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

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

BETWEEN

JAMIE MCNEIL

Grievor

and

DEPUTY HEAD
(Department of Agriculture and Agri-Food)

Respondent

Indexed as
McNeil v. Deputy Head (Department of Agriculture and Agri-Food)

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: Juliana Saxberg, counsel

For the Respondent: David Labelle, counsel

Heard at London, Ontario,
November 26 to 29, 2024, and February 5 to 7 and April 8 to 11, 2025,
and by videoconference,
May 1, 2025.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Jamie McNeil ("the grievor") was employed by the Treasury Board ("the employer") as a research technician classified at the engineering and scientific support (EG) 5 group and level at Agriculture and Agri-Food Canada (AAFC) at its London, Ontario, research and development centre (LRDC) in its Research, Development and Technology division (RDT). By letter dated October 7, 2022, he was terminated from his position, effective that day.

[2] On October 28, 2022, the grievor grieved the employer's decision to terminate his employment and alleged that it had discriminated against him. As relief, he requested that the following occur:

- the employer rescind the termination;
- he be allowed to remain on leave without pay (LWOP) status due to illness or injury until he can return to work;
- his rights to the dental plan, disability insurance, and all other benefits dependent on employee status be preserved and protected;
- when he returns to work, he be accommodated;
- the employer cease and desist from its discriminatory practices;
- the employer reimburse him for any salary, leave, and benefits or other entitlements lost as a result of discriminatory practices;
- he receive compensation pursuant to s. 53 of the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; *CHRA*); and
- he be made whole.

[3] As of the time of his termination of employment, his terms and conditions of employment were partially governed by a collective agreement between the employer and the Public Service Alliance of Canada ("the Alliance" or "the union") for the Technical Services Group that was signed on October 23, 2020, and that expired on June 21, 2021 ("the collective agreement").

[4] A significant portion of the testimony, as well as narratives in documents entered as exhibits, speak to interpersonal relationships or alleged interpersonal

relationships of employees or former employees who worked at the LRDC. Some of the testimony and narratives are based on assumptions, perceptions, and speculations. As such, in some circumstances, I have identified persons solely by a designation that anonymizes them.

II. Summary of the evidence

A. The collective agreement, and policies

[5] Clause 19.01 of the collective agreement is the no-discrimination clause and states as follows:

19.01 *There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practised with respect to an employee by reason of age, race, creed, colour, national or ethnic origin, religious affiliation, sex, sexual orientation, gender identity and expression, family status, marital status, mental or physical disability, membership or activity in the Alliance 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-e 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 ou expression de genre, sa situation familiale, son état matrimonial, ses caractéristiques génétiques, son incapacité, son adhésion à l'Alliance ou son activité dans celle-ci ou une condamnation pour laquelle l'employé-e a été gracié.*

[6] Clause 48.01 of the collective agreement is the LWOP for personal needs clause and states as follows:

48.01 *Leave without pay will be granted for personal needs in the following manner:*	***48.01*** *Un congé non payé est accordé pour les obligations personnelles, selon les modalités suivantes :*
a. subject to operational requirements, leave without pay for a period of up to three (3) months will be granted to an employee for personal needs;	*a. sous réserve des nécessités du service, un congé non payé d'une durée maximale de trois (3) mois est accordé à l'employé-e pour ses obligations personnelles;*
b. subject to operational requirements, leave without pay for	*b. sous réserve des nécessités du service, un congé non payé de plus*

more than three (3) months but not exceeding one (1) year will be granted to an employee for personal needs;	*de trois (3) mois mais ne dépassant pas un (1) an est accordé à l'employé-e pour ses obligations personnelles;*
c. an employee is entitled to leave without pay for personal needs only once (1) under each of paragraphs (a) and (b) during the employee's total period of employment in the public service. Leave without pay granted under this clause may not be used in combination with maternity or parental leave without the consent of the Employer.	*c. l'employé-e a droit à un congé non payé pour ses obligations personnelles une (1) seule fois en vertu de chacun des alinéas a) et b) du présent paragraphe pendant la durée totale de son emploi dans la fonction publique. Le congé non payé accordé en vertu du présent paragraphe ne peut pas être utilisé conjointement avec un congé de maternité ou de parental sans le consentement de l'employeur.*

[7] Entered in evidence was a copy of the employer's *Directive on Leave and Special Working Arrangements* ("the leave directive") in force at the time of the facts relevant to the grievance. Those parts relevant to this grievance are as follows:

…

2. Application

2.1 This directive applies to persons appointed to the core public administration as defined in section 11 of the Financial Administration Act *unless excluded through specific acts, regulations or Orders in Council.*

3. Context

3.1 This directive supports the Policy on Terms and Conditions of Employment *by providing direction to departments that will ensure the equitable, accurate, consistent, transparent and timely administration of leave provisions and special working arrangements across the core public administration.*

For the purposes of this directive, persons appointed to the core public administration include persons appointed to a position as:

- *an indeterminate;*

…

3.2 Persons appointed to the core public administration may be granted leave in accordance with the provisions of the relevant collective agreement or terms and conditions of employment. Where there is conflict or incompatibility between a provision of the collective agreement and the Treasury Board terms and conditions of employment policy instruments, the provisions of the collective agreement apply.

3.3 This directive is issued pursuant to sections 7 and 11.1 of the Financial Administration Act*.*

3.4 The Treasury Board has delegated to the president of the Treasury Board the authority to amend this directive.

3.5 The following appendices establish criteria to be followed with respect to the management of certain authorized paid and unpaid absences from work:

- *Appendix A — Leave with Pay or Time Off With Pay*
- *Appendix B — Leave Without Pay*

…

Appendix B—Leave Without Pay

…

2. Management of Specific Leave Without Pay Situations

2.1 This appendix establishes criteria that are to be followed by departments in the following leave without pay situations:

- *illness;*

…

2.2 Illness or injury in the workplace

When a person appointed to the core public administration is unable to work due to illness or injury in the workplace and has exhausted his or her sick leave credits or injury-on-duty leave, the person with the delegated authority is to consider granting leave without pay.

For administrative and benefits purposes only, this type of leave without pay is referred to as sick leave without pay and is recorded as such.

If it is clear that a person will not be able to return to work within the foreseeable future, the person with the delegated authority is to consider granting such leave without pay for a period sufficient to enable the person to make the necessary personal adjustments and preparations for separation from the core public administration on medical grounds.

When a person with the delegated authority is satisfied that there is a good chance a person will be able to return to work within a reasonable period of time (the length of which will vary according to the circumstances of the case), leave without pay provides an option to bridge the employment gap. The period of leave without pay is to be flexible enough to allow [*sic*] *person with the delegated authority to accommodate the needs of a person with special recovery problems, including retraining.*

Persons with the delegated authority are to regularly re-examine all cases of leave without pay due to illness or injury in the workplace to ensure that continuation of leave without pay is warranted by current medical evidence. Such leave without pay

> *situations are to be resolved within two years of the leave commencement date, although each case must be evaluated on the basis of its particular circumstances.*
>
> *All leave without pay due to illness or injury in the workplace will be terminated by the person's:*
>
> - *return to work;*
> - *resignation or retirement on medical grounds;*
> - *cessation of employment pursuant to section 42 of the* Public Service Employment Act; *or*
> - *termination for reasons other than breaches of discipline pursuant to the* Financial Administration Act.
>
> [Emphasis in the original]
>
> …

[8] Entered in evidence was a copy of the employer's *Guidelines for Termination or Demotion for Unsatisfactory Performance; Termination or Demotion for Reasons Other than Breaches of Discipline or Misconduct; and Termination of Employment During Probation* ("the Guidelines") in force at the time of the facts relevant to the grievance. Those parts relevant to this grievance are as follows:

> ***1. Context***
>
> …
>
> ***Other Reasons****: Paragraph 12(1)(*e*) of the FAA authorizes every deputy head in the core public administration to terminate employment of or demote an employee for reasons other than breaches of discipline or misconduct. Such actions must be for cause in compliance with subsection 12(3) of the FAA. Subsection 12.2(1) permits delegation of these authorities.*
>
> …
>
> ***3. General***
>
> *Upon request, the Treasury Board Secretariat's (TBS's) Employer Representation in Recourse Team is available to provide advice and guidance on demotion or termination of employment.*
>
> *It is recommended that measures taken to act in a manner consistent with the following principles are a matter of record.*
>
> …
>
> *b. In making a decision to demote an employee or terminate employment for other reasons, such as medical incapacity, the following guiding principles are key:*
>
> - *The employee has been unable to work due to illness or disability for an extended period, has exhausted his or her*

> *sick leave credits, and may have been granted leave without pay;*
>
> ◦ *The employee will not be able to return to duty within the foreseeable future. This determination should be based on an assessment of the employee's health, either by physicians of Health Canada, other medical practitioners deemed qualified by the employer, or both;*
>
> ◦ *Efforts have been made to accommodate the employee's condition to the point of undue hardship, taking into consideration issues of health, safety and cost, where the employee is determined to be "fit for work with limitations" after having been examined by physicians of Health Canada, or other medical practitioners deemed qualified by the employer, or both;*
>
> ◦ *The employee has been made aware of services offered through the Employee Assistance Program; and*
>
> ◦ *Other options, such as resignation or retirement on medical grounds, have been presented to the employee for consideration.*
>
> …
>
> ***4. Definitions***
>
> …
>
> ***medical incapacity (incapacité médicale)***
>
> *A continuing, non-culpable absence from duty due to illness or disability that prevents the employee from fulfilling his or her employment obligations.*
>
> …

[9] Entered in evidence was a copy of AAFC's *Workplace Violence Prevention Policy and Guidelines*, which took effect on January 1, 2021 ("the 2021 violence prevention policy"). It sets out the following:

- the policy objectives state that among other things, AAFC is to respond effectively to incidents of harassment and workplace violence when they occur;
- no employee can be penalized, reprimanded, or in any way criticized when acting in good faith while following the policy and the supporting procedures for addressing situations of harassment and violence;
- the policy applies to all persons employed at AAFC;
- "harassment and violence" is defined as any action, conduct or comment, including of a sexual nature, which can reasonably be expected to cause

offence, humiliation, or other physical or psychological injury or illness to an employee, including any prescribed action, conduct, or comment;

- "occurrence" is defined as an incident of harassment and/or violence in the workplace;

- the employee or employer who is the object of an occurrence is the principal party, while the responding party is the person who is alleged to have been responsible for the occurrence;

- "prohibited conduct" is defined as "[i]ntentionally causing physical or psychological harm or injury to another person";

- unless a complaint is made in bad faith as determined by the Minister of Labour or their representative, an employee cannot be suspended, demoted, or terminated; nor can the employer take disciplinary action against an employee, impose a financial or other penalty on an employee, or refuse to pay an employee remuneration for the exercise of the employee's rights under the legislative and regulatory provisions on workplace harassment and violence prevention;

- employees will not be penalized or disciplined for making a complaint in good faith. In fact, employees have a legal obligation under Part II of the *Canada Labour Code* (R.S.C., 1985, c. L-2; *CLC*) to report all hazardous situations noted during the course of employment and are encouraged to report occurrences of workplace harassment and violence;

- part of the process involves conducting an investigation, after which the investigator is to issue a report. Once a report is issued, a summary of it will be provided to the workplace occupational health and safety committee, which will jointly with management determine which recommendations set out in the summary report will be implemented. If the committee and management cannot agree on which recommendations to implement, management's decision as to which ones to implement prevails; and

- the process is completed when an investigator has provided a report and AAFC implements the recommendations provided.

[10] The violence and harassment policies in effect before January 1, 2021, were not entered into evidence.

B. Background information

[11] I was not provided extensive detail on the specifics of how the LRDC operates, as that is not particularly germane to the issues that I must decide. However, a basic comprehension of its organizational structure provides context to understanding the grievance and this decision.

[12] The LRDC is a research facility composed of land and buildings with offices, laboratories (labs), and greenhouses. It is a part of AAFC's Science and Technology Branch (STB) and is one of its 20 research centres in Canada. Its core function is researching agriculture and related issues. The exact number of research scientists and labs was not provided; nor was I provided a detailed outline of what each of the scientists and their labs did. However, I was led to understand that there are several labs, each carrying out research under the overall direction and supervision of research scientists, again who I was led to understand have PhDs in fields related to the work that they are doing.

[13] The research scientists are responsible for developing the research projects, writing up proposals, and obtaining funding, while the work itself would be carried out in the labs, greenhouses, and farming fields. I was led to understand that the projects would largely be carried out by research technicians, who are also scientists holding university degrees. The research technicians are classified in the EG (Technical Services) group. In addition to the research scientists and research technicians, there would be graduate students, doctoral students, and post-graduate fellows who would also assist the research technicians in carrying out the research, compiling the data, and writing the reports. There are also other AAFC employees working at the LRDC, some in non-research roles, such as administrative positions.

[14] The grievor holds a bachelor of science, honours, degree in biology, obtained in 1998 from the University of Western Ontario. He started working at AAFC in 1997 as a summer student, and in 1998, he was a contract employee. He was hired full-time in the summer of 1999 as a technician, specializing in toxicology and entomology. In 2005, he moved to the molecular biology lab. In 2008, he moved to Dr. Aiming Wang's plant virology lab.

[15] At the time of the hearing, and since 2019, Dr. Gilles Saindon was an assistant deputy minister (ADM) at AAFC for the STB. Before that, in 2011, he became an associate deputy minister, which he was until 2019. From 2006 to 2011, he held several different director general positions with AAFC; before that, he held different director positions. He started his career as a research scientist in 1989 in western Canada.

[16] At the time of the hearing, Sergio Paulo was a director of RDT in the LRDC of AAFC. His area of responsibility was the LRDC as well as a research and development centre in Harrow, Ontario (HRDC), located approximately two hours to the southwest of London, south of Windsor, Ontario. In 2019 and 2020, before he was appointed the director at the LRDC, Mr. Paulo was an associate director at the HRDC and moved to the LRDC as an associate director.

[17] Between roughly March of 2018 and March or April of 2020, Carrie Taylor was the associate director of RDT at the LRDC. Mr. Paulo replaced her in April of 2020.

[18] At the time of some of the matters raised in evidence during the hearing, Dr. Karl Volkmar was the associate director of RDT at the LRDC. He left that position in or about 2018 and was replaced by Ms. Taylor.

[19] At the time of some of the matters raised in evidence during the hearing, Dr. Della Johnston was the director of RDT at the LRDC. It appears from the evidence that she was away from work as of July of 2021, and her retirement was announced on October 20, 2021.

[20] At the time of some of the matters raised in evidence during the hearing, Dr. Javier Gracia-Garza was the director general of science and technology for the Ontario and Quebec regions of AAFC.

[21] At the time of some of the matters raised in evidence during the hearing, Dr. Wang was a research scientist working at the LRDC. The grievor worked in Dr. Wang's lab until he left on sick leave with pay (SLWP) in late August of 2018.

[22] At the time of some of the matters raised in evidence during the hearing, Erin Sterling was the integrated service manager at the LRDC.

[23] In 2018, Brian Gray was an ADM at AAFC.

[24] None of Drs. Gracia-Garza, Johnston, Volkmar, and Wang, Mr. Gray, or Mses. Taylor or Sterling testified.

[25] At the time of the hearing, Lisa Amyot was a senior advisor in the office of Intellectual Property and Commercialization at AAFC. Her office was co-located on the same property as the LRDC and was in a building that was also used by the LRDC.

At the time of some of the matters at issue, she was employed at the LRDC as a research technician at the EG-05 group and level. In 1994, she graduated from Wilfrid Laurier University with a BSc in biology, and in 1997, she received an MSc from the University of Waterloo, also in biology. She joined AAFC at the LRDC in November of 1997. She has known the grievor since 1997 and was a colleague and close friend with him while they both worked there and remained so as of the hearing.

[26] At the time of the hearing, Patrick St-Georges was the first national executive vice-president of the Agriculture Union, which is a component of the Alliance. He was on leave from his substantive position at AAFC, which is in Ottawa, Ontario. He has been in this union position since January of 2021. At the time of some of the matters at issue, he was consulted by the grievor and acted on the grievor's behalf.

[27] At the time of some of the matters raised in evidence at the hearing, Nancy Richter was a union steward with the Agriculture Union, located in London. She did not testify.

[28] At the time of the matters at issue, "person A" was a research scientist at the LRDC, and "person B" was a research technician at the LRDC. Neither testified.

[29] At the time of the matters at issue, there were more than 100 people working at the LRDC, not including students.

[30] By letter dated October 7, 2022, the grievor was terminated by Dr. Saindon; the relevant portions of the termination letter state as follows:

> …
>
> *This is further to Mr. Sergio Paulo's letters to you dated March 21, 2021 and April 26, 2022 regarding your continued absenteeism due to illness, and your prognosis for return to work. In order to resolve the situation, we offered you the following options: return to duty subject to medical certification, resignation, or medical retirement subject to Health Canada approval.*
>
> *You submitted medical information, dated September 6, 2022 indicating that you were unfit to "*return to Agriculture Food Canada. We will continue to reassess regularly however no real change is anticipated with respect to this condition. Next [follow-up] to be booked December 13, 2022.*" In Mr. Sergio Paulo's letter to you dated April 26, 2022 you were provided a final opportunity to choose an option by close of business May 27, 2022. This date was extended a couple of times as a result of*

> *discussions between your union representative, Mr. Patrick St-Georges and the Director General of Human Resources.*
>
> *On July 20, 2022, Mr. St-Georges was advised to speak directly with Mr. Paulo regarding your situation. On that same day, both you and Mr. St-Georges were advised that a final extension date of August 5, 2022 was granted, by which you were expected to make a decision in terms of your choice of option. There have been no further discussions between Mr. Paulo and Mr. St-Georges, and you have failed to make a decision regarding your employment.*
>
> *As you are aware, leave without pay is granted in order to provide continuity of employment while you are unable to work, however, it cannot be granted indefinitely. It has also been determined that no real change is anticipated with respect to your condition. Therefore, I am terminating your employment for non-disciplinary reasons effective immediately. This action is being taken pursuant to my delegated authority and in accordance with section 12. (1)(e) of the* Financial Administration Act.
>
> …

[31] The employer's and grievor's theories of the case are quite different.

[32] The employer's theory of the case is that the grievor left on SLWP on August 29, 2018, and that he remained on it or on sick leave without pay (SLWOP) until the termination date of October 7, 2022, and the evidence discloses that he was unfit for work and that it was unlikely that his condition would change, such that the employer was within its rights to terminate his employment under s. 12(1)(e) of the *Financial Administration Act* (R.S.C. 1985, c. F-11; "the *FAA*").

[33] The grievor's theory of the case is that starting in or about 2017, he was the victim of workplace harassment and/or violence by person A, person B, and/or confederates of theirs and that the employer did nothing to stop the harassment and/or violence being perpetrated against him. In addition, the employer's actions in terminating his employment amounted to discrimination on the basis of an illness or disability, were in bad faith, and/or were disguised discipline, or all three.

[34] I shall set out chronologically all those facts that appear relevant to understanding both the employer's and grievor's theories of the case. I have divided the narrative into two larger sections, the natural point of division being the date that the grievor left the workplace on sick leave, never to return.

[35] Entered in evidence was a set of notes identified by the grievor as a cumulative history of events. The first entry date is January 24, 2014, and the last entry date is October 30, 2018 ("the cumulative notes"). While the grievor stated that these notes were made as events unfolded, I suspect that not all notes were made that way, as the first event is dated January 24, 2014, and the next is more than three-and-a-half years later.

C. From 2014 to late August 2018

[36] The grievor testified that sometime in January of 2014, he came to believe that persons A and B were engaged in an intimate relationship after a group of employees from the LRDC had an evening out, and he and persons A and B returned to his home afterward. Alcohol was involved. The grievor testified as to why he believed that such a relationship existed.

[37] Ms. Amyot also testified that she believed that an intimate relationship existed between persons A and B. She testified that the initial source of this information was the grievor, albeit she also testified that she felt that the behaviour of persons A and B within the work setting confirmed this belief.

[38] According to the testimony of both the grievor and Ms. Amyot, persons A and B, up to sometime before August of 2017, were working in different labs. At some point in or about August of 2017, they began working in the same lab. Coincidental to this, another LRDC employee who was working in that lab moved from it. This created some disquiet among the ranks of the research technicians. Both the grievor and Ms. Amyot described it as a conflict of interest.

[39] Both the grievor and Ms. Amyot described the disquiet among the research technicians as reaching such a state that in about mid- to late September of 2017, they approached Dr. Volkmar to talk about it. According to both of them, he did nothing about it.

1. The *Public Servants Disclosure Protection Act* disclosure and investigation

[40] At some point in or about October 17 and 18, 2017, a letter dated October 17, 2017, and signed by Dr. Gracia-Garza, was given to the grievor by Dr. Volkmar. It informed him that an administrative investigation was to be conducted into allegations that the grievor either used, sold, and/or distributed illegal drugs at the

LRDC. The stated purpose of the investigation was whether the grievor breached the values and ethics code of AAFC or violated the *Criminal Code of Canada* (R.S.C., 1985, c. C-46) or any other federal statute. The letter advised him that he had the right to have a union representative present and that if there was a finding made that the allegations against him were founded, disciplinary action could be taken.

[41] The grievor testified that the letter was given to him on his last day of work just before leaving on a two-week vacation. Both he and Ms. Amyot testified that he disclosed the letter and the substance of its contents to her on the day that he received it.

[42] In November of 2017, Jean-Francois Savard was AAFC's departmental security officer (DSO) and the senior officer for internal disclosure at AAFC under the *Public Servants Disclosure Protection Act* (S.C. 2005, c. 46; "the *PSDPA*"). By letter from him dated November 10, 2017, the grievor was informed that a protected disclosure ("the *PSDPA* disclosure") was received by his office of the allegation of him using, selling, and/or distributing illegal drugs at the LRDC. Essentially, the *PSDPA* disclosure involved the same allegations as those set out in the letter of October 17, 2017, from Dr. Gracia-Garza. The relevant portion of the November 10, 2017, letter stated as follows:

> …
>
> *3. You were recently informed by your Director-General Javier Gracia-Garza of the fact that an administrative investigation had been initiated by him into similar allegations. Given the overlap between the two allegations, the internal disclosure investigation will take precedence. The administrative investigation is suspended until further notice, pending the results of the internal disclosure investigation. Once those results are known, a decision will be made either to cancel the administrative investigation, or to proceed with it.*
>
> …

[43] The letter of November 10, 2017, further said that two security officers, Richard Starkey and Gilles Girard, would conduct an interview and would be in touch with him. He was also told that at the conclusion of the investigation, a copy of the report would be provided to him, subject to the requirements of the *Privacy Act* (R.S.C. 1985, c. P-21) , *Access to Information Act* (R.S.C. 1985, c. A-1) and the *PSDPA*. I will refer to this investigation as "the *PSDPA* investigation". The evidence,

documentary and oral, often refers to the facts leading to the *PSDPA* investigation as the “drug allegations” or “false drug allegations”.

[44] The evidence disclosed that the grievor was interviewed as part of the *PSDPA* investigation on November 23, 2017 (“the Nov. 23 meeting”).

[45] The second set of notes appears to be a typed compilation of the notes taken by the grievor and his union representative, Ms. Richter, during the Nov. 23 meeting (“the Nov. 23 meeting notes”). The original notes of the grievor and Ms. Richter were not produced, and it is not known if they still exist.

[46] The grievor testified that during the Nov. 23 meeting, Messrs. Starkey and Girard told him that they knew by that point that there was no merit to the allegations. He testified that during the more than hour-long meeting, only about a minute of it dealt with the allegations of illegal drug use, sale, or distribution. This comment was reflected in the cumulative notes, which had the following entry for the Nov. 23 meeting: “Investigation interview - total joke. 1 minute of the 70 minute meeting deals with allegations”.

[47] The Nov. 23 meeting notes indicate that there were both audio and video recordings made of the meeting. No transcript of them was produced to the hearing; nor is there any evidence that one exists. At the end of the Nov. 23 meeting notes is the following entry: “Of the 75 minutes I spent with these gentlemen, only 1 minute was used to discuss actual allegations (them asking me if I did it and me saying no).”

[48] By letter dated December 22, 2017, Mr. Starkey informed the grievor that there was no evidence to support any of the allegations of illegal drug use, sale, or distribution by him, and as such, the *PSDPA* investigation was concluded. It also stated that since the allegations in the *PSDPA* investigation were the same as those that led to the initiation of the administrative investigation (the one referenced in Dr. Gracia-Garza’s October 17, 2017, letter), it had also been cancelled. The grievor testified that despite being told that he would be provided with a copy of the investigation report, he never was. No further investigation took place with respect to the allegations of drug use, sale, or distribution.

[49] At a date that is not clear, Ms. Amyot and others (exactly who was not clear) drafted and circulated a petition on behalf of the grievor. It is undated. It appears to be signed by about 50 people. It states as follows:

> *To Whom It May Concern:*
>
> *We stand by Jamie McNeil and can attest to his work ethic and character. In addition to managing the largest lab at LORDC, Jamie has trained countless graduate students and post-docs, has served on a number of committees, is the in-house expert on the transmission electron and Olympus confocal microscopes, and has represented LoRDC at public events with utmost professionalism.*
>
> *It is deeply upsetting to all of us that Jamie has been accused of using and/or distributing illegal drugs in the workplace. We the undersigned have never witnessed nor have knowledge of Jamie being under the influence of and/or distributing illegal drugs in the workplace.*
>
> …
>
> [*Sic* throughout]

[50] Ms. Amyot testified that she and others facilitated the petition supporting the grievor. She said that they did not approach people who they believed could have been responsible for making the drug allegations against the grievor (persons A and B) or who they believed were confederates of theirs or worked in their labs.

[51] Ms. Amyot testified that she was never interviewed as part of the *PSDPA* investigation. She stated that she was perplexed by this because she was a close friend of the grievor. She also confirmed in cross-examination that to the best of her knowledge, Dr. Wang was also not interviewed. She further testified that all the people who signed the petition were not interviewed, but she confirmed that she had no way of knowing whom the *PSDPA* investigators interviewed.

[52] There is no evidence of who was interviewed as part of the *PSDPA* investigation, other than the grievor, who testified about his interview.

[53] The grievor testified that he believed that either person A or person B or confederates of theirs made the false allegations about him using, selling, and distributing illegal drugs at the LRDC as retaliation against him for going to Dr. Volkmar with his and Ms. Amyot's belief that persons A and B were in a conflict of

interest due to the fact that they (the grievor and Ms. Amyot) believed that persons A and B were involved in an intimate relationship.

2. The Civility in the Workplace and Teambuilding Workshop

[54] After the *PSDPA* investigation, a mandatory Civility in the Workplace and Teambuilding Workshop was scheduled for February 26 and 28, 2018, at the LRDC ("the civility workshop"). In an email dated February 21, 2018, in the lead up to the civility workshop, Dr. Volkmar stated as follows:

> …
>
> *The London RDC OHS* [Occupational Health and Safety] *Committee met recently to identify risk factors for violence at the Centre and to recommend mitigation measures to reduce the risk. A recurring recommendation from this review was the need for a facilitated discussion with staff to address concerns around workplace culture and interpersonal relationships ….*
>
> *I have asked Mr. Jonathan Elston, a Conflict Resolution Practitioner with Integrated Resolution Services, to lead two Civility in the Workplace workshops:*
>
> - *Research Assistants: Monday, February 26, (9:00 to noon)*
> - *Research Scientists: Wednesday morning (9:00 to noon).*
>
> *As well during Monday afternoon, Jonathan will lead the Research Assistants in facilitated discussions and activities that best support their needs. Jonathan has advised that these activities will carry over into Tuesday morning and afternoon, as required.*
>
> ***In preparation for these sessions please email Jonathan privately with a list of 3 things that are working well in the team and 3 things that you'd like to see improved. This will help in his preparation and facilitation.***
>
> *I apologize for the short notice. Mr. Elston's schedule is full, and this was the only date available for him to meet with us for the foreseeable future.*
>
> ***Please note that attendance is mandatory.***
>
> …
>
> [Emphasis in the original]

[55] The grievor emailed the practitioner, Jonathan Elston, on Sunday, February 25, 2018, at 23:34, stating as follows:

> …

> *I will be attending the session with you tomorrow morning in London.*
>
> *I am not exactly sure what we are supposed to be detailing in a private email, in regards to 3 things that are working withe* [*sic*] *team etc. but I need to reiterate the sentiments of some of my colleagues, who had previously contacted you, in regards to the poisonous work environment we are currently working under.*
>
> *There is one specific situation, involving one of my fellow technicians, who is having an affair with one of the research scientists, at our centre. This has caused a lot of problems within our centre and for me, personally.*
>
> *I met with our ADRDT, Dr. Karl Volkmar, in regards to this situation, as this technician was being assigned to this research scientist. Oddly, even with his knowledge of this affair, he had no problem with this working arrangement.*
>
> *Subsequently (within several weeks of this meeting), I was notified that I was under investigation for the use and/or sale of illegal drugs at our center. Given that this was not true (I received notification on Dec. 22nd that I was no longer under administrative investigation due to the fact that there was no evidence), I, along with almost every other employee at our centre, was in complete shock. The fact that the timing of this investigation followed my meeting with our esteemed ADRDT could not be coincidence. My life has been forever changed by these false allegations, seemingly fabricated in retaliation for my candid meeting with Dr. Volkmar. I am assuming that you can agree that this act would be the exact opposite of civility in the workplace. The fact that these false allegations escalated to the level that they did, highlights the lack of respect afforded to myself in this situation and a seemingly huge breach of ethics by our local management.*
>
> …

[56] According to the cumulative notes, the entry with respect to February 27, 2018, which was the day after the civility workshop, states that the grievor met with Dr. Gracia-Garza. In the February 28, 2018, entry, the grievor references the annual union dinner and states that he had a conversation with another individual, in which he stated that everyone was listening when he stated that he would stop at nothing to seek accountability for what was done to him with respect to the drug allegations.

3. The missing pipettes

[57] Pipettes are a tool used in a lab to transport materials. They come in several sizes and dimensions. According to the evidence, they are commonplace at the LRDC; the grievor stated in his evidence that there are literally thousands of them.

[58] On March 7, 2018, at 15:50, Dr. Volkmar sent an office-wide email to staff members at the LRDC. It read as follows:

> …
>
> *It has come to my attention that several items have gone missing from* [person A's] *lab (Room …) in the past week. These items include the following:*
>
> *• 2 - 20ul Eppendorf pipette*
>
> *• 20-200ul Eppendorf pipette*
>
> *• 1000ul Eppendorf pipette*
>
> *• Integra Biosciences PipetGirl*
>
> *If you come across these items, please return them immediately to* [person A]. *If they are not located by the end of this week, we will need to file a security incident report, as these items are of relatively high value.*
>
> *Thank you for your help,*
>
> …

[59] On March 8, 2018, at 09:38, the grievor emailed Dr. Volkmar as well as Dr. Johnston and Dr. Gracia-Garza and copied Mses. Sterling and Taylor and Dr. Wang, stating as follows:

> …
>
> *Good news and bad news. The good news is that I found the pipettes in my desk drawer this morning. Bad news is that I have never seen them before. Therefore, I didn't put them there and they weren't there when I left yesterday afternoon.*
>
> *I am not sure if this is someone's idea of a joke but this is not funny. I am guessing that this is the exact opposite of a joke, especially given Karls mentioning a need to file a security incident.*
>
> *I will leave them on the stool outside of my lab for someone to collect.*
>
> …

[60] Also, on March 8, 2018, at 15:03, the grievor sent a further email to Ms. Sterling, with copies to Ms. Taylor and Drs. Wang, Johnston, Gracia-Garza, Volkmar, and Saindon and Mr. Gray. This email stated as follows:

> …

> *As per our discussion earlier, I would like you, as security head for our building, to initiate the security incident report investigation that Dr. Volkmar mentioned in his email yesterday, regarding the missing pipettes, which were subsequently found in my desk drawer this morning. The fact that items from a level 2 biocontainment laboratory were found in a common write-up area, where my computer desk is located, is a serious breach of health and safety regulations.*
>
> *I would also like to know the procedure for filing a harassment complaint. Given the recent sequence of events at our centre relating to false allegations, and the subsequent investigation, I cannot believe that these items mysteriously ending up in my desk, so soon after they were reported missing (as per Dr. Volkmar's email, below) is coincidental. As I noted earlier, they came from a level 2 biocontainment laboratory, one to which I do not have swipe card access.*
>
> *Furthermore, according to* [person A] *(who spoke to my advisor, Dr. Wang, this morning), these items were last used on Friday afternoon and discovered missing on Monday. In addition to not having access to the laboratory in question, I left the centre at 1:00PM on Friday, March 2nd and didn't return back to London, from the USA, until 5:00PM on Monday, March 6th. Clearly I could not have removed these items. They were not in my desk when I left at 4:30 yesterday but were discovered by me, in my desk drawer, at 9:30 this morning.*
>
> *These continuing incidents have had a great psychological impact on my wellbeing* [*sic*] *and now I feel like my physical safety is being compromised.*
>
> …

[61] The evidence disclosed that shortly after the grievor found the pipettes, it was confirmed that the lab from which they went missing was not (at least at that time) a level 2 biocontainment lab; nor was there any risk of any sort of toxic exposure.

[62] According to the testimony of the grievor, after the pipettes were located, person A told him that they had not been missing on the previous Friday, March 2, and that they were discovered missing on the following Monday, March 5. The grievor testified that he left the country on Friday (March 2) afternoon and that he returned on Monday (March 5) in the evening.

[63] In his examination-in-chief, the grievor described Dr. Wang's lab, stating that Dr. Wang had a closed office and that there was a kind of office area with six desk setups. He testified that keycards were required to enter the building as well as some specific labs that were identified as biocontainment facilities. Keycards are like the

electronic keys in hotels; they are programmed electronically in a fashion that permits them to open certain doors. He confirmed that Dr. Wang's lab did not require a keycard to enter it; however, one of person A's labs (who he said he believed had two) required keycard access.

[64] The grievor confirmed that the practice of "tailgating" could and did occur. Tailgating is when one person who has a keycard that electronically opens a locked door does so and others can freely walk in either with them or behind them, if the door does not swing shut and close. Additionally, keycards are not needed to open doors from the inside of a keycard-required area, meaning once someone is in the area that requires a keycard for access, one is not needed to exit it. He further testified that he was told by another employee that the cleaners would prop doors open when cleaning.

[65] The grievor said that he found the pipettes when a student asked him for a parking pass; he opened a drawer in the desk, and the pipettes were there. He said that he put them in a plastic bag. He told Dr. Wang that he had found them and then put them on a stool. He said that Dr. Wang took them to Dr. Volkmar.

[66] According to the cumulative notes, the missing pipettes were assigned to and used by a research technician whom I will identify as "person C". Person C did not testify.

[67] Ms. Sterling responded to the grievor's second March 8 email on March 9, at 15:41, with copies to Drs. Johnston and Volkmar. She confirmed that she had received his email, that she had spoken to both Drs. Johnston and Volkmar about it, and that they would look into it. About 25 minutes later, she clarified that email to the grievor, advising that Dr. Johnston and Ms. Taylor would look into it. In his testimony, the grievor stated that Ms. Sterling told him that it was not her decision whether to carry out an investigation; it was up to Dr. Volkmar.

[68] The grievor emailed Dr. Gracia-Garza on March 9, 2018, at 00:35. He requested that an investigation be conducted into the ongoing harassment that he said he was facing. He said that he believed that the drug allegations against him, which resulted in the *PSDPA* investigation, were made because he and Ms. Amyot went to Dr. Volkmar with the conflict of interest that they felt existed due to their belief that a relationship existed between persons A and B. He then referred to the pipettes going

missing from person A's lab and to his belief that Dr. Volkmar's email to all staff members about them missing was irregular. He also pointed out that the missing pipettes occurred shortly after his discussion with Dr. Gracia-Garza about his concerns related to the drug allegations and the *PSDPA* investigation.

[69] In that same email, the grievor then requests that Dr. Gracia-Garza initiate an independent investigation. The email is not clear as to whether he wants an investigation of both the drug allegations and the missing pipettes or either one. The email then states that Dr. Gracia-Garza had previously mentioned to him that he could make a harassment complaint, which the grievor states he would, if necessary, but that he prefers not to. He then states this: "… it appears that I might be left with no choice but to pursue whatever means available to see that the people responsible for this harassment are held accountable for their actions and that the appropriate steps are taken."

[70] By email dated March 15, 2018, at 07:05, Dr. Johnston wrote to the grievor, copying Drs. Volkmar, Gracia-Garza, and Wang and Mses. Taylor and Sterling, stating as follows:

…

> *… I regret that you feel that your safety has been compromised and can assure you that we are taking your concerns very seriously.*
>
> *We have engaged our Labour Relations, Occupational Health and Safety, and Departmental Security Services to ensure full consideration of this matter. Our Labour Relations unit will be conducting a Fact Finding exercise into the matter and suitable action will be taken to address any inappropriate behaviour or actions of misconduct identified through this process.…*
>
> *Although I can appreciate any concern that you may have, I would like to confirm that we did assess the issue and the pipettes appeared to have been clean and unused. In addition to the fact that* [person A]*'s lab is not yet a level 2 biocontainment laboratory, we are confident that there are no health and safety concerns with respect to the pipettes in question. However, a Hazardous Occurrence Investigation Report (HOIR) will be completed to confirm this. This will be done through the local OHS Committee, and will follow due process for incident investigations.*
>
> *Management is arranging to provide on-site conflict resolution and respectful workplace support services and recommendations either through Integrated Resolution Services or Health Canada's*

> *SOS program. This service is tentatively scheduled for early April. We hope to work together towards an improved work environment for everyone over the coming months. We are committed to this process, and to working with all staff on an ongoing basis to achieve a healthy and respectful workplace.*
>
> *As requested, the process for filing a harassment complaint can be found at the following link …*
>
> *…*

[71] When the grievor was asked in his examination-in-chief about the missing pipettes investigation, he testified that someone came from Ottawa, he assumed from Labour Relations (LR), and that he was interviewed. He said that the interview was short and that it seemed to him that it was a very cursory investigation. When asked about the results, he said that he did not receive a formal report but that he pressed Ms. Taylor, who told him that it was impossible to determine who was responsible. He then stated that he was sure that if Ms. Taylor had cross-referenced keycard information and information from the building's security cameras, it could have been determined.

[72] There is no evidence to suggest that security cameras were located to show persons either entering or leaving the lab from which it is believed that the pipettes were potentially taken or entering and leaving Dr. Wang's lab, where the pipettes were found. Additionally, any keycard data would indicate only who swiped or tapped their keycard to unlock any door; it would not indicate who actually entered or exited a locked lab or area.

[73] Entered into evidence was a document identified as the "ADMs Outreach 2018", which appears to be a paper version of a slide presentation. On the cover page, it also reads, "London, June 19, 2018".

[74] The grievor stated that Mr. Gray met with the research scientists on one day and with the EGs on the next day. He said that he met with Mr. Gray on June 20, 2018. The grievor said that he understood that Mr. Gray was there due to issues at the LRDC. He said that everyone had to be at the table; the grievor said that he noted that person B was not at the meeting. The grievor said that he told Mr. Gray that many bad things were happening, and Mr. Gray said that harassment is not to be tolerated. He said that someone asked what that entailed, to which the grievor said that Mr. Gray said more training, and to which the grievor said that he asked how

more training would fix issues in the past. The grievor said that he told Mr. Gray about what had happened to him. He said that Mr. Gray said that he took it seriously and that he would get back to the grievor. He said that Mr. Gray never did get back to him.

[75] Mr. Gray did not testify; however, the document identified as the ADMs Outreach 2018 appeared to be about AAFC's strategic plan on a going-forward basis, including budgets and corporate structure and on a macro basis, as well as the STB. There are 29 slides in the presentation. Of them, 1 is entitled "Annex G" and provides a brief comparison of the level of harassment, discrimination, and values and ethics at the STB. It states that compared to 2014, in 2017, harassment incidents at the STB were up 2%. However, it was below the AAFC average by 1%. No actual numbers or details of incidents were provided.

[76] No reports or summaries were provided of Mr. Gray's discussions with the research scientists or research technicians.

4. The greenhouse discussion

[77] The grievor testified that after the pipettes went missing, it was announced that a workplace assessment would be carried out ("the 2018 Workplace Assessment"). The person brought in to carry it out was Claude Freeman. He said that Mr. Freeman told him that he was not there to rectify the situation in the workplace. The grievor testified that as he understood it, it was not mandatory for people to speak to him. His task was to take the pulse of the workplace and make recommendations. According to the grievor, Mr. Freeman spoke to at least 10 people whom the grievor considered as friends. He also stated that he assumed that people who were not on "Team Jamie" were also spoken to. According to the cumulative notes, this took place in May of 2018.

[78] The grievor stated that the next the staff members heard about the 2018 Workplace Assessment was in June or July of 2018. There was an all-staff meeting. The cumulative notes reference this on July 19, 2018, as "meeting with investigator about Workplace Assessment results". The grievor testified at length about the meeting. He said that the people who spoke to Mr. Freeman had free reign to speak and that the grievor told him everything. The grievor was clearly upset with the way

the assessment and then the meeting unfolded. He stated that he approached Ms. Taylor and told her this: “If this is your response, we need to have a meeting.”

[79] The grievor testified that after the all-staff meeting on July 19, 2018, he was in a greenhouse, where he engaged in a discussion with a colleague and friend (“person D”). He said that the friend told him that the grievor appeared to him to have been “agitated” or “pissed off” when he left the meeting. The grievor said that he replied with “Yes” to the colleague and that he had been those things. The grievor testified that he “may have been animated” and that he “tends to swear a lot”. He said that the discussion carried on for about 15 minutes and that during this period, 2 other people came into the greenhouse, and 1 later left.

[80] According to the grievor, about a week later, he received an email from Ms. Taylor’s assistant, informing him that Ms. Taylor wanted to meet with him. He wanted to record the meeting, and he said that Ms. Taylor was uncomfortable. He then stated that he asked a colleague and friend (“person E”) to attend the meeting. He said that Ms. Taylor refused. He said that Dr. Wang was also invited to the meeting.

[81] According to the cumulative notes and an email sent by the grievor dated August 10, 2018, the meeting appeared to have taken place on July 25, 2018. The meeting was about the discussion that the grievor and person D had in the greenhouse. He said that Ms. Taylor told them that she was told that he had been yelling, swearing, and making hand gestures. The grievor testified that Ms. Taylor said that he appeared to be “under stress and at a breaking point.” The grievor said that he told Ms. Taylor that she should speak to person D. He stated that she told him that two people had come to her and had said that the grievor had been screaming, yelling, gesticulating, and making hand gestures and had been animated and swearing. He said that when he asked who it was, he recalled her laughing and making a snide remark (he did not indicate what that remark was). He then said that he identified for Ms. Taylor one of the people, whom he identified as a good friend of Ms. Taylor’s, and that Ms. Taylor would know from this good friendship that this person was “not on team Jamie”.

[82] The grievor said that Ms. Taylor suggested that he should take some time off and indicated that clearly, he was stressed. The grievor said that he admitted to her that he was stressed but that he also said that other people were stressed.

[83] The grievor said that he spoke to person D after this meeting and said that he confirmed that he had spoken to Ms. Taylor and had told her what had happened. He asked for person D to write a letter to this effect, a copy of which was entered into evidence. The portion of the letter that is relevant to the matters in issue reads as follows:

> …
>
> *As we just talked about, I did not feel that you were yelling at me in the greenhouse when we were talking after the meeting with Claude. Our conversation was animated, but we were discussing important, emotion-eliciting matters. I had no problem with it…other than learning that we may have made others uncomfortable. I don't necessarily understand why others felt this way, but that is just my opinion.…*
>
> …

[84] After the July 25, 2018, meeting with Ms. Taylor, the grievor emailed her on August 8, 2018. He reiterated his belief that he had been harassed and referenced the *PSDPA* investigation. He spent a considerable amount of time on his belief that the *PSDPA* investigation was baseless and on how the allegations were false and vexatious and made in bad faith and that something should be done about it. He also stated that he had felt intimidated and bullied throughout the *PSDPA* investigation. He then addressed the missing pipettes, again saying that it was harassment perpetrated against him and that management let this all happen.

[85] On August 16, 2018, at 13:35, Ms. Taylor responded to the grievor's August 8, 2018, email, the relevant portions of which state as follows:

> …
>
> *Thank you for your patience while I was determining the best way to respond to your email.*
>
> *At this time, I would like to advise you that management is no longer looking into the incident and is instead focused on moving forward. Management is now focusing attention on correcting some of the systemic code of conduct and civility/respect issues at the LRDC. Responsibility for the investigation in this case rests with AAFC's Senior Officer for Internal Disclosure (Jean Francois*

> *Savard). I understand that you have been in contact with him separately, and that he will respond directly to you regarding your questions with respect to the investigation.*
>
> *I recognize that this response may not be to your satisfaction and so would like to remind you that there is a formal harassment complaint process available for you to use as a potential recourse method. The following link will provide you with more information on this process to help aid you in your decision …*
>
> *I also fully acknowledge the significant impact that events at the Centre have had on you, both mentally and physically. I very much hope that we can work through these issues over time, as respect and transparency are restored at the Centre. That being said, the confrontation that occurred on July 19th between you and another employee at the Centre has highlighted my concern for your well-being. As we discussed at our meeting on July 25th, I have the same expectations for you as I do for all other employees at the Centre. All public servants are expected to follow the Code of Conduct as outlined in the Values & Ethics Code and to do your part in helping to contribute towards making this workplace one that is respectful, healthy and safe for everyone. If you need to take time away from the Centre to deal with the impacts of these issues, I am fully supportive of helping you work through the various options. You had also requested contact information for the Government of Canada Pension Centre, which you can find at the following link ….*
>
> *…*

[86] On August 15, 2018, at 13:58, the day before she responded to the grievor's August 8, 2018, email, Ms. Taylor sent an email to all staff members at the LRDC. The email stated as follows:

> *…*
>
> ***London Workplace Health Assessment:***
>
> *Following the recent all-staff working sessions to discuss the results of the Workplace Health Assessment, I received additional requests to share details of the report that was provided to management by Mr. Claude Freeman. You will find below a summary of the most significant issues identified at the Centre, as well as some additional considerations. I would like to thank those of you who have taken part so far, and I encourage those who may not have felt comfortable doing so to engage in the path forward. Restoration of a healthy workplace is a priority for management at all levels, and active engagement in the path forward is everyone's responsibility.*
>
> *Management is mapping out a workplace restoration strategy that will be shared with you in the coming weeks. All employees*

will be encouraged to participate in the various initiatives, and are supported by management to take time as needed to do so.

We have arranged for an Employee and Family Assistance (EFAP) resource to be here on-site for counseling sessions, one day per week for the next four (4) weeks, beginning on August 21st from 9AM-1PM. Additional details will be sent out before the end of this week.

I look forward to working together with all of you to help us reach a common goal of making the London RDC a productive, safe and healthy workplace. If you have any questions, please do not hesitate to reach out.

…

KEY ISSUES AFFECTING THE WORKPLACE:

1. A lack of confidence or trust in management due to inaction, inappropriate or insufficient action in handling past issues.

2. Feelings of inequitable treatment in past situations, and lack of reprimands for alleged/rumoured events involving code of conduct issues.

3. A climate of tension/toxicity due to past history, with staff divided into two different groups.

4. A significant amount of time spent gossiping or contributing to rumour-mill type discussions.

5. Due to the workplace tension, employees avoid certain areas of the building as they feel uncomfortable passing these areas and other staff.

CONSIDERATIONS:

- Issues raised by employees with respect to management responsibilities included delays, lack of comprehension, inaction or simply turning a blind eye on allegations of improper staff conduct or other issues.

- Alleged or perceived conduct issues are not generally meant to be shared at large. That being said, the cover of confidentiality/privacy has been an accepted form of functioning, and any exit from that makes for the start of rumour milling.

- Actively participating in the division of staff through rumouring and other divisive conduct (which includes exclusion of staff from activities, and cliques), is not a recipe for a comfortable work climate. If staff are participating in rumour-milling and in the creation/maintenance of cliques, then they are also the co-architects of the current workplace climate.

- A constructive path forward will require parties to take a "neutral" stance and not engage in discussions about others. Neither employees or management can be partially enlisted in workplace remediation processes, including conflict resolution and clarification on best workplace conduct practices and protocols. For example, educational training that is offered for

> *civility and respect must be taken seriously and practiced* [*sic*]*/modelled.*
>
> *- Management needs to undertake proactive intervention with respect to these issues, to ensure that the current toxicity does not result in future negative consequences, including with respect to productivity, presenteeism and staff retention.*
>
> [Emphasis added]

[87] On August 17, 2018, the grievor sent a further email to Ms. Taylor in response to her email to him of August 16, 2018. In this email, the grievor confirmed that he was unsatisfied with her response and reiterated some of the same points that he had already identified in his earlier email to her about the drug allegations, the ensuing *PSDPA* investigation, and the missing pipettes. The grievor further indicated that he had the distinct impression that there was considerable bias when considering the issues. As a result, he stated that he would initiate formal procedures. He did not indicate what those formal procedures would be.

[88] Also on August 8, 2018, the grievor wrote an extensive email to Mr. Savard (the DSO) with respect to the *PSDPA* disclosure and investigation. The email contained a number of statements putting forward his view of events and posing a series of five questions for Mr. Savard with respect to the allegations that led to the *PSDPA* investigation. Mr. Savard responded to the grievor's August 8, 2018, email by an email dated August 27, 2018.

[89] The gist of the grievor's questions and comments all lead back to the beliefs he held about the allegations and the investigation, namely, why a full (*PSDPA*) investigation took place, why the initial administrative investigation was changed to a *PSDPA* investigation, why his direct supervisor was not contacted, why despite his interview being recorded in both audio and video he was not provided with copies, why despite being advised that he would receive a copy of the report he did not, and, finally, why despite the fact that there was no evidence to support the allegations made against him, no action was taken against the person or persons who made the allegations.

[90] While Mr. Savard responded to the grievor's questions, the responses did not necessarily answer the questions, and the grievor was unsatisfied with the response. The following were the short answers to the grievor's questions:

1) when allegations are made, the DSO seeks a mandate for an investigation, conducts one to determine the validity of the allegations, and issues a report;

2) the change from an administrative investigation to the *PSDPA* investigation was made to ensure the confidentiality of the discloser and shield them from possible reprisals;

3) under the *PSDPA*, the DSO cannot disclose who was interviewed or how the list of interviewees was determined;

4) the grievor was not entitled to have disclosed to him any record made in the course of an investigation under the *PSDPA*; and

5) as for taking actions against disclosers, they do not do so for bringing forward allegations, as this would discourage future disclosers from bringing forward allegations. While the *PSDPA* does permit doing investigations in specific cases, they are conducted infrequently, and his view was that there was no malice that would lead him to believe that the allegations about the grievor were vexatious.

[91] There is no evidence that the grievor took steps to have judicially reviewed the decision made by Mr. Savard as outlined in his response to the grievor on August 27, 2018.

[92] The grievor left the workplace on SLWP on August 29, 2018.

D. From September 2018 to October 7, 2022

1. Medical notes provided to the employer

[93] After the grievor left the workplace on August 29, 2018, he never returned to work. He was on SLWP from that date until it ran out in or about March of 2019, when he went on SLWOP, on which he remained until his termination of employment on October 7, 2022.

[94] The grievor provided a series of notes from his family physician, Dr. Thomas Kyle Tabor, dated as follows: September 11 and 25, October 19 and 23, and November 30, 2018; January 22, March 16, and October 1, 2019; March 26, June 26, September 25, and December 15, 2020; March 23, 2021; and September 6, 2022.

[95] The note dated September 11, 2018, states, “Jamie is physically fit to resume work outside of Agriculture Food Canada. However, he is still not mentally fit to return to this environment as toxic relationships will likely exacerbate his mental health condition.”

[96] The notes dated September 25, October 23, and November 30, 2018; January 22, March 26, and October 1, 2019; and March 26, 2020, merely state that the grievor requires ongoing leave from work for a medical condition or that he is unfit to return to AAFC due to a medical condition, as well as often indicating a date when the doctor will reassess him.

[97] The notes dated June 26, September 25, and December 15, 2020; March 23, 2021; and September 6, 2022, in addition to stating that the grievor is unfit to return to AAFC and that the doctor will continue to reassess him, state, "… however no real change is anticipated with respect to this condition."

2. Access-to-information complaint and Public Sector Integrity Commissioner complaints

[98] The grievor testified that after his unsatisfactory email response from Mr. Savard, he received 200 pages of documents from an access-to-information-and-privacy (ATIP) request under the *Access to Information Act*. Of those 200 pages, he stated that 195 were redacted. He said that he decided to make a complaint to the Office of the Information Commissioner ("the Information Commissioner").

[99] At that office, he dealt with Austin Navroze, who was an investigator. Entered into evidence was a series of 16 emails between them from March 28 to May 1, 2019. In the email to the grievor dated March 28, 2019, Mr. Navroze outlined that his office was limited in its authorities and powers to investigate matters relating to the *Access to Information Act*. He pointed out to the grievor that what appeared to be the root of the grievor's complaint was whether the drug allegation qualified as a protected disclosure under the *PSDPA*. He told the grievor that his office was not well positioned to answer that question and that its role was determining if the records withheld under the *Access to Information Act* were withheld in compliance with the that legislation.

[100] After exchanging information with Mr. Navroze over several weeks, the grievor withdrew his complaint to the Information Commissioner.

[101] The grievor testified that he made two separate complaints with the Office of the Public Sector Integrity Commissioner ("the Integrity Commissioner"). The documentary evidence in this respect is unclear. Entered in evidence was a copy of the letter dated February 8, 2021, from the Integrity Commissioner, which references

a disclosure of wrongdoing made by the grievor to his office on November 6, 2020. There is no copy of any disclosure by the grievor on or about that date. He did identify a document that is dated May 23, 2019, and is addressed only to "To Whom it May Concern", which he thought was his application to the Integrity Commissioner to initiate his complaint, although the document is not addressed to that office; nor were any other documents entered into evidence to clarify that this was the complaint.

[102] The letter of February 8, 2021, from the Integrity Commissioner appears to suggest that the grievor complained to that office about the following:

> 1) That unidentified colleagues at the LRDC committed wrongdoing under s. 8(e) of the *PSDPA* when they subjected the grievor to reprisals in the workplace for having made a protected disclosure to management.
>
> 2) That AAFC management and the Investigations and Fraud Risk Management Division committed wrongdoing under ss. 8(b), (c), and (e) of the *PSDPA* by failing to resolve the retaliation issues in a fair and transparent manner; specifically,
>
> a) AAFC management failed its duty to establish sufficient grounds to launch an investigation and refused to launch one into the individuals who made allegations against the grievor in bad faith; and
>
> b) personnel from the investigations division failed their due diligence to investigate the origins of the drug allegations against the grievor.

[103] The letter from the Integrity Commissioner references a reprisal complaint that the grievor made on January 3, 2021, and states that his office issued a letter decision on January 8, 2021, which stated that the complaint was out of time and that his office would not grant an extension to accept a late filing of it. No copy of a complaint dated January 3, 2021, was entered into evidence; nor was a copy of the letter decision dated January 8, 2021. The date of that complaint, January 3, 2021, is long after the date on the document dated May 23, 2019.

[104] Finally, the letter from the Integrity Commissioner advises the grievor that the Commissioner will not launch an investigation into his allegations and sets out the reasons for the decision.

[105] I was provided no evidence that the grievor sought either a judicial review or appeal of the decisions of the Integrity Commissioner.

[106] On February 8, 2019, an email was sent by Ms. Taylor to what appeared to be all the employees at the LRDC. She advised that Mike Blake from Integrated Resolution Services would attend at the LRDC from February 20 to 22, 2019 and would work with the employees at the LRDC over the coming months, to provide support to employees and management to resolve the conflict within the workplace and to work with all staff members, to manage difficult situations. The email further stated that the support that Mr. Blake would provide was essential for the LRDC's path forward to a healthier workplace and that it was a component of the restoration plan developed following the 2018 Workplace Assessment.

[107] The grievor confirmed in his testimony that he spoke with Mr. Blake. He said that he told Mr. Blake about the drug allegations. The grievor said that Mr. Blake told him that from what he had heard, all things had been handled properly, that there was nothing he could do in his role, and that it sounded like rumours were a huge problem in the workplace. He suggested that the grievor was responsible for the rumours, specifically those about the affair between persons A and B.

[108] On October 19, 2018, after the September 25, 2018, note from Dr. Tabor, Ms. Taylor wrote to the grievor, stating as follows:

> …
>
> *You are currently scheduled to return to work on Wednesday October 24th, 2018. In the event that you are intending to return to work, I am requesting that your treating physician complete a medical assessment of your fitness for work. My primary concern is for your well-being and I want to ensure that a return to work will not jeopardize your health. This is a normal course of action when an employee has been away from the workplace for an extended period of time.*
>
> *The purpose of this assessment is to ensure your physician understands the demands of your job and to provide information which identifies any limitations and/or restrictions which may be necessary to assist you in your job, and the period of time required for any modifications and limitations. Please have him/her complete the attached assessment. You should review the Functional Abilities Form with him/her and indicate you have read the report. Please ask your physician to provide an invoice for any related charges to my attention.*
>
> *If your physician determines that you are in fact not ready to return to work, you will only need to send an updated physician's note to my attention.*
>
> …

[109] Subsequent to Ms. Taylor's email of October 19, 2018, the grievor provided the October 23, 2018, medical note from Dr. Tabor.

[110] The functional abilities form (FAF) referred to in the October 19, 2018, email from Ms. Taylor is an employer standard preprinted form with information in it and that poses questions for an assessing physician to answer.

[111] In or about April of 2020, Mr. Paulo became the acting associate director, RDT, at the LRDC. On June 9, 2020, he emailed the grievor for the first time. The email attached a copy of an FAF that had been dated October 18, 2018, and signed by Ms. Taylor. The relevant portions of the email state as follows:

> …
>
> *We have not officially met but I'm the acting Associate Director for London until March 31, 2020. As such I was checking over your file and your sick leave is due to expire at the end of the month (June 30, 2020); as per your last doctor's note.*
>
> *Please confirm whether or not you intend to return to work, or if you will be extending your sick leave without pay. I would like this information as soon as possible since I want to ensure that the appropriate paperwork is filed with Pay Centre.*
>
> *If you will not be able to return to work, we will need an updated medical note and an updated Leave form (or at least an email from you detailing that leave type you are requesting and until when).*
>
> *If you will be returning to work, then we will need a medical assessment to ensure your safe and healthy re-integration into the workplace. Please see attached.*
>
> …

[112] In his evidence, the grievor testified that he did receive the FAF in June of 2020 when it was sent by Mr. Paulo. However, he could not say if he received it from Ms. Taylor in 2018; nor could he say if he brought it to his doctor. He said that he recalled a bunch of checkmarks and when asked what happened to it, he said that he knew that his doctor had to sign it and send it back to Ms. Taylor. He then said that he did not recall receiving a form like it at any other time. No completed FAF was entered into evidence.

[113] He did testify that he responded to Mr. Paulo's June 9 email, confirmed that he would not return to work at that time, and asked Mr. Paulo what the limit was for

being on SLWOP. Mr. Paulo responded to the grievor by email on June 10, 2020, advising him that "[t]his type of leave without pay is usually expected to be resolved within 2 years of the commencement date." He further stated that LR usually prepares a letter for the employee at around six months before the two-year time frame arrives that sets out some options for the employee to consider. He further told the grievor that he expected that if the grievor was still on leave in the fall (of 2020), he would be provided with these options on how to proceed.

[114] On March 22, 2021, Mr. Paulo sent the grievor what has been identified as the "1st options letter". The relevant portions of that letter are as follows:

> …
>
> *Our records indicate that you have been on Leave Without Pay (LWOP) since March 3, 2019.*
>
> *The Treasury Board Secretariat (TBS) Directive on Leave and Special Working Arrangements (the Directive), requires that absences in the workplace be managed in a timely manner and that cases of leave without pay due to illness or injury be resolved within two years of the leave commencement date. Further to the requirements of the Directive, I would like to discuss the options available to you, at this time.*
>
> *If you feel that you have now recovered to the point where you are able to return to work, current medical clearance is required. With a favourable prognosis, I would assist you in developing a return-to-work plan, which must be in place before you return to work. In addition, if you require a workplace accommodation, I would be pleased to facilitate the process for your successful reintegration into the workplace.*
>
> *However, if you are unable to return to work immediately or unable to provide me with a prognosis for return to work within the near future, the options listed below are available to you. I recognize this is not an easy decision and want to ensure you have all the support you need.*
>
> *1. Resignation/Retirement – Should you choose to resign or retire you must do so in writing indicating your intention. For information on how to initiate the process for retirement, please contact ….*
>
> *2. Retirement on medical grounds – you must satisfy medical requirements demonstrating that you are incapable of pursuing regular and substantial gainful employment. You must **apply** for a medical retirement. Please contact ….*
>
> *3. Termination of your employment – this is an option available to the Employer under the Financial Administration Act, paragraph 12(1)(e), in the event that you are unable to return to*

> *work and do not voluntarily choose to terminate your employment or do not qualify for a retirement on medical grounds.*
>
> …
>
> *Please review the information contained in this letter, contact any of the representatives identified, as necessary, and advise me of the option with which you intend to proceed, by May 3, 2021.*
>
> *Depending on the option you select, a plan will be developed to support you in the decision to, either to return to work, resign, or retire from the Federal Public Service. If you do no make a decision and no arrangements for an extension have been agreed upon, the Employer does have the option to terminate your employment, in accordance with the Financial Administration Act, paragraph 12(1)(e).*
>
> …
>
> [Emphasis in the original]

[115] In cross-examination, counsel for the employer went through the 1st options letter with the grievor. He confirmed that the grievor did the following:

- read it;
- understood that he would be required to provide a current medical clearance to return to work;
- understood that if there was a favourable prognosis with respect to a return to work, at that time, a return-to-work plan would be developed;
- understood that after the favourable prognosis and when a return-to-work plan was developed, if a workplace accommodation would be required, it would be facilitated then;
- understood that there were options involving retirement and medical retirement;
- understood that the employer could potentially terminate his employment; and
- understood that there was a deadline and when it was.

[116] On April 7, 2021, after the grievor had been sent the 1st options letter, he emailed Mr. Paulo, asking for a meeting to discuss his options. A meeting was scheduled between them, and it eventually occurred by way of videoconference on April 28, 2021 (“the April 28 meeting”). In addition to the two of them, the grievor had Ms. Richter attend with him as a friend, and Mr. Paulo also had an LR officer and a health-and-wellness officer attend.

[117] In their respective testimonies, both Mr. Paulo and the grievor were asked about the meeting.

[118] Mr. Paulo stated that during the April 28 meeting, he explained what the grievor's return to work would look like. He stated what the grievor was looking for, which was that the people who had complained about him be held accountable and disciplined and that in essence, was that he receive an "immunity card", meaning that no one could complain about him in the future. Mr. Paulo said that the grievor was told that these things could not be done. He said that he could not tell the grievor if an employee were disciplined. In addition, he could not guarantee that in the future, if something happened and the grievor was somehow implicated, he would not be involved. Mr. Paulo went on to say that he told the grievor that LRDC management could try to improve the workplace and that it wanted a healthy work environment.

[119] Mr. Paulo stated that his takeaway from the meeting was that the grievor wanted to be heard about events that had taken place in 2017 and 2018. He said that his impression was that the grievor did not want to return to work.

[120] The grievor also testified about the meeting. He said that he thought that at one point, he felt that the health-and-wellness representative was a little confrontational. He said that he wanted a full third-party transparent investigation, and the employer representatives said that one probably would not happen. The grievor further said that he told those at the meeting that he knew who did it and that he could not work with the two or three people who he said he knew did it. He said that if he was to come back to work, he needed assurances that the frivolous allegations would be taken with a grain of salt.

[121] A set of notes with respect to the April 28 meeting and prepared by LR was entered into evidence ("the April 28 meeting notes").

[122] In cross-examination, the grievor was brought to the April 28 meeting notes. He confirmed that they were accurate. He was then brought to the part of the notes that said, "One of [the] options is returning … If some changes made at work – I would be willing to return to work … As it stands now – not possible", and was asked if he recalled the discussion. He replied with this: "I don't remember that specifically." However, counsel for the employer walked the grievor through the

notes, and he confirmed that the first option was his return to work. He confirmed that the employer heard the things that he believed he needed to return to work.

[123] The grievor was asked if he had anything to add to the April 28 meeting notes. He did not; nor did he see anything untoward in them. He said that he did not expect to receive anything from management, and did not see it as a positive meeting. When asked what he thought the employer tried to communicate, he said the options going forward and then retirement, medical retirement, or quit. He said that at the meeting, he said that he wanted to come back to work. When asked what their response was, he said that he could not remember. He then said that he told those present that if he was to come back to work, he wanted assurances about any claims against him. He said that the employer's representatives told him that that would not happen. When asked if he felt that he had choices, he said that they were return to work or leave, and that these were just semantic differences as to the way he would leave.

[124] The April 28 meeting notes reflect the following:

- The grievor indicated that if changes were made at the workplace, he would be willing to return to work; however, as things stood at that time, he said that it was not possible.
- The employer's representatives asked the grievor what changes needed to be made, to which he responded that he did not think that he was in a position to state what changes needed to be made.
- The grievor stated that the employer needed to know that the workplace was toxic, which was established in a workplace assessment in 2018, and that he needed assurances that he would have a healthy and safe workplace, given the current situation.
- The grievor was asked what a healthy and safe workplace looked like, and he referenced the allegations that led to the *PSDPA* investigation and the missing pipettes.
- The employer told him that it could not control any allegations being made or investigations taking place.
- The grievor said that he wanted the employer to make guarantees to him.
- The grievor stated that the lack of accountability was causing his mental health issues.
- The grievor stated that he filed many ATIP requests, which were denied because of the *PSDPA*.

- The grievor referenced the actions taken against him and the inaction of management. The employer indicated that management had investigated and had taken steps.

- When the grievor was asked if he had spoken to his doctor about the feeling of not being safe causing his mental health issues, he responded that no amount of counselling would help him go forward.

[125] After the April 28 meeting, between May 4 and 14, 2021, the grievor and Mr. Paulo exchanged emails. In this exchange, the grievor told Mr. Paulo that he believed that AAFC had never responded accordingly to his belief that he was being harassed due to the false drug allegations and the missing pipettes. He provided Mr. Paulo a copy of the email that he had sent to Ms. Sterling on March 8, 2018, and stated that there was an onus on management to investigate his claims of workplace violence. He further asked for an "indeterminate continuation" of his sick leave and an extension for his options letter deadline until the allegations of workplace violence has been investigated and resolved by an impartial investigator.

[126] In cross-examination, the grievor confirmed that in the final paragraph of the email of May 4, 2021, he made it clear to Mr. Paulo that he could not consider returning to work until the false drug allegations and the matter of the missing pipettes were investigated by what he called an impartial investigator, whom he identified as a "Competent Person" under the *Canada Occupational Health and Safety Regulations* (SOR/86-304). He stated further, "Pending the outcome of this investigation, and the restoration and preventative measures the employer implements …".

[127] Mr. Paulo emailed the grievor and indicated that he was not aware of an indeterminate extension for sick leave but that he would look into it and that in the meantime, he stated as follows with respect to the grievor's allegation that the allegation of harassment had never been looked into:

…

> *… You've indicated that you believe that AAFC management didn't act accordingly in response to your belief that you were being harassed/humiliated, given the false drug allegations and the missing pipettes showing up in your desk. Turning first to the drug allegations. As explained several times in the past, management was obliged to launch an investigation into an Internal Disclosure of this nature. As you know and were informed at the time, those allegations were determined to be*

> *unfounded and there was no evidence to support the claims made. As a result, no disciplinary or administrative measures were levied against you. During the process of that investigation it was also determined that the complaint was not malicious, vexatious, trivial nor made in bad faith. The Internal Disclosure investigation was concluded in December 2017.*
>
> *In terms of the pipettes, management did take action on this matter as well. A review of available information was undertaken, including a review of security cameras. There was absolutely no evidence to suggest how those pipettes went missing nor if they were placed in your work area maliciously or accidentally… As explained to you in the past, the incident did bring to light the need to enhance onsite security measures which has included increased security cameras and our systems are being updates* [*sic*] *as a result.*
>
> *Finally, management advised you of the formal harassment complaint process on March 15th 2018 in reply to your request on March 8th 2018 (see emails below). You confirmed last week in our call that you chose not to follow that process and did not file any formal complaints at the time or since.*
>
> *…*

[128] Mr. Paulo granted the grievor an extension of time.

3. The harassment complaint, and the Hamori investigation

[129] The grievor made a harassment complaint dated July 22, 2021 ("the Notice of Occurrence"), under the 2021 violence prevention policy. It identified him as the principal party and nine people as respondents, including persons A and B; Drs. Volkmar, Johnston, and Gracia-Garza; Ms. Taylor; the two *PSDPA* investigation investigators, Messrs. Starkey and Girard; and the DSO, Mr. Savard.

[130] The Notice of Occurrence states that the dates between which the incidents of harassment took place were October 5, 2017, and August 27, 2018. The grievor lists as witnesses 11 people, 2 of whom are Ms. Amyot and Dr. Wang. The allegations all relate to the issues already identified earlier in these reasons as the drug allegations, the missing pipettes, and the greenhouse discussion.

[131] While the Notice of Occurrence does not outrightly state that persons A and B made the *PSDPA* disclosure about the grievor allegedly using, selling, and distributing illegal drugs and planting the pipettes in his desk drawer, there is a strong inference that it is their doing. The allegations against Drs. Volkmar, Johnston, and Gracia-Garza and Ms. Taylor are to the effect that in their capacity as managers, they were

either complicit in allowing these acts of harassment to be perpetrated against him by persons A and B or were derelict or negligent in the conduct of their duties by not only allowing the harassment to be perpetrated against him but also by not carrying out appropriate investigations and then taking remedial action against those responsible and by not providing him with a safe work environment due to the harassment.

[132] The allegations against Messrs. Starkey, Girard, and Savard are based on the fact that two of them conducted the *PSDPA* investigation, and the third was their supervisor. Specifically, the grievor's complaint against them appears to be the facts that he did not receive a copy of a report despite being told that he would, that the allegations made by the person or people against him were not considered vexatious, and that no investigation of those who made the allegations against him would be conducted.

[133] On October 28, 2021, Tony Hamori of Henri Investigations Inc. was retained by AAFC to carry out an investigation ("the Hamori investigation"). He issued a report of his investigation on February 12, 2022 ("the Hamori report").

[134] The Hamori report indicates that Mr. Hamori was retained to investigate only the grievor's allegations against Ms. Taylor. It further indicates that he conducted interviews between December 10, 2021, and February 8, 2022. It would appear that both the grievor and Ms. Taylor were interviewed; both were given the opportunity to have union representatives accompany them at their interview, and both declined. In the Hamori report, the grievor is referred to as "the Principal Party" and Ms. Taylor as "the Responding Party". The allegations investigated were as follows:

> …
>
> *1. The Responding Party (RP) requested a meeting with the Principal Party (PP) and his/her supervisor on July 23, 2018 after two other employees reported an incident involving the PP and another employee. The PP requested union representation and was denied. The PP felt that nothing occurred, and that s/he was being "called out" in front of his/her supervisor for no reason.*
>
> *2. The PP felt that bias was being demonstrated against him/her by the RP from March 2018 to August 2018 with respect* [to] *internal matters the PP was involved in that occurred in later 2017 and March 2018. The PP notified the RP on August 8, 2018 that s/he was being harassed by unknown people in these*

> *internal matters and that AAFC (as represented by the RP) refused to look into his/her complaint.*
>
> …

[135] The allegations investigated as part of the Hamori investigation were with respect to Ms. Taylor's actions involving the greenhouse discussion and to the grievor feeling that bias was being demonstrated against him by Ms. Taylor with respect to internal matters that he was involved in with respect to the drug allegations and the missing pipettes.

[136] The Hamori report seems to reference eight witnesses. It is unclear from the report who they were and what they spoke about. The Hamori report also does not set out what, if any, documents or records were reviewed.

[137] The following are what were described in the Hamori report as the "Factual Findings and Analysis", the "Conclusion and Rationale", and the "Recommendations":

> …
>
> ***IX. FACTUAL FINDINGS AND ANALYSIS***
>
> …
>
> ***Allegation 1:***
>
> *Analysis/Findings: The PP and Witness 1 stated the conversation between them was "animated", loud and with some swearing. Although it was in a relatively private area, it took place at work an was seen / overheard by two other employees who were concerned by it. They reported the incident to the RP at two different times. The PP was emotional due to the findings of the Workplace Health Assessment because it did not cover the events s/he was involved in. The RP was concerned about the PP, and what occurred, after s/he heard the circumstances from the two employees and Witness 1. S/he had no intention of pursuing discipline but wanted to check in with him/her further and involve his/her supervisor in the conversation, even though Witness 1 was not concerned about the interaction s/he had with the PP. Witness 2 did not have any concerns with the way RP conducted the meeting. The RP was exercising his/her managerial responsibilities and authority by following up on this matter which was his/her duty. This does not meet the definition of harassment.*
>
> *Decision:* ***Unsubstantiated***
>
> ***Allegation 2:***
>
> *Analysis/Findings: In 2017 / 2018, harassment and workplace violence were covered under separate policies. The RP felt it was*

the PP's responsibility to submit a complaint in writing for either process. This was true of the Harassment policy, but the Workplace Violence policy does not mention a requirement in this regard. Under the Workplace Violence policy, the RP conducted the fact-finding investigation which was inconclusive in terms of who was responsible. The PP had a verifiable alibi and was therefore the target of harassing behaviour by person(s) unknown which had the potential for psychological harm. Although the RP had the best intentions, it was not appropriate for him/her to conduct the fact-finding investigation due to their role at the center. Arguably, s/he may have been the decision-maker [*sic*] *or involved in consultation about discipline that may have come from the investigation, and therefore would not be seen as impartial. A secondary concern is that no formal report was produced for this investigation.*

After this stage, and because the matter could not be resolved informally, a full investigation by a competent person (required by policy) should have been initiated. The RP was advised of this by Witness 3. Based on the circumstances, there was enough information to by-pass [*sic*] *the fact-finding stage and go straight to formal investigation which would have saved time and repetitive witness interviews. The RP took the initiative to do the initial investigation and s/he was assisted by someone from Labour Relations. The RP took a further step by conducting a Workplace Health Assessment to address some of the wider issues at the center however that process did not address the PP's specific concerns. The PP made his/her concerns and desire for further investigation known to several senior managers at AAFC, however they collectively decided that no further investigation would be conducted into the pipette incident.*

The PP was also concerned that no further investigation would be conducted on the merits of the PSDPA investigation and whether a vexatious/retaliatory complaint had been made against him/her. This issue was outside the investigator's mandate but some information was gathered during this investigation that will be subject of a separate Recommendation Letter to this Final Report. The RP was not in the position when the PSDPA investigation took place.

The RP took steps to address the pipette incident however proper policy was not followed and the circumstances show this was overlooked by several layers of management. Managers not following proper policy does not meet the definition of harassment, or workplace violence, as noted above. It is better characterized as workplace conflict. However, the PP claims that the organization's failure to properly address these issues has caused him/her stress which resulted in him/her going off work. This concern would have been more appropriately addressed in a grievance process back in 2018.

*Decision: **Substantiated in part.** AAFC did not follow the Workplace Violence policy by initiating a formal investigation of the pipette incident by a competent investigator.*

X. CONCLUSION AND RATIONALE

The RP did not engage in harassing or violent behaviour toward the PP. S/he was not in place when the PSDPA investigation was conducted, and s/he had only just started in his/her role when the pipette incident happened. Although s/he took the pipette incident seriously and took the initiative to conduct the fact-finding investigation, it was not completed according to policy. Senior management made a collective decision not to pursue this matter any further so the responsibility cannot rest with the RP alone. It was difficult to conduct this investigation so far after the fact when a number of people had retired or moved on from AAFC and were not available to be interviewed. Although available witnesses did their best, it was clear that some could not recall specific details due to the passage of time which is understandable. As a result, it would not be practical, or fruitful, to try and re-investigate the pipette incident again.

XI. RECOMMENDATIONS

These circumstances are an example of why Bill C-65 brought about the changes which combined harassment and workplace violence into one policy. Under the previous regime, it was the investigator's experience that supervisors and managers often did not realize harassment could be included under the Workplace Violence policy as potential psychological harm. Most supervisors and managers only considered the Workplace Violence policy in the context of physical harm. As such, any workplace incident had to be examined in the context of both policies, not one or the other, and it was easy to confuse procedures for them. The old Harassment policy had a requirement for the complaint to be made in writing but the Workplace Violence policy did not.

*1. AAFC should reinforce with supervisors and managers that the current policy under 9.0 Notification to the Employer states that a notice of occurrence can be done **verbally** or **in writing** [emphasis added]. When a harassment or violence in the workplace incident is brought to their attention supervisors are expected to take it seriously and act on it by supporting the employee, consulting policy and appropriate subject-matter experts to ensure proper process is followed.*

2. An appropriate investigator must be selected according to policy.

…

[Emphasis in the original]

[138] In addition to issuing the Hamori report, Mr. Hamori also wrote a letter dated February 11, 2022 to Isabelle LeBlanc, the acting associate director of workplace wellness programs for AAFC ("the Hamori letter"). It should be noted that while Ms. Leblanc was a director at AAFC, she was not located at the LRDC; nor is there any indication that she had any line authority with respect to the STB or RTD.

[139] The first paragraph of the Hamori letter states that it is intended to provide Ms. LeBlanc with the following:

> *… a summary of the events and some observations and recommendations that may assist AAFC in moving forward following the investigation* [he] *was engaged to conduct. These observations and recommendations fall outside the mandate of the harassment investigation but are related.*

[140] The grievor was sent a copy of the Hamori letter. According to the employer and the evidence of Mr. Paulo, AAFC and management at the LRDC took the steps that they felt implemented the recommendations in the letter. The grievor, in his testimony, was of the view that the employer had not implemented the recommendations in the Hamori letter.

[141] I will not get into the details of the Hamori letter or the testimony and documentation on the implementation or non-implementation of the recommendations in it for the reasons that are set out in the reasons section of this decision.

4. The post-Hamori investigation, the second options letter, and the termination of the grievor's employment

[142] On April 25, 2022, Mr. Paulo sent the grievor what has been identified as "the second options letter". Its substance is the same as the 1st options letter. The relevant portions of that letter are as follows:

> …
>
> *This letter is sent further to my letter to you dated March 22, 2021. We had agreed in previous communications to pause the need to make a decision in order to allow other administrative processes to be resolved. As those processes have concluded, the priority is now in making a decision concerning your options regarding your long term leave.*
>
> *Our records indicate that you have been on Sick Leave Without Pay (SLWOP) since March 30, 2019 and that you have recently*

> *submitted a medical note certifying your absence until June 2, 2022. The Treasury Board Secretariat (TBS) Directive on Leave and Special Working Arrangements (the Directive), requires that absences in the workplace be managed in a timely manner and that cases of leave without pay due to illness or injury be resolved within two years of the leave commencement date. Further to the requirements of the Directive, I would like to discuss the options available to you, at this time.*
>
> *Should you choose to return to work, I will work with you to create a return-to-work plan and together with input from medical practitioners, we can determine if you require any workplace accommodations. My goal would be to facilitate the process for your successful reintegration into the workplace.*
>
> *However, if you are unable to return to work immediately or within the near future, the options listed below remain available to you. I recognize this is not an easy decision and want to ensure you have all the support you need.*
>
> *1. Resignation/Retirement – should you choose to resign or retire you must do so in writing indicating your intention. For information on how to initiate ….*
>
> *2. Retirement on medical grounds – you must satisfy medical requirements demonstrating that you are incapable of pursuing regular and substantial gainful employment. You must apply for a medical retirement.…*
>
> *3. Termination of your employment – this is an option available to the Employer under the Financial Administration Act, paragraph 12(1)(e), in the event that you are unable to return to work and do not voluntarily choose to terminate your employment or do not qualify for a retirement on medical grounds.*
>
> …
>
> *Please review the information contained in this letter, contact any of the representatives identified, as necessary, and advise me of the option with which you intend to proceed, by no later than* ***May 27, 2022.***
>
> …
>
> [Emphasis in the original]

[143] Between May 28 and June 9, 2022, the grievor and Mr. Paulo exchanged emails. The relevant portions of the email exchange are as follows:

> [The grievor to Mr. Paulo, May 28, at 21:33 ("the May 28 email"):]
>
> …
>
> *I'm sorry about the late reply but I was hoping to have everything settled, prior to the 27th. There have been some delays in communication with my union, my legal representative*

and HR and, unfortunately, we need a bit more time. I was told that my union was able to confirm with HR that a 2 week extension was granted, but I wanted to touch base, anyways, and to provide another doctor's note (as mine was to run out on June 2nd). I see that the new note just says September and doesn't have a date. I will have this amended if things aren't settled within the 2 weeks. Please note that I have been in contact with my union and legal representation since before I received your letter and, as they say, the wheels of justice turn slowly.…

On a related note, were you shown the full Investigator's Letter to Management and Action Plan to Implement Recommendations, that was generated by Tony Hamori? I'm only asking, as this letter, and the situations it discusses, would be extremely informative and help to explain why I am heavily weighing this decision and am not completely comfortable with a return to the center, as it stands (which I had previously conveyed to you).

…

[Mr. Paulo to the grievor, May 30, at 14:42 ("the May 30 email"):]

…

I heard back from HR this past Friday that you would need another 2 weeks to select an option; so I noted that on my files and your doctor's note is thus timely. It will ensure we are able to keep your leave records up to date.…

We have a vacancy for an EG position with an ongoing project work that needs technical support. So I was hoping your return would fill that need and I have been holding off on filling that position as a result. However, I was a bit worried about ensuring you would have enough time to get an updated doctor's note with any conditions and limitations, temporary or permanent that we would need to put in place… So, don't worry about the date on the latest doctor's note too much. We will use September 1st of 2022 for the updated leave forms which aligns with the doctor note you provided.

I did receive a copy of the investigator's recommendation letter. I provided a few responses to a couple of items in the action plan. At least for those that would fall under local management's ability to address. From a local management perspective, there have been numerous updates to our processes given the updated Harassment and Violence in the workplace legislation that came out in January 2021. This included additional mandatory training for all supervisors and staff; which we completed. I hope that this new mandatory training and the fact that there is a new management team in place will ease your return to work in the near future.

However, as I have said to you before, please focus on your health when making a selection. We would be glad to see you return to help us with technical work but at the same time, I always ask my employees to decide what is best for their long-

term health and well being. It's important that you pick the option that is best for you; and don't let our local needs affect your final decision.

…

[The grievor to Mr. Paulo, June 9, at 23:31 ("the June 9 email"):]

…

Thank you for getting back to me and I appreciate your concern for my health and wellbeing. I realize that you had nothing to do with any of the things I was subjected to, or the subsequent mishandling, and I hope that we able to have an amicable and productive relationship, moving forward.

Regarding the letter, and the situations it described, I am hoping that you now realize that management didn't handle everything in a suitable manner, and that that my absence from the center was due to the overwhelming combination of harassment and mismanagement. While I am encouraged to see that AAFC is implementing some changes moving forward, I am extremely discouraged by the absence of any accountability for the incidents that I was subjected to, which had significant detrimental effects on my mental, physical, and financial health.

Prior to these incidents, there were numerous training sessions regarding harassment, violence in the workplace, Values and Ethics etc. Yet, all of this training was soundly ignored when a colleague (or colleagues) decided to file false and vexatious drug allegations against me and plant supposedly stolen pipettes into my desk. I'm quite certain that these situations are not what a federal employee should be subjected to, specifically, in a workplace that purports to have zero tolerance for harassment. I am more than confused, as to why these zero tolerance policies are put in place if management is not willing to enforce these policies and assign accountability and/or corrective action?

In addition to the points raised in Mr. Hamori's letter, there has been an enormous amount of misinformation directed towards myself, and my character, as evidenced by the line of questioning carried out by the drug allegation investigators (a copy is available if you have not seen it) and comments I have heard from other employees. It would appear that management was swayed by this misinformation, given their inaction, regarding my initial meeting with Karl Volkmar (regarding a conflict of interest that Mr. Hamori deemed valid) and the subsequent events/fallout that have transpired. It has also resulted in a number of fractured personal and working relationships. Combined with my unfairly damaged reputation, this is going to make it extremely difficult for me to return to the workplace, without an arrangement in place, beforehand.

Further consultations with the Union, HR and my legal representative will be focused on creating an amenable arrangement, in which I feel safe to return to the workplace. My

biggest issue will be having any form of interaction with the individuals who I believe are responsible for all of this (I am assuming that after reading the documents you know to whom I am referring) and, to a smaller degree, other people (the fractured relationships) who have been influenced by them and their misinformation. On a few occasions I have seen these individuals outside of the workplace, and immediately experienced unpleasant physical reactions. Given this, I cannot see having this happen on a daily basis, as a viable option, should I return to work.

Both you and the Union have mentioned accommodations/limitations/conditions etc., for my return to the workplace. For me, that would include me not having to interact these individuals. I realize that this might seem unrealistic (obviously passing through common spaces), but I do not think the onus should be on me to find a solution. The possibility of reassignment to another center has been raised but this really is not a viable option on two fronts: many of my family are in the London region and as I was the one harassed and it seems illogical that I should be asked to move.

Moving forward, the promise of further training sessions and changes in policies is not a very convincing argument/incentive for my return. As Mr. Hamori noted in his letter, many steps that had previously been put in place to avoid, or at least limit, the impact of the harassment I experienced, were not followed.

I do want to return to the workplace. But only if I am not returning to a toxic workplace, where I don't know who I can trust or am always wondering what might happen next. I hope that is AAFC stands behind the zero tolerance for harassment in the workplace, by taking transparent actions would help to restore my severely tarnished reputation in the centre, such that if the fractured relationships mentioned earlier continued, they would, at least, be based on facts and not misinformation, or outright lies. This certainly would show that AAFC stands behind the principles of integrity in the workplace; the same principles that led me to initiate the meeting with Karl Volkmar that started all of this.

I did not realize that you were holding off on staffing, pending my potential return. As you have read the letter from Mr. Hamori, you understand that he emphasizes that many aspects of my case were not handled in a suitable manner. These are the reasons for my prolonged absence, and as this was involuntary on my part, I obviously would like to return to Aiming's lab, although I do realise that [name deleted] *has been there for some time, and I would not seek to displace him. If not, I hope that I would have a say in my assignment, for as you know from Mr. Hamori's letter, there are several individuals that I would not wish to work with.*

Again, I realize that all of these events occurred prior to your arrival and, unfortunately, you have inherited these ongoing

> *issues. I just want to see the workplace restored through accountability, transparency, fairness. I will be sending a very similar, and more detailed, message to the Workplace Wellness office, sot this is just to keep you informed.*
>
> *I was notified by my union representative, yesterday, that they have not been able to communicate with HR, regarding my situation. And, to make matters worse, my union representative will be on vacation next week. Until something is resolved with HR, I will not be able to make a decision, regarding my work status. I am also waiting for the results of the Workplace Assessment that the Workplace Wellness team indicated would be happening in London. I am confident that this assessment will only compound the points that were raised in Mr. Hamori's informal letter and, perhaps, hold some accountability and help to restore the workplace. I'm hoping that HR will be willing to grant an extension (my representative indicated that they will be seeking this by end of day, tomorrow). If this is not possible, could you please forward me the paperwork for the 3 month LWOP, which I am to understand that each employee is entitled to? I just want to have everything settled and know where I stand, prior to a possible return to the workplace.*
>
> …
>
> [*Sic* throughout]

[144] On July 20, 2022, at 12:23, Mr. Paulo emailed the grievor ("the July 20 email"), stating as follows:

> …
>
> *… I'm writing today in regards to the options letter that I sent you on April 26th of 2022. I am attaching another copy of that letter for your reference. The deadline for a response has been extended twice since this letter was issued. This was to allow you additional time to consider your options but both extended due dates have past* [*sic*]*. Although the employer could select an option for you, I wanted to offer you one last opportunity to select an option.*
>
> *Please note that we have processed your medical note to cover you until into the early fall under unpaid sick leave. As such, we are at the point where we need to have a decision in terms of your future with us – whether you'd like to return to work or whether you would like to pursue another path as outlined in the letter.*
>
> *I would like to reiterate that I look forward to discussing a return to work as I believe your skills can be put to good use, but only if that is something that you are willing and medically able to pursue. As I stated before, the vacancy* [*sic*] *position I was holding for you is affecting operations and affecting others as it remains vacant, so we need to address the situation as soon as possible.*

> *With that in mind, I'm setting a final date for a decision. Could you please advise me of your intent* ***by end of day August 5th of 2022****. I look forward to hearing from you with your decision - as my preference would be for you to make the choice rather than the employer.*
>
> *Please note that going forward, I would ask that not just you but also your union representation reach out to me directly for any questions on your return to work options letter to ensure that we resolve the situation expeditiously.*
>
> …
>
> [Emphasis in the original]

[145] In his examination-in-chief, the grievor was asked about returning to a specific workplace and a specific place at the LRDC. He stated that he recalled a discussion involving returning to the LRDC into a lab other than Dr. Wang's, and he referenced that there was a particular lab that required a research technician. In this respect, he was brought to the July 20 email and said as follows that he believed that he would be sent to a lab that "wouldn't be good for me, so I chose not to choose."

[146] In his testimony, the grievor talked about a program that required technical support and that it was in a particular research scientist's lab. He said that he did not think that it would help reintegrate him into the workplace.

[147] The grievor testified that he wanted accountability. He said that nothing was done (with respect to the *PSDPA* disclosure and missing pipettes), and he said that if anyone can make allegations and nothing happens, then there is no accountability. He said that it kept him from returning to work because if it happened before, it could happen again, and he would not subject himself to it. The fact that it could happen again was not good for his health. He was also asked about a co-worker and friend who complained about being moved to a particular research scientist's lab ("Scientist 1"), was not happy about it, and would have to quit because of it.

[148] When posed the question by his representative as to if he had been offered a position in that scientist's lab, he said that he had not been. When asked if he would have accepted a position in that scientist's lab if he was offered one, he said that he would have refused it, the reason being that the research technician had to be removed from the lab, due to harassing behaviour. The grievor was asked by his representative if he thought that a return to work would have been successful. He replied that he was not convinced that a return to work would have been successful

in the best circumstances. When asked what behaviour he thought he would have been subjected to, he replied that he thought he would have been "subject to the behaviour [Scientist 1] did to others". Yet, he then said that he did not know the specifics but then added that "[Scientist 1] was demanding beyond the scope of the job description".

[149] An email chain dated August 8 to 11, 2022, between Mr. Paulo and a Dr. Krzysztof Szczyglowski was introduced into evidence. It had been forwarded to the grievor by his friend and colleague. It referenced moving one of Dr. Szczyglowski's research technicians (one of them being the colleague who had forwarded the email chain to the grievor) out of Dr. Szczyglowski's lab to the lab of Scientist 1. In the email, Dr. Szczyglowski references that the suggested move had a "… very negative, highly visceral and emotional impact …" on the two research scientists who were being suggested for deployment. Dr. Szczyglowski then references that according to his research technicians, the position had been advertised on multiple occasions, and no one had been willing to relocate because of a documented history of harassment of a prior technician by Scientist 1.

[150] In responding to Dr. Szczyglowski's response to the initial email in the chain, Mr. Paulo stated as follows:

> …
>
> *I can understand substantiated concerns, but I don't like to have "rumours" discussed about other employees. They often are just rumours, biases and impressions and don't generally reflect the complete story; often due to privacy concerns. So, I am aware of past history at London RDC. I also recognize that everyone deserves equal opportunity, an harassment-free workplace and that "course corrections" are sometimes part of self-improvement.…*
>
> …

[151] The specifics of the alleged harassing behaviour were not provided to the Federal Public Sector Labour Relations and Employment Board ("the Board").

[152] Entered into evidence was an email to the grievor, Ms. Amyot, and one other person dated November 7, 2023, from the grievor's colleague and friend who was moved into Scientist 1's lab from Dr. Szczyglowski's lab. It stated as follows:

> …
>
> *Just received the final report and thought you'd want to know.*
>
> *T.*
>
> *As mentioned, we have received the investigation reports conducted by the investigator … in regards to the harassment and violence in the workplace notice of occurrence you have* [*sic*] *filed on May 25, 2023. After conducting a thorough investigation,* [the investigator] *concluded that workplace harassment and violence has occurred.* [Scientist 1] *is being informed of the investigation findings and we can assure you that appropriate corrective measures are going to be put in place. Please note that you may not be made aware of any additional measures that are taken as per the* Access to Information Act and the Privacy Act.
>
> …

[153] It is clear that what was forwarded by the grievor's colleague was not their comments but had been cut and pasted from a report by an unknown management representative.

[154] In his testimony, Mr. Paulo said that in the summer of 2022, the LRDC had vacancies that needed to be filled. He said that management had held off on staffing processes and that they could juggle and move people around for a while. However, delaying staffing positions delayed projects, which delayed research. At some point, staffing has to be done.

[155] Dr. Saindon echoed Mr. Paulo's comments with respect to staffing and vacancies at the LRDC. The grievor had been absent from the workplace by the late summer and early fall of 2022 for four-plus years; there were consequences to the employer. Staffing positions cannot be put off forever.

[156] In cross-examination, Mr. Paulo was brought to the email chain between him and Dr. Szczyglowski from August 8 to 11, 2022, and then was asked about the grievor's potential return to work and whether Mr. Paulo had offered the grievor a return to Dr. Wang's lab. He said that he had not. When asked if the union had asked that he be returned to that lab, he said that he did not know. When he was asked about Scientist 1, he said that he had discussions with Mr. St-Georges about possible vacancies for the grievor. He did not specifically state that he had discussions about Scientist 1.

[157] After he received the second options letter, the grievor testified that he spoke with Mr. St-Georges about it and that Mr. St-Georges said to "leave it with him". The grievor said that he did not hear back from him.

[158] In his examination-in-chief, a reference was made to the grievor about LWOP of three months. In response, he stated that he tried to extend his leave; in short, to extend the time for dealing with the second options letter. He said that he was told that to take this leave, he needed to return to work. This leave was identified later as LWOP for personal needs under clause 48.01 of the collective agreement.

[159] Entered into evidence was a series of email exchanges between the grievor and Mr. Paulo over several dates. Included were references to the LWOP under clause 48.01. They are set out in this quote. The first is the final few sentences of the June 9 email already set out in its entirety. The chain is as follows:

> [The grievor to Mr. Paulo in the June 9 email, June 9, 2022:]
>
> …
>
> *… I'm hoping that HR will be willing to grant an extension (my representative indicated that they will be seeking this by end of day, tomorrow). If this is not possible, could you please forward me the paperwork for the 3 month LWOP, which I am to understand that each employee is entitled to? I just want to have everything settled and know where I stand, prior to a possible return to the workplace.*
>
> …
>
> [Mr. Paulo to the grievor, June 14, 2022:]
>
> *… I've reached out to my LR advisor to get you some information on the 3 month leave without pay that you mentioned. Employees can only take this leave period once in their total career. The clause from the collective agreement pertaining to this option is the following:*
>
> …
>
> *In terms of the paperwork required to request this leave, please find attached a leave form. You would need to use leave code 999 when submitting it to me for review and approval.…*
>
> *However, **please keep in mind that in order to approve this leave, we would likely need to have confirmation that you are selecting a return to work option**.…*
>
> *Please note that your Union representative may be able to give you some recommendations or information about your target approach as well.*
>
> …

> [The grievor to Mr. Paulo, June 17, 2022:]
>
> …
>
> *Thanks, for the information, regarding this leave.*
>
> …
>
> [Emphasis in the original]

[160] There was no suggestion that there was any oral communication between the grievor and Mr. Paulo on this topic; nor is there any indication that any leave form for this leave was submitted by the grievor.

[161] As set out in the July 20 email, the extension of time that the grievor referred to in the June 9 email was granted.

[162] On August 4, 2022, at 20:03, one day before the deadline set out in the July 20 email that set the August 5 deadline, the grievor emailed Mr. Paulo, stating as follows:

> …
>
> *As you are aware, I continue to seek guidance & treatment with my medical practitioner, and I am due to be reassessed in approximately 1 month. It is premature for me to respond to the options letter, at this time, since I am still hoping to return to work, in the near future.*
>
> *I am also waiting for my employer to conduct a thorough, full-centre workplace assessment, as promised in an email I received from Jessica McManus, A/Coordinator, Harassment and Violence in the Workplace Prevention Program, on March 22, 2022 and recommendation(s) made by Tony Hamori's investigative report (and stated in the subsequent Annex). Recognizing that Mr. Hamori already has a sense of the LRDC workplace, it would be appreciated if he would conduct this workplace assessment. I would also like to officially request that I be a part of this assessment.*
>
> *Please contact my union representatives (Nancy Ritcher &/or Patrick St-Georges) should you have any further questions.*
>
> …

[163] The grievor was brought to the email he sent on August 4, 2022, asking for a further extension of time. He said that he was under the impression that Mr. St-Georges was still discussing things with human resources (HR). He said that he "was just stalling for time to get word back from Mr. St-Georges." He said that he was pretty sure that in the end, he did not hear anything further from Mr. St-Georges.

[164] The grievor confirmed in cross-examination that he understood the ramifications of not choosing an option set out in the second options letter.

[165] The grievor also confirmed in cross-examination that management tried to provide him with everything that would have allowed him to make a choice.

[166] When asked in his examination-in-chief as to why he could not go back to work, the grievor said that other than a few people retiring and other than the updating of policies, he felt that nothing had changed. He said that it was in his best interests not to return to the workplace. When then asked if he wanted to return to work and why he did not choose that option from the options in the second options letter, he responded that it was because he could not return to a toxic workplace.

[167] On September 20, 2022, at 20:09, the grievor emailed Mr. Paulo, stating as follows:

> …
>
> *I haven't heard back from my union reps, who were supposed to be working on something with upper management, regarding a potential return to the workplace, for me.*
>
> *In the meantime, I had another doctor's note made up, to make sure there is no lapse.*
>
> …

[168] The medical note attached to the September 20, 2022, email was from Dr. Tabor (and is dated September 6, 2022). It was addressed to the grievor and stated as follows: "Jamie is still unfit to return to Agriculture Food Canada. We will continue to reassess regularly however no real change is anticipated with respect to this condition. Next f/u to be booked Dec 13, 2022" ("the Sept. 6 medical note").

[169] There were no further emails from Mr. Paulo to the grievor after his July 20 email (providing the extension to August 5, 2022), and there were no further emails from the grievor to Mr. Paulo after he forwarded the Sept. 6 medical note.

[170] During the course of the hearing before me, between the second and third weeks of the hearing, on March 11, 2025, counsel for the grievor and the Alliance wrote to Dr. Tabor, seeking both the disclosure of some medical records and a medical report. The request for medical records was limited to those pertaining to the grievor's work-related health condition from 2016 to 2022.

[171] On April 8, 2025, at 16:12, Dr. Tabor appeared to fax to counsel for the grievor and the Alliance a package of documents that included some of the clinical notes and records related to the grievor as well as a short three-paragraph letter dated April 6, 2025 ("the Tabor 2025 letter"). The relevant portion of that letter states as follows:

> …
>
> *Mr. McNeil's work-related medical condition is mental health in nature and was significantly exacerbated by work place incidents that to the best of my knowledge started back in early 2017. The problematic work dynamics continued to exacerbate Mr. McNeil's condition to the point where he had to take leave in September 2018. The main symptoms exacerbated at the time were anxiety, panic attacks, insomnia, concentration and attentional problems. These symptoms significantly improved during his leave from work however he was never really able to get back secondary to severe symptom exacerbation at even the thought of or being in proximity to this particular work environment.*
>
> *His prognosis for return to work at Agriculture and Agri-food Canada is quite poor with or without accommodation. At this point, I do not believe he will ever be able to return to this particular workplace given everything that has happened.*
>
> …

[172] Dr. Saindon terminated the grievor's employment by letter dated October 7, 2022.

[173] Dr. Saindon testified that he had met the grievor in the past, as at one time in his career, he had been a director at the LRDC. He stated that he did not recall exactly when he became aware of the grievor's situation. He stated that he has bilateral meetings with directors general who report to him, and it is likely that it would have been brought to his attention during these meetings. It likely would have been a verbal briefing.

[174] Dr. Saindon stated that the obligations on the employer flow from the leave directive that outlines the criteria with respect to employees who have been on SLWOP for an extended period and who have reached the two-year threshold. He stated that there are consequences for the workplace when employees are gone for extended periods because the work does not go away. He stated that for leave of a short duration, usually, nothing is done. For leave of a longer duration, he stated that management will often "shuffle the deck" so to speak or reassign duties from within; however, this causes a domino or ripple effect. It can orchestrate short-term hires,

casuals, and students and do some rotations; however, those are not long-term solutions.

[175] Dr. Saindon stated that he would have been briefed on the 1st options letter when it was sent, as part of the bilateral meeting process he had with his DGs. He recalled that there was a pause after the 1st options letter, as a harassment complaint had been made, and after that was dealt with, the second options letter would have been sent. He stated that likely, he received briefings from HR and was told that management had received notes from the grievor's doctor, which indicated that there would be no change in his condition in the future.

[176] In cross-examination, Dr. Saindon was put to both the 1st and 2nd options letters. He said that he was not consulted on them by Mr. Paulo and that managers would work with HR or LR and then issue the letters. When asked if there was a mention of the 2nd options letter going out during a bilateral meeting, Dr. Saindon said that it could well have been mentioned.

[177] When he was asked about the factors supporting the termination of the grievor's employment, Dr. Saindon stated that it was his absence from work due to illness, which at that point was four years, and the assessment from the grievor's doctor in his notes that there was no change expected for the foreseeable future.

[178] When asked about other options, Dr. Saindon stated that management always start with the question of whether the employee intends to return to work, and then they may adjust things to work with the employee, to return them to work. He said that the other options after that are retirement, resignation, or a medical retirement. If none of those options are chosen, the remaining option is that the employer can terminate the employee's employment.

[179] Dr. Saindon said that once the decision to terminate is made, a letter is prepared by HR for him, and he reviews and signs it. He said that he does this consistent with the Guidelines. The letter is then sent to the employee. When asked why he took the termination route, Dr. Saindon stated that there was no prognosis from the grievor's doctor that the grievor would get better. The information that the employer received was the same, repeated over months and years. He said that there were consequences to the employer; it could not continue infinitely with the grievor being away.

[180] In cross-examination, Dr. Saindon was asked if he was aware of allegations about the grievor and the *PSDPA* disclosure. He said that it did not ring a bell. When asked who the DSO for the *PSDPA* is at AAFC, he said that he did not know. Dr. Saindon was shown a leave-of-absence request with respect to the grievor for the period of October 1 to December 31, 2019, and was asked if he had seen it before. He said that he had not. When asked if he had seen this type of document before, he confirmed that he had.

[181] In cross-examination, Dr. Saindon was asked if it was part of his job to be aware of harassment in London. He stated that he and others at his level would have had general knowledge but would not have had a route to direct intervention. He was asked if he was aware of the grievor's leave in 2018. He said that he was not because it was SLWP. He was asked if he was aware of issues involving the grievor in 2017. He answered, "No." He was asked if anyone brought forward an issue of a conflict of interest to him involving the LRDC. He replied that it did not ring a bell. He was then asked if someone had brought to his attention an issue involving an extra-marital affair. He indicated that he had some recollection of it, but as a leadership team, it would have been dealt with by the DGs and Mr. Gray. When asked who raised the issue with him, he said that he believed that it was Ms. Amyot.

[182] When asked about what he did, he said that he recalled listening and that he then would have referred the matter to LR and the office that dealt with wellness. When asked if he met with Ms. Amyot, he said that he recalled speaking with her by phone. When asked if he recalled anything specific, he said, "No", just that the situation at the LRDC as a whole was not good. He was asked if he recalled being told about the grievor at the time; he asked if it was anything specific, and the question narrowed to if he had heard anything about the grievor selling drugs. He said that he knew that he heard about it because an investigation had been carried out.

[183] Dr. Saindon was shown a copy of undated "Public Service Survey" results for AAFC and asked if he had seen it before. He said that he had not. When asked if he was aware of an investigation about the sale of drugs, he confirmed he was aware of one. He said that he was not involved in the decision to investigate. He said that it was not his role to mandate investigations but that he was generally made aware of them.

[184] Dr. Saindon was also showed the email from Ms. Taylor dated October 19, 2018, which referenced the fitness-to-work evaluation (FTWE) and the FAF, and was asked if he had seen it before. He said not until just then. When he was then asked if completing an FTWE was normal, his response was that he could not say. When asked if he had seen one with respect to any other employee, his response was, "No." When asked if there was one on the grievor's file, he said that he did not know. When asked if when he made the decision on the grievor's termination, he looked at any medical assessment, Dr. Saindon said, "No." When it was suggested to him that there were none in his file, he said that there could be and that he was not aware. When asked if he considered asking for a further medical assessment, he said that he saw a series of notes stating that the grievor was not fit for work. He said that he was not about to second-guess them.

[185] When counsel for the grievor put it to him that he made no effort to obtain further or better information, Dr. Saindon said that for him, management did not need any. Counsel for the grievor referenced the first note written by Dr. Tabor in September of 2018, which states, "Jamie is physically fit to resume work outside of Agriculture Food Canada. However he is still not mentally fit to return to this environment as toxic relationships will likely exacerbate his mental health condition." Dr. Saindon stated that he did not see how the doctor could have come up with that conclusion. When Dr. Saindon was asked if he needed more information, he replied by stating that the grievor was absent because he was unfit. When counsel said that that was deficient because the doctor did not assess the grievor, Dr. Saindon repeated that he did not know how the doctor came to that conclusion. Dr. Saindon referred to several other subsequent notes written by Dr. Tabor, stating that the grievor was "… unfit to return [to AAFC] due to a medical condition."

[186] In cross-examination, Dr. Saindon was asked if he inquired as to whether the grievor wanted to return to work. He said that he had been assured that the grievor had not replied to the second options letter. When he was asked if he was aware at the time he signed the letter of termination that the grievor had asked for intervention to return to work safely, Dr. Saindon said that the grievor had made that request before.

[187] Dr. Saindon was asked if he was aware of the harassment complaint that was made after the delivery of the 1st options letter. He confirmed that he was and that

an investigation had been carried out. When asked if he knew that the grievor had asked for an extension of time with respect to the 2nd options letter, Dr. Saindon said that there had been several requests and there had been no change in the grievor's health condition. He was also asked if he knew if the grievor had been accommodated; he stated that the grievor was unfit to work. He said that he did not understand that the grievor was coming forward with an accommodation issue; he understood the grievor as someone who was unfit to work.

5. Other grievances

[188] According to the evidence, the grievor presented two other grievances to the employer on August 10, 2021. The grievances were not entered into evidence; however, their details were contained, to a certain extent, in the employer's first-level grievance response to them, which is dated November 24, 2023. From that document and the testimonies of the grievor and Mr. St-Georges, the two grievances were as follows:

1) The employer failed to provide the grievor with a safe workplace per article 22 of the collective agreement.

2) The employer discriminated against the grievor, contravening article 19 of the collective agreement, applicable employer policies and directives, and the *CHRA*. The corrective relief requested reflects that the grievor believed that he was being discriminated against by the employer on the basis of a conviction for an offence for which a pardon had been granted.

[189] The letter of November 24, 2023, states that the first-level grievance hearing took place on October 27, 2023, and that at that hearing and during the grievor's presentation, the grievor's representative, Ms. Richter, spoke about events that took place in 2017 and 2018. The grievances were denied at the first level as untimely; however, the merits were addressed in the response.

[190] According to the parties, these grievances are being held in abeyance. Neither has been referred to the Board.

6. The "thank you" comment

[191] During the course of the testimony of Mr. Paulo, he mentioned that early in his tenure at the LRDC, he was approached by a staff member, who thanked him and stated that the workplace was a better place. He said that this person told him that in the past, there had been situations that had made people feel stressed. He said that

the grievor's name came up in the discussion. He said that the staff member said to him that in the past, the staff members had been divided due to an event, that they were then coming together as a team, and that they felt better about the workplace. Mr. Paulo said that he spoke with Ms. Sterling about the situation and that she gave him background information, largely about "camps" in the workplace, and rumours. Mr. Paulo said that the information was similar to what Ms. Taylor had already told him.

[192] Mr. Paulo described being told of a discussion that was witnessed in which two employees were talking, and one commented, "Who do I have to sleep with to get a job around here?" The grievor was allegedly one of the parties to this discussion. According to Mr. Paulo, the discussion that was overheard took place in 2018. Mr. Paulo was concerned about the person's well-being, so he spoke to Ms. Sterling about it as well as the person who was involved in the discussion. He said that as a manager, he is responsible for the well-being of his employees, so he had some discreet discussions. He stated that in the end, he determined that there was nothing to this and did nothing about it.

[193] In cross-examination, Mr. Paulo stated that he did not speak to the grievor or Ms. Amyot about this. He confirmed that he never spoke to Ms. Amyot about the grievor at all. When asked about the handover when he started at the LRDC, taking over from Ms. Taylor, he was asked if Ms. Taylor suggested that the grievor was violent. Mr. Paulo answered in the negative. He was asked if he was briefed on the greenhouse discussion by Ms. Taylor. Again, he answered in the negative.

7. The biologist EG position

[194] In his testimony, the grievor testified about a biologist EG job opportunity that arose in the lab of a researcher (person E). He said that he was very interested in this opportunity, as biology was his original area of study. He said that his belief was that this happened sometime in 2016. He stated that on one occasion, during a discussion with person E, he found their demeanour odd. He said that he spoke to another EG, who he said told him why person E's demeanour might have been odd. He said that the other EG told him that person A had told person E that the grievor had said that he would sleep with person E to get the biologist EG position in person E's lab.

[195] The grievor said that he spoke with person A and asked him about them saying this. Person A's response was that they told person E this because they thought that it would be funny.

[196] The grievor testified that although he applied for the biologist EG position in person E's lab, he was not successful.

[197] During the course of the hearing, the grievor often alluded to persons who he believed were responsible for what he believed were reprisals against him. At times, he referenced three people. While almost all his testimony, as well as the allegations he set out in emails and his harassment complaint, featured him pointing a finger at persons A and B, when I asked him who the third person was, he said that it was person E.

[198] While there was some testimony about person E by the grievor, it appeared only to give some context to his comments allegedly passed on to person E by person A, which were, in the context provided, inappropriate. I heard absolutely no evidence of how or why the grievor thought that person E was somehow involved or responsible for the alleged acts of reprisal against him. The only context that I heard that involved anything about person E was that person E was a research scientist who ran a lab and was involved in needing a biologist EG for their lab, a position for which the grievor applied and was not successful in securing.

[199] I heard a considerable amount of testimony from the grievor about the background to the creation of the biologist EG position, from how he believed that the ability to create the position was based on what had happened in person A's lab with respect to the creation of a position in that lab to the details about his failure to qualify for an interview and his views on the staffing process. The grievor clearly felt that this position was his for the taking, and the impression from what he said was that he was either somehow unfairly treated in the process, unfairly cheated out of the position, and/or the person who was successful was either not as qualified as the grievor was or the grievor was at least equally qualified and should have been successful.

8. Miscellaneous

[200] Ms. Amyot left her position as a research technician at the LRDC in or about the end of 2019. She stated that she applied for the position at the Office of Intellectual Property and Commercialization and that it was open to any staff in the STB to apply. She stated that she was successful in her application for this position and that when it was offered to her, she took it. She did not state in any way that she was moved into this position as an accommodation.

[201] Ms. Amyot confirmed that the grievor did not keep her informed about the status of what was going on with him, other than that he was on sick leave and forwarding notes to the employer. She was never privy to documentation about investigations.

[202] Ms. Amyot said that although she knew that the grievor had been cleared of the drug allegations, she thought that they were hanging over him. She confirmed that there was never any communication from management about the *PSDPA* investigation. She confirmed that she did not know who made the *PSDPA* disclosure and that her thoughts on who did were speculation.

[203] When asked about the persons who did not sign the petition supporting the grievor with respect to the *PSDPA* disclosure, Ms. Amyot confirmed that she could not speak for why people did not sign the petition.

[204] As of the hearing, person B was working in the office of Mr. Paulo. Other than musings brought forward on the grievor's behalf that the employer accommodated person B by moving them into this position, no actual evidence of how they transitioned out of their research technician position to the position they were in outside the lab setting was submitted to the Board. Nor was there any evidence that the move was done in breach of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; "the *PSEA*") or any staffing regulations, policies, or procedures.

[205] During the course of his examination-in-chief, the grievor was asked to describe the physique of person A, whom he described as being taller and broader than him and in good shape. Also, at times during the course of his examination-in-chief, the grievor spoke of having what were described as "hallway" discussions with

person A. During the course of his testimony, the grievor inferred that he was afraid of person A.

[206] The grievor did not provide any information that actually suggested that person A ever assaulted him or threatened him with any sort of violence; nor was there any report of this ever made to management, the police, or anyone else. Nor did the grievor make a work refusal under the *CLC*.

[207] What the grievor brought forward was that he wanted to know who made the *PSDPA* disclosure and who was responsible for the missing pipettes.

[208] The grievor testified about working after he left the workplace. He testified that he had a small contracting business, which he worked at on the side while at AAFC and continued to work at after the termination of his employment from AAFC. Specifics were not provided.

III. Summary of the arguments

A. For the employer

[209] The employer requested that the grievance be denied.

[210] The employer referred me to the *PSDPA*; *Babb v. Canada Revenue Agency*, 2020 FPSLREB 42 ("*Babb*"); *Babb v. Canada (Attorney General)*, 2022 FCA 55 ("*Babb FCA*"); *English-Baker v. Treasury Board (Department of Citizenship and Immigration)*, 2008 PSLRB 24; *Georgoulas v. Canada (Attorney General)*, 2018 FC 652; *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 ("*Hydro-Québec*"); *Lapointe v. Canada Revenue Agency*, 2020 FPSLREB 19 ("*Lapointe*"); *Maher v. Deputy Head (Correctional Service of Canada)*, 2018 FPSLREB 93; and *Scheuneman v. Canada (Attorney General)*, [2000] F.C.J. No. 1997 (QL).

[211] The employer submitted that most of the facts are not in dispute.

[212] The grievor left the workplace in late August of 2018, never to return to work. His leave was initially SLWP, and when that ran out in March of 2019, he remained off work on SLWOP. In June of 2020, Mr. Paulo, the new manager, reached out to the grievor and inquired if he would be returning to work and if he would be returning, the employer would need a medical assessment if not documentation to substantiate

him remaining on leave. The grievor was forwarded the FAF that was dated October 17, 2018. This opened the conversation with the grievor, who responded that he was not in a position to return to work at that time and asked how long he could remain on SLWOP. Mr. Paulo responded to the grievor, advising him that if he remained on that leave, he could expect to receive a letter at about six months before the two-year point.

[213] The 1st options letter was sent to the grievor on March 22, 2021. It contained a list of options, which included returning to work with medical clearance, management assisting with a return-to-work plan, and workplace accommodations possibly happening. A response date of May 3, 2021, was set.

[214] After the delivery of the 1st options letter, discussions were had between management and the grievor, and the process for the 1st options letter was put on hold, to allow for a harassment complaint investigation to take place. This process was concluded by April of 2022, and the 2nd options letter was sent to the grievor on April 25, 2022, which again included options of returning to work with medical clearance, management assisting with a return-to-work plan, and workplace accommodations possibly happening. A response date of May 27, 2022, was set.

[215] After the issuance of the second options letter, extensions were given to the grievor with respect to the response date in that a final response date was set, August 5, 2022. In September of 2022, the grievor provided the employer with a final medical note from his doctor (on September 6), which stated that he was unfit to return to work at AAFC and that no real change was anticipated in his condition.

[216] If the grievor had chosen the return-to-work option, a medical clearance would have been required. Accommodation would have been addressed, if necessary. The first step was choosing an option; the grievor chose not to choose one.

[217] At the end of the day, the grievor was unfit to work, had no potential return-to-work dates, gave no indication of a change in his medical situation, remained in a situation of not choosing an option, and asked for a further extension.

[218] The grievor was unfit to work; thus, the employer satisfied its duty to accommodate, as the grievor was shown as unable to return to work.

[219] In anticipation of the grievor's argument, which was that the employer failed to address harassment and his bad-faith argument, the grievor attempted to put the cart before the horse. Mr. Paulo stated that accommodation would be dealt with once the grievor chose to return to work. In this respect, the employer referred to *Hydro-Québec*, at para. 14, where the Supreme Court of Canada (SCC) stated that the purpose of the duty to accommodate is to ensure that persons who are otherwise fit to work are not unfairly excluded where working conditions can be adjusted without undue hardship.

[220] During the hearing, the Tabor 2025 letter was produced that states that the grievor's doctor does not think that the grievor can return to work, based on everything he knows. The grievor was required to choose an option; this was the first thing that had to be done. When duty-to-accommodate discussions took place, returning to work had either been selected or was not in issue.

[221] As for the allegation that the termination of employment was discriminatory, this case is not about whether the employer is responsible for the grievor's illness. *Lapointe* stands for the proposition that causation is not for the Board to determine. At paragraphs 122 and 123, the Board goes on to reference the "obsession" of the grievor in that case to finding liability on the part of the employer for his ailments that it "… blinded him to the need to provide clear information to the employer on his ability to return to work …". The situation with the grievor in this case is the same. He was so profoundly obsessed by the drug allegation and the *PSDPA* investigation and the missing pipettes that he wanted accountability and transparency.

[222] The drug allegations were unfounded. There was no administrative or disciplinary process carried out with respect to the grievor. The missing pipettes were unfortunate; the grievor was never suspected of doing anything wrong. There was no discipline or reprisal against him. Indeed, the missing pipettes brought about updated and enhanced security measures within the LRDC.

[223] The grievor was unhappy with the *PSDPA* investigation. He wrote to Mr. Savard in August of 2018. Mr. Savard responded to him. The grievor was not satisfied with that response. Mr. Savard told him that he should not try to find out who made the

PSDPA disclosure or who was interviewed because it could be seen as him acting in a reprisal manner under that Act and expose him to sanctions.

[224] There is nothing in the *PSDPA* that precludes an investigation such as the one that was initiated with respect to the drug allegations made about the grievor. Section 8 of the *PSDPA* provides what can be investigated; this includes the contravention of any Act of Parliament, regulation, and any Act of a province. Offences under the *Controlled Drugs and Substances Act* (S.C. 1996, c. 19), which include drug trafficking, are covered by the protection afforded under s. 8 of the *PSDPA*.

[225] In the end, a protected disclosure was made, and the allegations with respect to the *PSDPA* disclosure were deemed unfounded. In March of 2019, the grievor contacted the Information Commissioner. The grievor chose to not pursue the matter by this avenue, and as such, he gave up his right to judicially review the decision by the Commissioner. The grievor also sought to obtain recourse by way of a complaint to the Integrity Commissioner. His complaint of course was that the drug allegations under the *PSDPA* were a reprisal against him. The Commissioner wrote to the grievor in February of 2021, dismissing his complaint and advising that his office would not pursue the matter.

[226] In 2021, the 1st options letter process was put on hold, to allow the grievor to pursue a harassment complaint. The relief that he sought in the complaint amounted to a personal remedy. As a part of this remedy, he said that he did not want to encounter the individuals directly or indirectly responsible for the harassment that was allowed to develop against him and that he wanted accountability for the harassment and mobbing against him and his workplace reputation restored.

[227] The process, albeit not as robust as the grievor wanted, was undertaken. The grievor was provided with a copy of the Hamori report and the Hamori letter. Measures set out in the Hamori letter were actioned. These fell short of the grievor's expectations. None of this addressed his perceived belief of harassment.

[228] To establish that the employer engaged in a discriminatory practice, the grievor must first establish a *prima facie* case of discrimination that covers the allegations and that if the allegations are believed, would be complete and sufficient to justify a finding in his favour in the absence of an answer from the employer. The

Board cannot consider the answer from the employer until a *prima facie* case is established.

[229] If it is assumed that the grievor experienced a mental health issue that kept him from the workplace or hence, a disability, and the adverse impact is the inability to return to work, the employer can provide a reasonable explanation to establish a statutory defence that justifies the discrimination. If a reasonable explanation is given by the employer, it is up to the grievor to demonstrate that the explanation is merely a pretext for discrimination. The test often referred to at this point is the three-part one in *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3 at para. 54 ("*Meiorin*"). In this case, the employer adopted a standard that has a legitimate work-related purpose — a person cannot be on leave indefinitely, and the employer is entitled to manage the workplace. The real analysis is whether the standard adopted makes it impossible to accommodate the employee without imposing undue hardship. The SCC gives guidance in *Hydro-Québec*, at paras. 12 through 19.

[230] By August 4, 2022, the grievor had been out of the workplace for a significant number of years. He was incapable of returning to work. The grievor was provided with the reference to the directive on sick leave. The grievor was given several extensions of time with respect to establishing that he was able to return to work. Right up to just before the termination letter was issued, the grievor's doctor wrote that the grievor was unfit to return to work and that there was no real change anticipated.

[231] During the time after Mr. Paulo became involved, up to and after the Hamori report and Hamori letter, the grievor had discussions with management, either directly with Mr. Paulo or through his union representatives, about returning to work. However, the grievor continued to set out measures that he felt that the employer should take before he returned to work. In the June 9 email, the grievor continues to talk about how management did not handle the incidents in 2017 (the *PSDPA* disclosure and investigation) and 2018 (the missing pipettes) correctly. The tone of this email is the same as in the one to Mr. Savard in August of 2021. He continues to speak of the lack of accountability for the incidents that he states he was subjected to and that he states caused significant detrimental effects to his mental, physical, and financial health. While steps have been taken to address those incidents, the

grievor's position remains unchanged. While there is an indication that there were numerous training sessions, the grievor's tone is the same as in 2018.

[232] The grievor took it upon himself to speak publicly about the drug allegations and the missing pipettes; his actions could have impacted his reputation. He filed no grievances about either the *PSDPA* allegations and investigation or the missing pipettes; nor did he file any work refusals under the *CLC*.

[233] With respect to the measures that the grievor spoke of and the steps that the employer was willing to discuss with respect to him returning to the workplace, the grievor said that the onus was not on him to find a solution. He also stated that he did not want to relocate and that he should not be asked to move. He further stated that training sessions were not an incentive to returning to work. He said that he did not want to return to work if the workplace was toxic; nor would he want to return to work if he did not know whom to trust.

[234] Mr. Paulo kept the lines of communication open with the grievor. He explained to the grievor the steps that the employer took and that management at the LRDC took steps involving the concerns raised by the grievor.

[235] Despite the amount of time that passed, and despite that the grievor was given extensions with respect to dealing with the options letters and that a final extension was given to August 5, 2022, on August 4, the grievor sought a further extension of time. He then suggested that Mr. Hamori conduct a full LRDC workplace assessment and that the grievor be a part of the assessment, despite having been away from the workplace for four years.

[236] Management came to the conclusion that the situation as to the grievor's health had not changed, despite granting numerous extensions and considering the options process. The employer reached a reasonable conclusion that the grievor was unfit to return to work and that he would remain so for the foreseeable future. This was based on his doctor's medical notes that he provided to the employer.

[237] The grievor's situation was very similar to that of the grievor in *Babb*. The employer had to make a decision. Dr. Saindon stated that he could not just keep extending the time; there had to be something to suggest a change. The employer has satisfied the requirement with respect to hardship. The grievor's own doctor's

prognosis in April of 2025 indicated that the chance of the grievor returning to work at AAFC was poor, with or without accommodations, and that he did not believe that the grievor could return to work at this workplace. So even if the employer had granted the further extension in August of 2022, it would not have changed anything, as after almost three years later as of the hearing, nothing had changed.

[238] Now for the bad-faith element being proffered by the grievor. This is also similar to the situation set out in *Babb*. The grievor remained and remains unsatisfied with the way management handled aspects of certain events that occurred. The Hamori report suggests that in certain aspects, the ball might have been dropped. However, it also states that there is no merit in looking back. But the grievor had his own expectations, and he maintained them. The grievor was focused on finding liability or accountability.

B. For the grievor

[239] The grievor requests the following relief:

1) A declaration that

- he was subjected to discrimination due to a disability;
- the employer failed to meet its obligations under the collective agreement and the *CHRA*; and
- he was terminated in contravention of the collective agreement.

2) An order reinstating him into his position with AAFC.

3) Full compensation for his loss of earnings from the date of his termination to his reinstatement.

4) Damages in the sum of $20 000.00 under s. 53(2)(e) of the *CHRA* for the pain and suffering that he experienced as a result of the discriminatory practice.

5) Damages in the sum of $20 000.00 under s. 53(3) of the *CHRA* for the wilful or reckless manner in which the employer engaged in its discriminatory practice against him.

6) Aggravated damages.

7) An order sealing the documents provided by the grievor's doctor and forming part of Exhibit G-7, which contains his medical information.

[240] The grievor referred me to the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"); the *FAA*; the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365); the *CLC*; the *CHRA*; the *Work Place Harassment and Violence Prevention Regulations* (SOR/2020-130); *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970; *Honda Canada Inc. v. Keays*, 2008 SCC 39; *Hydro-Québec; Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39; *Canada (Attorney General) v. Gallinger*, 2022 FCA 177; *Marentette v. Canada (Attorney General)*, 2024 FC 676; *Scott v. Canada (Attorney General)*, 2022 FC 832 (upheld in 2023 FCA 153); *Asare v. Treasury Board (Department of Indigenous and Northern Affairs)*, 2018 FPSLREB 57; *Edwards v. Treasury Board (Canada Border Services Agency)*, 2019 FPSLREB 62; *Frezza v. Deputy Head (Department of National Defence)*, 2018 FPSLREB 18; *Hare v. Treasury Board (Department of Indian Affairs and Northern Development)*, 2019 FPSLREB 59; *Hayter v. Deputy Head (Department of National Defence)*, 2015 PSLREB 15; *Kline v. Deputy Head (Canada Border Services Agency)*, 2024 FPSLREB 115; *Lamothe v. Deputy Head (Department of Canadian Heritage)*, 2021 FPSLREB 129; *Lyons v. Deputy Head (Correctional Service of Canada)*, 2022 FPSLREB 95 (upheld in 2024 FCA 26); *Markovic v. Parliamentary Protective Service*, 2021 FPSLREB 128; *Mattalah v. Treasury Board (Department of Foreign Affairs, Trade and Development)*, 2018 FPSLREB 13; *McNabb v. Treasury Board (Canada Border Services Agency)*, 2024 FPSLREB 143; *Panacci v. Treasury Board (Canada Border Services Agency)*, 2011 PSLRB 72; *Guraluk v. Treasury Board (Department of Human Resources and Skills Development)*, 2018 FPSLREB 42; *Pepper v. Treasury Board (Department of National Defence)*, 2008 PSLRB 8; *Robitaille v. Deputy Head (Department of Transport)*, 2010 PSLRB 70; *Rogers v. Canada Revenue Agency*, 2016 PSLREB 101; *Song v. Deputy Minster of National Defence*, 2016 PSLREB 73; *Tipple v. Deputy Head (Department of Public Works and Government Services)*, 2010 PSLRB 83; and *Yeo v. Deputy Head (Department of Employment and Social Development)*, 2019 FPSLREB 119.

[241] The grievor confirmed that the other two grievances that he filed were not before the Board at the hearing and that as of the hearing, they had yet to be referred to the Board for adjudication.

[242] The grievor submitted that s. 226 of the *Act* gives the Board jurisdiction to interpret and apply all legislation. It allows the Board to craft an award that deals with the underlying facts and that brings about a fair resolution of a dispute.

[243] To determine whether the employer's discretion to terminate the grievor's employment was properly exercised, the Board may have to make findings with respect to the grievor's illness, the sufficiency of the investigations, the adequacy of the employer's actions, the adequacy of the employer's conduct in failing to return the grievor to work, and the real reason it terminated his employment.

[244] The employer has to demonstrate that the termination of the grievor's employment was not discriminatory, was not done in bad faith, was not arbitrary, and was in accordance with the *CHRA*.

[245] The grievor submitted that with the contradictory evidence, his version of events should be accepted. It is factually consistent throughout.

[246] The grievor submitted that the evidence of Mr. Paulo and Dr. Saindon is problematic. Mr. Paulo was laser-focused on closing the grievor's file, while the grievor and the union hoped for a true discussion for the grievor to return to work. Mr. Paulo was poisoned and biased against the grievor from the very beginning. Mr. Paulo was a "wall of denial". It did not just continue but was another "take down" against the grievor, and the grievor was not even in the workplace. Mr. Paulo tried to deny every fact of the grievor's injury. He monolithically dismissed the grievor's concerns about things. It is the grievor's position that Mr. Paulo's goal was to get rid of him. Mr. Paulo was "poisoned" and "biased" against the grievor from the very beginning.

[247] The grievor stated that he tried to make a harassment complaint several times, while the employer stated that he failed to make a formal one. The grievor submitted that the employer failed to respond to his requests to make one; yet, when Mr. Paulo heard something about an unnamed employee being upset about historical facts, he was prepared to initiate an investigation. The grievor submitted that the employer rushed to terminate his employment, as Mr. Paulo enthusiastically received the anonymous allegation of sexual harassment in 2021.

[248] The Notice of Occurrence was submitted three times and was accepted only when the union intervened. There was an active interest by the employer to shut down the process. When the grievor received the Hamori report, he did not know if he could share it with the union, and he was threatened with discipline.

[249] The grievor stated that the Hamori investigation findings are critical evidence. The Hamori report found that management failed to investigate. With respect to the Hamori letter, it is the grievor's position that no action was taken. Mr. Paulo did not try to negotiate to return the grievor to work; all he did was knock on LR's door to say, "Let's get the options letter issued!"

[250] The employer did not try to negotiate to return the grievor to work.

[251] Mr. Paulo never considered the grievor's requested accommodation measures. Dr. Saindon never considered them either; he felt no obligation for the employer to do it. Mr. Paulo never considered them, and he also felt no obligation for the employer to do it. The evidence of the reported vacancy is that Mr. Paulo tried to claim that it was not in Scientist 1's lab. The way things operated was that research scientists were more valuable than research technicians, and the employer had no ability to control or correct the behaviour of the research scientists. The employer's suggested accommodation for the grievor was for him to work in the lab of Scientist 1, who had harassed people.

[252] The grievor's testimony contradicted the evidence of the employer. He indicated that he wanted to return to work, with accommodation. He said that he could not return to work with his symptoms. He submitted that there were two research scientists with track records of harassment. He submitted that person A was tall, "ripped", and went to the gym and that he had cornered the grievor in a stairwell. The grievor stated that he had felt threatened. Mr. Hamori made the finding that person A had intimidated the grievor. The grievor wanted protection from person A and the other individuals who tried to "take him down". The employer called his requests "revenge driven". Mr. Paulo's responses were insulting and dismissive to the grievor's requests.

[253] The grievor submitted that the employer failed to produce critical evidence by not calling someone from LR or the workplace wellness area. Nor was Ms. Taylor called, and no explanation was given for that. The employer's witnesses do not have

the same value as do the grievor and Ms. Amyot. With respect to credibility, the grievor referred me to *Faryna v. Chorny*, [1952] 2 DLR 354 (BC CA).

[254] The grievor wanted to take the personal LWOP set out in clause 48.01 of the collective agreement, but it was blocked by Mr. Paulo. No answer was given as to why he was not given a three-month LWOP. The Board held in *Edwards* that failing to grant personal leave to employees who are on sick leave is discriminatory and a breach of the collective agreement.

[255] The decision to terminate the grievor's employment was disguised discipline because he did not drop his complaint against person A and did not return to work.

[256] With respect to terminations for non-disciplinary reasons under s. 12(1)(e) of the *FAA*, the employer did not discharge its burden to act reasonably. *Hayter* stands for the proposition that when the employer exercises its discretion to terminate, it must act fairly and in good faith. See *Asare*, which holds that there are these three rules:

1) the decision cannot be discriminatory;

2) the decision cannot be arbitrary but must be procedurally fair; and

3) it must be made in good faith.

[257] The grievor submits that person B got a job, was welcomed to management, and is now an advisor to Mr. Paulo. One need not look far to see that Mr. Paulo was not going to act in good faith with respect to the grievor. The grievor stated that there is a lot of evidence that the decision to terminate him was discriminatory, as he was treated differently than were other employees involved in the same events in the workplace. He has a disability, and yet, he received differential treatment. Ms. Amyot and person B were moved. The grievor could have been moved.

[258] It is the grievor's submission that the employer failed to accommodate him by failing to look into the measures of returning him to the workplace; therefore, the employer failed to discharge its burden.

[259] The grievor submitted that the employer did not challenge the adequacy of the medical evidence. Only once was the FAF sent. The employer accepted one-line notes and did not dispute them, did not reach out to the grievor, and did not reach out to

the union. Even when the grievor reached out, the employer did not say, “Let’s get forms”; it said, “No, your complaints are water under the bridge.” The grievor stated that *Pepper* stands for the proposition that before an employer can terminate an employee, it must establish a medical condition and prognosis. It is not sufficient to accept the nominal notes provided by the grievor’s doctor. This demonstrates that the employer had made up its mind to terminate the grievor. He stated that the employer’s failure to request updated medical information was a breach of the duty to accommodate.

[260] The jurisprudence states that all parties must participate in the accommodation process. It is not the grievor’s responsibility to frame an accommodation; it is the employer’s responsibility to form an accommodation.

[261] Mr. Paulo did not discuss accommodations with the grievor and the union; he felt that what the grievor was talking about were just measures. Additionally, while there might have been a position available, it was in Scientist 1’s lab, and it would have been inappropriate to put him in that lab. The employer never looked for a position; it believed that he was unable and unfit to return to work and felt that he would not return to work.

[262] There was no actual evaluation of the grievor’s limitations. When the grievor set out his limitations, the employer laughed at him. The employer could not establish that it met the test in *McNabb* in that it did everything to accommodate him. A paper-based accommodation process will not cut it. The grievor testified that he worked while he was away and that he might have been able to return to work if his accountability processes were accommodated. He did not want anyone to get into trouble; he wanted accountability.

[263] The grievor submitted that there was an improper motivation in his termination in that management decided to change from an administrative investigation to the *PSDPA* investigation, to protect people. The investigation went ahead even though the employer had no grounds to proceed. The allegations were completely unfounded, and the *PSDPA* investigation was dismissed.

[264] The grievor complained to the employer about the affair between persons A and B. The employer stated that the *PSDPA* investigation was done in good faith. The Hamori report suggests that there are substantial concerns, and the employer should

do a post-mortem. It was not unreasonable for the grievor to look to have investigated the person who made the complaint in bad faith. There is an obligation to act judiciously when there is an appearance of bad-faith to abuse the *PSDPA* reporting process. There is no controversy that the investigation fell far short of what the employer was supposed to do.

[265] As for the failure of the employer to investigate the missing pipettes, the employer either demonstrated bad faith or failed to act in good faith. The employer should have been alerted to the risk that the person who made the false drug allegations would do it again and did so with the missing pipettes. The missing pipettes were a "secretive whitewash".

[266] Ms. Taylor demonstrated bad faith against the grievor. She dismissed his concerns, counselled him, told him that he could face corrective action, and, ultimately, recommended to him to go off work. Mr. Savard threatened the grievor by telling him that if he tried to determine who made the *PSDPA* disclosure, he could be investigated. With respect to the Hamori investigation and report, he was told that if he shared it with anyone, there could be discipline. Why is it that the grievor was told that if he looked into anything, he would be disciplined? The grievor was threatened multiple times. The bad faith continued throughout the relevant times, up to and including at the hearing, when the employer failed to disclose relevant documents and took the position of questioning if the grievor wanted to return to work. Those are all hallmarks of bad faith.

[267] With respect to the Hamori letter, Mr. Paulo stated that the employer had already implemented suggestions, which were not done in response to the grievor's complaint or the Hamori report. Making a representation that one has taken action when one has not is bad faith.

C. The employer's reply

[268] The grievor put less weight on his doctor's medical notes, which state that he is unfit. The medical documentation even after the August 2022 deadline does not state that the grievor is just currently unfit; it states flat out that he is unfit and that no real change is anticipated with respect to the condition.

[269] The grievor spoke about possible accommodation measures, suggesting that there were individuals whom he would have to avoid, some of whom he cannot name. He seemed to suggest that there could be a so-called “flick of the switch” and that he could return to work. This is not the case, since as recently as April 6, 2025, his doctor stated that he is not convinced that the grievor could ever return to AAFC.

[270] With respect to the grievor’s submission that Mr. Paulo had an agenda and that it was his intention to terminate the grievor’s employment, the employer submitted that the very first email sent by Mr. Paulo to the grievor indicates that if the grievor was still on SLWOP in the fall of that year, the employer would be looking at moving to the process of issuing the options letter, which actually did not occur until the next spring, in 2021. If Mr. Paulo was so eager to terminate the grievor’s employment, he could have moved forward in the fall. He did not.

[271] There is nothing in the evidence to suggest that on a balance of probabilities, the employer terminated the grievor for any reason other than the one indicated in its termination letter of October 7, 2022.

[272] The grievor attempted to link an argument of bad faith to the treatment that he ascribed to the harassment that he felt he was subjected to. This is not appropriate. The decision for the Board is whether the termination decision was based on discrimination.

[273] The grievor seeks lost wages and benefits for a time frame in which it is unclear that he was able to return to work.

[274] The employer submitted that *Asare* is not relevant to this matter, as in that case, the grievor was terminated for abandoning her position, while in this one, the grievor was terminated due to being unfit.

[275] On the Hamori letter, the grievor submitted that it was critical of the employer, which had dropped the ball. This letter was generated built on evidence that was largely the testimony of the grievor.

IV. Reasons

A. Request to seal documents

1. Medical documents

[276] The grievor submitted copies of medical records and the Tabor 2025 letter with respect to his health. He requested that these documents be sealed.

[277] 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.*

[278] 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 it 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.*

[279] 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 are part of Exhibit G-7, starting with the 8th page, also identified in the top right corner in bold as "Page 1/10", and ending with the 17th page, identified in the top right corner in bold as "Page 17/18".

[280] I am not prepared to seal the Tabor 2025 letter, as the information in it has largely been set out in the reasons, as it was relevant to the hearing and the determination that I had to make.

2. Other information

[281] Additionally, several documents that formed parts of the evidence contained the names of people, particularly persons A, B, and E, in which allegations were made that are unproven and potentially defamatory and could be seen as an attack on their characters and integrity. None of them were parties to the grievance; nor were they called as witnesses. While there were allegations made about these people and potentially their behaviour, and it formed the basis for much of the grievor's case, their actual identities are irrelevant to the decision that I have to make. I find that it is in the interest of the public as well as those individuals that their names be redacted from the documents that form part of the record.

[282] Therefore, I order sealed, until Friday January 30, 2026, all of Exhibit G-1, as well as Exhibit E-1 Tab 19, Exhibit E-2 and Exhibit E-3 Tabs 32D, 38, 39 and 39A , to allow the parties to provide to the Board an electronic version of these exhibits with the names of persons A, B, and E redacted, and without reference to the any person's initials.

B. Package of documents produced during the third week of the hearing

[283] The hearing in this matter commenced on November 26, 2024. It continued the week of February 3, 2025, from February 5 through the 7 and then again during the week of April 7, 2025, from April 8 through the 11. The evidence portion of the hearing ended on Friday, April 11, 2025. Oral arguments were made by videoconference on May 1, 2025.

[284] During the third week of the hearing, on Wednesday, April 8, during the fourth day of the examination-in-chief of the grievor, just before he continued his testimony, the Board was advised that the previous day, he produced to the employer a package of documents totalling about 400 pages. He asked that the entire bundle of documents be entered into evidence as one exhibit. The employer objected to the request, stating that it had received the package only the evening before, that the documents were in no particular order, that they might or might not have been

produced already in the parties' document briefs, and they might or might not be relevant.

[285] The grievor submitted that the documents were a package of material received as part of an ATIP request that he made on January 26, 2025, clarified on January 30, 2025, and that he received the documents on March 25, 2025.

[286] The Board has a document production policy that requires the parties, once they are aware of the hearing date for their matter, to produce a document list including all the documents that they believe are relevant as well as those over which they claim privilege. This policy was adopted by the Board to address a long-standing problem related to the production of documents for hearings that delayed and lengthened hearing times and in turn increased costs for the parties. While the process does streamline the production process, documents do get missed for any number of reasons, and any Board member hearing a matter does have the discretion to permit into evidence at a hearing any document that they deem necessary.

[287] I did not enter the package of documents into evidence as requested, as it was not demonstrated that the documents were, in and of themselves, relevant, and according to the submissions, many of them might have already been produced and were in the parties' document briefs. The parties could have presented any of the documents that were part of this package to a witness and had them identify them, and subject to the rules of evidence, such documents could have been entered into evidence and formed part of the record.

C. Ms. Amyot's recording and diary or notes

[288] During the course of the examination of Dr. Saindon, an email dated September 6, 2019, from Ms. Amyot to the grievor contained in the grievor's brief of documents came to the attention of the Board. The email referenced and attached notes that she used for a telephone conversation that she had with Dr. Saindon in February of 2018. The email references Ms. Amyot as having recorded the call. As of the time of the cross-examination of Dr. Saindon, this recording had not been produced, and it was not clear that it had been disclosed as part of the production process, following the Board's document-production policy.

[289] The Board had also been advised that Ms. Amyot had kept a diary or notes with respect to issues at the LRDC. However, the timeline and extent of the diary or notes were unclear. This diary or notes had also not been produced to the employer.

[290] A discussion was had in the absence of Dr. Saindon about the diary and/or notes, the audio recording and whether it still existed or had been transcribed, whether Ms. Amyot would testify and if so whether she would testify about the call, whether specifics about the call would be put to Dr. Saindon in cross-examination, and whether Dr. Saindon's credibility would be an issue with respect to his evidence about the call. I cautioned the grievor about the risks inherent in proceeding without the recording being produced as well as the diary and/or notes, as the case might be.

[291] To put this in perspective, the email of September 6, 2019, was sent 19 months after the call she had with Dr. Saindon, and by the time Dr. Saindon gave his evidence, more than 6.5 years had passed since the phone call.

[292] In the end, the audio recording was not produced; nor were Ms. Amyot's diary and/or notes. Ms. Amyot was the last witness to give evidence on April 11, 2025.

D. The merits of the grievance

1. The employer's case

[293] The majority of the facts that existed at all the relevant times do not appear to be in dispute. What is in dispute appears to be what is an actual fact or piece of evidence, as opposed to an interpretation of fact or evidence by the parties, speculation about what happened, or a theory of what happened. These are very different and will be discussed.

[294] The employer's theory is that the grievor was ill and off work and that it appeared from all the evidence that when he was terminated, he would not be able to return to work, and there was no indication that there would be any change in his prognosis.

[295] The grievor's theory is that after he and a colleague reported what they believed was a conflict of interest to management, a series of incidents occurred through which he was targeted and harassed by certain individuals who were allowed to do so. Also, the employer did not accommodate him and acted in bad faith by

terminating him or it terminated him for disguised disciplinary reasons or for all these reasons.

[296] This grievance raises the following questions:

- Was the grievor's employment terminated for reasons of incapacity, for disciplinary or discriminatory reasons, or in bad faith?
- If his employment was terminated for incapacity, was the employer justified in reaching the conclusion that he was incapable of working?
- Did the employer meet its duty of accommodation before ending the employment relationship?

[297] I have concluded that the grievor's employment was terminated for reasons of incapacity and that it was not discriminatory or disciplinary or done in bad faith, and as such, for the reasons that follow, the grievance is denied.

[298] At the core of the dispute is the grievor's health. The evidence of his health is limited to what he testified to, the very brief notes written by his family doctor and provided by him to the employer between September of 2018 and September of 2022, the Tabor 2025 letter, and a handful of clinical notes.

[299] The evidence disclosed that the grievor went on SLWP on August 29, 2018, and that he never returned. His SLWP credits eventually ran out, and in March of 2019, he went on SLWOP. In his testimony, he stated that after he learned of the *PSDPA* disclosure, he had difficulty sleeping and felt nauseous, anxious, and panic.

[300] The health complaints that the grievor testified about coincided with a clinical note recorded by Dr. Tabor and dated in November of 2017, which said that the grievor complained of severe anxiety, sleep difficulties, low appetite, low mood, and occasional panic attacks. A clinical note dated shortly after the pipettes went missing in early March of 2018 again referred to the grievor complaining of the same symptoms. A clinical note dated shortly after the grievor left on SLWP, in addition to noting his symptoms as including trouble sleeping, identified his mood as worse and him having low motivation and low concentration and stated that he was very angry.

[301] The Tabor 2025 letter identified the grievor's medical condition as being of mental health in nature and stated that the symptoms involved anxiety, panic attacks, insomnia, and concentration and attentional problems. The wording of the

letter is unclear as to whether the grievor suffered from these symptoms or illness before 2017, as it states that the symptoms were "… significantly exacerbated by work place incidents that to the best of [Dr. Tabor's] knowledge started back in early 2017." This could suggest that the grievor might have displayed these symptoms before the workplace issues that were identified in the doctor's notes as starting in late 2017. I did not have the benefit of all of Dr. Tabor's clinical notes and records or of his testimony, and as such, I cannot know if what the grievor suffered from pre-existed the *PSDPA* disclosure and investigation or to what extent the symptoms or illness worsened.

[302] From Dr. Tabor's observation, the grievor's ailments rendered him incapable of working at AAFC. In the medical notes that he provided to the grievor, which in turn were provided to the employer and were dated October 23 and November 30, 2018; January 22, March 26, and October 1, 2019; March 26, June 26, September 25, and December 15, 2020; March 23, 2021; and September 26, 2022, Dr. Tabor stated that the grievor was unfit to return to work. In his notes from June 26, 2020, onward, Dr. Tabor not only stated that the grievor was unfit to work but also stated that no real change was anticipated with respect to his condition. Almost three years after the grievor's termination of employment, and close to seven years after he first left the workplace in August of 2018, Dr. Tabor's assessment of the grievor was that his prognosis for return to work at AAFC was quite poor with or without accommodation and that he did not believe that the grievor would ever be able to return to that workplace.

[303] On the facts before me, I have no difficulty finding that the grievor has established a *prima facie* case of discrimination with respect to the termination of his employment. He has a characteristic protected from discrimination under the *CHRA* in that he suffers from a disability within the meaning of s. 25 of the *CHRA*, namely, "… any previous or existing mental or physical disability …". The employer relied on the medical notes of Dr. Tabor to establish that the grievor was suffering from some sort of ailment that had rendered him unfit to return to work and that this condition was unlikely to resolve. In addition, the grievor was adversely impacted with respect to his employment, as the employer terminated his employment.

[304] As set out in the jurisprudence, an employer faced with a *prima facie* case of discrimination can avoid an adverse finding by providing a reasonable explanation

that shows that its actions were in fact not discriminatory or by establishing a statutory defence that justifies the discrimination. If a reasonable explanation or a statutory defence that justifies the discrimination is given, it is up to the grievor to demonstrate that the explanation or claimed statutory defence is merely a pretext for discrimination (see *Babb*, at para. 247).

[305] In *Babb*, at paras. 258, 259, and 260, the Board stated as follows:

> *[258] In* Hydro-Québec*, the Supreme Court of Canada provided explicit guidance for my analysis. I have highlighted as follows a considerable portion of the Supreme Court's reasoning in this case because, in my view, it is exactly how I am to approach the undue-hardship analysis in the employment context:*
>
> …
>
> [12] … What is really required is not proof that it is impossible to integrate an employee who does not meet a standard, but proof of undue hardship, which can take as many forms as there are circumstances.…
>
> [13] … in the employment context, the duty to accommodate implies that the employer must be flexible in applying its standard if such flexibility enables the employee in question to work and does not cause the employer undue hardship.…
>
> …
>
> [15] However, the purpose of the duty to accommodate is not to completely alter the essence of the contract of employment, that is, the employee's duty to perform work in exchange for remuneration.…
>
> [16] The test is not whether it was impossible for the employer to accommodate the employee's characteristics… The employer … does have a duty, if it can do so without undue hardship, to arrange the employee's … duties to enable the employee to do his or her work.
>
> [17] … However, in a case involving chronic absenteeism, if the employer shows that, despite measures taken to accommodate the employee, the employee will be unable to resume his or her work in the reasonably foreseeable future, the employer will have discharged its burden of proof and established undue hardship.
>
> [18] Thus, the test for undue hardship is not total unfitness for work in the foreseeable future… if an employee with such an illness remains unable to work for the reasonably foreseeable future even though the

> employer has tried to accommodate him or her, the employer will have satisfied the test.…
>
> [19] …**The employer's duty to accommodate ends where the employee is no longer able to fulfill** [sic] **the basic obligations associated with the employment relationship for the foreseeable future.**
>
> …
>
> [Emphasis added]

[259] In McGill*, the Supreme Court of Canada stated at paragraph 11 as follows:*

> [11] The duty to accommodate in the workplace arises when an employer seeks to apply a standard that is prejudicial to an employee on the basis of specific characteristics that are protected by human rights legislation. This can occur in the context of a sick employee's right to be absent from work ….

[260] However, importantly, the Supreme Court went on to hold the following at paragraph 38:

> [38] The duty to accommodate is neither absolute nor unlimited. The employee has a role to play in the attempt to arrive at a reasonable compromise. If in Ms. Brady's view the accommodation provided for in the collective agreement *[a three-year period]* in the instant case was insufficient, and if she felt that she would be able to return to work within a reasonable period of time, **she had to provide the arbitrator with evidence on the basis of which he could find in her favour.**
>
> [Emphasis added]

[306] At paragraph 264 of *Babb*, the Board said the following about the application of the two-year standard, which in that matter was almost identical to that in this matter:

> *[264] The grievor had been on sick LWOP since April 19, 2007. He was not terminated at the two-year mark but on April 13, 2010. He argued that the employer applied the two-year standard automatically and mechanically. I disagree. Just because there might have been a considerable degree of boilerplate text in its correspondence to him in terms of the options available to him, both before and after the two-year mark, it does not in and of itself amount to an automatic and mechanical application of a policy. As the termination letter states, and as the evidence before me abundantly confirms, the*

> *grievor was offered a series of extensions to provide medical information setting out his limitations and restrictions to enable a return to work.*

[307] Section 15 of the *CHRA* sets out a statutory defence to what would otherwise be a discriminatory practice. It states as follows:

> ***15 (1)*** *It is not a discriminatory practice if*
>
> ***(a)*** *Any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer to be based on a* bona fide *occupational requirement ….*
>
> …
>
> ***Accommodation of needs***
>
> ***(2)*** *For any practice mentioned in paragraph (1)(a) to be considered to be based on a* bona fide *occupational requirement … it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.*

[308] The employer must establish to the Board that its application of the two-year standard was justified. In *Babb*, the Board reiterated as follows the three-part *Meiorin* test articulated by the SCC, at paragraph 250:

> *[250] …*
>
> …
>
> (1) that the employer adopted the standard for a purpose rationally connected to the performance of the job;
>
> (2) that the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfilment [sic] of that legitimate work-related purpose; and
>
> (3) that 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.
>
> (*Meiorin*, at para. 54)

[309] As set out in the Guidelines, the *FAA* authorizes a deputy head to terminate the employment of an employee for reasons other than breaches of discipline and misconduct, which includes the termination of an employee for medical incapacity.

[310] "Medical incapacity" is defined in the Guidelines as an employee being unable to work due to illness or disability for an extended period who has exhausted his or her sick leave credits and may be granted leave without pay. As well, it states that the employee will not be able to return to duty within the foreseeable future, and this determination is based on an assessment of the employee's health either by physicians at Health Canada or other medical practitioners deemed qualified by the employer. It is further defined as a continuing non-culpable absence from duty due to illness or disability that prevents the employee from fulfilling his or her employment obligations.

[311] It is clear from the evidence that the grievor's health situation fit within the definitions in the Guidelines that allowed the employer to take the steps to terminate him under the *FAA*. The grievor had been incapable of fulfilling his employment obligations due to illness or disability for a period of more than four years by the time he was terminated. He had exhausted all his sick leave credits, and the employer had placed him on leave without pay for more than three-and-a-half years. The information provided by his family physician was that he was unfit to work and that at least from June of 2020, no change in his condition was anticipated.

[312] In *Babb FCA*, at paras. 45, 46, 49 to 53, 56, and 57, addressing Mr. Babb's judicial review application of the Board's decision, the Federal Court of Appeal stated as follows:

> *[45] Thus, the Board appropriately considered the third element of the* Meiorin *test by relying on both* McGill *and* Hydro-Québec *in its analysis. Before us, as he did before the Board, the applicant did not really address paragraphs 18 and 19 of* Hydro-Québec*, where the Supreme Court stated that an employer's duty to accommodate ends where the employee will not be able to fulfil the basic obligations associated with the employment relationship for the foreseeable future despite attempts to accommodate him.*
>
> *[46] It is important to consider each of the findings made by the Board with respect to the right of the employer to rely on its policy, on whether or not it applied the said policy mechanically or automatically, and whether the employer could reasonably*

conclude that the applicant could not return to work in the foreseeable future. It is those findings that led to the conclusion that is now being challenged.

…

[49] I will focus therefore only on the manner in which the Board considered the employer's application of the two-year standard, and whether it was applied automatically and mechanically when considering the duty to accommodate the applicant, up until that duty came to an end. As discussed in Hydro-Québec, *when narrowing in on the employer's duty to accommodate, the duty implies that the employer must be flexible in applying its standard if such flexibility enables the employee in question to return to work and does not cause the employer undue hardship (*Hydro-Québec *at para. 13).*

[50] Beginning with the termination letter, the Board found that the employer's Illness and Injury Policy *triggered the events leading to the termination. Contrary to the applicant's assertions, he had not been terminated at the two-year mark of his LWOP. Rather, the applicant had been on sick leave since April 19, 2007, and was terminated on April 13, 2010 (Decision at para. 264).*

[51] The Board determined that the applicant had been granted several extensions to provide medical information setting out his limitations and restrictions to enable a return to work. The termination letter referenced these extensions, which total approximately 11.5 months (Decision at paras. 264, 267, 273). In my view, based on this record, it was reasonable for the Board to find that the employer showed flexibility in its application of the two-year standard set out in its Illness and Injury Policy*.*

[52] Further, it was reasonable for the Board to reject the applicant's argument that the employer should have continued to provide him with extensions of LWOP, because even after three years of being absent from work, there was no indication from the applicant's doctors of a possible return to work date (Decision at para. 279). In order to make this determination, the Board examined the medical and other evidence available to it to ascertain whether the applicant was able to return to work in the foreseeable future.

[53] Regarding the medical evidence and whether the applicant was able to return to work, the Board relied on the contents of the termination letter that referenced the medical certificates provided to the employer, dated August 24, 2009, and March 30, 2010. In those certificates, the physician stated that the applicant is not fit to return to work at this time and there are no specific accommodations that would be appropriate or adequate as the applicant was not able under any conditions to work at this time (Decision at paras. 268-270).

…

> *[56] Finally, the termination letter also highlighted the efforts made by management to obtain a return-to-work date, including attempts to have the applicant undergo a Health Canada assessment and to obtain more detailed information on his limitations (Decision at paras 263, 267, 268 and 269).*
>
> *[57] Thus, faced with the medical evidence as to the applicant's unfitness for work and no anticipated date for a return o work, coupled with his unwillingness to provide information on his limitations and restrictions for accommodation purposes, the Board found that the employer reasonably concluded that the applicant was incapable of returning to work in the foreseeable future. (Decision at para. 279).*

[313] As set out in *Babb FCA*, the employer afforded the grievor several opportunities to show that he was able to return to work. The grievor was given not 1 but 2 options letters. After the 1st options letter, his time to respond was extended and was then put on hold pending a harassment and violence in the workplace complaint that he made. After the complaint was investigated, the grievor was given the 2nd options letter, dated April 22, 2022. It was given 13 months after the 1st options letter and almost 4 years after the grievor first left on sick leave. It asked for a response by May 27, 2022. By July 20, 2022, the grievor had asked for and had been given 2 extensions of time to respond to it. On that date, the grievor was given a further third extension by Mr. Paulo, to August 5, 2022.

[314] Despite being granted several extensions of time, the grievor did not make a choice under the 2nd options letter. While he maintained that he wanted to return to work and that he told the employer that he wanted to, this in reality was nothing more than a fallacy to buy time.

[315] Although the grievor might have said that it was his intention to return to work or that he wanted to return, the incontrovertible written evidence presented, as well as his testimony, disclosed that he did not really choose this option.

[316] In the May 28 email, after he was provided with the second options letter, the grievor discussed his request for an extension of time to respond to it. He also said that given the Hamori report and Hamori letter, he hoped that they explained why he was "… heavily weighing this decision and am not completely comfortable with a return to the center, as it stands …". Mr. Paulo gave the grievor the extension and advised him of a work vacancy that he could return to at the LRDC. In an extensive return email to Mr. Paulo (the June 9 email), the grievor said that he was having

discussions with his union and his legal representative and that he was focused on creating an amenable arrangement in which he felt safe returning to the workplace. He identified as his biggest issue interacting with persons who he **believed** were responsible as well as **other people who had been influenced by them** and that he could return only if the LRDC were not a toxic workplace.

[317] What was clear from the emails authored by the grievor and his testimony was that a return to work was conditional and that the conditions were not as suggested by his doctor, as his doctor had stated and continued to state that the grievor was unfit to work and that there was no foreseeable change in that condition.

[318] The conditions that the grievor placed on a return to work had to do with what appeared to be his continuing fixation about finding out who was responsible for the *PSDPA* disclosure and the missing pipettes. He appeared to be unable to get past those two things. He stated in the June 9 email that he wanted the workplace restored through accountability, transparency, and fairness. He wanted assurances that he would not have to interact with persons who he believed were responsible for the *PSDPA* disclosure and the missing pipettes and wanted transparent actions to restore his severely tarnished reputation.

[319] The grievor submitted that the employer, specifically Dr. Saindon and Mr. Paulo, did not consider accommodating him. However, the conditions that he tried to place upon a return to work should not be mistaken for an accommodation as it is understood in the human rights context. This is because at that time, the grievor's doctor was still stating not only that he was still unfit to work (that had been stated for four years by August of 2022), and by that time his doctor had been indicating for some two years that he did not foresee that unfitness changing, but also at no point providing any indication of any restrictions or limitations that would permit the grievor to return to work.

[320] The conditions that the grievor looked to have put in place to allow him to return to work were conditions that the employer was not in any position to accede to and were unrealistic, and the facts supporting them were not borne out by the evidence.

[321] The grievor made submissions about the employer's position, with respect to determining who made the *PSDPA* disclosure and how the missing pipettes came into

the desk he used, as bad faith. However, the process to determine who was responsible for the *PSDPA* disclosure was a door that had long since been closed and firmly locked shut by other processes mandated by legislation that protect the identity of a person who makes a disclosure under the *PSDPA*, which the grievor either engaged or failed to engage in.

[322] Equally so was looking into the missing pipettes. Despite what the grievor submitted, the management representatives heard him on his complaint, and an investigation was carried out, albeit not to his satisfaction. They did not ignore his concerns. The investigation they carried out was inconclusive; and based on the information available both during the course of the Hamori investigation (echoed in the Hamori report, which did involve the grievor's interview) and on the evidence presented before me at the hearing, again largely by the grievor, there was no way that any further meaningful investigation of the pipettes could have been carried out.

[323] The grievor's belief and unsubstantiated hypothesis, which is that person A and/or person B, someone in their camp, or a confederate of theirs was behind the *PSDPA* disclosure and the missing pipettes, was insufficient for the employer to implement the conditions that the grievor wanted, which would have effectively limited the comings and goings of persons in the workplace and potentially limited the employer's ability to manage the workplace effectively. It could not have simply imposed restrictive conditions on persons or turned a blind eye to actions because of the grievor's perception, after the processes to resolve those matters were exhausted or found inconclusive. While it may seem unfair to the grievor, as he undoubtedly believes what he thinks happened is accurate, the employer cannot act on mere speculation. Given the facts that existed by 2022, and the passage of time, the situation was at a stalemate.

[324] In the end, while the grievor outwardly stated to management that he wanted to return to work, it was nothing more than a fallacy of his own doing, not unlike someone promising to do something if and when a future impossible event occurs. The reality was that he set out preconditions for his return that he was not only not entitled to set out but also could not have been achieved. As long as he maintained this position, his statement that he was prepared to return to work was nothing more than a falsehood.

[325] The grievor's reference to his severely tarnished reputation is also problematic. First and foremost, it is unclear that it was actually tarnished. Perhaps he believed that it was; however, there did not seem to actually be any evidence of this.

[326] The evidence before me disclosed that when the *PSDPA* disclosure was made, the circle of people who were aware of it was small. The initial information suggests that at the LRDC, it was only the grievor and Dr. Volkmar (as he provided the grievor with the letter about the *PSDPA* investigation in October of 2017). However, after receiving the letter informing him of the investigation, the grievor immediately told Ms. Amyot, and she and, according to her testimony, others who supported the grievor circulated a petition through the LRDC and secured signatures (over 50) supporting him. The petition disclosed that the grievor was accused of using or distributing illegal drugs in the workplace. Once the petition was being circulated, the proverbial cat was out of the bag, and I suspect that the entire workplace knew about the allegations. It is unclear from the evidence who the grievor told of the investigation's findings, clearing him.

[327] With respect to the missing pipettes, again, it is unclear how his reputation suffered from this or who knew what. While an initial email did go out, alerting the LRDC about the missing pipettes, again, the grievor took it upon himself and emailed several people about him finding the pipettes. And he continued to tell numerous persons about what he believed had happened, both privately and in public forums. There is nothing in the evidence to suggest that anyone accused the grievor of stealing the pipettes or of being responsible for them missing. The only person who seemed to allude to this was him.

[328] The June 9 email also refers to a discussion about returning to work at a different work location; indeed, the grievor also testified about it. He indicated both in the email and in his testimony that he was not interested in this, for a variety of reasons.

[329] Additionally, in the both the May 30 email and July 20 email, Mr. Paulo speaks about a vacancy at the LRDC that he had been holding for the grievor. The email chain between Mr. Paulo and Dr. Szczyglowski of August 8 to 11, 2022, further discloses that in fact, there are vacancies within the LRDC, albeit the exchange

discloses reluctance by some to change labs. In his testimony, Mr. Paulo confirmed that during the summer of 2022, the LRDC was holding off on staffing processes. However, there were vacant positions, and they needed to be filled. He said that delaying staffing positions does delay projects and research. Dr. Saindon confirmed that this situation existed. While an organization can delay and juggle things for a while, this situation cannot be maintained indefinitely, and vacant positions need to be staffed. It is clear that the employer had operational demands and requirements that needed to be dealt with, and it is clear that it was considering the grievor for a vacant position if he was able to return to work.

[330] I am satisfied that the onus upon the employer to provide a reasonable explanation that established a statutory defence that justified the discrimination has been met. I also find that the facts establish that the employer did not merely provide lip service or automatically or mechanically apply the leave directive and the Guidelines. Extensions of time were given and job vacancies were discussed, and in the end, the grievor's medical situation did not change. The employer accepted the assessment by the grievor's family doctor. Its acceptance of that assessment was reasonable given that the family doctor had provided a series of notes to the employer over the course of several years that stated the same thing. Subsequent evidence provided by the grievor during the third week of the hearing before me confirmed that this was still the case more than six years after he had left the LRDC on sick leave. The best evidence available sustained the employer's understanding that the grievor was unfit to work and that the situation was unlikely to change.

[331] The employer satisfied its burden that its action of terminating the grievor's employment was appropriate in all the circumstances. As such, the burden shifted to the grievor to demonstrate that this explanation was merely a pretext for discrimination. In this respect, the grievor argued that the employer's actions amounted to bad faith, disguised discipline, or both.

2. Bad faith and disguised discipline

a. Context for and basis of the grievor's theory

[332] The grievor's theory is that somehow, in addition to being discriminatory or as a pretext for discrimination, the employer terminated his employment for reasons related to disguised discipline, bad faith, or both.

[333] The foundation of that theory is that a series of acts were perpetrated against him by certain unknown persons, albeit the grievor believes them to be either or both of person A or B or confederates of theirs who, on purpose, meant to cause him harm. And what followed was a series of events and either actions or inaction by the employer that he suggested amounted to bad faith, disguised discipline, or both.

[334] According to the grievor, what started the chain of events that led to his termination was that in September of 2017, he and Ms. Amyot reported to Dr. Volkmar what they believed was an inappropriate relationship involving persons A and B. They testified that they did this because they said that this relationship had become a conflict of interest when, at some point in 2017, person B began working in the lab managed by person A.

[335] According to the testimonies of both the grievor and Ms. Amyot, at the time this happened, another research technician was moved out of person A's lab, to ostensibly make way for person B. It is to be noted that both person B and the research technician who moved out of the lab were both classified at the EG-04 group and level. There is no evidence that the move affected the jobs of the grievor or Ms. Amyot; nor is there evidence that either the grievor or Ms. Amyot were interested in the position in person A's lab, as they were in positions at a higher classification level.

[336] It should be noted that there is no evidence that the moves that took place could not have been legitimately carried out by management; nor was there evidence that a staffing process was required for person B to be assigned to work in person A's lab or that there was any breach of staffing legislation, regulations, policies, rules, or guidelines. There is no evidence that the person who was moved made a complaint under the *PSEA*.

[337] Both the grievor and Ms. Amyot testified that Dr. Volkmar did nothing about it; person B remained working in person A's lab until at some point moving to a position outside the lab setting.

[338] According to the grievor, his and Ms. Amyot's reporting of the relationship and their belief that it was a conflict of interest was the catalyst that led first to the drug allegations made against him, which led to the *PSDPA* investigation and later to the missing pipettes. It is his position that either person A, person B, or a confederate

of theirs was responsible for making the false drug allegations and again later orchestrated planting the pipettes, in an attempt to frame him as a thief.

[339] It is on the back of these two events and to what appears to be at a lesser extent the greenhouse discussion that the grievor structures his case of disguised discipline and bad faith. According to him, it is his dogged persistence to try to get to the bottom of who made the *PSDPA* disclosure and his exhorting of management with respect to the missing pipettes that were instrumental in management deciding to terminate his employment.

b. Disguised discipline and bad faith

[340] Disguised discipline occurs when an employer uses subterfuge to mask its actions. Disguised discipline and bad faith often go hand in hand; however, they are not mutually inclusive. It is a difficult concept to advance.

[341] In *Bratrud v. Office of the Superintendent of Financial Institutions Canada*, 2004 PSSRB 10 at para. 93, when it addressed disguised discipline, the Board's predecessor stated as follows: "The grievor bears the burden of proof in cases where disguised discipline is alleged."

[342] In *Dyson v. Deputy Head (Department of Fisheries and Oceans)*, 2015 PSLREB 58, I dealt with the issue of bad faith in the matter of a termination of employment that was ostensibly carried out as a rejection on probation under the *PSEA*. At para. 126, I set out the accepted jurisprudence with respect to bad faith which was succinctly set out in *Tello v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 134, at para. 127 as follows:

> *[127] … As noted by the Federal Court of Appeal in another context (*Dansereau v. Canada *(1990), [1991] 1 F.C. 444 (CA), at page 462) bad faith cannot be presumed and an employee seeking to provide evidence of bad faith "… has an especially difficult task to perform… ." In* McMorrow v. Treasury Board (Veterans Affairs), *PSSRB File No. 166-02-23967 (19931119), an adjudicator noted, at page 14, that, in his view:*
>
> *…*
>
> *… if it can be demonstrated that the effective decision to reject on probation was capricious and arbitrary, without regard to the facts, and therefore not in good faith, then that decision is a nullity… .*

> *… it is trite to say that a determination of whether there is good faith or not must be gleaned from all the surrounding circumstances; there can be a multitude of sets of facts that may result in a conclusion of bad faith … keeping in mind of course that good faith should always be presumed… .*
>
> *…*

[343] The difficulty with the grievor's theory and case is that the facts as set out do not demonstrate either bad faith or disguised discipline. While I did hear a significant amount of testimony from the grievor as well as Ms. Amyot, it was based largely on their belief of what might have happened. It was suspicions, perceptions, assumptions, suppositions, and then conclusions drawn based on the suspicions, perceptions, assumptions, and suppositions.

[344] The exact nature of the relationship between persons A and B is unknown. What is known is what the grievor and Ms. Amyot believed to be true. They might or might not have been involved in an intimate relationship or might have been, and it stopped. They might have been and might continue to be close friends, as relationships between individuals can be complex and not necessarily what others may think or perceive, are told, or are led to believe.

[345] What is a fact is that the grievor and Ms. Amyot did speak to Dr. Volkmar. While they assumed that Dr. Volkmar did nothing about what they viewed as the conflict of interest, the bottom line is that they have no idea as to what he might or might not have done. He might have done nothing, or he might have done something. Their thoughts on this are nothing but speculation. There is no evidence of anything. Dr. Volkmar was not obligated to report to either the grievor or Ms. Amyot.

[346] Additionally, it is unclear who knew of their visit and discussion with Dr. Volkmar. It could have been everybody in the LRDC. Again, while possible, it is at best speculative; but most importantly, again, there is no actual evidence.

[347] Despite both the grievor and Ms. Amyot seeing Dr. Volkmar and raising concerns, the allegation about illegal drugs was made only against the grievor. Why was it made solely against him, if both he and Ms. Amyot approached Dr. Volkmar, and this was retaliation for that? Again, any number of theories, based on different assumptions and drawn conclusions, can be advanced. However, the bottom line is that there is actually no evidence but again, mere perceptions and then speculations.

[348] The *PSDPA* investigation determined there was nothing to the drug allegations, which the grievor was advised of in December of 2017. No written report was issued. Despite the investigation completing, the grievor wanted to know who was behind the allegations.

[349] In his submissions, the grievor also suggests that the fact that originally, he was told that there was an administrative investigation and then it became the *PSDPA* investigation, is somehow tantamount to bad faith. There was no evidence explaining why originally in the fall of 2017, the grievor was told that the investigation into the drug allegations was to be administrative and then it became the *PSDPA* investigation. It could have been that someone thought that it was appropriate to have an administrative investigation, only to be advised that it properly should be an investigation under the *PSDPA*. Without some actual evidence that there was something nefarious afoot, this does support a finding of bad faith. The fact that an explanation was not proffered does not create a default to bad faith, especially when almost five years passed between the events and the grievor being told that there would be only one investigation, and, more importantly, it was concluded, the grievor was advised of the outcome, and the matter was closed from the employer's perspective in December of 2017.

[350] In an attempt to determine who made the allegations, he first emailed Mr. Savard (the DSO) on August 8, 2018. Mr. Savard emailed a reply on August 27, 2018. While Mr. Savard responded to the grievor's inquiry, he declined to provide the information that the grievor sought. It was at this time that the grievor left on SLWP.

[351] Section 8 of the *PSDPA* authorizes public servants to make disclosures under that Act in respect of wrongdoings in or related to the public sector relating to a contravention of any Act of Parliament as well as an act or omission that creates a substantial and specific danger to the life, health, or safety of persons or to the environment, other than a danger that is inherent in the performance of the duties or functions of a public servant. Section 11 of the *PSDPA* provides that the identity of a person who makes a disclosure under that Act is to be protected. Section 19.1 provides for complaints to be made under that Act to the Integrity Commissioner. While there are time limits to take this step, the Integrity Commissioner can permit making a complaint after the time limit, if the Commissioner feels that it is appropriate in all the circumstances.

[352] There is no evidence that at that time (the end of August and fall of 2018), the grievor took any steps to seek judicial review of Mr. Savard's decision or to make a complaint with the Integrity Commissioner.

[353] The grievor was an employee who was represented by the Alliance, as was evidenced by Ms. Richter, a local Alliance representative, who attended with him when he was interviewed as part of the *PSDPA* investigation in 2017. There is no indication that at that time, he sought advice or assistance from Ms. Richter or anyone else at the Alliance about advancing a complaint under the *PSDPA* or pursuing a judicial review application of Mr. Savard's answers to his questions.

[354] At a point in time, exactly when is unclear, the grievor sought the information through an ATIP request. When that was unsuccessful, in or about mid to late March of 2019, he made a complaint with the Office of the Information Commissioner. On April 20, 2019, the grievor decided to withdraw that complaint; his decision was reached based on discussions with that office that stated that it was the wrong forum to pursue the matter.

[355] The grievor subsequently made two complaints with the Integrity Commissioner, one on November 6, 2020, and the other on January 3, 2021. Both were dismissed by that office, the complaint made on January 3, 2021, by letter decision on January 8, 2021, and the complaint made on November 6, 2020, by letter decision dated February 8, 2021. The grievor had the option to seek the judicial review of the decisions of the Integrity Commissioner; he chose not to. Again, the grievor was represented by the Alliance, and again, there is no indication that he sought advice or information from it at that time on this.

[356] Up to and including the testimony before me, there is absolutely no evidence as to who made the *PSDPA* disclosure. The grievor's and Ms. Amyot's suspicions are not evidence. There is also no evidence of when the *PSDPA* disclosure was made. The evidence indicates only the time frame when the grievor was made aware of it and the pending investigation, which was in late October of 2017; the letter informing him of it is dated October 17. As no information was forthcoming about the *PSDPA* disclosure, there is no evidence that it was made after the grievor and Ms. Amyot spoke to Dr. Volkmar about persons A and B.

[357] According to the evidence, on March 7, 2018, at 15:50, Dr. Volkmar sent an office-wide email in the LRDC about the missing pipettes. The grievor emailed Dr. Volkmar at 09:38 the next morning, in which he stated that he found the pipettes in a drawer in a desk used by him in the lab that he worked in.

[358] In a further email dated March 8, 2018, sent less than six hours after finding the missing pipettes and alerting Dr. Volkmar of finding them, the grievor equated the fact that they were in a desk used by him as part and parcel of the earlier *PSDPA* disclosure made by unknown persons, in an attempt to discredit him and cast him as a thief.

[359] With respect to the missing pipettes, according to the evidence before me, an investigation was conducted. An email from Dr. Johnston to the grievor dated March 15, 2018, indicated that LR at AAFC was tasked with conducting the fact finding. According to the Hamori report, Ms. Taylor and LR carried out the fact finding; however, there was no formal written report. The grievor's cumulative notes have an entry dated April 24, 2018, which states that an investigation was carried out by an HR or LR person from Ottawa and that it was inconclusive. It is clear that the grievor was unhappy with the result of the investigation into the pipettes.

[360] While the grievor was steadfast in wanting a further investigation into the missing pipettes, the evidence before the Board, largely that of the grievor, was that it was unlikely that an investigation would have yielded anything helpful.

[361] Up to and including the testimony before me, there is no evidence of how the pipettes got into the drawer of the desk used by the grievor.

[362] The evidence did disclose that while some labs are accessible by keycard, not all are, and all a keycard does is unlock a door. "Tailgating" is a term that describes when one person opens a locked door with a keycard and any number of people can enter, as long as the door does not shut. The grievor confirmed that this could and did happen at the LRDC. There is no evidence that a keycard is necessary to be able to leave a lab that requires a keycard to enter it. In short, if someone leaves, they can hold the door open for any number of people to exit or enter. The evidence disclosed that the lab that the grievor worked in did not require a keycard for access or egress. It was unlocked, so anyone could enter and exit. Furthermore, the evidence disclosed that at times, the cleaners propped open doors that locked when they shut.

[363] There was also no evidence that there were surveillance cameras that would have captured persons entering and exiting the lab where the pipettes went missing from or persons entering and exiting the lab where the grievor worked. There is no evidence that there were any surveillance cameras in either person A's lab or the lab where the pipettes were found.

[364] The grievor also testified about how he raised the issue of the *PSDPA* disclosure and the missing pipettes at several levels of management. He often characterized these acts as harassment of him by the persons who were responsible for carrying out these acts. In addition, he raised his belief about person A and person B or their confederates being responsible for the *PSDPA* disclosure in at least three workshops organized by management at the LRDC, which were meant to address and deal with interpersonal issues in that workplace.

[365] The first was the civility workshop , which was held from February 26 to 28, 2018, at the LRDC. The email, dated February 21, 2018, from Dr. Volkmar in the lead up to the session read in part as follows:

> …
>
> *The London RDC OHS* [Occupational Health and Safety] *Committee met recently to identify risk factors for violence at the Centre and to recommend mitigation measures to reduce the risk. A recurring recommendation from this review was the need for a facilitated discussion with staff to address concerns around workplace culture and interpersonal relationships ….*
>
> …

[366] The employees at the LRDC were asked, as part of the sessions, to provide the facilitator with three items that they felt were working well in the team and three that they felt should be improved. The grievor's email to the facilitator was reproduced in this decision. Rather than setting out the items as requested, it was about his concerns about the alleged relationship between persons A and B and him reporting this to Dr. Volkmar, the *PSDPA* disclosure, and the *PSDPA* investigation.

[367] The evidence further disclosed that in or about the same time as the February civility workshop took place, the grievor had a discussion with Dr. Gracia-Garza, in which he spoke about the alleged relationship between persons A and B and the reporting of this to Dr. Volkmar and his belief that the *PSDPA* disclosure was falsely

made as a reprisal for him reporting to Dr. Volkmar the relationship of persons A and B and the allegation of a conflict of interest. Additionally, at about the same time, as evidenced by both his testimony and the cumulative notes, there was reference to a union dinner, at which the grievor had a discussion with another individual, in which he again voiced his belief about the *PSDPA* disclosure being made in reprisal, and everyone listened to this conversation.

[368] The second of the workshops, which was the 2018 Workplace Assessment, was carried out at the LRDC in or about June or July of 2018. The cumulative notes referenced a discussion that the grievor had with the 2018 Workplace Assessment facilitator, Mr. Freeman. In the notes, he references Mr. Freeman indicating that his mandate was to get the pulse of the LRDC and that he identified the major problems as a lack of transparency with management and rumour milling. The grievor noted in the cumulative notes that Mr. Freeman made "no mention of the drug allegations or stolen pipettes".

[369] After this workplace assessment, and after a meeting was held to discuss the matter, in July of 2018, the grievor was in an agitated state and found himself in what he described as an animated discussion with a colleague in the greenhouse area. According to the evidence, someone reported to management about what they had witnessed. This led to the grievor being asked to attend a meeting with Ms. Taylor.

[370] It was shortly after the greenhouse discussion and the meeting with Ms. Taylor in August of 2018 that the grievor left the workplace on SLWP. He never returned. In March of 2019, his SLWP changed to SLWOP.

[371] The third and final workshop, which was a workplace wellness session facilitated by Mr. Blake, took place in February 2019, after the grievor had left on SLWP. The stated purpose of this session was to provide support to employees and management at the LRDC, to resolve conflict, and to work to manage difficult situations. The evidence disclosed that the grievor participated in this session and that he spoke with Mr. Blake. Again, the grievor's focus was the drug allegations and the *PSDPA* disclosure and investigation. Mr. Blake's assessment of the workplace was that rumours were a problem there.

[372] In March of 2021, the grievor was sent the 1st options letter. After discussions with Mr. Paulo, the process was put on hold, to allow for the grievor's harassment complaint process to proceed.

[373] The complaint focused again on the initial discussion that the grievor and Ms. Amyot had with Dr. Volkmar about persons A and B, the *PSDPA* disclosure and resulting *PSDPA* investigation, and the missing pipettes. The complaint named nine respondents, including persons A and B as well as Drs. Volkmar, Gracia-Garza, and Johnston, Ms. Taylor, and the two investigators who carried out the *PSDPA* investigation, along with their supervisor. Mr. Hamori was appointed to conduct the investigation. The only allegations that were investigated were those against Ms. Taylor.

[374] I have no doubt that the grievor believes that person A or B, both of them, a friend, an acquaintance, an associate, or, as I have described, a confederate of theirs at the LRDC made the drug allegations that led to the *PSDPA* investigation and planted the pipettes in his desk, to frame him for theft.

[375] However, having that belief is not the same as providing facts that support it. It was insufficient for the grievor to come to the Board with a theory and allegations and suggest disguised discipline or bad faith or both on the part of the employer and then argue that first, the employer did not lead evidence to disabuse the Board of the theory and allegations, and second, the employer's failure to lead the evidence or call the witnesses is a part of that bad faith.

[376] Mr. Paulo gave extensive testimony, and the documents entered into evidence give a clear picture of the steps taken that led to the termination of the grievor's employment. The evidence is clear that Mr. Paulo made the decision to recommend the termination of the grievor's employment and that Dr. Saindon accepted that recommendation and then terminated his employment. The facts actually and clearly establish the following:

- the grievor was away from work on sick leave (either with or without pay) for an extended period, which by the time he was terminated had been in excess of four years;
- the medical information provided to the employer by the grievor's family physician for more than two years before the termination of his employment

stated that he was not only unfit to return to AAFC but also that "… no real change is anticipated with respect to this condition"; and

- during the course of the hearing, the grievor produced a letter from his family physician (the Tabor 2025 letter), the same family physician who had provided all the medical notes to the employer starting as far back as September of 2018. The assessment in April of 2025 was more than two-and-a-half years after the termination of the grievor's employment and more than six-and-a-half years after he first left the workplace on sick leave. It stated that his prognosis for a return to work at AAFC was quite poor with or without accommodation, and his assessment was that the grievor would never be able to return to AAFC.

[377] There does not appear to be any evidence whatsoever that links the decision arrived at by Mr. Paulo as to the recommendation for the termination of the grievor's employment and his actions pursuing information related to the identity of the person or persons responsible for the *PSDPA* disclosure made in or about 2017, which led to the *PSDPA* investigation, or his insistence that the missing pipettes were planted to portray him as a thief in the workplace.

[378] There is no evidence that when Mr. Paulo contemplated his decision to recommend that the grievor be terminated from his employment that any of Drs. Volkmar or Johnston or Ms. Taylor were still at the LRDC or with AAFC, let alone had any discussions with either Dr. Saindon or Mr. Paulo. It is unclear whether Dr. Gracia-Garza or Mr. Gray were still there and if they were, what their positions were, let alone if they had a discussion with either Dr. Saindon or Mr. Paulo. There is also certainly no evidence of a link between Mr. Paulo's determination about the termination of the grievor's employment and those who conducted the *PSDPA* investigation or their immediate superior. Nor is there any link between Dr. Saindon or Mr. Paulo and the decision to terminate the grievor and the Integrity Commissioner's decision.

[379] Dr. Saindon made the decision to accept the recommendation to terminate, and his stated reasons have already been set out. However, with respect to the allegation by the grievor that somehow, this decision was made in bad faith or was disguised discipline, Dr. Saindon's evidence clearly articulated the reasoning behind his decision. There is no evidence that he made it based on anything to do with the grievor's actions of attempting to find out who made the *PSDPA* disclosure against him, his actions of attempting to pursue an investigation into the missing pipettes, or his allegations of harassment.

[380] Dr. Saindon's evidence seemed to indicate that while he had some knowledge of what happened in 2017 and 2018, there is nothing to suggest that the grievor's subsequent actions to try to get to the bottom of both the drug allegations and missing pipettes had anything to do with his decision.

[381] Also bundled into the allegations of bad faith and disguised discipline are the greenhouse and the thank-you discussions. It is unclear just how these events somehow fit into things.

[382] The grievor admitted in his testimony that after the all-staff meeting of July 19, 2018, he was upset, and that while in a greenhouse, he had an animated discussion with a colleague. He admitted that in the course of this discussion, his voice was raised, and that he used foul language. At least one person, if not two, working in the vicinity of this animated discussion reported what they saw or believed that they saw to Ms. Taylor. This resulted in the grievor being asked to attend a meeting with her. He explained to her what had happened; however, he took umbrage that he was even questioned over what had happened.

[383] No discipline came out of the greenhouse discussion or the grievor's subsequent discussion with Ms. Taylor on the issue. However, his position throughout the hearing was that this reporting of the greenhouse discussion was another event or act perpetrated against him on purpose by persons close to or friendly with person A and/or B as a form of retaliation. There is no evidence of this. The evidence clearly disclosed that the grievor acted in a manner that was described as being animated, with a raised voice and foul language, and that he appeared upset. One cannot fault an employee with bringing this to the attention of a manager and an inquiry being made. In the end, the matter was cleared up after some discussions were held. There is absolutely no evidence that the greenhouse discussion played any role in the decision to terminate the grievor's employment.

[384] In his submissions, the grievor also suggested that the fact that Mr. Paulo made some discreet inquiries with respect to the thank-you comment was somehow akin to Mr. Paulo being ready to launch a full-scale investigation into the grievor while at the same time ignoring the grievor's demands for investigations into the *PSDPA* disclosure and the missing pipettes. This is not at all what the facts disclosed.

[385] At some point in 2020, well after the grievor had left the workplace and after Mr. Paulo had taken over for Ms. Taylor, he was approached by an LRDC employee, who thanked him because that employee felt that the workplace had become a better place. The grievor's name came up, and there seemed to be some discussion about comments that had been made that might have made some people feel uncomfortable. Mr. Paulo made some discreet inquiries about what he had heard. As he testified to, they amounted to nothing. However, the grievor, having not heard about it before the hearing, took umbrage. Again, his position was that this was something that management did to attack his character and that it amounted to bad faith. As with the facts surrounding the greenhouse discussion, if there is something that might be untoward in the behaviour of an individual in the workplace, a manager may make some inquiries.

[386] The facts that the grievor's name might have been mentioned by someone and that Mr. Paulo made some inquiries about something does not somehow taint the process that he carried out with respect to his recommendation to terminate the grievor's employment because of the grievor's inability to return to work. The inquiry itself is not evidence of bad faith; nor is it evidence of any sort of discipline.

c. Credibility

[387] The test for credibility is set out in *Faryna* and has been cited and followed by the Board and its predecessors for decades. I have often cited and referred to *Faryna* in my decisions. The key paragraph in *Faryna* states as follows:

> …
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> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.…*
>
> …

[388] The key takeaway from the *Faryna* decision is that triers of fact, when looking at evidence, are cautioned not to be swayed by merely the demeanour of a particular witnesses, as well as other superficial and subjective criteria. What *Faryna* states is to look at not only what the witness is saying but also at how that information relates to all the other relevant information that exists and that is being presented.

[389] The employer and the grievor brought forward two fundamentally different cases. Much of the grievor's theory of his case rests on events that neither of the employer's witnesses were involved in. Mr. Paulo was not at the LRDC until about 18 months after the grievor left on SLWP, and Dr. Saindon was the ADM in Ottawa.

[390] The most accurate record of what has happened is a document or recording (audio, video, or both) created in the moment in time in which the event happened. In many cases, the document, like an email, is the event itself. Memories can be notoriously inaccurate and may change as time passes. People often remember some things and not others, often when witnessing the same event. Hence, the importance of the test in *Faryna*.

[391] The grievor had no contact with Dr. Saindon. He had some with Mr. Paulo, and much of that was in the documentary evidence and consists largely of emails exchanged between them. Indeed, the events that occurred in 2017 and 2018, the *PSDPA* disclosure and resulting investigation, the missing pipettes, and the greenhouse discussion had a profound effect on the grievor. He subsequently left work on sick leave, and despite the passage of years, appeared to continue to ruminate over these issues.

[392] Dr. Saindon and Mr. Paulo on the other hand were not involved in much of the events and issues that caused the grievor such strife. Dr. Saindon was, in 2017 and 2022 and as of the hearing, an ADM for AAFC. His duties and responsibilities with respect to AAFC are extensive, demanding, and far reaching; the fact that he might not have a crystal-clear memory of meeting the grievor or having heard about the *PSDPA* disclosure and investigation or the alleged relationship between two people working at the LRDC some seven years earlier, is not surprising. Nor does it render the testimony he gave uncredible. Nor is it evidence of bad faith or some sort of malfeasance.

[393] The same reasoning applies to Mr. Paulo. He is administering a large RDC. He has a large amount of responsibilities. He is not just focused on the grievor and the grievor's issues; not recalling events precisely does not somehow mean that what he said is not true or credible; nor is it evidence of bad faith or malfeasance.

d. The Hamori report and letter

[394] The grievor made several submissions about the employer's failure to investigate the *PSDPA* disclosure and the missing pipettes. He took offence with this "failure" by the employer to conduct these investigations. As set out in the evidence portion, after he had been given the 1st options letter and had been given an extension of time, he made a complaint of harassment and violence in the workplace.

[395] The grievor submitted that he had tried to make complaints and that the employer thwarted him, which amounts to bad faith. The evidence did not disclose this.

[396] The grievor had been made aware of the process for making a harassment complaint while he was still in the workplace, before he left on sick leave. The evidence disclosed that before the pipettes went missing in 2018, he and different members of management, both locally and nationally, discussed him making a harassment complaint. Indeed, he was made aware of the policy and how he could do it. In the exchanges entered into evidence, it is clear that while he spoke about the potential and possibility of making a complaint, he demurred.

[397] In the end, the complaint was made under the new legislation that came into effect in 2021. While the process took some time, and there were issues having the complaint processed, there is no evidence that the employer blocked the grievor's access to the process and tried to hamper his ability to initiate the complaint.

[398] The complaint was processed and named nine respondents; however, the investigation was limited to two allegations related to Ms. Taylor's actions surrounding her response to the grievor's allegations with respect to the drug allegations, missing pipettes, and greenhouse discussion. The Hamori investigation resulted in the Hamori report. Subsequent to the delivery of his report, Mr. Hamori wrote a letter to the director of wellness for AAFC and made some further observations and recommendations ("the Hamori letter").

[399] The grievor placed much faith in the Hamori letter. This is unfortunate and troubling. Mr. Hamori's mandate was set out in the Hamori report, which was a very limited investigation involving one respondent. It was not to conduct an investigation into everything that the grievor might have been concerned about. Despite his mandate, Mr. Hamori penned the Hamori letter, in which he made some suggestions.

[400] According to the employer, at the time the discussions with the grievor took place in the late spring and summer of 2022 about returning to work, it had already taken steps to implement suggestions made by Mr. Hamori in the Hamori letter or was in the process of doing so. The grievor thought otherwise.

[401] The employer was not required to implement the suggestions made in the Hamori letter. They were also not conditions precedent to the grievor returning to work; nor were they any form of accommodation. They were merely suggestions. The belief by the grievor that the employer did not implement them or that it did not implement them in the manner he thought was stated does not amount to bad faith.

e. The grievor wanted to return to work

[402] A common theme from the grievor throughout the hearing was that he wanted to return to work. He stated this in his testimony, and it appears in several emails that he exchanged with Mr. Paulo. However, him stating that he desired to return to work and his ability to are two separate things. The evidence put forward from his doctor indicated that the grievor was unfit to return to work.

[403] However, even if the grievor was fit to return to work, which the evidence did not disclose, he also clearly indicated that there had to be conditions in place for him to return. Unsurprisingly, they were tied to the issues surrounding the *PSDPA* disclosure and the missing pipettes and his desire for assurances from the employer. Mr. Paulo characterized the grievor's conditions as in essence an "immunity card", among other things, which he said the employer could not agree to.

[404] While the grievor referred to these conditions in his evidence and submissions as "accommodations", they were not accommodations as recognized in the human rights law sense. Accommodations, in that law and in particular in duty-to-accommodate situations arising from an illness or a disability, are steps taken in the workplace to allow the employee to carry out the functions of their job.

Accommodations can take many forms, but the characteristic of accommodation measures is the removal of, or reduction in form of, the limitation or restriction barrier created by the illness or disability. They involve the workplace (the employer and other employees) and the employee in question, in conjunction, working around the limitation or restriction caused by the illness or disability, to allow the employee in question to do their job.

[405] In this case, Dr. Tabor did not identify any medical restrictions or limitations relating to any medical (physical or mental health) issue. What the grievor addressed when he put forward his conditions was his belief that someone or perhaps maybe more than one person was or were out to get him. He did not go so far as to state that there was a safety issue but alluded to the fact that he did not want to cross paths with the people who he felt were responsible for the *PSDPA* disclosure and missing pipettes.

[406] Moreover, despite the grievor's description of person A's physique and that perhaps this person stood taller and heavier than the grievor, there was no threat made to the grievor; nor was the grievor placed at risk of physical danger by this person. Had that happened, the grievor had the option to refuse to work under the *CLC* and to contact the local police about a threat to his safety. There was no evidence that these things happened.

[407] Despite the grievor's statements that he wanted to go back to work, the evidence disclosed the following:

- he was not medically fit to return to work, despite being away from the workplace, as of the termination, for more than four years, and as of the hearing, some six-and-a-half years; and
- he was not prepared to go to work unconditionally; he tied any return to conditions that were not recommended by any healthcare professional or based on a health condition but that were based on his belief about what might have been the facts surrounding the *PSDPA* disclosure and missing pipettes.

[408] The fact that the employer was not prepared to accept the grievor's conditions for a return to work in the face of medical evidence that stated he was unfit to is not evidence of bad faith.

[409] Despite the fact that the grievor was medically unfit to return to work, the evidence disclosed that Mr. Paulo was considering options for the grievor to return to work and that he discussed vacancies with the grievor in correspondence. The evidence disclosed that in the late spring and summer of 2022, research technician vacancies needed filling at the LRDC. While the grievor made much of the fact that one was in the lab of a research scientist whom he was not keen on working for and who had been subjected to harassment complaints (Scientist 1), this does not change the fact that there were vacancies and that Mr. Paulo clearly was actively looking to have the grievor be a part of filling them. The fact that one of the vacancies discussed was with a scientist who the grievor might have felt was not a good fit does not somehow negate the fact that steps were being taken by the employer to try to facilitate the grievor's eventual return to work. It is not evidence of bad faith or disguised discipline.

[410] The grievor also submitted that the employer should have sought more medical information. The employer relied on numerous medical notes brought forward by the grievor. These notes were not unclear. They clearly stated that he was unfit to work, and in the two years before the termination of his employment, Dr. Tabor confirmed that he did not foresee the prognosis changing.

[411] The employer provided the grievor with the FAF to bring to his doctor. While there is some question as to whether it was given to him by Ms. Taylor in October of 2017 when it was dated and signed by her because there does not appear to be a document forwarding the form to him, there is no question that Mr. Paulo did provide it. The documentation confirms this. The employer provided the grievor with ample opportunities to provide it with medical information that was different from what was being brought forward. None was forthcoming.

f. LWOP under clause 48.01 of the collective agreement

[412] The grievor in his submissions stated that he wanted to take the personal LWOP set out in clause 48.01 of the collective agreement. He alleged that Mr. Paulo blocked his request for this leave and that he was not given a reason for the refusal. The grievor referred me to *Edwards*, which is a decision that deals with LWOP for personal needs under the collective agreement. In that decision, the Board found that the failure to grant this leave was discriminatory. That decision dealt with a grievance specific to that article , article 44.01 in that case, and in those specific circumstances.

In this case, the grievor never grieved the failure of the employer to grant him leave under article 48. The grievance before me is about the termination of his employment.

[413] Further, from what was provided in evidence, the grievor made an inquiry of Mr. Paulo about the three months of leave by the June 9 email. In that email, he does not ask for LWOP under clause 48.01; he seeks an extension of time to make a decision on the options letter. The email states this:

> …
>
> *… I'm hoping that HR will be willing to grant an extension (my representative indicated that they will be seeking this by end of day, tomorrow).* ***If this is not possible****, could you please forward me the paperwork for the 3 month LWOP, which I am to understand that each employee is entitled to? I just want to have everything settled and know where I stand, prior to a possible return to the workplace.*
>
> …
>
> [Emphasis added]

[414] The wording in the email is clear that the grievor was interested in LWOP under article 48 if the extension he sought in the June 9 email was not granted. The balance of the evidence on this shows that on June 14, 2022, Mr. Paulo responded to the grievor's inquiry about the LWOP under article 48 by providing him with a copy of that leave provision as well as a leave application form and instructions on how to fill it out for that type of leave. He also added his interpretation of the article but advised the grievor that his union representative might be able to give him some recommendations or information about the grievor's approach. The grievor responded to Mr. Paulo on June 17, 2022, thanking him for the information on the LWOP under article 48.

[415] The evidence disclosed that the extension of time that the grievor sought in the June 9 email was granted and further that there did not appear to have been a request submitted for the LWOP under article 48, and as such, no denial of it occurred.

[416] While Mr. Paulo's interpretation of article 48 would appear incorrect, this does not equate to a denial of the leave, as it was not requested; nor does it taint Mr. Paulo's recommendation to terminate the grievor's employment with bad faith.

E. General workplace interpersonal issues

[417] As has been set out, much of the grievor's case flows generally from what appears to be a troubled workplace environment. The grievor often spoke of two "camps" and referred to one as "Team Jamie", meaning persons in the workplace he believed were aligned with him. I heard a significant amount of testimony from the grievor and some from Ms. Amyot as to why they believed the workplace was troubled. The documentary evidence clearly indicates that that there were issues, which were described by workplace assessment professionals as interpersonal; rumours and gossiping were among the terms used to describe the problems.

[418] Despite the efforts of management to address the interpersonal difficulties within this workplace through meetings and training, they seemed to persist. With respect to these meetings and training sessions, emails from the grievor focus almost exclusively on his persistence over who made the *PSDPA* disclosure and on the missing pipettes. It was clear from the grievor's testimony, and the documentary evidence brought forward by him, that the focus of the problems in the workplace emanated from persons other than him.

[419] Undoubtedly, at least during the time frame of around the summer of 2017 through the summer of 2018, the LRDC experienced difficulties when it came to the interpersonal relationships between some of the people who worked there. Without casting any blame on anyone, it is also clear that the grievor was somehow involved. It is unfortunate that this dysfunctional interpersonal work environment appears to have played a role in the grievor's ongoing disability.

[420] The Board certainly understands the grievor's desire to find out both who made the *PSDPA* disclosure alleging that he used, sold, or distributed drugs in the workplace and if someone actually tried to frame him by planting the missing pipettes in a drawer in a desk that he used. These issues obviously had an impact on the grievor and, it appears, his health. It appears that some eight years after the *PSDPA* disclosure and seven years after the missing pipettes, the grievor remains distressed and anxious about what happened.

[421] However, the issue before the Board is not who was responsible for making the workplace a problem; nor is it for the Board to lay blame on any person or group of people or even management for not being able to address what was happening and

what could have been done. The issue before the Board is also not who made the *PSDPA* disclosure about the grievor that led to the *PSDPA* investigation or how the pipettes went missing and how they ended up in a drawer in a desk used by the grievor. The Board is not in a position to make determinations on these issues.

[422] The grievor's relief with respect to the *PSDPA* disclosure and investigation lay with the Integrity Commissioner and the Federal Court. That avenue of recourse was closed and not pursued any further by him. With respect to the missing pipettes, while the grievor was unhappy with the investigation that was undertaken, one was undertaken, and its findings were inconclusive. At this juncture, the information provided to the Board at the hearing, largely by the grievor, suggests that any further investigation would be redundant and inconclusive, as those events took place more than seven years ago, and there does not appear to be any surveillance video or any useful information that could be garnered from any keycard data.

[423] As set out earlier, these events, as difficult and troubling as they are for the grievor, do not somehow morph the termination of his employment into an act of bad faith or disguised discipline. The grievor's case was largely theoretical and based on his perceptions and suspicions, assumptions, and suppositions, all of which led him to draw certain conclusions. While the initial starting point of much of the grievor's case is factual, such as the fact that the *PSDPA* disclosure did occur, the grievor's theory of what actually happened consists of his suspicions, presumptions, and assumptions. There is also not any actual evidence that there is any connection between any of the events that transpired in roughly the year before the grievor left on SLWP and his termination of employment, which was more than four years later.

F. Alleged accommodations of both person B and Ms. Amyot

[424] During the course of the hearing and during the submissions, the grievor suggested that both person B and Ms. Amyot, who were both tangentially involved in some of the issues the grievor spoke to as is obvious from the factual narrative in this decision, were accommodated by the employer and that the failure of the employer to accommodate him when he had a disability showed differential treatment between the way the employer treated them and the way it treated him.

[425] There is absolutely no evidence of this.

[426] Both person B and Ms. Amyot changed positions within the organization. There is nothing to suggest that either was accommodated for anything.

[427] As for person B, no evidence was brought forward to show how they obtained their position in Mr. Paulo's office or any other position that they held after moving out of person A's lab. The grievor speculated that it was inappropriate and that things were done for person B, but he brought forward no evidence. There was nothing to suggest that the move was not done appropriately and within the staffing rules, processes, and procedures.

[428] Even more troubling was the suggestion that Ms. Amyot was somehow accommodated by the employer. Ms. Amyot was called by the grievor to give evidence. Ms. Amyot's evidence did not disclose any accommodation process or that any accommodation took place. In fact, the opposite was brought out in her testimony. She stated unequivocally that she applied for the position that she was currently in. She applied to a process, was the successful candidate, and was appointed.

[429] Additionally, the suggestion that person B and Ms. Amyot were moved and that the grievor was not moved and could have been moved was also disingenuous. A discussion was had with the grievor about moving out of London. He was not willing to.

V. Conclusion

[430] I find that the grievor failed to prove on a balance of probabilities that the explanation offered by the employer to establish a statutory defence was merely a pretext for discrimination or that it was disguised discipline or bad faith.

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

(The Order appears on the next page)

VI. Order

[432] The grievance set out in Board file nos. 566-02-47910 and 47911 is denied.

[433] Exhibit G-1, and Exhibits E-1 Tab 19, E-2, and E-3 Tabs 32D, 38, 39, and 39A are ordered sealed until Friday, January 30, 2026, to allow the parties to provide copies with the names and initials of persons A, B, and E redacted.

[434] Exhibit G-7, starting with the 8th page, also identified in the top right corner in bold as "Page 1/10", and ending with the 17th page, identified in the top right corner in bold as "Page 17/18", is ordered sealed.

December 29, 2025.

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