

Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

BETWEEN:

GLORIA BAPTISTE

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

CORRECTIONAL SERVICE CANADA

Respondent

REASONS FOR DECISION

**T.D. 12/01
2001/11/06**

PANEL: Anne Mactavish, Chairperson

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I. INTRODUCTION

[1]Gloria Baptiste is a nurse at Matsqui Institution, a penitentiary operated by the Correctional Service of Canada in Mission, British Columbia. Ms. Baptiste alleges that she has been subject to differential treatment in the course of her employment with CSC because of her race. Specifically, Ms. Baptiste claims that her job performance was unfairly evaluated and that she was denied promotional opportunities, all because she is black.

[2]Ms. Baptiste was supervised for a number of years in the early and mid-1990's by Sharon Greye. According to Ms. Baptiste, Sharon Greye did not like her because she is black.

Ms. Baptiste alleges that Ms. Greye's discriminatory attitude was reflected in performance appraisals of her work that unfairly devalued her performance. Further, Ms. Greye's attitude towards Ms. Baptiste laid the foundation for how Ms. Baptiste was treated by other managers within Matsqui Institution, as well as the way she was treated by her co-workers and the inmates.

[3]The respondent contends that there were problems with Gloria Baptiste's performance on the job, which problems were noted not only by Sharon Greye, but were observed by each of the nine supervisors who have had contact with Ms. Baptiste in the course of her employment with CSC. CSC denies that racism played any part in the actions which form the subject matter of Gloria Baptiste's complaint.

II. LAW

[4]Ms. Baptiste's complaint is brought under Section 7 of the *Canadian Human Rights Act*, which makes it a discriminatory practice to differentiate adversely in relation to an employee in the course of their employment on a prohibited ground of discrimination.

[5]Race is a prohibited ground of discrimination.

[6]In a case of this nature, the burden of proof is on Ms. Baptiste to establish a *prima facie* case of discrimination.⁻⁽¹⁾ Once that is done, the burden then shifts to CSC to provide a reasonable explanation for the conduct in issue.⁻⁽²⁾

[7]A *prima facie* case is one which covers the allegations made, and which, if believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent.⁻⁽³⁾ The allegations made by the complainant must be credible in order to support the conclusion that a *prima facie* case has been established.⁻⁽⁴⁾

[8]If CSC does provide a reasonable explanation for otherwise discriminatory behaviour, Ms. Baptiste then has the burden of demonstrating that the explanation was pretextual, and that the true motivation behind her employer's actions was, in fact, discriminatory.⁻⁽⁵⁾

[9]It is difficult to prove allegations of discrimination by way of direct evidence. As was noted in *Basi*, discrimination is not a practice which is ordinarily displayed overtly.⁻⁽⁶⁾ It is the task of the Tribunal to view all of the circumstances to determine if there exists what was described in *Basi* as the "subtle scent of discrimination".

[10]The standard of proof in discrimination cases is the ordinary civil standard of the balance of probabilities. In cases of circumstantial evidence, an inference of discrimination may be drawn where the evidence offered in support of it renders such an inference more probable than the other possible inferences or hypotheses.⁻⁽⁷⁾

[11]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 basis* for the

employer's actions or decisions.⁽⁸⁾

III. GENERAL COMMENTS REGARDING GLORIA BAPTISTE'S CREDIBILITY

[12]There are many points in the evidence where I am required to decide between the testimony of Gloria Baptiste and that of witnesses called by CSC. While I will deal with these points of divergence as they arise, there were two issues that arose repeatedly throughout the hearing that relate to the question of Gloria Baptiste's general credibility, which bear comment. These relate to the letters, e-mails and memoranda addressed to her that Ms. Baptiste says that she never received, and the documented incidents that Gloria Baptiste says never happened.

[13]In the course of her testimony, Ms. Baptiste was shown dozens of documents that appear to be letters, memoranda and hard copies of e-mails purportedly sent to her over the years, each of which she denies receiving. Some documents were purportedly sent through CSC's inter-office mail system, others were sent by electronic means or by Canada Post to Ms. Baptiste's home. In at least one case, multiple means of transmission were used for the same document. Others were allegedly hand delivered to Ms. Baptiste herself. The majority of the documents in issue emanated from within CSC, although Ms. Baptiste also denied receiving letters from the Canadian Human Rights Commission and the Public Service Commission.

[14]Most of the documents in issue were subsequently identified by their authors, each of whom testified under oath that the documents were sent to Gloria Baptiste on or around the dates indicated on the documents in question.

[15]To accept Gloria Baptiste's evidence that she did not receive any of these documents would require me to find that many people within CSC fabricated documents, and then perjured themselves when they testified that the documents were in fact provided to Gloria Baptiste. In the alternative, I would have to find that Gloria Baptiste has been extraordinarily unlucky over the years, insofar as her mail delivery is concerned, in that so many documents addressed to one person were not delivered. This alternate explanation, however, would not address the situations where individuals have testified that they handed documents directly to Ms. Baptiste.

[16]I simply cannot accept Ms. Baptiste's testimony in this regard. I find it far more probable that Gloria Baptiste was sent and did receive the documents in issue.

[17]Similarly, numerous documents were put into evidence through various witnesses, purportedly recording many different discussions that the authors of the documents say that they had with Gloria Baptiste, or incidents they say happened involving Ms. Baptiste. Ms. Baptiste testified that many of these discussions and incidents never happened. Once again, the authors of most of the documents testified under oath that the notes accurately reflected the discussions that they had with Gloria Baptiste at or around the date of the documents in question. In some cases, the events described in the documents were corroborated by more than one witness. Several witnesses explained that they started reducing their discussions with Gloria Baptiste to writing, after having her deny that earlier discussions between them had ever taken place.

[18]Here again, to accept Gloria Baptiste's testimony would require me to find that all of these witnesses lied on the witness stand, that these incidents never happened, and that the documents purporting to record the incidents were fabrications. On the evidence before me, I am not prepared to make that finding.

[19]In his final submissions, counsel for CSC noted that Ms. Baptiste's inability to recollect was so extreme that he was not prepared to contend that it was done out of pernicious intent. I do not know whether Gloria Baptiste is consciously lying when she says that she did not receive these documents and that the recorded discussions and incidents never happened, or whether, for some reason, her memory is profoundly flawed. Either way, I am left with very serious reservations about the general reliability of her testimony. As a result of these concerns, unless otherwise noted, where the testimony of Gloria Baptiste conflicts with that of other witnesses, I prefer the testimony of the other witnesses.

IV. THE EVIDENCE

[20]This hearing took place over four weeks, and involved testimony from some nineteen witnesses. A significant volume of documentary evidence was also placed before the Tribunal. As a consequence of the significant volume of evidence adduced in the course of the hearing, and in the interest of providing a coherent decision, I have outlined the evidence as it relates to each of Ms. Baptiste's principal allegations. While each issue is dealt with separately, I have also considered each of the allegations in the context of the totality of the evidence, in an effort to determine whether there existed a discernable pattern of discriminatory conduct on the part of the respondent.

A. Ms. Baptiste's Early Years at Matsqui Institution

[21]Gloria Baptiste is a Registered Nurse. After working for several years in various hospitals in Western Canada, in April, 1990, Ms. Baptiste joined CSC at Matsqui Institution as a staff nurse. Ms. Baptiste was originally hired on a term contract, but shortly thereafter became an indeterminate CSC employee.

[22]Matsqui Institution is an upper medium security penitentiary, housing some 400 inmates. Ms. Baptiste worked in the prison hospital, which was a self-contained 12 bed sub-acute care centre located on the prison grounds. The inmate population at Matsqui Institution is mixed, and includes individuals convicted of a range of serious offenses.

[23]There are a number of levels of nursing positions within CSC: NU-HOS-02 nurses work as psychiatric nurses, whereas nurses at the NU-HOS-04 level and up have managerial responsibilities. Ms. Baptiste was hired at the NU-HOS-03 level. NU-HOS-03 nurses are line staff nurses, who provide health care and treatment to inmates with respect to their physical ailments.

(i) The 1990-1991 Performance Appraisal

[24]Ms. Baptiste's immediate supervisor was Sharon Greye. After her first year on the job, Ms. Baptiste's job performance was evaluated by Ms. Greye. Ms. Greye rated Ms. Baptiste's performance as "Satisfactory", which meant that Ms. Baptiste: "Met the requirements but did not meet some of the established objectives and/or accomplished some of the defined duties of the position". Ms. Greye noted that Ms. Baptiste had experienced initial difficulties in dealing with the inmate clientele. Conflict areas and difficulties in some of Ms. Baptiste's working relationships were also noted, although Ms. Greye observed that Ms. Baptiste had been successful in working through these problems. Ms. Baptiste does not take issue with this performance appraisal.

[25]Ms. Baptiste's early days at CSC were not problem free, however. During her first year at Matsqui Institution, Ms. Baptiste filed a harassment complaint against a Correctional Officer, complaining about two log entries written by the Officer in relation to Ms. Baptiste's dealings with inmates. According to the investigation report prepared with respect to Ms. Baptiste's complaint, Ms. Baptiste did not feel that there was a personal vendetta between herself and the Correctional Officer, but that the Officer had been caught up in a racially-motivated plot "orchestrated by security", and fed by another nurse. Ms. Baptiste's complaint was investigated, and was not substantiated. No evidence of a plot against Gloria Baptiste was uncovered. The investigation disclosed that Gloria Baptiste was widely perceived to be abrupt and rude with inmates, and identified concerns with respect to Ms. Baptiste's interpersonal relations with other staff members. While the Correctional Officer displayed questionable judgment in the wording of the log entries, there was no specific policy governing the way in which such entries were to be recorded. Although not the subject of Ms. Baptiste's complaint, one nurse was found to have made a negative comment about Ms. Baptiste's conduct behind her back, in violation of the CSC harassment policy, although there is no suggestion that the comment was racially motivated.

[26]The investigator did find that Gloria Baptiste had been called racially derogatory names by certain inmates. The investigator observed that management had responsibility for providing Ms. Baptiste with a harassment-free workplace, and indicated that staff should be advised that inmates using racially derogatory names should be reported and dealt with through the inmate disciplinary process. Harassment training for staff was also recommended. The investigator further recommended that Gloria Baptiste be provided with guidance on how best to deal with inmates, and the avenues available to her, should she be subject to racial abuse.

[27]It appears that harassment training was provided to the staff as a result of the investigation into Gloria Baptiste's complaint. Ms. Baptiste was herself provided with counselling with respect to how to deal with inmate abuse. Finally, Sharon Greye issued a memo to all nursing staff at Matsqui Institution regarding "Derogatory Comments / Slurs Directed Towards Nursing Staff by Inmates". Much was made by Commission counsel of the fact that the memo does not make specific reference to racially derogatory slurs. While this is true, the memo does provide clear direction to staff on the need to report abusive or derogatory behaviour and comments from inmates. In my view, Ms. Greye's memo was a reasonable response to the recommendation of the investigator.

(ii) The 1991-1992 Performance Appraisal

[28]Ms. Baptiste's performance was next evaluated by Sharon Greye in the Spring of 1992. Once again, Ms. Greye rated Ms. Baptiste's performance as "Satisfactory". Ms. Greye noted that Ms. Baptiste had been provided with direction regarding her interaction with inmates, the need for courteous, professional and non-confrontational approaches, and the options available to her if she was subject to abuse from inmates. Ms. Baptiste's relations with her co-workers were also the subject of comment, with Ms. Greye noting that Ms. Baptiste's interactions with her colleagues were inconsistent, that she was aloof, and frequently provided brusque responses when co-workers attempted to discuss work-related matters with her. Sharon Greye also noted that Ms. Baptiste had not properly completed a quality assurance nursing audit project assigned to her, having turned in only three of seven reports required. Ms. Baptiste could not recall whether or not this was correct.

[29]Ms. Baptiste did not agree with the overall appraisal. Although space was provided for her to sign the appraisal with her disagreement noted, she refused to sign the appraisal at all. Although invited to do so, Ms. Baptiste did not provide a written explanation for her disagreement with the appraisal. Similarly, while Ms. Baptiste was advised of her right to challenge the performance appraisal, she did not do so.

(iii) The 1992-1993 Performance Appraisal

[30]In the spring of 1993, Sharon Greye rated Gloria Baptiste's performance as "Fully Satisfactory", meaning that she "Entirely met the requirements, fulfilled the assigned objectives and / or accomplished the defined duties of the position". According to an addendum to the performance appraisal prepared by Ms. Greye, Ms. Baptiste had made a concerted effort over the preceding year to improve her level of performance. Ms. Greye noted an improvement in Ms. Baptiste's dealings with inmates, and as well, in Gloria Baptiste's relationships with her co-workers. Indeed the only even slightly negative comment in this evaluation is the observation that Ms. Baptiste had twice made errors in narcotics counts.

[31]Even though the performance appraisal was generally positive, Ms. Baptiste again refused to sign it. Ms. Baptiste explained that, in her view, refusing to sign an appraisal did not mean she agreed or disagreed with it, noting that she had no obligation to do so under her collective agreement. She did go on to say that she did not agree with the comment regarding the narcotics count, stating that there was a problem with the packaging of the drugs, and the errors were not entirely her fault.

[32]Ms. Baptiste's desire to attend an AIDS conference is noted in this performance appraisal. Ms. Baptiste stated that Ms. Greye refused to allow her to attend the conference in 1993, and that this is evidence of differential treatment accorded her by reason of her race. A memo from Sharon Greye was introduced wherein Ms. Greye indicates that she would not support Ms. Baptiste's application to attend the conference. Ms. Greye stated that her normal practice would be to verbally communicate information of this nature to her employees, but that she had started communicating with Ms. Baptiste in writing because Ms. Baptiste had been unable to recall some of their earlier discussions.

[33]Ms. Greye testified that there could be many reasons why she would refuse to support an employee's attendance at a conference, including budgetary constraints, workload and scheduling issues, as well as the suitability of the training for the individual in question. Ms. Greye was unable to say at this point why she was unwilling to support Ms. Baptiste's application in 1993, but thought that Ms. Baptiste was ultimately allowed to attend the conference. Ms. Greye's version of events is corroborated by Ms. Baptiste's own *curriculum vitae*, which notes that she did attend a conference dealing with AIDS at St. Paul's Hospital in 1993.

[34]There is little evidence before me as to how other employees were treated with respect to their attendance at conferences during this time period. It is apparent from the record, however, that approval was given for Ms. Baptiste to attend a number of conferences during the years that she was supervised by Sharon Greye.

(iv) The 1993-1994 Performance Appraisal

[35]Sharon Greye again evaluated Gloria Baptiste's performance in early 1994. This time, Ms. Greye rated Ms. Baptiste's performance as unsatisfactory. An "Unsatisfactory" rating means that the employee "Did not meet the requirements and did not meet the established objectives or duties of the position. The performance is clearly unsatisfactory." A number of specific incidents were cited in the appraisal to support Ms. Greye's conclusion that Gloria Baptiste had demonstrated an inability to meet the fundamental requirements of the job in several areas.

[36]The first example cited by Ms. Greye related to the reassignment of a project relating to chart audits. According to Ms. Greye, Ms. Baptiste was verbally advised that this project was being assigned to another staff member. Ms. Baptiste subsequently denied having been told of this, and stated her intention to carry on with the project. Ms. Greye contends that she was then obliged to order Ms. Baptiste, in writing, to turn the project over to another staff member.

[37]Ms. Baptiste testified that this whole incident simply never happened.

[38]Sharon Greye's entry in the performance appraisal regarding the chart audit issue is corroborated by contemporaneous notes that Ms. Greye made of her discussions with Ms. Baptiste in this regard. I have no hesitation in preferring the evidence of Sharon Greye over that of Gloria Baptiste as it relates to this issue.

[39]The second example cited by Sharon Greye to justify the unsatisfactory rating assigned to Gloria Baptiste related to Ms. Baptiste's alleged failure to comply with hospital policy with respect to pre-HIV test counselling for inmates. According to Ms. Greye, Ms. Baptiste neglected to provide pre-test counselling to an inmate, resulting in the inmate being unequipped to deal with a positive test result. According to Ms. Greye, this was followed by Gloria Baptiste completely disregarding several verbal and written requests for an explanation.

[40]It is common ground that Gloria Baptiste drew blood from Inmate N on March 5, 1993, for the purposes of testing the blood for the presence of the HIV virus. It appears that the test was ordered by a Dr. Hoogewerf. Ms. Baptiste also agrees that CSC policy required that any inmate who was to be tested for HIV was to receive counselling from health care staff with respect to

the implications of a positive test result. According to Ms. Baptiste, she provided the requisite counselling and had the inmate sign the appropriate consent form at the time that the blood was drawn.

[41]It appears that on March 24, 1993, Inmate N was advised that he had tested positive for HIV. The inmate was evidently very upset, and required medication and psychological counselling to deal with the result. Inmate N denied receiving any pre-test counselling, and no record of any such counselling appeared on the inmate's medical file, nor was there a signed consent form on file.

[42]Sharon Greye testified that she approached Gloria Baptiste on April 6, 1993, and asked her for a written explanation of what had occurred. Ms. Baptiste told Ms. Greye that the inmate impliedly consented when Ms. Baptiste drew the blood, and said that she would have to review the inmate's chart before she could give a more complete explanation. Ms. Greye's verbal request was followed up the following day with a written request for Ms. Baptiste to provide an explanation, in writing, by April 15. A copy of Ms. Greye's written request was produced at the hearing. Ms. Baptiste denies that Ms. Greye ever spoke to her about this issue, and further denies receiving Ms. Greye's memo.

[43]When no response was received from Ms. Baptiste, Ms. Greye says that she again wrote to Ms. Baptiste, requesting an explanation. In this regard, a memo from Ms. Greye to Gloria Baptiste dated April 19 was produced. Once again Gloria Baptiste denies receiving the memo, and no response was received by Sharon Greye.

[44]On April 20, Ms. Greye notified Gloria Baptiste that a disciplinary investigation was being commenced into the matter. Gloria Baptiste admits receiving notice of the disciplinary investigation. It does not appear, however, that the disciplinary investigation was pursued at this time. On September 7, 1993, Sharon Greye again wrote to Ms. Baptiste, noting that four months had passed, and that Ms. Baptiste had not yet provided an explanation regarding her conduct in the HIV testing matter. Ms. Greye again warned Ms. Baptiste that, unless a written explanation was received by September 17, 1993, she would have no alternative but to consider disciplinary action.

[45]Gloria Baptiste says that she never received Ms. Greye's September 7 memo. One week later, however, she provided Ms. Greye with a package of material relating to the inmate in question. It appears that Ms. Baptiste saw the inmate on September 14, at which time the inmate was ostensibly seeking another HIV test. Although Ms. Baptiste did not draw blood for testing at that time, she states that the inmate was provided with HIV pre-test counselling, to address the concern regarding the March test.

[46]Ms. Baptiste's testimony surrounding this entire issue is confusing, at times disingenuous, and thoroughly unsatisfactory, and I reject it in its entirety. I find that an issue arose in March of 1993 as to whether or not Inmate N had been provided with pre-test counselling, and that, despite receiving numerous verbal and written requests to do so, Gloria Baptiste refused to provide any explanation for her conduct. When Ms. Baptiste did finally produce information with respect to the inmate in question, clearly in response to Ms. Greye's September 7 memo, the information

provided was not responsive to what had clearly been identified as the concern. It is particularly noteworthy that nowhere in the package of material eventually produced by Gloria Baptiste is there any suggestion that she had in fact provided pre-test counselling to the inmate in March.

[47]The Commission submitted that, in considering this issue, I should consider the fact that Sharon Greye never contacted Dr. Hoogewerf to see if he had in fact ordered the HIV test. It is apparent from the testimony of both Gloria Baptiste and Sharon Greye that a physician's signature is required on the provincial requisition form used for HIV testing. Although Ms. Greye's April 7 memo refers to the fact that no doctor's order had been located on the inmate's chart, a review of the documentation as a whole, including Ms. Greye's next memo to Gloria Baptiste, makes it clear that it was the issues of pre-test counselling and lack of informed consent that were the real concern.

[48]The performance appraisal also notes a concern regarding a breach by Gloria Baptiste of patient confidentiality. It appears that when Ms. Baptiste met with Inmate N in September, she discussed his HIV status in the presence of a guard. Obviously, one's HIV status is a matter of some sensitivity. Ms. Baptiste did not provide a satisfactory explanation for this apparent breach of patient confidentiality in her testimony.

[49]The third example given by Sharon Greye to justify her unsatisfactory rating related to Ms. Baptiste's failure to enter the name of a newly admitted inmate into a log book. Gloria Baptiste has no recollection of this issue. Sharon Greye described the matter in some detail, explaining that inmates were to be examined on their admission to Matsqui Institution in order that their physical condition could be ascertained. There had been an ongoing problem with Security failing to notify the Health Centre regarding the arrival of new inmates. In this case, Ms. Greye had become aware that an inmate had been admitted overnight. Given that there was no record of the Health Centre being so advised, Ms. Greye complained to Security about what appeared to be another breakdown in communication. In fact, it transpired that Ms. Baptiste had been advised of the inmate's arrival, but had failed to log him in.

[50]Ms. Greye's evidence regarding this matter was buttressed by her contemporaneous notes describing the incident, and I accept her testimony in this regard. The incident itself is not terribly serious, but is noteworthy because it is another documented example of behaviour that appears to have characterized Gloria Baptiste's conduct throughout her career and in this hearing. That is, it is an example of CSC personnel discussing issues with Gloria Baptiste, only to have her disclaim any knowledge of the matter shortly thereafter. This behaviour is disconcerting, and has clearly led to much conflict with and distrust of Gloria Baptiste throughout her employment with CSC.

[51]The final incident cited by Ms. Greye to justify her conclusion that Gloria Baptiste's performance was unsatisfactory related to Ms. Baptiste's alleged administration of prescription medication without a doctor's order. In this case, Ms. Baptiste provided Toradol, an analgesic normally prescribed for migraines, to an inmate. Concern regarding Gloria Baptiste's conduct was evidently raised by an institutional physician, as the inmate in question was known to be one who would regularly seek access to prescription drugs.

[52]In contrast with the previously cited incident regarding the HIV test, Ms. Baptiste testified that she had no recollection whatsoever with respect to this incident. She did state, however, that she had given the Toradol to an inmate pursuant to a standing doctor's order. Sharon Greye was not sure, but did not think that there was a standing order for Toradol at the time. In any event, a review of the contemporaneous documentation discloses that Gloria Baptiste gave an entirely different explanation for her actions at the time. Ms. Baptiste had previously explained that the inmate had requested analgesics, she had noted his history of drug-seeking behaviour and concluded that Toradol was a better choice, as it did not contain codeine. There is no suggestion that, at the time the drug was given, Gloria Baptiste thought that she was authorized to do so by a doctor's standing order.

[53]Sharon Greye concluded this performance appraisal by noting that Gloria Baptiste had also demonstrated problems prioritizing her work and in working as part of a team. Ms. Greye also referred to a complaint received from an employee named Pierre Bell. Mr. Bell's complaint related to an incident where arrangements had been made for a group of health care workers to travel together to attend a workshop in Vancouver. Ms. Baptiste allegedly failed to show up at the appointed time, causing the other employees to be delayed. When the employees got to the workshop, Ms. Baptiste was already there. No explanation was provided for her failure to advise anyone that she had made alternate travel plans, and she allegedly avoided all of her co-workers during the workshop. Mr. Bell confirmed that he had filed a complaint with Sharon Greye because of his irritation with Gloria Baptiste's conduct. Ms. Baptiste has no recollection of this incident, noting simply that she always takes her own car to workshops.

[54]According to Sharon Greye, she met with Gloria Baptiste to review this performance appraisal on February 11, 1994. Aided by her contemporaneous notes of the meeting, Ms. Greye testified that Ms. Baptiste read the performance appraisal, but was unwilling to discuss any of it with Ms. Greye, other than to indicate her unwillingness to sign it. Ms. Greye testified that she pointed out to Gloria Baptiste that there were sections of the appraisal form where the employee's input was sought, whereupon Ms. Baptiste said that she was not prepared to respond at that time. Ms. Greye then told Ms. Baptiste that if she was unwilling to discuss the appraisal with her, she could discuss it with the Acting Deputy Warden, who was responsible for reviewing the performance appraisal.

[55]Gloria Baptiste's evidence with respect to her discussions with Ms. Greye regarding this performance appraisal is confusing. She agrees that she had a discussion with Sharon Greye at the time that Ms. Greye gave her a copy of the performance appraisal, but disputes Ms. Greye's version of that discussion. According to Gloria Baptiste, she told Sharon Greye that she was not happy with the performance appraisal, and discussed the appraisal 'in full' with Ms. Greye. She did not, however, provide any particulars of what it was that she had said to Ms. Greye.

[56]A memo dated February 17, 1994 from Brenda Marshall, the Acting Deputy Warden to Gloria Baptiste was produced, wherein Ms. Marshall asks Ms. Baptiste to provide any feedback that she may have with respect to the performance appraisal by March 2, 1994. Ms. Baptiste denies ever receiving this memo, and Ms. Marshall did not testify. In my view, nothing turns on this, as Ms. Baptiste was clear that she was aware of her right to have input into the performance

appraisal process, and the avenues of redress available to her in the event that she did not agree with an appraisal.

[57]This performance appraisal evidently went before a Review Committee on March 4, 1994. No submissions having been received from Gloria Baptiste, the performance appraisal was confirmed as it stood.

[58]Ms. Baptiste did eventually provide a rebuttal to the 1993-1994 performance appraisal, although there is an issue as to when this took place. The document identified by Ms. Baptiste as constituting her rebuttal is dated April 26, 1995, that is, some fourteen months after her discussion with Sharon Greye. Ms. Baptiste suggested that she may have erred by putting the wrong year on the document, and that she had really submitted it in April of 1994. A review of the document itself discloses that this is not likely. Ms. Baptiste refers to Sharon Greye having supervised her for five years, which would have been the case in April of 1995, but not in April of 1994. More tellingly, Gloria Baptiste's rebuttal makes reference to the fact that Shirley Cox would be coming in soon to replace Sharon Greye as Chief of Health Care Service. Ms. Cox took over from Sharon Greye at the beginning of May in 1995.

[59]In terms of its substance, Ms. Baptiste's rebuttal consists largely of affirmations that she performed each and every one of the tasks required of a NU-HOS-03 nurse in a satisfactory, if not fully satisfactory manner. While Ms. Baptiste alleges that Sharon Greye was biased against her, and was unfair in her assessment of her performance, she made no effort to address any of the substantive criticisms of her performance which had been carefully identified in Sharon Greye's appraisal.

(v) The 1994-1995 Performance Appraisal

[60]In early 1994, a developmental opportunity arose for a nurse from Matsqui Institution to go to work at the Regional Psychiatric Centre for a period of six months. Pierre Bell and Gloria Baptiste both expressed interest in the assignment. Mr. Bell had previous experience in psychiatric nursing, whereas Ms. Baptiste did not. As a consequence, Ms. Greye was of the view that Ms. Baptiste would derive greater benefit from the opportunity than would Mr. Bell, and Ms. Baptiste was chosen to go.

[61]The position at the RPC was that of psychiatric nurse, and was classified at the NU-HOS-02 level. According to Ms. Greye, although Ms. Baptiste actively sought the opportunity to go, she was concerned that she would be paid at the NU-HOS-02 level while at the RPC. Ms. Greye assured Ms. Baptiste that she would continue to be paid at the NU-HOS-03 level, and Ms. Baptiste's concern appeared to have been allayed.

[62]Ms. Baptiste worked at the RPC from April to October of 1994, under the supervision of Devadas Ilapogu. According to Mr. Ilapogu, unlike NU-HOS-03 level nurses, who attend mainly to patients' physical needs, and are required to function independently, NU-HOS-02 nurses work under continued direction, and focus on the psycho-social rehabilitation needs of their patients.

[63]Mr. Ilapogu did not know Gloria Baptiste before she came to the RPC, and had heard nothing about her. Mr. Ilapogu denied ever having any discussions with Sharon Greye about Ms. Baptiste.

[64]According to Mr. Ilapogu, Ms. Baptiste related well to her patients, and he did not receive any complaints about her conduct from patients during the time that she was at the RPC. Mr. Ilapogu emphasized the need for the RPC staff to work as a team when dealing with mentally ill and potentially dangerous inmates, and testified that while Ms. Baptiste did interact with her colleagues from time to time, she worked mainly in isolation, and this was a concern for him. Ms. Baptiste had expressed an interest in exploring nursing management opportunities within the Federal Government. In Mr. Ilapogu's opinion, Ms. Baptiste's difficulties interacting with her peers indicated that she lacked the leadership skills necessary to move into a supervisory position.

[65]Mr. Ilapogu prepared a performance appraisal for the period during which he supervised Gloria Baptiste. Mr. Ilapogu rated Ms. Baptiste's overall performance during this period as 'Fully Satisfactory'. While generally positive in tone, Mr. Ilapogu did note concerns in relation to Ms. Baptiste's psychiatric nursing skills, the way in which she organized her workload, and the quality of her charting. Her tendency to work alone was also noted, and she received only a 'Satisfactory' rating in relation to her ability to work successfully with other employees. The performance appraisal form contains a section which allows the manager to indicate when an employee will be ready for advancement. Mr. Ilapogu indicated that he was unable to assess Ms. Baptiste in this regard.

[66]Ms. Baptiste returned to Matsqui Institution in October of 1994. In April of 1995, Sharon Greye prepared an appraisal of Ms. Baptiste's performance for the period from October of 1994 to February of 1995, which rated Ms. Baptiste's performance as 'Satisfactory'.

[67]According to Ms. Greye, Ms. Baptiste's performance was deficient in relation to her knowledge of the job, her attitude towards her work, the sound exercise of decision making, her willingness to take necessary action on her own, and to accept responsibility for her decisions, the clarity of her written work, and her willingness to seek guidance where necessary. Attached to the appraisal is a lengthy description of an incident which, Ms. Greye says, illustrated all of the deficiencies in Ms. Baptiste's performance.

[68]On October 23, 1994, Gloria Baptiste found an inmate lying on the floor of his cell, purportedly as a result of a fall from the top bunk. The inmate was conscious and was moving his head and arms, but complained that his back hurt. Ms. Baptiste noted that the inmate's pupils were equal and reactive to light, his blood pressure was 140/80 and that his pulse was 80/minute and strong, and respirations were 20/minute. The inmate's skin was noted as dry and warm to touch. Ms. Baptiste charted: "Appears query under influence of unknown substance. Periods rambling speech. No track marks noted." Ms. Baptiste recorded having given the inmate "Narcon 0.4 I/M". The inmate was then sent via ambulance to the public hospital in Abbotsford.

[69]Questions were evidently raised by the inmate with respect to the treatment provided by Gloria Baptiste. In addition, Ms. Greye testified that the prison doctor was very upset because he

had not been contacted about the inmate's condition, and because he had received a complaint from the community hospital that it had not been advised in advance that the inmate was on his way. Ms. Baptiste was asked for information with respect to her assessment and treatment decisions, as this had not been fully explained by her charting. Ms. Baptiste did not respond directly to this request, but recorded a 'late entry' on the inmate's medical chart which states "No seizure like activity observed. No lost [sic] of consciousness observed. Constantly moving eyes appears observing nurse and security activity. Assisted nurse by raising RT arm for nurse to apply blood pressure cuff. Able to squeeze nurse's hands on command. Able to wiggle toes for assessment of muscle strength. Able to raise all four extremities with no assist."

[70]Three days later, Ms. Baptiste was again asked to provide a written explanation for the treatment provided to this inmate. According to Ms. Greye, Ms. Baptiste stated that she could not give a written response to the request as this was not her job. Ms. Baptiste did provide a verbal explanation to Ms. Greye. Ms. Greye stated that Ms. Baptiste did not provide any justification for the administration of Narcon, apart from the inmate's periodic rambling speech.

[71]Sharon Greye had several concerns with respect to the way in which Gloria Baptiste handled this situation. These include Ms. Baptiste's failure to contact the prison doctor to notify him of the inmate's condition, or to notify the hospital that the inmate was coming. Ms. Baptiste did not indicate that Narcon was being administered pursuant to a standing doctor's order or indicate her reasons for administering Narcon.

[72]Sharon Greye's contemporaneous record of her discussion with Ms. Baptiste has Ms. Baptiste advising Ms. Greye that she had not notified the prison doctor about the inmate's situation, as it was the Correctional Supervisor that had called the ambulance and sent the inmate to the hospital. Ms. Baptiste is recorded as stating that the decision to send the inmate to the community hospital was justified, as the inmate could have fractured his back in the fall. Ms. Greye questions Ms. Baptiste's nursing judgment, in light of the fact that Ms. Baptiste had recorded the inmate as being able to move his head from side to side, toss his arms around, wiggle his toes, lift all four limbs without assistance, and squeeze her hands, and all of his neurological vital signs were within normal limits. In Sharon Greye's view, the inmate should properly have been sent to the prison hospital for observation.

[73]According to Sharon Greye, Narcon can be administered pursuant to a standing doctor's order in cases of suspected opioid poisoning. Opioid poisoning is characterized by decreased or low blood pressure, decreased or depressed respirations, loss of consciousness or inability to respond to verbal command, pupils that are unresponsive to light, and flaccid extremities. Not only were none of these symptoms documented as being present in this case, indeed the inmate's blood pressure, pulse and respirations are all recorded as being within normal limits. Further, the inmate's pupils were equal and reactive to light, and the inmate was conscious and able to provide his name when asked.

[74]Ms. Baptiste acknowledged in her testimony that she did not note that the Narcon was administered pursuant to a standing doctor's order, but states that this was not required by the prison standards. When asked whether the symptoms exhibited by the inmate properly called for the administration of Narcon, Ms. Baptiste said: "At the time, I did not feel that it was

inappropriate." Ms. Baptiste did not explain what it was about the inmate's condition that led her to administer the Narcon.

[75]Ms. Baptiste testified that she sent the inmate to hospital as the prison did not have an x-ray technician on staff. She says that she had attempted to reach the hospital physician beforehand, but had been unable to do so. She also testified that she had notified the hospital that the inmate was coming. According to Ms. Baptiste, the inmate returned from the hospital with a prescription, so "there must have been something wrong with him".

[76]Ms. Baptiste's testimony regarding this incident is troubling. I note that Ms. Baptiste now claims that she did try to reach the prison doctor and did call the hospital on the night in question, although there is nothing in the record to suggest that she ever provided this information to anyone before this hearing. More importantly, however, Ms. Baptiste did not provide a satisfactory explanation for her decision to administer Narcon to the inmate, in light of her recorded clinical findings.

[77]Two other entries in this performance appraisal bear comment. Ms. Greye indicated that she was unable to assess when Ms. Baptiste would be ready for promotion, but noted that Ms. Baptiste would have to bring her basic nursing assessment skills to a fully satisfactory level before she would be able to advance in her career. The appraisal also comments on Ms. Baptiste's "inability to retain/recollect instruction provided".

[78]Although Sharon Greye had serious concerns about specific aspects of Ms. Baptiste's performance, she explained that she ultimately gave Ms. Baptiste a 'Satisfactory' rating overall because there were a number of areas where her work was satisfactory or even fully satisfactory.

[79]An April, 1995 document entitled "Personal Development Plan" was also put into evidence. According to Sharon Greye, such plans were developed for each employee. The Plan document allows the employee to outline their career aspirations, and allows the employer to identify both recommended and mandatory training for the period governed by the Plan. Ms. Baptiste is recorded as expressing her desire to advance within CSC, and to occupy a NU-HOS-04 position within two years. Sharon Greye (who was about to leave her position at this time), notes in the Plan that Ms. Baptiste should discuss her career plans further with her new supervisor, but that Ms. Baptiste would have to be fully satisfactory as an NU-HOS-03 before she would be able to advance. Ms. Greye testified that she also discussed this requirement with Gloria Baptiste. Although Ms. Baptiste signed off on the Plan, she was not prepared to agree that she had been so advised, although I did not understand her to deny it either.

(vi) Were Ms. Greye's Performance Appraisals of Gloria Baptiste Between 1990-1995 Fair?

[80]In considering this issue, it is important to understand the precise nature of Gloria Baptiste's complaint. In her complaint form, Ms. Baptiste says "My performance appraisals, written by competing co-workers, undervalue the extent and quality of my work performance. I believe that my work was not judged in an objective and unbiassed manner. My work has been graded lower ever since I expressed a desire to move into management."

[81]There is no suggestion that Sharon Greye was ever "a competing co-worker".

[82]It became clear during the hearing that Ms. Baptiste's complaint with respect to the fairness of her performance appraisals at Matsqui Institution extended beyond those appraisals prepared by colleagues identified by Ms. Baptiste as being in competition with her. Central to Ms. Baptiste's case is her contention that Sharon Greye was racially biased against her, and that this bias negatively affected Ms. Greye's assessment of Ms. Baptiste's performance, to Ms. Baptiste's ongoing detriment. Although not clearly articulated in Ms. Baptiste's complaint, this allegation was dealt with in minute detail in the hearing. I am satisfied that CSC has had ample notice of the case that it was being called upon to meet in this regard, and has availed itself fully of that opportunity.

[83]In assessing the fairness of the evaluations prepared by Ms. Greye, (as well as later performance appraisals prepared by others at Matsqui Institution), the Commission submits that consideration has to be given to the environment within CSC generally, and at Matsqui Institution in particular. Once again, in considering this evidence, it is important to keep in mind the nature of Ms. Baptiste's complaint. This is not a complaint of racial harassment in the workplace. Ms. Baptiste is not alleging that the use of racially derogatory epithets and language by inmates and staff poisoned her work environment. Indeed, it is clear that Ms. Baptiste was not aware of most of the comments in issue, at least insofar as comments by staff are concerned. Rather, what I am being asked to do is to consider the evidence of racially derogatory language and attitudes in the workplace as evidence that racial bias played a role in the matters that form the subject matter of Ms. Baptiste's complaint: That is the allegations that her performance was appraised unfairly, and that she was denied promotional opportunities. In this context, consideration will now be given to the environment at Matsqui Institution.

a) The Environment at Matsqui Institution

[84]A great deal of time was taken up during the hearing with testimony regarding the environment within CSC in general, and within Matsqui Institution in particular. It is clear that a federal penitentiary is a difficult workplace, and that federal inmates pose unique challenges for the staff, including the nursing staff. It is also apparent that the nursing staff was frequently exposed to verbal abuse from inmates. This abuse took many forms, and included sexist comments such as "fucking cunt" and "douche bag", directed at the female staff, as well as comments such as "old fucking bitch" specifically directed at one of the older nurses. A male nurse recalls being called homophobic names such as "faggot" and "queer", and other staff recalled this same individual being called derogatory names that related to his Francophone origin. Staff members would often tell inmates that their language was unacceptable, but would not normally file disciplinary complaints unless they felt that their safety was in jeopardy. Several nurses testified that verbal abuse was such a regular occurrence that it was simply not realistic to try to deal with each incident through the disciplinary process.

[85]In Gloria Baptiste's case, much of the abuse directed at her had racial overtones. She was frequently referred to by inmates as "the black bitch", and at least one inmate also referred to her as a "jungle bunny". A number of witnesses testified that Gloria Baptiste was often rude with inmates, and that she had a tendency to 'talk down' to them, which would provoke confrontations

with and verbal abuse from the inmates. Various examples of such behaviour were cited by the witnesses, many of which were not disputed by Ms. Baptiste. There was also a recognition, however, going back as far as the 1991 harassment investigation report, that some inmates did not like Ms. Baptiste because she was black, and that some of the negative behaviour that she encountered was as a result of racial prejudice on the part of the inmates. Sharon Greye herself testified that it was well known throughout the correctional system that there was often an objectionable racialized attitude on the part of inmates.

[86]Gloria Baptiste says that when inmates called her racially derogatory names, other, unidentified, staff members would laugh, that "it was a big joke" to them. Ms. Baptiste says that she wrote 'observation reports', or formal complaints about the inmates' behaviour, but that to her knowledge nothing was ever done about them. By way of example, Ms. Baptiste points to a complaint that she filed relating to an incident in 1998. While there was a tremendous amount of documentary material put into evidence in relation to Ms. Baptiste's early years at Matsqui Institution, no observation reports or other written complaints from her with respect to racial abuse from inmates have been put before me. While it is uncontroverted that Ms. Baptiste was subject to racial abuse from inmates during this period, I do not accept Ms. Baptiste's testimony that she filed written complaints about this conduct, and that nothing was done about it.

[87]It was abundantly apparent that Gloria Baptiste was not popular with her co-workers, many of whom found her to be rude or aloof. Several expressed concerns about her nursing skills, and many felt that she was not a 'team player', and was unwilling to help out her colleagues. Even Jasmine MacKay and Eva Sabir, the two nurses who testified in support of Ms. Baptiste were lukewarm, at best, in their endorsement of Gloria Baptiste as a team player. A number of co-workers also expressed mistrust of Ms. Baptiste, referring to situations where Ms. Baptiste would simply deny that earlier discussions or agreements between them had ever taken place. There was evidence that Gloria Baptiste was, from time to time, referred to in racially derogatory terms by certain of her peers. These names included 'black bitch' and 'black beauty'. At one point, Ms. Baptiste was referred to as "Gloria Black", so as to distinguish her from another employee named Gloria, who was called "Gloria White". For the most part, these comments were made behind Ms. Baptiste's back, and she was not aware of them.

[88]Ms. Baptiste did mention one comment with racial overtones that was allegedly made to her by a co-worker early in Ms. Baptiste's career with CSC. According to Ms. Baptiste, Lee (Richardson) Nelson said to Ms. Baptiste that "I'm salt and you're pepper". Ms. Baptiste states that she complained to Ms. Greye about the comment, and that Ms. Greye said that she would let the two of them "work it out". Ms. Greye has no recollection of Ms. Baptiste ever speaking to her about this, observing that she would likely have remembered, given the unusual nature of the comment in issue.

[89]Lee Nelson denies ever making the comment attributed to her, although her denial was not entirely unequivocal. While she said that she could not recall making the statement, she could not say that it did or did not happen. Ms. Nelson was not an impressive witness. She admitted to having called Ms. Baptiste racially derogatory names on a number of occasions. Her attempt to claim, albeit somewhat facetiously, that her reference to Ms. Baptiste as a "black beauty" was intended as a compliment seriously undermined her credibility. While I have significant

reservations about the reliability of Ms. Baptiste's testimony, in this instance I prefer the testimony of Ms. Baptiste to that of Lee Nelson, and find that Ms. Nelson indeed made the comment attributed to her.

[90]I am not prepared to conclude, however, that Ms. Baptiste brought the matter to Sharon Greye's attention. I agree with Ms. Greye that one would likely recall a complaint of this nature. Ms. Greye has no such recollection. In this regard, I prefer the testimony of Ms. Greye to that of Gloria Baptiste.

[91]It is also alleged that certain supervisors referred to Ms. Baptiste in racially derogatory terms. These allegations will be considered in the context of each supervisor's dealing with Gloria Baptiste. It is, however, uncontroverted that Sharon Greye referred to Gloria Baptiste as a 'black bitch' on at least one occasion. According to Ms. Greye, she and a representative from Personnel had arranged to meet with Gloria Baptiste and a union representative. Ms. Greye waited for Ms. Baptiste to arrive, and when she did not show up, she contacted the union representative, who advised her that the meeting had been cancelled, and that Gloria Baptiste was to have so advised Ms. Greye. According to Ms. Greye, she was very frustrated and angry, and went looking for Gloria Baptiste, exclaiming "Where is that black bitch?" or words to that effect. Ms. Greye testified that as soon as the words were out of her mouth, she realized what she had said, and apologized immediately to Jasmine MacKay and Eva Sabir, the two nurses present at the time. According to Sharon Greye, this was the only time that she called Ms. Baptiste a 'black bitch'.

[92]Jasmine MacKay and Eva Sabir confirm Ms. Greye's description of the incident, including the fact that Ms. Greye apologized when she saw Ms. MacKay and Ms. Sabir nearby. It is unclear when this incident took place, but it must have happened in some time in 1996 or 1997. [\(9\)](#)

[93]Pierre Bell testified that he heard Ms. Greye refer to Ms. Baptiste as a 'black bitch'. According to Mr. Bell, Ms. Greye came storming out of her office after a meeting with Gloria Baptiste, exclaiming "That fucking black bitch!". Mr. Bell described Ms. Greye as being very agitated - "In a state other than normal", and says that she proceeded to go outside and have several cigarettes. Mr. Bell does not recall either Eva Sabir or Jasmine MacKay being present at the time, and thinks it unlikely, as Ms. MacKay and Ms. Sabir evidently worked a different shift to Mr. Bell. There is no indication when this incident took place.

[94]Based upon the description of events provided by Mr. Bell, I think it is more probable than not that Sharon Greye did refer to Gloria Baptiste as a 'black bitch' a second time. Mr. Bell has no reason whatsoever to lie about this incident, and from his description it appears that he is referring to a different situation from the incident described by Ms. Greye, Ms. MacKay and Ms. Sabir. It is also noteworthy that Sharon Greye has no recollection of Mr. Bell being present at the time she made the comment in front of Eva Sabir and Jasmine MacKay. Given that Sharon Greye admitted quite candidly that she had called Gloria Baptiste a 'black bitch' on one occasion, I think that her failure to recall the second incident is more likely the result of the passage of time than any lack of candour on her part. [\(10\)](#)

[95]I have found that inmates and Ms. Baptiste's co-workers used racially derogatory names in reference to Gloria Baptiste, and that Sharon Greye referred to Ms. Baptiste as a 'black bitch' on two occasions. This conduct, particularly as it relates to CSC employees, is both unprofessional and unacceptable, and has no place in a workplace. It must be recalled, however, that Ms. Baptiste's complaint is not about the existence of a poisonous work environment, but rather about alleged unfairness in the evaluation of her work performance.

b) Was Ms. Baptiste's Race a Factor in the Appraisals Prepared by Sharon Greye?

[96]The question for me then is whether the performance appraisals prepared by Ms. Greye were unfair, and whether racial animus was a factor in Ms. Greye's assessment of Gloria Baptiste's performance. I am not persuaded that this is the case.

[97]The Commission submits that Ms. Greye's appraisals consist of numerous petty complaints. I do not agree. The performance appraisals prepared by Ms. Greye were detailed and careful. Specific examples of conduct on the part of Gloria Baptiste were cited to justify Ms. Greye's assessment of Ms. Baptiste's performance, and the ratings assigned to her. Over the first five years of her employment with CSC, several serious incidents of poor judgement on the part of Ms. Baptiste were identified, including the failure to provide pre-test HIV counselling to an inmate, and the administration of Narcon in the absence of clinical findings justifying the use of an anti-opiod. Ms. Baptiste's explanations regarding the incidents referred to in the performance appraisals were not at all satisfactory. Further, there is no evidence before me that Sharon Greye's approach to the assessment of Ms. Baptiste's performance was any different to the approach taken by her in relation to the assessment of the performance of Ms. Baptiste's co-workers.

[98]It is noteworthy that although Ms. Baptiste acknowledges that she was made aware of the avenues of redress open to her in the event that she wished to challenge any of Ms. Greye's performance appraisals, at no time did she take any steps to do so, beyond submitting a response to the 1994 appraisal, some fifteen months after the fact.

[99]It is also very telling that the performance appraisal prepared by Devadas Ilapogu identified many of the same concerns that had been recurring themes in the performance appraisals prepared by Ms. Greye. Gloria Baptiste suggests that Sharon Greye's racist attitude tainted the views of all of her subsequent supervisors. There is no evidence, however, that Devadas Ilapogu ever had anything to do with Ms. Greye.

[100]Gloria Baptiste and Sharon Greye had a long and, at times, very difficult professional relationship. It is clear that Ms. Baptiste was a very challenging employee to manage, and that Ms. Greye became increasingly frustrated with Ms. Baptiste over time. While Ms. Greye's references to Gloria Baptiste as a 'black bitch' are indeed disturbing, having considered the matter very carefully, I simply cannot infer the necessary link between Ms. Greye's intemperate remarks and her negative evaluations of Ms. Baptiste's performance.

c) Was Ms. Baptiste's Work Graded Lower After She Expressed a Desire to Move in to Management?

[101]Ms. Baptiste also complains that her work was "graded lower" after she advised Sharon Greye of her desire to move into management. The earliest written record of Ms. Baptiste expressing this career goal is in the performance appraisal completed by Devadas Ilapogu in October of 1994. The first reference to Ms. Baptiste's ambitions in a document prepared by Sharon Greye is in the April, 1995 Personal Development Plan. Ms. Baptiste testified, however, that she had verbally advised Sharon Greye of her aspirations some time before 1994.

[102]Ms. Greye believes that the first time she was made aware of Gloria Baptiste's career aspirations was in April of 1995, although she was not absolutely certain of this.

[103]Given my concerns as to the unreliability of Gloria Baptiste's testimony in general, and the lack of specificity in her claim that she had previously advised Sharon Greye of her desire to move into management, I can not accept Ms. Baptiste's testimony that she made Ms. Greye aware of her career goals at any time before April of 1995. It is possible, however, that Ms. Greye may have become aware of Ms. Baptiste's ambitions in late 1994, as a result of the notation in the performance appraisal completed by Devadas Ilapogu.

[104]Sharon Greye rated Gloria Baptiste's performance as "Satisfactory" in 1991 and 1992, "Fully Satisfactory" in 1993 and "Unsatisfactory" in early 1994. Assuming that Sharon Greye had become aware of Ms. Baptiste's career ambitions in late 1994, the next (and last) performance appraisal completed by Sharon Greye in early 1995 rates Ms. Baptiste as "Satisfactory", which is an improvement over the previous appraisal. As a consequence, I find no basis for Ms. Baptiste's claim that Sharon Greye graded her work lower after she became aware of Ms. Baptiste's desire to move into management. The fairness of performance appraisals prepared by other supervisors after 1995 will be considered further on in this decision.

B. Acting Team Leader Competition

(i) The Application Process

[105]Ms. Baptiste complains that in January of 1997, she was denied the opportunity to act as a Team Leader at Matsqui Institution, notwithstanding that such an appointment had previously been promised to her.

[106]Gerwyn Mills was the Regional Manager for Health Services for the Pacific Region of CSC during the time in question. According to Mr. Mills, some time in 1995 the Chiefs of Health Care at two institutions retired. CSC management began exploring ways to reorganize the management structure within the Pacific Region in a more cost-effective fashion. The decision was made to try replacing the managers of several institutions with a single Chief. In May of 1995, Shirley Cox was appointed Chief of Health Services for the lower Fraser Valley, which included Mission Institution and Ferndale Institution. Ms. Cox took also over Sharon Greye's responsibilities at Matsqui Institution at that time. Ms. Greye was seconded to work in the Regional office.

[107]Mr. Mills testified that the other institutions had limited health facilities, whereas Matsqui Institution had a prison hospital with the ability to admit patients. Because of the more

sophisticated level of care, and the correspondingly higher work load, it was decided to try having a NU-HOS-04 level manager at Matsqui, who could supervise the hospital when the Chief was at the other institutions.

[108]Because this was something of an experiment, a permanent position was not created, nor was a formal competition held. Instead, in July of 1995, the position of Acting Team Leader was advertised at Matsqui Institution. The Notice to Staff indicated that, depending on the number of people interested in the position, acting appointments could be made on a rotational basis. The original Notice stipulated that applications had to be submitted to Personnel prior to August 8.

[109]Gloria Baptiste was interested in the Acting Team Leader position and submitted an application before the deadline, as did a second nurse by the name of Donna Raketti. No steps were taken at that time, however, to fill the position. Instead, on August 16, a second Notice to Staff was posted, again advertising the position, this time with an August 30 deadline for applications.

[110]Marie Dunn was the Acting Chief of Personnel at Matsqui Institution, and was assisting Ms. Cox with the hiring process. Ms. Dunn testified that she met with Shirley Cox on August 15 to review the status of the matter. Ms. Dunn's normal practice would have been to check the Personnel Department file for the position immediately before the meeting. In this case, Ms. Dunn's understanding was that no one had applied for the job, and she advised Ms. Cox accordingly. Ms. Cox understood that there were nurses at Matsqui Institution who were interested in the position, and the decision was made to re-advertise the position.

[111]CSC date stamps confirm that both Gloria Baptiste and Donna Raketti's applications were received in Personnel on August 8, 1995. That same day, a letter signed by Ms. Dunn's assistant, Francine Goodfellow, on Ms. Dunn's behalf was sent to Ms. Baptiste, acknowledging receipt of her application. It is somewhat surprising, therefore, that Ms. Dunn was not aware of the applications already submitted when she met with Ms. Cox on August 15. Ms. Dunn's explanation is that she may have been misinformed by Ms. Goodfellow.

[112]Although much was made of this apparent discrepancy by the Commission, for a number of reasons, I am not prepared to read too much into it. Ms. Dunn's recollection of the situation was quite hazy, which is not surprising, given the number of staffing processes that she was involved in between 1995 and the time that she testified. Indeed, her initial recollection was that the time for applications was extended because only a limited number of candidates had applied. The contemporaneous documentation sheds little light on the question: Ms. Dunn's Note to File regarding her meeting with Ms. Cox says only that Ms. Cox asked that the process be extended as she believed that there were staff in her section that were willing to be considered for the position. It is apparently quite appropriate to extend the time limit for applications, even if applications are received within the original period, if managers want to obtain a wider pool of candidates from which to draw. This often occurs in periods of high leave usage, which would include the summer period, when many staff take their holidays. It is noteworthy that while Gloria Baptiste alleged racial animus on the part of a significant number of individuals within CSC, she made no such suggestion about Marie Dunn, who I found to be a credible witness. The decision to extend the time for applications had the same impact on Donna Raketti, a Caucasian

employee, as it did on Gloria Baptiste. Most importantly, the results of the staffing process militate against reading anything sinister into all of this: Ms. Baptiste was indeed offered a rotation as an Acting Team Leader, although the terms of that offer remain to be determined.

[113]As a result of the extension of the application period, and following discussions between managers and staff, additional applications were received from Jenny Plate and Kim Watkins. All four of the applications were reviewed by Shirley Cox, and all were offered the opportunity to act as Team Leader. Jenny Plate was offered the first opportunity, followed by Kim Watkins, Donna Raketti and then Gloria Baptiste. Because of Gloria Baptiste's "marginally satisfactory level of performance", Ms. Cox decided to put Ms. Baptiste last on the list, in order to give her time to improve her level of performance. Ms. Cox's notes regarding her decision state: "She cannot be considered for the developmental opportunity until her performance reaches the level of fully satisfactory."

[114]According to Ms. Cox, she based her comments with respect to Gloria Baptiste on Ms. Baptiste's most recent performance appraisal, as well as her own observations of Ms. Baptiste and discussions she had with the staff. Although Ms. Cox discussed Ms. Baptiste's performance with some of the other managers, she testified that she never had any discussions with Sharon Greye regarding Gloria Baptiste.

[115]Ms. Cox also conducted an oral interview with Ms. Baptiste. Ms. Cox described Ms. Baptiste as 'very tentative' in the interview. Ms. Cox followed a similar process with the other candidates, with the exception of Donna Raketti. Ms. Raketti was a new employee at Matsqui Institution, having just recently joined CSC after a career in nursing management in the public hospital system. As a consequence, Ms. Raketti had not yet undergone a formal performance appraisal at CSC. In Ms. Raketti's case, Ms. Cox based her assessment on her oral interview, as well as Ms. Cox's own observation of Ms. Raketti's performance on the job.

[116]On September 25, 1995, Ms. Baptiste was advised of the results of the staffing process. In a letter from Ms. R. Fulbrook, the then Acting Chief of Personnel at Matsqui Institution, Ms. Baptiste was told that she would be acting from January 1, 1997 to March 1, 1997. The offer was not unconditional, however. Ms. Fulbrook's letter states that "These are anticipated acting assignments and are subject to change **based on individual staff performance** and staff availability at the time of appointment." (Emphasis added)

[117]Marie Dunn explained that a 'Fully Satisfactory' performance rating was not included as a formal requirement in Statements of Qualifications. Individual levels of performance would, however, be considered in the course of assessing candidates, on the basis that past performance is usually a reliable indicator of future performance. It was open to a manager to refuse to appoint a candidate to a position where the individual did not have a fully satisfactory level of performance.

[118]Shirley Cox testified that she met with Gloria Baptiste in the Fall of 1995, and explained why she had put Ms. Baptiste last on the list for the acting assignment. According to Ms. Cox, she told Ms. Baptiste that the only way she was going to be able to act in the Team Leader position was if she got her performance to the fully satisfactory level. Ms. Cox stated that Ms.

Baptiste asked her if she thought it was possible for Ms. Baptiste to reach the fully satisfactory level. Ms. Cox testified that she told Ms. Baptiste that with support and lots of hard work on Ms. Baptiste's part, it was indeed possible.

[119]Ms. Baptiste denies that any such discussion ever took place.

[120]Because of my concerns with respect to the reliability of Ms. Baptiste's evidence, I prefer Ms. Cox's testimony. I find that in the Fall of 1995, Gloria Baptiste was told that her assumption of the Acting Team Leader position was contingent on her achieving a fully satisfactory level of performance.

(ii) Ms. Baptiste's Subsequent Performance

[121]Sharon Greye's April 1995 appraisal of Ms. Baptiste's performance was reviewed by Brenda Marshall, the Deputy Warden at Matsqui Institution. On May 8, 1995, Ms. Marshall wrote Gloria Baptiste advising her that, while her performance had been rated as satisfactory, "it borders on Unsatisfactory overall as there are many areas where your performance is unsatisfactory." Ms. Marshall further advised Ms. Baptiste that she was asking Ms. Cox (who had just succeeded Ms. Greye as Ms. Baptiste's supervisor) to conduct monthly appraisals of Ms. Baptiste's performance. Ms. Baptiste denies ever receiving this memo, and further denies that Ms. Cox ever performed monthly appraisals of her performance.

[122]Shirley Cox testified that she did conduct monthly appraisals of Ms. Baptiste's performance. According to Ms. Cox, she first met with Ms. Baptiste and reviewed her previous performance appraisals, in an effort to identify the problem areas in her performance. Ms. Cox then met with Ms. Baptiste on a monthly basis. During the course of these meetings, Ms. Cox would discuss specific examples of Ms. Baptiste's performance, which examples were chosen by Ms. Baptiste. Ms. Baptiste's conduct would then be assessed against the Standards of the Registered Nurses' Association of British Columbia, so as to determine Ms. Baptiste's ability to meet the Standards. Ms. Cox's initial meeting with Gloria Baptiste, as well as her plan for subsequent monthly meetings, are confirmed in a series of contemporaneous e-mail messages between Ms. Cox, Brenda Marshall and Marie Dunn.

[123]Shirley Cox testified that Jenny Plate was involved in these meetings. Ms. Plate had been acting as Chief of Health Services at Matsqui Institution in the period between Sharon Greye's departure and Shirley Cox's arrival at the prison. After Ms. Cox assumed the duties of Chief of Health Services, Ms. Plate continued to act for Ms. Cox on an informal basis during the latter's absences from Matsqui Institution, while the staffing process was under way. Ms. Plate confirms having attended at least two of these monthly meetings, and her description of the nature and purpose of the meetings echoes that of Ms. Cox. According to Ms. Plate, Ms. Baptiste put a lot of effort into these discussions. Once again, I prefer the testimony of Ms. Cox and Ms. Plate to that of Gloria Baptiste and find that there were a series of meetings in 1995, the purpose of which was to assist Ms. Baptiste in improving her performance.

[124]On October 1, 1995, Ms. Plate formally took over as Acting Team Leader. The following day, Ms. Plate wrote to the Institutional Preventative Security Officer with respect to a concern

regarding Gloria Baptiste's safety. According to Ms. Plate, she had received two or three inmate complaints regarding Ms. Baptiste's rudeness in her dealings with offenders. In the course of discussing one of these complaints with an inmate, the inmate advised Ms. Plate that many inmates had a problem with Ms. Baptiste's attitude, and that her safety would be in jeopardy if there was a riot at the institution. Ms. Plate testified that she had previously spoken to Ms. Baptiste about her manner of dealing with inmates, and she raised the issue with Ms. Baptiste again as a result of this complaint. Ms. Plate advised Ms. Baptiste that she herself had observed Ms. Baptiste frequently interrupting people, and attempting to answer inmates' questions before they had finished asking them. In the course of discussing this most recent complaint with Ms. Plate, Ms. Baptiste denied that she had any difficulties with her interpersonal relations, and further denied that Ms. Plate had ever before mentioned any concern in this regard.

[125]Gloria Baptiste denies that any of this ever happened.

[126]In February of 1996, Gloria Baptiste's performance was once again evaluated, this time by Ms. Plate, who was completing her turn as Acting Team Leader. Shirley Cox was also involved in the preparation of the appraisal, which rated Gloria Baptiste's performance as 'Satisfactory' overall. According to Ms. Plate, she rated Ms. Baptiste's performance in the various areas, and Shirley Cox provided the written comments.

[127]It appears that Ms. Plate may have had a slightly different understanding of what the various categories of ratings meant than did Ms. Baptiste's other supervisors. According to Ms. Plate, "Fully Satisfactory" meant that the employee frequently exceeded the expectations set out in the Registered Nurses' Association Standards. Whatever Ms. Plate's understanding may have been, counsel for the Commission was clear that there was no suggestion, at least on the part of the Commission, that Ms. Plate was motivated by racial animus in applying the standard she did in relation to Ms. Baptiste's performance. Further, there is no evidence that Ms. Plate applied a different standard to the evaluation of Ms. Baptiste's performance than she used with respect to the other NU-HOS-03 nurses at Matsqui Institution. It is also noteworthy that Shirley Cox reviewed and concurred with Ms. Plate's assessment of Ms. Baptiste.

[128]Ms. Baptiste received satisfactory and occasionally fully satisfactory ratings in most areas, however her performance was rated as unsatisfactory in relation to her ability to work successfully with inmates. The appraisal noted that complaints had been received with respect to Ms. Baptiste's attitude, that she was perceived by the inmates as not listening to them, and not being empathetic. Ms. Baptiste was described by inmates as "pushy and hurrying them so that she can do other things more important." The appraisal noted that Ms. Baptiste had made a concerted effort to improve her performance, but that there were still concerns with respect to her relations with staff and inmates.

[129]Ms. Baptiste did participate in this appraisal process, and notes her career aspirations for the next 2-3 years as including acting in the Team Leader position. The employer portion of the appraisal indicates that Ms. Baptiste would be not ready for advancement for 3-5 years. The agreed-upon objective for the upcoming year has Gloria Baptiste continuing to work with the Health Unit staff at Matsqui Institution, maintaining "the designated portfolio assignments as required."

[130]Most significantly, the performance appraisal states: "Gloria has expressed a desire to work in the Acting Team Leader position. This will only be possible once Gloria has achieved a fully satisfactory level of performance."

[131]Ms. Plate, Ms. Cox and Ms. Baptiste met to discuss the performance appraisal on February 6, 1996. During the course of this meeting, Ms. Baptiste signed the appraisal in the section that indicates that the employee had reviewed the appraisal and concurred with the supervisors' evaluation, although she did not tick off the box indicating her agreement with the appraisal. The appraisal was subsequently considered by a Review Committee. On April 19, 1996, the Review Committee wrote "The Review Committee is pleased to note improvement and would encourage Ms. Baptiste to work towards a fully satisfactory rating". Ms. Baptiste's signature appears again after the Review Committee's comments, where she is noted to have read the completed report. Ms. Baptiste's second signature is dated April 29, 1996.

[132]Ms. Baptiste testified that during the course of her meeting with Ms. Plate and Ms. Cox in February of 1996, Ms. Cox agreed to change her rating to fully satisfactory, and that she signed the appraisal on the basis of this representation. I reject Ms. Baptiste's testimony in this regard in its entirety. Not only do both Shirley Cox and Jenny Plate deny that any such agreement was ever reached, Ms. Baptiste's version of events is simply not credible when viewed in light of her past conduct in relation to the performance appraisal process. Ms. Baptiste clearly had a longstanding distrust of CSC management. She had repeatedly refused to sign performance appraisals, even when she agreed with them. It simply defies belief to think that Gloria Baptiste would sign a performance appraisal indicating that she agreed with it, when she did not, based upon a promise to change the rating after the appraisal had been signed.

[133]Ms. Baptiste's testimony further does not accord with the performance appraisal document itself. It is evident that Ms. Baptiste signed the performance appraisal a second time, after it had gone to the Review Committee. The Review Committee encouraged Ms. Baptiste to work towards a fully satisfactory rating in the future. It would have been obvious on the face of the document itself that, as far as the Review Committee was concerned, Gloria Baptiste was not there yet.

[134]Ms. Baptiste acknowledges having signed the appraisal a second time, after the Review Committee process, although she suggested that she may not have seen 'the whole package' when she did so. Once again, given Ms. Baptiste's caution when it comes to affixing her signature to documents, I cannot believe that she would have signed the appraisal, acknowledging that she had read the completed report, unless she had done so. In any event, Ms. Baptiste's signature appears on the same page as the Review Committee's comments.

[135]The next issue is whether the evaluations of Gloria Baptiste's performance in the period leading up to January of 1997 were fair. In particular, I must determine whether the colour of Ms. Baptiste's skin played any part in the way in which her performance was assessed. I am not persuaded that this was the case.

[136]I have found that Gloria Baptiste signed the performance appraisal, indicating her agreement with its contents. While not determinative of the issue, it certainly suggests that, at the

time of the evaluation, Ms. Baptiste was satisfied that the appraisal fairly reflected the quality of her work. It is also important to keep in mind the nature of Ms. Baptiste's concerns with respect to the appraisal issue. Her complaint alleges that there was unfairness in the performance appraisal process because her work was evaluated by individuals who were in competition with her for promotional opportunities. It is true that Jenny Plate's substantive position was that of a NU-HOS-03, and there was at least the theoretical possibility that Ms. Plate could later find herself in competition with Gloria Baptiste for promotion. While this situation may well raise concerns from a Human Resources perspective, there are two difficulties with this issue insofar as Gloria Baptiste's human rights complaint is concerned. Firstly, there is no suggestion that Gloria Baptiste was treated any differently in this regard than were all of the other NU-HOS-03 nurses at Matsqui Institution. Secondly, even if I were to conclude that Ms. Plate was unfair in her assessment of Gloria Baptiste's performance, so as to try to eliminate Ms. Baptiste as a potential future competitor (which I do not), this would not constitute a breach of the *Canadian Human Rights Act*. The purpose of the *Act* is to eliminate discrimination, not to regulate every aspect of the performance appraisal process. An appraisal influenced by self-interest might be unfair, it might be the proper subject of a grievance or appeal, but it does not breach the *Act*.

[137]As far as Ms. Baptiste's allegation that Sharon Greye somehow tainted the performance appraisal process after she had left Matsqui Institution is concerned, there is simply insufficient evidence on which I could make such a finding. Sharon Greye had gone on a secondment to the Regional office. Shirley Cox was clear that she never had any discussions with Ms. Greye about Ms. Baptiste in the course of the appraisal process. There is nothing in the record to indicate that Sharon Greye had any involvement whatsoever in the assessment of Gloria Baptiste's performance in this period.

[138]Finally, I am also not satisfied that racist attitudes on the part of either Shirley Cox or Jenny Plate negatively affected Ms. Baptiste's evaluation. Although Ms. Baptiste alleged that both Ms. Cox and Ms. Plate were racially biased against her, Ms. Baptiste did not provide any particulars to back up her allegation. Eva Sabir did testify that she heard Jenny Plate, amongst others, using racial epithets in the workplace, but provided no details or specific examples. Jenny Plate, who impressed me as a credible witness, denies ever using such language, and no one else confirms having heard it. I have some concerns about the credibility of Ms. Sabir, who struck me as well-meaning, but somewhat prone to overstatement. Ms. Sabir was understandably very offended by the use of racial epithets in the workplace, and by what she perceived to be the unfair treatment of Gloria Baptiste. According to Ms. Sabir, she complained about the language in the workplace to her supervisor and "everyone else". None of the fifteen CSC employees called by the respondent, a number of whom impressed me as credible, recalled Ms. Sabir ever raising any such concern. Ms. Sabir's evident desire to support Ms. Baptiste also appears to have affected her objectivity: For example, Ms. Sabir testified that she did not think that the fact that an inmate later accused Gloria Baptiste of having killed another inmate would create any concern for Ms. Baptiste's safety in the institution.

[139]On all of the evidence, I am satisfied that Ms. Baptiste's race was not a factor in the evaluation of her performance in the period leading up to January of 1997.

(iii) The Denial of the Acting Team Leader Position to Gloria Baptiste

[140]It is unclear whether a specific, conscious decision was made to deny Ms. Baptiste the opportunity to act as Team Leader at any time before January 1, 1997, or whether it happened by default, given that she had not reached a fully satisfactory level of performance. We do know that some time before she went on medical leave in November, 1996, Sharon Greye asked Donna Raketti (who was going to be acting as Chief of Health Care, in Ms. Greye's absence) whether Ms. Raketti felt she needed an Acting Team Leader while she was acting as Chief. Ms. Raketti evidently advised Ms. Greye that she did not think it was necessary. There is no indication that there was any discussion about Gloria Baptiste's situation at this time.

[141]Gloria Baptiste acknowledges that, in the period leading up to January 1, 1997, she did not ask anyone whether she was still scheduled to commence acting as Team Leader on that date. Kim Watkins testified that shortly before Ms. Watkins was scheduled to begin acting as Team Leader, a memo was circulated to staff advising accordingly. There is no suggestion any such memo was circulated in relation to Ms. Baptiste at any time prior to January 1, 1997. Nevertheless, Ms. Baptiste testified that she reported to work on January 1, 1997, fully expecting to assume the responsibilities of the Acting Team Leader.

[142]Donna Raketti had been acting as Team Leader in the months leading up to January, 1997. On January 1, Ms. Baptiste says that Ms. Raketti told her that Ms. Raketti would be continuing to act. According to Ms. Baptiste, she was surprised, bewildered and dismayed, as there had been no prior indication that she would not be fulfilling the acting assignment that had previously been promised to her.

[143]Ms. Raketti denies that Gloria Baptiste raised the issue of the Acting Team Leader position with her on January 1, 1997.

[144]Ms. Baptiste contacted Mr. Mills' office, and arranged to meet with him on January 22 regarding the denial of the Team Leader opportunity. There was an issue with respect to the location of the meeting. Mr. Mills and Donna Raketti both understood that Mr. Mills would be coming to Matsqui Institution. Ms. Raketti was surprised, therefore, when, on January 22, Ms. Baptiste prepared to leave the institution to go to Mr. Mills' office for the meeting. Ms. Raketti told Ms. Baptiste that she could not leave, as she did not have staff available to cover Ms. Baptiste's responsibilities. According to Ms. Raketti, Ms. Baptiste simply left the building.

[145]Ms. Baptiste testified that in the course of her meeting with Mr. Mills, he said that she should have been allowed to act. According to Ms. Baptiste, Mr. Mills said that he would contact Sharon Greye (who had returned to Matsqui Institution, replacing Shirley Cox, in August of 1996) and would ask Ms. Greye what she was going to do about the situation. At no time in the course of the meeting did Ms. Baptiste suggest to Mr. Mills that she thought there was any racial motivation behind the denial of the acting opportunity.

[146]On January 28, 1997, Mr. Mills wrote to Gloria Baptiste, advising that he had discussed Ms. Baptiste's concerns with both Shirley Cox and Sharon Greye. Mr. Mills referred to the letter from Ms. Fulbrook, and in particular to the statement that the acting appointments were subject to change, based upon individual staff performance. Mr. Mills noted that both Sharon Greye and, to a lesser extent, Shirley Cox, had concerns with respect to Ms. Baptiste's performance. Mr.

Mills indicated to Ms. Baptiste that he would discuss the matter further with Ms. Baptiste and Sharon Greye, when Ms. Greye returned to work from sick leave in mid-February.

[147]Donna Raketti subsequently asked Gloria Baptiste for a written explanation for having left work without permission on January 22. Ms. Baptiste responded, stating that Donna Raketti knew Ms. Baptiste was to meet with Mr. Mills at his office. Ms. Baptiste also denied that Donna Raketti ever gave her a direct order not to leave work.

[148]Ms. Baptiste then got her Union involved. On February 5, 1997, she filed a grievance concerning both the denial of the acting opportunity and the allegation that she had left work without permission. Ms. Baptiste subsequently filed an appeal with the Public Service Commission against the appointment of Donna Raketti to the Acting Team Leader position. According to Ms. Baptiste, in the course of a meeting dealing with this appeal, Shirley Cox told her repeatedly that she had no serious concerns with respect to Ms. Baptiste's performance, and that, in Ms. Cox's view, Ms. Baptiste should have been allowed to act in the Team Leader position.

[149]Mr. Mills confirmed having met with Gloria Baptiste on January 22. However, his version of what transpired in the course of the meeting differs considerably from that of Ms. Baptiste. Mr. Mills had previously been aware that Gloria Baptiste had been offered the Acting Team Leader position, contingent upon her performance being fully satisfactory. According to Mr. Mills, after he received Ms. Baptiste's request for a meeting, he spoke to both Shirley Cox and Sharon Greye about the situation. After he heard from Ms. Baptiste, he indicated that he would have a further discussion with Ms. Cox and Ms. Greye, in order to review what Ms. Baptiste had told him. Mr. Mills was emphatic that he never told Ms. Baptiste that she should have been allowed to act as Team Leader. What he told her was that he would look into the situation, and would get back to her. After speaking again to Ms. Cox and Ms. Greye, Mr. Mills was satisfied that Ms. Baptiste had been treated fairly, and advised her accordingly in his January 28 letter.

[150]Both Shirley Cox and Sharon Greye confirmed that Mr. Mills contacted them concerning Ms. Baptiste and the Acting Team Leader position. Ms. Cox testified that she was reluctant to give Mr. Mills her opinion as to whether Ms. Baptiste should be allowed to act or not, given that she was no longer Ms. Baptiste's supervisor, and did not have access to her performance appraisals. Ms. Cox suggested that Mr. Mills review Ms. Baptiste's most recent performance appraisals and speak to her current manager. Ms. Cox also testified that she had no involvement in Ms. Baptiste's appeal of Donna Raketti's appointment, and denied ever telling Ms. Baptiste that, in Ms. Cox's view, Ms. Baptiste should have been allowed to act as Team Leader.

[151]Ms. Greye stated that she asked Mr. Mills whether Ms. Baptiste's most recent performance appraisal was fully satisfactory: Mr. Mills stated that he did not know and would have to check. Ms. Greye said that, in her view, Ms. Baptiste should not act as Team Leader if she had not reached the fully satisfactory level. Ms. Greye also told Mr. Mills that, based upon her own experience with Ms. Baptiste's performance, she was not prepared to support Ms. Baptiste becoming an Acting Team Leader. Ms. Greye indicated that her concerns were magnified by the fact that she herself was not there to assist Ms. Baptiste in carrying out the duties of the Acting Team Leader position. Donna Raketti was currently acting as Ms. Greye's replacement while Ms.

Greye was absent from work because of illness. This would have led to a situation where one acting employee was required to supervise another, which, in Ms. Greye's view was not a desirable situation.

[152]Sharon Greye denies that Mr. Mills ever suggested to her that she should honour the promise made to Ms. Baptiste. Indeed, Ms. Greye testified that Mr. Mills agreed with her assessment of the situation.

(iv) Was Gloria Baptiste's Race a Factor in the Decision to Deny Her the Acting Team Leader Position?

[153]The Commission submits that the decision to deny Gloria Baptiste the opportunity to act as Team Leader was effectively made by Sharon Greye, who had barely seen Gloria Baptiste in the preceding two years. No attempt was made to discuss the matter with Donna Raketti, who was then Ms. Baptiste's current supervisor, and Ms. Greye's decision was reached in an arbitrary fashion. The Commission further contends that Ms. Raketti was allowed to act as a Team Leader, notwithstanding the fact that her performance had not yet been appraised at Matsqui Institution, and thus Ms. Raketti did not have a fully satisfactory performance appraisal. In all of the circumstances, the Commission says, I should infer that racial animus on the part of Sharon Greye was at least a factor in the decision to deny Gloria Baptiste the opportunity to act as Team Leader. I do not agree.

[154]I accept the testimony of Marie Dunn that while a fully satisfactory performance appraisal is not something that is properly a formal requirement in a Statement of Qualifications, an employee's performance in their current position is something that may properly be considered in assessing a candidate's suitability for increased responsibilities. Indeed, as one witness put it, it would not make any sense to give an employee additional responsibilities before they were able to handle their current level of responsibility.

[155]I have already concluded that the appraisals conducted with respect to Ms. Baptiste's performance to this point were fair, and that Ms. Baptiste's race was not a factor in these appraisals.

[156]The offer of the Acting Team Leader position made in Ms. Fulbrook's September, 1995 letter was clearly made contingent on individual performance. Sharon Greye's 1995 appraisal of Gloria Baptiste's performance indicated that Ms. Baptiste would not be able to advance in her career until such time as she brought her nursing assessment skills to a fully satisfactory level. This was reiterated to Ms. Baptiste in the April, 1995, Personal Development Plan, where Ms. Greye indicates that Ms. Baptiste will have to be fully satisfactory as a NU-HOS-03 before she will be able to progress to a NU-HOS-04 position.

[157]I have also found that in the Fall of 1995, Ms. Cox told Ms. Baptiste that she would only be able to assume the duties of an Acting Team Leader if her performance was fully satisfactory. This message was communicated again to Ms. Baptiste in her February 6, 1996 meeting with Jenny Plate and Shirley Cox. It is also clearly set out in the performance appraisal that Ms. Baptiste signed on February 6, and again on April 29, 1996. This appraisal stated: "Gloria has

expressed a desire to work in the Acting Team Leader position. This will only be possible once Gloria has achieved a fully satisfactory level of performance." At no time between the Fall of 1995 and January 1, 1997 did Gloria Baptiste achieve a fully satisfactory level of performance.

[158]Even Gloria Baptiste was prepared to admit that she had been told at least twice that she had to achieve a fully satisfactory level of performance before she would be able to assume a NU-HOS-04 level position. In this light, it is therefore difficult to understand Ms. Baptiste's professed bewilderment when, on January 1, 1997, she realized that she would not be acting as Team Leader.

[159]While Mr. Mills might have chosen to consult with Donna Raketti and others who had supervised Ms. Baptiste with respect to her situation, the fact is that in January of 1997, the position of Acting Team Leader was vacant, and Ms. Greye was Ms. Baptiste's immediate supervisor.⁽¹¹⁾ Ms. Raketti was merely acting for Sharon Greye while Ms. Greye was on sick leave. Sharon Greye had worked with Gloria Baptiste off and on over a period of some seven years, and was well acquainted with her work. Ms. Greye was also careful to point out that she was not aware of Ms. Baptiste's most recent performance appraisal, and to refer Mr. Mills to that document for assistance. Mr. Mills did not speak only to Ms. Greye, but also consulted with Ms. Cox. It is also worth mentioning that although she was not consulted by Mr. Mills, Donna Raketti was in full agreement with the decision not to allow Gloria Baptiste to assume the Acting Team Leader position. In Ms. Raketti's opinion, Ms. Baptiste was not competent to carry out the responsibilities of the Acting Team Leader position.

[160]Ms. Baptiste points to the fact that she acted in the Team Leader position for two days in July of 1996 as proof that she was competent for the job. It is common ground that Kim Watkins did not complete her rotation as Acting Team Leader, as she began training as a renal dialysis nurse in June, 1996, which was several weeks before her term was to end. Donna Raketti was not scheduled to start acting until August 1. To cover the gap, Shirley Cox arranged for nurses at Matsqui Institution (including a number of nurses who had not applied for the Acting Team Leader position) to take a turn as the nurse in charge on a temporary basis.

[161]Shirley Cox testified that the work carried out by these individuals could in no way be equated to that of the Acting Team Leader, but was the equivalent of the 'Charge Nurse' position occupied by nurses in the hospital at night and on the weekend. The Charge Nurse has responsibility for admitting and discharging patients, as well as for ensuring that there is full complement of staff on duty. Indeed, Gloria Baptiste often acted as Charge Nurse. In contrast, the Acting Team Leader had responsibility for organizing and supervising clinics, scheduling duties, and for some financial matters. Ms. Cox's characterization of the temporary assignments as being akin to that of "Charge Nurse" is echoed in a memo she wrote to Personnel in June of 1996, advising that until Ms. Raketti took over as Acting Team Leader, the position would be filled each day by a staff member designated "in charge".

[162]Based upon Ms. Cox's description of the difference in responsibilities between the daily substitutes and the Acting Team Leader position, I am satisfied that the fact that Ms. Baptiste was allowed to act as a "Team Leader in Substitute" for two days in July of 1996 cannot be

construed as any kind of admission or recognition that Ms. Baptiste was competent to assume the Acting Team Leader position in January of 1997.

[163]The final point to be considered here is the Commission's submission that Gloria Baptiste was held to a different standard than other employees. In this regard, the Commission points to the fact that Donna Raketti was allowed to act as Team Leader even though she did not have a fully satisfactory - or any - written performance appraisal from CSC.

[164]With the greatest of respect, I think that this submission misses the point somewhat. The requirement was that Ms. Baptiste reach a fully satisfactory level of performance. A performance appraisal is one, but not the only, measure of performance. Donna Raketti was a relatively new employee, who had not yet undergone a formal performance appraisal. She was evidently performing well, however, in the NU-HOS-03 position, and did well in her interview with Shirley Cox. Ms. Cox had also observed Ms. Raketti handling medical crises, and was satisfied that she was able to do so in a thoroughly competent manner. There is no evidence of any complaints having been received with respect to any aspect of Ms. Raketti's performance, including her clinical judgment or her relations with co-workers and inmates. Further, Ms. Raketti had worked in nursing management for many years, had been responsible for supervising a 57 bed facility, and had thus demonstrated her ability to handle managerial responsibilities. In short, there is nothing to suggest that Ms. Raketti's performance as a NU-HOS-03 was anything other than fully satisfactory.

[165]In contrast, Ms. Baptiste had a long history of mediocre performance. A review of her appraisals, as well as the testimony of the various supervisors who have worked with Ms. Baptiste over the years, discloses the same recurring themes - a tendency to be rude and abrupt with inmates, difficulty in communicating with her co-workers, and a disturbing inability to recall or retain directions. In my view, based upon Ms. Baptiste's work history, it was entirely reasonable for Mr. Mills and others to have reservations about Ms. Baptiste's ability to assume greater responsibilities. I am not persuaded that Ms. Baptiste's race was a factor in the decision not to allow Ms. Baptiste to act as Team Leader in January of 1997.

(v) The Settlement of Ms. Baptiste's Grievance

[166]As previously noted, Ms. Baptiste grieved the denial of the Acting Team Leader position, as well as the disciplinary letter from Donna Raketti regarding her allegedly unauthorized departure from the workplace to attend the meeting with Mr. Mills on January 22. Mr. Mills was prepared to accept that there had been a genuine misunderstanding with respect to the location of the meeting between himself and Ms. Baptiste, and allowed her grievance in this regard, agreeing to remove Ms. Raketti's letter from Ms. Baptiste's personal file. With respect to Ms. Baptiste's allegation that she had been denied the opportunity to act as Team Leader as a result of racial bias, the grievance was denied by Mr. Mills. In his decision, Mr. Mills stated that Ms. Baptiste's name had been put on the list in error, and that he would not compound the error by putting some one who had only received satisfactory appraisals over the last four years in the acting position. In his testimony, Mr. Mills explained that he would not have put Ms. Baptiste's name on the list to act in the first place, given her marginal level of performance. He had been

content to go along with including Ms. Baptiste's name on the list, however, as long as her name was last, to give her the chance to reach the fully satisfactory level.

[167]Ms. Baptiste took her grievance to the next level. Before the grievance could be heard by the Deputy Commissioner, however, an agreement was reached between Ms. Baptiste and Mr. Mills, whereby Ms. Baptiste would be provided with a three month developmental opportunity. In exchange, Ms. Baptiste agreed to withdraw her grievance.

[168]There was some dispute in the evidence with respect to the precise terms of the agreement. Ms. Baptiste testified that she understood that she would be acting as a Team Leader herself, and would not be working with other Team Leaders. In contrast, Mr. Mills testified that Ms. Baptiste's union representative suggested that CSC provide Ms. Baptiste with an opportunity to work with a supervisor in order to gain experience, and that this was what was arranged for Ms. Baptiste.

[169]Ms. Baptiste's insistence that the agreement was that she was to work as a Team Leader must be viewed in light of Ms. Baptiste's own contemporaneous characterization of the arrangement. Ms. Baptiste wrote to Mr. Mills summarizing her understanding of the agreement. According to Ms. Baptiste's letter, Mr. Mills had proposed that Ms. Baptiste work for three months at Mission Institution, "working with Acting Team Leader, Nurse Dale". After a May 13 meeting with Mr. Mills and Ms. Greye, Ms. Baptiste states that the arrangement was modified so that she would work at Mission Institution for six weeks [implicitly working with the Acting Team Leader, Nurse Dale Shackleford], following which, she would work for a further six weeks at Kent Institution , "with Acting Team Leader, Nurse Debbie [Gaskell]."

[170]This arrangement was confirmed in a memo from Mr. Mills dated May 14, wherein he advises Ms. Baptiste that her role was to work closely with Mr. Shackleford and Ms. Gaskell to learn the role and responsibilities associated with a NU-HOS-04 position. In his May 22 third level decision regarding Ms. Baptiste's grievance, the Deputy Commissioner, Mr. P.H. de Vink, confirmed that Ms. Baptiste was to be given the opportunity to "work with other Team Leaders" for a period of three months.

C. Events After the Settlement of Ms. Baptiste's Grievance

[171]There was considerable discussion in the course of this hearing regarding the scope of Ms. Baptiste's complaint. As I understand the position of Ms. Baptiste and the Commission, the crux of their case relates to the appraisals of Ms. Baptiste's performance and the denial of the Acting Team Leader position. They are also relying upon the reorientation process Ms. Baptiste went through on her return to Matsqui Institution in September of 2000 as a source of liability under the *Act*. Although there was a considerable amount of evidence with respect to Ms. Baptiste's experiences in the workplace between January of 1997 and September of 2000, the Commission's position is that it is primarily relevant as further evidence of the environment within CSC. Although I have considered all of this evidence carefully, given the purpose for which it was adduced, I will deal with it somewhat more summarily.

(i) The 1996-1997 Performance Appraisal

[172]In April of 1997, Ms. Baptiste was appraised, this time by Donna Raketti and Kim Watkins, who had been responsible for supervising Ms. Baptiste during the appraisal period. This appraisal rates Ms. Baptiste's performance as satisfactory overall, but rates her performance as unsatisfactory in relation to her ability to work with other employees, the quality of her written work and whether she has the confidence of line management. Although some improvement is noted, Ms. Baptiste is still described as continuing to have problems with staff and offender contacts. Once again, the appraisal comments that Ms. Baptiste's performance will have to be fully satisfactory before she will be able to advance in her career.

[173]Ms. Baptiste refused to sign the performance appraisal.

[174]Ms. Baptiste states that she met with Donna Raketti to review the appraisal, at which time Ms. Baptiste advised Ms. Raketti that she felt that she should be rated as fully satisfactory. According to Ms. Baptiste, Ms. Raketti said that she would discuss the matter with Ms. Watkins, and that they would make the changes requested by Ms. Baptiste. When no changes were made, Ms. Baptiste wrote to Mr. Mills, complaining about the unfairness of the appraisal. Once again, Ms. Baptiste's complaint is that the appraisal was done by employees that she says were in competition with her. According to Ms. Baptiste, the appraisal was designed to eliminate her from competition. Because Ms. Baptiste refused to sign the appraisal, it was sent to a Review Committee for consideration. Ms. Baptiste took no part in the Review Committee process, testifying that she was unaware that it was going on.

[175]Donna Raketti and Kim Watkins testified that they both met with Gloria Baptiste in order to discuss the appraisal. Both are of the view that the appraisal fairly reflects Ms. Baptiste's performance during the period in question, and both deny ever telling Ms. Baptiste that the appraisal would be changed.

[176]I reject Ms. Baptiste's testimony regarding this performance appraisal in its entirety. Ms. Baptiste would have me believe that Ms. Raketti agreed to change Ms. Baptiste's rating to fully satisfactory after meeting with Ms. Baptiste. Not only do both Donna Raketti and Kim Watkins deny that Ms. Raketti ever agreed to make this change, Ms. Baptiste herself makes no mention of this 'agreement' in her subsequent letter of complaint that she sent to Mr. Mills regarding the appraisal. I also reject her claim that she did not provide any information regarding her concerns to the Review Committee as she had no knowledge of the Review Committee process. Several memos and letters were sent to Ms. Baptiste, advising her of the process and her right to provide the Committee with information supporting her position. Marie Dunn sent one memo to Ms. Baptiste at work. A couple of months later, Ms. Dunn sent a letter to Ms. Baptiste's legal representative, seeking Ms. Baptiste's input. Ms. Baptiste's counsel had previously advised that Ms. Baptiste would be responding to the appraisal, however no response was ever received by CSC. Marie Dunn then sent a letter by ordinary mail to Ms. Baptiste's home, and a second copy by electronic mail to Ms. Baptiste at work. I do not believe Ms. Baptiste when she says that she did not receive any of the correspondence addressed to her. Further, Ms. Baptiste had previously been involved in the Review Committee process, and was thus well aware of this process as a possible avenue of redress.

[177]I am also not persuaded that Ms. Baptiste's race played any role in the way in which Ms. Raketti and Ms. Watkins assessed Ms. Baptiste's performance. It is worth noting that the only concern that Ms. Baptiste herself raised with respect to this appraisal was her objection to having her work evaluated by those that she perceived to be in competition with her. In my view, this is not an unreasonable concern, although once again, I note that a performance appraisal negatively influenced by self-interest on the part of the appraiser does not contravene the *Act*.

[178]The potential for at least a perception of non-racial bias is exacerbated in this case, given that by the time Ms. Raketti was evaluating Ms. Baptiste's performance in April of 1997, Ms. Baptiste had launched her appeal against the appointment of Ms. Raketti to the Acting Team Leader position.⁽¹²⁾ Not only did this state of affairs create a reasonable apprehension of bias in Ms. Baptiste's mind: It also placed Ms. Raketti in a very difficult position.

[179]The Review Committee asked Ms. Raketti and Ms. Watkins to provide the Committee with specific examples to support the ratings assigned to Ms. Baptiste. Numerous specific examples were provided, at least one of which discloses an apparently serious error on the part of Ms. Baptiste.⁽¹³⁾ I do not intend to review these examples, but note that I am satisfied that the performance appraisal fairly reflected Ms. Baptiste's performance. Much was made of the fact that the examples cited by Ms. Raketti and Ms. Watkins occurred after the period covered by the appraisal. According to Marie Dunn, however, this is permissible, although it could affect the weight that would be ascribed to the examples by the Review Committee.

[180]The Review Committee confirmed the appraisal as written.

(ii) Ms. Baptiste's Experience at Mission and Kent Institutions

[181]It is common ground that Ms. Baptiste's time at these institutions was very unsatisfactory for all concerned. Neither Dale Shackleford nor Debra Gaskell were consulted before the agreement was reached with Ms. Baptiste, and both were somewhat taken aback to have Ms. Baptiste suddenly thrust upon them. Both testified they were short-staffed, and were concerned about the time that they would have to devote to Ms. Baptiste. Notwithstanding their concerns, both stated that they endeavoured to provide Ms. Baptiste with a positive learning experience. Despite their best efforts, however, both testified that Gloria Baptiste asked few questions, was reluctant to make decisions, and showed little interest in learning about the NU-HOS-04 position. Because of the staff shortage, the Acting Team Leaders were required to perform clinical functions. Ms. Baptiste was evidently unwilling to assist in this regard, being of the view that clinical tasks were not properly the responsibility of supervisors. This evidently caused resentment from her co-workers. Mr. Shackleford and Ms. Gaskell shared the view that Ms. Baptiste showed little initiative, and was not viewed as a team player. Although Dale Shackleford felt that Ms. Baptiste's nursing assessment skills were satisfactory, both Mr. Shackleford and Ms. Gaskell expressed serious concerns with respect to her interpersonal and communications skills.

[182]Mr. Mills asked both Mr. Shackleford and Ms. Gaskell to provide him with feedback regarding Ms. Baptiste's experience. Ms. Baptiste alleges that both Mr. Shackleford and Ms. Gaskell were 'competing co-workers' and that their feedback regarding her performance was

negatively affected as a result. I am not persuaded that this is the case, and note once again that even if Ms. Baptiste's allegation that these assessments were affected by self-interest on the part of either Dale Shackelford or Debra Gaskell were true, this would not contravene the *Canadian Human Rights Act*.

[183]Although the Commission is not contending that Ms. Baptiste's race played any role in the structure of the assignments at Mission and Kent, it was suggested that I should consider the testimony of Mr. Shackelford in light of his alleged use of the term 'black bitch' in relation to Gloria Baptiste. Jasmine MacKay testified that one day, after hanging up the telephone, Kim Watkins turned to her and said that Dale Shackelford had asked Ms. Watkins why they had sent the 'black bitch' to Mission. Both Mr. Shackelford and Ms. Watkins deny that any such comment was ever made. Ms. Watkins also testified that even if Mr. Shackelford had made the comment attributed to him, she would never have told Ms. MacKay, who was herself a member of a visible minority. In this regard, I prefer the evidence of Mr. Shackelford, and even more so, the testimony of Kim Watkins, to that of Ms. MacKay. Ms. MacKay never claimed to have heard the comment herself, but relied on a purported second-hand report from Kim Watkins. Ms. Watkins is no longer employed by CSC, and is clearly no friend of the organization. There is no allegation of any misconduct of Ms. Watkins' part, and no reason for her to deny the comment, if it was made. I also accept Ms. Watkins' statement that she would never have passed such a comment on to Ms. MacKay, given her own visible minority status.

[184]I agree with counsel for the Commission that the arrangements for Ms. Baptiste's assignments at Mission and Kent Institutions were poorly thought out, and perhaps doomed to failure. It should be noted, however, that the Commission is not contending that Ms. Baptiste's race played any role in the structure of the assignments at Mission and Kent. Rather, the Commission says that the inadequacy of the experience provided to Ms. Baptiste at these institutions is relevant with respect to the issue of remedy.

(iii) The NU-HOS-05 Competition

[185]In anticipation of Sharon Greye's retirement from CSC, a competition was held in the Summer of 1997 for the position of Chief of Health Services. This was a NU-HOS-05 position, and required experience in planning, implementing and evaluating clinical programs, as well as in the supervision of nursing units, and the management of financial resources, projects and contracts. Ms. Baptiste applied for the job, but was screened out of the competition as she did not have the necessary managerial experience.

[186]The Commission does not suggest that there was anything untoward with this competition. Rather, the Commission contends that having been wrongfully deprived of the opportunity to act as a Team Leader in January of 1997, Ms. Baptiste lost the opportunity to compete for this position, and that this is a matter I should consider in relation to remedy. As previously noted, I am not satisfied that Ms. Baptiste's race was a factor in the decision to deny her the opportunity to act as a Team Leader.

[187]Ms. Baptiste appealed the results of this competition, alleging that she had been screened out of the competition as a result of systemic racial bias excluding blacks from management in

CSC Pacific Region. In December of 1998, the Public Service Commission Appeal Board declined to consider the denial of the Acting Team Leader position in the context of this appeal, as that matter had been the subject of a separate appeal by Ms. Baptiste, which had been dismissed. ⁽¹⁴⁾ As a consequence, the Appeal Board did not examine Ms. Baptiste's allegation of systemic racial discrimination.

[188]Insofar as the decision to screen Ms. Baptiste out of the competition for the NU-HOS-05 position was concerned, the Appeal Board found that it was not enough for Ms. Baptiste to claim that she had the requisite level of experience in her application; it was incumbent on her to demonstrate to the Selection Board that she met the experience qualification. The Appeal Board concluded that, on the evidence before it, it was reasonable for the Selection Board to conclude that Ms. Baptiste did not have experience in the area of planning, implementing or evaluating clinical programs or in the management of financial resources, projects and contracts. Similarly, the Appeal Board found that it was reasonable for the Selection Board to conclude that Ms. Baptiste's experience as a Charge Nurse did not constitute experience in supervising a nursing staff. Ms. Baptiste's appeal was accordingly dismissed.

[189]Linda Dean won this competition, and took over as Chief of Health Services in January of 1998.

(iv) The NU-HOS-04 Competition

[190]In December of 1997, CSC ran a competition for a permanent Team Leader. Ms. Baptiste applied for the job, and was screened into the competition, having been found to have met the basic qualifications for the position. Ms. Baptiste then wrote an examination, but failed the knowledge component of the test. Once again, Ms. Baptiste unsuccessfully appealed the results of the competition to the Public Service Commission Appeal Board.

[191]It is unclear whether Ms. Baptiste is alleging that this competition was tainted in any way by racial bias. In any event, there is insufficient evidence before me to make any such finding.

(v) The Abortive Disciplinary Inquiry

[192]In the first several months of 1998, a number of inmate and staff complaints were received concerning Ms. Baptiste's conduct. Although several individuals, including Shirley Cox and Linda Dean recalled discussion these complaints with Gloria Baptiste, Ms. Baptiste says that she has no knowledge of the complaints.

[193]Three more complaints regarding Ms. Baptiste's conduct were received by CSC in rapid succession during a two week period in late June and early July of 1998. One incident involved an altercation that occurred while Ms. Baptiste was assisting in bathing an inmate (the 'bathing incident'); the second was the allegation that Ms. Baptiste had referred to her peers as "fucking bitches"; and the third related to the way in which Ms. Baptiste managed a confrontation with an inmate in the dispensing area of the hospital (known as the 'medi-wicket'). Mr. Mills testified that any one of the complaints, when taken in isolation, would have been dealt with by having Ms. Baptiste's supervisor meet with her in order to discuss the allegations. In this case, however,

given that three complaints, all relating to Ms. Baptiste's professionalism, were received in such a short space of time, Mr. Mills decided to hold a disciplinary inquiry in order to ascertain what was going on.

[194]Before the disciplinary inquiry could get under way, however, Mr. Mills was contacted by Paul Winn, who was Ms. Baptiste's lawyer. Mr. Winn expressed serious concerns regarding the poisonous atmosphere within Matsqui Institution that he said was contributing to Ms. Baptiste's problems at work, and suggested to Mr. Mills that it should be investigated. Mr. Mills accepted Mr. Winn's suggestion, and nothing further happened with respect to the disciplinary inquiry into the complaints regarding Ms. Baptiste.

(vi) Theresa Killam's Investigation and Report and Jamie Millar-Dixon's Involvement

[195]As a result of Mr. Winn's call, in October of 1998, Mr. Mills retained Theresa Killam to investigate the atmosphere within the nursing unit at Matsqui Institution. Ms. Killam is a Registered Nurse, as well as a Registered Psychiatric Nurse, and had experience in Corrections, having previously worked at the Correctional Centre for Women in Burnaby.

[196]Although there is evidently a protocol in place within CSC for the conduct of investigations, this was not provided to Ms. Killam. Rather, Mr. Mills simply asked Ms. Killam to interview all of the staff at the Matsqui Institution Health Centre regarding "their impressions, personal experiences, and concerns within the Centre, specifically as it refers to any racial innuendoes or comments".

[197]In preparation for the investigation Ms. Killam met with Linda Dean, who had replaced Sharon Greye as Chief of Health Services. According to Ms. Killam, Ms. Dean was concerned about the problems in the Health Centre, and appeared eager to approach Ms. Killam's investigation in a constructive manner. Ms. Killam interviewed the staff in the Health Centre, including Ms. Baptiste, and submitted a written report to Mr. Mills on March 12, 1999.

[198]I do not intend to review the contents of Ms. Killam's report in detail. The report consists primarily of a narrative description of what each nurse told Ms. Killam. Information from Ms. Baptiste, as well as that received from Eva Sabir and Jasmine MacKay (which tends to support Ms. Baptiste's position), is segregated into separate sections. The views of nine other nurses, which describe the problems they have encountered in their dealings with Ms. Baptiste, are consolidated into another section. Most of the people who were interviewed by Ms. Killam testified in this proceeding, and repeated what they told Ms. Killam. Their testimony is the 'best evidence' and has already been considered earlier in this decision.

[199]What is important is the nature of Ms. Killam's conclusions, and what CSC did with her report. Ms. Killam noted that her investigation raised significant issues with respect to the behaviour of professional staff at Matsqui Institution. She described the situation as 'volatile, destructive and dangerous'. Ms. Killam noted that "several highly charged, destructive and dangerous signals are evident", pointing to Jasmine MacKay's statement that Ms. Baptiste had told Ms. MacKay that she "felt like stabbing everyone on duty in the heart with a knife".⁽¹⁵⁾

[200]Ms. Killam also notes concerns with respect to Ms. Baptiste's safety around inmates. Ms. Killam indicated that, in her view, Ms. Baptiste should be afforded professional help, observing that it appeared that most of Ms. Baptiste's allegedly unacceptable behaviour occurred after the bathing incident in the summer of 1997.⁽¹⁶⁾ Ms. Killam concluded by noting that staff at the Health Centre appeared 'non-professional, racially biased, cruel, and, at times, frustrated'. Ms. Killam points to the use of terms such as 'black bitch' by staff to support her conclusion that the staff was racially biased. The unwillingness of staff to work with Ms. Baptiste is cited as an example of the cruelty of the staff.

[201]Ms. Killam felt that Ms. Baptiste was fighting a losing battle at Matsqui Institution, and that she should "accept professional help, accept a transfer and move on". Ms. Killam also noted that Ms. Baptiste seemed to be 'in denial' with respect to the concerns of inmates and other staff. Ms. Killam recommended that daily team conferences be held to avoid further conflicts, and improve communication, and that 'sensitivity and cultural diversity training should be initiated in order to eliminate stereotypes and enhance a respectful work environment'. Ms. Killam also recommended that the Chief of Health Services institute an 'open door policy' and be pro-active in working through disputes. Finally, Ms. Killam reiterated her recommendation that Ms. Baptiste be reassigned to another area.

[202]Mr. Mills testified that he was shocked and somewhat confused when he received Ms. Killam's report, as he had never been made aware of any problems of the type she described. Mr. Mills shared the report with Linda Dean and Shirley Cox, both of whom were equally surprised at the findings. It does not appear that any one else within the Health Centre at Matsqui Institution was made aware of Ms. Killam's findings.

[203]By the time that Mr. Mills received Ms. Killam's report, Ms. Baptiste was no longer working at Matsqui, for reasons that will be explained in the next section of this decision. It was therefore not necessary to address Ms. Killam's recommendation that Ms. Baptiste be reassigned. Mr. Mills felt that quick action was required in relation to the other issues raised by the report, and contacted the CSC Regional Harassment Co-ordinator for advice. Mr. Mills then retained the services of Jamie Millar-Dixon, a consultant who had been recommended to him by the Harassment Co-ordinator. Mr. Mills and Ms. Dean then met with Ms. Millar-Dixon. Ms. Millar-Dixon recommended a programme which she said would address the concerns that had been identified by Ms. Killam, and was retained to deliver the programme.

[204]Mr. Mills retired from CSC in June of 1999, and was not involved in the delivery of Ms. Millar-Dixon's program. On August 12, 1999, Linda Dean advised the Health Services staff that issues had been raised by employees regarding the work environment, although she did not identify what these issues were. Ms. Dean indicated that Jamie Millar-Dixon would be coming to Matsqui Institution for 'an important initiative to ensure that employees have access to a healthy and respectful work environment, free from behaviours which could be interpreted as harassment or discrimination'. Ms. Dean also advised the staff that they would be given the opportunity to identify any issues, questions or concerns that they may have with respect to workplace harassment.

[205]Although I accept Mr. Mills' testimony that Ms. Millar-Dixon was hired as a response to the findings of the Killam report, it does not appear that the staff understood why she was there. Most of the nurses who testified recalled meeting with Ms. Millar-Dixon, but thought that she was there to deal with morale problems relating to difficulties with a manager. Most of the staff had no idea that Ms. Millar-Dixon was there to deal with concerns regarding racism in the workplace. This is perhaps not surprising, given that most of the staff were unaware that any such problem had been identified by Ms. Killam.

[206]Ms. Millar-Dixon met with Health Services staff in August and September of 1999, and on October 5, 1999, she reported to Shirley Cox⁽¹⁷⁾ with respect to the 'Work Enhancement initiative' at Matsqui Institution. In her report, Ms. Millar-Dixon notes that the objective of this initiative was to ensure that the working environment "is healthy, respectful, welcoming and rewarding ...". Ms. Millar-Dixon's report also noted that the extent to which workplace harassment was an issue was specifically targeted for review. Ms. Millar-Dixon made a number of recommendations in her report. According to Shirley Cox, responsibility for implementing Ms. Millar-Dixon's recommendation rested with John Sawatsky, who had succeeded Mr. Mills as Executive Director of the Regional Health Centre. Mr. Sawatsky did not testify. There is, however, some suggestion in the evidence that staff training in "Diversity in the Workplace" issues was provided.⁽¹⁸⁾

[207]The Commission contends that the Killam report was effectively buried, and that this is further evidence of an unwillingness to address the problem of racism in the workplace in a meaningful fashion. I agree with the Commission that CSC's response to the findings of the Killam report was less than ideal. It is indeed difficult to understand how staff members could have been expected to work towards the elimination of a problem if they were not made aware that the problem existed. While I have accepted Mr. Mills' testimony that Jamie Millar-Dixon was retained to assist in addressing the problems identified by Ms. Killam, once again, this does not appear to have been communicated to Health Services staff in any meaningful way.

[208]That said, I am not prepared to make the leap that the Commission asks of me, and to conclude that the shortcomings in CSC's response to the Killam Report in 1999 suggest that racism was a factor in the treatment that Ms. Baptiste encountered in the workplace in the period leading up to the denial of the Acting Team Leader position in January of 1997, or in relation to the reorientation provided to Ms. Baptiste in the Fall of 2000. Sharon Greye, whom Ms. Baptiste has identified as the source of many of her problems, had no involvement in anything to do with Theresa Killam's investigation or the response to her report. Similarly, none of the individuals who Ms. Baptiste has identified as 'competing co-workers' had any role in how the Killam report was dealt with. John Sawatsky, who was evidently responsible for implementing Ms. Millar-Dixon's recommendations, does not appear to have had any prior involvement in any of the matters giving rise to Ms. Baptiste's complaint. I am also satisfied that Mr. Mills, who was one of the very few CSC employees that Ms. Baptiste did not accuse of being racially biased against her, was genuinely horrified at Ms. Killam's findings. I find that he acted in good faith in seeking out the assistance of the Regional Harassment Co-ordinator, and retaining Jamie Millar-Dixon to assist in addressing the concerns that had been identified by Ms. Killam. Mr. Mills then retired from CSC in June of 1999, and had virtually no involvement in how Ms. Millar-Dixon carried out her mandate.

(vii) The Unexplained Deaths at Matsqui Institution

[209]In January of 1998, an inmate died in the hospital at Matsqui Institution. A Coroner's Inquest was called to investigate the man's death. Before the inquest could begin, a local activist wrote a letter to the Coroner in Abbotsford, advising that inmates had reported suspicious behaviour regarding the care of the deceased inmate in the hour immediately before his death. On November 5 of the same year, a second inmate died. While investigating the death of the second inmate, the Coroner's office realized that Ms. Baptiste was on duty at the time of both inmates' deaths, and decided to conduct an autopsy of the body of the second inmate. In January of 1999, the Coroner's office received the results of toxicology tests conducted with respect to the second inmate, which disclosed an unusually high level of morphine in the inmate's blood. The Coroner decided to convene an inquiry into the second death, and the Abbotsford police were brought in to investigate.

[210]According to Mr. Mills, rumours were swirling around Matsqui Institution, associating Ms. Baptiste with the inmate deaths. This created a serious concern for Ms. Baptiste's safety. Mr. Mills was also very concerned about Ms. Baptiste's emotional well-being. Mr. Mills, Shirley Cox and Linda Dean met with Ms. Baptiste in early February of 1999, at which time Mr. Mills offered Ms. Baptiste a temporary transfer out of Matsqui Institution. Ms. Baptiste refused this offer. Mr. Mills determined that Ms. Baptiste was under considerable stress, and that it was in her best interests that she be removed from the Institution. Accordingly, he reassigned Ms. Baptiste to work at the Regional Health Centre. Mr. Mills also referred Ms. Baptiste to the Employee Assistance programs run by CSC and the Registered Nurses' Association of British Columbia.

[211]Ms. Baptiste and the Commission take different positions with respect to her removal from Matsqui Institution. The Commission does not dispute the appropriateness of Mr. Mills' decision to remove Ms. Baptiste, whereas Ms. Baptiste alleges that she was moved in retaliation for her having filed her complaint with the Canadian Human Rights Commission. In support of her allegation, Ms. Baptiste points to the fact that no other nurse was moved during the investigation. Further, Ms. Baptiste denies that she was under any stress at this time.

[212]In my view, Mr. Mills' decision to move Ms. Baptiste was eminently reasonable. The allegation that Ms. Baptiste may have been responsible for the deaths of two inmates would undoubtedly have raised serious concerns with respect to Ms. Baptiste's safety in the institution. Ms. Baptiste's contention that no other nurse was subject to this treatment is disingenuous. As I understand the evidence, no other nurse was suspected of having killed inmates. Finally, Ms. Baptiste's testimony that she was not under any stress, despite having been implicated in two deaths, is simply not credible.

[213]Ms. Baptiste did not report to work at the Regional Health Centre on February 8, 1999, as Mr. Mills had directed, but was off of work for a number of weeks on sick leave. Ms. Baptiste did eventually report to the Regional Health Centre, where she worked as a NU-HOS-02 psychiatric nurse. Ms. Baptiste continued to be paid at the NU-HOS-03 level. After working as a psychiatric nurse for a brief period, Ms. Baptiste testified that she was assigned to work on a

special project under the supervision of Shirley Cox. Ms. Baptiste worked at the Regional Health Centre until September of 2000, when she returned to Matsqui Institution.

[214]Although the Commission does not dispute the appropriateness of Mr. Mills' decision to remove Ms. Baptiste, it does have concerns with respect to the alternate work provided to her at the Regional Health Centre. The Commission points to Ms. Baptiste's testimony that she found it demeaning to be working at the NU-HOS-02 level, and says that the nature of the alternate duties assigned to Ms. Baptiste shows an ongoing lack of respect for Gloria Baptiste, and suggests that CSC's motives may not have been altogether pure.

[215]I am not persuaded that there was anything untoward in Ms. Baptiste being assigned to a NU-HOS-02 position at the Regional Health Centre. Mr. Mills was obviously confronted with an extraordinary situation, and some alternate arrangement had to be made. Although the NU-HOS-02 position is a lower level position than the NU-HOS-03 position that Ms. Baptiste ordinarily occupied, I am not at all convinced that the work was demeaning. In this regard, it should be recalled that in 1994, Ms. Baptiste had actively pursued the opportunity to work as a NU-HOS-02 nurse at the Regional Psychiatric Centre (as the Regional Health Centre was then known). In the course of her cross-examination concerning that developmental opportunity, Ms. Baptiste indicated that, in her view, there was little difference between the responsibilities associated with a NU-HOS-02 nurse and those associated with a NU-HOS-03 position. Further, Ms. Baptiste continued to be paid as a NU-HOS-03 nurse throughout the time that she was away from Matsqui.

(viii) The Reorientation of Gloria Baptiste into Matsqui Institution

[216]Ms. Baptiste was away from Matsqui Institution for some two and a half years. During this time, the suspicious inmate deaths at the prison and Ms. Baptiste herself were the focus of considerable media attention. An article appeared in a local paper that referred to Ms. Baptiste as an "Angel of Death", and the CBC television program "The Fifth Estate" evidently did a program on the situation at Matsqui Institution. Ultimately, the police completed their investigation. Although no explanation was provided to me as to how the second inmate came to have a high level of morphine in his blood, I was advised that there is currently no suggestion that Ms. Baptiste was in any way to blame for the death of either inmate.

[217]In September of 2000, Ms. Baptiste returned to work at Matsqui Institution. Before she arrived, Mr. Sawatsky met with the Health Services staff to advise them of Ms. Baptiste's impending return. During the course of this meeting the staff were advised that Ms. Baptiste was to be treated with respect, and that the use of racially derogatory language or profanity would not be tolerated.

[218]From September 5 to October 25, Ms. Baptiste was subject to a reorientation program. Ms. Baptiste says that no other employee was subject to such a rigorous reorientation, and that this is a further example of race-based differential treatment.

[219]Shirley Cox was the Professional Practice Director for the Pacific Region at this time, and as such was involved in the reintegration of Ms. Baptiste into Matsqui Institution, where she was

to be supervised by Linda Dean. According to Ms. Cox, Ms. Dean sought her advice regarding the reorientation of Ms. Baptiste. Ms. Cox testified that she had never had anyone else return to a workplace, after having left in the circumstances that surrounded Ms. Baptiste's 1999 departure from Matsqui Institution. Ms. Baptiste had been away from the clinical setting for a considerable time. Further, there were ongoing concerns about Ms. Baptiste's safety. As a result, Ms. Cox sought the guidance of the Registered Nurses' Association with respect to how Ms. Baptiste's return to work should be handled. Ms. Cox stated that the Association provided her with principles that she should follow, and that she used these principles to develop a reorientation plan for Ms. Baptiste. Ms. Cox testified that her goal was to provide a smooth reintegration, not only for Ms. Baptiste, but for the staff that would be working with her. Ms. Cox explained that "considering the turmoil that had occurred over the piece of time, I felt that everybody needed to have some time for healing...".

[220]Shirley Cox stated that she had been pushing for a more sophisticated orientation plan for some time, and to that end had been working on the development of an orientation manual for approximately two years. Gloria Baptiste was the first employee to whom the new orientation program had been applied. According to Ms. Cox, a similar reorientation plan should have been used for subsequent new and returning employees at Matsqui Institution.

[221]Linda Dean confirmed the involvement of the Registered Nurses' Association in the development of the reorientation plan for Gloria Baptiste. According to Ms. Dean, Jamie Millar-Dixon was also involved in managing Ms. Baptiste's reintegration. Ms. Baptiste confirms Ms. Millar-Dixon's involvement in discussions regarding her return to Matsqui Institution.

[222]Ms. Dean testified that she met weekly with Ms. Baptiste during the reorientation period. Near the end of the reorientation, Ms. Baptiste expressed the view that the reorientation may have gone on too long. According to Ms. Dean, this was the first time that Ms. Baptiste expressed any concern with respect to the length of the reorientation, although Ms. Baptiste says that she complained earlier about the length of the program. Ms. Dean agrees that, in retrospect, the reorientation may well have gone on for too long.

[223]There was little evidence with respect to the orientation or reorientation of other employees. Pierre Bell testified that when he returned to work in May of 1999, after a ten month absence, he did not have to go through any form of reorientation. Mr. Bell did not recall any one else going through an eight or nine week orientation program. Ms. Sabir recalled an employee coming back from a one year sabbatical having to undergo a two or three week reorientation. It is not clear when this occurred. Dale Shackleford recalled having spent two or three weeks orienting NU-HOS-03 nurses. Linda Dean testified that an employee named Micki Huisman returned to Matsqui Institution in March of 2001, and underwent a two week reorientation. According to Ms. Dean, Ms. Huisman works the day shift in an area where a supervisor is always present. Esther Neilson mentioned that a new staff member was undergoing an orientation as Ms. Neilson was testifying, and that the orientation had been going on for a long time - some three or four weeks to that point, and was still ongoing.

[224]I am not persuaded that Ms. Baptiste's race was a factor in the reorientation program she was subjected to on her return to Matsqui Institution in the Fall of 2000. I accept Ms. Cox's

testimony that the need for a more sophisticated orientation system had been identified long before Ms. Baptiste was scheduled to return to Matsqui Institution. Indeed, Ms. Millar-Dixon's October, 1999 report identified inconsistencies in employee orientation as a source of concern. While Ms. Millar-Dixon's comments were addressed specifically to new employees, it is noteworthy that she recommended the introduction of a three month orientation period. Ms. Cox's evidence that Ms. Baptiste was reoriented in accordance with a new program is also corroborated by the contemporaneous documentation regarding Ms. Baptiste's reorientation, which mentions a new orientation manual, as well as a new orientation video.

[225]Ms. Baptiste's reorientation period lasted seven weeks and one day. While this does seem a long time for an experienced CSC employee, I am of the view that it was primarily the extraordinary circumstances surrounding Ms. Baptiste's removal from Matsqui Institution that led Shirley Cox and Linda Dean to devise a program of this duration. Other factors influencing this decision undoubtedly included the length of time that Ms. Baptiste had been away from clinical work, and the ongoing concerns with respect to the quality of her performance. In this regard, it is noteworthy that the Registered Nurses' Association was consulted with respect to the design of the program. I do not think that the fact that Ms. Baptiste is black had anything to do with Ms. Cox and Ms. Dean's decision. Indeed, the fact that Jamie Millar-Dixon was brought in to the process suggests that CSC was endeavouring to deal with the reintegration of Ms. Baptiste into Matsqui Institution in a sensitive manner.

[226]My conclusion the Gloria Baptiste's race was not a factor in the reorientation is not affected by the evidence regarding the length of the orientation provided to other employees. Pierre Bell's experience on his return to work took place before the new reorientation program was introduced, and is thus irrelevant. Insofar as the orientation of other employees after September of 2000 is concerned, it must be recalled that Ms. Baptiste was the first employee to go through the new orientation program, in unique circumstances, and that the program provided to her appears to have been something of an experiment. Ms. Dean acknowledged quite candidly that, with the benefit of hindsight, a seven week program was simply too long. In light of Ms. Dean's testimony, therefore, it is not surprising that modifications were made, and the program shortened.

V. CONCLUSION ON LIABILITY

[227]Racism can be conscious or overt, or can operate on a more insidious, unconscious level. Indeed, racist stereotyping and attitudes can influence an individual's actions without the individual ever being consciously aware of the fact. While I cannot rule out the *possibility* that some of the actions of individuals within CSC were tainted by racism, on all of the evidence and for the reasons set out in this decision, I do not think it *probable* that racism was a factor in the treatment encountered by Gloria Baptiste in relation to the matters that are the subject matter of her complaint.

[228]It is clear Gloria Baptiste was actively disliked by many of her co-workers and supervisors. Four weeks of hearings disclosed many reasons for this antipathy that have absolutely nothing to do with the colour of Ms. Baptiste's skin.

[229]It is true that this antipathy often manifested itself through the use of racially derogatory epithets by Ms. Baptiste's co-workers, and on at least two occasions, by one of her supervisors. My conclusion that this complaint must be dismissed should in no way be taken as a condonation of this conduct. Abuse from inmates is an unfortunate incident of working in the penal system. Although the use of racially derogatory language by inmates should be actively discouraged, it may never be completely eliminated. However, even though Gloria Baptiste herself was largely unaware of it, the evidence regarding the regular use of racially derogatory epithets by CSC staff in this case is very disturbing. While a federal penitentiary is undoubtedly a rough work environment, these nurses are well-educated, professional people. They should know better.

[230]Although it is by no means clear that CSC management was aware of the extent of the problem with respect to staff behaviour before the receipt of the Killam report, it is aware now. This conduct is disgraceful, and should not be tolerated in the future.

VI. ORDER

[231] For the foregoing reasons, this complaint is dismissed.

Anne L. Mactavish, Chairperson

OTTAWA, Ontario

November 6, 2001

CANADIAN HUMAN RIGHTS TRIBUNAL COUNSEL OF RECORD

TRIBUNAL FILE NO.: T590/4800

STYLE OF CAUSE: Gloria Baptiste v. Correctional Service Canada

PLACE OF HEARING: Abbotsford, British Columbia

(April 17-20, 2001; April 23-26, 2001;

August 27-31, 2001; September 10-13, 2001)

DECISION OF THE TRIBUNAL DATED: November 6, 2001

APPEARANCES:

Gloria Baptiste On her own behalf

Salim Fakirani, Harvey Groberman, Q.C. and Eddie Taylor For the Canadian Human Rights Commission

Simon Fothergill For Correctional Service Canada

1. *Ontario Human Rights Commission v. Etobicoke*, [1982] 1 S.C.R. 202 at 208 and *Ontario Human Rights Commission and O'Malley v. Simpson Sears Limited*, [1985] 2 S.C.R. 536 at 558

2. *Israeli v. Canadian Human Rights Commission*, 4 C.H.R.R. D/1616 at p. 1617 (aff'd 5 C.H.R.R. D/2147 (Rev. Trib.))

3. *O'Malley*, supra, p. 558

4. *Singh v. Statistics Canada*, [1998] C.H.R.D. No. 7, aff'd [2000] F.C.J. No. 417 (T.D.), and *Dhanjal v. Air Canada*, [1997] F.C.J. No. 1599, (1997) 139 F.T.R. 37

5. *Israeli*, supra., and *Basi v. Canadian National Railway Company*, (1988), 9 C.H.R.R. D/5029 (C.H.R.T.)

6. *Basi*, supra, at p. D/5038

7. B. Vizkelety, Proving Discrimination in Canada, (Toronto), Carswell, 1987 at p. 142

8. *Holden v. Canadian National Railway* (1990), 14 C.H.R.R. D/12 (F.C.A.)

9. Both Ms. Sabir and Ms. MacKay started working at Matsqui Institution in 1996. Sharon Greye retired from CSC in August of 1997.

10. It should be noted that while Sharon Greye testified that she only used the term 'black bitch' on the one occasion, she did not have the opportunity of addressing the incident described by Pierre Bell. Mr. Bell testified after Ms. Greye, and the incident that he described was never put to Ms. Greye for comment.

11. Given the position taken by the Commission and Ms. Baptiste in this case, however, it is reasonable to assume that any consultation by Mr. Mills with Ms. Raketti (or any of the other individuals who had acted as Team Leaders) would have resulted in the argument that competing co-workers were improperly involved in the decision to deny Ms. Baptiste the opportunity to act as Team Leader.

12. According to the decision of the Public Service Commission Appeal Board, Ms. Baptiste's appeal was filed on March 25, 1997. Ms. Raketti signed Ms. Baptiste's appraisal on April 14, 1997.

13. On February 27, 1997 Ms. Baptiste is alleged to have administered morphine to patient intravenously, rather than subcutaneously. There is some suggestion that this may have hastened the death of the patient. When the issue was raised with Ms. Baptiste, it appears that she went back and changed the patient's chart to indicate that the morphine had been administered subcutaneously. Ultimately it is unclear whether the morphine had been administered correctly, and charted incorrectly, or whether it had been administered incorrectly. Even if Ms. Baptiste had administered the drug correctly, however, there is still a concern about Ms. Baptiste changing the chart after the fact. Ms. Baptiste herself acknowledged that changing a chart after the fact would be contrary to accepted nursing standards. However, after being provided with the contemporaneous documentation, including the patient's chart, Ms. Baptiste denied that any of this ever happened.

14. In its September 29, 1997 decision, the Public Service Appeal Board declined to deal with Ms. Baptiste's appeal with respect to the acting appointment of Donna Raketti, as it had been brought out of time.

15. It should be noted that Gloria Baptiste denies ever making this statement. Ms. MacKay did not address it in her testimony, and I make no finding in this regard.

16. In this regard, it should be noted that no one other than Eva Sabir reported noticing any change in Ms. Baptiste's behaviour after this incident. Ms. Baptiste herself denies that her behaviour changed in any way as a result of the altercation with the inmate.

17. By this point, Shirley Cox had assumed the role of Professional Practice Director for the Pacific region. As Professional Practice Director, Ms. Cox provided consultative and practice advice to the senior administration of the Pacific region.

18. See the August 25, 1999 letter from P.H. de Vink to Gloria Baptise, Ex. R-2, Tab 92.