Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

**Between:**

**Peter M. Collins**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Correctional Service of Canada**

**Respondent**

**Decision**

**Member:** Athanasios D. Hadjis
**Date:** December 17, 2010
**Citation:** 2010 CHRT 33

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[1] The Complainant, Peter M. Collins, is an inmate incarcerated at the Bath Institution (the Institution), located near Kingston, Ontario. The Institution is a medium security penitentiary operated by the Respondent, the Correctional Service of Canada (CSC). Mr. Collins suffers from chronic and severe back pain that limits his mobility. The CSC has a policy of requiring inmates to stand up and be counted by correctional officers at least once a day, known as the stand-to count procedure. Mr. Collins sought an exemption from the requirement to stand due to the pain associated with his disability. He alleges in his complaint that this accommodation was denied, and that he was therefore discriminated against in the provision of services customarily available to the general public, within the meaning of s. 5 of the *Canadian Human Rights Act* (*CHRA*).

[2] Several weeks before the start of the hearing into the complaint, the CSC admitted that Mr. Collins has a disability, which it had failed to accommodate during the performance of the stand-to count procedure. At the hearing, the CSC advised the Tribunal that a medical exemption had recently been granted to Mr. Collins as a result of which he would no longer be required to stand and be counted.

[3] Mr. Collins acknowledged that the measures to accommodate his disability had indeed been implemented. This accommodation was one of the remedies he had been seeking. The hearing proceeded, nonetheless, in order to deal with the remaining claimed remedies under the *CHRA*, namely damages for pain and suffering (s. 53(2)(*e*)) and special compensation (s. 53(3)).

## I. FACTS

### A. Mr. Collins' disability

[4] When Mr. Collins was a young man, he was injured in a serious motorcycle accident, badly damaging his spine. He testified that in subsequent years, he was involved in other motor vehicle accidents that caused further damage to his spine. As a result, he developed back and neck pain that has increased over time. His mobility has correspondingly decreased. Among his medically identified ailments today are herniated discs and narrowed nerve canals. Although in

constant pain, he is able to stand up and walk. The act of rising from a lying or seated position itself can be particularly painful, however. The hearing into the present complaint had to be adjourned on one occasion because the pain Mr. Collins was experiencing that day was so great, he was unable to get out of bed and walk to the Institution's chapel where the proceedings were being held.

[5] Mr. Collins has been incarcerated in institutions operated by the CSC since about 1982. Over that period, the CSC enabled him to be treated by several physicians, including a number of specialists. The CSC also provided him with a variety of assistance devices to help him deal with his pain, such as supportive mattresses, special chairs and desks, heating and massaging pads, as well as neck and back braces. In addition, the CSC assigned him certain forms of inmate jobs that he could accomplish despite his disability.

**B. The Stand-to count procedure**

[6] Mr. Collins' complaint relates to a CSC policy requiring inmates to stand and be counted by correctional officers. According to Ian Chinnery, who for a time managed the unit in which Mr. Collins was incarcerated, this procedure was initiated pursuant to a directive from the Commissioner of the CSC (CD-566-4), which stated that at least one stand-to count must be conducted every day in all CSC institutions and community correctional centres.

[7] Mr. Chinnery testified that the policy of requiring the stand-to count was adopted as a result of several unfortunate incidents where correctional officers had verified the presence of inmates in their cells without noticing that the inmates were sick, injured or even deceased. This oversight could have been avoided had all inmates been required to stand and be counted.

[8] The objective of the stand-to count was therefore the establishment of a standard for conducting inmate counts so as to monitor their whereabouts at all times and ensure "the presence of a live, breathing body during counts", as stated in the pre-August 2006 version of the directive. The stand-to count was defined as one during which the inmate was required to be in a standing position, either inside or outside the inmate's cell or bed location. As explained later

in this decision, this definition was modified in a subsequent version of CD-566-4, issued on August 8, 2006.

[9] Mr. Collins testified that although the Institution was implementing the directive and conducting a stand-to count every day, the correctional officers of the CSC were not requiring him to rise, due to his disability. While there was no formal directive or policy adopted that he be exempt from the procedure, the CSC was effectively accommodating him. Mr. Collins claims that this practice suddenly ceased on November 30, 2005, when one of the CSC's correctional officers ordered him for the first time to stand and be counted in an unsupported manner (i.e., without being able to lean on an object for assistance). Mr. Collins informed the correctional officer that he was medically incapable of standing at the time. She advised him to get an exemption from the stand-to count procedure from the Institution's warden, failing which he risked being charged with a disciplinary offence whenever he did not rise for the count.

[10] Mr. Collins explained in his testimony that the presence of charges on an inmate's security file, whether or not they are ultimately upheld, can have a significant impact on the inmate. For instance, they could affect the inmate's security rating thereby preventing him from gaining access to a lower security penitentiary. They could even lead to the inmate being sent to a higher security institution. Privileges could also be denied to him, and his chances to gain approval for parole may also be affected.

[11] Unwilling, therefore, to risk having charges laid against him, Mr. Collins immediately set upon requesting an exemption from the Institution's warden. On the same day as his exchange with the correctional officer (November 30, 2005), he sent a letter to the warden explaining the incident and expressing his concern that charges would be laid against him. According to Mr. Collins, the warden advised him to seek a medical recommendation from the Institution's physician. Mr. Collins followed this advice and sought an appointment with the physician.

[12] On December 21, 2005, the Institution's Chief of Health Services, Brian Blasko, learned from another staff member of the Institution, that Mr. Collins intended to seek a medical

exemption from the stand-to count procedure. Mr. Blasko is a registered nurse, and he had begun serving as the Institution's Chief of Health Services two months earlier. His duties included managing the Institution's clinic and ensuring that essential patient care was provided to inmates. He coordinated and oversaw the Institution's contracts with medical and dental professionals for the provision of services to the inmates. He testified that his duties included ensuring that medical recommendations comply with CSC policies.

[13] Upon learning of Mr. Collins' intention, Mr. Blasko wrote an email back to the same staff member, on December 22, 2005, in which he stated that he saw no reason why Mr. Collins could not stand "for a few seconds" to be counted. Mr. Blasko added that if Mr. Collins required a cane or other device to do so, he could request it from the Institution's health services office.

[14] Meanwhile, on December 27, 2005, following up on the warden's advice, Mr. Collins met with Dr. Diana Wyatt, a physician in family medicine. Her practice consists exclusively of providing medical services to inmates in a number of CSC institutions. She is not, however, an employee of the CSC. The CSC engages her services as a contractor.

[15] Dr. Wyatt testified that during her meeting with Mr. Collins, he mentioned that he was seeking a medical recommendation regarding whether he should be required to stand during the stand-to count procedure. Her medical opinion was that it would be simpler if he were not required to stand. She wrote a note to this effect in Mr. Collins' medical chart. An additional entry was placed in the chart to indicate that the Institution's Chief of Health Services (Mr. Blasko) would address the issue. Dr. Wyatt explained in her evidence that it is a common practice for her to assign the implementation of her recommendations to the Chief of Health Services.

[16] According to Mr. Collins, it was his understanding from his meeting with Dr. Wyatt that she would be making a written recommendation for his exemption from having to stand.

[17] Mr. Blasko saw Dr. Wyatt's note in Mr. Collins' medical chart a few days later. Mr. Blasko understood from his knowledge of Mr. Collins' medical file that he was not confined to a wheelchair nor paralyzed, and was fairly ambulatory. Mindful of the CD-566-4 directive's requirements, he decided to speak to Dr. Wyatt about the matter. Dr. Wyatt testified that she is not familiar with commissioner's directives nor did she receive any training regarding them. She had no prior knowledge of the stand-to count procedure at all.

[18] Mr. Blasko explained the stand-to count policy to her and its stated objective of protecting inmates' health and safety. He asked her if it would be acceptable for Mr. Collins to be required to stand while leaning on a wall or chair. According to Mr. Blasko, she agreed this requirement would not pose a problem for Mr. Collins.

[19] Thus, on January 11, 2006, the deputy warden formally replied to the Mr. Collins' request for a medical exemption, by stating that the Institution's Health Care Services unit had confirmed that there was no medical reason that he could not stand unaided for "a few seconds" during the count. Nevertheless, on January 13, 2006, the health care services unit issued a written recommendation, allowing Mr. Collins "to use the aid of an object when standing up for prolonged periods of time, such as a wall or desk".

[20] The recommendation was handwritten by Mr. Blasko. He wrote in Dr. Wyatt's name at the bottom in block letters over a line marked "physician". He placed his own signature over the part of the line marked "nurse". Dr. Wyatt explained that it is a common practice for her and other physicians to give instructions or recommendations to a nurse who in turn writes them out, particularly when she gets called away on some other matter and does not have the time to complete and sign the recommendation herself.

[21] Mr. Blasko testified that he felt it was important that there exist a document confirming that Mr. Collins was allowed to stand while supported against a wall or chair. If not, the correctional officers conducting the counts could have incorrectly assumed from his leaning on objects for support, that he was injured and therefore unable to stand unassisted. Mr. Blasko

indicated in his evidence that he considered the authorization for Mr. Collins to use a support when he stands, to be a form of accommodation.

[22] The evidence is unclear on whether Mr. Collins was required to stand and be counted in the immediately ensuing weeks, but on February 7, 2006, Mr. Collins had another appointment with Dr. Wyatt. She testified that he told her that even standing with the support of a wall was a problem for him, since he sometimes needed to stand while all the inmates were counted, a period that could last from 20 to 30 minutes. Dr. Wyatt stated that standing for that long, even while supported, would be extremely painful.

[23] Dr. Wyatt testified that at this time, she was still unfamiliar with the specific details of how the stand-to count was conducted, so based on Mr. Collins account, she changed her recommendation and wrote out a new note addressed to Mr. Collin's unit manager (Mr. Chinnery) stating:

> The following recommendation has been made:
>
> There may be occasional times due to medical limitation when this inmate may need to lie, sit or stand supported for stand up count.

[24] After receiving Dr. Wyatt's memo, Mr. Chinnery spoke to Mr. Blasko about it. They felt that the recommendation gave rise to some "ambiguity".

[25] Consequently, on February 14, 2006, after receiving Dr. Wyatt's note, Mr. Chinnery sent a memo to her in reply, expressing concern about her recommendation, namely because it suggested Mr. Collins could decide at his discretion whether or not he could stand for the count. According to Mr. Chinnery, the recommendation made it difficult for the Institution to apply the CD-566-4 directive. He pointed out that her medical recommendations were subject to any CSC security requirements, and the stand-to count was one such requirement. Her recommendation was therefore "simply […] not in compliance CSC directives". Mr. Chinnery suggested that if

Mr. Collins was at any time unable to stand, he could request medical intervention at that time and be taken to the clinic for diagnosis and treatment.

[26] Mr. Chinnery therefore prepared a memo for Dr. Wyatt, asking that she reconsider and amend her recommendation to no longer state that Mr. Collins may need to lie or sit, but rather that he may on occasion need to stand supported.

[27] Before forwarding the memo to Dr. Wyatt, Mr. Chinnery sent a draft, as an email attachment, to the Institution's Deputy Warden, seeking his comments and approval. In the accompanying email, Mr. Chinnery wrote that he would appreciate a quick response "so that Collins doesn't start playing games at count time". Mr. Chinnery explained in his evidence that he meant if Mr. Collins were to stand on one occasion and not another, it could elicit charges from, or potential confrontation with, correctional officers. Mr. Chinnery was convinced that applying Dr. Wyatt's recommendation would have been very disruptive to the unit in which Mr. Collins was incarcerated.

[28] After receiving Mr. Chinnery's memo, Dr. Wyatt had a conversation with Mr. Blasko. She testified that he provided her with two new details of which she had previously been unaware. First, that in fact, Mr. Collins and the other inmates were not required to stand for 20 minutes as he had suggested, but rather for no more than two minutes. Second, the stand-to count procedure was implemented as a measure to protect the health and safety of inmates, after an incident in another institution where an inmate who was ill was counted without the correctional officers realizing that he was in need of urgent medical care.

[29] After this conversation, Dr. Wyatt booked another medical appointment with Mr. Collins. They met on March 2, 2006, during which Dr.Wyatt informed him that she was readjusting her recommendation to state the following:

> There may be times that Mr. Collins' back does make standing or even sitting difficult. However, I am aware that security must come first and therefore Mr. Collins is aware that at present, he does need to stand in some fashion for count.

[30] Dr. Wyatt testified that she was not forced by anyone to change her recommendation, and she was comfortable making it. She recalls Mr. Collins reiterating that he needed to stand for the entire duration of the count, but she replied that it was her understanding now that he stood for a short time only. Both she and Mr. Blasko, who was also present at this meeting, testified that Mr. Collins did not otherwise react, in a positive or negative way, to this information.

[31] Dr. Wyatt met with Mr. Collins again at a scheduled medical visit, on May 23, 2006. She testified that although the discussion centred principally on his pain management, he also asked her to change her recommendation about the stand-to count. She refused.

**C. Charges were laid on two occasions**

[32] According to the evidence before the Tribunal, charges were laid against Mr. Collins for failing to stand on only two occasions, on May 28, 2007, and on November 19, 2007. The outcomes regarding these charges were not placed in evidence.

**D. Mr. Collins files grievance complaints**

[33] Pursuant to the *Corrections and Conditional Release Act*, S.C. 1992, c.20, the CSC provides a redress procedure for offenders. On April 25, 2006, Mr. Collins filed a complaint under this procedure, alleging that Mr. Chinnery had wrongly interfered with Dr. Wyatt's medical recommendations. His complaint was denied. Dissatisfied with this outcome, Mr. Collins filed a first level (institutional level) grievance on May 23, 2006, in accordance with the designated procedure. He alleged that Mr. Chinnery was biased against him and had acted in a "retributive capacity", which was "deliberately designed to inflict pain and suffering" on him.

[34] On June 12, 2006, the Institution's deputy warden denied the grievance, finding that Mr. Chinnery acted properly. Mr. Collins therefore filed a second level (regional) grievance on June 20, 2006. He reiterated his allegation that Mr. Chinnery was "intent on causing pain and suffering". This grievance was also denied in a decision dated April 3, 2007, which noted that

Mr. Chinnery had acted properly in advising Dr. Wyatt of her initial recommendation's conflict with the stand-to count policy.

[35] Mr. Collins filed a third level (national) grievance following this decision, in which he not only restated his prior allegations against Mr. Chinnery, but also complained about the length of time the decision had taken to be issued. Mr. Collins noted in the grievance that Mr. Chinnery was at that time working at the Offender Redress division at the Regional Headquarters, from where the decision had been issued. Mr. Chinnery testified that in 2006 and 2007, he had served on secondment at the Offender Redress divisions at both Regional and National Headquarters of the CSC. He stated, however, that he never served as an analyst on any of Mr. Collins' grievances.

[36] The national and final level decision found that Mr. Chinnery's memo to Dr. Wyatt could not be interpreted as an attempt at malicious interference or harassment, and this part of the grievance was therefore denied. However, it was also noted that due to the delays attributed to a backlog of grievances being handled at the regional level, Mr. Collins was not provided with a response within the appropriate time frame. That part of his grievance was therefore upheld. Mr. Chinnery confirmed in his testimony that there were huge delays at the time processing all grievances at Ontario's Regional Headquarters. One of the reasons why he was asked to work in the Offender Redress division was to help clear this backlog.

**E. Changes to the CD-566-4 directive**

[37] At the time when Mr. Collins first began being required to stand during the count, in November 2005, the CD-566-4 directive defined the stand-to count as a "count during which the inmate is required to be in a standing position, either inside or outside the inmate's cell or bed location". There was no provision in the directive for dealing with individuals whose disabilities may prevent them from standing.

[38] The CD-566-4 directive was amended, however, on August 8, 2006, and now included a modified definition of the stand-to count, which provided for the possibility that an inmate may be prevented from standing due to medical or physical restrictions:

> **Stand-to count:** A formal count of inmates in a standing position, facing the counting staff member to ensure facial identification is made except in cases where exemptions for medical conditions or physical limitations have been identified.

[39] The directive also now described an alternate method by which these exempt inmates could be counted:

> Inmates with medical conditions or physical limitations, deemed by the Chief of Health Services (or equivalent) as unable to respond to or perform a stand-to-count request, are exempt from this requirement. In such cases, inmates must be awake and signal the staff member through an alternative means, normally a hand signal.

[40] The amendment to the directive had no impact on Mr. Collins, however, until a short time prior to the hearing when, as mentioned earlier, the CSC conceded that he was disabled. He obtained a medical exemption and has been accommodated in accordance with the directive.

**F. Mr. Collins' interaction with Mr. Chinnery and the administration of the CSC**

[41] Mr. Collins claims that the CSC, and Mr. Chinnery in particular, required him to stand as a wilful act of discrimination against him and his disability. As mentioned earlier, Mr. Collins had alleged in his grievance that Mr. Chinnery was biased against him and that he acted in a "retributory" manner. Mr. Collins objected to Mr. Chinnery's "malicious interference" in his efforts to obtain a medical exemption from the stand-to count. As also indicated earlier, Mr. Collins claims that this bias even extended to the processing of his grievance, since Mr. Chinnery was employed at the Officer Redress division for a period during which Mr. Collins grievance was being considered.

[42] Mr. Collins testified that his dealings with CSC staff have been strained over the course of his incarceration. In 1994 when he was being held at the Joyceville correctional facility, for instance, he claims that he was denied privileges because he had accused a correctional officer of stealing from him. Mr. Collins also claims that a number of false accusations were made against him over the years, of which he was ultimately absolved. In the meantime, however, his complaints had come to be perceived negatively by the CSC staff who dealt with him on a daily basis. Mr. Blasko was employed at the Joyceville institution while Mr. Collins was there.

[43] An additional strain between Mr. Collins and CSC personnel arose as a result of a series of controversial cartoons and other drawings that he created around 1998, which were shown at public exhibits and made some headlines in the press. Some of the drawings were critical of CSC staff and police authorities, which drew particular attention given that Mr. Collins is serving a sentence for the murder of a police officer.

[44] Between 1999 and 2001, Mr. Chinnery was Mr. Collins' institutional parole officer at the Institution. Mr. Chinnery testified that when Mr. Collins arrived at the Institution, there were some concerns about his prior interactions with CSC staff, especially revolving around his cartoons and drawings. The warden was troubled about the negative depictions of police officers and the publicity they would attract to the Institution and Mr. Collins, given the crime for which he had been convicted. Mr. Chinnery acknowledged that during the period that he was Mr. Collins' parole officer, he was personally humiliated by one of Mr. Collins' drawings in particular, which he felt was an obvious depiction of him portrayed in a negative light. Mr. Chinnery categorically denies, however, having retaliated against Mr. Collins in any way, including in his involvement regarding the stand-to count issue.

[45] Mr. Collins also contends that the CSC denied him the use of a walker to move around the Institution and he referred in his evidence to a statement that Mr. Chinnery had made in his memo to Dr. Wyatt of February 14, 2006, that he was making efforts to provide Mr. Collins with a TV stand, which would enable him to view the screen more comfortably. Mr. Collins claims that the TV stand was never in fact provided. He also argues that Mr. Blasko's decision to

discuss Dr. Wyatt's medical recommendation with the warden and others constitutes an unauthorized disclosure of his personal information and thus a breach of the *Privacy Act*. Mr. Collins claims that these alleged acts demonstrate that Mr. Blasko has "long term issues" with him, dating back to the time when he was being incarcerated in the Joyceville institute at the same time as Mr. Blasko worked there.

[46] Mr. Collins contends, therefore, that Mr. Chinnery's personal animosity towards him and his difficult relationship with Mr. Blasko and CSC staff in general, demonstrate that he was wilfully discriminated against on the basis of his disability.

## II. The complaint is substantiated

[47] The CSC has admitted that Mr. Collins has a disability. On account of this disability, as Mr. Collins testified during the hearing, standing up to be counted causes him physical pain and discomfort. The CSC also conceded that until shortly before the start of the hearing, it had failed to accommodate Mr. Collins' disability during the performance of the stand-to count procedure. Mr. Collins alleges that this failure to accommodate constitutes adverse differentiation in the provision of a service customarily available to the public, on the basis of the prohibited ground of disability, pursuant to s. 5(*b*) of the *CHRA*. The CSC did not deny or refute this allegation.

[48] In the circumstances, the Tribunal finds the complaint to be substantiated.

## III. Remedies

### A. Compensation for pain and suffering (s. 53(2)(*e*) of the *CHRA*

[49] Section 53(2)(*e*) of the *CHRA* provides that if at the conclusion of an inquiry, the Tribunal finds that the complaint is substantiated, the Tribunal may order that the person found to have engaged in the discriminatory practice compensate the victim, by an amount up to $20,000, for any pain and suffering that the victim experienced as a result of the discriminatory practice. Mr. Collins is claiming the maximum of $20,000.

[50] As a result of the CSC's failure to accommodate Mr. Collins' disability, he was required to rise for the stand-to count. The CSC claims that Mr. Collins is in chronic pain, due to his pre-existing back injuries, whether he stands or not. The CSC therefore argues that it should not be ordered to compensate him for his pain and suffering. I am persuaded by Mr. Collins' evidence, however, which was not in fact contradicted on this point, that the act of standing up causes him additional pain. It is this aggravation to his chronic pain that necessitated his accommodation. If the act of standing was of no consequence to him, Dr. Wyatt would not have made any entry in her chart or issued any of her recommendations. I am satisfied that requiring Mr. Collins to rise caused him additional pain to varying degrees, depending on his condition that day, than if he had remained seated or lying down.

[51] I also accept Mr. Collins' evidence that he experienced some degree of anguish over the possibility that he would face charges or other retribution for failing to comply with the correctional officers' orders that he stand to be counted.

[52] In the circumstances, I find that Mr. Collins is entitled to $7,000 in compensation for his pain and suffering, pursuant to s. 53(2)(*e*) of the *CHRA*.

**B. Special compensation (s. 53(3) of the *CHRA*)**

[53] Section 53(3) provides that the Tribunal may order a respondent to pay up to $20,000 in compensation to the victim, as the Tribunal may determine, if it is satisfied that the respondent engaged in the discriminatory practice wilfully or recklessly. Mr. Collins is claiming the maximum amount of $20,000. As noted in *Johnstone v. Canada Border Services Agency*, 2010 CHRT 20 at para. 379, the maximum award under this heading is reserved "for the very worst cases".

[54] Mr. Collins alleges that the CSC engaged in the discriminatory practice against him both wilfully and recklessly.

[55] An important consideration in determining whether the CSC was reckless in its discriminatory conduct centres on Messrs. Blasko's and Chinnery's interventions into the assessments by Mr. Collins' physician, Dr. Wyatt, with respect to his medical condition. In Mr. Blasko's view, Mr. Collins was fairly ambulatory and he believed that since Mr. Collins was not confined to a wheelchair or paralyzed, standing for the count would not be an issue. Mr. Chinnery believed that Dr. Wyatt's recommendation, although based on her medical expertise, made it difficult for the Institution to apply the CD-566-4 directive. In his view, the medical recommendation was "simply not in compliance with the directives". This opinion failed to take into account, however, the fact that Mr. Collins was disabled and that, according to Dr. Wyatt, he required accommodation. The foremost concern for Mr. Chinnery was applying the directive properly, not accommodating Mr. Collins' disability.

[56] The CSC points out that even if Messrs. Blasko's and Chinnery's motivation was to enforce the applicable directives, Dr. Wyatt, in her professional opinion, was "comfortable" with the changes proposed by the two CSC employees. As such, Mr. Collins did not need to be accommodated. This submission is inconsistent, however, with the CSC's admission (and ultimately, the Tribunal's finding) that it had failed to accommodate Mr. Collins and his disability. The physician's reversal on her recommendation is, on the evidence, entirely explicable. As Mr. Collins points out, while Dr. Wyatt was not formally an employee, at the relevant times, she was essentially working for the CSC exclusively. Having no personal prior knowledge of the commissioner's directive relating the stand-to count procedure, she demonstrated a high degree of deference to the information and advice provided to her by CSC staff, i.e. Messrs. Blasko and Chinnery.

[57] It is therefore clear that the CSC's employees, Messrs. Blasko and Chinnery, endeavoured to set aside the initial medical recommendation of Mr. Collins' physician and replace it with conditions that would conform to the directive. The CSC points out that this matter arises in the unique context of a medium security correctional facility and that other issues are in play than those that normally arise in more typical accommodation cases. However, the CSC did not lead evidence or argue that there was a *bona fide* justification for the adverse

differentiation in treatment of Mr. Collins pursuant to s. 15(1)(*g*) of the *CHRA*. Nor did the CSC, to that end, contend that accommodating him would have imposed undue hardship on the CSC, within the meaning of s. 15(2). Moreover, I note that the CD-566-4 directive itself was later amended to specify that an inmate can be exempt from being required to stand for the count for medical reasons. Thus, even the CSC ultimately recognized formally the reasonableness of the form of accommodation Mr. Collins was seeking.

[58] Taking all of these circumstances into account, I find that Messrs. Blasko and Chinnery did not sufficiently consider the potential physical pain that could be caused to Mr. Collins by endeavouring and succeeding in reversing Dr. Wyatt's initial recommendations. Instead, they drew their own conclusions about his ability to stand for the count, and successfully worked towards having her change her opinion. As such, they disregarded Mr. Collins' request and need for accommodation, in pursuit of maintaining the CSC's stand-to count policy. These CSC employees should have known that to act accordingly would constitute a discriminatory practice. It was reckless of them to have proceeded nonetheless.

[59] On the other hand, I am not persuaded that the discriminatory practice was intentional. While there is some indication in the evidence that Mr. Chinnery was not particularly pleased with some of Mr. Collins' activities (particularly in relation to his cartoons), and that CSC employees have over the years occasionally viewed Mr. Collins as a difficult inmate, the evidence is not sufficient to support a finding that the CSC or its staff intentionally engaged in the discriminatory practice against Mr. Collins. His allegation that Mr. Chinnery was motivated by a desire to personally decide when Mr. Collins would stand and cause him additional pain is completely unfounded. There is no reason to doubt Mr. Chinnery's testimony that his sole intention at all relevant times was to apply the CSC's directives. I also do not find any merit in Mr. Collins' suspicions that Mr. Chinnery somehow had a hand in the grievance proceedings or in the delays that were apparently endemic to the process in all cases, not just Mr. Collins'.

[60] In the circumstances, I find that an award of $2,500 in special compensation, pursuant to s. 53(3) of the *CHRA*, is appropriate.

**C. Other remedies**

[61] In his final submissions, Mr. Collins requested a series of additional remedies. These items include that the CSC be compelled to provide seating in the visiting, correspondence, and library areas of the Institution, and that safety hand holds be added in the toilet and shower areas. There was no evidence led in relation to any of these claims. In addition, Mr. Collins asked to be provided with a walker. While there was some mention in the evidence about his requests for this mobility aid, it was entirely collateral to the issues of the case and was, in any event, insufficient to support any finding in this regard.

[62] Finally, Mr. Collins asked that the CSC should be "compelled to ensure against surreptitious or direct reprisal activities". Mr. Collins indicated in his evidence that ever since the CSC has begun formally accommodating him during the stand-to count procedure, he has sensed that some CSC correctional officers somehow feel "diminished", prompting them to make certain comments about him. He expressed the hope that these remarks would cease. This evidence does not justify the issuance of an order as requested by Mr. Collins in his final submissions. The present decision should provide all parties with ample and sufficient guidance on how to conduct them regarding the issues of this case. Should anyone engage in any forms of retaliation or intimidation within the meanings of ss. 14.1 and 59 of the *CHRA*, a separate recourse may be available under these provisions.

[63] For these reasons, Mr. Collins' request for these additional remedies is denied.

## IV. Order

[64] The Tribunal orders the CSC to pay Mr. Collins the sum of $7,500 as damages for pain and suffering pursuant to s. 53(2)(*e*) of the *CHRA* and the sum of $5,000 as special compensation pursuant to s. 53(3).

*Signed by*

Athanasios D. Hadjis
Tribunal Member

Ottawa, Ontario
December 17, 2010

**Canadian Human Rights Tribunal**

**Parties of Record**

**Tribunal File:** T1382/0809

**Style of Cause:** Peter M. Collins v. Correctional Service of Canada

**Decision of the Tribunal Dated:** December 17, 2010

**Appearances:**

Peter M. Collins, for himself

No one appearing, for the Canadian Human Rights Commission

Shelley Quinn, for the Respondent