

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2024 CHRT 22

Date: April 19, 2024

File No.: T2660/3621

Between:

Gaétan Houle

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Transports Canada

Respondent

Decision

Member: Marie Langlois

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I. DECISION

[1] The Canadian Human Rights Tribunal (the “Tribunal”) allows the complaint of discrimination based on disability (schizophrenia) of Gaétan Houle (the “Complainant”). The Tribunal finds that the Complainant has met his burden of proof and that Transport Canada (the “Respondent”) has failed to justify its discriminatory practices (refusal to issue a marine medical certificate without limitations) by demonstrating that there was a *bona fide* justification for them. The reasons for the decision are as follows:

II. OVERVIEW

[2] Mr. Houle worked as a seafarer in the Merchant Navy from 1975 to 1990.

[3] On August 16, 1990, Mr. Houle stopped sailing due to illness. He received a diagnosis of schizophrenia and was prescribed medication. In 1994, Mr. Houle stopped taking his medication. The symptoms of schizophrenia reappeared.

[4] Mr. Houle resumed sailing on August 23, 1995, continuing until November 13, 1999. He then stopped sailing and began working at his brother’s farm.

[5] In 2001, he wished to return to sea service.

[6] In 2005, Transport Canada declared him unfit for sea service because of his diagnosis of schizophrenia. Mr. Houle is challenging that decision.

[7] The Appeal Board formed under section 73 of the *Crewing Regulations* ultimately overturned the decision of June 21, 2005, declaring him unfit for service at sea (appeal of a reviewed medical certificate). The Appeal Board issued a marine medical certificate with limitations, including that of performing the duties of an officer of the watch (which excludes the duties of a captain) during a local voyage (defined in the regulations as a voyage less than 200 nautical miles from the shore) and that of continuing to take his medication and following up with his physician every four months.

[8] Transport Canada sought judicial review of this decision. The Federal Court (2006 FC 497) dismissed the application for judicial review, upholding the Appeal Board’s decision.

[9] Thus, Transport Canada issued a marine medical certificate with the limitations specified by the Appeal Board. The certificate was valid as of June 21, 2005.

[10] Since 2012, Transport Canada has been issuing marine medical certificates with the same limitations attached. Mr. Houle again appealed the certificate. The limitations were upheld on review in a decision of the Transportation Appeal Tribunal of Canada on June 14, 2014 (2014 TATCF 19 and 20) and on appeal on February 18, 2016 (2016 TATCF 3).

[11] On January 29, 2013, Mr. Houle filed a complaint with the Canadian Human Rights Commission for discriminatory practices committed by Transport Canada starting on September 4, 2012; that is the matter that is presently before this Tribunal.

[12] Mr. Houle resumed sea service on February 13, 2015, in accordance with the limitations specified on the certificate issued to him by Transport Canada.

[13] In the course of his career, he has worked as a first, second and third officer on oil tankers, cargo ships, chemical tankers and other vessels, including vessels transporting dangerous goods. He has never worked as a captain.

[14] Before this Tribunal, he argues that Transport Canada's conduct is discriminatory and that its policy of imposing limitations on marine medical certificates for people with schizophrenia is being applied to him without taking into account his personal circumstances and his own risk of recurrence of a schizophrenic episode.

[15] Transport Canada, on the other hand, argues that granting a certificate without limitations to Mr. Houle represents too high a risk to the safety of seafarers, crew members, passengers, the vessel, its cargo and the environment. It submits that the limitations are put in place to reduce the risks that a health problem may present. Transport Canada is relying on the applicable regulations and its national and international obligations. It is of the view that the issuance of a certificate with limitations constitutes reasonable accommodation and that going beyond that would constitute undue hardship for it.

III. ISSUES

[16] The issues are the following:

(i) Issue 1: Has the Complainant established *prima facie* evidence of discrimination within the meaning of section 5 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (CHRA), because the Respondent refused to issue him a marine medical certificate without limitations?

- (a) Does the Complainant have one or more characteristics protected under the CHRA?
- (b) In the affirmative, has he experienced an adverse impact as a result of the issuance of certificates with limitations?
- (c) In the affirmative, was the protected characteristic or were the protected characteristics a factor in the Respondent's decision regarding the issuance of the certificate with limitations?

(ii) Issue 2: Has Transport Canada established that it had *bona fide* justification to refuse to issue the certificate sought by Mr. Houle?

- (a) Did Transport Canada adopt the standard for a purpose rationally connected to the issuance of the certificate and is the standard reasonably necessary?
- (b) Did Transport Canada adopt the standard in an honest and good faith belief that it was necessary to the fulfilment of that certificate-related purpose?
- (c) Was the standard reasonably necessary to accomplish this goal or purpose, in the sense that it was impossible for Transport Canada to issue the certificate sought by Mr. Houle without incurring undue hardship?

(iii) Issue 3: If the Respondent has not justified its decision under section 15(2) of the CHRA, what remedies are available?

IV. ANALYSIS

(i) Issue 1: Has the Complainant established *prima facie* evidence of discrimination within the meaning of section 5 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (CHRA), because the Respondent refused to issue him a marine medical certificate without limitations?

[17] Mr. Houle wrote in his statement of particulars that he had suffered discrimination within the meaning of section 7 of the CHRA, but he did not establish a relationship of employment with Transport Canada. He has never worked there or attempted to work there. Moreover, the Tribunal's case law confirms that for the provisions of section 7 of the CHRA to apply, an employment relationship must exist between an employee and an employer (see *Temate v. Public Health Agency of Canada*, 2022 CHRT 31 at paras 65 and 66).

[18] In the circumstances, the Tribunal will deal only with the issue of provision of services within the meaning of section 5 of the CHRA, which reads as follows:

5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

(b) to differentiate adversely in relation to any individual,

on a prohibited ground of discrimination.

[19] In response to the first issue, the Tribunal is of the opinion that Mr. Houle has established, on a balance of probabilities, *prima facie* evidence that he has suffered discrimination as a result of Transport Canada's refusal to issue him a certificate without limitations. This is shown by the answers to questions (a), (b) and (c).

a. Does the Complainant possess one or more characteristics protected by the CHRA?

[20] The Tribunal finds that there is no doubt that the Complainant has a disability within the meaning of section 3 of the CHRA.

[21] The evidence in the record and the testimony of Dr. Girard, Mr. Houle's attending psychiatrist since 1995, and that of the Respondent's expert, Dr. Jean-Robert Turcotte, Psychiatrist, establish that Mr. Houle has schizophrenia. This illness constitutes a disability within the meaning of section 3 of the CHRA. This is not disputed by Transport Canada.

[22] Therefore, the answer to question (a) is yes.

b. In the affirmative, did he experience an adverse impact as a result of the issuance of certificates with limitations?

[23] The Tribunal finds that the certificates issued by Transport Canada between 2012 and 2023 with limitations, namely that of performing the duties of an officer of the watch (which excludes the duties of a captain) during a local voyage (defined in the regulations as a voyage less than 200 nautical miles from the shore) and that of continuing to take his

medication and following up with his physician every four months, have had an adverse impact on Mr. Houle in that they have prevented him from working as a master mariner.

[24] The evidence shows that seafarers cannot perform the duties of a master mariner with the limitations of the medical certificate issued to Mr. Houle by Transport Canada, even if, as in Mr. Houle's case, they possess a valid certificate of competency.

[25] According to the evidence, Mr. Houle has successfully completed the training required to obtain a Master Mariner certificate. In April 1995, Transport Canada issued to the Complainant a Master Mariner, Steamship certificate. On December 18, 2001, Transport Canada issued an endorsement certifying the issuance of a Master certificate without limitations in Mr. Houle's name. In November 2015, Transport Canada again issued a Master Mariner certificate of competency without limitations.

[26] Moreover, the testimony of Captain Cédric Baumelle establishes that the remuneration available to a master mariner is higher than that of an officer of the watch restricted to territorial waters. This point is not challenged.

[27] However, Transport Canada submits that the Complainant is not adversely affected because he holds a certificate allowing him to work as a seafarer. He may sail in territorial waters and perform the duties of an officer of the watch. Transport Canada argues that it did not, in the provision of a service, deny Mr. Houle access to that service or differentiate adversely in relation to him within the meaning of section 5 of the CHRA.

[28] Let us now consider whether this is indeed the case. As mentioned above, section 5 of the CHRA provides that it is a discriminatory practice in the provision of a service to differentiate adversely in relation to an individual on a prohibited ground of discrimination.

[29] In *West v. Cold Lake First Nations*, 2021 CHRT 1, the Canadian Human Rights Tribunal considers the meaning of "service" in section 5 of the CHRA. It states that in order to determine whether we are dealing with a "service", the Tribunal must clearly describe and analyze the complained of act, action or activity. It adds that the "services" referred to in section 5 of the CHRA mean something of benefit being held out as services and offered to

the public (*Watkin v. Canada (Attorney General)*, 2008 FCA 170 [*Watkin*], and *Gould v. Yukon Order of Pioneers*, 1996 CanLII 231 (SCC), [1996] 1 SCR 571 [*Gould*]).

[30] The Tribunal must therefore determine whether the complained of act constitutes a “service” and whether this “service” is customarily available to the general public as set out in section 5 of the CHRA. In the affirmative, it must be determined whether Mr. Houle has experienced an adverse impact with respect to the provision of this service on a prohibited ground of discrimination. This is the applicable test (*Moore v. British Columbia (Education)*, [2012] 3 SCR 360 at para 33).

[31] In this case, the Tribunal considers that the issuance by Transport Canada of a marine medical certificate authorizing a person to work as a master mariner constitutes a service within the meaning of section 5 of the CHRA in that it confers an advantage or benefit on the possessor. In the absence of such a certificate, a person may not perform the duties of a master mariner. A benefit is therefore conferred by Transport Canada when it issues the certificate sought by Mr. Houle, namely, the possibility of exercising that profession.

[32] Is this a service customarily available to the general public? In *Watkin*, the Federal Court of Appeal notes that the requirement in section 5 of the CHRA that the service be “customarily available to the general public” will usually be present in cases involving discrimination arising from government actions. Therefore, because Transport Canada is a government entity, this requirement is also met, so that Transport Canada’s issuance of the marine medical certificate allowing for the performance of the duties of a master mariner without limitations constitutes a service customarily available to the general public within the meaning of section 5 of the CHRA.

[33] On the other hand, Transport Canada argues that, in reality, the evidence establishes that even if a person possesses a certificate authorizing them to perform the duties of a master mariner, there is no guarantee that they will actually perform such duties. Additional conditions must also be met. It is also necessary to have a Master Mariner certificate, which recognizes that the training courses have been successfully completed. The evidence further establishes that to work as a master mariner, even with the marine medical certificate and Master Mariner certificate, a person must have sailed as a captain or first or second

officer in the preceding months or years. Captain Cédric Baumelle's testimony at the hearing establishes that a company wishing to hire a master mariner would not rely solely on the medical and competency certificates, but would require relevant and recent experience.

[34] The Tribunal does not accept the Respondent's argument because its role is to deliver the certificate that constitutes the authorization to sail, not to guarantee employment in accordance with the certificate. The refusal to issue the marine medical certificate without limitations prevents a person from legally working as a master mariner. It is a prerequisite. The certificate in question is considered a benefit, in accordance with the interpretation of the case law on the concept of service within the meaning of section 5 of the CHRA (*Watkin and Gould*). The benefit conferred by a marine medical certificate without limitations is undeniable, and the lack thereof, in this case, has an adverse impact on Mr. Houle, who is seeking one.

[35] The answer to question (b) must therefore be yes.

- c. In the affirmative, was the protected characteristic or were the protected characteristics a factor in the Respondent's decision regarding the issuance of the marine medical certificate with limitations?**

[36] The Tribunal finds that Mr. Houle was refused a marine medical certificate authorizing him to perform the duties of a master mariner without limitations because of his disability.

[37] Both the documentary evidence and the testimony of marine medical examiners Drs. Lelièvre and Gomez, of Dr. Goulet of the Marine Medical Unit and of Mr. Najha, Executive Director of the Marine Medical Unit, confirm that it was because of Mr. Houle's disability, namely schizophrenia, that limitations were added to the certificate.

[38] Accordingly, the Tribunal finds that Mr. Houle has established *prima facie* evidence of discrimination against him.

(ii) Issue 2: Has Transport Canada established that it had *bona fide* justification to refuse to issue the certificate sought by Mr. Houle?

[39] The Tribunal notes that when the Complainant establishes *prima facie* evidence of discrimination, as is the case here, the burden of proof shifts to the Respondent. Transport Canada must therefore demonstrate, on a balance of probabilities, that the alleged discrimination is justified in accordance with section 15 of the CHRA.

[40] The issue is therefore whether there is a *bona fide* justification within the meaning of section 15 of the CHRA for the limitations on the marine medical certificate issued to Mr. Houle. The Tribunal finds that this is not the case.

[41] Section 15(1)(g) of the CHRA reads as follows:

15(1) It is not a discriminatory practice if

...

(g) in the circumstances described in section 5 or 6, an individual is denied any goods, services, facilities or accommodation or access thereto or occupancy of any commercial premises or residential accommodation or is a victim of any adverse differentiation **and there is *bona fide* justification for that denial or differentiation.**

[Emphasis added.]

[42] This provision must be interpreted in light of the three-step approach set out by the Supreme Court of Canada in *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 SCR 3 [*Meiorin*], and clarified, in a service context, in *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, 1999 CanLII 646 (SCC) [*Grismer*]. Therefore, according to the approach established by the Supreme Court of Canada, to demonstrate the existence of a *bona fide* justification for the discrimination, the Respondent must prove that:

(a) it adopted the standard for a purpose or goal that is rationally connected to the function performed;

(b) it adopted the standard in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal; and

(c) the standard is reasonably necessary to the accomplishment of its purpose or goal, i.e., it must demonstrate that it is impossible to accommodate people sharing the characteristics of the Complainant without imposing undue hardship upon it.

[43] The CHRA specifies that undue hardship can be expressed in terms of cost, health and safety. Section 15(2) reads as follows:

15 (2) For any practice mentioned in paragraph (1)(a) to be considered to be based on a *bona fide* occupational requirement and for any practice mentioned in paragraph (1)(g) to be considered to have a *bona fide* justification, it must be established that accommodation of the needs of an individual or a class of individuals affected would impose **undue hardship** on the person who would have to accommodate those needs, **considering health, safety and cost.**

[Emphasis added.]

[44] Before answering these questions, we need to consider the illness itself, then outline the legal context in which Transport Canada issues certificates, as well as the administrative process involved in the latter.

a. Schizophrenia

[45] Psychiatrist Jean-Robert Turcotte testified at the hearing as a medical expert at the Respondent's request. He also produced an expert report after examining Mr. Houle. He explained that the cause of schizophrenia is unknown. Psychiatric diagnostic categories are based on epidemiological/statistical/longitudinal observation of large populations and expert clinical opinion. Observation enables experts to identify common trends in symptoms. Some symptoms are "positive" (such as hallucinations and delusions), while others are negative, such as affect. There are also cognitive symptoms, such as the ability to concentrate, memory, attention and executive capacity. The illness also causes affective symptoms including depression and anxiety. The patient's behaviour is often disorganized.

[46] Previously, the scientific community believed that the illness progressively worsened. Now, it is of the view that 50% of patients have a favourable prognosis. Early treatment has a positive effect on a patient's outcome. However, drug use has a negative effect on the patient's outcome. Longitudinal studies clearly show that the evolution of this illness is not

uniform and that there is a subgroup with a very favourable prognosis. Dr. Turcotte stated that this was probably the case for Mr. Houle.

[47] Individuals with the illness are more sensitive to external stressors, such as bereavement, financial problems, interpersonal conflict and other psychosocial stressors. Dr. Turcotte stated that the risk of decompensation could increase compared to the population not subjected to these new stressors. This medical knowledge does not allow him to determine in advance which stressors will cause a person to decompensate. Only the experience of each individual can answer this question. However, he had never seen a person with schizophrenia decompensate because of the presence of stressors.

[48] Dr. Turcotte specified that Mr. Houle's medical file indicated that he still had minor residual symptoms until at least 2005. He wrote the following: [TRANSLATION] "The furthest we can go is to say that he would probably be more fragile to external stressors than someone from the general population who has never had psychosis".

[49] Dr. Turcotte stated that Mr. Houle had not experienced decompensation for nearly thirty years despite the stressors he has experienced. In the future, Mr. Houle could face new stressors. Accordingly, the risk of decompensation could increase. It is, however, impossible to predict the true effect of new stressors on a potential decompensation. For the future, with new stressors, the risk increases, but it cannot be said that there will be an effect on a potential decompensation.

[50] As for whether this diagnosis entails any limitations or restrictions in Mr. Houle's life and employment, Dr. Turcotte stated that he could not give a complete answer to this. He noted that Mr. Houle had never worked as a master of a vessel and that Mr. Théorêt, a marine expert employed by Transport Canada, wrote in a letter dated May 25, 2005, that masters must be able to develop emergency plans, organize and direct the crew and also provide on-board medical care. Dr. Turcotte assumed that those skills required flexibility, fast thinking and cognitive functions without any deficits. Because of the minor residual symptoms, Dr. Turcotte stated that he was not certain that Mr. Houle could have met these requirements in the early 2000s. Mr. Houle describes himself as [TRANSLATION] an "autocratic leader", which he believes is the best type of leader in an emergency. According

to Dr. Turcotte, Mr. Houle might therefore have a tendency to make decisions on his own, without much consultation, perhaps indicating a degree of rigid thinking. To know more, Dr. Turcotte added, a simple psychiatric evaluation would not be enough. For a more specific answer about Mr. Houle's functional and cognitive abilities, a specialized occupational therapist would have to assess his functional abilities, and a neuropsychologist would have to assess his cognitive abilities.

[51] With respect to medication, Dr. Turcotte observed that Mr. Houle would be at risk of relapse if he were to stop taking his medication, even though he is progressing well.

[52] Dr. Turcotte explained the difference between "remission" and "recovery" with respect to schizophrenia. A person is in remission if they no longer have symptoms or if their symptoms are of very low intensity, to the point where their symptoms no longer influence their behaviour. Recovery occurs when the person has regained the ability to function normally in the community, both socially and professionally, and is virtually symptom-free. Generally, the term "recovery" implies better functioning than "remission". In Mr. Houle's case, we are talking about recovery.

[53] The illness also diminishes with age. Mr. Houle's illness does not appear to affect him. As the person ages, the dose of medication can be reduced. The illness is always present, but it is controlled by the medication. If the patient stops taking the medication, the risk of relapse is high.

[54] Dr. Turcotte concluded that the mental examination was within normal limits. He wrote the following: [TRANSLATION] "Broadly speaking, it is relatively clear that Mr. Houle has not shown any significant symptoms of his disease since the early 2000s. He notes no esoteric concerns". Dr. Turcotte confirmed the diagnosis of paranoid schizophrenia, with a single episode, which is currently in complete remission.

[55] Dr. Turcotte was present during the testimony of Mr. Houle, who stated that, if he concentrated, he could feel the presence of extraterrestrials. According to the physician, this statement has no bearing on the fact that Mr. Houle is in full remission of the illness. In his written expert report, he mentioned that this type of concern could have no pathological

consequences, but it could also be an element indicating that he still has a slight thought disorder and possibly greater fragility than a person who has never suffered from psychosis.

[56] According to the available information, the medical reports and his testimony, Dr. Turcotte is of the view that Mr. Houle functions normally in his professional and personal life and that he has a healthy capacity for self-criticism.

b. Legal context for issuing marine medical certificates

[57] The issuance of marine medical certificates is governed by the *Canada Shipping Act, 2001*, S.C. 2001, c. 26 (CSA), and the *Marine Personnel Regulations*, SOR/2007-115 (MPR).

[58] The Minister of Transport is responsible for the issuance of all marine documents, including certificates (CSA, ss. 2 and 16).

[59] A marine employer must not hire a seafarer who does not hold a valid medical certificate attesting to the seafarer's ability to perform the duties for which they are to be employed and to complete the voyage to be engaged on by the vessel (MPR, s. 269).

[60] The Minister of Transport designates marine medical examiners to carry out periodic medical fitness examinations of seafarers (MPR, s. 268). These physicians are responsible for issuing provisional medical certificates attesting to fitness for sea service (physical and mental fitness) with or without limitations.

[61] When assessing fitness for sea service, marine medical examiners must take into account the medical standards set out in the International Labour Organization and World Health Organization publication entitled *Guidelines for Conducting Pre-sea and Periodic Medical Fitness Examination for Seafarers*, which has been replaced by the *Guidelines on the Medical Examinations of Seafarers* (the "Guidelines"). They must also take into account the standards set out in the MPR, including the fact that the seafarer must possess the physical and mental fitness to meet the occupational and operational requirements of the position that they occupy or seek to occupy (MPR, s. 270).

[62] The Guidelines apply to seafarers in accordance with the standards of the *Maritime Labor Convention, 2006* (MLC, 2006) and the *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978* (STCW), as amended. According to the Respondent, the purpose of the Guidelines is to provide marine administrators with a set of internationally recognized criteria that can serve as a reference for competent authorities. These criteria can be used either as they stand or as a basis for developing national medical examination standards compatible with the international requirements (MPR, s. 270).

[63] The Guidelines are incorporated by reference into the MPR. Furthermore, Transport Canada developed a guide for marine medical examiners to standardize medical examination (the “Canadian Guide”); it was approved in March 2013.

[64] After completing the medical examination, the marine medical examiner must provide the Minister of Transport with a provisional medical certificate either with or without limitations (MPR, s. 275).

[65] The seafarer may request from the Minister a reconsideration of that decision (MPR, s. 278). In that situation, if the Minister is of the view that the provisional certificate is incomplete or erroneous, the Minister may direct that medical examinations or tests be carried out, consult an expert or name a medical reconsideration committee (MPR, s. 278(3)), which was not done between 2012 and 2023 in Mr. Houle’s case.

[66] Then, after having taken into consideration the provisional medical certificate and the seafarer’s health, the Minister issues the medical certificate declaring the seafarer fit for sea service with or without limitations, as specified in the certificate if applicable (MPR, s. 278(4))

[67] In short, for a certificate to be issued by Transport Canada, a seafarer must provide the assessment report of the marine medical examiner who issued the provisional medical certificate and a report from their own physician.

[68] To render a decision about a medical certificate, the Minister takes into account the occupational and operational requirements of the position the seafarer occupies or seeks to occupy and the level of risk involved in the position with regard to the seafarer, other

seafarers, the passengers, the vessel and the health and safety of the general public (MPR, ss. 278(5)(a) and (b)). The MPR also provides that the Minister must take into account any relevant consideration linked to human rights as set out in the *Canadian Charter of Human Rights and Freedoms* and the *Canadian Bill of Rights* (MPR, s. 278(5)(c)). Dr. Goulet, of Transport Canada's Marine Medical Unit, testified at the hearing and stated that this obligation means that the person has a right to work.

[69] According to Transport Canada, the medical standard that is applied by the marine medical examiner and by the Minister is set out in the Canadian Guide and in the Guidelines.

[70] The Canadian Guide states that a seafarer diagnosed with schizophrenia is automatically deemed unfit to receive a certificate, while the Guidelines allow for the issuance of a certificate, which may be subject to limitations. Recall that the Guidelines are incorporated into the MPR.

[71] The Guidelines include a table to help determine how common medical conditions affect fitness. The table includes a section on mental, cognitive and behavioural disorders (Diagnostic Code F00-99), including a subsection entitled, "Psychosis (acute) – whether organic, schizophrenic or other category listed in the ICD [International Classification of Diseases]. Bipolar (manic depressive disorders)" (Diagnostic Code F20-31).

[72] The third column of the table provides for temporary incompatibility (3 months) with duties at sea in the case of a single episode with provoking factors. For a single episode without provoking factors, the incompatibility is expected to be permanent.

[73] The fourth column provides for fitness that is limited in time and restricted to near coastal waters, and a limitation not to work as master in charge of a vessel or without close supervision and continuing medical monitoring. This limited fitness is conditional on the seafarer having insight into their state, being compliant with treatment and having no adverse effects from medication.

[74] The fifth column provides for fitness to perform all duties worldwide. In that case, the assessment must be performed on a case-by-case basis at least one year after the episode, provided that provoking factors can and will always be avoided.

[75] According to the documentation in the file, Dr. Sully first classified Mr. Houle in the third column (permanent incompatibility) and then in the fourth column (limited fitness excluding the duties of a master).

c. Administrative process for issuing marine medical certificates

[76] As seen above, Mr. Houle was diagnosed with schizophrenia in 1990. He was hospitalized for closed therapy in 1992. He takes medication but ceased doing so for a brief period in 1994. The symptoms reappeared. Next, after he resumed taking his medication, Dr. Girard, his attending psychiatrist, confirmed the diagnosis of residual schizophrenia. Mr. Houle's state stabilized. He has not experienced a relapse since 1994.

[77] As early as 2002, Dr. Girard specified that Mr. Houle had been in complete remission of his symptoms for several years. He stated that it was unlikely that periods of stress experienced at sea would cause his symptoms to reappear if he were to continue taking his medication.

[78] In 2005, Dr. Gauthier, psychiatrist, assessed Mr. Houle at Transport Canada's request. He concluded that Mr. Houle was unfit for sea service and produced a marine medical examination to that effect. Transport Canada then refused to issue a certificate. Mr. Houle challenged that decision, which was set aside by the Appeal Board. The Appeal Board declared that Mr. Houle was fit for sea service with limitations and issued him a marine medical certificate with limitations (officer of the watch on a local voyage, taking of medication and follow-up with his specialist every four months). Transport Canada sought judicial review of that decision. In 2006, the Federal Court (*Canada (Attorney General) v. Houle*, 2006 FC 497 (CanLII)) dismissed the application for judicial review, upholding the Appeal Board's decision to issue the medical certificate with limitations.

[79] On February 4, 2010, Dr. Girard wrote in a letter that he had been monitoring Mr. Houle since 1995 and that he met with him every three to four months. He wrote the following:

[TRANSLATION]

“Mr. Houle is functioning normally, including at work. He continues to take medication preventively, namely, Stelazine and Kemadrin. He has always attended all his appointments. He has never been hospitalized since 1995.

In recent years, I have maintained his diagnosis of residual schizophrenia. Mr. Houle’s functioning demonstrates that he is capable of working, and that he has no particular psychiatric limitations or restrictions, except that I recommend that he continue his long-term medication. He continues to benefit from follow-up appointments with me every three to four months.”

[80] Dr. Girard testified that he has been in contact with Transport Canada every year or two for over 20 years. He has been treating Mr. Houle for almost 30 years. He has found no active psychotic symptoms. He explained that the medication he prescribes to Mr. Houle is taken to prevent relapses. Mr. Houle takes his medication and has not experienced a relapse. He cannot be cured of this illness, but he is stable and in his normal state with the preventive medication. As for the esoteric concerns, they are neither delusions nor an indication of illness. Several people have such concerns.

[81] On May 16, 2012, Dr. Louis Robert, Marine Medical Examiner, performed a medical examination of Mr. Houle and completed a provisional marine medical examination declaring him fit. The physician added no limitations to the provisional certificate.

[82] On September 4, 2012, after receiving Dr. Girard’s report of February 7, 2010, and Dr. Robert’s provisional report of May 16, 2012, both declaring Mr. Houle fit for sea service, Dr. Sully, Senior Marine Medical Officer for Transport Canada, decided that Mr. Houle was unfit to obtain a marine medical certificate because of his paranoid schizophrenia. She wrote that, [TRANSLATION] “[u]nfortunately, by its nature, paranoid schizophrenia involves unpredictable relapses, and symptoms can occur despite treatment. The conceivable repercussions of the signs and symptoms of a psychotic episode on board a vessel can be very serious and are a source of great concern for marine safety”. She added that section 113 of the CSA stipulates that [TRANSLATION] “every crew member on board a vessel shall carry out their duties and functions in a manner that does not jeopardize the safety of the vessel or of any person on board. **A person with a diagnosis of paranoid schizophrenia does not meet this standard**”. [Emphasis added.]

[83] Mr. Houle then asked for a reconsideration of Dr. Sully's decision. In October 2012, Dr. Sully asked Dr. Girard for a detailed updated report on Mr. Houle. The previous report was dated February 2010.

[84] On October 26, 2012, Dr. Girard replied that since he had begun monitoring Mr. Houle in 1995, they had had regular appointments every three to four months. Mr. Houle had never been re-hospitalized since 1995 or experienced any periods of disability in connection with schizophrenia. He had continued taking his medication preventively. With his authorization, Mr. Houle had reduced the dose of his medication by half. He had always attended all his appointments and appeared stable. Dr. Girard specified the following: [TRANSLATION] "With respect to his symptoms, Mr. Houle has no active psychotic symptoms. Nor does he have any particular limitations or restrictions with regard to work". He added: [TRANSLATION] "Mr. Houle's prognosis is very good, given the absence of relapse for over 15 years, healthy capacity for self-criticism, normal functioning and a regular intake of medication".

[85] On November 5, 2012, Dr. Sully noted that she was concerned about Dr. Girard's comment that Mr. Houle had decreased his dose of medication. She wondered whether an observation period would be necessary given the lower dose. She tried unsuccessfully the next day to contact Dr. Girard; he was absent. On November 9, Dr. Girard left Dr. Sully a voice message. Dr. Sully again tried to reach Dr. Girard on November 19 and 20 and December 6, 10 and 14, still unsuccessfully.

[86] In the meantime, on November 7, 2012, Mr. Houle informed Dr. Sully of his intention to revalidate his Master Mariner certificate, and on the following December 17, he informed her that he wished to work as a captain in Canadian territorial waters and would therefore accept a limitation for international waters.

[87] On December 20, 2012, Dr. Sully rejected Mr. Houle's request and issued a medical certificate declaring Mr. Houle fit to work as an officer of the watch for limited voyages in contiguous waters. She based her decision on the 2006 decision of the Federal Court. Mr. Houle challenged Dr. Sully's decision, which was ultimately upheld by the

Transportation Appeal Tribunal of Canada on June 11, 2014. Mr. Houle sought a review of this decision.

[88] On December 12, 2013, Dr. Girard confirmed to Transport Canada that Mr. Houle had still presented no active symptoms of his illness since 1995. He continues to take his medication and has no symptoms or limitations that prevent him from doing any work.

[89] Despite Dr. Girard's report, on January 15, 2014, Dr. Sully issued a certificate with limitations (officer of the watch and limited contiguous waters voyages).

[90] On May 8, 2014, marine medical examiner Dr. Robert issued a provisional medical certificate finding Mr. Houle fit without limitations.

[91] In a letter to Dr. Sully dated May 12, 2014, Mr. Houle stated that, in light of Dr. Girard's report and Dr. Robert's provisional medical certificate, he wished to apply for a position as tug, small cruise ship or ferry master. He asked her to issue a medical certificate without limitations or at least a Master 3000 Gross Tonnage, Near Coastal, Class 1, certificate.

[92] On June 5, 2014, Dr. Sully noted that the appeals before the Transportation Appeal Tribunal of Canada were still pending and that she would issue a certificate with the same limitations as before, preventing Mr. Houle from working as a master. The following day, she sent him a letter confirming her decision and explaining that, since there was no new evidence to assess, she was complying with the Federal Court's 2006 decision. She issued a certificate with limitations (officer of the watch, contiguous waters and medical report confirming the taking of medication, clinical follow-ups and stability of his condition).

[93] On June 6, 2014, Dr. Sully wrote to Dr. Robert that, in accordance with section 113 of the *Canada Shipping Act, 2001*, a person at risk of experiencing a psychotic episode does not meet [TRANSLATION] "the standard" that every crew member on board a vessel must carry out their duties and functions in a manner that does not jeopardize the safety of the vessel or of any person on board. She also referred to the table in the Guidelines, specifically the mental disorders defined in line F20-31, and explained that, in some circumstances, a certificate is issued but with several limitations, such as in Mr. Houle's case.

[94] Dr. Robert testified at the hearing. According to his evaluation and review of the file, Mr. Houle was fit for sea service without limitations. He explained that a diagnosis of schizophrenia does not automatically disqualify a candidate from seafaring. He found it inappropriate to declare a person unfit if the illness is properly managed and there has been no further recurrence. In reaching his conclusions, he mainly looks at a patient's condition and their history. He did not remember Mr. Houle specifically, but stated that he must have proceeded in this manner to make his evaluation and conclude that he was fit without limitations in both 2012 and 2014.

[95] On June 11, 2014, the Transportation Appeal Tribunal of Canada rendered a review decision. It upheld Transport Canada's September 2012 decision to issue a certificate with limitations. On February 18, 2016, the Transportation Appeal Tribunal's decision was confirmed by an appeal panel, which dismissed the appeal from the June 11, 2014, decision (*Houle c. Canada (Ministre des Transports)*, 2016 TATCF 3 (appeal)).

[96] On February 10, 2015, Mr. Houle asked Dr. Sully to amend his medical certificate to allow him to work as a master 150 gross tonnage of a pilot vessel in Les Escoumins, Quebec. Dr. Sully refused his request on March 10, 2015.

[97] On May 4, 2015, Mr. Houle sent Dr. Sully a new medical report from Dr. Girard dated April 28, 2015. The report confirmed that Mr. Houle's condition was stable and symptom-free, that he attended his medical appointments every three or four months and that he continued to take his medication regularly without side effects. Dr. Girard concluded that, [TRANSLATION] "from a psychiatric perspective, [he] deemed him entirely fit to work, without limitations".

[98] On May 28, 2015, Dr. Sully issued a certificate with the same limitations. She based her decision on the fact that there was no new evidence and on the Federal Court's 2006 decision.

[99] On February 29, 2016, Dr. Girard wrote that Mr. Houle was still being monitored for an initial diagnosis of schizophrenia, which had been at a residual stage for about 20 years. Mr. Houle had regular follow-ups every three or four months and took his medication, as has been the case for 20 years. He wrote as follows: [TRANSLATION] "In my opinion, Mr. Houle is

fully functional, and, during our meetings, I observed nothing in particular during the mental examination that might suggest decompensation. He does not have a thought disorder. There is also nothing to note in terms of his thought content. His psychomotor activity is normal. His cognitive functions are also normal, and he has a healthy capacity for self-criticism". Dr. Girard concluded as follows: [TRANSLATION] I would therefore like to inform you that this patient, whom I have now known for about twenty years, is stable; in my opinion, his condition is stable and he is fit to do any type of work".

[100] On March 11, 2016, marine medical examiner Dr. Picher issued a provisional medical certificate declaring Mr. Houle fit without limitations. On the same day, Richard Garber, Executive Director, Marine Personnel Standards, Pilotage and Medicine, Transport Canada, issued a medical certificate for a watchkeeping mate with limitations for limited, contiguous waters voyages, justifying his decision in the same manner as Dr. Sully had done.

[101] On November 21, 2016, Mr. Garber issued a medical certificate with the same limitations and the same justifications as those expressed by Dr. Sully, namely, the lack of new evidence and the Federal Court's 2006 decision. Mr. Houle requested a reconsideration of this medical certificate.

[102] On September 24, 2017, Mr. Houle forwarded a letter from Dr. Girard dated September 1, 2017, to Transport Canada. In that letter, Dr. Girard wrote that, from a psychiatric perspective, he still considered that Mr. Houle did not have any objectifiable functional limitations that would prevent him from working in a remote community or on vessels.

[103] On October 20, 2017, a certificate was issued by Mr. Garber, with the usual limitations and justifications. This certificate was valid from March 11, 2016, to March 11, 2018.

[104] On March 19, 2018, Dr. Girard wrote that Mr. Houle had been treated for residual schizophrenia since 1995. He was asymptomatic, had been taking the same medication ever since and was stable. He was fit to do any kind of work.

[105] On March 23, 2018, marine medical examiner Dr. Picher issued a provisional medical certificate declaring Mr. Houle fit without limitations.

[106] On March 23, 2018, Julie Bédard, Director, pilotage and marine medicine programs, Transport Canada, issued a certificate with the same limitations and justifications. This certificate was valid from March 23, 2018, to March 23, 2020.

[107] On September 17, 2018, Élisabeth Bertrand, Executive Director, Marine Personnel Standards, Pilotage and Medicine, Transport Canada, issued a certificate with the same limitations and justifications, valid from March 23, 2018, to September 17, 2019.

[108] On March 27, 2019, Dr. Girard confirmed that Mr. Houle was fit to work in transportation. He attended his appointments and was taking his medication. He had no psychiatric limitations.

[109] At the hearing, Ms. Bédard explained that, in her opinion, Dr. Girard's report was incomplete in that it failed to mention the frequency of the medical appointments, the date of the last appointment, and the name and dosage of any medication. However, she admitted that Dr. Girard had not been asked for this information specifically. She explained that more complex cases were discussed as a group, with other people from the marine unit. One of their concerns was more critical situations, such as when a ship had to be evacuated. She stated that, in accordance with section 278(5)(c) of the MPR, decisions to issue a certificate have to take human rights into account. According to Ms. Bédard, this provision relates to the right to work.

[110] On April 25, 2019, Ms. Bédard issued a medical certificate with the same limitations. This certificate expired on March 23, 2020.

[111] On May 24, 2019, Mr. Houle challenged this limited medical certificate.

[112] On January 30, 2020, Dr. Girard confirmed to Transport Canada that Mr. Houle was fit to work in transportation without any psychiatric limitations or restrictions.

[113] On March 2, 2020, marine medical examiner Dr. Gomez issued a provisional medical certificate with limitations (watchkeeping mate). In his testimony at the hearing, Dr. Gomez

stated that his examination of Mr. Houle's mental health had been normal in 2020. He had looked at the letter from Dr. Girard, the Transport Canada opinion and the Federal Court's 2006 decision. He specified that the Federal Court decision had determined the limitations, and so he had imposed these limitations in the 2020 provisional certificate.

[114] On September 2, 2020, Ms. Bédard wrote to Mr. Houle after having reviewed Dr. Girard's reports from March 19, 2018, March 27, 2019, and January 30, 2020. She stated that Dr. Girard had not mentioned the appointment frequency, the date of the last appointment or the names and dosages of any medication. She concluded that, in compliance with the Federal Court's 2006 decision, the certificate had to include the same limitations. Ms. Bédard therefore issued a certificate for March 2, 2020, to March 2, 2021; this was later extended to June 2, 2021.

[115] On January 14, 2021, Dr. Josée Perreault wrote to Transport Canada that Mr. Houle had been released from psychiatric care the year before. He remained fit to work in transportation, attended his annual appointments and followed his treatment plan. He had no psychiatric limitations.

[116] On March 18, 2021, Dr. Girard wrote to Transport Canada to confirm that Mr. Houle had been his patient since 1995, that he had seen him three or four times a year, and that he had been stable and residual since 1995. He had not been re-hospitalized or experienced any disability periods since 1995. He was taking his medication, 10 mg of Stelazine once a day, without any side effects. He had no limitations or symptoms, and was fit to do any of the work for which he had been trained.

[117] On April 20, Mr. Houle wrote to Transport Canada asking for his medical certificate to be amended so that he could work as the chief officer or master of a ferry.

[118] On April 29, 2021, marine medical examiner Dr. Lelièvre issued a provisional medical certificate with the same limitations. He wrote that Dr. Girard's letter of March 2021 did not contain any information to suggest that the medical condition for which these limitations had been imposed since the previous certificate for 2020 had changed. He added that the limitations complied with the Federal Court's 2006 decision. He explained that he had discussed the case with Dr. Marie Goulet, a physician at Transport Canada.

[119] In his testimony at the hearing, Dr. Lelièvre indicated that he also did not really remember Mr. Houle, but that, according to his notes, his examination had been normal. He also stated that he had been bound by the Federal Court's 2006 decision and had added the limitations stipulated in the decision in his provisional certificate for 2021. Had it not been for the decision, he would have declared Mr. Houle unfit, as stipulated in the Canadian Guide. Indeed, as we have seen previously, according to the Canadian Guide, seafarers with a diagnosis of schizophrenia should be deemed unfit.

[120] On October 10, 2021, Julia Murphy, Acting Director, Marine Personnel Certification, Marine Safety and Security, Transport Canada, issued a medical certificate with the usual limitations and justifications, valid from April 29, 2021, to October 10, 2022.

[121] On March 22, 2022, Mr. Houle forwarded to Transport Canada a report from Dr. Girard dated March 17, 2022, reconfirming that Mr. Houle had no symptoms or limitations, and was fit for all of the work for which he had been trained.

[122] On April 14, 2022, Mr. Houle wished to apply for the position of master of a scientific research vessel (the *Coriolis II*). The position was open.

[123] On August 18, 2022, Julia Murphy, Director, Marine Personnel Certification, Marine Safety and Security, Transport Canada, wrote to Mr. Houle that Dr. Girard's letter of March that year did not contain any information on the frequency of their meetings or the date of their last meeting. She issued a medical certificate with the same limitations and justifications, valid until April 29, 2023.

[124] On February 9, 2023, Dr. Girard wrote to Transport Canada that he had been treating Mr. Houle since 1995 and that he was seeing him every six to twelve months at that time. He reiterated that Mr. Houle was stable and had not had any decompensation or periods of disability since then. He had no limitations or symptoms. He was fit for any kind of work.

[125] Marine medical examiner Dr. Doré examined Mr. Houle and produced a report on April 4, 2023. He declared Mr. Houle fit without limitations and issued a provisional medical certificate.

[126] On June 21, 2023, Ms. Murphy issued a temporary medical certificate with the usual limitations. In her letter, she stated that the imposed limitations complied with the Federal Court's 2006 decision.

[127] In short, since 2010, Mr. Houle's attending psychiatrist, Dr. Girard, has repeatedly informed Transport Canada that Mr. Houle is fit to work without any psychiatric restrictions or limitations. At no time did he impose any limitations for the work of master or any other kind of work. Mr. Houle is fit for any job.

[128] To sum up, the marine medical examiners issued the following provisional medical certificates:

- Dr. Robert, May 16, 2012, fit without limitations
- Dr. Robert, May 8, 2014, fit without limitations
- Dr. Picher, March 11, 2016, fit without limitations
- Dr. Picher, March 23, 2018, fit without limitations
- Dr. Gomez, March 2, 2020, fit with limitations
- Dr. Lelièvre, April 29, 2021, fit with limitations
- Dr. Doré, April 4, 2023, fit without limitations

[129] Between 2012 and 2023, Transport Canada issued certificates with the limitations imposed by the Federal Court in 2006, without any regard for the provisional certificates issued by Dr. Robert in 2012 and 2014, Dr. Picher in 2016 and 2018, and Dr. Doré in 2023. It also did not consider the conclusions of Dr. Girard, reached on more than ten occasions between 2010 and 2023, and, according to which, Mr. Houle was fit for sea service without limitations.

[130] At the hearing, Transport Canada argued that its decision was justified by safety requirements and that issuing a certificate with limitations was a reasonable accommodation. Let us examine this.

[131] As we saw previously, the Supreme Court of Canada established a three-step test in *Grismer*.

d. Step 1: (a) Did Transport Canada adopt the standard for a purpose or goal rationally connected to the function being performed in issuing the certificate and is the standard reasonably necessary?

[132] In this case, the “function being performed” is the issuance of maritime medical certificates. The standard the Tribunal needs to look at is the standard under which Transport Canada does not grant certificates without limitations to seafarers with a diagnosis of schizophrenia.

[133] Transport Canada submits that marine transportation is a tightly regulated field, where marine safety is a high priority. It submits that the purpose of adopting the standard was marine safety.

[134] Indeed, the MPR provide that the Minister’s decision with regard to any medical certificate shall be based on the occupational and operational requirements of the position that the seafarer occupies or seeks to occupy and on the level of risk involved in the position with regard to the seafarer, other seafarers, passengers, the vessel and the health and safety of the general public (MPR, ss. 278(5)(a) and (b)). This provision confers considerable discretion on the Minister, who must consider all of the factors, including marine safety, when issuing a certificate.

[135] Moreover, as seen above, under the Canadian Guide, a seafarer diagnosed with schizophrenia is automatically deemed unfit to receive a certificate. However, under the Guidelines, a certificate may be issued, subject to limitations. The Guidelines are incorporated in the MPR.

[136] Captain Cédric Baumelle testified at the hearing. He explained that the master of a vessel is the highest authority on board. The master is supported by a first officer—the chief mate, second and third mates, and the chief engineer. If the master becomes unfit in the course of a voyage, the chief mate takes control until the vessel is safely anchored and a new master takes over.

[137] He explained that navigation is associated with many risks, such as weather conditions, storms, movement of other vessels, proximity of the shore, management and evacuation of a sick crew, disciplinary management, equipment breakages, fires, spills,

evacuation of the vessel and any other exceptional circumstances that can arise at sea. The work of a master is very demanding.

[138] The Complainant is not disputing that marine safety is a sufficiently important purpose to justify setting a standard for the issuance of certificates.

[139] In light of these factors, the Tribunal concludes that Transport Canada's purpose (marine safety) in adopting the standard in question (imposing limitations for seafarers diagnosed with schizophrenia) is rationally connected to the function of issuing certificates.

e. Step 2: Did Transport Canada adopt the standard in good faith, in the belief that it was necessary for the fulfillment of the purpose or goal rationally connected to the function of issuing certificates?

[140] The Tribunal is of the opinion that the evidence does not show that Transport Canada established the standard in bad faith.

[141] As the Supreme Court of Canada held in *Grismer*, citing *Meiorin*, even if the general purpose was rationally connected to the issuance of the impugned certificate, as we saw in the previous section, we have to verify whether the choice of this standard was made in good faith or legitimately.

[142] Nothing in the evidence establishes that the standard, which is of general application, was adopted in bad faith or motivated by discriminatory *animus*. Nothing and no one suggests that Transport Canada chose the standard in question for any purpose other than marine safety.

[143] Moreover, this standard is part of international standards.

[144] The Tribunal concludes that Transport Canada adopted the standard in the sincere belief that it was necessary for the fulfillment of the ultimate purpose of protecting the safety of seafarers, crew members, passengers, the vessel, the vessel's cargo and the environment. The Complainant agrees.

f. Step 3: Has Transport Canada demonstrated that issuing the certificate without limitations would cause it undue hardship?

[145] The Tribunal is of the opinion that Transport Canada has not established that issuing a certificate without limitations to Mr. Houle would have caused it undue hardship.

[146] In *Grismer*, the Supreme Court of Canada insisted on the importance of doing an individual assessment to determine whether, in not applying its standard to a particular person in specific circumstances, the respondent would have faced undue hardship.

[147] In that decision, the Supreme Court held that the respondent was required to accommodate the characteristics of affected individuals in the standard. It explained that accommodation ensures that each person is assessed according to their own personal characteristics instead of presumed group characteristics.

[148] In this case, the Tribunal finds that the decisions to impose limitations on Mr. Houle's marine medical certificate, be it by Dr. Sully, Mr. Garber, Ms. Bédard, Ms. Bertrand or Ms. Murphy, were made without an assessment of Mr. Houle's particular situation. They decided to disregard Dr. Girard's very clear, oft-repeated opinion on Mr. Houle's fitness without using the tools at their disposal, namely, psychiatric, functional and neuropsychological evaluations, or any other evaluation that might have invalidated, confirmed or qualified Dr. Girard's opinion.

[149] In addition, Transport Canada also disregarded the opinions of the marine medical examiners, namely, Dr. Robert, in 2012 and 2014, Dr. Picher, in 2016 and 2018, and Dr. Doré, in 2023, instead relying on the 2005 limitations imposed by the Appeal Board, whose decision the Federal Court had, as previously mentioned, upheld in 2006. Indeed, the letters from Dr. Sully to Mr. Houle on September 4, 2012, speak for themselves. Dr. Sully noted that schizophrenia, by its very nature, could reoccur unpredictably and that symptoms could appear despite treatment. She stated that a person suffering from schizophrenia did not meet [TRANSLATION] "the standard" of the *Canada Shipping Act, 2001*. She did not assess Mr. Houle's specific condition but relied on generalizations about the illness. In 2014, Dr. Sully confirmed that there was no new information and complied with

the Federal Court's 2006 decision, once again without assessing Mr. Houle's specific condition. Dr. Sully maintained this opinion in 2015.

[150] The Tribunal finds that Transport Canada, through its representative, Dr. Sully, did not consider Mr. Houle's specific condition at all. Dr. Sully based her decision on the illness itself, with no concern for Mr. Houle or the time that had elapsed since his last episode, the fact that he was taking his medication and the absence of symptoms. She completely disregarded the expert opinion of Dr. Girard, who has been treating Mr. Houle since 1995, and has seen Mr. Houle two to four times a year ever since. Dr. Girard has been saying for almost thirty years that Mr. Houle does not have any psychiatric limitations and that he can do any of the work for which he was trained. As early as 2002, Dr. Girard stated that it was very unlikely that periods of stress such as those that can be experienced at sea would cause Mr. Houle's symptoms to reappear, if he continued his medication. Of course, Dr. Girard is not a specialist for assessing the specific risks of a ship master's job, but, as an attending psychiatrist, he is in the best position to assess Mr. Houle's specific psychiatric condition. Dr. Girard's opinion that Mr. Houle does not have any of the symptoms of his illness is uncontradicted.

[151] Until 2023, Mr. Garber, Ms. Bédard, Ms. Bertrand and Ms. Murphy then followed the same logic as Dr. Sully, issuing marine certificates with limitations, without ever assessing Mr. Houle's specific condition, thereby preventing him from working as the master of a ship.

[152] It should be added that, at the hearing, even Dr. Turcotte, the Respondent's expert psychiatrist, explained how the illness evolves differently depending on the individual. Some have an excellent prognosis and can lead normal lives, like Mr. Houle. He is not only in remission, but is recovering, that is, he has regained his ability to function normally in the community both socially and professionally and no longer has any symptoms despite not being cured of his illness as he will have to take medication for the rest of his life.

[153] Why did Transport Canada not use the tools at its disposal to make a specific evaluation of Mr. Houle? Dr. Goulet, a senior officer in Transport Canada's Marine Medicine Unit, explained it, so to speak, at the hearing.

[154] Dr. Goulet stated that her work involved receiving marine medical examiners' and attending physicians' reports and discussing files with the nurses in her unit. If a file was complex, it would be discussed in a meeting with the unit's director, Ms. Murphy (at the time Dr. Goulet was in the Marine Medicine Unit), who would decide whether a certificate should be issued. She explained that she would rely on the legal framework, namely, the Canadian Guide, the Guidelines, section 270(1) of the MPR, which sets out the fitness requirements for sea service, and section 278(3) of the MPR, under which further information may be requested. The Marine Medical Unit does not examine seafarers. The regulations allow it to request expert reports and paraclinical tests, but Dr. Goulet considered these to be exceptional measures that were unnecessary in Mr. Houle's case given the 2005 decision of the Appeal Board—which had assessed the risk and determined the limitations to be imposed—a decision that had been upheld by the Federal Court in 2006.

[155] She confirmed that she had never assessed Mr. Houle's specific risk of recurrence, relying on the medical literature, which speaks of the risk of decompensation for people suffering from schizophrenia. According to Dr. Goulet, the risk is the same for everyone who has schizophrenia. She did not know whether Mr. Houle has had a single episode of schizophrenia or several.

[156] Dr. Goulet commented on Dr. Girard's reports, describing them as being repetitive and not very informative. She would have liked to have had more information, including on Mr. Houle's personal lifestyle and achievements, his social relations and friendships, and how he spent his free time. She would have liked to have known how Mr. Houle reacted in highly stressful situations. But she never attempted to communicate with Dr. Girard about this.

[157] She also commented on the 2012 and 2014 provisional reports of marine medical examiner Dr. Robert, who had declared Mr. Houle fit. She stated that these reports were incomplete. As for marine medical examiner Dr. Picher's 2016 and 2018 reports, she considered that these reports did not meet expectations because the opinion differed from what is found in the Canadian Guide. The same was true of the provisional report of Dr. Doré, who had also declared Mr. Houle fit without limitations.

[158] In short, Dr. Goulet reminded the Tribunal that a master is the most senior authority on a ship and that the job comes with a great deal of stress. Given Mr. Houle's illness, which, according to the medical literature, can lead to episodes of decompensation and loss of contact with reality, she found the safety risks to be too great to allow him to carry out this job. The risk of relapse was well documented in the literature. She stated that the risk level was the same for anyone who has schizophrenia.

[159] However, she admitted that she had never assessed Mr. Houle's specific risk of a relapse or another psychotic episode. She explained that her decisions to impose limitations has been based on the Federal Court's 2006 decision, which had upheld the decision of the Appeal Board that had assessed the risk.

[160] In light of the evidence as a whole, the Tribunal finds that Transport Canada has not fulfilled its duty of performing an individual assessment, as imposed by the Supreme Court of Canada in *Grismer*. Transport Canada did not assess Mr. Houle according to his personal characteristics instead of the presumed group characteristics found in the Canadian guide. Since this assessment was not performed, Transport Canada has failed to establish before this Tribunal that it would have incurred undue hardship in not applying its standard to Mr. Houle given his stable condition over the past 30 years.

[161] The Tribunal's role is not to determine whether Mr. Houle is entitled to a medical certificate with or without limitations, but rather whether Transport Canada performed an individual assessment of Mr. Houle before making its decision. The Tribunal notes that it did not, contrary to its legal human rights obligations.

[162] Indeed, Dr. Goulet's and Mr. Najha's testimonies suggest that they interpreted the human rights obligation imposed by section 278(5)(c) of the MPR as being limited to the right to work given the professional risks associated with a seafarer's work. The Tribunal finds this to be an extremely narrow view that conflicts with the CHRA and the entire body of human rights case law. As the Canadian Human Rights Tribunal aptly pointed out in *Duverger v. 2553-4330 Québec Inc. (Aéropro)*, 2019 CHRT 18: "It cannot be said enough: the purpose of the CHRA is to guarantee that all individuals 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 any of the prohibited grounds of discrimination under the *CHRA* (see section 2 *CHRA*)."

[163] Consequently, the Tribunal concludes that Transport Canada has failed to demonstrate that it would have incurred undue hardship if it had granted Mr. Houle a maritime medical certificate without limitations. It therefore failed to establish the existence of *bona fide* justification for the discriminatory practice, meaning that it cannot benefit from the exceptions set out in sections 15(1) and (2) of the CHRA.

[164] Mr. Houle's discrimination complaint is therefore substantiated.

(iii) Issue 3: If the Respondent has not justified its decision under section 15(2) of the CHRA, what remedies are available?

[165] Since the complaint is substantiated, the Tribunal may, under section 53 of the CHRA, order various remedies against the person found to be engaging or to have engaged in the discriminatory practice in question; these include compensating the victim for wages that the victim was deprived of (s. 53(2)(c)) and pain and suffering (s. 53(2)(e)) and to pay the victim additional compensation if the person is engaging or has engaged in the discriminatory practice wilfully or recklessly (s. 53(3)).

[166] The complainant is seeking \$1,114,627 for lost wages, including \$386,764 in interest, \$20,000 for pain and suffering and \$20,000 for the additional compensation, making a total of \$1,154,627.

[167] Let us examine this.

[168] The relevant provisions of the CHRA are as follows:

53(2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:

...

(c) that the person compensate the victim for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice;

...

(e) that the person compensate the victim, by an amount not exceeding twenty thousand dollars, for any pain and suffering that the victim experienced as a result of the discriminatory practice.

53(3) In addition to any order under subsection (2), the member or panel may order the person to pay such compensation not exceeding twenty thousand dollars to the victim as the member or panel may determine if the member or panel finds that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly.

53(4) Subject to the rules made under section 48.9, an order to pay compensation under this section may include an award of interest at a rate and for a period that the member or panel considers appropriate.

a. Compensation for lost wages (CHRA, s. 53(2)(c))

[169] The Tribunal has the discretion to award compensation for any or all of the wages that the victim was deprived of as a result of the discriminatory practice. In exercising this discretion, it is guided by certain principles.

[170] In its decision in *Chopra v. Canada (Attorney General) (F.C.A.)*, 2007 FCA 268 at paragraph 40 [*Chopra*], the Federal Court of Appeal reminds us that there must be a causal link between the discriminatory practice and the loss resulting from the discriminatory practice. It adds that the mitigation of loss principle applies. The Federal Court of Appeal has held that the choice of a particular date when compensating lost wages must also be explained (*Tahmourpour v. Canada*, 2010 FCA 192 at para 47).

[171] Mr. Houle is seeking \$727,863 in lost wages for the period between January 29, 2013, the date of his complaint to the Human Rights Commission, and September 15, 2023, the date of the final hearing, plus legal interest. He based his claim on the difference between

his gross annual income between 2013 and 2023 and the salary of a master, which he estimates to be \$150,000 a year.

[172] The Tribunal is of the opinion that, to establish the compensation for the lost wages, it should only consider the periods of sea service between 2013 and 2023. With the marine medical certificates he was issued, Mr. Houle could have been a seafarer for those 10 years, even if he could not work as a master. The shortfall must be reflected in the calculation.

[173] There is no need to take into account the times he did not work or salary differences with other jobs Mr. Houle could have occupied. The marine medical certificate issued to him did not prevent him from working as a seafarer. Yes, it did not allow him to be master, but he could occupy other positions on ships, which he did indeed do on several occasions. The Tribunal therefore only needs to consider the wages he earned as a seafarer and to calculate the shortfall on that basis. The causal link between the discriminatory practice and the wages actually earned relates to the seafarer's duties.

[174] To establish the amount of compensation, the Tribunal must estimate a master's salary.

How much does a master earn?

[175] Mr. Houle testified that, to his knowledge, a master earns about \$150,000 a year. His testimony was confirmed by Captain Simon Perreault, who also testified at the hearing. Simon Perreault stated that, since 2023, the base salary has been about \$150,000 based on 180 days (\$850 x 180 days). In 2008, it was around \$100,000 (\$550 x 180 days). On top of this salary, masters receive bonuses based on the size of the ship, the dangerousness of the cargo, the waters they sail, the number of passengers and crew, and other factors.

[176] The Complainant filed some job offers at the hearing.

[177] He filed a job offer from Transports Desgagné for the position of master on M/T *Harbour Fashion* trading in the Great Lakes and Eastern Canada. The position was available for a temporary period of two months, starting in August 2022. It was posted for a wage of \$66.77 for the first 40 hours of work and \$101.66 thereafter, for 8 hours a day, 7 days a

week. This meant a 56-hour work week for 8 weeks, amounting to 448 hours in total. The first 40 hours were paid at a rate of \$66.77, making a total of \$2,670.80, and the remaining 408 hours at an hourly rate of \$101.66, making a total of \$41,477.28. The total salary for the two months of work was therefore \$44,148.08. If one considers that a master sails six or seven months a year (around 180 days), the annual salary is around \$150,000.

[178] The Careers at Sea website also suggests that a master can earn between \$90,000 and \$150,000 a year.

[179] In short, the Tribunal accepts that, for the purpose of calculating the shortfall, a master's salary for the period at issue was \$150,000 a year, especially as no evidence to the contrary was submitted.

Which periods should be considered in determining the compensation for lost wages?

[180] Mr. Houle sailed for some of the time during the 2013 to 2023 period given that his medical certificates allowed him to do so.

[181] He testified that, in 2013 and 2014, he redid the necessary courses to start sailing again. The Tribunal finds that there was no shortfall as a result of the marine medical certificates or, in other words, he was not prevented from carrying out the duties of a master as a result of the limitations that were imposed in a discriminatory manner, meaning that there are no lost wages to be compensated for this time.

[182] Mr. Houle resumed sea service in 2015. According to his sea service record, he sailed from February 13 to March 15, 2015, from March 15 to 21, 2015, from March 25 to April 22, 2015, from May 14 to July 5, 2015, from July 29 to August 12, 2015, from August 15 to October 7, 2015, from December 11, 2015, to January 20, 2016, from January 21 to February 19, 2016, from April 9 to July 8, 2016, from August 5 to September 26, 2016, and from December 16, 2016, to January 8, 2017. According to his income tax returns, he earned a salary of \$78,490.61 in 2015, and \$76,911.36 in 2016.

[183] Had he been a captain in 2015 and 2016, Mr. Houle would have earned around \$150,000 a year, according to the evidence. He therefore lost \$71,509.39 in wages for 2015, and \$73,088.64 for 2016.

[184] In 2018 and 2019, Mr. Houle worked on a cargo ship, the *Jean-Joseph*, according to his testimony. During these two years, he could have worked as a ship's master if he had had a marine medical certificate without limitations. He would have earned \$150,000 a year. According to his income tax returns, as a seafarer, he actually earned \$67,576.05 in 2018 and \$81,895.31 in 2019, meaning that there was a shortfall of \$82,424.95 in 2018, and \$68,104.69 in 2019.

[185] Mr. Houle testified that, in the summer of 2021, he sailed on the *Georges Alexandre Lebel*, a train ferry. Since summer is four months long, the Tribunal finds that Mr. Houle worked as a seafarer for 4 months out of 12 that year and that he could have worked as a master during this period and earned \$50,000 ($4 \div 12 \times 150,000 = 50,000$). According to his income tax return, he earned \$26,714 in employment income, meaning \$23,286 in lost earnings.

[186] In April 2022, Mr. Houle and the supervisor of operations at Reformar (ship management and scientific equipment) exchanged emails. The company was looking to hire a permanent captain for a scientific research ship (the *Coriolis II*). Mr. Houle expressed his interest, but told the company about his limitations resulting from the marine medical certificate. He was not hired. The Tribunal is of the opinion that the lack of a medical certificate without limitations was at least partially responsible for the fact that Mr. Houle did not obtain the position at Reformar, resulting in a shortfall as of May 2022. This shortfall can be calculated at a master's salary for the period from April to December 2022, that is, eight months ($8 \div 12 \times 150,000 = 100,000$). His employment income in 2002 was \$37,500. If we assume that the \$37,500 were earned from April to December 2022, the shortfall for 2022 was therefore \$62,500.

[187] For 2023, from July 9 to 22, 2023, Mr. Houle earned an hourly wage of \$27.00 as a seafarer for Croisières AML. He earned \$2,875.15. He stated that he worked for Croisières AML for 17 weeks, earning \$24,438.69. Had he been a captain, he would have worked

about 180 days, or 26 weeks, and would have earned \$98,076.92 ($17 \div 26 \times 150,000 = 98,076.92$). The shortfall for 2023 is therefore \$73,638.23.

[188] The total eligible wage shortfall is therefore \$454,551.90.

b. Pain and suffering (CHRA, s. 53(2)(e))

[189] Mr. Houle is seeking \$20,000 for pain and suffering.

[190] The CHRA provides that, pursuant to section 53(2)(e), the Tribunal may award a maximum amount of \$20,000 to compensate a victim of discrimination for any pain and suffering the victim may have experienced.

[191] The case law establishes that this maximum amount is only awarded in the most egregious of circumstances: where the extent and duration of the pain and suffering warrant the full amount (*Closs v. Fulton Forwarders Incorporated and Stephen Fulton*, 2012 CHRT 30 (CanLII) at para 81).

[192] In order to set a fair amount for pain and suffering, the Tribunal must therefore assess, among other things, the emotional consequences, frustration, disappointment, loss of self-esteem and self-confidence, grief, emotional well-being, stress, anxiety and sometimes even depression, suicidal thoughts and other psychological symptoms resulting from the discriminatory practice. That type of demonstration is not necessarily easy to do.

[193] A medical record can be helpful in proving an individual's emotional state, but it is certainly not mandatory for establishing pain and suffering. In some cases, a medical record can support the evidence for the mental health consequences for a victim of discrimination; in other cases, the testimony of the victim, and of his or her work colleagues and loved ones can shed light on the extent, degree, intensity and duration of the pain and suffering experienced by the victim.

[194] In this case, only Mr. Houle's testimony sheds light on the matter. Mr. Houle testified that he had felt belittled, as if he were being punished because of his illness. He felt that he had lost his master's rank. But he had continued to work and to live a normal life, without any further psychological effects. The evidence does not demonstrate the extent, degree,

intensity and duration of the pain and suffering. He was indeed affected according to the evidence presented at the hearing, but not excessively so.

[195] In these circumstances, the Tribunal finds that **\$250** is fair compensation for the pain and suffering experienced by Mr. Houle.

c. Interest (CHRA, s. 53(3))

[196] Under section 53(3) of the CHRA, special compensation not exceeding \$20,000 may be awarded when the Tribunal finds that a respondent is engaging or has engaged in a discriminatory practice wilfully or recklessly.

[197] This provision is intended to provide a deterrent and to discourage, and, consequently, to prevent, as noted by the Federal Court in *Canada (Attorney General) v. Johnstone*, 2013 FC 113 (CanLII) at paragraph 155, which was affirmed by the Federal Court of Appeal (2014 CAF 110 (CanLII)).

[198] As held by the Canadian Human Rights Tribunal in *Bilac v. Abbey, Currie and NC Tractor Services Inc*, 2023 CHRT 43 [*Bilac*], human rights legislation, including the CHRA, is not punitive, but remedial and preventive (see *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62 at para 31). In fact, in *Bilac*, the Tribunal noted that the deterrent nature of section 53(3) of the CHRA and its discouraging effect on those who engage in or wish to engage in a discriminatory practice wilfully or recklessly is consistent with the preventive purpose of the CHRA.

[199] Here, the Complainant argues that Transport Canada's conduct was reckless because it repeatedly rejected the medical expertise of its own examiners and instead imposed a rigid, cliched view of schizophrenia and its associated risks. In doing so, Transport Canada engaged in reckless conduct that was highly prejudicial to Mr. Houle.

[200] Transport Canada argues on the contrary that its acts were not intentional, that it did not disregard or show indifference for the consequences and that its conduct was not done wantonly or heedlessly.

[201] In the Tribunal's opinion, the discriminatory practice was not intentional. Admittedly, Transport Canada maintained its perspective without taking Mr. Houle's personal situation into account, thereby engaging in a discriminatory practice, but nothing in the evidence establishes that it acted knowingly in contravention of human rights. The various individuals involved acted in the sincere but wrong belief that they were complying with their obligations.

[202] Consequently, the Tribunal concludes that the discriminatory practice was not engaged in wilfully or recklessly and that Mr. Houle can therefore not receive special compensation under section 53(3) of the CHRA.

d. Interest (CHRA, s. 53(4))

[203] The total compensation amount is \$454,801.90, that is, \$454,551.90 to compensate for lost wages, and \$250, for pain and suffering.

[204] It should be noted that the accrual of interest on the award made should not result in a total award that surpasses the statutory maximums prescribed in the CHRA (see *Christoforou v. John Grant Haulage Ltd*, 2021 CHRT 15 at para 112). In this case, the sum of the amount for pain and suffering, \$250, and the interest on this amount do not surpass the statutory minimum prescribed in the CHRA, which is \$20,000 for pain and suffering (CHRA, s. 53(2)(e)). As for the compensation for lost wages, the CHRA does not specify a maximum, so interest must be applied on the awarded amount of compensation, namely, \$454,551.90.

[205] Interest therefore applies on the total compensation amount, \$454,801.90, and will be awarded under section 53(4) of the CHRA. In accordance with rule 46 of the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, interest must be simple interest that is equivalent to the bank rate established by the Bank of Canada and must accrue from the day on which the discriminatory practice occurred until the day on which the award of compensation is paid.

[206] In the complaint he filed with the Canadian Human Rights Commission on January 29, 2013, Mr. Houle stated that the discrimination started on September 4, 2012.

Interest must therefore accrue from September 4, 2012, until the day on which the award of compensation is paid.

V. ORDER

[207] The Canadian Human Rights Tribunal finds that Gaétan Houle's complaint is substantiated and therefore orders Transport Canada to:

- PAY the amount of \$454,551.90 in compensation for lost wages;
- PAY interest on the amount of \$454,551.90 from September 4, 2012, until the day on which the award of compensation is paid;
- PAY the amount of \$250 in compensation for pain and suffering; and
- PAY interest on the amount of \$250 from September 4, 2012, until the day on

Signed by

Marie Langlois
Tribunal Member

Ottawa, Ontario
April 19, 2024

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2660/3621

Style of Cause: Gaétan Houle v. Transports Canada

Decision of the Tribunal Dated: April 19, 2024

Date and Place of Hearing: September 11 to 15, 2023

Québec, Quebec

Appearances:

Jean-François Labadie, for the Complainant

Chantal Labonté and Nadia Hudon, for the Respondent