 461, 485-86):*
>
> > *Discrimination is frequently masked as a "personality" problem … Oppressors frequently are successful in obscuring the reality of oppression by characterizing complainants as "confrontational." This is the ultimate reversal of "who is doing what to whom." Resisting, fighting back, or showing anger is seen as inappropriate, intimidating and/immature behaviour.*

…

[148] Ms. Aupin said that she had been allowed to telework, and she felt that it was a privilege. She did not feel that the grievor deserved it. Management had stereotypical beliefs about quadriplegia and had a hard time understanding.

[149] The grievor requests the following as relief:

1) a declaration that the employer breached clause 19.01 of the collective agreement and s. 7 of the *CHRA*;

2) damages pursuant to s. 53(2)(e) of the *CHRA*, in the sum of $15 000.00, for pain and suffering;

3) damages pursuant to s. 53(3) of the *CHRA*, in the sum of $15 000.00, for discriminatory practices that were willful and reckless; and

4) damages in an amount that equals the total amount of paid sick leave that he received and the return to his sick leave bank of those sick leave credits.

B. For the employer

[150] The employer also referred me to *Central Okanagan*, as well as to *Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ)*, 2008 SCC 43, *Gibson v. Treasury Board (Department of Health)*, 2008 PSLRB 68, and *Ahmad v. Canada Revenue Agency*, 2013 PSLRB 60, which all discuss the basis for accommodation in the workplace.

[151] Counsel for the employer set out the legal principles and test involved in assessing for family status accommodation. That test is set out in *Canada (Attorney General) v. Johnstone*, 2014 FCA 110, and has been applied by the Board and one of its predecessors in *Guilbault v. Treasury Board (Department of National Defence)*, 2017 PSLREB 1; *Grant*; *Tarek-Kaminker v. Treasury Board (Public Prosecution Service of Canada)*, 2021 FPSLREB 120 (upheld in 2023 FCA 135); *Miller v. Treasury Board (Correctional Service of Canada)*, 2022 FPSLREB 10; and *Milinkovich v. Treasury Board (Department of Transport)*, 2024 FPSLREB 50.

[152] The employer submitted that an accommodation need only be reasonable, not perfect or the preferred accommodation wanted by an employee. In this respect, the employer referred me to *Nash v. Deputy Head (Correctional Service of Canada)*, 2017 PSLREB 4; *Leclair v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 97; *Bourdeau v. Treasury Board (Immigration and Refugee Board)*, 2021 FPSLREB 43; and *Herbert v. Deputy Head (Parole Board of Canada)*, 2018 FPSLREB 76.

[153] The employer also submitted that there is no *prima facie* discrimination. It submitted that even if the grievor could establish it, the employer reasonably accommodated the grievor.

[154] The employer also submitted that there is no separate procedural duty to accommodate. In this respect, the employer referred me to *Canada (Attorney General) v. Cruden*, 2014 FCA 131; and *Canada (Attorney General) v. Duval*, 2019 FCA 290.

[155] Finally, the employer submitted that frustration and hurt feelings do not equate to discrimination. In support, the employer referred me to *Eady v. Treasury Board (Correctional Service of Canada)*, 2019 FPSLREB 71; and *Riche v. Treasury Board (Department of National Defence)*, 2013 PSLRB 35.

[156] The employer asked valid questions, and despite not getting great answers, it accommodated the grievor.

[157] The employer was entitled to ask the questions that it asked. The grievor's position that once the accommodation was in place, it was fixed and could not be changed, is not correct. Accommodation is an ongoing process; needs can change, and accommodations can change.

[158] The grievor provided information in 2005 and suggested that an accommodation was suggested and accepted. He stated in his evidence that in the past, he had discussed the situation verbally with his supervisors; however, Mrs. Kaiser testified that the June 2016 questions document was the first time that she was aware that the employer had asked for any written detail and that she was surprised that it had not done so before then.

[159] There is no documentary evidence that anything was asked from 2005 until 2016. In 2005, *Johnstone* had yet to be the law.

[160] The employer did not deny that questions were asked; they were. The grievor might have thought that everyone was asking questions that were personal or intimate, but the questions arose from the decision in *Johnstone*. That is the context within which to gain an understanding of when the grievor could work. It could not reasonably have been expected to cause offence or harm.

[161] *Milinkovich* sets out the four main principles for accommodation on the basis of family status, as previously set out in *Johnstone* and *Tarek-Kaminker*.

[162] An accommodation serves to allow the employee to carry out their duties; it is assessed on a standard of reasonableness.

[163] Paragraphs 99 of *Nash* and 125 of *Leclair* restate the oft-quoted *Central Okanagan*, which provides that employees seeking accommodation have a duty to cooperate with their employers by providing information as to the nature and extent of their accommodation needs, which will enable their employers to determine the necessary accommodation. Further, in paragraph 99 of *Nash*, the Board states that "[i]f the grievor was not willing to be open and forthright in identifying his needs, then the employer cannot be held responsible."

[164] At paragraph 100, the Board states, “An employee is not entitled to a perfect accommodation, only a reasonable one ….” The grievor in this case is trying to dictate what he wants.

[165] In *Bourdeau*, at para. 199, the Board states, “Asking [an employee] periodically whether he was being accommodated can also credibly be viewed as part of a continuing effort to monitor the effectiveness of the accommodation measures.” Further, at paragraph 211, the Board holds that accommodation is an ongoing, cooperative process.

[166] Performance issues were noted and were outlined in the evidence. Ms. Aupin explained these issues, and they were recorded in his performance assessments. The grievor in his evidence stated that he disagreed with her assessment. If the grievor had disagreed with those performance appraisals, he could have challenged them, at that time; he did not. Ms. Aupin’s concerns were not minor fluctuations in his work during the working hours that did not have to be reported, but was he actually working? The issue was 300 hours. The grievor’s ability to be accessible to clients and managers was a valid concern.

[167] The grievor complained about Ms. Aupin referring to him as “you people”. If he had an issue with that, he should have brought it up then. This is a breach of s. 225 of the *Act*, as well as the rule in *Burchill*. This is not a technicality but fundamental; it would fundamentally change the nature of the grievance. With respect to this, the employer also referred to *Slivinski v. Treasury Board (Statistics Canada)*, 2021 FPSLREB 35 at paras. 235 to 237, where the grievor in that matter grieved her performance appraisal on the basis of discrimination. The grievor in this case did not.

[168] The articles produced about Mrs. Kaiser are not a large piece of the puzzle, as the grievor suggested. People who were not experts asked questions. If you look at the articles, they suggest that Mrs. Kaiser may be a lot more self-sufficient and need less assistance than the grievor led the employer to believe. Mr. Tepelenas admitted in his evidence that he did not know the details of quadriplegia. The grievor is supposed to provide information, not because it is in agreements but because it is the law.

[169] The employer did not rely on the articles to deny the accommodation; it relied on them to ask questions.

[170] *Boivin v. President of the Canada Border Services Agency,* 2017 PSLREB 8 stands for the proposition that the Board has no jurisdiction with respect to the *Privacy Act* (R.S.C., 1985, c. P-21). Additionally, there is no reasonable expectation of privacy, which would apply to public articles and publications. The information that the employer obtained about Mrs. Kaiser came from public sources.

[171] All the employer's witnesses said that the grievor could be confrontational and difficult. That does not change the character of the questions that were asked.

[172] The questions asked by Mr. Tepelenas were about how the hours that the grievor was working could be fit into the work of the BIQA. There is no suggestion that the accommodation afforded to the grievor of working from home ever stopped.

[173] There was no discipline or performance improvement plan. His time in Sudbury ended; he returned to the Toronto North TSO, and then the move was facilitated to the BIQA.

[174] In his evidence, the grievor said that he is a full-time caregiver and that he is also on standby. This begs asking the question of when he can be working. The employer is not disputing that the grievor has a spouse who has a disability and needs care. The employer had questions; the fact that it asked the questions was reasonable in the following circumstances:

- There were performance issues identified.
- Public articles stated certain things that did not suggest that 24/7 care was required for Mrs. Kaiser.
- The employer's managers are not experts in the care that Mrs. Kaiser requires.
- The grievor was changing jobs and work locations between 2015 and 2017.
- There was new jurisprudence, and new tests had been developed since the grievor's 2009 accommodation letter.

[175] With respect to remedy, the evidence disclosed that the grievor was suffering from a number of different issues, as well as stressors in his life. These included caring for his elderly parents, caring for his young daughter, building a new home, moving to the new home, his own stress, and situational stress.

[176] The grievor was paid all along. He received sick leave with pay. The purpose of sick leave is for when an employee is sick.

[177] The grievor would have you believe that the employer was "out to get him". The grievor made an assumption that because of Mrs. Kaiser's injury, there would be "no questions asked."

C. The grievor's reply

[178] The grievor stated that the employer conceded that there is a duty to accommodate, and it was not contested. The needs were accepted. The issue is what happened during the process.

[179] There should not be a link between performance and accommodation.

[180] The grievor testified that he had to explain to every supervisor; now, the employer is challenging the validity of the accommodation.

[181] With respect to the privacy issue, the information was gathered and shared secretly. What was the relevance of this information to the accommodation needs?

[182] Discriminatory intent is not required to prove discrimination.

IV. Reasons

A. Sealing documents

[183] The grievor submitted copies of clinical notes and records with respect to his health.

[184] The test for any discretionary limit on court openness was reformulated in *Sherman Estate v. Donovan*, 2021 SCC 25. At paragraph 38, the SCC set out the test as follows:

> *[38] … In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:*
>
> *(1) court openness poses a serious risk to an important public interest;*
>
> *(2) the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent this risk; and,*

> *(3) as a matter of proportionality, the benefits of the order outweigh its negative effects.*

[185] At paragraph 33, the Court talks about the issue of dignity as follows:

> *[33] … A court can make an exception to the open court principle, notwithstanding the strong presumption in its favour, if the interest in protecting core aspects of individuals' personal lives that bear on their dignity is at serious risk by reason of the dissemination of sufficiently sensitive information. The question is not whether the information is "personal" to the individual concerned, but whether, because of its highly sensitive character, its dissemination would occasion an affront to their dignity that society as a whole has a stake in protecting.*

[186] While some of the medical information was relevant to the hearing and is tangentially mentioned in this decision, the medical records should not be in the public domain, which would be a serious risk to the grievor's privacy and dignity, and that outweighs the deleterious effects outlined in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41. Therefore, I order sealed the documents that were submitted and that are part of Exhibit G-1, Tab 11.

[187] Additionally, entered into evidence were four of the grievor's performance appraisals, the 2014-2015 Y280, the 2015-2016 Y280, and the 2016-2017 and 2017-2018 Y280s. They contain references to identifying numbers with respect to either taxpayer files or taxpayer names.

[188] While the information about the grievor's performance in the time frame before the filing of the grievance adds context to understanding the issues in the grievance and the hearing, the identification of taxpayers by either a name or a reference number is not relevant and should not be in the public domain, as it would be a serious risk to those persons' privacy. It outweighs the deleterious effects outlined in *Sierra Club of Canada*, and as such, the information shall be sealed for a period of 30 days from the date of the decision, to allow the employer to file electronic versions of these documents, found respectively at Exhibit E-1, Tabs 24, 25, 26, and 27.

B. The merits of the grievance

1. What is the grievance?

[189] The first question I must answer is, what is the grievance?

[190] Normally, this is clearly spelled out in the grievance form presented by the grievor. In this case, however, the grievance form itself says one thing, and the appendix attached to it says something different.

[191] The grievance form is preprinted and created under the *Regulations*. It comprises two sections. The first one or top of the form is for the grievor to fill out, and it has four subsections or boxes, identified as A through D. Section 1 takes up approximately two-thirds of the form. Section 2, the bottom one-third, is to be completed by the bargaining agent, if applicable.

[192] Subsection (Box) A is for tombstone data about a grievor, such as their name and home address, phone number, and where they work, including an address, division, and section and their job classification.

[193] Subsection (Box) B is a large blank box that is titled, "Grievance details". In small print, in both English and French, it then has instructions for the employee who is grieving. The English instructions state as follows:

> …
>
> *… a statement of the nature of each act, omission or other matter that establishes the alleged violation or misinterpretation giving rise to the grievance including, as the case may be, a reference to any relevant provision of a statute or regulation or of a direction or other instrument made or issued by the employer that deals with the terms and conditions of employment or any relevant provision of a collective agreement or an arbitral award, or (ii) a statement of the alleged occurrence or matter affecting the grievor's terms and conditions of employment.*
>
> …

[194] On the grievance form, in Box B, the grievor wrote this: "That my Accommodation and Telework Agreement completed on April 26, 2017 remain unchanged until conditions change as informed by me."

[195] Below Box B is subsection (Box) C. It has instructions that state, "Date on which each act, omission or other matter giving rise to the grievance occurred." This is also set out in French. In this area, the grievor wrote April 26, 2017.

[196] The final subsection (Box) is D. In it is where a grievor sets out what they are seeking as corrective action; in it, the grievor stated the following:

- he wants to keep his position in North York while being allowed to work indefinitely in the Toronto East BIQA;
- he wants to be reinstated or be given leave with pay in lieu of all the certified medical leave that he took as a result of the CRA's actions; and
- he wants to be made whole in every way.

[197] Attached to the grievance form is a page that is typed and that is entitled, "GRIEVANCE DETAILS" (the appendix). The appendix says something different than what is set out in the "Grievance details" in the grievance form. It states that the grievor, under clause 19.01 of the collective agreement, is grieving that the CRA has discriminated against him due to his family status. He then sets out the background facts to his family status accommodation, stating that the cover letter to the accommodation agreement provided that since the prognosis for Mrs. Kaiser's disability is permanent, the onus was on the grievor to provide the CRA with notice of any change, so that it could review the plan accordingly. He then sets out what appears to be the basis of his grievance against the CRA, which is as follows:

> …
>
> *In late March 2016, the Toronto North CRA senior management started a review of my existing Accommodation and Telework agreements. This was started contrary to the conditions for such a review, as stipulated in the aforementioned agreement of November 2, 2009. This review was completed by the signing of revised Accommodation and Telework agreements on April 26, 2017.*
>
> *The new arrangements ultimately contained only minor changes of one half hour to my start and end time of work, 11:00 a.m. to 7:00 p.m., and changes to my reporting during the silent hours of 5:00 to 7:00 p.m.*
>
> *As a result of this inappropriate and unnecessary review I was required to provide a plethora of documentation regarding my wife and her care. This entire process has caused me a great deal of stress which culminated in my having to take certified stress leave.*

[198] It is clear to me based on the appendix that the grievor is not grieving the accommodation agreement signed in 2017 but instead the fact that the employer initiated a review of the existing accommodation agreement, the one entered into in 2009 and outlined in the 2009 accommodation letter. He goes on to state that as a result of "… this inappropriate and unnecessary review [he] was required to provide a plethora of documentation regarding [his] wife and her care."

[199] This is confirmed in the grievance hearing notes at the first and second levels, as well as in the grievance replies, which confirm that the issue that the grievor and the grievor's representative were concerned about was that the accommodation that the grievor was receiving should not have been subject to review and that the information requested was too personal and invasive.

[200] It is undisputed that Mrs. Kaiser suffered a debilitating injury in 1996 that left her with significant limitations and restrictions. Both the grievor and Mrs. Kaiser described what she was able to do and what she could not do. Despite her difficulties, the evidence before me revealed that she is very independent in much of what she does, albeit certain aspects of her daily routine require assistance from others. Some of the assistance provided came from the grievor, and some from PSWs and nurses.

[201] As a result of Mrs. Kaiser's injury and disability, from 2005 on, the grievor and employer had an agreement in place that permitted him to work from home and that allowed him to work his daily hours, usually with some flexibility, initially, in 2005, between 10:30 and 18:30, and then, starting in 2009, between 11:30 and 19:30.

[202] As part of the evidence, both the grievor and Mrs. Kaiser testified that care was provided daily by a PSW and a nurse for three hours in the morning.

2. Discrimination on the basis of the protected characteristic of family status

[203] The legal test for finding a *prima facie* case of discrimination on the protected ground of family status was set out by the Federal Court of Appeal in 2014 in *Johnstone*, at paras. 75 through 99.

[204] The first part of the test is that the complainant (or grievor, as the case may be) must establish that they have a characteristic protected from discrimination, that they experienced an adverse impact with respect to employment, and that the protected characteristic was a factor in the adverse impact. The steps required of a complainant (or grievor, as in this case) to establish a *prima facie* case of discrimination under the protected ground of family status are set out at paragraph 93 of *Johnstone* and are as follows:

> *[93] … (i) that a child is under his or her care and supervision;*
>
> *(ii) that the childcare obligation at issue engages the individual's legal responsibility for that child, as opposed to a personal choice;*

> *(iii) that he or she has made reasonable efforts to meet those childcare obligations through reasonable alternative solutions, and that no such alternative solution is reasonably accessible; and*
>
> *(iv) that the impugned workplace rule interferes in a manner that is more than trivial or insubstantial with the fulfillment of the childcare obligation.*

[205] *Canada (Attorney General) v. Hicks*, 2015 FC 599 (*Hicks*), at paras. 66 through 71, discusses family status and finds that the prohibited ground of family status should remain flexible to address unique circumstances, such as elder care.

[206] In *Grant v. Treasury Board (Canada Border Services Agency)*, 2021 FPSLREB 84, the Board dealt with a family status situation involving an employee's elderly mother. At paragraphs 97 through 99, the Board stated as follows:

> *[97] Before getting into the applicable tests to determine whether the grievor established a* prima facie *case of discrimination, I note that there is very little jurisprudence at the federal level on the notion of family status and the care of an elderly parent. In* Johnstone*, the Federal Court of Appeal dealt with a situation involving the care of a child and the obligations that flowed from that relationship; it did not deal with a situation involving the care of elderly parents.*
>
> *[98] The* CHRA *does not define "family" or "family status". However, in* B. v. Ontario (Human Rights Commission)*, 2002 SCC 66 at para. 4, the Supreme Court of Canada recognized that the broad goal of anti-discrimination statutes is furthered by embracing a more inclusive interpretation of the expression family status. That broad meaning of family status protects against adverse distinctions drawn based on the particular identity of one's family members or the type of family status one has (see* B. v. Ontario (Human Rights Commission) *at para. 39).*
>
> *[99] Recognizing a broad and liberal interpretation of the meaning and scope of family status, the Federal Court of Appeal in* Johnstone *found that the ground can also include family circumstances (see* Johnstone *at paras. 53-67). While the family circumstances at issue in* Johnstone *were with respect to the relationship of a parent towards their child, such family circumstances have also been recognized to exist with respect to other familial relationships, including of a child towards their parent. In cases such as* Devaney *and* Bharti*, it was accepted that family status also applies to situations involving the care of elderly parents.…*

[207] While *Johnstone* dealt with an employee's family status vis-à-vis childcare responsibilities, as suggested in both *Hicks* and *Grant* the *Johnstone* test set out by the

Federal Court can be used in addressing family status with respect to elder care; and as such, it can also be used when addressing it with regard to a spouse.

[208] Additionally, in *Grant*, at paragraphs 108 through 111, the Board extrapolated the test set out in *Johnstone*, for childcare obligations, in relation to care for an elderly parent. As such, in assessing the grievor's situation, the questions being brought forward are not with respect to a child or children but in this case, the grievor's spouse.

[209] Paragraphs 94 through 97 of *Johnstone* set out the four progressive steps of how the *prima face* test is established by someone claiming discrimination on the protected ground of family status. I say progressive steps because each of the steps of the test must be established before moving to the next. If at any point during the assessment, any of the four steps is not established, then the test cannot be satisfied.

[210] In inquiring into what being "under [the] care or supervision" means, the Court stated at paragraph 94 of *Johnstone* as follows:

> *[94] The first factor requires the claimant to demonstrate that a child is actually under his or her care and supervision. This requires the individual claiming* prima facie *discrimination to show that he or she stands in such a relationship to the child at issue and that his or her failure to meet the child's needs will engage the individual's legal responsibility. In the case of parents, this will normally flow from their status as parents. In the case of* de facto *caregivers, there will be an obligation to show that, at the relevant time, their relationship with the child is such that they have assumed the legal obligations which a parent would have found.*

[211] In assessing this first factor, the facts that need to be shown are that Mr. Kaiser has a relationship with Mrs. Kaiser and that she is under his care and supervision. In answering this question, there is no doubt that there is a relationship between the two, as they are married. However, it is the second part of this first question that is problematic, the portion that deals with her being under his care and supervision. The evidence did not disclose this. Indeed, the evidence quite clearly disclosed that Mrs. Kaiser is a highly competent, highly educated, and independent individual who at times requires assistance carrying out certain functions of daily life. The question is not if the grievor felt a moral responsibility or obligation; the question is whether Mrs. Kaiser is under his care and supervision. She is not.

[212] The facts here are very similar to those outlined in *Grant* at paragraph 110, where in that case while the grievor's mother was seriously ill, she was autonomous for most of the time; and, while the grievor asserted that her mother needed help and care and felt an obligation to do so, there was no evidence to establish that a failure by the grievor to provide that care would result in those needs not being met or engage any legal responsibility.

[213] As Mrs. Kaiser is not under his care and supervision, the first factor in the test is not established, and as such, there is no way that the grievor can establish a *prima facie* case of discrimination under the protected ground of family status, and the grievance cannot succeed.

[214] For argument's sake, I have also looked at and assessed the grievor's situation under both the second and third factors. The second factor is set out at paragraph 95 of *Johnstone* as follows:

> *[95] The second factor requires demonstrating an obligation which engages the individual's legal responsibility for the child. This notably requires the complainant to show that the child has not reached an age where he or she can be reasonably be expected to care for himself or herself during the parent's work hours. It also requires demonstrating that the childcare need at issue is one that flows from a legal obligation, as opposed to resulting from personal choices.*

[215] The second factor requires that the grievor demonstrate an obligation that engages his legal responsibility to Mrs. Kaiser. The grievor's failure to provide care or supervision to Mrs. Kaiser would not engage a legal responsibility. Again, as stated previously, the evidence disclosed that Mrs. Kaiser is a highly competent, well-educated and independent individual. Again, while there is evidence that at times, she may require assistance in some functions of daily living, she often does many things completely independent of the grievor, including wheeling herself in her wheelchair and getting in and out of a van and driving it to school or other venues, where she navigates those premises on her own. The grievor has not established that a legal responsibility has been engaged. While there is, in any marriage, give and take, as spouses support one another and move through life together, if either of them wishes to leave the other, in short, to separate and possibly divorce, in this case, there does not appear to be a legal obligation on the grievor to provide Mrs. Kaiser with care and supervision.

[216] In assessing this second factor, there is no legal responsibility that is engaged, and as such, even if I was incorrect in my assessment of the first factor, the grievor would not get past the second factor.

[217] For argument's sake, I have also looked at the third factor in *Johnstone*, which the Court set out at paragraph 96 as follows:

> *[96] The third factor requires the complainant to demonstrate that reasonable efforts have been expended to meet those childcare obligations through reasonable alternative solutions, and that no such alternative solution is reasonably accessible. A complainant will, therefore, be called upon to show that neither they nor their spouse can meet their enforceable childcare obligations while continuing to work, and that an available childcare service or an alternative arrangement is not reasonably accessible to them so as to meet their work needs. In essence, the complainant must demonstrate that he or she is facing a* bona fide *childcare problem. This is highly fact specific, and each case will be reviewed on an individual basis in regard to all of the circumstances.*

[218] Again, the situation herein is similar to that in *Grant*, where at paragraph 111, the Board states that while the grievor asserted that she could not rely on others to take care of her mother in the all encompassing way that she required, the evidence did not support this claim or establish what all encompassing care her mother required from that grievor.

[219] Again, as I have already noted, it is clear from the facts that Mrs. Kaiser has a significant level of independence. However, there are certain tasks that she requires assistance with from others. As such, she is provided with a PSW and nurse on a daily basis for three hours, starting at 08:00. The evidence of the grievor was that at times, a nurse or PSW was not available, and that when a new PSW or nurse was assigned to work with Mrs. Kaiser, he had to train them. The evidence also disclosed that there were times outside of when the nurse and PSW were at the Kaiser home in which Mrs. Kaiser might have required support and assistance. Both the grievor and Mrs. Kaiser said that this was provided by the grievor.

[220] I have no doubt that this was the state of affairs that existed at the time in issue. The question posed for the third factor is not whether Mrs. Kaiser needed some assistance; that is a given. It also is not whether the grievor was providing care and assistance; again, I have no doubt that he was. The question is whether there was an

alternative arrangement to allow **the grievor** to meet his work needs. To satisfy this third factor, the grievor must show that he faced a bona fide problem.

[221] The evidence about Mrs. Kaiser disclosed that she is fairly independent, both in and outside the house. She indicated in her evidence that she goes places and does things on her own. An example was that she attended in-person classes at the UofT. She got there by driving herself in her modified van. The evidence did not disclose that she required the grievor to drive her or attend with her.

[222] The grievor's evidence about him having to train new nurses and PSWs is problematic. I also have no doubt that the grievor did at times provide this instruction; however, the question to be answered is not that he carried out this task but that there was no alternative.

[223] Nurses and PSWs are trained professionals and have a certain level of knowledge to be able to do what is necessary to carry out their job functions. I also have no doubt that every patient who requires nursing and PSW care, or assistance, is different and that every home, facility, or equipment layout may be a little different. That said, Mrs. Kaiser is the one who needs the care and assistance and is, from the evidence before me, more than competent to give instructions and explain things to a new nurse or PSW. I also have no doubt that if a nurse or PSW required instruction or information, she could have provided it. Mrs. Kaiser certainly had no difficulty expressing herself before me at the hearing and conveying information that was asked of her by both counsel and me.

[224] The situation is different if a nurse or PSW does not show up as required. The evidence on this was in essence that the grievor steps in and does their tasks. When asked how often this occurred, his answer was hundreds of times.

[225] I do not doubt that there were times when a nurse or PSW who otherwise was supposed to attend did not, and the tasks normally carried out by them were carried out by him; however, it is insufficient for the grievor to make a statement that it happened hundreds of times, without providing any additional evidence. Did the grievor take notes or keep a record of this; if so, where is it? The service provider of the nurses and PSWs would have records; those records could have been requested and provided, as this work is paid for, and an accounting had to have been done at some level. The grievor's statement that this happened hundreds of times falls far short of

the requirement to provide evidence on a balance of probabilities. But this, in and of itself, is insufficient to satisfy the third factor of the test.

[226] The evidence from the grievor was that Mrs. Kaiser's routine was quite regimented. The nurse and PSW came at 08:00 because the tasks that she required assistance with were those that took place on a regular basis first thing in the morning. But the third factor is not about the employee having to step in and carry out the functions but that an alternative arrangement is not reasonably accessible to them, to meet their work needs.

[227] The arrangement was in place and appeared to largely be working. I did not hear any evidence about what sort of potential alternative arrangement could have been put into place or what steps were taken to look into this. I expect that in situations in which a health-services provider is providing a PSW and nurse on a daily basis for three hours of care to someone who relies on that service, they have some sort of contingency plan. Was there one? If not, why not? Again, this is something that the grievor would have had access to and could have obtained and provided evidence of.

[228] While I did not hear any evidence on the topic, there would certainly be other persons who require the care of nurses and PSWs who do not have the advantage of a spouse or live-in significant other and who rely on the service. It is incumbent for a grievor who is attempting to establish a breach of the family status portion of the no-discrimination clause of the collective agreement to provide sufficient evidence to satisfy the Board that they have exhausted all alternative arrangements.

[229] Additionally, as would be the case for a regular childcare plan that an employee may have in place, there will always be situations in which something unexpected may happen, such as the caregiver is ill or has an emergency of their own to deal with that throws the childcare plan out the window for the day or a few days. Additionally, childcare providers may take vacations, and as such, a plan has to be in place to deal with these sorts of things.

[230] As I am satisfied on a balance of probabilities that the grievor has not satisfied any of the first, second, or third factor of the *Johnstone* test, to establish a *prima facie* case of discrimination on the basis of family status, there is no need to do any further analysis in this respect.

[231] For these reasons, the grievor did not establish a *prima facie* case that he was discriminated against on the basis of family status.

[232] Based on the wording of the grievance, the allegations made by the grievor do not meet the definition of any of the protected characteristics listed under article 19 of the collective agreement.

3. No right to a procedural process for accommodation

[233] While the grievor can certainly grieve under s. 208 of the *Act* what he believes is an act that negatively impacts his work or job, the jurisdiction of the Board to hear that grievance is circumscribed by s. 209. Section 209 provides that for the Board to have jurisdiction, the grievance in issue must fall within the parameters set out in ss. 209(1)(a), (b), (c), or (d).

[234] This grievance was referred to adjudication under s. 209(1)(a) of the *Act*, which permits the Board to hear grievances that address the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award.

[235] The Federal Court of Appeal, in both *Cruden*, at paragraph 24 and *Duval*, opined on whether there is a separate procedural right to accommodation. Both cases stated that there is not. At paragraph 25 of *Duval*, the Court stated as follows:

> *[25] … In* Canada (Human Rights Commission) v. Canada (Attorney General)*, 2014 FCA 131, [2015] 3 F.C.R. 103 (F.C.A.), this Court held that there is no separate procedural right to accommodation that imposes any particular procedure that an employer must follow in seeking to accommodate an employee. Rather, in each case, it will be a question of fact as to whether the employer has established that it accommodated a complainant up to the point of undue hardship.*

[236] The Board in *McNabb v. Treasury Board (Canada Border Services Agency)*, 2024 FPSLREB 143, at paragraph 127, has also stated, citing both *Cruden and Duval*, that there is no standalone procedural right to accommodation that requires an employer to follow a specific process or formula.

[237] *Tarek-Kaminker* is a decision that I rendered recently; it was upheld by the Federal Court of Appeal on judicial review. It dealt with a grievance involving telework and accommodation, not only on the basis of family status but also on the basis of a

disability and religion. In it, I addressed the issue of telework in the workplace, and accommodation. At paragraph 201, I stated as follows:

> *[201] Telework is a manner in which an employee can carry out the duties of his or her employment with the concurrence of the employer. It involves working from a location, usually an employee's home, rather than the employee's normal place of work. Usually, it is most conducive with respect to jobs that are office related and that do not require some form of physical presence in the work location. Neither the* CHRA *nor any clause of the collective agreements that may be relevant in this matter provide that telework is a protected right. But it can form the basis of an accommodation that can be used in cases in which a protected right may be at issue.*

[238] In this case, the wording of the "Grievance details", found in the appendix, specifically states that what the grievor is grieving is the "inappropriate and unnecessary review" that was "initiated [i]n late March [of] 2016 of [his] existing Accommodation and Telework agreements." The grievor further states that this review "… was started contrary to the conditions for such a review, as stipulated in the aforementioned agreement of November 2, 2009."

[239] It is clear is that the grievor grieved that the employer initiated a review of his working arrangement that allowed him to 1) work from home every day (telework), and 2) complete his work with some flexibility in his working hours. The grievance is clearly about the questioning by the employer of the grievor's telework arrangement; the questioning by the employer is clearly a process. Additionally, during the grievance hearing with Mr. Tsetsos on May 31, 2017, while his representative said that he was not grieving the accommodation process, the grievor stated that he was.

[240] As set out by the Federal Court of Appeal in *Cruden* and *Duval*, there is no protected right of an accommodation process. There is also no provision of the collective agreement that requires the employer to carry out a specific process with respect to accommodation for a protected characteristic in any particular manner or, more to the point, not in any particular manner. As set out in *Tarek-Kaminker*, telework is not a protected right under the collective agreement. As such, there can be no breach of the collective agreement by virtue of the employer conducting a process to validate either an accommodation agreement or a teleworking agreement.

[241] It also needs to be clear that this is not about whether the employer accommodated the grievor. It is about whether the employer discriminated against the grievor on the basis of the protected characteristic of family status. Employees can be accommodated by employers in a non-human-rights sense. Accommodations can be made for any number of situations that may arise in the workplace that do not engage the no-discrimination clause of a collective agreement or human rights legislation. An example is accommodating an employee with respect to allowing them to work from home on a particular day, to allow them to get to a personal meeting or event after work, without having to leave work early or take leave. In short, someone is being accommodating in the way they are managing the work environment. This is different than a workplace accommodation that is put in place to address a protected characteristic, such as a disability or family status situation.

[242] In the end, this case is not about whether the grievor was accommodated or whether he was entitled to an accommodation. It is whether the employer discriminated against him by initiating the review of the accommodation agreement.

[243] It is clear that throughout the period in issue, from roughly about 2005 until well after the grievance was filed, the employer was permitting the grievor to work from home, with a certain flexibility in his hours. There is no evidence that this accommodation, no matter in what context it may be defined, was ever denied or changed without the consultation and agreement of the grievor.

4. The application of the *Burchill* principle

[244] The *Burchill* principle is based on the Federal Court of Appeal's decision set out in *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.). This decision set out that a grievor is not entitled to alter their grievance at adjudication. The operative part of that decision that sets this principle out is at page 110 and states as follows:

> *In our view, it was not open to the applicant, after losing at the final level of the grievance procedure the only grievance presented, either to refer a new or different grievance to adjudication or to turn the grievance so presented into a grievance complaining of disciplinary action leading to discharge within the meaning of subsection 91(1). Under that provision it is only a grievance that has been presented and dealt with under section 90 and that falls within the limits of paragraph 91(1)(*a*) or (*b*) that may be referred to adjudication. In our view the applicant having failed to set out in his grievance the complaint upon which he*

> *sought to rely before the Adjudicator, namely, that his being laid off was really a camouflaged disciplinary action, the foundation for clothing the Adjudicator with jurisdiction under subsection 91(1) was not laid. Consequently, he had no such jurisdiction.*

[245] The Board and its predecessors have applied the principle to hold a party bringing forward an issue before the Board to the issue that it is complaining of, whether that issue is brought forward by the grievance or complaint process.

[246] This grievance is not about the grievor's performance appraisal; nor is it about the alleged comment by Ms. Aupin in which she allegedly used the term, "you people". Quite simply, it is about the grievor's allegation that management was, in short, asking him about the accommodation afforded to him due to his spouse's disability and his belief that the employer had, starting in March of 2016, conducted an inappropriate and unnecessary review of the accommodation, which included invasive questions. As a part of this, he alleges that the process caused him undue stress and required him to take certified stress leave.

[247] During the course of the grievance process, the grievor raised many issues relating to the accommodation that he was receiving and the steps taken by the employer to conduct a review of the accommodation in place, starting in March of 2016.

[248] The grievor did not file grievances about any alleged comment by Ms. Aupin; nor did he file grievances about his performance appraisals. He did not. He could not then try to bootstrap them to a grievance that he made, alleging that the employer should not have conducted a review of the accommodation.

5. Was the information requested by the employer a breach of the collective agreement or somehow a breach of its no-discrimination clause?

[249] The answer to this question is, simply, "No."

[250] I was not presented with any evidence or any submission that would suggest that asking questions about information that pertains to issues involving either a request for an accommodation or to ensure that an accommodation is either necessary or can be modified is covered by or referenced in the collective agreement.

[251] At the heart of the grievance is the request by the employer for information with respect to Mrs. Kaiser and the grievor about her disability and the grievor's

accommodation request. The grievor maintains that the requested information was too personal and too invasive. The information requested was set out in two letters dated June 30, 2016, one sent to Mrs. Kaiser's treating physician, and the other to the grievor. The questions in those letters are set out in the evidence section of this decision.

[252] In any case of an accommodation being requested, it is incumbent on the parties to the accommodation to know what is at issue. The jurisprudence with respect to accommodation sets out that an accommodation need not be perfect; nor need it be the accommodation that is preferred. It need only be one that works.

[253] The grievor's position is that Mrs. Kaiser's injuries, sustained in an accident, are permanent and will not change. While that may be true, many other things can and do change. Early on in the evidence, a question was put to the grievor about what he shared with his section manager, the one who signed the 2009 accommodation letter, Mr. Rice, about Mrs. Kaiser's restrictions and limitations. The grievor's answer was very telling. He said that he "assumed" that Mr. Rice knew, that Mr. Rice never asked, and that he did not know if Mr. Rice knew.

[254] In testifying about what Ms. Aupin knew or did not know about Mrs. Kaiser's situation and the grievor's accommodation, the grievor stated that he "didn't know what she was told." Ms. Aupin confirmed that she had not been provided with a copy of the 2009 accommodation letter; she received the telework agreement, and the grievor explained the accommodation to her.

[255] Some seven years later, the employer asked Mrs. Kaiser's doctor questions about the restrictions and limitations that she has and asked the grievor about the things that he did to assist Mrs. Kaiser with respect to those restrictions and limitations. The manner in which the seven questions were put to the grievor were clearly centred on issues directly related to accommodating the grievor, if necessary, in relation to the protected characteristic of family status; they were all relevant, as were the questions posed to Mrs. Kaiser's physician. All the questions went directly to the issue of accommodation on the basis of family status.

[256] It is no different than posing questions to an employee with respect to accommodating them for family status for a child or for a disability or for a religious ground. The employer is entitled to know the basis upon which the accommodation is

being based and is entitled to have, within reason, sufficient information to allow it to formulate or reformulate, as the case may be, an accommodation.

[257] Both the grievor and Mrs. Kaiser confirmed that this was the first time that the employer had put any questions to him about his wife's situation in writing, and it was also the first time that anyone had asked her physician anything.

[258] The answers to the questions posed came from the grievor and Mrs. Kaiser; her physician signed off that she concurred with what Mrs. Kaiser wrote. The information provided might have been detailed, and, quite frankly, it might have been too detailed. The grievor and Mrs. Kaiser determined what they were going to tell the employer. The questions were quite broadly based, and the level of detail provided was determined by the grievor and Mrs. Kaiser.

[259] It is well established in the federal public sector jurisprudence that the accommodation process should be a tri-party inquiry that includes the employee, the employer, and the union. The grievor and Mrs. Kaiser provided a lot of information in response to the employer's questions; perhaps some of that information was superfluous to the employer's needs. However, the employer did not drag that information out of them; nor did it insist — the employer merely asked the questions. It was the grievor and Mrs. Kaiser who drafted the responses and sent the information. Had the grievor engaged his bargaining agent, then someone versed in this area might have been able to assist, and perhaps, less information would have been provided, and perhaps, the response letters could have been tempered and the detailed information might have been far less detailed. The fact that the grievor and Mrs. Kaiser provided detailed and perhaps too-personal information is not the employer's fault. A union tends to be more proficient at dealing with such situations, as it has dealt with them before. Its involvement at an earlier stage might have eliminated much of the problems that followed.

[260] Furthermore, the grievor made submissions about the request for medical information. The case law submitted by the grievor in this respect is distinguishable, as those cases deal with information relative to an employee. The employer was not asking the grievor about his medical condition.

6. Harassment

[261] Clause 19.01 of the collective agreement also protects employees from harassment on the basis of family status.

[262] In his submissions, the grievor categorized the questions put to him and Mrs. Kaiser as adverse behaviour and stated that the questions were inappropriate, invasive, wide-ranging, and probing, which required them to provide intimate, detailed information, which was an invasion of their privacy. The time in issue was during the accommodation process in 2016 and 2017.

[263] To be more exact on this time frame, we must turn to the evidence. The following facts are clear:

- The grievor went on sick leave on June 19, 2016.
- The first written request for information by the employer was on June 30, 2016. Two letters were sent by Mr. Arumugam, one to the grievor, and one for Mrs. Kaiser's doctor.
- The grievor responded to Mr. Arumugam's request in writing on July 5, 2016. The date of the response from Mrs. Kaiser's doctor is not clear, but there was no further request by the employer of Mrs. Kaiser's doctor.
- Mr. Arumugam wrote to the grievor on August 2, 2016, stating that "the CRA has approved your Accommodation request and Telework Agreement, until further review is deemed necessary."
- Before August 2, 2016, the grievor's daily hours of work were from 11:00 to 19:00. After August 2, 2016, it was agreed that they would be from 11:30 to 19:30.
- On August 19, 2016, after accepting the position at the BIQA, the grievor wrote to Mr. Tepelenas and told him that after speaking with Mrs. Kaiser and considering all the variables, his work hours should be 11:00 to 19:00, with a buffer of 10:00 to 21:00.
- The grievor returned to work on October 3, 2016, only to go off work a week later due to what appeared to be an injury from moving materials during his house move.
- The new accommodation agreement and telework agreement were signed sometime in April of 2017.

[264] It is clear that what set the wheels in motion, and the requests for the information about Mrs. Kaiser, came out of Ms. Aupin's supervision of the grievor's

work and her assessment that something was off with respect to the amount of time that he was spending on files. She testified and the documentary evidence supports that she was concerned that the grievor might have been involved in time theft. This led to her speaking with her manager and then the involvement of the IAFCD, to look into the concern. In the end, the IAFCD closed its file, but in reporting back to Ms. Aupin and her superior, Mr. Messier, it advised them that it thought that this could be a performance issue. It suggested that they speak with LR and identified the information that it found on accommodation and on Mrs. Kaiser.

[265] It is clear that the employer, and specifically, the grievor's managers at the Sudbury TSO, were concerned about his performance, which is backed up by the emails sent between themselves as well as what Ms. Aupin set out in the Y280 assessments of the grievor's work.

[266] The fact that the grievor's managers believed that he was underperforming and that there were issues related to his performance that might have been related to his telework arrangement does not somehow equate to discrimination. The employer is entitled to ask questions related to performance and the potential that the accommodation measure in place may be a contributing factor.

[267] Accommodation is about leveling the playing field. It is to ensure that someone with a protected characteristic is not disadvantaged in the workplace because of that characteristic. It is not about giving those employees with a protected characteristic an advantage over others; nor is it about absolving them of meeting the standards and requirements of their jobs.

[268] In *Ryan v. Treasury Board (Department of National Defence)*, 2004 PSSRB 18 (application for judicial review dismissed, 2005 FC 65), in discussing the issue of harassment, the Board stated at paragraph 60 that it is the grievor who bears the burden of proof in establishing that the events in issue constituted harassment. Paragraph 61 states in part as follows:

> *[61] … However, not all uncomfortable human interaction can be considered "harassment" or "intimidation". In* Joss (supra)*, the adjudicator noted, at paragraphs 90 and 96:*
>
> … harassment should not be founded upon non-consequential incidents, non-culpable errors of judgement or foolish behaviour. Neither, in my view, should it be

> employed as a weapon in the workplace, especially where such use is furthering personal vendettas. The proper function of the law of harassment and harassment policies in the work place is not to cause problems or exacerbate interpersonal disputes, but to protect those in need of protection.
>
> …
>
> Hard feelings, feelings of resentment, and out right feuds between employees crossing all ranks are not unique in employment relationships. Such situations do not always amount to harassment and more often than not, are two-way streets. Those problems are not necessarily effectively remedied by disciplinary action, and certainly not by indiscriminate use of harassment policies or harassment complaints as this unfortunate tale reveals.

[269] In *Joss v. Treasury Board (Agriculture & Agri-Food Canada)*, 2001 PSSRB 27, the Board stated at paragraphs 59, 63, and 64 as follows:

> *[59] According to the Treasury Board policy, for general harassment to exist, there must be 1) objectionable conduct; 2) the conduct must be directed at the complainant; 3) the conduct must be offensive to that employee; 4) the perpetrator must know or ought to have known, the conduct would be unwelcome; 5) the conduct must demean, belittle, or cause personal humiliation or embarrassment to the complainant; and 6) the incident may be conduct, comment or display made either on a one-time or continuous basis. Therefore, in harassment that is not sexual in nature, it is not sufficient that the conduct was improper and that the perpetrator knew or should have known it would be unwelcome; the object of the conduct must find it offensive, and the conduct itself must be objectionable because it demeaned, belittled, or caused personal humiliation or embarrassment to the victim. As a result, harassment that is not sexual contains both an objective and subjective element. The objective element is that the conduct must be objectionable and be demeaning, belittling, or have caused personal humiliation or embarrassment. The subjective element is that the victim or object of the conduct must have found it to be offensive for one of those reasons.*
>
> …
>
> *[63] More importantly it must be clearly understood that harassment is not a weapon to be placed at the disposal of people in the workplace. It does not belong in disputes or disagreements that frequently arise between employees, or between managers and employees. Nor should it be used as a tool to resolve such disagreements or disputes - although the discussion and mediation approach contained in harassment policies is a constructive way of addressing personal, or authority based, disputes in the workplace.*

> *[64] … In addition, harassing conduct requires some intent or alternatively, that the objectionable or offensive nature of the conduct be reasonably apparent.…*

[270] The grievor's argument is grounded in the employer asking questions with respect to the telework arrangement that was in place for the grievor, in which his work was carried out at his home, and his work hours were between the hours of 11:30 and 19:30. The wording in the grievance itself, the documentation from the grievance hearings, and the grievance replies all reference the grievor's perception of what happened. The employer did ask questions about Mrs. Kaiser's limitations and restrictions and about the grievor's participation in assisting her due to these limitations and restrictions.

[271] According to the definition set out in *Joss*, at paras. 59, 63, and 64, harassing behaviours have both a subjective and an objective component. Additionally, the behaviour has to include conduct that is considered objectionable and that is directed at the party complaining of it, who must find it offensive. In addition, the perpetrator knows or ought to have known that the behaviour would have been unwanted and that it would demean, belittle, or cause personal humiliation or embarrassment.

[272] Additionally, in both *Joss* and *Ryan*, the Board stated that harassment is not about non-culpable errors of judgement; nor should harassment be used as a weapon in the workplace or by parties in disputes between managers and employees or to resolve disputes or disagreements. Finally, *Joss* indicated that some intent behind the objectionable or offensive nature of the conduct must be reasonably apparent.

[273] I do not find that the questions that were put to the grievor with respect to the situation involving Mrs. Kaiser's limitations and restrictions, and his participation in assisting her with some of her daily needs, was objectionable behaviour. Nor do I find that by asking the questions, they were meant to be objectionable or offensive. They also were not belittling or meant to cause personal humiliation or embarrassment. I do not see any evidence that the grievor was belittled, humiliated, or embarrassed.

[274] The evidence disclosed that the grievor believed that the fact that Mrs. Kaiser's injuries left her with a permanent disability meant that he would not be required to answer questions about the accommodation unless he notified the employer of a change in her circumstances. He interpreted this to mean that nothing would occur

with respect to his work situation (telework) unless he informed the employer of a change.

[275] That is not actually what the 2009 accommodation letter stated. Although it did state that it was incumbent upon the grievor to advise the employer of any changes, it also stated that it was subject to the satisfactory performance of his duties. Placing the burden on the grievor to advise the employer of changes in his situation did not mean that the employer could not make inquiries; nor did it mean that the accommodation measures in place could not change. As the jurisprudence of the Board, as well as the courts, including the Supreme Court of Canada, has held, an accommodation need not be the perfect accommodation, the best accommodation available, or the most favoured accommodation (from the perspective of the grievor or complainant).

[276] The fact that the genesis of the process of asking questions about Mrs. Kaiser's situation and the assistance that the grievor provided came as a result of concerns raised in the grievor's Y280s, and later the IAFCD highlighting that perhaps what the supervisors thought might be fraud might be a performance issue that could be related to the telework due to Mrs. Kaiser, did not somehow change the inquiry into harassment. It is not harassment or discriminatory to ask legitimate questions.

[277] What came across clearly in the evidence was that during this time frame, the grievor was highly agitated and distressed by what he perceived as persistent badgering about his arrangement of working from home. I do not see the facts as unveiling themselves in this manner.

[278] What I see clearly from the facts, and as disclosed in the clinical notes, is that at the time in issue, the grievor appeared burdened with a significant amount of stress, triggered by several different sources. These were identified in several of the clinical notes and were, in no particular order, identified as his work, Mrs. Kaiser's situation, his aging parents and their need for more care, the lack of support he perceived from his brother for his parent's situation, his young child, and the issues surrounding the building of his and Mrs. Kaiser's new home. All these stressors appeared to have come together during the late spring, summer, and early fall of 2016.

[279] Additionally, it is clear that the grievor was having health issues of his own, issues that were, at least from the clinical notes and records produced, medical in

nature and totally unrelated to stress, from any source. I suspect that those personal health issues, unrelated to the stress issues, could well have created additional stress.

[280] I fully understand the grievor's frustration at the situation that was evolving, given everything that he was dealing with.

V. Miscellaneous

[281] In his submissions, the grievor referenced that the employer suggested that he was "prickly" in his demeanour. He suggested that this was part and parcel of a phenomena akin to blaming the victim, as set out in *Naraine*. The grievor alluded to this as being part of the employer's discriminatory action.

[282] The clinical notes made several references to the grievor and anger issues. The June 10 clinical note references the grievor as being "pissed off", that he is impulsive in his responses, and that he will deal with issues head-on and go straight to the top of the authority chain. It references him as understanding that he needs to "step back" and "re-evaluate". The letter written by Dr. Azoulay states, "He discussed having issues with anger and trust." It further references him standing up for his rights and those of others but states that "… his methods cause some difficulties, and are not the most effective he could choose …". The September 30 clinical note references him as having "situational anger" with respect to the construction of the new home.

[283] Given the evidence in the clinical notes about the grievor and the topic of anger in relation to him, I do not accept that the grievor has satisfied on a balance of probabilities that the employer was either labelling or mislabelling him, as the case may be, as prickly. Indeed, at best, Ms. Aupin found him difficult.

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

(The Order appears on the next page)

VI. Order

[285] The grievance is denied.

[286] Exhibit G-1, Tab 11, is ordered sealed.

[287] Exhibit E-1, Tabs 24 through 27, are ordered sealed for a period of 30 days from the date of this decision, to permit the employer to provide copies of these documents with the information redacted that is referenced in these reasons.

December 19, 2025.

John G. Jaworski,
a panel of the Federal Public Sector
Labour Relations and Employment Board