Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2017 CHRT 8
Date: March 29, 2017
File No.: T1828/5812

Between:

Jessica Stanger

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canada Post Corporation

Respondent

Decision

Member: David L. Thomas

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I. Complaint

[1] This is a decision regarding a Complaint dated June 5, 2009 by Jessica Mary Stanger, as Complainant, against Canada Post Corporation ("CPC" or "Canada Post"), as Respondent, alleging it discriminated against her on the basis of her disability and marital status.

[2] On June 11, 2012, pursuant to s. 44(3)(a) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the "*CHRA*"), the Canadian Human Rights Commission (the "Commission") requested the Chairperson of the Canadian Human Rights Tribunal (the "Tribunal") to institute an inquiry into the Complaint.

[3] Ms. Stanger appeared and gave evidence at the hearing. She was ably assisted by her husband, Mr. Patrick Stanger who, although not a lawyer, did a commendable job of navigating through the Tribunal's hearing process. The Respondent was represented by a lawyer, Mr. Zygmunt Machelak. The Commission did not appear at the hearing.

[4] The hearing took place in Victoria, British Columbia ("BC") mainly over three separate one-week sessions, starting in October 2013 and ending in January 2014. Thereafter, it was necessary to receive the testimony of one witness by affidavit, as he was not well enough to testify in person. This process took several months to complete. Final arguments were heard orally in July of 2015.

II. Overview

[5] Ms. Stanger is a long-time employee of Canada Post. Her complaint alleges workplace discrimination on two grounds: Firstly, Ms. Stanger alleges that some fellow employees discriminated against her because of her partial, physical disability. Secondly, Ms. Stanger alleges that some co-workers and CPC discriminated against her because of her relationship with, and eventual marriage to, a Canada Post superintendent.

III. Decision

[6] For the reasons set out below, I have determined that one allegation in the Complaint is substantiated. The remaining allegations are not substantiated and are therefore dismissed.

IV. Allegations of Discrimination

[7] At the hearing, Ms. Stanger gave evidence about 18 separate events which she alleges constitute prohibited discrimination under the *CHRA*. Her allegations are based on two grounds of discrimination under s. 3(1) of the *CHRA*: marital status; and disability.

[8] Ms. Stanger alleged 5 acts of discrimination under s. 7: that she was denied employment advancement and that she was treated differentially when certain tasks were wrongly removed from her work rotations because of her marital status. She also alleged 3 acts of discrimination based on her disability.

[9] Under s.14 of the *CHRA*, Ms. Stanger alleged harassment related to her employment: 7 events relate to alleged harassment because of her marital status and 3 events relate to alleged harassment because of her disability.

A. Legal Framework

Section 7 of the *CHRA*

[10] Section 7 of the *CHRA* states:

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

[11] In human rights cases, a complainant has the burden of proof to establish a *prima facie* case. A *prima facie* case is "…one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent-employer." (*Ontario Human Rights Commission and O'Malley v. Simpsons-Sears,* [1985] 2 S.C.R. 536 (*"O'Malley"*) at p. 558).

[12] To demonstrate *prima facie* discrimination in the context of the *CHRA*, complainants are required to show: (1) that they have a characteristic or characteristics protected from discrimination under the *CHRA*; (2) that they experienced an adverse impact with respect to a situation covered by sections 5 to 14.1 of the *CHRA*; and, (3) that the protected characteristic or characteristics were a factor in the adverse impact (*see Moore v. British Columbia (Education),* 2012 SCC 61 at para. 33; *Siddoo v. I.L.W.U., Local 502,* 2015 CHRT 21, para. 28). The three elements of discrimination must be proven on a balance of probabilities (see *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center) ("Bombardier")*, 2015 SCC 39 at paras. 55-69).

[13] The Tribunal has recognized the difficulty in proving allegations of discrimination by way of direct evidence. As was noted in *Basi v. Canadian National Railway Company* 1988 CanLII 108 (CHRT) ("*Basi*"): "Discrimination is not a practise which one would expect to see displayed overtly. In fact, rarely are there cases where one can show by direct evidence that discrimination is purposely practised*."* Rather, one must consider all of the circumstances to determine if there exists what was described in the *Basi* case as "…the subtle scent of discrimination*."*

[14] It is not necessary that discriminatory considerations be the sole reason for the actions in issue for a complaint to succeed. It is sufficient that the discrimination be a factor in the employer's actions or decisions (*Holden v. Canadian National Railway Co.* (1990), 14 C.H.R.R. D/12 (F.C.A.)). Nevertheless, the complainant has the burden of showing that there is a *connection* between a prohibited ground of discrimination and the adverse treatment. (See *Bombardier, supra*, at para. 52.)

[15] Once a complainant establishes a *prima facie* case of discrimination, he is entitled to relief in the absence of justification by the employer (*Ontario Human Rights Commission v. Etobicoke*, [1982] 1 S.C.R. 202, at p. 208; *Lincoln v. Bay Ferries Ltd.*, 2004 FCA 204, at para. 18).

Section 14 of the *CHRA*

[16] Section 14 of the *CHRA* states:

> It is a discriminatory practice,
>
> (a) in the provision of goods, services, facilities or accommodation customarily available to the general public,
>
> (b) in the provision of commercial premises or residential accommodation, or
>
> (c) in matters related to employment,
>
> to harass an individual on a prohibited ground of discrimination.

[17] Marital status and disability are prohibited grounds of discrimination under s. 3(1) of the *CHRA.*

[18] Ms. Stanger alleged several events occurred in the workplace which she claimed constituted harassment.

[19] The Tribunal has attempted to define harassment as any words or conduct that are unwelcome or ought reasonably to be known to be unwelcome, related to a prohibited ground of discrimination, that would detrimentally affect the work environment or lead to adverse job-related consequences for the victim. Harassment usually denotes repetitious or persistent acts, although a single serious event can be sufficient to create a hostile work environment (see *Janzen v. Platy Enterprises Ltd.*, [1989] 1 SCR 1252; and, *Kimberley Franke and Canadian Human Rights Commission* v. *Canadian Armed Forces,* [1999] 3 FC 653 ("*Franke*")). In the context of harassment based on disability, the Tribunal has held that, the key is to examine whether the conduct has violated the dignity of the employee from an objective perspective such that it has created a hostile or poisoned

work environment (see *Croteau v. Canadian National Railway Company*, 2014 CHRT 16 ("*Croteau*"), at para. 43).

[20] In the context of alleged harassment that is not sexual in nature, the Tribunal has considered whether or not comments about one's disability are relevant to or consistent with the legitimate operations and business goals of the employer. If they are, such comments may not constitute harassment. On the other hand, derogatory comments or unnecessary questioning about a disability are irrelevant and extraneous to the safety, operations and business goals of the employer. Such conduct, where it is humiliating or demeaning, can constitute harassment. (See *Day v. Canada Post Corporation*, 2007 CHRT 43 ("*Day"*), at para. 184.)

[21] The Tribunal further considered the meaning of harassment in *Siddoo v. International Longshoremen's and Warehousemen's Union, Local 502* 2015 CHRT 21 at paras. 45-46 (judicial review pending, T-1742-15):

> Every act by which a person causes some form of anxiety to another could be labelled as harassment. What offends one person may not offend the next person at all. Furthermore, none amongst us are perfect, and we are all capable of being, on occasion, somewhat thoughtless, insensitive and perhaps even outright stupid. Does this mean that there can never be any safe interactions between people? The question is not so much whether one is offended or feeling humiliated, but by what objective measure can we define harassment, so that people everywhere know exactly how to conduct themselves to avoid it.
>
> I do not think that every act of foolishness or insensitivity in the workplace was intended to be captured under section 14 of the CHRA. Harassment is a serious word, to be used seriously and applied vigorously when the occasion warrants its use. To do otherwise would be to trivialize it. It should not be cheapened or devalued in its meaning by using it to loosely label petty acts or foolish words where the harm, by any objective standard, is fleeting.

[22] The Tribunal also noted the importance of not trivializing the protection granted in section 14 of the *CHRA* in *Rampersadsingh v. Wignall*, 2002 CanLII 23563 (CHRT), para. 55:

> [55] The same issue was dealt with by the Court of Appeal of Quebec in the case of *Habachi* v. *Commission des droits de la personne du Québec*. The Court recognized that a single act, provided it is serious enough and has an ongoing effect, may constitute harassment. As an example, Madame Justice Deschamps suggested that a single incident of sexual assault at the workplace would create the deep, long-lasting and unfavourable effect required to constitute sexual harassment. But Mr. Justice Baudouin also pointed out in the same case that if one were to conclude that acts lacking the requisite severity nevertheless constitute harassment, the effect would be to trivialize a provision of the *Act* that was intended to deal with a very specific form of discrimination…

V. General Background Facts

[23] There are various background facts which should be noted, none of which are in contention by the parties. Ms. Stanger was first hired by Canada Post in Calgary in 1989. She was transferred to Victoria in 1991 in the position of postal clerk. She suffered a non-work related injury to her neck in 1999 which resulted in two bulging spinal discs. In 2000, Canada Post deemed Ms. Stanger to be a "permanently, partially disabled" employee, referred to commonly at Canada Post as a "PPD".

[24] From June of 2000, until she left the Victoria Mail Processing Plant ("VicMPP") in 2008, Ms. Stanger's PPD status entailed the following limitations on her ability to work:

- Lifting floor to waist: Maximum 10 lbs.
- Carrying items with both hands: Maximum 15 lbs.
- Standing: Maximum 2 hours.

[25] Canada Post accommodated Ms. Stanger's return to work from 2002 to 2004 through a graduated return to work program. In 2004, Ms. Stanger was assigned to the Number 3 shift in the Communication A section at VicMPP. At VicMPP, each shift section consisted of approximately 16 employees. There were 13 specific work activities to be performed by each section, and the shift workers were rotated, usually every two hours, to

a different activity. As a result of her PPD limitations, Ms. Stanger was unable to perform the majority of these activities, and she therefore had to be accommodated by being permitted to perform a limited number of them on a more frequent basis.

[26] Ms. Stanger had been previously married to one of her co-workers, Mr. Patrick Gibbons, who appeared as a witness for the Respondent at the hearing. She separated from Mr. Gibbons in early 2003, and they were formally divorced in 2004.

[27] In 2004, Ms. Stanger began a romantic relationship with the Shift 3 Superintendent at VicMPP, Mr. Patrick Stanger. By the end of 2004, the Complainant and Mr. Stanger were living together, and in February of 2008 they were legally married.

[28] Ms. Stanger stopped working at VicMPP on or about June 22, 2008. She took a sick leave and did not return to work until December of 2008. Ms. Stanger did not return to work at VicMPP. When she returned to work in December of 2008, it was in a retail position for the Respondent elsewhere in the region and she remained working there at the time this complaint was heard.

VI. Preliminary Issues

A. Grounds of Discrimination based on Marital Status or Family Status?

[29] When this complaint was originally filed with the Canadian Human Rights Commission in 2009, the Complainant listed the prohibited grounds of discrimination as: "Disability, Marital Status & Family Status." A revised Summary of Complaint form dated November 30, 2011, listed the prohibited grounds of discrimination as: "Disability & Marital Status."

[30] In written submissions and in oral argument, the Complainant's representative used the terms "marital status" and "family status" interchangeably. It appeared to me that he made no distinction between the two grounds, and that he considered them to be the same. In *Waddle v. C.P.R. et al.* 2016 CHRT 8, the Tribunal found that where an Amended Summary of Complaint form was referred to the Tribunal along with the

Complaint, the Summary of Complaint could serve as an instrument amending the Complaint (see para. 30).

[31] Accordingly, as the revised Summary of Complaint form makes no mention of "Family Status", I have considered the Complainant's submissions about family status in reference to marital status only.

B. Start Date for Allegations of Discrimination based on Marital Status

[32] In its closing argument, the Respondent contends that Ms. Stanger cannot make a claim of discrimination on the grounds of marital status until such status has been acquired by her. In a strict application of the ground "marital status", the Respondent argues that Ms. Stanger did not acquire it until her legal marriage to Mr. Stanger on February 14, 2008. In the alternative, if common-law marriage status can be acquired after one year of co-habitation, then Ms. Stanger could not have acquired such status until November 1, 2005. This is the date on which Ms. Stanger confirmed to her employer in writing that she effectively commenced living in a "spousal" (*i.e.* common-law) relationship with Superintendent Stanger. Submitted as an exhibit, this document was entitled Dependant Information and appeared to be a form issued by Great West Life Assurance Company and the Respondent. It was signed by the Complainant on February 8, 2006. As such, the Respondent argues, any incidents that pre-date the acquisition of marital status cannot give rise to valid complaints under the *CHRA*.

[33] The Complainant made no submissions on the argument that she had not acquired marital status until February 14, 2008.

[34] There is some confusion on the record about when Ms. Stanger's relationship with the Superintendent began, and when they started to cohabit. In her direct evidence, Ms. Stanger said they started dating in late summer or September of 2004. Under cross examination, Ms. Stanger said that she started living with Superintendent Stanger in late October of 2004.

[35] However, in Ms. Stanger's complaint filed with the Commission, she stated that she began dating Superintendent Stanger in the fall of 2005. In her revised Statement of

Particulars ("SOP"), Ms. Stanger stated that she began dating Mr. Stanger in "the fall of 2004". The SOP also makes reference to Superintendent Stanger's change of status form submitted to the Respondent, indicating the Complainant "…and Mr. Stanger have been in a spousal relationship since January 11, 2004."

[36] The Complainant filed the Superintendent's change of status form as an exhibit. It was also titled "Dependent Information" and was the same form issued by both Great West Life Assurance Company and the Respondent. It indicated that Ms. Stanger was his spouse with an effective date of: "2004 01 11." A related provincial health care form filed with the exhibit indicated that Superintendent Stanger's former spouse, Elizabeth, was deleted as his dependent effective November 1, 2004.

[37] At the hearing, I attempted to sort through all of this conflicting information to clarify the dates for the record. I asked the Complainant straightforward questions. Ms. Stanger gave confusing and sometimes contradictory answers. In the end, based on the answers the Complainant provided in cross-examination, I conclude that she and Superintendent Stanger started to cohabit at some time in October of 2004.

[38] The *CHRA* does not define "marital status". There has been much jurisprudence in recent years which attempts to clarify the scope of this prohibited ground. However, relatively few cases directly address the question as to what extent an unmarried couple facing discrimination based on their conjugal relationship can claim "marital status" discrimination. Respondent counsel cited the Tribunal's decision in *Schaap v. Canadian Armed Forces*, ("*Schaap")* 1988 CanLII 4504 (CHRT), wherein it was held that the term "marital status" under the *CHRA* was restricted to relationships involving a legal form of marriage and could not be stretched to include the common law relationship. At issue in *Schaap* was whether the Canadian Armed Forces ("CAF") discriminated on the basis of marital status when it denied "married quarters" to members who were involved in a common law relationship with their cohabiting partner.

[39] However, it is important to note that that the Federal Court of Appeal overturned the Tribunal's decision in a judgment cited as: *Schaap v. Canada (Canadian Armed Forces)* (1988) [1989] 3 F.C. 172, 12 C.H.R.R. D/451 (C.A.) (*"Schaap-FCA*").

[40] The Court of Appeal's judgment in *Schaap-FCA* is comprised of three sets of reasons, with the majority reasons issued by Hugessen and Pratte JJ.A. Hugessen J.A. commenced by noting that a common law relationship cannot "fall within" the definition of marital status, as a status and a relationship are two different things. Marital status, in his view, meant no more than status in the sense of "married or not married" (C.H.R.R. para. 6). He then went on to examine the more general intention of Parliament when it included "marital status"—as well as the other prohibited grounds of discrimination—in the *CHRA*:

> …I do not think the purpose of the human rights legislation is to favour the institution of marriage (or, for that matter, that of celibacy). On the contrary, I think the legislation, by including marital status as a prohibited ground of discrimination along with such factors as race, ethnic origin, colour, disability, and the like, is clearly saying that these are all things which are irrelevant to any of the types of decisions envisaged in ss. 5 to 10 inclusive. Those decisions are to be made on the basis of individual worth or qualities and not of group stereotypes. [para. 10]

[41] Hugessen J.A. acknowledged the CAF's legitimate interest in only providing married quarters to employees who were involved in relationships "…which had a high degree of permanency and stability" (para. 11). By allowing an employee to cohabitate with a person perceived to be in a special relationship with that employee, an employer ultimately fosters better morale (para.13). The flaw in the CAF's policy, however, was that it based its recognition of the value of the favoured special relationship on the status of those in it, by asking if they were married to each other:

> In taking this approach, the policy is based on and perpetuates a stereotype, namely, that a relationship between a man and a woman has a lesser social value if it does not have the status of marriage. [para. 14]

[42] He observed that assessments of the stability and permanency of relationships must be based on factors which actually indicated their existence, and that marriage or its absence was not determinative in this regard (para. 15).

[43] Finally, Hugessen J.A. noted that in order to correctly appreciate the status of one person, it is frequently necessary to look at the situation of someone else:

> To appreciate the marital status of the applicants, one must look at the situation of the people with whom they are living in a relationship of husband and wife. The applicants are not married to those people and it is that status alone which is the cause of their exclusion from obtaining the benefit of married quarters. [para. 17]

[44] Justice Pratte commences his reasons with the statement that "marital status" under the *CHRA* means "…the status of a person in relation to marriage, namely, whether that person is single, married, divorced or widowed" (para. 2). He then asserts that the complainants in the *Schaap-FCA* case, (applicants on judicial review) were indeed victims of discrimination based on their marital status, "…in spite of the fact that the reason for that discrimination was not simply that the applicants were not married but, rather, that each one of them was not married to the woman with whom he was living…" (para. 3).

[45] Like Justice Hugessen, Pratte J.A. acknowledges that the plain meaning approach to marital status would not seem to expressly include unmarried partners. However, both Justices ultimately recognize the viability of a "relative status" claim, whereby a person subjected to adverse treatment based on her cohabitation in a conjugal relationship outside marriage, could seek the protection of the *CHRA*. Justice Hugessen clearly arrives at this conclusion based on a purposive and contextual interpretation of the prohibited ground in question.

[46] Together, the majority judgments in *Schaap-FCA* do not establish in the clearest of terms that any unmarried couple who faces discrimination under the *CHRA* is eligible for protection under the prohibited ground of "marital status". In *Schaap-FCA*, the focus was on the exclusion of unmarried couples from a benefit made available to legally married couples. However, the majority judgments at the very least establish that marital status discrimination can be a relative construct, in the sense that an individual's marital status can be determined by looking at his or her current conjugal living situation and relationship with one's partner. Moreover, unlike the Tribunal decision which it set aside, *Schaap-FCA* does not foreclose the possibility of a marital status claim under the *CHRA* from an

individual who experiences adverse treatment based on her involvement in a conjugal relationship outside of marriage.

[47] The foregoing interpretation of *Schaap-FCA* is buttressed by subsequent jurisprudence from courts and tribunals:

> In *Jensen v. B.C. Report Magazine Ltd.* (1993), 19 C.H.R.R. D/495 (B.C.H.R.C.), the tribunal had to construe the undefined term "marital status" in the British Columbia *Human Rights Act*. It noted the Supreme Court's statements in *O'Malley, supra,* regarding the special nature of human rights legislation, and the Court's rejection of the approach that "…no broader meaning can be given to the Code than the narrowest interpretation of the words employed." (para. 32) The tribunal then noted that in the context of other prohibited grounds of discrimination, namely "race", "colour" and "disability", the protection against discrimination is not limited to actual characteristics, but extends to perceived characteristics. Applying the principle to the matter at hand, it concluded that "…[t]he complainant, although unmarried at the time in question, had the same protection under the Act as if she were married because the respondent perceived her as married." (para. 37)

[48] In *Gipaya v. Anton's Pasta Ltd. ("Gipaya")* (1996), 27 C.H.R.R. D/326 (B.C.C.H.R.), the British Columbia tribunal again had to determine whether the complainant in the case was protected by the "marital status" provision of the BC *Human Rights Act.* In holding that she was so protected, the tribunal noted that the state of being engaged to be married clearly related to or was connected with the status of marriage and could be considered "marital" (para. 109). It also noted that in Supreme Court jurisprudence (*O'Malley, supra; Action travail des femmes v. C.N.* [1987] 1 S.C.R. 1114), "…human rights tribunals have been cautioned not to seek ways and means to minimize the proper impact of human rights legislation." Rather, a large, liberal and purposive approach to interpreting the provision in question would permit "…a finding that "marital status" includes both the status of being engaged to be married and the status of living in a relationship analogous to marriage." (Paras. 112-113).

[49] In *502798 N.B. Inc. v. N.B. Human Rights Commission*, 2008 NBQB 390 ("*502798 N.B. Inc.")* the Court had to determine whether the ground "marital status"—undefined in New Brunswick's *Human Rights Act*—applied to the relationship existing between the

complainant and a colleague, who were cohabiting. The Court cited a statement in *The Law of Human Rights in Canada* (by the Honourable Justice Russel W. Zinn) to the effect that where there is no statutory definition to rely on, the jurisprudence has established that "marital status" will be interpreted to include common law relationships (para. 39). The Court then noted the evidence given in the case from the two cohabiting individuals, that by the time of the complainant's termination, "…they were living as a married couple." This evidence was found to be "completely determinative" (para. 41). The Court concluded that the complainant was involved in a common law relationship that would qualify for protection on the basis of marital status (paras. 44-45).

[50] Finally, in *Canada (Attorney General) v. Johnstone*, 2014 FCA 110 ("*Johnstone"*), a case concerned with the scope of the ground "family status" under the *CHRA*, the Federal Court of Appeal provided important guidance on how to interpret the scope of a prohibited ground. It recalled that human rights legislation must be given a broad interpretation to ensure that the stated objects and purposes of such legislation are fulfilled; a narrow restrictive interpretation that would defeat the purpose of eliminating discrimination should be avoided. The Court also noted that the key provisions of human rights legislation must be interpreted in a flexible manner and with an adaptive approach. Finally it cited the rule that human rights legislation has a unique quasi-constitutional nature and ought to be interpreted in a liberal and purposive manner in order to advance the broad policy considerations underlying it (paras. 61-63).

[51] In *Johnstone,* the issue was whether the ground "family status" could include family circumstances such as childcare obligations. In holding that it did include such circumstances, the Court considered the French version of ss. 2 and 3 of the *CHRA*, and noted that "family status" ("*situation de famille"*) was much broader than "marital status" ("*état matrimonial"*). However, this finding does not impact the current analysis given that the complainant in this case, Ms. Stanger, is not asserting that the marital status discrimination she experienced pertained to circumstances or obligations that were incidental to her relationship. Rather, it is the identity of her spouse that in her view is the source of the marital status discrimination.

[52] Re-examining the Respondent's position in light of the foregoing jurisprudence, one is compelled to conclude that the *CHRA*'s protection against marital status discrimination cannot be confined to the period commencing on the date of a legally solemnized marriage. Such a narrow and restrictive interpretation would frustrate the purposes of the *CHRA*, and create the absurd result whereby the termination of employees on the basis of their recent marriage would be reviewable under the *CHRA,* while the termination of employees on the basis of their imminent marriage would not be. The Respondent's position ignores the fact that marriage does not spontaneously come into existence without any antecedents; hence the extension of marital status protection to the engaged couples in *Jensen* and *Gipaya*.

[53] Moreover, were the Tribunal to deny the Complainant the benefit of the *CHRA* protection available to married couples on the sole basis that her relationship with her unmarried partner did not qualify as a legal marriage, would it not be perpetuating the same kind of stereotypical value judgments about the worthiness, permanence and stability of unmarried relationships that were so clearly denounced by Hugessen J.A. in *Schaap-FCA*? I conclude it would and therefore do not find the protection against marital status discrimination to be so limited.

[54] The Respondent's alternative position—that protection against marital status discrimination only commences after one year of co-habitation—is also inconsistent with the jurisprudence. To the extent this argument relies upon definitions of spousal relationships found in statutes outside the field of human rights, it must be noted that legislation passed for different purposes cannot contribute to a purposive interpretation of the *CHRA*: see *Jensen,* para. 38; and *Gipaya,* para. 108. Moreover, none of the authorities reviewed above have made marital status protection strictly contingent upon the sheer number of months of a couple's prior conjugal cohabitation. For that matter, the periods of cohabitation range greatly, from 4 months in *Jensen* to over two years for the co-complainant in *Schaap*.

[55] Rather, the scope of the protection granted by the ground of marital status has been ascertained by a more qualitative assessment of the relationship in question at the relevant time. Hugessen J.A. in *Schaap-FCA* tacitly acknowledged that the relationship

giving rise to marital status discrimination was essentially "a relationship of husband and wife" (para. 17). In *Gipaya,* the complainant, who cohabited with her colleague, had purchased a house with him, and had announced their engagement, was protected "…by virtue of her status of being engaged or being in a common-law spousal relationship." (Para. 115). In *502798 N.B. Inc.*, the human rights board of inquiry had found that the testimony of the complainant and his colleague that "…they were living as a married couple, without specifying particulars of their cohabitation…" was sufficient, and the Court endorsed the finding that they had marital status at the relevant time (paras. 6, 41-42). In *Jensen,* the tribunal found that the complainant was protected under the statute because the respondent perceived her as married (para. 37). The emphasis placed on perception in the *Jensen* case has been subsequently underscored by the Supreme Court of Canada in *Québec (C.D.P.D.J.) v. Montréal* 2000 SCC 27, where the Court held that the ground "handicap" in Québec's *Charter of Human Rights and Freedoms* can include both an ailment, as well as the perception of such an ailment (para. 72).

[56] Unfortunately in this case, the parties did not make fully developed arguments about when marital status protection might commence, such as how soon after cohabitation in a conjugal relationship has started. The matter is further complicated by the conflicting dates in the evidentiary record. As such, this is not the best case in which to make a definitive determination of this question. However, for the purpose of the analysis below, I will give a broad interpretation and find that Ms. Stanger is entitled to the protection granted by the ground of marital status for events occurring after November 1, 2004.

C. Credibility of the Complainant

[57] For the most part, Ms. Stanger appeared to be sincere in giving her evidence. However, there were times when her answers were unclear, evasive and simply not credible. There are several specific examples:

A) As mentioned above, Ms. Stanger provided the Tribunal with several conflicting dates regarding the commencement of her relationship with

Superintendent Stanger. Even when I asked her directly to clarify the dates, it took her a very long time to give me a clear answer and she was unable to explain the reasons for the alternative dates provided;

B) At one point, Ms. Stanger testified that she had filed two human rights complaints and that she had originally contacted the Commission in 2004 to file a complaint. After repeating this several times when being questioned about the date, she suddenly changed her testimony and stated that she had first contacted the Commission in 2008. She also stated that she filed two complaints with the Commission that were later amalgamated although I did not see any evidence of that;

C) During her cross examination by the Respondent, Ms. Stanger was asked to confirm when she had booked her holidays in Hawaii, which took place from February 9 to 26, 2008, during which trip she legally married Superintendent Stanger. The upcoming CLDP course (discussed in detail below) ran from February 25-28, 2008, conflicting with the dates of Ms. Stanger's wedding plans. The questions about when she booked the holiday related to whether she already knew at the time of applying for the CLDP that she was unavailable to attend the course due to her wedding plans. I found Ms. Stanger to be rather evasive when questioned about when she booked the trip to Hawaii. She stated repeatedly that she did not know when she booked the trip to Hawaii, and she would also not concede that she must have requested the time off work at least one or two months in advance. To this and several like questions, she replied, "I don't know." I found her answers not to be credible because she applied for the CLDP merely 17 days prior to her departure to Hawaii for her wedding. She also testified that her honeymoon cruise, departing several weeks later, had been booked several weeks prior to her wedding date;

D) As will be discussed in detail below, Ms. Stanger testified that her former spouse, Patrick Gibbons, had deliberately followed her at work while he was driving a forklift. Ms. Stanger described him as "chasing" her in the forklift and

being “very aggressive” towards her. Mr. Gibbons testified and completely denied the allegation. Ms. Stanger also testified that she had reported the incident to a Supervisor, Brad Harrison. Mr. Harrison was called as a witness by the Respondent and denied any memory of the incident. He also testified that the allegation would have been considered very serious, if true, and that he certainly would have followed up on it. There were no written reports or any other evidence presented at the hearing indicating that this event occurred as described by Ms. Stanger; and,

E) As will be discussed in detail below, one of Ms. Stanger’s allegations involved an exchange she had with a co-worker named Pam Cromwell. Ms. Cromwell was later reprimanded by Superintendent Stanger, and thereafter Ms. Stanger alleges she was subjected to an act of reprisal by Ms. Cromwell. Ultimately, Superintendent Stanger wrote an email to Manager Sherry Aiken in which he suggested Ms. Cromwell was connected to the alleged reprisal. Notwithstanding that Ms. Stanger was then living with him, she denied ever having spoken to Superintendent Stanger about the reprisal and suggesting that Ms. Cromwell was responsible for this alleged act. This was explored during Ms. Stanger’s cross-examination and I did not find her denial to be credible.

[58] Many of the events discussed at the hearing happened several years prior. It is possible for memories to fade and for mistakes to be made. However, the above-noted instances caused me to have concerns about the Complainant’s credibility such that I was unable to accept her evidence about certain key controversial incidents without cogent corroborative evidence. (See *Cassidy v. Canada Post et al.* 2012 CHRT 29 *para*. 27).

[59] I make the foregoing observations having due regard to the principles of credibility assessment, as expressed in *Faryna v. Chorny* [1952] 2 D.L.R. 354 (B.C.C.A.):

> The credibility of interested witness, 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." [See also: *Cassidy v. Canada Post et al*. 2012 CHRT 29, paras.25-26]

VII. Section 7 Allegations of Discrimination related to Marital Status

A. Denial of Career Leadership Development Program Participation

i) Background and Facts

[60] At the time Ms. Stanger worked at VicMPP, there was a recruitment program offered by Canada Post called the Career Leadership Development Program ("CLDP"). Canada Post employees, mainly members of the Canadian Union of Postal Workers ("CUPW"), were often assessed through this program for consideration for promotion to supervisory positions. The CLDP was developed in an attempt to bring some objectivity into the assessment of employees wishing to move up to these supervisory positions. The program was run periodically in anticipation of staffing needs, and it was usually run once or twice per year in the Pacific region. Employees interested in applying to attend the CLDP were required to have their Team Leader complete a Recommendation Form and then have it signed by their local Manager. If a particular CLDP session was over-subscribed, the surplus applicants were usually put on a waiting list to attend the next CLDP session that was offered.

[61] Ms. Stanger testified that she had applied for the CLDP session in Vancouver, scheduled for late February of 2008. The deadline for the application submission was January 22, 2008. The Manager at VicMPP was Ms. Sherri Aiken, and it was her signature of approval that was required on Ms. Stanger's Recommendation Form.

[62] The Recommendation Form for the CLDP was tendered as an exhibit at the hearing. Ms. Aiken checked the box to decline the approval, signed and dated the form, and then wrote the following in the comment section:

> Jessica would potentially be a good candidate if her personal situation was different or if she were to work in another facility. Her husband is shift #3 operations superintendent and there is a high likelihood of conflict of interest. Recommend review with HPM expertise to determine best next steps for Jessica to pursue her career advancement.

[63] Ms. Aiken testified that she had a meeting with Ms. Stanger on or about January 22, 2008, to discuss her concerns about a possible conflict of interest. According to Ms. Aiken, the CLDP was usually run when there were specific vacancies that needed to be filled. It was Ms. Aiken's understanding that the only supervisor position available in Victoria at that time was a position that would put her into a direct conflict of interest situation with her spouse, Superintendent Stanger.

[64] There was conflicting testimony about whether or not Ms. Stanger had indicated at that meeting her willingness to relocate to a different town in order to avoid the conflict with her spouse. In her direct examination, Ms. Stanger said that during the January 22, 2008, meeting, she had asked Ms. Aiken about the availability of positions elsewhere on Vancouver Island. Under cross-examination, Ms. Stanger indicated she had been willing at that time to relocate anywhere in BC, even to places as far away as Fort St. John, even though she would have to bear the relocation cost and notwithstanding her then imminent marriage to Superintendent Stanger three weeks later.

[65] In her direct testimony, Ms. Aiken recalled that she had told Ms. Stanger there were no other supervisory positions available at the time on Vancouver Island. Ms. Aiken testified that she asked Ms. Stanger if she would be willing to relocate to Vancouver, where there were several positions available. According to Ms. Aiken, Ms. Stanger said no. Ms. Aiken went on to testify that if Ms. Stanger had been willing to relocate to the mainland, she would have approved the Recommendation Form without hesitation. Ms. Aiken testified she was positive about Ms. Stanger's position on relocation, because her subsequent correspondence with Human Resources officers focused specifically on

Ms. Stanger's unwillingness to relocate. (In an email dated February 4, 2008, Ms. Aiken wrote to the responsible Human Resources Officer in Vancouver, Colleen McKenzie, about her conversation with the Complainant as follows: "I did speak to her about her mobility and she is not interested in a position outside of Victoria.")

[66] Ms. Aiken's testimony provided further clues about her motivation, as she testified that it would be an unwise expenditure for Canada Post to send Ms. Stanger on the CLDP assessment, specifically because Ms. Stanger had not indicated a willingness to relocate to avoid a possible conflict of interest in the future.

[67] After Ms. Aiken declined to approve the Recommendation Form, Ms. Stanger submitted her application for the CLDP directly to Ms. Colleen McKenzie, the responsible Human Resources Officer in Vancouver. In an email dated January 28, 2008, Ms. McKenzie advised Ms. Aiken that she had consulted with Canada Post's human rights officer, Ms. Roxanne Ayers, and that it was Ms. Ayers' advice that Ms. Stanger could not be denied the opportunity to apply for the CLDP based on her marital status. Ms. McKenzie recommended that Ms. Aiken approve the Recommendation Form, and if Ms. Stanger was a successful candidate at the CLDP, she could go on a waiting list for a position that would not be reporting to her husband.

[68] A subsequent email, dated February 5, 2008, was sent to Ms. Aiken by Mr. John Scott, then Acting Director of HPM (Human Performance Management) - Pacific Region. Mr. Scott wrote the following advice to Ms. Aiken:

> Denying an opportunity that would result in a conflict of interest as per our policy is appropriate.

[69] Mr. Scott went on in his email to advise Ms. Aiken of the following, regarding the application for a seat at the CLDP program:

> Having said all that, my belief is that if you believe that she is a good candidate for supervisor (aside from the conflict issue) you can complete the recommendation. The normal step would be that when we select who gets the seats we base it on where there are existing opportunities. If there are no opportunities except where the conflict exists and if she has noted that

> she is unwilling to relocate, then she would not get one of the seats based on that.
>
> The decision is based on our conflict policy and not her marital status. There is significant case law to support this interpretation.

[70] Based on the advice she received, Ms. Aiken reversed her decision. At a meeting in early March of 2008, after Ms. Stanger returned to work following her trip to Hawaii, Ms. Aiken advised Ms. Stanger that she had approved her application to attend the CLDP, and that Ms. Stanger was now on a waiting list to attend the next CLDP session, whenever it was announced. Unfortunately, Canada Post later decided to cancel the CLDP program and, as such, Ms. Stanger's application was never considered. Canada Post had decided to contract with an external company to run the process for supervisor recruitment. The CLDP session at the end of February 2008, was the last such program to be run in the Pacific Region.

[71] Ms. Aiken testified that it was not immediately apparent to her that Ms. Stanger was disappointed by missing the CLDP session. A letter of apology from Ms. Aiken to Ms. Stanger dated April 6, 2009, was tendered as an exhibit at the hearing. In the letter, Ms. Aiken explained that she only became aware of the anxiety she had caused Ms. Stanger in denying the CLDP recommendation when the latter filed a human rights complaint. Ms. Aiken wrote the letter to Ms. Stanger to offer her apology and to confirm that Ms. Stanger was still on a waiting list should the CLDP session be offered again.

ii) *Prima facie* Case of Discrimination Established

[72] While there is conflicting testimony about was what actually said at the January 22 meeting, the conflict has no bearing on the question of whether a *prima facie* case has been established. In my view, Ms. Stanger presented uncontroverted evidence proving a *prima facie* case of discrimination based on her marital status.

[73] As I held earlier, Ms. Stanger has established that since November 2004 she was in a conjugal relationship with Mr. Stanger that was protected by the ground of marital

status. In the context of the current allegation, her manifestation of the protected characteristic was evinced by the fact that she was engaged to be married in a few weeks.

[74] Secondly, Ms. Stanger has proven that she was differentiated adversely when her CLDP recommendation was not approved. While I have doubts about whether Ms. Stanger actually planned to attend the CLDP session in late February, conflicting as it did with her wedding plans, the fact remains that Ms. Stanger was denied access to a significant employment opportunity (*CHRA*, s. 2). It is possible that when Ms. Stanger applied for the CLDP, she simply forgot or was not aware that it conflicted with her wedding plans. In any event, it is not necessary to speculate what Ms. Stanger might have done if she had been accepted to the February 2008 CLDP session. As it turned out, the CLDP program was never offered again. As such, I conclude the CLDP denial had an adverse impact upon her.

[75] Lastly, Ms. Stanger has demonstrated that the Respondent differentiated adversely based on her marital status. The reasons given on the Recommendation Form show that Ms. Aiken's perception of Ms. Stanger's spousal relationship with Superintendent Stanger (referring to him as "her husband") was a factor in the decision to deny her the opportunity to participate in the CLDP session. Ms. Aiken's testimony corroborates this fact.

[76] For the foregoing reasons, I find that the three constituent elements of *prima facie* discrimination have been proven on a balance of probabilities. (See *Bombardier*, *supra*.)

iii) Justification for Discrimination

[77] Once a *prima facie* case has been proven on a balance of probabilities, it is incumbent on the respondent to justify the discriminatory actions taken (*Bombardier,* paras. 36-38, 61).

[78] Section 15(1)(a) of the *CHRA* provides an exception to discrimination in circumstances where an employer establishes that the impugned actions were based on a *bona fide* occupational requirement:

> 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;
>
> […]

[79] Section 15(2) of the *CHRA* imposes a burden on a respondent relying on s. 15(1)(a) to demonstrate that it would be an "undue hardship" to accommodate the needs of the individuals affected, considering health, safety and cost.

[80] Section 15(2) must be read in conjunction with the findings of the Supreme Court of Canada in *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, 1999 CanLII 652 (SCC), [1999] 3 S.C.R. 3 ("*Meiorin*"). In *Meiorin,* the Supreme Court articulated a three-step test for determining whether … a given standard is a *bona fide* occupational requirement. The Court states, at para. 54, that an employer may justify the impugned standard by establishing on the balance of probabilities:

> a. that the employer adopted the standard for a purpose rationally connected to the performance of the job;
> b. that the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfilment of that legitimate work-related purpose; and
> c. 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.

[81] The Respondent did not put forward a formal *bona fide* occupational requirement ("BFOR") defense for the CLDP incident. The actual conflict of interest policy of Canada Post was not in issue. In this case, the actual impugned standard was Ms. Aiken's premature refusal of the CLDP recommendation, based on her perception that admission to the Program would inevitably put Ms. Stanger into a conflict of interest predicament.

[82] Although the parties believed much turned on the question of Ms. Stanger's willingness to relocate, I am not as convinced. I do not find that there was a BFOR to deny the approval of the Recommendation Form. A decision to approve the CLDP Recommendation would not have immediately given rise to a real or potential conflict of interest based on Ms. Stanger's marital status. It related only to Ms. Stanger's ability to attend an assessment session, after which she might possibly have been considered for a supervisor position.

[83] On the evidence before me, it could not be established that Ms. Aiken's refusal, in the circumstances of the present case, constituted a BFOR. The Respondent led no evidence indicating that Ms. Stanger could not have been accommodated by approving the CLDP and managing the conflict of interest if and when it arose. The correspondence of Mr. Scott submitted into evidence clearly indicated that the Respondent could have accommodated the CLPD request, and indeed recommended that course of action.

[84] Ms. Stanger's attendance at the February 2008 session of the CLDP course would not have put her into an immediate conflict of interest situation. As such, it was not reasonably necessary, for the accomplishment of the purpose of conflict of interest avoidance, to impose a blanket prohibition on her attendance at the CLDP session because of her marital status.

[85] It is understandable that Ms. Aiken, as a responsible manager, did not want to squander corporate resources if there was, in her view, no possible way the CLDP attendance could lead to career advancement for Ms. Stanger. However, as Ms. Aiken's colleagues pointed out, approving the recommendation to attend the CLDP session did not in and of itself place Ms. Stanger into a conflict of interest situation. It was within the realm of possibility that Ms. Stanger might not have been favourably assessed at the CLDP session, or even given a seat, as was suggested by Mr. Scott. If either of these two things had happened, any potential conflict of interest problem would have been averted.

[86] Ms. Aiken's motivation for declining Ms. Stanger's application may have been based on her perception of the proper way to implement the conflict policy of Canada Post. However, as Mr. Scott points out above, the conflict would not have arisen just

because Ms. Stanger's CLDP recommendation was approved. Mr. Scott's advice to Ms. Aiken was for her to approve the CLDP recommendation and let the conflict policy be applied later.

[87] Canada Post should be commended for quickly realizing their error and they immediately took action to reverse Ms. Aiken's decision not to approve the CLDP recommendation form. However the effect of this decision, once taken, could not be reversed.

iv) Allegation of Discrimination Substantiated

[88] Although they reversed their position, Ms. Stanger has satisfied me that Canada Post did initially discriminate against her on the ground of marital status when Ms. Aiken declined the CLDP recommendation because of her marriage to Superintendent Stanger. Furthermore, Canada Post has not established on a balance of probabilities that accommodation of Ms. Stanger's marital status in this instance would have caused it undue hardship.

v) Remedy

[89] As this is the only part of Ms. Stanger's complaint that is substantiated, I will address the issue of remedy at this point in the decision. Upon a finding that the Complaint or a portion thereof is substantiated, section 53 of the *CHRA* authorizes the Tribunal to make an order against a respondent, providing for compensation and other forms of redress. At the hearing, Ms. Stanger did not come prepared with submissions or documentary evidence related to her claimed financial losses. Respondent counsel suggested that the hearing be bifurcated, and that any evidence and submissions on damages could be presented if and when the Tribunal found liability. The parties and the Tribunal agreed to the bifurcation.

[90] The Tribunal's Registry will contact the parties to inform them of the schedule for filing documentary evidence and argument on the issue of remedy. I will give this material due consideration, along with any relevant evidence that was already received at the

hearing. It was conceded by the Complainant in her final argument that even if she had attended the CLDP, there was no guarantee that she would have been selected to receive an offer of a supervisor position. The CLDP was merely a tool to assess interested candidates. In preparing their submissions, it will be important for the parties to bear in mind the specific provisions of s. 53, and also, the extent to which they require a causal link between the discriminatory practice and the loss claimed. (See *e.g. Chopra v. Canada (Attorney General),* 2007 FCA 268, ("*Chopra")* para. 37.)

[91] Moreover, the parties should address the question of whether, and if so, to what extent, the Tribunal should apply the doctrine of mitigation of losses to any claim for compensation. (See *Chopra,* para. 40.) Naturally, the parties are free to refer to any additional legal authorities they deem relevant to the remedial claim in this case.

B. Removal from Version 2 Duties

[92] Ms. Stanger testified that she had been assigned Version 2 work because it was within her PPD limitations. It involved several hours of paperwork each month connected with the mail-out of provincial welfare cheques. According to Ms. Stanger, in early 2008, her supervisor, Mr. Michael Yaromy, told her she would no longer be doing this work, and that she needed to train her replacement right away. Furthermore, she alleged other employees had the perception that she was allowed to do Version 2 work as a perk for being in a marital relationship with Superintendent Stanger. I asked Ms. Stanger specifically if she was removed from the Version 2 work and she replied affirmatively.

[93] Mr. Yaromy testified that he did not recall that Ms. Stanger was ever removed from performing the Version 2 duties. He did not receive any complaints from any other workers about Ms. Stanger performing these duties, nor did he hear anyone say it was considered to be a perk. Mr. Yaromy agreed that Ms. Stanger would have been asked to train other employees to do the Version 2 work, but this was to ensure that other employees would be available to do the work if Ms. Stanger was away or otherwise unable to perform this work.

[94] In the cross-examination of Mr. Yaromy, a question was asked of him asserting that Ms. Stanger had testified that she was removed from Version 2 duties. However, Mr. Yaromy was not asked if Ms. Stanger was actually removed from these duties or if he ever told her that she would be. I find the omission of these two questions in the cross-examination to be somewhat telling.

[95] I prefer the evidence of Mr. Yaromy because it is more consistent and logical. Ms. Stanger gave very brief oral evidence in chief, whereas Mr. Yaromy answered several questions on the subject. Moreover, when I asked Ms. Stanger specifically whether it happened that she was actually removed from Version 2 duties, she replied affirmatively, but in a rather vague manner and then changed the subject. I am not convinced that Ms. Stanger was ever removed from performing the Version 2 duties. She may have been asked to train other employees, but she has not satisfied me that she was permanently removed from performing this task and therefore suffered adverse differential treatment. Moreover, contrary to her Statement of Particulars, none of the evidence, including her own testimony, suggests a connection between any alleged removal of duties and her disability. Her claim about the perceptions of other employees, if anything, suggests a connection to the ground of marital status, which is why this allegation is addressed here. However, I do not find Ms. Stanger has proven the existence of these perceptions by merely stating they existed.

VIII. Section 7 Allegations of Discrimination related to Disability

[96] Ms. Stanger alleges that certain job duties that she was capable of performing were taken away from her because of her disability. According to Ms. Stanger, these duties were taken from her as a result of complaints from co-workers about her PPD status. As such, she alleges, this constituted adverse differentiation under section 7(b) of the *CHRA.*

[97] In 2004, upon her completion of the graduated return to work program, Ms. Stanger was assigned to the Number 3 shift in the Communication A section at VicMPP. Each shift section consisted of approximately 16 employees, and there were 13 specific work activities to be performed by each section. For the purposes of this decision, all the

different job duties do not need to be described in detail. However, the main duties are commonly referred to by these names: A/Os; No Codes; Bag Revision; Version 2; EFM; O'Cull; and, DRS.

[98] The workers in her section were rotated into different duties, usually every two hours. Every week, a duty rotation would be posted so that each worker in the shift knew what duties they would be performing each day. Ms. Stanger's supervisor, Mr. Yaromy, gave evidence that much effort was required to schedule a rotation of productive duties for Ms. Stanger because of the limitations under her PPD status.

[99] Over the course of the hearing, much evidence was given about each of the specific duties and the physical efforts required to perform them. Ms. Stanger testified that she was accommodated by Canada Post from 2004 until late 2007- early 2008. Ms. Stanger testified that during that period, she performed Bag Revision, A/Os, O'Cull, Version 2, EFM and No Codes. Some parts of these duties, such as bag dumping while on O'Cull, were not performed by Ms. Stanger because of her limitations.

[100] Ms. Stanger testified that starting in late 2007, certain co-workers made complaints to her and others about her physical limitations. These complaints, alleges Ms. Stanger, led to her being removed from certain rotation duties by her supervisor, Mr. Yaromy, and another supervisor, Ms. Paula Sylvester.

A. Randy Bourke and Norma Chin Incidents

[101] Ms. Stanger gave evidence about being removed from A/O work twice in late 2007, when her work shift overlapped for an hour or so with the graveyard shift at VicMPP. On one evening, Ms. Stanger was performing A/Os in the Dock 3 area that was also occupied by a graveyard shift worker, Mr. Randy Bourke. According to Ms. Stanger, Mr. Bourke told her that this A/O work was for his shift only, so she returned to Mr. Yaromy who then assigned her to Bag Revision. She testified that Mr. Bourke was very angry and told her to get out of the Dock 3 area. Ms. Stanger accused Mr. Yaromy of not dealing with the situation.

[102] About a week later, Ms. Stanger testified, she was back at Dock 3 again to do A/Os when another employee, Ms. Norma Chin, told her that A/Os were assigned to Ms. Chin because it was the work of the graveyard shift. According to Ms. Stanger, she complained to Mr. Yaromy and he told her to do something else instead.

[103] Neither Mr. Bourke nor Ms. Chin were called as witnesses. However, Mr. Yaromy was called as a witness by the Respondent and gave his evidence in chief, cross-examination and re-direct testimony by affidavit, as he was unable to attend the hearing. Mr. Yaromy recalled Ms. Stanger complaining about Mr. Bourke asking her to leave the Dock 3 area. He had no recollection about a complaint involving Ms. Chin.

[104] According to Mr. Yaromy, after Ms. Stanger complained about Mr. Bourke, he sought out the Dock 3 Supervisor, Dave Diertens, to get clarification. Mr. Diertens informed Mr. Yaromy that the A/Os was a scheduled assignment for the Dock 3 graveyard shift workers. This had to be respected and, as such, he testified that he probably would have asked Ms. Stanger to return to a different job duty that she could perform based on her PPD limitations.

[105] I accept Ms. Stanger's testimony that these events with the Dock 3 workers did occur. However, Ms. Stanger has failed to demonstrate that the re-assignment of work had anything to do with her disability. It seems clear on the evidence that Ms. Stanger was asked to leave the Dock 3 area because the A/O work belonged to a different shift that was tasked with working in that area. Therefore, since Ms. Stanger has not proven on a balance of probabilities that there was a connection between the treatment she experienced and a prohibited ground of discrimination, I do not find the allegations involving Mr. Bourke and Ms. Chin are substantiated.

B. Joanne Cook Incident

[106] Ms. Stanger testified that she was permanently removed from performing No Codes after an incident involving one of her co-workers, Ms. Joanne Cook. In late 2007, Ms. Stanger was assigned to work on No Codes, which involved looking up postal codes at a desk. Ms. Stanger saw an empty desk against a wall and decided to sit there

to work on this rotation. Ms. Stanger testified that Ms. Cook approached her and said, "You have to leave." Ms. Cook allegedly then added, with anger in her voice, "I might hurt you if you sit there." Ms. Stanger then testified, "And I felt threatened when she told me that she was going to hit me. I felt threatened by that." I asked Ms. Stanger, "Did she use these words?" Ms. Stanger replied "Yes". I asked again, to clarify, "She said she was going to hit you?" Ms. Stanger then altered her testimony and said that Ms. Cook might have said, "I could hit you if you sit there."

[107] I further asked Ms. Stanger to clarify what she thought Ms. Cook meant when she said "hit". Ms. Stanger replied that she understood that to mean being hit with a box or something else heavy. In my view, this is a departure from her earlier testimony where Ms. Stanger used the phrase, "she was going to hit me" to imply Ms. Cook threatened to strike her. I believe Ms. Stanger deliberately exaggerated those words to give that impression.

[108] In any event, Ms. Stanger said she felt threatened by Ms. Cook's comments, and so she complained to her supervisor, Mr. Yaromy. She told Mr. Yaromy she felt threatened by Ms. Cook and she asked him to speak to her. Mr. Yaromy did not immediately speak to Ms. Cook; he told Ms. Stanger to do something else instead. Ms. Stanger said this made her feel abandoned. She testified that she never did No Codes again. Ms. Stanger presented this story as an example of discrimination based on her PPD status, and of not being accommodated, by removing a work rotation from her schedule.

[109] The Respondent called Ms. Cook as a witness. Ms. Cook recalled the interaction with Ms. Stanger which stood out in her memory because it only happened once. According to Ms. Cook, she was not angry, and she merely asked Ms. Stanger to leave the workspace at the desk because there was not enough room for two people to work there at once. Furthermore, this was Ms. Cook's regular work space for doing No Codes look-ups. Shortly after the conversation with Ms. Stanger, Superintendent Stanger showed up in Ms. Cook's office, and before she could say anything, he asked her if she had a problem working with people. According to Ms. Cook, she explained to Superintendent Stanger that there was not enough room for two people, and that the area

was a “steel-toe” area of the workplace, making it more dangerous. Ms. Cook denied that she was angry, and she denied saying that she could hurt Ms. Stanger if Ms. Stanger worked there.

[110] Mr. Yaromy also testified about the incident with Ms. Cook. He recalled Ms. Stanger complaining about it, so he went to talk to Ms. Cook directly. Ms. Cook explained to him that she said that it was possible Ms. Stanger could get hurt accidentally if she was at that particular desk while Ms. Cook and her shift co-workers occasionally used it. Mr. Yaromy observed that Ms. Cook was mildly upset over the incident, but he did not agree that she was angry. Mr. Yaromy also testified that after this incident, Superintendent Stanger placed a desk at the far end of the Multi-Line Optical Character Reader (MLOCR) area, and at this location, Ms. Stanger continued to work on No Codes.

[111] I prefer the evidence of Ms. Cook and Mr. Yaromy about this incident. I find that Ms. Stanger exaggerated her account of this conversation and then altered her testimony as I questioned her. On the other hand, the testimony of Mr. Yaromy and Ms. Cook was more consistent. Ms. Cook merely asked Ms. Stanger to work in a different location. This is not adverse differentiation. She may have been short and terse in her conversation, but based on the evidence, I do not conclude that Ms. Cook threatened Ms. Stanger. Although it is not determinative, there was no evidence that Ms. Cook even knew that Ms. Stanger had PPD limitations. I also conclude that Ms. Stanger was not immediately and thereafter prevented from performing the No Codes job rotation. Mr. Yaromy’s evidence was very clear that Superintendent Stanger had provided a desk to Ms. Stanger for that very purpose and thereafter she continued to perform that job rotation. The complainant has not substantiated this part of her complaint. I would add that none of the evidence presented on this allegation, including the Complainant's own testimony, indicated any connection between, on the one hand, Ms. Cook’s conduct and the alleged reassignment, and on the other, the Complainant’s disability.

C. Removal from O’Cull Duties

[112] Ms. Stanger also testified that in early 2008 she was removed from the O'Cull rotation. This rotation involves dumping bags of mail and sorting the individual pieces. The Tribunal was told that every thirty minutes, the four employees on the O'Cull rotation would rotate so that each would take a 30 minute turn at the bag dumping, which was more strenuous work. Ms. Stanger testified that she had worked on the O'Cull rotation, but had been exempted from the bag dumping part. Ms. Stanger said that Mr. Yaromy pulled her from the O'Cull rotation because other employees were complaining about her PPD status.

[113] Mr. Yaromy testified that around early 2008, the O'Cull rotation was modified to reduce the number of employees from 4 to 3 on each rotation. This meant that able-bodied employees rotated more frequently into the position that dumped the mail bags onto the sorting belt. As Ms. Stanger was unable to perform the bag dumping, she was removed from the rotation at this time. According to Mr. Yaromy, this was the only time he recalled Ms. Stanger being removed from a job duty. In this case, the decision was not made only by him, but it was also endorsed by two other supervisors, a superintendent and the plant manager. The decision was made for health and safety reasons, not because of other co-workers complaining about Ms. Stanger's PPD status.

[114] Mr. Yaromy testified that he once heard from an employee complaining about "picking up the slack" for PPD status employees. However, the comment was made generally, not in relation to Ms. Stanger. Mr. Yaromy also testified that Ms. Stanger once complained to him that co-workers were treating her unkindly. However, he did not recall Ms. Stanger saying it was in relation to her PPD or marital status.

[115] Ms. Stanger has not convinced me that her removal from the O'Cull rotation was an adverse differential treatment. The removal of duties for health and safety reasons is not adverse treatment *per se*. Ms. Stanger has not proven that such action was "hurtful, harmful or hostile" within the meaning of *Tahmourpour vs. Attorney General for Canada* (2010 FCA 192, para. 12). Further, the broader legislative scheme recognizes that good faith measures taken on account of health and safety are not discriminatory. (See *CHRA* ss. 15(1)(a), 15(2)). There was satisfactory evidence that the rotation had changed to reduce one employee and create additional physical burden in relation to bag dumping.

IX. Section 14 Allegations of Harassment related to Marital Status

[116] Ms. Stanger alleges that she was harassed in the workplace by fellow employees because of her marital status, namely her common-law and later legal marriage to VicMPP Superintendent, Patrick Stanger. According to Ms. Stanger, there were a series of events from 2005 to 2008 that constituted harassment on the ground of marital status in matters related to employment, under section 14(1)(c) of the *CHRA*. Each of the alleged events will be addressed below.

A. Guy Labine Grievance – Harassment Relating to Work Break Schedule

[117] Ms. Stanger alleges that she was harassed in the workplace on or about February 7, 2006 by her supervisor, Guy Labine, when he mentioned her personal relationship with Patrick Stanger in front of co-workers on the shop floor. She testified she felt embarrassed and bullied when he suggested aloud there was a perception on the floor that she was receiving preferential treatment regarding her break times because of the relationship. This incident gave rise to a formal grievance filed by Ms. Stanger dated February 15, 2006.

[118] According to Ms. Stanger, Mr. Labine spoke to her in the company of two shop stewards, Sue Robinet and Betty Kristofferson, about her break schedule. Mr. Labine asked her to be consistent about which lunch break (earlier or later) she would be taking. According to Ms. Stanger, it made no difference to her, and she was ready to take whatever break made the most sense given her PPD limitations. Ms. Stanger said she felt "ganged up" on at this meeting, and she claimed that the shop stewards were not there to represent her interests. She said she felt angry and highly upset. Mr. Labine told her to take her lunch on the early break time.

[119] Mr. Labine was called as a witness by the Respondent to testify about the incident and the complaints about Ms. Stanger's break times. Mr. Labine was employed as an Acting Supervisor at VicMPP in 2006, and was the immediate supervisor of the Complainant at that time. In turn, Mr. Labine reported to Superintendent Stanger.

[120] Mr. Labine gave background information relating to this incident. The evening shift was divided into two groups and each had its own designated half-hour lunch break. The lunch breaks were to be strictly observed so that rotations could continue in an orderly manner. Mr. Labine testified that it was possible that Ms. Stanger might occasionally, because of her PPD status, have been asked to switch her break time. In late 2005, Ms. Sue Savoy, one of Ms. Stanger's co-workers, and two shop stewards, Sue Robinet and Betty Kristofferson, spoke to Mr. Labine to complain about Ms. Stanger's break times. Their complaint was two-fold: Ms. Stanger did not appear to be taking her lunch break in accordance with the schedule of either group; and, Ms. Stanger was very often taking more than the allotted 30 minutes for her lunch break. Neither party called Ms. Robinet or Ms. Kristofferson as witnesses. However, the Respondent called Ms. Savoy as a witness and her evidence is discussed below in another section of this decision. Moreover, Mr. Labine testified that he told Ms. Stanger there was a perception she was getting preferential treatment because of her relationship with Superintendent Stanger, and that he was advised this by Ms. Savoy and the shop stewards.

[121] Mr. Labine testified that he observed Ms. Stanger's lunch breaks for a few weeks thereafter, and concluded the complaints were well-founded. Ms. Stanger did not appear to be following the regular schedule of either work group, and she returned from her breaks often 10 to 20 minutes late. He also observed that on many days, she took her lunch break with Mr. Stanger, and they returned to the work-place at the same time.

[122] Mr. Labine also gave evidence concerning Canada Post's card swipe system, which was used to keep track of employee attendance. Each employee had a card that they were required to swipe through a reader to record the time they entered the shop floor, the time they departed for breaks, the time they returned from breaks, and the time they left at the end of their shift. The computer system would generate a report based on the swipes. However, if an employee failed to swipe their card, either upon an entry or a departure from the shop floor, an error report would be generated. The Supervisor would be required to override the system and input a time to correct the error. A Supervisor had to make such corrections, if required, at the end of each shift.

[123] Mr. Labine observed that many times, Ms. Stanger failed to swipe her card when taking her breaks. This forced him to override the system and input a time for the missing swipe, usually for the departure or return from her lunch break. He mentioned that he had to fix Ms. Stanger's missing swipes several times per week.

[124] Mr. Labine decided to escalate the issue one level higher. It was a delicate situation, Mr. Labine testified, because taking the issue one level higher would mean taking it to his direct boss, who was Superintendent Stanger. Although he felt uncomfortable, Mr. Labine thought if he mentioned the problem to Mr. Stanger, the matter would resolve itself. Mr. Labine did not mention the extended break times to Mr. Stanger, just that the Complainant was taking her lunch breaks erratically. Mr. Labine asked if the Superintendent could request the Complainant to conform to the appropriate break schedule, and to ensure she swiped her card each time.

[125] At the hearing, Mr. Labine stressed how clearly he remembered Mr. Stanger's response to his request, because the reaction was totally unexpected. According to Mr. Labine, the Superintendent replied that he did not think it would be a good idea for Mr. Labine to request that the Superintendent speak with Ms. Stanger. Mr. Labine testified that he was quite taken aback at the response, because he thought Mr. Stanger would have been more congenial about it.

[126] Mr. Labine recalled that another supervisor, Mr. Bob Tischert, also observed the same problem with Ms. Stanger's breaks. Prior to Mr. Labine's conversation with Ms. Stanger, both Mr. Tischert and he had gone to see the VicMPP Manager, Sherri Aiken. Mr. Labine advised that he took the Dynamic List Display, a computer generated list of employee card swipes, to show Ms. Aiken some proof of the problem.

[127] Two similar Dynamic List Display records were admitted into evidence at the hearing. The first one showed Ms. Stanger's swipe records having been changed by Mr. Stanger twice on January 30, 2006. Mr. Labine described Mr. Stanger's actions as "inappropriate" and "abnormal", because it was the responsibility of a Supervisor, not a Superintendent, to fix any errors in the Dynamic List Display record. The second record

showed that Mr. Stanger had altered Ms. Stanger's swipe record 45 times between 2005 and 2008.

[128] As the situation was ongoing, Mr. Labine testified that he decided to have a conversation with Ms. Stanger about her break times. This led to the conversation on the shop floor in the presence of the two shop stewards, Ms. Robinet and Ms. Kristofferson. Mr. Labine asked Ms. Stanger to be consistent about which group's break she would be taking, and he mentioned that her behaviour regarding her breaks had raised a perception amongst some of her co-workers that she was receiving preferential treatment because of her relationship with the Superintendent. Mr. Labine related that he had been trained to address work floor conflicts, and that therefore he spoke to her in a business-like, professional and calm manner, presenting her with the facts as he knew them. Mr. Labine described the reaction of Ms. Stanger as "highly animated and belligerent". He testified that he tried to diffuse the situation on the shop floor because he didn't like the sudden outburst of emotion. Mr. Labine testified that he immediately made the decision to no longer deal with the problem, as he felt it was beyond his jurisdiction to impose any discipline. He said he decided to just report it again to the Manager, Sherri Aiken, which he did.

[129] After the conversation on the shop floor, Ms. Stanger filed a union grievance against Mr. Labine, alleging she "…was embarrassed in front of co-workers by supervisor Guy Labine by his referring to the Grievor going out with supervisor Pat Stanger several times and mentioning that there is a perception that the Grievor is receiving preferential treatment."

[130] Mr. Labine testified that he was quite shocked and upset to find that a grievance had been filed against him. He mentioned having had a lengthy career in the unionized private courier industry, and never having had a grievance filed against him before. He was particularly upset at the time because he was merely an Acting Supervisor, and he feared the grievance would have a negative impact on his chances for advancement. In the end, a Memorandum of Settlement, entered as exhibit, resolved the matter between the union and management. The grievance was fully resolved by Canada Post agreeing

to issue a reminder to supervisory staff within the Victoria Local that an employee's personal life is not an appropriate subject of discussion on the work floor.

[131] I do not find Mr. Labine's statements during the work floor conversation to constitute harassment under the *CHRA*. The Complainant has established the event occurred and that her marital status (her relationship with the Superintendent-with whom by that time she had been cohabitating for over a year) was raised in the presence of others. However, I do not find that the conduct of Mr. Labine violated Ms. Stanger's dignity such that it could contribute to the creation of a hostile or poisoned work environment. The Complainant may have perceived Mr. Labine's comments to be unwelcome and embarrassing. However, on the evidence, they constituted a good faith exercise of supervisory authority in pursuit of the legitimate operations and business goals of the employer (see *Day, supra,* para. 184).

[132] On the question of whether the incident constituted demeaning, humiliating or insulting treatment, I must conclude that the conversation was nothing other than appropriate under the circumstances, as the Respondent's evidence establishes. I was persuaded by Mr. Labine's testimony that he addressed the Complainant in a professional manner, and that he mentioned her relationship only in the context of the complaints that had been raised with him by others. Although the shop stewards were present, I do not view this as them and Mr. Labine "ganging up" on Ms. Stanger. They had originally brought the complaint to Mr. Labine and presumably their presence was viewed as part of their legitimate labour relations responsibilities. There was no evidence that there were other employees present.

B. Incidents concerning Ms. Susan Savoy

[133] Ms. Stanger also alleged that a co-worker, Susan Savoy, harassed her because of her marital status. There were two separate allegations against Ms. Savoy: that Ms. Savoy harassed her by saying Ms. Stanger received preferential treatment concerning her break times; and, that Ms. Savoy harassed her by saying Ms. Stanger's relationship with the Superintendent was "un-Christian."

[134] Ms. Savoy was a co-worker of the Complainant in 2006 and she was also called as a witness by the Respondent. Ms. Stanger's testimony about Ms. Savoy was not very clear, and she implied both alleged events happened at the same time. Ms. Stanger was not clear about when, but she stated that Ms. Savoy revealed to her that she had written a letter to the VicMPP Manager, complaining about Ms. Stanger's erratic break times. Ms. Stanger alleges that Ms. Savoy was self-righteous and made Ms. Stanger feel hurt.

[135] Ms. Savoy's letter to the VicMPP Manager, Ms. Aiken, was dated February 6, 2006, and it was admitted as an exhibit at the hearing. As the content of this letter was not revealed to Ms. Stanger until the disclosure in preparation for this hearing, it is not itself part of the harassment allegation. However, I raise it here as part of the context of the situation. The letter set out in some detail specific instances when Ms. Stanger had been late returning from breaks, and how that adversely impacted co-workers who were working on rotations where operations required a full complement of employees. In the letter, Ms. Savoy stated:

> In my opinion, changing her break time for their (the Stangers') own convenience, or to fulfill their own personal agenda expresses a blatant disregard for corporate policy or rules and regulations. It also shows a total lack of respect and concern for her co-workers health and well-being, who have the extra burden of doing her job (as well as their own).

[136] According to Ms. Savoy, some time after she wrote her letter to Ms. Aiken, she found herself working alongside Ms. Stanger. Ms. Savoy never received a reply from Ms. Aiken, and was unaware that Ms. Stanger had filed a grievance against Mr. Labine. However, she wanted to be forthright with Ms. Stanger, so she told her about the letter when they were working alongside each other some weeks later. Ms. Savoy described the conversation as normal and without hostility.

[137] The other alleged event happened earlier. Ms. Savoy described that in 2005 she learned about Ms. Stanger's early relationship with the Superintendent from a co-worker on the shop floor. She recalled a long conversation with the co-worker, who was upset that Ms. Stanger had started dating the Superintendent, because she felt that Ms. Stanger was being used and would end up hurt. Ms. Savoy said she defended Ms. Stanger,

stating that she was old enough to make her own decisions. Sometime later that year, Ms. Stanger came up to Ms. Savoy, after having spoken to the other employee about her relationship. Ms. Savoy said Ms. Stanger seemed pleased that she had defended Ms. Stanger to the other employee in regards to the relationship. Ms. Savoy testified that she told Ms. Stanger that she did agree Ms. Stanger had the right to make her own decisions, but that in some ways she agreed with the other employee about the inappropriateness of the relationship. Ms. Savoy recollected that she either said, "in my religion, it [the relationship] was wrong" or perhaps, "being a Christian, that might be wrong" because, as Ms. Savoy understood the circumstances, Mr. Stanger was still a married man.

[138] According to Ms. Savoy, Ms. Stanger's response was to give her a funny look. Ms. Savoy said that she may have had a less friendly relationship with Ms. Stanger thereafter, but that she didn't shun her or otherwise treat Ms. Stanger differently.

[139] Ms. Stanger's evidence was that Ms. Savoy called the Complainant's relationship "un-Christian". Although Ms. Savoy did not recall using that exact term, I am convinced on the evidence of both parties that Ms. Savoy did convey to the Complainant some sort of judgement about the appropriateness of the Complainant's personal relationship with the Superintendent. I am also prepared to accept that the ground of marital status is engaged, given the fact that the Stangers had been cohabitating for at least a few months by that time (even if their relationship was still perceived as "just dating"). However, I do not find Ms. Savoy's comment violated Ms. Stanger's dignity such that it created a hostile or poisoned work environment. The comment in question was accompanied by Ms. Savoy's affirmation that Ms. Stanger had the right to make her own decisions. In the context of the conversation in which it arose, I do not find that the comment was demeaning, humiliating or insulting within the meaning of s. 14. Moreover, I am not convinced the comment was completely unsolicited as it would appear that it was Ms. Stanger who initiated the conversation.

[140] Ms. Stanger testified that being told about the letter and that Ms. Savoy suggested she was being shown favouritism regarding her breaks caused her to feel hurt. However, I do not find Ms. Savoy's conduct concerning her complaint to be harassment. A letter of

complaint to management about a co-worker's non-compliance with the employer's break policy is consistent with the legitimate operations and business goals of the employer. There was no evidence that the letter was sent in bad faith or for an improper purpose. In fact, Ms. Savoy had no reason to reveal the existence of the letter to Ms. Stanger. In my view, it was for the sake of transparency and an extension of the good faith in which it was written. In this context, I do not find that conversation to have been demeaning or insulting, nor do I find that the possible embarrassment caused to Ms. Stanger would fall within the ambit of s. 14.

C. Patrick Gibbons – Forklift Incident

[141] Ms. Stanger alleges that on March 10, 2005, Mr. Patrick Gibbons, her former spouse, deliberately chased her on the shop floor while he was driving a forklift. Ms. Stanger was wheeling a large box, which she referred to as a "coffin", when Mr. Gibbons approached her from behind in the forklift. Ms. Stanger described him as "chasing" her in the forklift and being "very aggressive" towards her. Ms. Stanger testified that she turned around and told Mr. Gibbins to "back off", but he just smiled at her and kept coming closer in the forklift. After getting out of his way, Ms. Stanger went to see her immediate supervisor at the time, Dean Iverson, to report the incident. She described Mr. Iverson as not all that interested in the incident, even though she felt Mr. Gibbons had crossed a line. Ms. Stanger said she then went to the office of Superintendent Stanger to report the incident. She said that another shift superintendent, Mr. Brad Harrison, was also present in the office, and that she relayed the details of the forklift incident to both of them. Ms. Stanger described herself as being scared, intimidated and angry over the incident.

[142] Ms. Stanger testified that nothing was ever done about the forklift incident. Nothing was said, and nothing was ever brought to her attention about the matter being resolved. Ms. Stanger said she also spoke with her union shop stewards, Ms. Kristofferson and Ms. Robinet, about the forklift incident. She said they both told her they couldn't talk to her because there was a conflict of interest, presumably between her and Mr. Gibbons. (It is worth noting at this point, no evidence was led indicating that Ms. Stanger exercised any

kind of recourse against her union in relation to the shop stewards alleged refusal to talk to her).

[143] The Respondent called both Mr. Gibbons and Mr. Harrison as witnesses to speak about this alleged event. Mr. Gibbons had been married to Ms. Stanger for approximately 11 years, and they ceased living together in 2004. He was also Ms. Stanger's co-worker at VicMPP, and Patrick Stanger was also his Superintendent. Mr. Gibbons gave evidence about his shock when he found out that his ex-wife was dating the Superintendent, to whom he reported. Shortly after hearing the news, Mr. Gibbons sought counselling from his doctor, and then took a six week stress leave from work. He testified that he also consulted an employment lawyer, because he was worried about returning to a workplace that could be hostile. Mr. Gibbons was worried that something he might say or do could be interpreted as harassment and get him into trouble. His lawyer advised Mr. Gibbons to have limited interaction at work with his ex-wife and the Superintendent, and for a while Mr. Gibbons' hours were modified to avoid overlap with their shifts.

[144] Mr. Gibbons was quite blunt in his testimony and said the forklift event never happened. His evidence was that he didn't remember anything like that happening, that he would not have driven close to someone and not been aware of it, and that no supervisor or anyone else ever spoke to him about the alleged incident. Although Mr. Gibbons was cross-examined, there were no cross-examination questions put to Mr. Gibbons about the alleged forklift incident, and I find that telling. Furthermore, Mr. Gibbons gave evidence that he was worried about his future with Canada Post because of his ex-wife's relationship with the Superintendent. It therefore seems very unlikely that he would dangerously threaten or intimidate her with a forklift.

[145] Mr. Harrison had no recollection of Ms. Stanger's complaint about the forklift incident. He agreed it would have been a serious event in the workplace, if it happened. Mr. Harrison also felt that it was unlikely he would have been in the Superintendent's office at the same time as Mr. Stanger, because he was working the graveyard shift in those days.

[146] In cross-examination, Mr. Harrison admitted he could have been in the Superintendent's office if he had been at work during daytime hours for some exceptional reason, such as training. However, he also was not cross-examined about the fork-lift allegation, which I find telling.

[147] The Tribunal was presented with starkly conflicting evidence about whether or not this event occurred. I do not believe the Complainant has established, on a balance of probabilities, that Mr. Gibbons chased her with a forklift, or followed her too closely. In addition to the two witnesses who denied any knowledge of this alleged event, Ms. Stanger's version of events is not in 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 (*Croteau* supra, para. 53). It would be a serious danger in the workplace for an employee to recklessly and aggressively drive a forklift towards a co-worker. I find it hard to believe the matter would not generate any contemporaneous documentation.

[148] The allegation certainly invites the question why the Superintendent himself, Mr. Stanger, would not have taken some action, or at least reported it to the Plant Manager. Mr. Stanger did, in fact, send Ms. Aiken an email about a much less serious incident, which will be discussed in detail below. Why would he not report an event like this which potentially involved the perpetration of violence with a workplace vehicle? It appears that Mr. Stanger himself could have offered testimony on this point. However, Superintendent Stanger did not testify at the hearing. Similarly, Mr. Iverson, Ms. Robinet and Ms. Kristofferson were not called to testify about their alleged refusal to assist the Complainant with this issue. Ms. Stanger has not proven on a balance of probabilities that this event occurred as she described it. In light of the foregoing, the issue of its connection to her marital status need not be discussed.

D. Pam Cromwell – Conversation and the Rotten Fruit Incident

[149] Ms. Stanger testified about events in late 2006 involving a co-worker named Pam Cromwell. During one particular overtime shift, Ms. Stanger had been asked to label

a sortation case. According to Ms. Stanger, Ms. Cromwell approached her in an angry mood, and demanded to know what she was doing, stating it was stupid to work on a case that no one used. According to Ms. Stanger, Ms. Cromwell suggested Ms. Stanger was getting perks because she was in a relationship with the Superintendent. Ms. Stanger said these remarks were made in a loud voice, with aggression, and that others on the shop floor could hear.

[150] Ms. Cromwell testified that she recalled the event, but her version of events differed from the Complainant's. Ms. Cromwell said she did not have a close relationship with Ms. Stanger, and that she seldom talked to her. She recalled that she and other co-workers were surprised to see Ms. Stanger labelling a sortation case that was in disuse. It also appeared strange to her that Ms. Stanger would be getting paid overtime, as they were that evening, to do such a job. According to Ms. Cromwell, she was not angry or upset, but just curious as to why Ms. Stanger was labelling that case. On their way to their break, Ms. Cromwell testified, she simply asked Ms. Stanger if there was a plan to use that sortation case at some time in the future. Ms. Cromwell denied being angry. She denied suggesting that Ms. Stanger was getting perks as a result of her relationship with the Superintendent. She admitted she might have had that thought, but that it would have been very unwise for her to ever say something like that out loud. Ms. Cromwell testified that she was "99.9% sure" about the words she spoke to Ms. Stanger that day, and that all she asked was whether or not the sortation case was going to come into use again.

[151] Ms. Cromwell went on to testify that immediately after the break, after she had asked the Complainant about the case, Superintendent Stanger came up to her on the work floor. Ms. Cromwell was still eating an apple that she had not finished during her break. She testified that Mr. Stanger verbally reprimanded her for eating the apple on the floor. Ms. Cromwell said that it was not that unusual for employees to sometimes finish food or coffee on the work floor, and that she had done it many times before without ever being reprimanded. Ms. Cromwell described feeling attacked by Superintendent Stanger, and could not understand why he was so upset. She later felt that it might have been because she had asked his girlfriend a question.

[152] According to Ms. Stanger's testimony, a few days later, when she went to her unlocked locker, there was a plastic bag of "rotten fruit" hanging on one of the hooks. She described it as "rotten fruit and a couple of apples on top", noting that the apples did not look rotten. Ms. Stanger said that she considered the bag of rotten fruit as a "threat", because it had been placed in her locker. However, Ms. Stanger did not show the bag of rotten fruit to anyone, and there were no other witnesses to the incident.

[153] Ms. Stanger testified she complained to her supervisor, Mike Yaromy, and that he told her to tell the superintendent on duty, Patrick Stanger.

[154] However, Mr. Yaromy testified that he was absent from VicMPP when this incident took place, and was only advised about it when he returned. He stated, "I was not approached by Ms. Stanger about this incident."

[155] Ms. Stanger said she asked Superintendent Stanger to write an email to Ms. Aiken about the rotten fruit incident, and the email was tendered as an exhibit. Dated December 11, 2006, the email first seeks clarification as to whether Mr. Stanger should place a written letter of reprimand (for eating an apple on the shop floor) in Ms. Cromwell's file, or not. It goes on to say:

> However, a matter has come to my attention that may pertain to this issue. On Sunday night when Jessica came in for overtime she found that two apples and some rotting fruit had been placed in her unlocked locker. This would appear to be related to my letter of discipline to Pam Cromwell regarding her eating an apple on the work floor. In conversation with Jessica, she feels that she is being targeted every time someone on the work floor disagrees with something I have done.

[156] However, Ms. Stanger denied having told Superintendent Stanger that she suspected the rotting fruit incident was possibly connected to his discipline of Ms. Cromwell. Ms. Stanger also emphatically stated that she did not discuss her conversation with Ms. Cromwell about labelling the case with Superintendent Stanger either, even though she had been living with him for roughly two years. When asked how —without the Complainant's information—Superintendent Stanger could have made the link to Ms. Cromwell concerning the rotten fruit, Ms. Stanger simply replied that he must have arrived at this conclusion on his own.

[157] Ms. Cromwell testified that Ms. Aiken did speak to her about the bag of rotten fruit. She told Ms. Aiken she knew nothing about it.

[158] Ms. Stanger has not adduced sufficient evidence to convince the Tribunal the rotten fruit event occurred or if it did, that it constituted a form of harassment under the *CHRA*. If Ms. Stanger considered the appearance of rotten fruit as some kind of threat towards her, why did she not show it to anyone? Furthermore, the appearance of the fruit is not conclusive about anything. As described by Ms. Stanger, the plastic bag did not contain only "rotten fruit", but also two or more fresh apples on top. There was no note attached to the bag. There is no evidence allowing the Tribunal to conclude the bag was targeted towards Ms. Stanger, or that it was deliberately placed in her locker. It may have been placed there by accident or for completely innocuous reasons.

[159] Furthermore, regarding Ms. Cromwell's question about the sortation case, the two witnesses gave starkly different accounts of the exchange. Ms. Stanger testified that Ms. Cromwell's remarks were in a loud voice and that others on the shop floor could hear her. However, Ms. Stanger did not call any witnesses to corroborate her version. On the other hand, Ms. Cromwell gave very clear evidence and assured the Tribunal that her recollection was 99.9% accurate. I prefer the testimony of Ms. Cromwell for this reason and conclude that she did not remark about Ms. Stanger receiving perks because of her marital status.

E. Union Shop Steward Zaria Andrews and Supervisor Russell Odnokon

[160] Ms. Stanger testified that she was harassed and intimidated by a co-worker because of her relationship with the Superintendent. In late 2004, not long after she started dating the Superintendent, Ms. Stanger was approached by Ms. Zaria Andrews, a co-worker and her union's shop steward. Ms. Andrews made a couple of requests for Ms. Stanger to meet with her in the Union Office, which seemed unusual to her; as such a meeting usually occurs after some incident or for the purpose of discussing some formal matter. Feeling that she needed some representation in dealing with her own union, Ms. Stanger asked her then-supervisor, Russell Odnokon, to accompany her to the Union

Office. She acknowledged that, normally, the union would send a representative to accompany its employee member, if the employer requested a meeting with that member. This was happening the other way around, and Ms. Stanger herself described the situation as “highly unique”.

[161] According to Ms. Stanger, at the meeting Ms. Andrews told her that she was only being used in her relationship so that the Superintendent could get information about the union. Ms. Andrews and the other shop stewards wanted her to break off the relationship. Ms. Stanger said she didn’t feel that she was being used. She described Ms. Andrews as being angry, and speaking to her at a close range, making her feel intimidated. Ms. Stanger concluded from this meeting that the Union would not offer her any representation or protection going forward. After 5 minutes or so, as the meeting was concluding, Mr. Odnokon asked Ms. Stanger, “Can I go now?” He then left the room.

[162] There were no witnesses called to corroborate or refute this story, as neither Ms. Andrews nor Mr. Odnokon testified before the Tribunal. There was no documentary evidence to support Ms. Stanger’s allegations. Given the reservations that I have expressed concerning Ms. Stanger’s credibility, I do not make the finding that this event occurred.

[163] Even if I were convinced, on a balance of probabilities, that the event occurred exactly as Ms. Stanger recounted it, I do not find it amounts to harassment under the *CHRA.* Section 14 of the *CHRA* does not prevent union officials from pursuing legitimate operations and business goals, provided they act in good faith. Even if Ms. Andrews may not have used optimal language, a bargaining agent has a legitimate interest to ensure that internal information is not leaked to management.

[164] The second part of Ms. Stanger’s argument concerning this incident is that Mr. Odnokon had a positive duty to take further action, having witnessed this conversation first hand. At several points in her testimony, and in her final arguments, Ms. Stanger argued that Canada Post had a positive duty to investigate her numerous complaints of harassment and discrimination, and that they failed to do so. I will address this argument in a separate section of this decision.

F. Incidents with Postal Clerk Tom McMenemy

[165] Ms. Stanger alleges that a co-worker named Tom McMenemy harassed her by talking to her about her relationship with Superintendent Stanger in a derogatory manner. In late 2005, Ms. Stanger had taken a vacation to Calgary with Superintendent Stanger. On her first day back at work, just before a pre-shift meeting when all co-workers were gathered on the shop floor, Mr. McMenemy questioned Ms. Stanger about her trip. He wanted to know where they went, what they saw, and if they had seen the Canada Post plant in Calgary, in which he appeared to be interested. When Mr. McMenemy asked specific questions about Superintendent Stanger's activities in Calgary, Ms. Stanger suggested that he ask him directly. Ms. Stanger testified that Mr. McMenemy had the type of personality of someone who wouldn't take no for an answer. According to Ms. Stanger, Mr. McMenemy was not satisfied with her suggestion that he ask Superintendent Stanger directly, and made a comment to the effect of, "Are you telling me you're sleeping with him and you don't know?"

[166] Ms. Stanger testified that the comment was loud and made within earshot of many others gathered for the meeting, including Shop Steward Robinet and Ms. Stanger's supervisor. She said they did not react at all after Mr. McMenemy's comment.

[167] In cross-examination, Ms. Stanger admitted that she was vaguely aware that Mr. McMenemy had a daughter in Calgary, and that he was contemplating a transfer to the Canada Post plant there. Mr. McMenemy was not called as a witness, and there was no other evidence tendered in support of this allegation.

[168] In the Complainant's written closing argument about this event, there is an inconsistency which must be noted. The written argument states, "The complainant talked to team leader Yaromy later in the day and told him that she felt Mr. McMenemy's comments were hurtful and inappropriate. Mr. Yaromy did nothing." These assertions did not form part of Ms. Stanger's oral evidence when she was on the stand, nor was any documentary evidence adduced in support thereof. Although he did not testify in relation to this alleged incident, I note it was Mr. Yaromy's evidence elsewhere that he did not start working at Canada Post until May of 2006.

[169] Ms. Stanger brought her own credibility as a witness into question, as outlined above. As there was no corroborating evidence, no witnesses called or supporting documentation, I do not conclude on a balance of probabilities that this event occurred as she alleged.

[170] Although McMenemy's alleged comment would have been unseemly and impolite, I would not find this single event to be significant enough to warrant a finding of harassment on its own. Even if I were convinced that the event occurred exactly as Ms. Stanger described it, I would find any harm caused thereby to be fleeting. According to Ms. Stanger, there was no reaction from others nearby and as such, I would find the event itself did not create a hostile or poisoned work environment. Ms. Stanger and the Superintendent had been living together for about a year by this time, and it was known at the workplace that they had been travelling together. If others had heard Mr. McMenemy's comment, they would not have been surprised by his presumption that there was an ongoing conjugal relationship. Notwithstanding my finding such a comment to be in bad taste, I would not find that it constitutes harassment under section 14.

[171] The Complainant's written closing argument also speaks of another incident involving Mr. McMenemy. However, there was no evidence regarding this incident presented at the hearing, so it will not be addressed.

G. Incident with Postal Clerk Howard Siegrist

[172] Ms. Stanger alleges that a co-worker, Mr. Howard Siegrist, harassed her because of her marital status by making derogatory remarks about her then-boyfriend, Superintendent Stanger. Mr. Siegrist was a co-worker of the Complainant for around three years. Ms. Stanger alleged that in early 2007, she was working alongside Mr. Siegrist in the O'Cull rotation, where one worker would dump mail out of bags, and others would sort it. On the day in question, Mr. Siegrist had just come from a "24 hour notice" disciplinary meeting with Superintendent Stanger. According to Ms. Stanger, Mr. Siegrist was angry and was slamming down the postal bags 4-5 feet away from her. Ms. Stanger was vague on the details of her conversation with Mr. Siegrist that day, but she said that he referred to

Superintendent Stanger as, “your fucking boyfriend” and also as “a prick”. She says that Mr. Siegrist’s behaviour made her scared, hurt and embarrassed.

[173] Mr. Siegrist was called as a witness by the Respondent. I found him to be forthright and not hesitant about admitting unflattering comments he might have made. In my view, this made him a credible witness. Mr. Siegrist did not have a specific recollection of his conversation with Ms. Stanger that day. He said that he had attended more than ten 24 hour notice meetings, and that for him, it was like a joke. These meetings didn’t concern him at all because they were removed from his record every year anyway. Furthermore, he didn’t mind spending 1-2 hours away from the shop floor to go to these meetings. Mr. Siegrist said he did not recall referring to Superintendent Stanger as “your fucking boyfriend” and doubted he had said it. He didn’t rule out the possibility that he may have said it at some point, but he claimed that he had no recollection. However, Mr. Siegrist was rather certain that he had never referred to Mr. Stanger as a “prick”, because that was not an expression that he ever used.

[174] Mr. Siegrist also contested the allegation that he was slamming down mail bags in anger, or to scare Ms. Stanger. He stated that the mail bags were already quite heavy, and that he would not have been able to make the extra effort to slam them down in any exceptional way. I accept his testimony on this point. Furthermore, M. Siegrist also testified that Ms. Stanger never told him that she was scared of him or intimidated by him.

[175] Mr. Siegrist was cross-examined at the hearing. He was asked several unrelated questions about PPD status employees and other general matters but there was no attack on his credibility. Furthermore, there were no cross-examination questions related to the alleged conversation in early 2007.

[176] There was not much evidence presented in support of this allegation. However, given that Mr. Siegrist did not rule out the possibility that he may have made one of the comments attributed to him, I am prepared to accept Ms. Stanger’s testimony in that regard. However, even if Mr. Siegrist had indeed referred to Superintendent Stanger as “your fucking boyfriend” in his conversation with the complainant, I do not find this single occurrence to be significant enough, on its own, to warrant a finding of workplace

harassment under the *CHRA*. To create a hostile work environment, a single event must be quite serious or severe. (See *Franke*, *supra*.) The act was evidently not sufficiently serious enough for Ms. Stanger to report it at the time to any level of management.

H. Incident with Postal Clerk Darlene Schultz Regarding Jacket

[177] Ms. Stanger made two allegations about Ms. Darlene Schultz, but relating to two different incidents, and based on different grounds of discrimination. The incident that related to marital status harassment was referred to in the Complainant's SOP and written closing argument, but no evidence was led in regard to this incident. The other incident was related to harassment based on disability, and will be addressed in the following section of these reasons.

[178] Ms. Schultz was a co-worker of the Complainant for around three years. In her SOPs, Ms. Stanger alleged that Ms. Schultz had commented on a new Canada Post jacket that Ms. Stanger was wearing. According to Ms. Stanger, Ms. Schultz wanted to know if the jacket was new, and who had given it to her. When Ms. Stanger told her it was not a new coat, she alleges Ms. Schultz told her, "Oh, it's who you know", which Ms. Stanger took as an implication that she had received the jacket as a perk because of her marital status. According to Ms. Stanger's SOP, many other employees were present at the time and heard the comment.

[179] At the hearing, there were no witnesses called to speak to the allegation, and Ms. Stanger herself did not speak to it. There was no documentary evidence to support the allegation. Therefore, I made no finding about this allegation.

X. Section 14 Allegations of Harassment related to Disability

A. Incident concerning Ms. Ruth Allen

[180] The Complainant's SOP speaks of an incident involving Ms. Ruth Allen. However, there was no evidence regarding this incident presented at the hearing, so it will not be addressed.

B. Incident concerning Ms. Corinne Jacobson

[181] The Complainant's SOP speaks of an incident involving Ms. Corinne Jacobson. However, no evidence was presented at the hearing in regard to this incident, so it will not be addressed.

C. Incident concerning Ms. Darlene Schultz

[182] As mentioned above, in her oral testimony, Ms. Stanger talked in detail about a conversation with Ms. Darlene Schultz on Ms. Stanger's final day of work at VicMPP, which was June 22, 2008. Ms. Stanger had put in a request to transfer to a new job with Canada Post in a different location. According to Ms. Stanger, as they were working on the O'Cull rotation, she noticed that Ms. Schultz was agitated and angry at her. Ms. Schultz was complaining to Ms. Stanger that Superintendent Stanger was not doing a good job managing the Communications 3A shift. Wanting to change the topic, Ms. Stanger mentioned that she had been told Ms. Schultz had made a complaint to the union because of Ms. Stanger's transfer request. Ms. Stanger observed that people like Ms. Schultz had been harassing her for years because of her PPD status, and now that she was trying to leave, people were still not happy.

[183] According to Ms. Stanger, Ms. Schultz commented that it was amazing how PPD employees suddenly became miraculously cured of their disabilities when they applied for a transfer, and that people like Ms. Stanger were "scamming the corporation."

[184] After that comment, Ms. Stanger ended the conversation by putting on her head phones. She finished her shift and went on sick leave immediately thereafter. She never returned to VicMPP.

[185] Ms. Schultz was not called as a witness, and this incident was not explored during the cross-examination of Ms. Stanger. There were no witnesses called to corroborate or refute this evidence. Without any additional evidence, and given the credibility issues raised earlier, I am not prepared to make a finding that this event occurred as described.

XI. Cumulative Effect of Harassment Incidents

[186] Where impugned conduct takes the form of sarcastic comments, derogatory references to one's marital partner and like comments, it must be persistent and frequent in order to constitute harassment within the meaning of the *CHRA* (see *Morin v. Canada (Attorney General)*, 2005 CHRT 41, at para. 258). However, in the above analysis, I have concluded that only three of the ten harassment allegations actually occurred: the Labine complaint; the Savoy complaint; and, the Siegrist complaint. The Labine allegation was not substantiated because I was persuaded Mr. Labine was conducting himself properly within the context of his role. For the reasons outlined above, I did not find Ms. Savoy's comment nor the revelation of her letter to be harassment as defined under the *CHRA*. The possible comment by Mr. Siegrist about the Complainant's boyfriend was unwelcome and could be perceived as demeaning. However, as it was a single occurrence, and evidently not serious enough for Ms. Stanger to report it, I did not find that allegation of harassment to be substantiated by itself.

[187] If there were several incidents, none of which alone were sufficient to substantiate a finding of harassment, but cumulatively they could create a poisoned work environment, then a finding of harassment under s. 14 could be made. However, in this case, there were only two relevant incidents, involving Ms. Savoy and Mr. Siegrist, that were found to have occurred. Therefore, the argument of the cumulative effect is significantly diminished. Both remarks were connected to Ms. Stanger's marital status. Both comments were unwelcome and both could be viewed as somewhat demeaning towards Ms. Stanger. However, I do not believe that two comments, made by two different co-workers, perhaps 18-24 months apart, had a cumulative effect sufficient to conclude there was a toxic/poisoned work environment. A series of small events that are insulting, demeaning or degrading could create over time a poisonous, hostile workplace. However, neither of these comments were found to be severe enough on their own to constitute harassment. Likewise, I do not find that on the evidence before the Tribunal, that both of them combined contributed to a poisonous or hostile work environment for the Complainant.

XII. Notification of Discrimination / Harassment to the Employer

[188] Even if I had found that the relevant incidents possessed sufficient gravity, persistence or repetition to poison Ms. Stanger's work environment, there is an additional legal requirement to be considered before a finding of harassment can be made. In fairness to respondents who have established harassment policies that include complaint mechanisms, there is an obligation for employees to give adequate notice to the employer of the alleged harassment. This matter was considered in some detail by the Federal Court in *Franke*, *supra*, which reads at section 2(d) as follows:

> Although this was not an element considered by the Supreme Court in *Janzen*, I believe that fairness requires the employee, whenever possible, to notify the employer of the alleged offensive conduct.
>
> In recent years, courts and tribunals have insisted on a degree of vigilance over the work environment, which requires employers to provide a workplace free from harassment. Conversely, in my opinion, in order for sexual harassment policies to work, the employee should inform the employer of any problems, in order to give him or her the opportunity to remedy them.
>
> This requirement will exist where the employer has a personnel department along with a comprehensive and effective sexual harassment policy, including appropriate redress mechanisms, which are already in place.
>
> The goal of a sexual harassment policy is to achieve a healthy workplace; and, therefore, the sooner action is taken to eliminate harassing conduct, the less likely it is that any such conduct will become detrimental to the work environment.

[189] The Tribunal is satisfied that Canada Post has a personnel department and had in place a comprehensive and effective anti-harassment and discrimination policy. Amongst other measures, since 2005, Canada Post gave human rights training to all new employees. An informative newsletter on harassment and discrimination was distributed to all employees. The newsletter gave out the name and contact information of the internal Canada Post human rights officer. Periodic seminars were also given to employees. With this policy in place, the question is whether Ms. Stanger gave adequate

notice to the employer of the alleged offensive conduct in order for them to have an opportunity to investigate and remedy the situation.

[190] The first period to consider is when Ms. Stanger was working at VicMPP where the harassment was alleged to have occurred. The relevant period is from November 1, 2004 to June 22, 2008. Did Ms. Stanger give notice to her employer that she was experiencing harassment in the workplace during this period? In addressing this argument, I will consider the five events where Ms. Stanger contends she reported the alleged harassment to her employer between November 2004 and June 2008:

A) Guy Labine Grievance: On February 15, 2006, Ms. Stanger filed a written grievance with her union which included the allegation that Mr. Labine "did harass and bully" her. The grievance was acted upon and a settlement was reached between the union and the employer. I concluded that Mr. Labine's conduct was in the good faith exercise of his supervisory duties and not harassment.

B) Forklift Incident: Ms. Stanger alleges that she complained to Supervisor Brad Harrison and Superintendent Stanger about this incident immediately after it happened in March 2005. I have concluded that there was insufficient evidence this event occurred as described. In particular, I am convinced that if such allegations had been made to management, they would have been acted upon. I therefore conclude that no such report was made.

C) Rotten Fruit Incident: Mr. Yaromy denies Ms. Stanger's evidence that she reported this incident to him. However, one can infer that Ms. Stanger reported the rotten fruit incident to Superintendent Stanger, as he referred the matter to Ms. Aiken and she took steps to investigate the matter. Ms. Aiken testified that she did speak to Ms. Cromwell, whom Superintendent Stanger had implied was the suspect. Ms. Aiken's investigation did not lead to any conclusion about who was responsible, or even if the event actually occurred. Ms. Stanger chose to not show the

alleged bag of rotten fruit to anyone. Even assuming that a bag of rotten fruit was placed in Ms. Stanger's locker in late 2006, Ms. Stanger has not proven on a balance of probabilities that Ms. Cromwell was involved in this act and that it constituted some form of reprisal. Therefore, it remains within the realm of possibility that the bag of fruit was innocently placed in Ms. Stanger's locker by mistake.

D) Zaria Andrews Incident: Ms. Stanger gave the only evidence that Supervisor Odnokon was in attendance at a meeting in late 2004 with union representative, Zaria Andrews. Ms. Stanger argues that Supervisor Odnokon had a duty to act in relation to the Zaria Andrews incident. However, as stated above, I am of the view that even if the event occurred exactly as Ms. Stanger has described, it was not an act of harassment under the *CHRA*. The union has a legitimate role in the pursuit of its business and it would appear that asking for a meeting in private, the union was pursuing those goals in good faith. As such, I would conclude that Supervisor Odnokon would not have witnessed harassment and would therefore have nothing to report. Moreover, there is no evidence that Ms. Stanger expressly told Supervisor Odnokon at the time that she regarded Ms. Andrews' words and actions as harassment. It is understandable that Supervisor Odnokon would not take action *on his own initiative* in relation to a conversation between a unionized employee and her shop steward.

E) Tom McMenemy Incident: Ms. Stanger alleged in her written argument that she reported Mr. McMenemy's inappropriate remarks in late 2005 to Supervisor Yaromy. However, she did not give this evidence orally at the hearing nor does any other evidence in the record support this allegation. Further, it was Mr. Yaromy's evidence that he did not start working at VicMPP until some months after the alleged incident. I therefore conclude that no such report was made to Supervisor Yaromy.

[191] Under cross-examination, Ms. Stanger admitted that she had only reported the first three incidents above during the 2004 – 2008 period in question. She also admitted that she did not report harassment when she decided to leave VicMPP in June of 2008. Moreover, it was the testimony of Mr. Yaromy that Ms. Stanger never complained to him about co-workers harassing her about her marital relationship or her PPD status. Ms. Aiken also testified that Ms. Stanger never complained to her about harassment during this period.

[192] Therefore, the Complainant's argument that the Respondent had sufficient notice of ongoing harassment falls short. At most, there was evidence that Canada Post had received a grievance about Mr. Labine's conduct in early 2006 and there was some kind of notice of an allegation about rotten fruit in her locker in late 2006 which was investigated but inconclusive. Accordingly, Ms. Stanger fails to meet the fairness requirement under the *Franke* test for her failure to adequately put the employer on notice.

[193] Much evidence was given about Canada Post's reaction to Ms. Stanger's harassment allegations after she left the VicMPP workplace. Notwithstanding her admissions in cross-examination, Ms. Stanger insisted that Canada Post was well aware during the 2004 – 2008 period that she had been harassed in the workplace. When asked for specific evidence, she referred to the minutes taken by Manulife Financial of her Return to Work (RTW) meeting, held on August 5, 2008, and specifically, this observation in the minutes:

> The employee indicated she feels harassed at work on the basis that she has PPD limitations and that she is married to her Superintendent. She stated the severity of this harassment has led to her not feeling safe at work.

[194] As was pointed out by respondent counsel, the above observation merely constitutes the recounting of the Complainant's self-serving statement. It was not an admission by Canada Post, and indeed there was evidence that harassment had never been raised by the Complainant prior to that meeting: Ms. Aiken testified that prior to the August 5, 2008 RTW meeting, Ms. Stanger had never complained that she was harassed, or not accommodated because of her PPD status.

[195] The above-quoted minutes from the RTW meeting went on to say:

> The employee indicated she has brought forward these concerns in the past but feels that by raising these concerns the harassment only escalates. The employee stated she has no interest in discussing these matters with a representative from the Human Rights department.

[196] After leaving the VicMPP workplace unannounced in June 2008, Ms. Stanger remained off work until she started her new position in December 2008. Ms. Stanger's sick leave ran out in early September 2008 so she then made a request for "special leave", but her request was denied. On September 18, 2008, Ms. Stanger wrote to the President of Canada Post, Ms. Moya Greene, and alleged she had been harassed while working at VicMPP.

[197] The office of the President took prompt action. Ms. Greene assigned Lucie Manoni, Director of Presidential and Corporate Affairs, to look into the matter. An email was also sent to Ms. Roxanne Ayers dated September 25, 2008, instructing her to "handle as urgent" an inquiry into Ms. Stanger's allegations.

[198] The Respondent called Ms. Ayers as a witness. She was an employee of Canada Post from 1973 until her retirement in 2009. From 1995 to 2000, Ms. Ayers worked as a Human Rights Investigator amongst other positions, and from 2000 to 2009 she was the Pacific and Yukon Specialist for Human Rights, Employment Equity and Official Languages. Ms. Ayers provided the Tribunal with very helpful evidence throughout her direct examination and a very lengthy cross-examination.

[199] Ms. Ayers testified that she told Ms. Stanger that in order for there to be an investigation into her complaints, Ms. Stanger would have to provide a complaint in writing that contained specific details of the allegations. Ms. Stanger insisted that Ms. Ayers make that request to her in writing. Ms. Ayers testified that this request was "abnormal" because human rights investigators did not want to appear to be soliciting complaints from employees. It was normal practice, she testified, to act only once a complaint was received from an employee. Notwithstanding the normal practice, Ms. Ayers did write to Ms. Stanger, and specified what information would be required in her complaint, in order for an official investigation to be commenced. Even though she had asked for it,

Ms. Stanger did not reply to Ms. Ayers' letter, and did not provide any detailed information about the allegations of harassment.

[200] Based on the testimony of Ms. Ayers, and the correspondence submitted at the hearing, I am convinced that Ms. Ayers had a genuine interest in Ms. Stanger's situation, and was concerned for her human rights. Ms. Ayers said she was very surprised to first hear about Ms. Stanger's allegations from the President's office, after Ms. Stanger had referenced harassment in her letter to Ms. Greene. Ms. Ayers was also quite surprised that Ms. Stanger had been off work for nearly four months without having contacted her.

[201] Ms. Ayers gave detailed evidence about the human rights awareness training given to all Canada Post employees. Various materials were submitted into evidence, including the Canada Post Code of Conduct, the Canada Post 2008 Annual Report on Human Rights, copies of Canada Post's No Harassment Policy, and samples of workplace posters guiding employees on what to do if they feel they are being "harassed, bullied or discriminated against." Ms. Ayers highlighted the section of the Annual Report that confirmed the delivery of a program called "Human Rights and Conflict in the Workplace", which is delivered to all new employees hired into the CUPW bargaining unit. Ms. Ayers testified that existing employees were also given this half day module about human rights, harassment, discrimination, and resolving conflict in the workplace.

[202] In a letter to Ms. Stanger dated September 25, 2008, Ms. Ayers sent her a copy of the Canada Post No Harassment Policy. The policy was clear that investigations would remain confidential to the extent possible, and that complainants would be protected from retaliation. The policy also instructed employees about who to contact to make a complaint of harassment, including Human Rights Coordinators like Ms. Ayers. Under cross-examination, Ms. Stanger confirmed she had received and read this document and in particular that she understood the sections about retaliation and that employees could be disciplined or even dismissed for violating the policy.

[203] Notwithstanding that she was clearly aware of the policy, Ms. Stanger continued to refuse to cooperate with an investigation. When Ms. Ayers retired in 2009, her file

concerning Ms. Stanger was taken over by another Human Rights Manager for Canada Post, Ms. Renu Srai.

[204] On February 28, 2009, Ms. Srai wrote a letter to Ms. Stanger about her human rights allegations. She noted Ms. Stanger's reluctance to provide particulars of the allegations and wrote:

> Therefore, Canada Post has not investigated your complaint of harassment and cannot either confirm or deny that the harassment occurred until additional information is provided.

[205] In a letter to Ms. Stanger dated May 19, 2009, Ms. Srai repeated:

> …your complaint of harassment by your peers based upon disability and marital status was not investigated because you have not provided any particulars or incidents which could be investigated.

[206] On March 4, 2009, Ms. Stanger filed a grievance through her union complaining that "the Corporation caused the intentional infliction of emotional distress to the above-named employee (Ms. Stanger) when Canada Post failed to conduct a proper investigation into a written complaint of harassment and violence in the workplace…"

[207] Again, Ms. Stanger refused to provide particulars of her allegations. The Memorandum of Settlement for the grievance provided that Ms. Stanger would give Canada Post "…a written statement outlining the specific allegations of her complaint within 30 days of this memorandum of agreement that (sic) it will be referred to the Human Rights department for review." Failing to provide the statement within 30 days would result in the grievance being resolved. Ms. Stanger did not provide the written statement.

[208] What makes this complaint audacious is that on multiple occasions, Ms. Stanger was invited to provide details of her alleged harassment so her employer could investigate. She steadfastly refused to cooperate but then instead made this complaint to the Canadian Human Rights Commission.

[209] It is worth noting that Ms. Stanger's refusal to disclose details of her alleged harassment continued well into the inquiry at the Tribunal. Throughout the case management phase before the hearing, Ms. Stanger exhibited a reluctance to provide

specific details about her allegations of discrimination and harassment. The original SOP of the Complainant focused mainly on the discrimination allegation related to the CLDP assessment session. The harassment allegations under s.14 in Ms. Stanger's original SOP were quite vague. Other than a reference to the formal grievance filed against Mr. Labine, the allegations against other employees were not specific, and did not contain the names of those employees, the relevant dates, nor the circumstances surrounding the alleged harassment.

[210] Prior to the first week of hearing, the Tribunal made an order directing Ms. Stanger to provide an amended SOP that described in detail any actions, words and/or deeds that constituted, in her view, "harassment" and/or "discrimination". Ms. Stanger complied with the order, and a revised, 58 page SOP was re-submitted. The amended SOP added twenty-one separate incidents of alleged harassment, in addition to the allegations contained in her original SOP. The additional twenty-one incidents were described in detail, including dates, locations, and the names of others involved. At the hearing, however, Ms. Stanger did not give any evidence for nine of the incidents alleged in her revised SOP.

[211] Ms. Stanger claimed she was previously reluctant to provide such details because she felt the Respondent could not "protect" her after she had made such allegations. However, it was never articulated from what Ms. Stanger felt she needed to be protected, nor was she able to describe what such protection might look like, even when I asked her at the hearing.

[212] For the reasons outlined in the following section, I find Ms. Stanger's earlier failure to provide details to the Respondent was unreasonable.

XIII. Complainant's Assertion of Respondent's Positive Duty to Act

[213] Throughout her written submissions and at various times during the hearing, the Complainant alleged that Canada Post had a positive duty to investigate human rights abuses in the work place, and that it failed in such duty. This argument is very weak under

the circumstances, because it pre-supposes a finding that harassment under s. 14 actually occurred. In this case, there has been no such finding.

[214] The duty of an employer to investigate an allegation or an occurrence of workplace discrimination was considered by the Tribunal in *Cassidy v. Canada Post Corporation et al.* (2012 CHRT 29) at paragraphs 158 and 159:

> [158] A corporate (including governmental) respondent (analogous to vicarious liability under tort law) may be held liable for the discriminatory acts or harassment committed by its officers, directors, employees or agents acting in the course of their employment, pursuant to section 65 of the *CHRA*. This is so unless the respondent employer can show it did not consent to the discriminatory practice, and exercised "all due diligence" to prevent it and mitigate or avoid its effect. I should add that, in my view, the modifier "all" before "due diligence" does not require a standard of "perfection" in the exercise of its due diligence. Rather, the modifier requires that the corporate respondent exercised "reasonable" due diligence all of the time. In *Hinds v. Canada (Employment and Immigration Comm.)*(1988), 10 C.H.R.R. D/5683 (C.H.R.T.), at para. 41611, applying s. 48(6) of the *CHRA* [s. 65(2) as it then read], the Tribunal wrote:
>
> > Although the C.H.R.A. does not impose a duty on an employer to maintain a *pristine working environment*, there is a duty upon an employer to take prompt and effectual action when it knows or should know of coemployees' conduct in the workplace amounting to racial harassment…To avoid liability, the employer is obliged to take *reasonable steps* to alleviate, *as best as it can*, the distress arising within the work environment and to reassure those concerned that it is committed to the maintenance of a workplace free of racial harassment. A response that is both timely and corrective is called for and its degree must turn upon the circumstances of the harassment in each case. [Emphasis added.]
>
> [159] Included in this duty to mitigate is an examination of the steps taken by a corporate respondent to investigate, make findings and impose a resolution. In *Sutton v. Jarvis Ryan Associates et al.*, 2010 HRTO 2421, at paras. 130-33, the Human Rights Tribunal of Ontario dealt with a corporate respondent's duty to investigate a complaint of discrimination or harassment:
>
> > It is well established in the Tribunal's jurisprudence that an employer may be held liable for the way in which it responds to a complaint of discrimination.

The rationale underlying the duty to investigate a complaint of discrimination is to ensure that the rights under the *Code* are meaningful. As stated in *Laskowska v. Marineland of Canada Inc.*, 2005 HRTO 30 (CanLII) ("*Laskowska*"), at para. 53:

> It would make the protection under subsection 5(1) to be a discrimination-free work environment a hollow one if an employer could sit idly when a complaint of discrimination was made and not have to investigate it. If that were so, how could it determine if a discriminatory act occurred or a poisoned work environment existed? The duty to investigate is a 'means' by which the employer ensures that it is achieving the *Code*-mandated 'ends' of operating in a discrimination-free environment and providing its employees with a safe work environment.

The Tribunal's jurisprudence has established that the employer's duty to investigate is held to a standard of reasonableness, not correctness or perfection. In *Laskowska*, the Tribunal set out the relevant criteria for an employer to consider in its duty to investigate as:

> (1) *Awareness of issues of discrimination/harassment, Policy Complaint Mechanism and Training*: Was there an awareness of issues of discrimination and harassment in the workplace at the time of the incident? Was there a suitable anti-discrimination/harassment policy? Was there a proper complaint mechanism in place? Was adequate training given to management and employees?
>
> (2) *Post-Complaint: Seriousness, Promptness, Taking Care of its Employee, Investigation and Action*: Once an internal complaint was made, did the employer treat it seriously? Did it deal with the matter promptly and sensitively? Did it reasonably investigate and act; and
>
> (3) *Resolution of the Complaint (including providing the Complainant with a Healthy Work Environment) and Communication*: Did the employer provide a reasonable resolution in the

> circumstances? If the complainant chose to return to work, could the employer provide him/her with a healthy, discrimination-free work environment? Did it communicate its findings and actions to the complainant?

The Tribunal in *Laskowska* also stated the following at para. 60:

> While the above three elements are of a general nature, their application must retain some flexibility to take into account the unique facts of each case. The standard is one of reasonableness, not correctness or perfection. There may have been several options – all reasonable – open to the employer. The employer need not satisfy each element in *every case* in order to be judged to have acted reasonably, although that would be the exception rather than the norm. One must look at each element individually and then in the aggregate before passing judgment on whether the employer acted reasonably.

[215] In considering the three part test in *Laskowska, supra,* I will review the evidence regarding Canada Post's harassment policy. Ms. Ayers gave detailed evidence about the human rights awareness training given to all Canada Post employees. I am satisfied that Canada Post meets the first part of the *Laskowska* test by having an adequate human rights policy which ensures there was a general awareness of these issues in the workplace.

[216] Regarding the second part of the *Laskowska* test, I am similarly satisfied that Canada Post had in place the appropriate mechanisms and responses to deal with a human rights complaint. The evidence of Ms. Ayers confirmed that the employer took all human rights complaints seriously and that they were acted upon forthwith. Ms. Stanger chose to not make a written complaint with details of her allegations as requested by Ms. Ayers. Therefore, there was no complaint to be investigated or resolved. However, Ms. Ayers did take steps to investigate Ms. Stanger's complaint and the documentary record shows the actions taken were prompt, sensitive and reasonable. I am satisfied that the second part of the *Laskowska* test is satisfied.

[217] The third part of the *Laskowska* test, the resolution of the complaint and communication thereof, are not directly applicable to this case as there was no actionable

complaint submitted by Ms. Stanger. In conclusion, I am satisfied that Canada Post did in fact discharge its corporate responsibility to have in place appropriate policy and mechanisms to investigate complaints of discrimination and harassment. Their policy was clear that harassment would not be tolerated. They exercised due diligence by taking reasonable steps to train and inform their employees about the policy to prevent harassment. Canada Post employed human rights experts trained to intervene and mitigate any instances of harassment or discrimination. I am satisfied that Canada Post would have fully investigated her complaints if Ms. Stanger had been cooperative. Under the circumstances, and based on Ms. Stanger's own admission that she was aware of the details of the No Harassment Policy, I find her failure to cooperate was not reasonable.

[218] Until this Tribunal specifically directed Ms. Stanger to provide detailed particulars of her allegations, she resisted doing so. Although she may have had her reasons, they were never clear to me. If Ms. Stanger was fearful of violent or threatening reprisal, she did not so indicate when asked about this possibility at the hearing. There was no convincing evidence presented to support a conclusion that the workplace at VicMPP was unsafe.

XIV. Conclusion

[219] Notwithstanding the multiple allegations of the Complainant, I find that only one aspect of the complaint is substantiated: the allegation concerning the denial of the CLDP opportunity. As mentioned above, the parties and the Tribunal agreed to bifurcate the hearing so as to only address remedy in the event the complaint was found to be substantiated. As this part of Ms. Stanger's complaint is substantiated, the parties are to follow the remedy instructions outlined in paragraphs 89-91.

Signed by

David L. Thomas
Tribunal Member

Ottawa, Ontario
March 29, 2017

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1828/5812

Style of Cause: Jessica Stanger v. Canada Post Corporation

Decision of the Tribunal Dated: March 29, 2017

Date and Place of Hearing: October 21 to 25, 2013; December 2 to 6, 2013; January 20 to 23, 2014, July 15, 2015

Victoria, British Columbia

Appearances:

Patrick Stanger, for the Complainant

No one appearing, for the Canadian Human Rights Commission

Zygmunt Machelak, for the Respondent