

CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES DROITS DE LA  
PERSONNE  
MICHELLE DAWSON

**Complainant**

- and -  
CANADIAN HUMAN RIGHTS COMMISSION

**Commission**

- and -  
CANADA POST CORPORATION

**Respondent**

**REASONS FOR DECISION**

MEMBER: Pierre Deschamps 2008 CHRT 41  
2008/10/03

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## I. INTRODUCTION

[1] Ms. Dawson is an autistic person. On August 9, 2002, she filed a human rights complaint with the *Canadian Human Rights Commission* against the Respondent. This complaint was the second complaint filed by Ms. Dawson against the Respondent. The record shows that, with respect to her first complaint, a settlement between the Respondent and the Complainant was reached on August 16, 2001. The record also shows that the implementation of the settlement gave rise to a lot of aggravation on the part of Ms. Dawson who felt that the settlement was not being respected by the Respondent, that in fact it was being violated.

[2] In her complaint, dated August 9, 2002, Ms. Dawson alleges that the Respondent discriminated against her on the basis of disability, in breach of section 7 of the *Canadian Human Rights Act* in that it failed to accommodate her disability (autism). Ms. Dawson further alleges that the Respondent subjected her to harassment on the basis of disability, contrary to section 14 of the *Canadian Human Rights Act*. Finally, Ms. Dawson alleges that the Respondent retaliated against her for having filed a previous human rights complaint, contrary to section 14.1 of the *Canadian Human Rights Act*.

[3] Section 7(b) of the *Canadian Human Rights Act* states that *it is a discriminatory practice, directly or indirectly in the course of employment, to differentiate adversely in relation to an employee on a prohibited ground of discrimination*. Section 14(c) of the *Act* states that *it is a discriminatory practice in matters related to employment to harass an individual on a prohibited ground of discrimination*. As for section 14.1 of the *Act*, it states that *it is a discriminatory practice for a person against whom a complaint has been filed under Part III, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim*. As for the prohibited grounds of discrimination, they are described in section 3 of the *Act* and are *race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted*.

[4] At the hearing, Ms. Dawson represented herself without the help of legal counsel. The Commission was represented by legal counsel, and so was the Respondent.

[5] At the outset, it must be noted that the Complainant, in her final submissions as well as throughout the hearing, was very critical about how the Tribunal dealt with her requests for accommodation during the hearing. The Complainant was of the view that the Tribunal was more inclined to accommodate non-autistic people's needs than her own needs.

[6] For example, Ms. Dawson stated repeatedly at the beginning of the hearing that the hearing was not accessible to autistic people like her. She furthermore stated that she was not provided with the information she needed, nor was she provided with the answers she needed. She further asserted that the kind of schedule imposed on her, i.e. long lunch hours, long hours, did not meet her needs, that what she needed was a very fast concentrated day with short breaks, no lunch. In that respect, Ms. Dawson acknowledged that she had fairly big logistical problems. Ms. Dawson also stated that the Commission was largely adversarial in this case, that in fact, she did not have the co-operation of the Commission.

[7] The Tribunal will refrain from judicially justifying the decisions that were made with respect to the conduct of the hearing and will let the record speak for itself. This said, in her final submissions, the Complainant asks that the identity of her treating physicians be kept confidential so as to protect her own privacy. The Tribunal sees no prejudice to any of the other parties in not mentioning the name of Ms. Dawson's treating physicians or the name of the psychologist who diagnosed her condition.

## **II. PRELIMINARY CONSIDERATIONS**

[8] Before analysing the substantive issues that this complaint raises, there are a number of preliminary matters that need to be addressed. These are A. past events, B. Ms. Dawson's career at Canada Post and C. Ms. Dawson's medical condition.

### **A. Past events**

[9] The Tribunal is of the view that it is important in order to understand the issues relevant to the present complaint to consider events that preceded the filing of this complaint. The Tribunal is mindful of the fact that these events were covered by the first complaint filed by Ms. Dawson, which was the object of a settlement between the parties. These events, although not part of this complaint, were referred to and commented upon in the course of the hearing. They provide the background to the present complaint. However, they cannot in any way be determinative with respect to the findings made in relation to the events covered by the present complaint, events that occurred between September 2001 and June 2002. The Tribunal will consider firstly, the Cantin Report and secondly, the 2001 settlement.

[10] Both Ms. Dawson and Ms. Daoust, a witness called by the Respondent, testified about these events. Ms. Daoust was, between November 1998 and November 2002, Health and Safety Manager at Canada Post and was in charge of managing work related accidents as well as the prevention of accidents.

#### **(i) The Cantin Report**

[11] At the hearing, Ms. Daoust explained to the Tribunal when and how she got involved with Ms. Dawson's case. In that respect, she testified that, in July 1999, she got a call from one of Ms. Dawson's supervisors, Mr. Schetagne, who informed her that some Pierrefonds postal workers (not management) had gone to management and had expressed concerns about seeing an employee coming to work with self-inflicted wounds and feared that one day they could be injured by that person. According to Ms. Daoust, these employees were wondering if this person represented a threat to their safety. Mr. Schetagne asked Ms. Daoust to send someone to the Pierrefonds postal station to speak to the employees and address their concerns. Ms. Dawson testified that this came as a surprise and a shock to her to know that colleagues would have thought that she could become violent and pose a threat to their safety.

[12] Ms. Daoust testified that she then sent Ms. Johanne Cantin, who was director of the Employees' Assistance Program (EAP), to meet with the employees at the Pierrefonds postal station. Ms. Daoust stated that when she asked Ms. Cantin to go to the postal station, it was to reassure employees and not to conduct an investigation on Ms. Dawson. According to Ms. Daoust, Ms. Cantin met with the employees, wrote a report and handed her report to her in July 1999.

[13] There is no need here to refer to the exact content of the report if not to say that it contained Ms. Cantin's observations and recommendations, that it was sent to a number of Canada Post people and that Ms. Dawson only became aware of the report at the end of 2000. Ms. Dawson's indicated in her testimony that the fact that so many people at Canada Post got a copy of the report negatively affected their views about her.

[14] Ms. Daoust further testified that when she sent Ms. Cantin to the Pierrefonds postal station to investigate, she did not know who Ms. Dawson was and that Ms. Cantin had a professional relationship with Ms. Dawson. The evidence shows that Canada Post contracts with an outside organization to provide an EAP and that it is that organization which decides who is going to be the person who will respond to any request made by Canada Post. Ms. Daoust testified that Canada Post found out about Ms. Dawson's disability after the Cantin inquiry.

[15] The evidence shows that the Cantin report was sent to Medisys, a firm which handles medical matter for the Respondent and also found its way into Ms. Dawson's administrative file at the Pierrefonds postal station. Given the content of Ms. Cantin's report, Ms. Daoust testified that she felt that the matter needed a follow-up. The decision was thus made to send a nurse, Madeleine Dufour, from Medisys to Ms. Dawson's workplace in order to provide reassurance to the postal station employees. Ms. Dawson testified that she was never made aware of this measure. Ms. Daoust testified that the Union was made aware as well as her "chef d'unité".

[16] The additional steps taken by Canada Post revealed that Ms. Dawson did not represent any threat to her colleagues, that she had never injured herself in front of co-workers. Ms. Daoust testified that all those who received a copy of the Cantin report were told to disregard the report.

[17] In her testimony, Ms. Dawson stated time and time again that she saw the initiative to send Ms. Cantin to the Pierrefonds postal station as an investigation on her after serious allegations had been made by colleagues in relation to her violent behavior.

[18] Ms. Daoust testified that, when Ms. Dawson learned about the existence of the Cantin report, in November 2000, she was very angry that such an inquiry had been conducted without her knowledge, that she did not understand why such an inquiry had taken place as well as why the information contained in the report had circulated within Canada Post.

[19] In the course of her cross-examination, Ms. Daoust testified that right after December 2000, Ms. Dawson would have called her between three to five times, maybe four. She was however not able to provide dates. According to Ms. Daoust, the calls were about the Cantin Report. Ms. Daoust testified that, in the first phone call, Ms. Dawson complained about the content of the report. Ms. Daoust stated that Ms. Dawson never mentioned to her that Ms. Cantin was her psychologist. Ms. Daoust recalled that Ms. Dawson asked her at the time to remove the letter from her file and to tell her co-workers that the content of the report was false. Ms. Daoust further testified that in one of the telephone conversations in relation to the Cantin report, a discussion took place about what Ms. Daoust would do if she was told that a person had a gun in the postal unit.

[20] The record shows that, after Ms. Dawson discovered the existence of the Cantin report, Ms. Daoust drafted two apology letters.

[21] The first letter, dated January 18, 2001, is in reference to the report produced by Ms. Cantin, Canada Post EAP Coordinator in July 1999. The record shows that this draft letter did not meet Ms. Dawson's expectations. In the letter, Ms. Daoust acknowledges that the report had found its way in Ms. Dawson's personal file, where it should never have been placed, that it was not of a disciplinary nature but a sum-up of Ms. Cantin's observations and a summary of facts that were reported to her by some of the employees of the Pierrefonds postal station. Ms. Daoust further writes in the draft letter that the report was written for management to better understand the situation and help inform colleagues adequately whenever necessary and assured Ms. Dawson that it would be destroyed immediately. Finally, Ms. Daoust states that, at the time of the report, Ms. Cantin made a more complete verbal report and informed Canada Post management that no one in her working area should ever feel concerned regarding their security at work.

[22] The second draft letter, which is dated June 4, 2001 and was also rejected by Ms. Dawson, refers to a meeting held on February 7, 2001 with Ms. Dawson. The letter states that there were never any complaints regarding her work that were made and that her work was exemplary, that she had not engaged in a certain type of conduct, that she was not dangerous for other people and would not physically attack anyone.

**(ii) The 2001 settlement**

[23] The record shows that the first complaint filed by the Complainant against the Respondent was settled on August 16, 2001. The first complaint had to do with the Cantin Report. Under the terms of the settlement, the Respondent agreed to pay a certain amount of money to a charity and to apologize to Ms. Dawson.

[24] In the course of her testimony, Ms. Dawson alluded many times to the problems she encountered with respect to the settlement of the first complaint and the way it was handled by Ms. Huguette Demers, Canada Post Director of Human Resources for the province of Québec. The delay in paying the settlement money became very annoying to Ms. Dawson. What appears to have been especially annoying to Ms. Dawson was the fact that Ms. Demers told her that the settlement payment had been made when in fact it had not.

[25] The evidence shows that Ms. Dawson was able to explain the settlement to her co-workers at a five-minute floor meeting on September 6, 2001. Ms. Dawson noted that the meeting came after the airing in February 2001 on Radio-Canada of a documentary featuring her. According to her testimony, 100 people attended this meeting. At the meeting, Ms. Dawson stated that she was autistic, informed those present of her human rights complaint which had just been settled and talked a bit about the human rights training done by Canada Post. More specifically, Ms. Dawson pointed out that discrimination against autistic people is not caused by autistic people, that the problem is not autism and that there is not one set of rights for people judged to be crazy and one for everybody else.

[26] For her part, Ms. Daoust testified that, in 2001, after the settlement of the first complaint, meetings were held with Ms. Dawson. Ms. Daoust was present at two of these meetings which were held at the Pierrefonds postal station.

[27] The record shows that a meeting was held on September 21, 2001. Richard Paradis, Danielle Daoust, Jacques Théroux, Christian Potvin and Michel Couture were present at the meeting. Ms. Daoust stated that, at one point in the course of the meeting, Ms. Dawson told Richard Paradis to

shut up and that he did not have the right to talk. Ms. Daoust, however, admitted that she did not recall the exact words that were used. Ms. Daoust further stated that she did not recall what was the purpose of the meeting and who had called the meeting.

[28] Ms. Daoust nonetheless stated that at the meeting, the content of the apology letters, referred to above, was discussed. Ms. Daoust testified that it was Ms Dawson who had requested that a statement to the effect that she was not violent be put in the letter. Ms. Dawson stated, in her testimony, that she needed this to be written down in order to ensure her safety. It appears that Ms. Daoust, according to Ms. Dawson, did not want to acknowledge that the second letter was badly worded, especially the part where it is stated that in concluding, the management and your colleagues now know that although you suffer from an autism disorder, your condition represents no threat to the safety of others. Ms. Dawson further testified that, in the course of the meeting, she was told that if she had concerns about anything, she should speak to Richard Paradis.

[29] It is worth noting here that Ms. Boucher, Manager of Human Rights at Canada Post, one of the Respondent's two witnesses, stated in her testimony that it was in the context of the application of the settlement of the first complaint that a person was assigned to answer Ms. Dawson's inquiries and that the decision was made to minimize the number of persons who had to deal with Ms. Dawson. According to the testimony of Ms. Boucher, that person was at first Richard Paradis and later Huguette Demers. This was done in order to better understand Ms. Dawson and resolve her concerns, it appears.

[30] Ms. Daoust testified that, after the settlement of the first complaint, she received calls from Ms. Dawson who was still preoccupied by the settlement. According to Ms. Daoust, all the phone conversations lasted between 30 to 45 minutes. She explained that the reason why Ms. Dawson was phoning her was because she had made phone calls to her bosses and that they had not returned her calls. Ms. Daoust stated that during the phone calls, Ms. Dawson sometimes raised her voice, especially when she did not get the answer she wanted but that she never was insulting.

[31] The record shows that it took an additional few months to completely resolve the settlement issue. In fact, it was not resolved until December 2001.

[32] It is worth nothing here that in the course of her testimony, Ms. Daoust stated that, after July 1999, she had many phone call conversations initiated by Ms. Dawson. She admitted that she never took notes of these phone conversations. According to Ms. Daoust, these telephone conversations, which took place at the end of the day, lasted for very long periods of time, between half an hour and one hour. Ms. Daoust however acknowledged that some of them were shorter but most of them were probably around 30 minutes or more.

[33] According to Ms. Daoust, Ms. Dawson talked endlessly and, at times, became very upset. Ms. Daoust testified that she was not the only one receiving phone calls from Ms. Dawson. Individuals such as Carman Lapointe-Young, Raymond Poirier, Huguette Demers, Richard Paradis and Louise Lefebvre all experienced this kind of situation that was not always easy to deal with. According to Ms. Daoust, the individuals Ms. Dawson called were forced to ultimately hang up on Ms. Dawson in order to cut short the conversation.

[34] In relation to the phone calls, Ms. Daoust stated that she could not recall when Ms. Dawson started speaking to Ms. Traversy, Corporate Manager, Industrial Relations, and how many times she spoke with her. She, however, was able to recall that Ms. Traversy had called her and had told her that Ms. Dawson had called and that her enquiries should be dealt with locally and not at a national level. The record shows that Ms. Traversy became involved in Ms. Dawson's file in the course of the settlement of the first complaint which took place in the August 2001.

[35] Ms. Dawson, according to Ms. Daoust, called her because she was concerned about losing her job because she had come to work injured, about being seen as a bad employee. According to Ms. Daoust, these telephone conversations would have taken place at the time when the restructuring of the Pierrefonds postal station took place which was, according to Ms. Dawson, in April 1999 and according to Ms. Daoust, in July 1999, notably in relation to her sorting case. Ms. Daoust was however unable to recollect precisely if these telephone conversations had taken place at the time of the restructuring or in December 2000 when Ms. Dawson got a copy of the Cantin Report.

[36] In her testimony, Ms. Dawson strongly disputed the fact that she had started phoning Ms. Daoust in 1999. For her, this was pure fabrication. Ms. Dawson stated that she had been working at Canada Post since 1988 and found it incredible that she would have started calling Ms. Daoust after July 1999 for whatever reason.

[37] Ms. Dawson testified that she only became aware of the existence of Ms. Daoust when she became aware of the Cantin report in November 2000. The record shows that Ms. Daoust wrote to Ms. Dawson on January 18, 2001 in reference to the Cantin report. Ms. Dawson further testified that she met Ms. Daoust for the first time on September 21, 2001 in the context of the settlement of her first complaint.

[38] Asked by Ms. Dawson if it was possible that she might have started telephoning her after August 7, 2001, after the signing of the minutes of settlement, Ms. Daoust answered that everything was possible, that she did not have the dates. Asked by the Chair if it was to be understood that between 1999 and September 2001, she had many telephone calls from Ms. Dawson where the latter talked about problems she had at work, Ms. Daoust gave the following answer: *Well, I'm under the impression that we did talk not too long after the investigation. Obviously, after the report was found (late 2000), there were increasing calls, increasing issues, but at such dates, like I said, Mrs. Dawson is very good at dates because she writes everything, she knows when, and this and that, I didn't take any notes.*

[39] The evidence shows that Ms. Daoust was not able to recall precisely when she started talking on the telephone with Ms. Dawson. Furthermore, given the time line of events, the testimony of Ms. Dawson as well as the testimony of Dr. M., *infra*, that autistic individuals are *extraordinarily precise of the things they complain about*, the Tribunal finds that in all probability Ms. Dawson started telephoning Ms. Daoust after she discovered the Cantin report, i.e. in November 2000.

[40] The above events, i.e. the Cantin Report as well as the 2001 settlement, provide the background to Ms. Dawson's second complaint and provide valuable information for the understanding of the events that form part of Ms. Dawson's second complaint.

## **B. Ms. Dawson's career at Canada Post**

[41] Ms. Dawson started her employment at Canada Post in December 1988 as a full-time letter carrier. Ms. Dawson stated in her testimony that she worked at Canada Post for 15 years, until she went on sick leave. Now, she says, she feels that she has sort of lost her work at Canada Post and that she is not inclined to go back. Ms. Dawson testified that she liked her job a lot and that it was very important to her.

[42] Ms. Dawson stated in her testimony that she was a very good employee. She testified that she had a perfect work record at Canada Post: she did not take sick days, she did not do overtime on her route, she did not declare work accidents and she did not complain when her rights were violated, she never had disciplinary measures taken against her, even in a minor way, that she was doing everything that Canada Post considered that an employee should do. Nothing in the evidence shows otherwise. None of the witnesses called by Canada Post questioned her perfect work record at Canada Post, on the contrary.

[43] For example, in the second draft letter written by Ms. Daoust, in relation to the first complaint and which was rejected by Ms. Dawson, it is clearly acknowledged by Canada Post that her work as a letter carrier was at the time exemplary and that no complaints had been received from customers. In the letter of apology that was posted on August 7, 2001 on the Pierrefonds' Postal Station Bulletin Board, Ms. Traversy, Corporate Manager, Industrial Relations at Canada Post, clearly acknowledges Canada Post's confidence in Ms. Dawson's capabilities and her commitment to high standards in her work. In the letter of apology, Canada Post also acknowledges that Ms. Dawson had never done anything wrong to merit any complaint either from management, colleagues or clients.

[44] Ms. Dawson testified that a lot of people on her work floor did really nice things for her and that she would help them out. However, she stated in her testimony that she had problems with her supervisors, mainly Mr. Schetagne and Mr. Potvin. She referred to specific incidents in her testimony, one of them being the day where Mr. Potvin came up to her and said that she would not be getting the things she had asked for by way of accommodation and that he had thrown her rack out. Ms. Dawson also mentioned an incident with Mr. Schetagne where the latter grabbed her and pushed her or shoved her into his office.

[45] Ms. Daoust testified that Canada Post tried to accommodate Ms. Dawson in many ways, that Canada Post, according to Ms. Daoust, bent or ignored the rules in order to accommodate Ms. Dawson. This was strongly contested by Ms. Dawson.

[46] For example, in relation to the restructuring of the Pierrefonds postal station which, according to Ms. Dawson occurred in the spring of 1999, Ms. Daoust testified that Canada Post tried to change as little as possible Ms. Dawson's delivery route, given that Ms. Dawson was autistic, that any change to Ms. Dawson's delivery route entailed a lot for Ms. Dawson, that in the course of the restructuring of delivery routes at the Pierrefonds postal station, Ms. Dawson's route was not part of the bidding process so as to allow her to keep the bulk of her route and keep the changes at a minimum level.

[47] According to Ms. Daoust, Ms. Dawson, by way of accommodation, was allowed to start her work before her colleagues, that she was allowed to pick up her mail before her other colleagues.



Ms. Daoust also stated that Canada Post made some changes to the lighting system so as to accommodate Ms. Dawson's need or request to have less luminosity.

[48] Ms. Daoust testified that *she was told* that Canada Post also allowed Ms. Dawson to keep the design of her sorting rack the way it was, even though it did not meet the national standards, that she was allowed to sort differently from everybody else. For Ms. Daoust, this was another accommodation provided by Canada Post.

[49] Ms. Daoust further stated that *she was told* that the reason why Ms. Dawson's rack was changed was because she could not work well with existing norms. On the other hand, Ms. Daoust testified that letter carriers could make minor adjustments to the design of their rack. However, they were bound to respect the national standards. If a letter carrier was not pleased with the national standards, she testified, he/she could appeal but otherwise, except for minor changes, he/she would have to adapt himself/herself to the rack design according to national norms. Grievances were settled through the collective agreement.

[50] In her cross-examination of Ms. Daoust, Ms. Dawson put to Ms. Daoust the proposition that the reason why she was allowed to change her rack was because it was full of errors. Ms. Daoust's response was that it was the national norms that Ms. Dawson did not like and stated that *she assumed* that the reason why Ms. Dawson was allowed to have a special rack was because of her condition, otherwise she would not have been allowed to set up a rack the way she wanted. She would have had to follow the national norms.

[51] Ms. Dawson strongly disputed the fact that the rack she was given was a good rack that met the national standards. Ms. Dawson stated in her testimony that Canada Post dismissed the concerns she had with the design of her rack offhand, did not consider them as legitimate concerns and considered the changes that were allowed done to accommodate her because of her condition. Ms. Dawson expressed the opinion that the changes that were brought to her rack might have had nothing to do with her condition but because the design of the rack was faulty or problematic.

[52] Ms. Dawson further asserted in her testimony that accommodation became an issue when her diagnosis became known to Canada Post in 1999 and that before that time, from 1988, when she started working at Canada Post, to 1999, it had never been an issue. Ms. Dawson testified that she asked to be accommodated twice on the basis of her disability. These requests, she stated, had to do with flexibility in scheduling and taping conversations in a hostile environment. As for the other measures mentioned herein, they were, according to Ms. Dawson, not related to her condition. Other letter carriers, according to her, had asked for similar accommodations.

### **C. Ms. Dawson's medical condition**

[53] Ms. Dawson testified that she was diagnosed, as being autistic, for the first time in the early 90's, both by M. T., who had a Ph.D. in psychology and was a researcher at Université du Québec in Montréal, and by Dr. K.

[54] In a letter, dated April 9, 1999, addressed to Mr. Christian Potvin, Dr. T. states the following: 'Autism is characterised by qualitative deficits in social interactions, qualitative difficulties in communication, an intense need for structure as well as certain behaviors that may be perceived as peculiar'. And he adds: 'Due to this disorder, Ms. Dawson needs a highly

structured and consistent environment to function well and will thus experience difficulties adjusting to changes in her work routines. Ms. Dawson is an intelligent woman who seems to have been able to cope and adapt to her environment to meet the special needs that her disability creates'. At the end of his letter, Dr. T. makes himself available to clarify any questions Canada Post may have regarding Autistic Disorder and that with Ms. Dawson's permission, he would also be happy to make himself available to discuss specifics about her case.

[55] In a note written on April 7, 1999, addressed to whom it may concern, Dr. K. states that Michelle Dawson has been a patient of hers for many years, that Ms. Dawson is autistic and that to be able to continue to perform her duties to satisfaction, she requires flexibility in scheduling and work job areas.

[56] The evidence shows that Mr. T.'s letter as well as Dr. K.'s note were received by the Health Services of Medisys, the outside firm that took care of medical matters involving Canada Post employees, on April 14, 1999. It must be noted here that Ms. Dawson testified that she believed that Canada Post became aware of her condition in April 1999.

[57] The Tribunal finds that Canada Post was clearly made aware of Ms. Dawson's condition in April of 1999. For her part, Ms. Daoust testified that she became aware of Ms. Dawson's condition in July 1999 after receiving the Cantin report.

[58] Ms. Dawson testified that after she disclosed her diagnosis to Canada Post, everything went wrong. Before that time, even though Ms. Dawson came to work with self-inflicted injuries, this did not seem to create any qualms or concerns with respect to Canada Post. Things started to change, she stated in her testimony, after some Pierrefonds employees felt threatened by Ms. Dawson and sent a letter to that effect to Ms. Daoust in July 1999.

[59] The record shows however, that on September 6, 2001, Ms. Dawson was able to address close to 100 of her co-workers in the context of the settlement of her first human rights complaint as seen above. In her testimony, Ms. Dawson stated that after that day, she did not have problems with her co-workers. Even those few who still regarded her with some suspicion did not mock her. New people coming into the Post Office got accurate information about her and her colleagues made sure that the newcomers knew how to behave with respect to her. Colleagues of Ms. Dawson, it appears, went out of their way to apprise the new employees of Ms. Dawson's condition and that sometimes she might need to be treated differently than other employees. According to Ms. Dawson, the floor meeting had a dramatic effect on her colleagues. This 5 minute meeting was for Ms. Dawson a turning point in the way her co-workers saw her. The key to this turn around was, according to Ms. Dawson, the fact that her co-workers got accurate information about her and some notion of the consequences of their actions.

### **III. LEGAL CONSIDERATIONS**

[60] The Complaint filed by Ms. Dawson raises a number of legal issues as well as a specific human rights issue.

[61] In her testimony, Ms. Dawson stated that, through this complaint, she was attempting to get a decision that establishes that autistic people are human beings covered by the *Canadian Human Rights Act* and to find out whether the *Canadian Human Rights Act* considers autistic people to be human and therefore protects them.

[62] As for the Commission, in its closing arguments, it submits that the issues that must be addressed by this Tribunal in relation to this complaint are:

- (1) Whether the respondent failed to provide the complainant with a harassment free workplace by virtue of failing to respond in an appropriate fashion to her concerns and needs or by treating her in an intolerant and paternalistic manner and by not exercising all due diligence to ensure that the workplace was harassment free;
- (2) Whether the respondent treated the complainant in an adverse differential manner by reason of her disability by failing to respond in an appropriate fashion to her concerns and needs or by treating her in an intolerant and paternalistic manner and by not exercising all due diligence to ensure that the workplace was harassment free;
- (3) Whether the respondent treated the complainant in an adverse differential manner by reason of her disability by failing, in the face of a medically supported request, to accommodate the complainant's need to record interactions with management;
- (4) Whether the employer retaliated against the complainant for having filed one or both of her two complaints with the Canadian Human Rights Commission.

[63] The Tribunal will deal in turn with each of these issues, i.e. whether autistic people are human beings and are protected by the *Canadian Human Rights Act*, whether Ms. Dawson was discriminated against in the course of her employment, whether Canada Post retaliated against her for having filed a human rights complaint, as well as to whether or not she was harassed in her workplace.

#### **A. The relevant legal principles**

[64] At the outset, it is important to set out the legal principles applicable to the adjudication of issues related to discrimination, retaliation and harassment made by the Complainant against the Respondent.

##### **(i) Discrimination**

[65] In human rights cases, as well as in civil cases, the complainant or the plaintiff bears the burden of proof and must prove the allegations he or she makes on a balance of probabilities. HE WHO ALLEGES MUST PROVE. (*Ontario (Human Rights Commission) v. Simpsons Sears Ltd. (O'Malley)*, [1985] 2 S.C.R. 536.

[66] This said, in proceedings before Human Rights Tribunals, the complainant must establish a *prima facie* case of discrimination in order to have the burden of proof shift to the respondent who then has to provide a *reasonable explanation* which is not a mere pretext that will convince the Tribunal that, for example, the reason for treating a person the way it did was not motivated in any way by a prohibited ground of discrimination. As stated by Mr. Justice McIntyre in *O'Malley*, a *prima facie* case is one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favor in the absence of an answer from the respondent or, in other words, one where the evidence, if believed, and not satisfactorily explained by the respondent, will suffice for the complainant to succeed.

[67] In *Morris v. Canada (Canadian Armed Forces)*, [2005], F.C.J. No. 731, the *O'Malley* test was found to be the legal test of a *prima facie* case of discrimination under the *Canadian Human Rights Act*. According to *Morris*, it is a question of mixed fact and law whether the evidence adduced in any given case is sufficient to prove adverse differentiation on a prohibited ground, if believed and not satisfactorily explained by the respondent (*Morris*, par. 27).

[68] The Tribunal shares the view expressed in *Singh v. Canada (Statistics Canada)*, [1998] C.H.R.D., No. 7, at par. 197 that to support a finding that a *prima facie* case of discrimination has been established the complainant must do more than put forward sweeping assertions. Furthermore, as stated in *Bobb*, mere allegations that a conduct was discriminatory cannot be substituted for proof of facts (*Bobb v. Alberta (Human Rights and Citizenship Commission)*, [2004] A.J. No. 117, par. 76. The Tribunal further shares the view that a tribunal should be reluctant to find discrimination on the basis of a prohibited ground where there is a reasonable alternative to the theory that the complainant incurred discrimination.

[69] A belief, however strong, that someone is being discriminated against is not sufficient in law to give rise to an inference of discrimination or to establish a *prima facie* case of discrimination (*Singh v. (Statistics Canada)*, [1998] C.H.R.D. No 7, par. 206). As stated in *Filgueira v. Garfield Container Transport Inc.*, [2005] CHRT 32, par. 40, there must be some evidence, i.e. material facts, that if believed, will make the existence of discrimination more likely than its non-existence given all the circumstances of the case.

[70] Over the years, Human Rights Tribunals have recognized that *direct evidence* that discrimination was the motivating factor behind a decision or a behavior is rarely available to complainants, given that discrimination is not a practice which is usually displayed overtly. As stated in *Basi v. Canadian National Railway Company*, [1988] C.H.R.D. No 2, rarely can discrimination be proven by direct evidence.

[71] Complainants alleging discrimination must thus more often than not rely on circumstantial evidence, notably the conduct of individuals or organizations whose conduct is at issue (*Brooks v. Canada (Department of Fisheries and Oceans)*, 2006 F.C.J. No. 1569, par. 27). The criterion is whether the circumstantial evidence, if believed, tends to prove the allegation of discrimination.

[72] In *Brooks*, this Tribunal stated, with respect to circumstantial evidence, that *it is not enough if circumstantial evidence is consistent with an inference of discrimination. This merely establishes the possibility of discrimination, which is not enough to prove the case. The evidence must be inconsistent with other possibilities.* (*Brooks*, par. 114).

[73] This said, as stated in *Wall v. Kitigan Zibi Education Council*, (1997) C.H.R.D. 6, the standard of proof in discrimination cases remains the ordinary civil standard of the balance of probabilities and that in cases of circumstantial evidence, the test is the following: 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 (B.Vizkelety, *Proving Discrimination in Canada*, Carswell, 1987, p. 142).

[74] Hence, in its determination as to whether or not an alleged conduct is discriminatory, the Tribunal must analyze and scrutinize carefully the conduct itself as well as the context in which it occurred, keeping in mind, as stated in *Marinaki v. Canada (Human Resources Development)*, [2000] C.H.R.D No 2, that for a complaint to succeed, it is not necessary that discriminatory consideration be the sole reason for the actions in issue but that it is sufficient that the discrimination be a basis for a person's action (*Marinaki*, par. 191) and that the intent to discriminate is irrelevant to the determination of discrimination (*Nova Scotia (Human Rights Commission) v. Play it Again Sports Ltd*, [2004] N.S.J. No 403, par. 37).

## **(ii) Retaliation**

[75] The *Canadian Human Rights Act*, as it stands, considers retaliation or threats of retaliation only in relation to a complaint having been filed and a conduct which was in response to the complaint being filed (*Witwicky v. Canadian National Railway*, [2007] C.H.R.D. No. 28). The source of the retaliation must thus be the filing of a complaint and not, for example, an event which occurred prior to the filing of the complaint.

[76] The law is clear. Section 14.1 of the *Act* only considers retaliation in relation to the filing of a complaint. Furthermore, as indicated by this Tribunal in *Marinaki v. Canada (Human Resources Development)*, [2000] C.H.R.D. No 2, par. 224, section 14.1 of the *Act* came into force on June 30, 1998 with no retroactive effect being contemplated. To apply the new retaliation provision of the *Act* to acts occurring before the section came into force would be to attach new consequences to events that took place before the enactment. This would, according to the Tribunal, give the legislation retrospective effect, which is not generally permissible, and is not supported by the wording of the act.

## **(iii) Harassment**

[77] The *Canadian Human Rights Act* does not define what constitutes harassment but the case law does. In *Hill v. Air Canada*, 2003 CHRT 9, this Tribunal stated that the gravamen of harassment lies in the creation of a hostile work environment, which violates the personal dignity of the complainant. In *Marinaki v. Canada (Human Resources Development)*, [2002] C.H.R.D. No 2, this Tribunal examined the elements that should be taken into consideration when determining if there has been harassment under section 14 of the *Act*.

[78] In *Marinaki*, the Tribunal expressed the view that victims of harassment need not prove that they suffered pecuniary losses, that for a behavior to amount to harassment, some element of repetition or persistence is usually required (*Marinaki*, par. 188-191). However, as stated in *Bobb v. Alberta (Human Rights and Citizenship Commission)*, [2004] A.J. No 117, in certain circumstances, a single incident may be enough to create a hostile work environment. In those circumstances, the nature of a conduct should be calculated according to the inversely proportional rule: the more serious the conduct and its consequences are, the less repetition is necessary; conversely, the less severe the conduct, the more persistence will have to be demonstrated.

## **B. The relevant allegations**

[79] Ms. Dawson feels very strongly that Canada Post has discriminated and retaliated against her as well as harassed her. Her hurt feelings go beyond specific events that took place at her workplace. They also encompass the manner in which Canada Post dealt with her concerns.

[80] In her complaint form, Ms. Dawson underscores the fact that throughout the period of the complaint, whenever she had met or spoken with a member of the Respondent made a point of not only defending its employees, but of praising, commending and congratulating those who, according to her, had insulted, threatened and hurt her and had violated her human rights. She asserts that she has tried very hard to find out from the Respondent what she was doing wrong. The Respondent, she alleges, continues to refuse to tell her.

[81] Ms. Dawson feels that Canada Post acted throughout on the belief that autistic people are unable to speak for themselves or make their own decisions, that only non-autistic experts, and

not autistic people, know anything about autism, that autistic people are bizarre and difficult to manage. Ms. Dawson alleges in her complaint form that, in her workplace, she was treated as a non-person although her work record continued to be excellent. She states that she never approached a member of the management of the Pierrefonds post office directly for any reason, that she used intermediaries to prevent outbreaks of intolerance, threats and accusations by the Respondent, that her very determined effort to resolve this widespread and deeply rooted human rights problem which, she said, has been very exhausting for her, have collapsed because of bad faith on the part of management. She furthermore expresses the view that the worsening of her situation since she filed her original complaint has led her to believe that she is facing retaliation because of the earlier complaint.

[82] Over and above these general allegations, Ms. Dawson as well as the Commission identified specific employees of the Respondent who, they alleged, discriminated and retaliated against Ms. Dawson and harassed her, as well as events where the Respondent, through the acts of certain employees, discriminated and retaliated against Ms. Dawson and harassed her.

[83] The Tribunal will analyse in turn the allegations related to specific employees and certain events. However, before conducting such an analysis, the Tribunal will consider the question as to whether or not autistic people are persons and are protected by the *Canadian Human Rights Act*. The determination of this question should provide valuable information as to the condition of autistic people, notably Ms. Dawson.

#### **(i) Autistic individuals and the CHRA**

[84] On this issue, the Tribunal heard evidence from Dr. M. who was the only physician called as a witness as well as from Ms. Dawson. The Respondent did not call any expert.

##### **a) The testimony of Ms. Dawson**

[85] At the hearing, there was an objection made by Counsel for the Respondent with respect to the ability of Ms. Dawson to speak to the issue of autism in general. The Tribunal ruled that, even though Ms. Dawson had not been qualified as an expert in autism, the fact that she was an autistic person made her particularly cognizant of all the issues surrounding autism and allowed her to speak to issues that were not limited to her own condition.

#### **1. Ms. Dawson's testimony on autism**

[86] Ms. Dawson testified that autism is a neurological disability and that people generally do not have a good understanding of this reality. Ms. Dawson stated repeatedly that autism was not a mental illness. For her, a mental illness has an onset, various treatments, and there is a return to the previous state to a greater or lesser degree. Both Ms. Dawson and Dr. M., as will be seen, pointed out that the notion of curing autism was nonsensical. Still many people want to cure autism.

[87] Ms. Dawson pointed out in her testimony that autistic people are prevented from discussing autism whereas parents of autistic children are considered experts automatically in autism itself, not in being the parent of an autistic child, but on autism itself. According to Ms. Dawson, parents are inevitably and invariably consulted in policy-making decisions and rarely autistic people. As to the representation of autistic people in Canada, according to Ms. Dawson, autism associations do not represent autistic people. These associations or societies represent families of autistic individuals.

[88] Ms. Dawson further testified that parents also run major private funding bodies, including Cure Autism Now, thus showing that their goals may be at odds with what science dictates, their goal being to have a world free of autistic people, thus a cure for autism even if this is scientifically impossible and, according to her, ethically very troubling.

[89] In the course of her testimony, Ms. Dawson asked the question whether it was wrong to be autistic, whether autism was a disease that should be eradicated from the face of the world, whether or not autistic people should be treated so as to be cured of their disability. Why is autism, she asked, responded to the way it is? Why, she asked, with all the range of human behaviors that we accept, why is it that autism seems to fall outside of that?

## **2. Ms. Dawson's testimony on autistic people**

[90] Ms. Dawson testified that autistic persons compared to non autistic people process information very differently, at a very basic profound level, really low level. According to her, cognitive processes in autism are very different, so is the way the cognitive processes work together. Ms. Dawson testified that the brain of autistic people works differently. Autistic people require different kinds of information. Ms. Dawson underscored the fact that there are kinds of information with which autistic people cannot work at all but, on the other hand, there are kinds of information that ordinary people cannot work with but autistic people can.

[91] Ms. Dawson also mentioned that there are ways of communicating that make it possible for an autistic person to function and others that make it impossible. Autistic people will, according to Ms. Dawson, do what they are told to do. For her, there are not that many people easier to accommodate than autistic people, that it is very simple to accommodate autistic people.

[92] Ms. Dawson stated, in her testimony, that autistic people, like herself, need to know what rules apply and, if they are not going to apply, they need to be told and not have the rules change day after day. She also mentioned that autistic people are often times assumed to badly behave and to be deliberately difficult.

[93] According to Ms. Dawson, one of the worst things one can do to an autistic person is to claim that one has not said what he has said. According to her, this throws the autistic person into massive confusion because speaking is a gigantic effort to them.

[94] In the course of her testimony, Ms. Dawson referred to the case of Charles-Antoine Blais, an autistic six year old child who was murdered in 1996 in Montréal. She testified that this murder had a huge effect on her, especially the fact of finding out that everybody thought it was understandable to kill an autistic child.

[95] In her testimony, Ms. Dawson also referred to people with Down Syndrome. She testified that Down Syndrome is in the same classification as autism. They are both developmental disorders or neuro-developmental disabilities. People with Down Syndrome have been included in society with all the assistance and accommodation they need, which does not seem to have been the case with autistic people. Ms. Dawson expressed the view that the rights of autistic people will never be established or defended.

[96] According to Ms. Dawson, there are a lot of autistic people. She testified that the conservative prevalent figure is 60 per 10,000, which is 1 in 166. This would mean that there are 197, 000 autistic people in Canada. No documentary evidence was provided to support these

figures, although Ms. Dawson mentioned the Census estimates for 2006 in support of her assertion. According to Ms. Dawson, of the 197, 000 autistic individuals, 150,000 would be adults and 47,000 would be children.

### **3. Ms. Dawson's testimony about herself**

[97] In her testimony, Ms. Dawson spoke about her self-inflicted injuries. Ms. Dawson testified that, at the very worst, there was probably a week or two weeks where two weeks in a row, she would have something, that she would injure herself. She added, however, that this would be rare. According to her, she would self-injure about once a month and never more. She testified that for cuts, it would not be more than one small area affected and not more than one or two cuts, but they would be in the same place.

[98] Ms. Dawson testified that, well before Canada Post knew she was autistic, she would show up at work with self-inflicted wounds, that she did not suddenly start showing up with obvious signs of self-injury in 1999. According to her, any time after 1990, she would have had at times signs of self-injury, sometimes more than at other times, sometimes with long gaps.

#### **b) The testimony of Dr. M**

[99] At the beginning of his testimony, Dr. M., who is a psychiatrist, was qualified by the Tribunal as an expert in autism. Dr. M. filed a report as well as three letters pertaining to Ms. Dawson's condition.

[100] Dr. M. testified on the nature of autism, autistic individuals as well as on Ms. Dawson's condition. The credibility of Dr. M. as well as the accuracy of his statements and opinions was not challenged by the Respondent. The Tribunal finds Dr. M.'s testimony highly credible even if the evidence shows that in recent years, Ms. Dawson has worked with him and has co-authored scientific articles with Dr. M.

#### **1. Dr. M.'s testimony about autism**

[101] In his testimony, Dr. M. explained that autism is not a psychiatric disorder, that it is in fact a neuro-biological difference as opposed to a mental disability. Autism is an innate condition. It is not a condition that someone acquires.

[102] Autism is characterized by the presence of a certain number of symptoms above a certain threshold. According to Dr. M., what is very special in autism is that, you may have extremely different levels of adaptation and of apparent intelligence, that the level of impairment that appears may be completely discrepant with the actual level of intelligence for autistic people. Dr. M. stated in his testimony that autism has a lot of unique features in the sense that it is a condition which clearly gives some cognitive advantages to those who have it.

[103] For Dr. M., the idea of curing autism is meaningless. Violence is absolutely not a problem that is attached to autism. According to Dr. M., what characterizes autism is that the specific part of the brain which is in charge of social activities is broken in an autistic brain. According to Dr. M., self-injury is linked to autism.

#### **2. Dr. M.'s testimony about autistic people**

[104] Dr. M. testified that more than 90% of autistic individuals are of normal intelligence. According to Dr. M., autism without mental illness or deficiency is now acknowledged as representative of autistic people. For Dr. M., autistic people are vulnerable to the malice of their



peers and that they are stigmatized in society. Autistic people are not violent by definition. However, Dr. M. stated that he was sure that most people are intimately convinced that most autistic individuals are violent, even if it is not true. In general, for him, non autistic people have a poor understanding of autistic people

[105] In his testimony, Dr. M. stated that he spends a lot of clinical time verifying complaints made by autistic people and that he is always struck by the extraordinary preciseness of the things they complain about. He testified that lying is exceptional in autistic people, and also that exaggeration and the exploitation of one's handicap to gain certain benefits are foreign to autistic people.

[106] According to Dr. M., complete arbitrariness or appearance of complete arbitrariness is something autistic people cannot cope with. Within predetermined set of rules, autistic people can be very good.

[107] Dr. M. agreed with Ms. Dawson's statement that if an autistic person learns how to regulate reactions that he or she has by having, for example, a safe place to go to, that he or she is able to get away from a stressful situation, it is possible for an autistic person to deal with quite difficult events, even though they may provoke strong reactions. Dr. M. also agreed with the statement that if an autistic person knows that he or she can use their coping mechanisms in a stressful situation, it makes it much less likely and even takes away the possibility that they will get into difficulty. Autistic individuals will express their emotions differently than ordinary people, as well as their anxiety, according to Dr. M.

[108] According to Dr. M., autistic individuals process information in a more precise way than non autistic individuals. Furthermore, according to Dr. M., autistic people do not archive information in the same way as non autistic people. Autistic people are at their best in working with information. They are extremely good, for the most educated, in science and law. In fact, according to Dr. M., the information processing of people with autism is superior to that of non autistic individuals in some conditions. However, individuals with autism are, in many respects of every day life, at a certain disadvantage. Dr. M. thus stated that autistic people live in fact in a world that is not made for them.

[109] Dr. M. testified that autistic individuals have no problem with hierarchy as long as hierarchy is consistent and fair. Autistic individuals start to have problems with hierarchy when it is self-contradictory. Autistic people are not as rigid as one can think. They can adapt to a new situation as long as the rules are clear, as long as there is a consistent framework. In an environment where there are little or no rules, they will not perform well. According to Dr. M., autistic individuals will function better in a regulated environment. Dr. M. agreed with the proposition that so long as there is a consistent framework in place, even though there will be unexpected events, autistic people will be able to cope with these unexpected situations and do well.

[110] Dr. M. testified that, while the ordinary person will become aggressive when anxious, autistic individuals will sometimes self-injure. This is especially the case, according to Dr. M., when an autistic person cannot understand a situation or cannot get an answer to a question. According to Dr. M., self-injury is the most extreme response to a psychological impasse that has no solution. It is a response to a disorganization of the world. It is the way for an autistic person

to respond to negative situations whereas non autistic persons will show anger. Dr. M. stated in his testimony that he was aware of Ms. Dawson self-injury behavior. He had seen one of the wounds she had inflicted upon herself. For Dr. M., a self-inflicted injury is a sign of a deep psychological suffering.

[111] According to Dr. M., autistic people will also have a self-injurious behavior when experiencing internal pain of physical or psychological displeasure. So, if an autistic person finds himself or herself in a situation where he or she cannot escape, or experiences a feeling of disorder, he or she may self-injure, such as biting one's arm or hand. Dr. M. added that it is very difficult for a non autistic person to understand this type of behavior.

[112] Dr. M. furthermore expressed the view that autistic people very rarely become aggressive. Self-injury, according to Dr. M., is a phenomenon not well understood at a scientific level. It appears that self-injury may solve a certain situation at the psychological level.

[113] According to Dr. M., autistic individuals are at their worse when they have to guess very quickly the good behavior in a certain situation. And they are at their best in processing sophisticated information and in doing logical work or action. Autistic people are very precise. Routine is important to them.

[114] Dr. M. testified that, if one accepts a certain number of conventions, autistic individuals will be able to perform. Autistic people are different from non autistic people in that senses are different, colors are different, brain allocation is different, involvement of a certain function or of a certain brain region in a certain task is different.

[115] Autistic people, according to Dr. M., have a misunderstanding of what other people want of them, they have the impression of not being correct, not being adequate, because they do things because they just need and want to do them. They realize that, when they do their spontaneous behavior, it creates drama around them. Dr. M. testified that, for autistic people, verbal abuse has a detrimental effect on them. Autistic people will prefer if they can withdraw themselves.

[116] Dr. M. stated in his testimony that it is absolutely untrue or wrong to say that autistic people do not accept changing things or change and stated that all the autistic people he knows that succeed to be employed, the commentary that is made is that they are the best employees. According to Dr. M., if autistic people are employed according to their level of excellence, their impairment becomes a means of excellence. According to Dr. M., in the workplace, the informal nature of certain activities, such as coming into the premises, dressing up, breaks, jokes can present difficulties to the autistic person.

[117] Dr. M. acknowledged that for autistic people, accommodation takes usually the form of behavioral changes and of one's interaction with autistic individuals. This said, according to Dr. M., society is not very tolerant to accommodate autistic people.

[118] According to Dr. M., autistic individuals should be told in advance of what is expected from them and an agreement be reached in this regard. Dr. M. acknowledged that coming to this form of working relationship is sometimes difficult in a workplace. Dr. M. feels that there needs to be a form of initial contractual agreement or arrangement where all the expectations are clearly spelled out and agreed upon.

[119] In cross-examination, Dr. M. stated, even though there are unexpected situations in the workplace, what needs to be done is not to limit these situations but to make them more foreseeable. Dr. M. gave as an example a route change: what is important is that proper explanations be provided. According to Dr. M., the unknown raises more problems than the unexpected. Thus, with respect to an autistic person, one way of accommodating that person is to tell the person in advance the changes that one wants to implement and explain them so that the person will be able to prepare herself. Changes must be explicit and understandable.

[120] In his testimony, Dr. M. stated that when somebody who is not aware of autism is confronted with an autistic person, that person will perceive the autistic person as rude or as manipulative. Dr. M. agreed that if autistic people behave differently in social situations, it may not have to do with the socialness (*sic*) of the situation but with the kind and amount of information involved.

[121] In his testimony, Dr. M. acknowledged that if autistic people are simply assumed to not be behaving well, that accounts for a lot of the social difficulty that autistic people might experience. According to Dr. M., a lot of their apparent strangeness results from this kind of absence of reciprocity. For Dr. M., one can perfectly live in a very peaceful way close to an autistic person with a very small number of accommodations. Dr. M. testified furthermore that autistic persons sometimes need to withdraw for a certain amount of time and that they should be accommodated for that. Dr. M. acknowledged that a number of accommodations requested by autistic people are impossible to satisfy.

[122] According to Dr. M., autistic people most of the time know what they have to do to take care. They also know what they have to avoid. According to Dr. M., autistic people have a social naïveté.

### **3. Dr. M.'s testimony about Ms. Dawson**

[123] Dr. M. testified that he first came into contact with Ms. Dawson after seeing her on the television program *Enjeux* in 2001. At the hearing, Ms. Dawson stated that before the airing of *Enjeux*, she had tried to get into Dr. M.'s clinic but was unable to get past the reception. It appears from the evidence that Ms. Dawson went to see Dr. M. in April 2001. At that time, he diagnosed Ms. Dawson as being autistic. According to Dr. M., Ms. Dawson is considered as a very high functioning person.

[124] Dr. M. testified that he wrote his first letter for her in 2002. The evidence shows that Ms. Dawson has been working with Dr. M. for a few years and that they had co-authored articles. Through his working relationship with Ms. Dawson, Dr. M. stated in his testimony that Ms. Dawson said things as she thought they were, that she has good judgment and takes good decision. Dr. M. testified that he thought that the decisions that Ms. Dawson took at her work were good, the reason being that he had never seen Ms. Dawson take a decision that he really disapproved on a judgment basis. Dr. M. stated that this does not mean that Ms. Dawson can never be wrong.

[125] According to Dr. M., Ms. Dawson has the ability to accept errors from another point of view than hers. He further testified that the two main difficulties related to Ms. Dawson are related with the feeling of emergency and the feeling of exhaustiveness. So, according to Dr. M., when Ms. Dawson wants something, usually it's here and now. Whereas non autistic individuals

who are 98% convinced of something will do the thing, autistic people need 100%. This may create the feeling or impression that she is never satisfied, that she is never happy.

[126] Dr. M. testified that as to questions about Ms. Dawson's accommodation and her functioning within the workplace, it was important for Ms. Dawson to be consulted. Asked why this was important, Dr. M. testified that it was because Ms. Dawson knows more than people who are not professionals in autism.

[127] In his testimony, Dr. M. testified that he did not understand very well what was happening at Ms. Dawson's workplace and that he was not interested in Ms. Dawson's employment issue. In fact, given the bad ambiance that existed at Ms. Dawson workplace, Dr. M. was cautious in his assessment of Ms. Dawson, suspecting that Ms. Dawson might be looking for some form of possible gains. His main interest was in determining if Ms. Dawson was autistic or not.

[128] Dr. M. testified that he was not precisely aware of the measures taken by Canada Post to accommodate Ms. Dawson. This said, the record shows that Dr. M. wrote two letters in which it is stated that Ms. Dawson is autistic and which provide information about her condition. By signing these letters, Dr. M. did not have a clear idea of what purpose it would serve or how it would be used by Ms. Dawson. According to Dr. M., these letters were of a general nature and in his mind, Ms. Dawson would in fact decide of what use she would make of them.

[129] The record shows that the second letter refers to Ms. Dawson self-inflicted wounds. In his letter, Dr. M. restates that Ms. Dawson is autistic and refers to the fact that Ms. Dawson's psychological equilibrium is maintained through acts of self-injury performed at home, that it is a way for her to cope psychologically with intense emotional reactions and should not be seen as an expression of anger.

[130] Dr. M. testified that Ms. Dawson had told him that the injury that she self-inflicted helped her psychologically. For Dr. M., Ms. Dawson had the habit of self-injuring. Dr. M. interpreted these acts of self-injury as a sign of major psychological suffering, a way for autistic individuals to cope with anxiety. He stated in his testimony that he personally saw one of the wounds that Ms. Dawson had inflicted upon herself and stated that the wound was impressive, and would have been impressive for her coworkers.

[131] In his second letter, Dr. M. states that like all autistic people with high intelligence, Ms. Dawson is particularly vulnerable to malevolence of her peers and can show intense emotional reactions. For Ms. Dawson, certain unforeseen events may cause a form of psychological disorganisation, even chaos and confusion and generate an intense reaction which can take the form of self-inflicted wounds.

[132] The Tribunal finds that the views expressed by both Ms. Dawson and Dr. M. about autism and autistic people provide the proper background for the analysis of the allegations of discrimination, harassment and retaliation made by Ms. Dawson in her complaint.

[133] This said, there is no doubt for the Tribunal that autistic people are persons, that unfortunately they are not well accepted in society, that they are looked at often times as special creatures who are not part of society as a whole and that society would be better off without them. The Tribunal is further of the view that autistic people need to be better respected and protected in society. They need above all to be better understood and accepted. The testimony of

both Ms. Dawson and Dr. M. should provide a better understanding of autism and autistic individuals.

[134] Hence, the Tribunal is of the view that the *Canadian Human Rights Act* provides to autistic people the same protection as to non autistic people and that both are equal before and under the law.

**(ii) Allegations related to specific individuals**

[135] In her complaint form, Ms. Dawson refers to certain individuals who she alleges discriminated and retaliated against her as well as harassed her.

[136] Ms. Dawson thus alleges in her complaint form that, as stated above, she had tried very hard to find out from the Respondent what she had been doing wrong and that, on May 27, 2002, she was reprimanded by Christian Potvin, Superintendent of the Pierrefonds post office, for even asking this question. Ms. Dawson further alleges that on May 24, 2002, Ms. Louise Lefebvre, of the Respondent's Operation sector in Montréal, told her that the problem was not that she was doing anything wrong; the problem was that she was different. It must be noted here that neither Mr. Christian Potvin, nor Ms. Louise Lefebvre were called to testify.

[137] Ms. Dawson further states in her complaint form that, on October 22, 2001, the Respondent's Ethics Officer, Carman Lapointe-Young told her that she was violent, that the problems in her workplace were entirely the result of her disability and that in the absence of her autism, there would be no problem. Ms. Dawson further states that, on October 24, 2002, Ms. Huguette Demers, Respondent's Director of Human Resources for Québec, also stated her assumption that Ms. Dawson was violent, at a time when she had little information about her except that she was a person with a disability. Neither Ms. Huguette Demers nor Ms. Lapointe-Young was called to testify.

[138] In her evidence, Ms. Dawson specifically referred to a phone conversation she had with Ms. Carman Lapointe-Young. According to Ms. Dawson, in the course of the telephone conversation, Ms. Lapointe-Young asserted that Ms. Dawson had committed violent acts involving bloodshed on her work floor and in front of co-workers, that she had mutilated herself in front of her co-workers. According to Ms. Dawson's testimony, Ms. Lapointe-Young stated that she assumed this to be true. Moreover, according to Ms. Dawson, Ms. Lapointe-Young said in the course of the phone conversation that the big problem was autism.

[139] Furthermore, in her complaint form, Ms. Dawson refers to Mr. Raymond Poirier, Operation Manager for Québec who, Ms. Dawson alleges, would have told her that she was denied the tape-recording accommodation measure because Canada Post did not like it as well as to Mr. Christian Potvin, Superintendent of the Pierrefonds Post Office who, Ms. Dawson alleges, reprimanded her, on May 27, 2002, for having asked what was she doing wrong, as well as Ms. Lefebvre, from the Respondent's Operation sector in Montréal who, Ms. Dawson alleges, told her on May 24, 2002, that the problem with Ms. Dawson was not that she was doing anything wrong, but that she was different.

[140] None of the persons identified in Ms. Dawson's complaint form were called to testify by the Respondent. The Tribunal is thus left with Ms. Dawson's testimony.

[141] In its final submissions, for its part, the Commission referred to the conduct of a certain number of Canada Post employees which, the Commission alleges, constitutes discriminatory behavior on the part of the Respondent, i.e. Mr. Christian Potvin, one of Ms. Dawson's supervisor, Mr. Richard Paradis, a manager in charge of Labour Relations at Canada Post, Ms. Huguette Demers, Director, Human Resources for Québec, as well Ms. Carman Lapointe-Young, Canada Post's Corporate Ethics Officer.

[142] Given the evidence and the nature of the allegations made by Ms. Dawson, the Tribunal will only deal with the allegation pertaining to Ms. Lapointe-Young. As for the allegation pertaining to Ms. Demers, the allegation refers to an event which occurred in October 2002. This event falls outside the scope of the complaint - September 2001 to June 2002 - and the Tribunal will not consider it.

[143] The Tribunal finds Ms. Dawson to be a credible witness. The Tribunal notes here that in his testimony, Dr. M. stated that lying is exceptional in autistic people and that exaggeration and the exploitation of one's handicap to gain certain benefits are foreign to autistic people.

[144] This said, the record shows that no evidence was called by the Respondent to contradict Ms. Dawson with respect to the remarks that Ms. Lapointe-Young would have made in the course of a telephone conversation with Ms. Dawson on October 22, 2001, an event which was clearly identified in the complaint form as potentially discriminatory.

[145] The Tribunal finds that the remarks to be discriminatory in that they brand Ms. Dawson as a violent person in relation to her disability, a perception which is totally, given the evidence, gratuitous. The Tribunal thus finds that the Complainant has established a *prima facie* case of discrimination with respect to the comments that Ms. Dawson alleges were made in relation to her condition by Ms. Lapointe-Young and further finds that these allegations meet the *O'Malley* test, i.e. allegations made which, if believed, are complete and sufficient to justify a verdict in the complainant's favor in the absence of an answer from the respondent. No such reasonable explanation was provided by the Respondent.

[146] Hence, the Tribunal rules that Ms. Dawson has established on a balance of probabilities that she was discriminated against because of her disability, in contravention of section 7 of the *Act*. There is nothing in the evidence that establishes, however, that Ms. Lapointe-Young's conduct constitutes harassment or retaliation.

### **(iii) Allegations related to specific incidents**

[147] In her complaint form, Ms. Dawson makes reference to specific and clearly defined incidents in relation to which, according to Ms. Dawson, a breach of sections 7, 14 and 14.1 of the *Act* occurred. These are: 1. Ms. Dawson's medical file, 2. the Ottawa meeting, 3. Ms. Dawson's work related injury, 4. the Respondent's refusal to have her tape-record conversations. The Tribunal will analyse these incidents in turn.

#### **a) Ms. Dawson's medical file**

[148] Ms. Dawson asserts in her complaint form that the Respondent's medical file on her case which, she alleges, she gained access to in October 2001, after repeated denials of its existence by the Respondent, is grossly biased, is an inaccurate account of extreme interventions and constitutes harassment against her. Ms. Dawson furthermore asserts that the Respondent's

behavior towards her, as documented by its own file, is discriminatory and demonstrably based on the Respondent's equating her disability with being a dirty, crazy, dangerous menace.

[149] At the hearing, Ms. Dawson, for reasons related to the protection of her privacy, decided not to put her medical file in evidence. Indeed, the record shows that Ms. Dawson, throughout her testimony, was reluctant to make available to the other parties and the Tribunal documents of a private nature, especially her medical record, given the bad experience, she alleges, she had had in the past at Canada Post where she felt betrayed by the actions of third parties.

[150] The Tribunal is thus not in a position to assess the content of Ms. Dawson' medical file and make a determination as to whether or not the content is discriminatory. The Tribunal finds that the Complainant has not made a *prima facie* case of discrimination with respect to her medical file.

#### **b) The Ottawa meeting**

[151] In her complaint form, the Complainant alleges that the Respondent paid her former psychologist, Ms. Nathalie Poirier, to make a presentation to its national level officials (including legal counsel, Ethics Officer and Human Resources Manager), as well as executives of the Canadian Union of Postal Workers (CUPW) on January 14, 2002 on autism. Ms Dawson asserts that no autistic people were consulted or invited to attend or even spoken about this. Ms. Dawson further asserts in her complaint form that Dr. Poirier stated that she did not know her (though she was her treating psychologist for some time) and gave such a relentlessly negative picture of autistic people at this presentation that when one participant asked if there was anything good about autistic people, she said no.

[152] With respect to the hiring of Ms. Poirier, the Tribunal heard testimony from Ms. Shirley Boucher, Manager of Human Rights at Canada Post, Mr. Lafleur, a union official, Ms. Daoust, as well as Ms. Dawson. Ms. Boucher and Ms. Daoust provided evidence as to the circumstances that led to the hiring of Ms. Poirier. Mr. Lafleur gave evidence about the meeting itself. Ms. Dawson testified as to the impact that the meeting had on her.

[153] Ms. Boucher testified that she was, up to September 2001, Manager of Employment Equity at Canada Post and that shortly thereafter was appointed Manager of Human Rights. Ms. Boucher worked out of Ottawa. At the time, Ms. Huguette Demers was Director of Human Resources, for the region of Montréal. Ms. Boucher testified that, after her appointment, she received a phone call from Ms. Dawson about her original complaint, more specifically about the settlement of the complaint.

[154] Ms. Boucher testified that she spoke to Ms. Dawson on the phone about the settlement of the complaint, specifically the problem related to the issuance of the cheque to the non-profit organisation she had identified, several times, four, five or maybe more, she stated. These conversations took place between September 2001 and December 2001. Ms. Boucher testified that these conversations were long conversations.

[155] Ms. Boucher testified that Ms. Dawson also called other people within Canada Post, identifying the President's Office, Ms. Carman Lapointe-Young, the Director General responsible for ethics, and Mary Traversy, Corporate Manager, Industrial Relations.

[156] Ms. Boucher further stated in her testimony that people would call her after they had received a call from Ms. Dawson who were quite stressed because they felt, she testified, that Ms. Dawson was upset and they wanted to ensure that they had not upset her. She added that the conversation was long and that people were having difficulty communicating and closing the conversation. Ms. Boucher further testified that she herself felt that she needed to go and get help from an expert to speak to the management who was having difficulty with Ms. Dawson and to provide them with information and guidance about autism and how to better communicate.

[157] Ms. Boucher testified that the decision was made, at the time, to have all of Ms. Dawson's calls handled by one person, Mr. Richard Paradis, who was replacing Ms. Demers, Director of Human Resources, at the time. The record shows and the Tribunal finds that all of these phone calls were related to the first complaint and its settlement. Later in her testimony, Ms. Boucher stated that after the January 14, 2002 meeting in Ottawa, Canada Post management did not get many phone calls, to her knowledge, directly from Ms. Dawson.

[158] In her testimony, Ms. Boucher stated that she was the one who initiated the search for an expert on autism who could give sessions, dealing basically with communication issues and general information with respect to autism.

[159] Ms. Boucher testified that, at one point, she received a call from Ms. Dawson who was quite upset because she had learned that Canada Post wanted to hire this individual who had a child who was autistic to provide information on autism to management and not a specialist.

[160] Ms. Dawson's concerns about the hiring of an expert are clearly expressed in a letter she wrote to Ms. Mary Traversy, on November 12, 2001. In her letter, Ms. Dawson refers to the fact that Ms. Boucher also hired a consultant to find an autism expert who she knew and was a meteorologist. She goes on to say that what she wrote in her June 18, 2001 letter to André Ouellet: Educating management in autism - something she didn't ask for - had frightening consequences, including the EAP Director's letter. She expresses the view that having an expert come in seemed to confirm that autism was the problem, absolving management of their failure to apply, to her as to everyone else, existing standards and procedures, or even a modicum of decency and competence.

[161] The record shows that, after Ms. Dawson's phone call, Mrs. Boucher contacted l'Intégrale in Montréal in order to get a bilingual person able to speak about autism and that, in early December 2001, she was given the name of Ms. Nathalie Poirier. It was intended that Ms. Poirier provide help to the people in Ottawa as well Montréal. The meeting was scheduled to take place on January 14, 2002.

[162] The record shows, however, that an initial meeting took place in Montréal with Ms. Poirier before the January 14, 2002. Ms. Daoust testified that the meeting was organised by Ms. Demers, Director of Human Resources. Ms. Daoust, who attended the Montréal meeting, testified that were in attendance at the Montréal meeting all the managers in Human Resources but that there were no union member present. It appears from Ms. Boucher's testimony that the purpose of the meeting was to determine if Ms. Poirier was the right specialist. Ms. Boucher stated in her testimony that Ms. Demers called her back to inform her that Ms. Poirier was a suitable specialist.



[163] According to Ms. Daoust what was said at the meeting was that Canada Post had to deal with an autistic person, that they were not well equipped to do that, that they did not understand how to deal with the person. People were able to ask questions, according to Ms. Daoust, and Ms. Poirier explained to them how an autistic person functions and provided advice as to how to deal with Ms. Dawson, like hanging the phone if Ms. Dawson kept talking too much. According to Ms. Daoust, when Ms. Poirier came for the first time at Canada Post, she was not aware that the person in question was Ms. Dawson. However, according to Ms. Daoust, in the course of the meeting, Ms. Dawson's name came up and Ms. Poirier stated that she had already come across her file and that she knew Ms. Dawson very well.

[164] Ms. Boucher testified, with respect to the meeting that was to be held in Ottawa, that those who would be invited to attend the meeting would be people who currently were getting the most communication, who were having difficulty communicating with Ms. Dawson. Ms. Boucher testified that initially only management was supposed to be invited and that, after a impromptu meeting with a union representative, the decision was made to invite union representatives. Ms. Boucher further stated in her testimony that Mr. Lafleur called her a few days before the meeting that was scheduled to be held in Ottawa, asking for a copy of Ms. Poirier's c.v. which she sent him. Mr. Lafleur testified that it was not unusual for Canada Post to organise meetings where human rights issues were discussed.

[165] The record shows that on January 14, 2002, a meeting was held in Ottawa with Canadian Union Postal Workers representatives (national, regional and local levels), Canada Post officials and Ms. Nathalie Poirier. The record shows that amongst the attendees at the January 14, 2002 meeting were Mr. Lafleur, a union official, seven or eight people from Canada Post Employee Assistance Program, Huguette Demers, from Canada Post, as well as seven or eight other Canada Post people. According to Mr. Lafleur, the purpose of the meeting was for Canada Post to get more education on autism, get a better understanding of what autism was and what the implications were as well as to move Ms. Dawson's file forward.

[166] In her testimony, Ms. Boucher stated that the organisers of the meeting were mindful of the need not to discuss an individual case and to have a general session. Mr. Lafleur testified that, during the meeting per se, there were no discussions about Ms. Dawson and Ms. Dawson's situation at Canada Post. Ms. Boucher acknowledged however, under cross-examination, that the meeting was about how to better communicate with Ms. Dawson. Ms. Boucher further acknowledged that the meeting was not successful in achieving that goal.

[167] It appears from Mr. Lafleur's testimony that the union had tried on many occasions to have Ms. Dawson present at the meeting, but to no avail. Finally, the union and Canada Post agreed to have a meeting in Ottawa without Ms. Dawson present. Ms. Dawson was thus not invited at the January 14, 2002 meeting in Ottawa. Mr. Lafleur stated that he felt that it would be preferable if the interested parties were invited to these information sessions but that this was not usually the case.

[168] The record shows that Ms. Poirier gave handouts of her presentations to the attendees. Mr. Lafleur testified that he was taken aback by what was said by Ms. Poirier on autism. According to Mr. Lafleur, Ms. Poirier's comments were to the effect that autistic people were selfish and did not have any feelings. Mr. Lafleur was never contradicted on this. For her part, Ms. Boucher testified that there was, according to her, good information in the presentation, that it gave the

attendees a little bit more information on autism. When one looks at the handout provided to the participants by Ms. Poirier, the content puts a lot more emphasis on the negative traits of autism than on the positive ones.

[169] The record shows that on January 15, 2002, Mr. Lafleur wrote a letter to Ms. Mary Traversy, Manager, Industrial Relations, after it was discovered that Ms. Poirier knew Ms. Dawson personally. In his letter, Mr. Lafleur states that at the beginning of the meeting, he had asked Ms. Poirier about her knowledge of Ms. Dawson's file and that she had replied that she had no knowledge of the file and that she was attending the meeting to attempt to explain her understanding of autism.

[170] Mr. Lafleur testified that when Ms. Dawson learned that the union had gone to the Ottawa meeting, she was upset, especially when she realised that the person making the presentation on autism was Ms. Poirier who had been her psychologist in the past. In a second letter written to Ms. Traversy, dated January 16, 2002, Mr. Lafleur stated that he could not believe that Canada Post would have set the union up in this way knowing full well what the impact would be on Ms. Dawson.

[171] Asked if she was aware at any time prior to the meeting that Ms. Poirier could have been Ms. Dawson treating psychologist, Ms. Boucher testified that she was not and had she been made aware, she would have looked for someone else. There is no reason for the Tribunal not to believe Ms. Boucher. The record shows that Ms. Poirier was later on disciplined by her professional order.

[172] The evidence tends to show furthermore that Ms. Dawson was the only known autistic person working at Canada Post at the time. This is confirmed by Mr. Lafleur who stated that he thought that there was no other autistic person working at Canada Post at the time apart from Ms. Dawson.

[173] The Tribunal finds, given the evidence, that prior to the January 14, 2002 meeting, Canada Post management was not aware or was not made aware that Ms. Poirier was Ms. Dawson's treating psychologist. The Tribunal also finds that the meeting held in Ottawa on January 14, 2002 had a double purpose: provide information on autism so as to better communicate with Ms. Dawson. The Tribunal further finds that the information provided by Ms. Poirier at the meeting most probably did not convey the proper information on autism and did not contribute to improve the relations between Ms. Dawson and Canada Post management.

[174] Hence, the Tribunal finds that, with respect to the January 14, 2002 meeting, the Complainant and the Commission have failed to make a *prima facie case* of discrimination or retaliation or harassment. Neither the Commission nor Ms. Dawson provided the Tribunal with any material element which indicated that Canada Post's motivation in hiring Ms. Poirier was to discriminate against Ms. Dawson on the basis of her disability, to retaliate against her for having filed a human rights complaint or to harass her. The evidence shows that, at the time, Canada Post management was seeking outside expertise so as to better understand how it could cope with Ms. Dawson and was not aware of the past professional relations that had existed between Ms. Dawson and Ms. Poirier.

### **c) The work related injury**

[175] In her complaint form, Ms. Dawson states that, after the January 14, 2002 meeting and her declaration of a consequent validated work-related injury, the harassment she was experiencing escalated, that members of the Respondent attacked her verbally, threatening her aggressively. She further asserts that, when the Respondent's actions threatened her health, safety and life, CUPW, as well as her doctors intervened in writing. She also adds that the Respondent maintained the threat of forcing her to undergo a psychological assessment, an ordeal which would be devastating to her as an autistic person, and which was designed to be so. Ms. Dawson furthermore mentions that Richard Paradis, the Respondent's Labour Relations agent for Québec remarked in a telephone call to CUPW, on March 4, 2002, that she would only mutilate herself a few more times, personally insulting her and mocking her disability.

[176] With respect to the work related injury that Ms. Dawson declared in January 2002, the Tribunal heard evidence from both Ms. Dawson and Ms. Daoust. Dr. Piette, a physician at Medisys, who was scheduled to testify according to the Respondent's witness list, was not called to testify.

[177] The record shows that, following the January 14, 2002 meeting in Ottawa, Ms. Dawson declared a harassment-based work accident on January 30, 2002 to the CSST, indicating as the date of the accident January 14, 2002. The record shows that the medical report attesting this injury was signed by Dr. K., Ms. Dawson's physician. Dr. K. writes in her report: *victim of workplace harassment. Stress related adjustment reaction. Dx. Unable to return to work.*

[178] The record shows that Ms. Dawson went back to work on February 6, 2002. Ms. Dawson testified that she decided to go back to work because she was scared, not because she was healthy and that upon returning to work, she was not in great shape but that she was doing her work.

[179] In a report signed by Dr. K. and dated February 5, 2002, the latter states: *patient is emotionally fragile. (unreadable) she feels the ( ) to return to work because of continuous harassment (sic).* The record further shows that that same day, Dr. K. wrote on a prescription script: *To facilitate communication, it would be useful for Ms. Dawson to tape all the conversation with management.*

[180] In her testimony, Ms. Daoust stated that she received, after Ms. Dawson reported her work accident, the worker's claim completed by Dr. K. (Form 1940) and Dr. M.'s letter dated January 24, 2002 both in the same envelop. Ms. Daoust stated, with respect to Dr. K.'s report, that what caught her attention was the mention *patient is emotionally fragile*. What Ms. Daoust understood from this remark was that Ms. Dawson was not ready to come back to work. Ms. Daoust's feared at the time that Ms. Dawson would be coming back to work while still injured and that her condition would worsen.

[181] The record shows that, in his letter, Dr. M. states that the letter reflects the content of a meeting held on April 4, 2001. He further states that he has diagnosed Ms. Dawson as being autistic, with superior intelligence associated with chronic depression related to adaptation problems due to her handicap. Dr. M. goes on to say that Ms. Dawson is capable of good judgment, has a good sense of her condition, that she is lucid and capable to make decision by herself, able to speak about her condition and that no decision concerning her condition should be made without her consent. It is to be noted here that the letter was written after the Ottawa

conference, which took place, on January 14, 2002, but before Ms. Dawson reported her work accident, on January 30, 2002.

[182] Ms. Daoust testified that after receiving the documents related to Ms. Dawson's claim, she got a call from Ms. Dawson. Ms. Daoust testified that Ms. Dawson was preoccupied by the mention *chronic depression* written in the medical certificate.

[183] In the course of her cross-examination of Ms. Daoust, Ms. Dawson asked Ms. Daoust to explain what Dr. M. had to do with the accident (injury on duty absence), given that the letter written by Dr. M. does not contain any mention of a work accident and that it came out of an appointment that Ms. Dawson had had with Dr. M. approximately 9 months before the letter was written and the occurrence of her work related injury. Ms. Daoust testified that for her, the letter was not related to the accident but provided information on the state of health of Ms. Dawson.

[184] In her testimony, Ms. Dawson explained that the January 25, 2002 letter from Dr. M. addressed to her was necessary as a certificate of diagnosis because the CSST claim was harassment based on disability and that Ms. Dawson felt compelled to establish her diagnosis through a note coming from Dr. M. Ms. Dawson stated that and the evidence shows that before giving permission to Canada Post to contact Dr. M., she wanted to ascertain why this was necessary and relevant given the nature of her claim. Ms. Dawson was of the view that Dr. M. knew nothing about the work accident and would have been puzzled to be approached.

[185] The record indicates that after having filed her claim with the CSST, Canada Post undertook to investigate internally the allegation of harassment. At the end of its investigation, after having spoken to supervisors at the Pierrefonds postal station, Canada Post concluded that there was no harassment at the Pierrefonds postal station but that the allegation had to do with the Ottawa meeting.

[186] The record shows that Canada Post requested that Ms. Dawson submit herself to a medical evaluation by a physician designated by Canada Post. Ms. Daoust testified that even if Ms. Dawson had gone back to work, on February 6, 2002, Canada Post still wanted an expertise or medical evaluation of her state of health for two reasons according to Ms. Daoust, 1. Canada Post did not believe that Ms. Dawson had been harassed, 2. in every case where there is an allegation of harassment, the employer asks for an evaluation - expertise. Ms. Daoust stated that given the content of the report written by Dr. K. that Ms. Dawson was fragile but felt that she had to come back to work, Canada Post felt that a second opinion was warranted to determine if she was fit to return to work or not even if Ms. Dawson had returned to work on February 6, 2002. Ms. Daoust gave as an explanation for this, that Ms. Dawson's injury was not physical, that Canada Post wanted to know if she was mentally fit to come back to work, since the injury was described as harassment in the workplace.

[187] On this topic, Ms. Dawson testified that, after declaring her accident, many reasons were put forward by Canada Post as to why she had to submit to an expertise, including her past depression and a hernia she had sustained earlier in her career. Ms. Dawson noted in her testimony that the form filled out by Dr. K. did not mention depression or hernia which are two conditions which have nothing to do with her work accident. Ms. Dawson testified that her work accident was not in any way related to depression. Ms. Dawson furthermore stated that she did not know what the expertise was for and why Canada Post wanted that expertise and that in fact,

she was told that she was going to see a specialist about her hernia and her depression, which were not the basis of her current work accident.

[188] Ms. Daoust testified that Ms. Dawson's supervisor asked her to report to a clinic so as to be evaluated. Ms. Daoust testified that Respondent's request to have Ms. Dawson submit to a medical evaluation by a physician designated by the Respondent had a dramatic impact on Ms. Dawson. According to Ms. Daoust, Ms. Dawson told her that she could not go and see a physician that she did not know, that Canada Post had no right to ask that of her.

[189] Ms. Dawson testified that she had two concerns with respect to the request that she submit herself to a medical examination; 1. having to go and see a physician who did not exist and 2. wanting information about how to fill out a medical certificate. Ms. Dawson did not understand why she was getting so much flack because of this and was wondering what she had done terribly wrong. She stated that Mr. Schetagne, because she wanted that information, i.e. how to fill out a medical certificate, accused her of harassing Ms. Leroux, one of her supervisors.

[190] Ms. Dawson stated in her testimony that it was not her intention to see a Canada Post doctor after all the privacy violations she was the object of according to her (Canada Post had contacted her doctors without her permission, Canada Post had hired her psychologist). She also stated that she was not prepared to see a Canada Post doctor who had probably no experience in autism. Her fear was that doctors who do not know anything about autism will make whatever assumptions they think. Ms. Dawson repeatedly stated that she was terrified of management.

[191] Ms. Dawson testified that, on March 1<sup>st</sup>, 2002, Donald Lafleur, a union official, informed her that she would be given a letter on March 5, 2002 forcing her to see a Canada Post paid doctor without providing her with a reason. In her testimony, Ms. Dawson stated that she could not believe that Canada Post was going to force her to see a doctor. The record shows that Ms. Dawson was provided with the letter on March 7, 2002.

[192] The record shows that, on March 4, 2002, Dr. K. wrote a letter to whom it may concern about Ms. Dawson. The letter states that Ms. Dawson is a patient that she has been following for several years for general medical care, that she has been informed that she is to undergo an expertise examination by a medical specialist, that Ms. Dawson feels that this is being forced upon her and constitutes harassment by her employer. Dr. K. goes on to state that at the present time, Ms. Dawson is in a very fragile state of mind and that, as a physician, she is very concerned that this could provoke a serious emotional reaction from Ms. Dawson.

[193] The record shows that, on March 4, 2002, Dr. M. also wrote a letter. In his letter, Dr. M. states that Ms. Dawson is perfectly able to work and to make decisions about herself. He recommends that Ms. Dawson be consulted about any decision about herself and that she not be subjected to changes that are brusque and go unexplained with respect to her work. Dr. M. states that this type of accommodation is as vital as adapting sidewalks to meet the needs of people in wheelchairs or to enlarge fonts for people who are visually impaired.

[194] The record indicates that, on March 4, 2002, Mr. Pierre Contant, the union's national director for the region of Montréal, wrote a letter to Ms. Huguette Demers, Director of Human Resources. Ms. Dawson was cc'd. In this letter, Mr. Contant expresses his consternation about

the interview to be held on March 5, 2002 with Mr. Potvin so that Ms. Dawson be subjected to a medical exam. Mr. Contant expresses his disapproval about this procedure.

[195] The records shows that on March 6, 2002, Mr. Christian Potvin, Unit superintendent at the Pierrefonds postal station, wrote to Ms. Dawson informing her that further to her injury-on-duty absence from January 31, 2002 to February 5, 2002 and to the medical certificates she had submitted to Canada Post to justify this absence and her return without consolidation and pursuant to section 212 of the *Act respecting Industrial Accidents and Occupational Diseases*, Canada Post would have the right to require her to submit to an independent medical assessment. Mr. Potvin goes on to say that Canada Post would be ready, however, to take another approach by adding a step to the regulatory procedure where Ms. Dawson would grant Dr. Piette, the Canada Post consulting physician, permission to contact Drs. K. and M. to obtain the required medical information.

[196] According to Ms. Daoust's testimony, this alternate solution was considered because it appeared that it would have been difficult for Ms. Dawson to have been referred to a physician that she did not know in an unfamiliar setting. Ms. Daoust testified that she was involved in the decision to sidestep the ordinary rule. She indicated in her testimony that this was done because of the concerns expressed by Ms. Dawson.

[197] According to Ms. Daoust, Ms. Dawson refused to have Dr. Piette contact her physicians. Ms. Daoust testified that what would have happened is, if after contacting Ms. Dawson's physicians, the Canada Post physician had been of the view that he had the information he was seeking, then there would have been no need to go ahead with the medical evaluation.

[198] The evidence shows that the reason why Ms. Dawson did not give her permission to Canada Post to contact Dr. M. was because Ms. Dawson did not see a link between the harassment she had complained about and Dr. M. However, the Canada Post physician felt that it was pertinent to contact Dr. M., given that Dr. M.'s note was sent to Ms. Daoust at the same time as the work accident claim. Ms. Daoust stated in her testimony that this was interpreted as a document which supported certain elements of the work accident.

[199] Ms. Daoust stated in her testimony that Ms. Dawson had up to March 11, 2002 to make her views known about Dr. Piette contacting her physicians. The record shows that Canada Post, given Ms. Dawson refusal to have Dr. Piette contact her physicians (Dr. M. and Dr. K.), decided on March 11, 2002 to send Ms. Dawson for an independent evaluation, the medical evaluation being scheduled for March 15, 2002.

[200] According to Ms. Daoust, this - i.e. referring an employee for an independent medical evaluation when Canada Post has doubts about the employee's medical condition - was standard procedure. In fact, Ms. Daoust testified that Canada Post made an exception to the rule in the case of Ms. Dawson by first trying to get the information it was seeking from her treating physicians.

[201] Ms. Dawson asked Ms Daoust if it was common practice to contact a physician who had nothing to do with the work accident. Ms. Daoust testified that this was a procedure which was not the normal procedure, that in fact Canada Post was proposing an alternate measure so that

Ms. Dawson would not have to go through the normal process provided by the *Act*, i.e. submit herself to an evaluation by a physician that she did not know in an unfamiliar setting.

[202] The record shows that on March 11, 2002, Ms. Louise Leroux, a supervisor at the Pierrefonds postal unit, wrote to Ms. Dawson advising her that she had an appointment with Dr. Jocelyn Audet, MD for a medical evaluation in accordance with article 211 of the *Act respecting Industrial Accidents and Occupational Diseases*. The evaluation was scheduled to take place on March 12, 2002 at the Groupe Santé Medisys, at 8 A.M. The letter states that the purpose of the independent medical evaluation was to determine the 5 matters indicated in section 212 of the *Act*.

[203] With respect to the March 11, 2002 request, Ms. Daoust testified that Ms. Dawson expressed a concern about this request. Ms. Daoust acknowledged that there was an error in relation to the physician's name. The name of the physician should have read Aubut instead of Audet. Ms. Daoust testified that Ms. Dawson did not attend the March 11, 2002 appointment given the confusion about the physician's name. Ms. Daoust testified that another appointment was scheduled but that Ms. Dawson refused to attend.

[204] Ms. Dawson testified that she was handed Ms. Leroux's letter on March 12, 2002. Ms. Dawson stated in her testimony that Ms. Leroux forcefully threatened her and told Ms. Dawson that she would undergo disciplinary measures if she refused to see the doctor. Ms. Leroux was not called to testify.

[205] Ms. Dawson testified that, on March 13, 2002, Ms. Louise Leroux told her that Dr. Audet was a psychiatrist. According to Ms. Dawson, Ms. Leroux, even if she stated that Dr. Audet was a psychiatrist, stated that the appointment was for her hernia (which she had had a year before) and her depression, two conditions which had nothing to do with the work accident she declared, i.e. workplace harassment.

[206] Ms. Dawson testified that she called Medisys to enquire about Dr. Audet. She was told that there was no Dr. Audet but a Dr. Aubut. Ms. Dawson stated that she found it confusing to be threatened by disciplinary measures if she did not agree to see a physician who did not exist.

[207] Ms. Dawson stated, in her testimony, that the Internet research she made on Dr. Jocelyn Aubut indicated that the latter was a psychiatrist who was associated with Pinel Institute in Montréal, which is a psychiatric hospital where individuals with criminal behavior are committed or remanded. She testified that he is not a specialist in autism.

[208] In this respect, Ms. Dawson put in evidence documents that she obtained on the web and which show that Dr. Aubut's expertise is related to dangerous individuals, citing in support of this allegation an abstract where Dr. Aubut is cited as one of the authors of an article entitled *An inventory for the evaluation of dangerousness in mental patients*. Counsel for the Respondent objected to the filing of these documents, stating that they did not prove anything about who Dr. Aubut was.

[209] The Tribunal is of the view that the evidence supports Ms. Dawson's assertion that Dr. Aubut is not a specialist in autism, that he is associated with Pinel Institute in Montréal and that his field of expertise is related mainly to criminal behavior, violence. Apart from objecting to the documentary evidence adduced by Ms. Dawson, the Respondent tendered no evidence

disproving Ms. Dawson's assertion about Dr. Aubut which the Tribunal finds to be credible as well as Ms. Dawson's testimony and knowledge of the medical community familiar with autism.

[210] The record shows that on March 13, 2002, Mr. Donald Lafleur, a union official who had attended the January 14, 2002, wrote to Mary Traversy, Manager, Industrial Relations at Canada Post. In his letter, he reiterates the union's objection to Canada Post sending Ms. Dawson for a medical assessment. The record further indicates that Ms. Dawson was told on March 25<sup>th</sup> that the previously cancelled expertise was scheduled for March 28, 2002.

[211] The record finally shows that on June 14, 2002, the CSST ruled on Ms. Dawson's claim of harassment. The letter which informs Ms. Dawson of the ruling refers to the events of October 1999 which gave rise to a complaint to the Human Rights Commission and to the subsequent settlement. The letter states that, given the January 14, 2002 meeting, the events referred to in two letters from the union, that for the second time, a psychologist who knew Ms. Dawson was consulted by the union and the employer, the cognitive handicap described in Dr. M.'s letter, dated February 12, 2002, the fact that Ms. Dawson had been a letter carrier for 13 years, without any problems, the CSST concluded that Ms. Dawson was victim of a work related accident on January 14, 2002 which resulted in an adaptation deficit.

[212] After the CSST decision, it appears that Canada Post decided not to have Ms. Dawson go through a medical evaluation or expertise by Dr. Aubut. Canada Post decided that for a four day absence, it was not worth it to pursue the expertise, energy and money wise. A business decision, stated Ms. Daoust.

[213] In the course of her testimony, Ms. Dawson often came back in her comments to the fact that Canada Post maintained its threat of having her submit to an expertise or medical evaluation up to the month of June 2002, that the union had also sent a letter to Ms. Traversy.

[214] On this issue, Ms. Dawson asked Ms. Daoust specifically the question if it was reasonable for Canada Post to maintain the threat of an expertise given the letter sent by Dr. K. on March 4, 2002 stating that this would be detrimental to her. Ms. Daoust answered: *I cannot say* and referred to the fact that one reason was that Canada Post was trying to contact her physician.

[215] The Tribunal finds that, in the particular circumstances of this case, the Respondent, through its employees, did not provide the Complainant with a workplace free of harassment. The Tribunal finds that even in the face of major concerns expressed both by Ms. Dawson's treating physician and her union representatives, the Respondent continued to press for a medical evaluation by a Canada Post designated physician.

[216] Indeed, the evidence shows that the Respondent remained deaf to the pleas of Ms. Dawson who did not want to see a physician whom she did not know and who knew nothing about autism, of her union representatives who expressed concern and consternation about Ms. Dawson having to submit to a medical examination by a Canada Post designated physician but more importantly, of her treating physician who stated that she was very concerned that this could provoke a *serious emotional reaction* from Ms. Dawson.

[217] Still, still, still, Canada Post pressed to have Ms. Dawson submit herself to a physical examination by an unknown doctor, with full knowledge that Ms. Dawson was autistic and very poor knowledge of autism. It is worth noting here that Ms. Daoust acknowledged in her



testimony that the request to have Ms. Dawson submit herself to a medical evaluation had a *dramatic impact* on Ms. Dawson.

[218] And to add insult to injury, Canada Post requested that Ms. Dawson meet with a physician who, the evidence shows, was not an expert in autism, but, on a balance of probabilities, a psychiatrist, specialised in violent behavior. The record shows that Ms. Dawson had to live with the threat of having to submit to a medical evaluation for a period of three months, i.e. from March to June 2002.

[219] However well-intended Canada Post management was in seeking a medical evaluation, the Tribunal finds that, in the present circumstances, the general behavior of those Canada Post employees who were involved in the medical evaluation process constitutes harassment. The behavior meets the criteria established in the case law with respect to what constitutes harassment, notably in *Hill* where the Tribunal stated that the gravamen of harassment lies in the creation of a hostile work environment, which violates the personal dignity of the complainant and in *Marinaki* where the Tribunal expressed the view that victims of harassment need not prove that they suffered pecuniary losses, that for a behavior to amount to harassment, some element of repetition or persistence is usually required. This said, section 65 of the *Act* establishes that the Respondent is responsible for the discriminatory acts of its employees, officers and directors.

[220] The Tribunal thus finds that Ms. Dawson's disability was an important factor in the way she was treated by the Respondent in relation to the above mentioned events and that the Respondent's conduct amounts to harassment and contravenes section 14 of the *Act*. However, the Tribunal finds that there exists no conclusive evidence that the Respondent's conduct and that of its employees constitute retaliation.

[221] Can Ms. Dawson be blamed for having refused to have the Medisys physician contact her physicians? The chain of events shows clearly a total lack of knowledge and understanding by Canada Post management of autism and of how autistic individuals process information. It clearly stems from the evidence that Ms. Poirier's presentation in January 2002 did not bring much to Canada Post management as to how to interact in the workplace with individuals who are autistic. There were in fact from the Ottawa meeting no lessons learned.

#### **(iv) The tape-recording of conversations**

[222] In her complaint form, Ms. Dawson states that, after the January 14, 2002 meeting, she requested a simple accommodation which would have been free of trouble or cost to the Respondent, that is, the right to tape-record her conversations with management. This measure is necessary because, Ms. Dawson asserts, she does not process information from conversations in the same way as non-autistic people.

[223] Ms. Dawson further asserts that, from September 2001 to May 9, 2002, she was denied this accommodation and that in a telephone call on May 9, 2002, Mr. Raymond Poirier, Operation Manager for Québec, told her that she was denied this accommodation measure because Canada Post did not like it. Ms. Dawson goes on to say that this comment shows intolerance for her based on her disability, that she felt unwelcomed and felt that she was held in contempt because she is disabled. Finally, Ms. Dawson states that, when the accommodation was granted in June

2002, unwarranted and demeaning conditions were attached in keeping with the Respondent's view of autism.

[224] Ms. Dawson testified that the first time she started taping conversations at Canada Post was in May 1999, shortly after she disclosed her diagnosis. She did this with management's knowledge and permission. Ms. Dawson testified that, at the time, she just informed management that this is what she would be doing and made it obvious that she was taping. At the time, nobody asked her to stop or to provide medical papers. Ms. Dawson further testified that it is just when there is a hostile environment that it becomes necessary for her to have a precise record of her own words and actions.

[225] Ms. Dawson stated in her testimony that she stopped taping at the end of 1999 or early 2000 but that in the fall of 2001, she asked for the permission to start taping again because she found it unwise not to ask for permission. The evidence shows that on September 30, 2001, in a letter sent to Ms. Mary Traversy, Manager Industrial Relations at Canada Post, Ms. Dawson asked for the permission to, if she finds it necessary, to tape her interactions with management, stating that as she has done before, she would let everyone know what she was doing.

[226] The record shows that, in December 2001, Ms. Mary Traversy, in response to a letter previously sent to her by Ms. Dawson, sent a letter to the latter in which she indicates that Canada Post is still not in agreement with her request to tape conversations with management. Ms. Traversy however states that to accommodate her, Canada Post will provide her with written explanations, as appropriate.

[227] The record indicates that, on February 5, 2002, Dr. K. wrote on a prescription script that to facilitate communication it would be useful for Ms. Dawson to tape all the conversations with management. The evidence indicates that this document was received by Canada Post.

[228] The record further indicates that in a letter dated February 12, 2002, Dr. M., in response to a request made by Ms. Dawson, underscores the need for Ms. Dawson to tape-record the conversations that take place between herself and Canada Post people. Dr. M. states that Ms. Dawson is vulnerable to the malevolence of her peers and that she displays intense emotional reactions when people do not respect their word or make statements that do not correspond to the true nature of things. Furthermore, Dr. M. expresses the opinion that this request, if satisfied, will allow Ms. Dawson to refer to the verbatim of what is said and not to approximations. Finally, Dr. M. states that he considers that this request is related to Ms. Dawson's cognitive handicap and must be addressed with the same respect as are requests made by people who have a medical handicap.

[229] In her testimony, Ms. Dawson confirmed Dr. M.'s statements. Ms. Dawson testified that she works with the verbatim of things and that it is hard for her to keep track of the verbatim of things in a conversation. Ms. Dawson further testified that she uses information differently compared to a non-autistic person. For her, all information is important and is weighed equally.

[230] Ms. Dawson stated in her testimony that she handed both these letters to Christian Potvin on February 18, 2002. It appears that Mary Traversy in Ottawa as well as Mr. Lafleur, union official, obtained copies of the letters.

[231] Ms. Daoust testified that she was personally involved in the decision to authorize the accommodation requested by Ms Dawson. In the course of her testimony, Ms. Daoust explained how requests for accommodation were processed at Canada Post. When a request for an accommodation is received, it is checked by a physician at Medisys to assess whether or not it is reasonable. Ms. Daoust testified that with respect to Ms. Dawson's request, managers at the Pierrefonds postal station were a bit reluctant to be recorded. They did not object to the accommodation but to the method suggested. This explains, according to Ms. Daoust, why it took so long to provide Ms. Dawson with the accommodation she was seeking.

[232] According to Ms. Daoust, Canada Post, given the objections expressed by local management, wanted to speak to Ms. Dawson's physicians in order to find another type of accommodation, such as putting in writing what had been said in the course of a conversation. According to Ms. Daoust, Ms. Dawson's position was that she had two medical certificates and did not understand what the problem was notwithstanding the explanations provided by Ms. Daoust about the supervisors' concerns. According to Ms. Daoust, Ms. Dawson was of the view that it was only by recording a conversation that one could have the tone of the conversation, and that a written document would not provide this.

[233] The record shows that, on May 23, 2002, Ms. Dawson gave her authorization to Canada Post to contact one of her physicians, Dr. M. The consent form for the release of medical information states that Ms. Dawson authorizes Dr. M. to discuss with the Medisys physician the use of a recording machine for conversation with the Canada Post management. It appears from the evidence that the delay in arriving at this was caused by the difficulty in getting hold of Ms. Dawson's physician and Ms. Dawson's request to speak about this issue with Canada Post's General Manager as well as negotiations with local management.

[234] Ms. Dawson stated in her testimony that finally, she was informed by Mr. Potvin that she would have the accommodation she had requested. It appears that the authorization came in June 2002.

[235] In view of the evidence, the Tribunal finds that the Complainant and the Commission have not established a *prima facie* case of discrimination or retaliation. The evidence shows clearly that the delay in providing Ms. Dawson with the permission to tape-record conversations with management stems from the reluctance of certain employees to be tape-recorded. In the present circumstances, the Tribunal finds that the Respondent had to balance the needs of the Complainant with the concerns expressed by certain of its employees. This said, the tense relations between Ms. Dawson and management at Canada Post cannot be totally excluded as a factor having contributed to the delays.

#### **IV. REMEDIES**

[236] In its final submissions, Ms. Dawson states, with respect to the issue of remedies, the following:

- a) Because I was deemed unreasonable and non-credible early in the hearings, and because I could not function adequately or sometimes even at all in the hearings, and because I did not therefore understand the hearings, and for other similar reasons unrelated to the facts of this case, I believe that this argument is futile.

- b) I suggest that autistics be warned away from CPC unless they can successfully conceal their differences and are certain that their diagnosis will never be obtained by CPC by any means.
- c) There was an impressive quantity of evidence showing that CPC is determined to make it harmful for me to interact with CPC in any way. This lends credibility to my demand that CPC leave me alone. However, I am in no position to ask for remedies.
- d) It seems pointless to have proceedings in which one of the parties is refused any accommodation and therefore can only function poorly or not at all (and is seen as dependent on the pity, charity, etc., of those who are considered typical or reasonable, and are therefore accommodated as of right). There seems to be no remedy for that.

[237] As for the Commission, it states the following:

Perhaps the most effective remedy this Tribunal could grant would be to order that Ms. Dawson be reinstated into the workplace in such a manner as would ensure her successful return to productive work and to a job that she clearly loved to perform and that suited her capabilities. The most effective way to effect change and tolerance in a workplace is to have the agent of change present in the workplace on a daily basis with the appropriate accommodations and safeguards in place.

That being said, Ms. Dawson has not requested that specific remedy and the Tribunal is not in a position to impose such a remedy upon her. However, Ms. Dawson did state in evidence that she is incapable of casting her mind into the future or speculating about where she would be today but for the alleged discrimination. She has asked at various times that she be left alone and, more specifically, kept on the books as an employee of Canada Post and that no steps be taken to terminate her employment. This would, in effect, leave the door open for her return to active employment if she feels capable of doing so in the future.

[238] The Tribunal agrees with the Commission. Given that Ms. Dawson has not requested to be reinstated into her workplace, nor any other form of compensation by the way, the Tribunal is without jurisdiction to make such an order. This is an issue that will have to be dealt with between Ms. Dawson and the Respondent.

[239] Furthermore, the Commission, in its final submissions, asks that an order that Canada Post work with the Commission to ensure that the discriminatory practices and behavior do not continue by ensuring:

- a) that it provide a copy of its existing or amended harassment, discrimination and accommodations policies within 30 days of the Tribunal's decision;
- b) that Canada Post work with the Commission to modify their existing policies to conform with the *Canadian Human Rights Act* and human rights law of Canada should the Commission determine that amendments are necessary;
- c) that the employer, in consultation with the Commission, retain appropriate persons to conduct workplace equity, accommodation and sensitivity training for managers and staff, and

- d) that the employer take such further and other steps as the Commission deems appropriate in the circumstances.

The Tribunal agrees.

[240] At the end of her testimony, Ms. Daoust acknowledged that it was the first time that Canada Post had to deal with an employee who was autistic, that in all probability, Canada Post mismanaged the case but that in the end, Canada Post learned from this experience.

[241] According to Ms. Daoust, Canada Post took different measures to increase its understanding of autistic people and be better managers, such as organizing a meeting with Dr. Poirier. Canada Post had to adapt itself to Ms. Dawson's thought process. According to her, Canada Post tried to accommodate Ms. Dawson but that there are rules at Canada Post that must be followed and to try to accommodate Ms. Dawson given these rules was not always easy. Canada Post did its best, according to her, with the knowledge it had of autism.

[242] Be this as it may, the Tribunal finds it disturbing for the future of autistic people that they be seen because of their condition to pose a threat to the safety of others and some form of nuisance in the workplace. An employer has a duty to ensure not only that all employees work in a safe environment but also that ill perceptions about an employee's condition due to poor or inadequate information about his disability lead other employees to have negative and ill-founded perceptions about him.

[243] An autistic person should expect that his workplace be free of any misperception or misconception about his condition. It goes to the right of autistic individuals to be treated equally, with dignity and respect, free of any discrimination or harassment related to their condition. In this respect, in a society where human rights are paramount, an employer has the duty to dispel such misconception or misperception about such individuals.

[244] This duty stems from the *Canadian Human Rights Act* and the need to get rid of any discriminatory behavior in the workplace as well as in society in general. It is worth reminding employers as well as society as a whole that the purpose of the *Canadian Human Rights Act*, as stated in section 2 of the *Act*, is to *give effect to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, **disability** or conviction for an offence for which a pardon has been granted.*

[245] Autistic people, if they want to be able to accomplish themselves in a workplace or in society, need to be reassured that everything possible short of undue hardship will be done in order to ensure that misperceptions and misconceptions about their condition are properly handled by their employer, so that co-workers have a proper understanding of their condition and are not inclined to discriminate against them or harass them.

[246] To discriminate on the basis of somebody's physical appearance or social behavior might be one of the cruelest forms of discrimination. Here, Ms. Dawson was seen or perceived, at one

point in her career at Canada Post, to be a threat to her co-workers because she had self-injured in the past, not because she had assaulted colleagues. She was later on perceived as a form of nuisance because she insisted on obtaining rational responses to her queries and never backed down. The fact of the matter is that Ms. Dawson was, until her diagnosis became officially known to Canada Post in 1999, seen as an excellent employee.

[247] The Tribunal is of the opinion, in view of the evidence, that the Respondent needs to review its policies in relation to discrimination and harassment and put in place educational programs that will sensitize its employees as well as management to the needs of disabled individuals in the workplace, notably autistic individuals, so that individuals such as Ms. Dawson will not have to suffer from a lack of knowledge and understanding of their condition. In this respect, given the Canadian Human Rights Commission's expertise in these matters, the latter can surely provide assistance, which should be welcomed, to the Respondent.

## V. ORDER

[248] For the foregoing reasons, the Tribunal finds that the complaint filed by Ms. Dawson against Canada Post is substantiated and that the Respondent has contravened sections 7 and 14 of the *Act*. Given that Ms. Dawson did not request any remedial measures, the Tribunal will not award any. However, the Tribunal orders the Respondent:

- a) to provide a copy of its existing or amended harassment, discrimination and accommodations policies within 30 days of the Tribunal's decision;
- b) to work for a period of one year with the Commission to modify its existing policies to conform with the *Canadian Human Rights Act* and human rights law of Canada should the Commission determine that amendments are necessary;
- c) to retain, in consultation with the Commission, appropriate persons to conduct workplace equity, accommodation and sensitivity training for managers and staff, notably in relation to autism and autistic individuals; and
- d) to take such further and other steps as the Commission deems appropriate in the circumstances.

*"Signed by"*

Pierre Deschamps

OTTAWA, Ontario  
September 12, 2008

## PARTIES OF RECORD

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| TRIBUNAL FILE:                         | T1053/3405  |
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| DECISION OF THE TRIBUNAL DATED:        | October 3, 2008   |
| APPEARANCES:                           |   |
| Michelle Dawson                        | For herself   |
| R. Daniel Pagowski<br>Patrick O'Rourke | For the Canadian Human Rights<br>Commission   |
| Marc Santerre<br>Richard Pageau        | For the Respondent  |