

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 84
Date: August 29, 2025
File No.: HR-DP-3055-24

Between:

Kenneth Molyneux

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

National Arts Centre Corporation

Respondent

Decision

Member: Jo-Anne Pickel

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I. OVERVIEW

[1] These are my reasons for finding that this complaint has not been substantiated.

[2] Kenneth Molyneaux, the Complainant, worked for the National Arts Centre (NAC), the Respondent, as First Cook in the Respondents' Green Room restaurant from 2018 to 2024. Mr. Molyneaux is a professional Red Seal Chef and a member of the order of the Culinary Federation of Chef's Cuisine. He had a great deal of experience before being employed at the NAC. Mr. Molyneaux took great pride in his work and was proud to be employed by the NAC. Unfortunately, he lives with chronic pain, depression and post-traumatic stress disorder (PTSD). He alleged that the NAC subjected him to discrimination in employment on the ground of disability contrary to section 7 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (CHRA). More specifically, he alleged that the NAC denied him reasonable accommodations for his disabilities which prematurely ended his career and forced him into retirement.

[3] The NAC denies Mr. Molyneaux's allegations. It says that Mr. Molyneaux failed to establish his disability-related accommodation needs. Alternatively, it argues that it provided Mr. Molyneaux with reasonable accommodations, even if they were not his preferred accommodations. The NAC argues that requiring it to provide any additional accommodations would have imposed undue hardship on it.

[4] The Canadian Human Rights Commission (the "Commission") was a party to the proceeding and acts in the public interest. However, it did not participate in the hearing.

II. DECISION

[5] For the reasons detailed below, I find that the complaint is not substantiated.

III. Procedural and evidentiary issues

A. Scope of complaint

[6] Mr. Molyneaux's complaint raised numerous issues, including allegations of a failure to accommodate his disability, issues with his seniority ranking, his eligibility for tips, and alleged health and safety violations. Following its investigation, the Commission decided to refer only a portion of Mr. Molyneaux's complaint to the Tribunal for inquiry. The only allegation that the Commission referred to the Tribunal was Mr. Molyneaux's allegation that the NAC failed to provide reasonable accommodations for his disabilities. Therefore, this inquiry was limited to that allegation.

B. Ruling regarding Mr. Molyneaux's late hearing documents

[7] Shortly after the Commission referred Mr. Molyneaux's complaint to the Tribunal, I held a case management conference call with the parties to explain the Tribunal's process. In the call, I explained that the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 (the "Rules of Procedure"), are aimed at providing for an orderly disclosure process to prevent surprises just before a hearing. I also set deadlines for the parties' disclosure obligations. In December 2024 and January 2025, the parties complied with their disclosure obligations by filing Statements of Particulars (SOPs) and disclosing arguably relevant documents and witness summaries, as required under the Tribunal's Rules of Procedure.

[8] The hearing of this case was scheduled for the first week of May 2025. Therefore, I directed the parties to file the documents they intended to introduce into evidence at the hearing (the "hearing documents") by April 7, 2025. I ended up providing Mr. Molyneux an extension of time, until April 14, 2025, to file his hearing documents. On April 14, 2025, Mr. Molyneaux filed three emails with his 174 hearing documents attached to them. The attachments to the emails were blocked by the Tribunal's server due to their collective size.

[9] The next day, Mr. Molyneaux filed over 200 additional documents with the Tribunal, saying that he wished to add them to his hearing documents. Mr. Molyneaux had not

included these additional documents in the list of arguably relevant documents he filed with his SOP earlier in the proceeding, nor had he provided copies of those documents to the NAC as required by Rule 23 of the Tribunal's Rules of Procedure.

[10] I scheduled an urgent case management conference call that was held on April 23, 2025, to discuss Mr. Molyneaux's proposed hearing documents. I explained to Mr. Molyneaux that he had failed to disclose his additional documents to the NAC at the time he filed his SOP, as required under the Tribunal's Rules of Procedure. Therefore, his documents were not admissible under Rule 37. Just as importantly, I explained to Mr. Molyneaux that I had reviewed his additional documents and, in my view, they had little relevance to the precise legal issues I would need to address in this case.

[11] Some of the documents contained excerpts of laws that Mr. Molyneaux believed to be relevant to his case. I told him that he did not need to file copies of these laws into evidence, but instead he could simply refer to them in his closing submissions. Some of the additional documents (such as staffing schedules) were duplicates of documents already filed by the NAC. I explained to Mr. Molyneaux that he did not need to disclose and provide his own copies but could instead rely on the copies filed by the NAC. Other documents related to allegations contained in Mr. Molyneaux's complaint that had not been referred to the Tribunal by the Commission. I reminded Mr. Molyneaux that the only allegation that I had the power to address was his allegation that the NAC failed to accommodate his disabilities.

[12] Still other documents within Mr. Molyneaux's set of additional documents pertained to his work at the NAC but had little probative value in relation to the disability discrimination issue I must decide in this case. Probative value is an answer to the question, "to what degree is this information useful in answering the question I have to address?": *Magonza v. Canada (Citizenship and Immigration)*, 2019 FC 14 at paras 21–23. While the numerous documents Mr. Molyneaux submitted shortly before the hearing were relevant to his work in a general sense, they had limited usefulness to establishing his allegations of discrimination under the CHRA.

[13] For instance, Mr. Molyneaux submitted many of the additional documents to show the very high volume of work that he was required to do. However, even on a reading of the parties' SOPs, it seemed to me clear that Mr. Molyneaux was required to carry out a high volume of work. Therefore, in my view, many of these additional documents—like photos of food plates and multi-course menus—added little to the evidence that was expected to be presented in the case. In particular, the documents had little probative value in establishing that the NAC discriminated against Mr. Molyneaux based on his disability because they did not help establish the facts needed to prove discrimination or rebut a defence of undue hardship.

[14] As another example, Mr. Molyneaux sought to add to his hearing documents a photo that showed the height difference between an ergonomic insole and a cushioned mat. As I discuss later, one of the accommodations requested by Mr. Molyneaux was the provision of a cushioned mat at his workstation in the NAC kitchen. The photo provided by Mr. Molyneaux illustrated that the cushioned mat in the photo was thicker than the pair of ergonomic insoles pictured in the photo. However, this difference in thickness, by itself, has little probative value in assessing whether the ergonomic insoles that the NAC provided to Mr. Molyneaux reasonably accommodated his disabilities up to the point of undue hardship. This is because the issue of whether the insoles constituted a reasonable accommodation was not a question that could be determined by merely comparing their thickness to that of an anti-fatigue mat.

[15] Ultimately, while I had the discretion to waive compliance with the Tribunal's Rules of Procedure (Rule 8), I refused to admit Mr. Molyneaux's over 200 additional documents which were filed late. I concluded that the probative value of these documents was outweighed by the prejudice that would be caused to the NAC by admitting them just one week before the hearing was about to begin. That is to say, it would have been unfair to require the NAC to prepare an answer to the questions raised by these documents, and gather its own evidence on the subject, in such a short period of time.

[16] It was evident that Mr. Molyneaux had a difficult time accepting this ruling. He commented at various points during the hearing that he would have been able to make out his case if only I had admitted the additional documents he filed shortly before the hearing.

In addition, Mr. Molyneaux sought to resubmit most or many of the additional documents I had rejected, by attaching them to the written reply submissions he filed when the hearing was over. I find that the documents Mr. Molyneaux attached to his reply submissions continue to be inadmissible for the reasons detailed above.

C. Conduct of hearing

[17] Mr. Molyneaux did an impressive job representing himself throughout this proceeding. I am sensitive to the challenges faced by individuals who must represent themselves in legal proceedings like this one. This is especially the case for those who face additional challenges, such as persons who are living with disabilities. I am also mindful that the Tribunal, as an adjudicative body, has a legal obligation to accommodate litigants with disabilities and that this is a component of a procedurally fair hearing: see *Haynes v. Canada (A.G.)*, 2023 FCA 158 at paras 18–32. Throughout the process, I provided accommodations to Mr. Molyneaux by extending deadlines where appropriate and applying the Tribunal's rules and processes as flexibly as possible in the circumstances.

[18] At the hearing, Mr. Molyneaux intended to read his SOP as his evidence. Given that Mr. Molyneaux had filed a very detailed SOP, I asked the parties whether they would consent to having Mr. Molyneaux adopt the contents of his SOP as his evidence in chief and to simply add any information he believed to be relevant. Mr. Molyneaux and the NAC consented to this way of proceeding. The NAC's counsel then had the opportunity to cross examine Mr. Molyneaux in the usual way. Following this, I gave Mr. Molyneaux a chance to clarify any answers he gave in cross-examination to replace the re-examination opportunity that he would have had if he had been represented by legal counsel.

IV. FACTUAL BACKGROUND

A. Mr. Molyneaux's work in the Green Room

[19] Mr. Molyneaux was hired as First Cook in the Green Room in August 2018. The Green Room is a cafeteria-style restaurant that serves the staff of the NAC as well as the performers who appear there.

[20] Based on the evidence presented, I have little doubt that the First Cook position in the Green Room was a demanding job and that it required a significant amount of effort from Mr. Molyneaux. As First Cook, Mr. Molyneaux was required to prepare breakfast, lunch and dinner, to be served in the Green Room to approximately 50 to 100 or more persons.

[21] The job posting to which Mr. Molyneaux applied indicated that the successful candidate should have the ability to delegate work to a brigade of four or more individuals. The posting gave Mr. Molyneaux the impression that he would have four or more helpers to whom he could delegate work. However, that was not the case. Ultimately, Mr. Molyneaux had at most one part-time helper who could assist him with food preparation in the kitchen. In addition to the part-time helper, the NAC typically scheduled one counter attendant per shift to work in the Green Room. That person would also provide some assistance such as cooking breakfast items or stocking supplies.

[22] On days when there was a part-time helper to assist Mr. Molyneaux in the kitchen, that helper typically started work at around 11 a.m. or later, whereas Mr. Molyneaux typically started his day at 6:30 a.m. and worked until 3 p.m. At times, the helper might also be reassigned to other tasks or areas, which often left Mr. Molyneaux without assistance to prepare food for the Green Room. On several occasions, Mr. Molyneaux expressed concerns to the Executive Sous-Chef about the unavailability of helpers to assist him with food preparation. The Executive-Chef testified that additional part-time helpers were scheduled when the volume of events at the NAC required such additional assistance. However, this still meant that Mr. Molyneaux was required to work with little assistance on a regular basis.

B. Mr. Molyneaux's complaints and requests for accommodation

(i) January 2019 email

[23] On January 24, 2019, Mr. Molyneaux emailed Executive Chef, Kenton Leier, and two other members of his management team with a list of eleven wide-ranging requests that he said would benefit all employees in the kitchen. The list included a padded floor mat, a swivel stool, a trolley, a knife sharpener, a baker's closed-in cart, a non-closed-in cart, a scoop for stews and other items for the kitchen. Mr. Molyneaux also suggested that the NAC refund employees for kitchen supplies. In addition, he asked whether the NAC could refund or reduce the parking fees he had to pay when parking at the NAC. Lastly, Mr. Molyneaux asked to be allowed to consolidate his two 15-minute breaks and his 30-minute lunch break and take them at the end of his shift. He attached a January 22, 2019, note from his doctor to the email. The note said that Mr. Molyneaux had been diagnosed with depression, PTSD and chronic pain. In the note, the doctor suggested that the NAC allow Mr. Molyneaux to consolidate his breaks and lunch time for use at the end of the day. The note did not refer to any other disability-related accommodation needs that Mr. Molyneaux might have. I discuss the NAC's response to this note in my analysis section further below.

(ii) Mid-June to mid-July 2019 leave of absence

[24] On June 11, 2019, Mr. Molyneaux began a leave of absence. On that date, he provided the NAC with a note from his doctor stating that he had reported an increase in depressive symptoms including worsening insomnia and heightened levels of chronic pain. The doctor advised the NAC that Mr. Molyneaux's fatigue level was such that he should not continue to attempt to carry out his professional responsibilities nor continue his commute between work and his home, which lasted approximately an hour and a half each way. The doctor said that he would reassess Mr. Molyneaux in two weeks' time.

(iii) July 2019 doctor's letter and functional abilities form

[25] On or around July 16, 2019, Mr. Molyneaux sent the NAC's Executive Sous-Chef an email with a medical note from his doctor dated that same day. The note stated that Mr. Molyneaux's leave was ending that day. The doctor said that he had filled out a functional abilities form (FAF) provided to him by the NAC's third-party benefits administrator. He said that he had recommended important accommodations that he felt would "enhance both [Mr. Molyneaux's] level of productivity and comfort at work". The doctor strongly suggested that the NAC review his comments, as well as his considered evaluation of "potentially helpful modifications to [Mr. Molyneaux's] professional environment and routine".

[26] The FAF that the NAC's third-party benefits provider had sent to Mr. Molyneaux's doctor asked about various functional abilities. The doctor completed the form by indicating various restrictions relating to actions such as climbing stairs, pushing/pulling, carrying and lifting.

[27] In the additional comments section of the FAF, the doctor wrote that Mr. Molyneaux could return to work provided that the following accommodations were put into place:

- a four-day work week (Tuesday to Friday),
- ability to do prep lists at home,
- a cushioned mat to stand on, and
- ongoing use of baker's carts and a trolley, for trips to the stockroom or refrigerators.

(iv) NAC's assessment of Mr. Molyneaux's medical information

[28] On July 18, 2019, the NAC's Health and Safety Manager, Stephen Jackson, shadowed Mr. Molyneaux to assess the workplace and how he performed his duties. Mr. Jackson used the FAF completed by Mr. Molyneaux's doctor to assess whether Mr. Molyneaux was exceeding any of the restrictions set out in the form when carrying out his work. After he had shadowed Mr. Molyneaux, Mr. Jackson wrote a report for the NAC in which he wrote that Mr. Molyneaux was not required to exceed any of the functional limitations set out in the FAF during the time in which he had observed him. With respect to the cushioned mat recommended by Mr. Molyneaux's doctor, Mr. Jackson expressed a concern that such a mat may not be appropriate in the kitchen environment for sanitary reasons. Instead, Mr. Jackson recommended that the NAC provide Mr. Molyneaux with better insoles for his shoes.

[29] By letter dated September 4, 2019, the NAC's then Senior Manager of Human Resources wrote to Mr. Molyneaux to inform him that the NAC would reduce his schedule from five to four days per week, as recommended by his doctor. In the letter, the Senior Manager of Human Resources mentioned that the NAC was doing so even though it doubted the validity of this restriction. The letter did not refer to the other accommodations recommended by Mr. Molyneaux's doctor.

[30] According to Mr. Molyneaux, the NAC provided him with an old office chair where he could sit, instead of a stool as he had requested, and a rusty cart instead of the requested baker's cart. The NAC also provided him with ergonomic insoles for his shoes, instead of the anti-fatigue mat he requested. In addition, both the NAC's Executive Chef, Mr. Leier, and Labour Relations Officer, Catharine Campos, testified that the NAC permitted Mr. Molyneaux to consolidate his breaks, until July 2020 (see below).

[31] Mr. Molyneaux filed his complaint with the Commission in March 2020.

(v) Reassessment of accommodations: July 2020

[32] Although Mr. Molyneaux's accommodations were supposed to be reassessed every six months, the first reassessment could not occur until July 2020 because the NAC was forced to close during the first wave of the COVID pandemic in the spring of 2020.

[33] In July 2020, at Ms. Campos' request, Mr. Molyneaux provided the NAC with a questionnaire completed by his doctor to update his disability-related restrictions. The doctor set out the following four recommendations:

- maintain four-day work week

- mat to stand on

- limited stairs

- use of trolleys and carts for food transportation

[34] The doctor also wrote that it would be helpful if Mr. Molyneaux could put together his food preparation lists from home.

[35] By letter dated July 22, 2020, Ms. Campos confirmed that the NAC would maintain the functional limitations listed in the July 2019 FAF completed by Mr. Molyneaux's doctor. In particular, she indicated that the NAC would continue Mr. Molyneaux's four-day work week accommodation until the next review period. In addition, she advised Mr. Molyneaux that the NAC would provide him with a pair of ergonomic insoles annually. Lastly, Ms. Campos wrote that, due to a provision of the *Canada Labour Code*, R.S.C., 1985, c. L-2 (the "Code"), Mr. Molyneaux could no longer consolidate all of his breaks, only two of them, to take them at the end of the day (see below).

[36] From October 2020 to July 2021, the NAC was once again required to close because of the COVID pandemic. Ms. Campos emailed Mr. Molyneaux, before the NAC reopened in July 2021, to let him know that his accommodations would be extended until January 2022.

(vi) Mr. Molyneaux's long-term disability leave and retirement

[37] Mr. Molyneaux did not return to work at the NAC after the first week of January 2022.

[38] On January 28, 2022, Ms. Campos sent Mr. Molyneaux a medical questionnaire, to be completed by his doctor, to review Mr. Molyneaux's workplace accommodations. On February 3, 2022, Mr. Molyneaux forwarded to Ms. Campos a note from his doctor simply stating that he would be "off work for an undetermined period because of health issues" and that a "regular follow-up" was planned. Ms. Campos responded by advising Mr. Molyneaux that it was not acceptable for his doctor to declare that he needed to be off for an "undetermined period". She asked Mr. Molyneaux to obtain another note with an actual end date for his absence or a reassessment date.

[39] On March 4, 2022, Mr. Molyneaux provided Ms. Campos with an attending physician questionnaire stating that he had to be off work for an additional eight weeks. On March 29, 2022, Mr. Molyneaux began receiving long-term disability benefits, which he received for one year, the maximum period under the NAC's group benefits plan.

[40] On April 13, 2023, Ms. Campos informed Mr. Molyneaux that he had reached the maximum benefit period for long-term disability benefits. She advised Mr. Molyneaux that he had two options: (i) to retire or (ii) to return to work. Ms. Campos informed Mr. Molyneaux that if he wished to return to work, he would have to provide an assessment from his doctor indicating that he was no longer fully disabled and proposing workplace accommodations for a safe return to work in the kitchen and Green Room.

[41] For the following year, Ms. Campos periodically continued to follow up with Mr. Molyneaux to determine whether he was able to return to work. Each time, she received short notes from Mr. Molyneaux's doctor, saying that he was unable to work for an undetermined period of time and would be reassessed.

[42] On or about April 10, 2024, Mr. Molyneaux forwarded to Ms. Campos a note from his doctor stating "Mr. Molyneaux is fully disabled and is permanently unable to return to work". Around this same time, Mr. Molyneaux contacted the NAC's pension centre to apply for retirement and receive his pension.

V. LEGAL ISSUES

[43] This case raises the following issues:

A. Alleged adverse differentiation based on disability

- 1) Has Mr. Molyneaux satisfied his initial onus of establishing a *prima facie* case, that is to say, has he proven that he was subject to adverse differentiation by the NAC in the course of employment, based on disability, contrary to section 7(b) of the CHRA?
- 2) If so, has the NAC established a valid justification for the adverse differentiation based on disability?

B. Alleged refusal to continue to employ based on disability

- 1) Has Mr. Molyneaux satisfied his initial onus of establishing a *prima facie* case, that is to say, has he proven that the NAC refused to continue to employ him based on his disability, contrary to section 7(a) of the CHRA?
- 2) If so, has the NAC established a valid justification for its refusal to continue to employ Mr. Molyneaux based on his disabilities?
- 3) If the NAC cannot establish valid justifications for any discrimination that has been established in this case, what remedies should be awarded?

VI. REASONS AND ANALYSIS

A. Legal framework

[44] Section 7 makes it a discriminatory practice to, directly or indirectly, differentiate adversely in relation to an employee in the course of employment on a prohibited ground of discrimination. The provision also makes it a discriminatory practice to, directly or indirectly, refuse to continue to employ any individual on a prohibited ground of discrimination. Disability is a prohibited ground of discrimination under section 3 of the CHRA.

[45] Mr. Molyneaux has the initial onus of establishing what is often referred to as a *prima facie* case of discrimination. He must do so on a balance of probabilities. Establishing something on a balance of probabilities means proving that something is more likely than not. To establish a *prima facie* case of discrimination under sections 7(a) or 7(b) of the CHRA, Mr. Molyneaux must prove the following:

- 1) He is identified by a prohibited ground of discrimination—in this case, one or more disabilities;
- 2) He experienced adverse differentiation in the course of his employment with the NAC and/or the NAC refused to continue to employ him;
- 3) There was a connection between Mr. Molyneaux's disability(ies) and either the adverse differentiation he experienced in the course of employment or the NAC's refusal to continue to employ him (section 7 of the CHRA; *Québec (C.D.P.D.J) v. Bombardier Inc.*, 2015 SCC 39 at paras 52, 65 [*Bombardier*]; *Moore v. British Columbia (Education)*, [2012] SCR 61 at para 33).

[46] To establish discrimination, the prohibited ground does not need to be the sole or primary cause of a respondent's adverse differentiation or its refusal to continue to employ a person: see *Holden v. Canadian National Railway* (1990) CanLII 12529 (FCA). See also

Ottawa (City) v. Todd, 2022 FC 579 at para 85. However, a complainant has the onus of proving a connection between the prohibited ground (i.e., disability) and the respondent's impugned actions (*Bombardier* at paras 43–52).

[47] In determining whether discrimination occurred, the Tribunal may consider the evidence of all parties. A respondent can present evidence to refute an allegation of *prima facie* discrimination, put forward a defence to justify the discrimination, or do both (see *Bombardier* at paras 64, 67, 81).

[48] If a complainant establishes a *prima facie* infringement of section 7 of the CHRA, the onus will shift to the respondent to prove, on a balance of probabilities, that there is a *bona fide* justification for the discrimination within the meaning of section 15(1)(a) or 15(b) and that further accommodating the needs of the complainant would impose undue hardship on the respondent, considering health, safety and cost in accordance with section 15(2) of the CHRA.

[49] The purpose of the CHRA includes accommodating individuals' needs to allow them to lead their lives without being hindered by discrimination based on prohibited grounds: section 2 of the CHRA. However, the duty to accommodate an individual is not a freestanding obligation owed by a respondent to a complainant identified by one or more prohibited grounds of discrimination: *Moore v. Canada Post Corporation*, 2007 CHRT 31 at para 86; *Chisholm v. Halifax Employers Association*, 2021 CHRT 14 at para 84. See also *Baber v. York Region District School Board*, 2011 HRTO 213 at paras 88–96.

[50] The CHRA does not require accommodation in the absence of proof of *prima facie* discrimination. A complainant who alleges that a respondent has breached its duty to accommodate them is really claiming that (i) they have experienced adverse differentiation based on a prohibited ground and (ii) the respondent cannot justify the adverse differentiation—namely, by showing that it accommodated the complainant up to the point of undue hardship: see subsections 15(1)–(2) of the CHRA

[51] It is not a disability that triggers the obligation to accommodate up to the point of undue hardship. Instead, it is the existence of a barrier or disadvantage in the workplace which is related to that disability that requires an employer to take steps to address the

barrier or disadvantage to ensure that the employee can participate fully at work: see *Todd v. City of Ottawa*, 2020 CHRT 26 at para 202 (aff'd 2022 FC 579).

[52] In this case, Mr. Molyneaux's disabilities did not automatically trigger a duty on the part of the NAC to accommodate him. Mr. Molyneaux must first establish that he faced adverse differentiation or employment loss and that there was a connection between these events and his disability. It is only if he is successful in doing so that any defence asserted by the NAC under the CHRA needs to be examined, including whether it provided Mr. Molyneaux reasonable accommodations up to the point of undue hardship.

B. Mr. Molyneaux's medical notes and his doctor's failure to appear as a witness

[53] The NAC argues that I should draw an adverse inference from Mr. Molyneaux's failure to present his doctor as a witness at the hearing. I disagree. As noted by the NAC, the Tribunal may draw an adverse inference against a party who does not call a material witness over whom they have exclusive control without explanation: see, for example, *Chopra v. Health Canada*, 2008 CHRT 39 at para 243. However, Mr. Molyneaux does not have exclusive control over his doctor in the same way as, for example, an employer may have control over an employee. Mr. Molyneaux initially indicated that he planned to present his doctor as a witness. However, he ended up not doing so, saying his doctor was unable to attend. The NAC infers from this that Mr. Molyneaux was attempting to shelter his doctor from cross-examination. However, in my view, it is just as likely that Mr. Molyneaux's doctor, like all other health professionals, has a busy practice and could not, or would not, clear his schedule to testify in this case. Therefore, I decline to draw any adverse inference from Mr. Molyneaux's failure to present his doctor as a witness.

[54] I also do not agree with the NAC's suggestion that doctors' notes can never be used for the truth of their contents unless the author of the note is called to testify. Under section 50(3) of the CHRA, the Tribunal is entitled to receive and accept any evidence it sees fit, whether or not that evidence would be admissible in a court of law, subject only to two exceptions that have no application here. In my view, much depends on the quality of

the evidence contained in the note or other documents prepared by the doctor. Much also depends on whether there are reasons to doubt the reliability of the medical documents.

[55] In my view, the decision in *Butler v. Nenqayni Treatment Centre Society*, 2002 CanLII [Butler] cited by the NAC is distinguishable. In that case, the Tribunal member had valid doubts about the qualifications and expertise of the person who provided a “medical” note: *Butler* at para 90.

[56] Tribunals have determined that, in certain cases, natural justice requires that an opposing party be given the opportunity to challenge the reliability and veracity of a doctor’s note by cross-examining its author: see *Baber v. York District School Board*, 2010 HRTO 538 at paras 20–21, cited by the NAC. However, on balance, I prefer the approach taken by the member in *Philps v. Ritchie-Smith Feeds Inc.*, 2019 CHRT 43 at paras 18–34, also cited by the NAC. In that case, the member adopted a case-by-case approach to assessing the weight to be granted to any particular piece of medical evidence, taking into account the extent to which a given fact was disputed, and the other party’s ability to refute the statements contained in the document. The member held that generally more weight should be given to oral testimony that has been subject to cross-examination as compared to written statements. However, he did not go so far as to find that medical notes should not be admitted into evidence unless the author of the notes is made available for cross-examination. See *Blakely v. Queen’s University*, 2011 HRTO 2308 for a similar approach.

[57] I agree with and adopt this approach. However, it is important to note that complainants who seek to proceed solely on medical notes face certain risks. First, as noted above, some decision-makers have refused to admit opinions in doctors’ notes when the author was not available for cross-examination. Second, doctors’ notes often lack sufficient detail to connect requested accommodations to disability-related needs. Without a doctor’s testimony, decision-makers are left only with the contents of these, frequently brief, notes which may not adequately explain the connection between recommended accommodations and the complainant’s disability-related needs. I will return to this point below.

C. Has Mr. Molyneux established a *prima facie* case of discrimination in the form of adverse differentiation under section 7 of the CHRA?

(i) Has Mr. Molyneux established that he has one or more disabilities?

[58] Yes. It was not disputed by the NAC that Mr. Molyneux has been diagnosed with depression, PTSD and chronic pain. In my view, each of these conditions would satisfy the CHRA's definition of disability as it has been interpreted in the applicable case law (sections 3, 25 of the CHRA; *Desormeaux v. Ottawa (City)*, 2005 FCA 311 at para 15).

(ii) Has Mr. Molyneux established that he was subject to adverse differentiation in the course of employment based on disability?

[59] As detailed above, for this set of allegations, Mr. Molyneux must establish that he experienced adverse differentiation in the course of his employment with the NAC. He must also establish that there was a connection between any adverse differential treatment and his disability. As these two factors are intertwined in this case, I treat them together in this section rather than separately.

[60] In my view, Mr. Molyneux has failed to establish a connection between his disabilities and many of the forms of adverse differentiation he alleged.

[61] Mr. Molyneux alleged that the NAC discriminated against him by denying him the following accommodations for his disabilities:

- a) permission to consolidate all of his breaks and take them at the end of the day
- b) being assigned to a four-day work week from Tuesday to Friday
- c) a cushioned mat
- d) a stool for sitting down
- e) use of trolleys and carts

f) permission to complete his food preparation lists from home

[62] In addition, Mr. Molyneaux alleged that:

g) He was forced to exceed the disability-related restrictions recommended by his doctor due to the volume of work he had to do and the lack of sufficient help.

[63] The NAC's position is that, while many of the accommodations sought by Mr. Molyneaux might have made his job easier, he has failed to establish that they were necessary to address functional restrictions or limitations connected to his disabilities.

[64] I address below each of Mr. Molyneaux's failure to accommodate allegations in turn. I first examine whether, for each allegation, Mr. Molyneaux has met his initial onus of establishing adverse differentiation connected to any of his disabilities. As previously stated, the duty to accommodate arises only after a complainant establishes a *prima facie* case of discrimination. Therefore, I will assess the NAC's justification for its actions, including whether it fulfilled its duty to accommodate, only for allegations where Mr. Molyneaux has met this initial onus of establishing a *prima facie* case of discrimination.

(a) Permission to consolidate all breaks

[65] I am not persuaded that Mr. Molyneaux has met his initial onus of establishing that he experienced adverse differentiation based on any of his disabilities because of the NAC's refusal, after July 2020, to permit him to consolidate all of his breaks and take them at the end of the day.

[66] Mr. Molyneaux first requested the NAC's permission to consolidate his breaks in late 2018 or early 2019. To be clear, what he was requesting was that the NAC permit him **not** to take any breaks during the day. Instead, he wished to consolidate his two 15-minute breaks and his 30-minute lunch break and take them at the end of the day in order to finish work earlier. In an email to the Executive Sous-Chef in July 2019, Mr. Molyneaux said that he would appreciate being allowed to leave an hour earlier, as it would allow him to avoid a lot of traffic on his drive home. The Executive Sous-Chef told Mr. Molyneaux that this kind

of consolidation of breaks would not be permitted unless it was for a medical reason. Mr. Molyneaux then obtained a doctor's note recommending that he be permitted to consolidate his breaks as he had requested.

[67] In his note, Mr. Molyneaux's doctor said that Mr. Molyneaux had been diagnosed with depression, PTSD and chronic pain. The doctor suggested that the NAC allow Mr. Molyneaux to consolidate his breaks and lunch time for use at the end of the day. Mr. Molyneaux's doctor did not explain why consolidating breaks at the end of the day was required by Mr. Molyneaux's disabilities. In his note, the doctor simply wrote that this consolidation would reduce Mr. Molyneaux's fatigue, ease his commute, foster an optimal professional environment and enhance his productivity.

[68] In his human rights complaint, Mr. Molyneaux linked his request to consolidate his breaks to his heavy workload, which he said left him no time to take breaks during the day. In his complaint, he wrote "After doing to (sic) much work, not taking breaks or lunch and not getting paid for the extra hours worked to try and keep up, I was seen by my Doctor and he told them in a letter that I needed to take my breaks and lunch and do it at the end of my shift each day".

[69] The evidence in this case demonstrated that the NAC allowed Mr. Molyneaux to consolidate his breaks and use them at the end of the day until July 2020. In a letter following the July 2020 review of Mr. Molyneaux's accommodations, Ms. Campos informed Mr. Molyneaux that the *Canada Labour Code* requires employers to provide employees at least one break of a minimum duration of 30 minutes every five consecutive hours of work: section 169.1(1) of the Code. From this point on, the NAC required Mr. Molyneaux to take his 30-minute lunch break no later than five hours after the start of his shift. However, the NAC allowed him to continue to consolidate his two 15-minute breaks and use them at the end of his shift, subject to business needs.

[70] In my view, there is insufficient evidence to establish that this limit on Mr. Molyneaux's ability to consolidate his breaks amounted to adverse differentiation based on disability. The evidence showed that Mr. Molyneaux's doctor felt that consolidating breaks in this way would decrease his fatigue, make his return drive home easier, and ensure an optimal

professional environment and enhance his productivity. While all of these are positive things, this Tribunal has a very specific mandate to address discrimination on prohibited grounds, including disability. The evidence in this case fails to establish a connection between Mr. Molyneaux's disability and any adverse differentiation he experienced by not being able to consolidate all of his breaks to take them at the end of the day.

(b) Four-day work week – Tuesday to Friday

[71] Mr. Molyneaux's doctor first recommended that the NAC allow Mr. Molyneaux to work a four-day work week in the July 2019 FAF he completed. There was little evidence in this case to show why requiring Mr. Molyneaux to work his usual five days per week had an adverse impact on him because of his disability. Despite the lack of evidence on this point, I am willing to assume, without deciding, that working five days per week every week exacerbated Mr. Molyneaux's disabilities, for example, his chronic pain. Therefore, I am willing to assume that he had a disability-related need to not work five days per week on a regular basis. However, there was insufficient evidence to establish that Mr. Molyneaux had any disability-related need to take a particular day of the week off. At most, Mr. Molyneaux's own evidence was that he required three consecutive days off per week on a regular basis to manage his chronic pain.

[72] For the above reasons, I am willing to accept that Mr. Molyneaux met his initial onus to make out a *prima facie* case of discrimination with respect to the requirement that he work five days a week. I address below whether the NAC has met the duty to accommodate that was triggered with respect to that issue.

(c) Cushioned mat to stand on

[73] In his January 24, 2019, email to his management team in which he requested various items to assist in his work, Mr. Molyneaux included a request for a cushioned floor mat. His doctor further recommended a cushioned mat in the additional comments section of Mr. Molyneaux's July 2019 FAF and in a note submitted at the time that the NAC reassessed Mr. Molyneaux's accommodations in July 2020.

[74] As with the four-day work week request, I am willing to assume, without deciding, that Mr. Molyneaux would have experienced adverse differentiation by being required to work without some kind of cushioning to alleviate fatigue and that this differential treatment was connected to at least one of his disabilities, such as his chronic pain. Therefore, I am prepared to find that Mr. Molyneaux has made out a *prima facie* case of discrimination on this issue.

[75] I address below whether the NAC has met the duty to accommodate that was triggered with respect to that issue.

(d) Stool for sitting down

[76] Mr. Molyneaux has failed to establish that he experienced adverse differentiation based on disability due to not being able to sit on a stool at his workstation.

[77] Although Mr. Molyneaux testified to needing a stool at his workstation, his doctor's notes contain no such recommendation. The only evidence that Mr. Molyneaux requested a stool is his January 2019 email to the NAC management team. In that email, he listed eleven different types of items to assist his work. Some of the items were later recommended in doctor's notes, while others were general supplies such as permanent markers, masking tape and baker's scoops. Amongst these eleven items, Mr. Molyneaux asked for "a swivel stool with a back support in case needed, just knowing it is there helps (safety)". Beyond this single mention, the evidence contains no further reference to Mr. Molyneaux requiring a stool, and none of his doctor's notes indicate that a stool was required to accommodate his disabilities.

[78] In the above circumstances, the evidence before me does not establish, on a balance of probabilities, that Mr. Molyneaux experienced any adverse differentiation based on his disability due to the absence of a stool at his workstation.

(e) Use of trolleys and carts

[79] Mr. Molyneaux has failed to establish that he experienced adverse differentiation due to any lack of trolleys or carts in the NAC kitchen.

[80] Mr. Molyneaux testified that there were not enough carts in the kitchen when he started at the NAC. However, he himself admitted that the NAC made carts and trolleys available to him after he requested them.

[81] Although Mr. Molyneaux stated in his SOP that the NAC only provided a rusty cart and not the baker's cart he had requested, this conflicted with the evidence of multiple NAC witnesses who testified that there was a variety of trolleys and carts available in the kitchen. In any event, the evidence does not establish that Mr. Molyneaux experienced any adverse differentiation based on any of his disabilities due to the provision of one type of cart over another.

[82] Moreover, I note that, when Ms. Campos asked Mr. Molyneaux to provide an updated set of accommodations in July 2020, Mr. Molyneaux's doctor simply wrote that he required "use of trolleys and carts for food transportation".

[83] Overall, the evidence showed that, despite his preference for a baker's cart, Mr. Molyneaux failed to establish that the absence of such carts in the NAC kitchen resulted in adverse differentiation based on his disability. In other words, he failed to establish that being required to perform his work without a baker's cart was incompatible with his functional limitations.

(f) Permission to complete his preparation lists from home

[84] I am not persuaded that Mr. Molyneaux experienced adverse differentiation based on disability due to the requirement that he complete his preparation lists from the workplace.

[85] In the July 2019 FAF he completed, Mr. Molyneaux's doctor recommended that the NAC permit Mr. Molyneaux to put together his preparation lists from home. There is nothing

in the FAF that links this recommendation to any of Mr. Molyneaux's disabilities. In the July 2020 form he submitted, Mr. Molyneaux's doctor wrote "would be helpful if Pt [Mr. Molyneaux] could do prep list at home – would be more efficient and organized at workplace".

[86] Mr. Molyneaux testified that being able to prepare a prep list from home would have allowed him to be more organized and that it would have allowed him to avoid making several trips back and forth to various parts of the kitchen. Based on his testimony, it was clear that Mr. Molyneaux was referring to the benefits of having a prep list at all, rather than addressing any disability-related need he had to prepare one from home rather than from the workplace.

[87] Overall, the evidence before me does not establish that Mr. Molyneaux experienced any adverse differentiation based on disability by being required to prepare his prep lists at the workplace. In other words, he has failed to show that the NAC's refusal to allow him to put together his prep lists at home was incompatible with his disability-based functional limitations.

(g) Working outside restrictions due to volume of work and lack of sufficient help

[88] The evidence does not establish, on a balance of probabilities, that Mr. Molyneaux was forced to exceed his disability-related restrictions relating to bending, twisting, carrying, using stairs, etc. contained in the July 2019 FAF, due to the volume of work he had to do or the lack of sufficient help.

[89] Mr. Molyneaux made no allegation about having to exceed any disability-related work restrictions regarding bending, twisting, pulling, etc. in his complaint. He did focus, in his complaint, on the fact that he was often required to work alone. As noted above, Mr. Molyneaux assumed, based on the job posting for his position, that he would have four or more helpers to assist him. However, he was only provided with at most one part-time helper in the kitchen, a helper who might be reassigned to other tasks if needed. In his

complaint, Mr. Molyneaux addressed this by saying “they are trying to get me to do 2-3 persons (sic) duties at the same time”.

[90] Mr. Molyneaux sought to admit two statements from former co-workers, both asserting he was often required to work alone without assistance. I found these statements inadmissible for two reasons: first, their authors were unavailable for cross-examination; second, they had little to no probative value concerning the precise factual and legal issues I must decide. At most, they supported Mr. Molyneaux’s allegation that he was frequently required to work alone, a fact I have accepted.

[91] During his cross-examination of the NAC’s witnesses at the hearing, Mr. Molyneaux asked numerous questions aimed at showing that he was forced to work outside the restrictions set out in the July 2019 FAF completed by his doctor. He also asked several questions about the absence of certain kitchen tools in the NAC kitchen, such as a potato-peeling machine.

[92] There was no mention of any need for such a machine in Mr. Molyneaux’s complaint, SOP or any of his doctor’s notes. When I asked Mr. Molyneaux about the relevance of kitchen tools, such as a potato peeling machine, he indicated that he was forced to work beyond the restrictions recommended by his doctor due to the volume and pace of work he had to do. He also indicated that the impact of the pace of work was exacerbated by the NAC’s failure to provide him with more help and certain kitchen tools that would have accelerated his food preparation work.

[93] Restrictions in the FAF: The July 2019 FAF completed by Mr. Molyneaux’s doctor, at the request of the NAC’s benefits provider, indicated the following functional restrictions:

- Limit of 60 minutes per hour for sitting, walking or standing (with ability to move around)

- No ladders and limited ability to climb stairs

- Leaning, squatting, bending, and twisting was allowed but the doctor notes that the level of pain should be considered
- Pushing and pulling limited to 30 pounds
- Carrying limited to 50 pounds and 25 feet
- Lifting floor to waist limited to 50 pounds
- Lifting waist to shoulder limited to 10 pounds
- Lifting above shoulder limited to 10 pounds
- Ankle movement: chronic pain in right ankle, although no restrictions or limitations noted

[94] In an email to Mr. Molyneaux in July 2019, a Health and Disability Specialist for the NAC's benefits provider advised Mr. Molyneaux that they had informed the NAC that Mr. Molyneaux would benefit from an ergonomic assessment in the workplace. Instead of hiring an ergonomist, the NAC asked its Health and Safety Manager to shadow Mr. Molyneaux for two and a half hours to assess the workplace and whether he was exceeding the functional restrictions contained in the FAF submitted by his doctor.

[95] In a report submitted after the shadowing, Mr. Jackson indicated that Mr. Molyneaux was not required to exceed any of the restrictions in the FAF during that time.

[96] When Ms. Campos asked Mr. Molyneaux for an update of his disability-related restrictions in July 2020, he provided the NAC with a questionnaire completed by his doctor, which only recommended the following:

- maintain four-day work week
- mat to stand on

- limited stairs
- use of trolleys and carts for food transportation
- ability to complete prep lists from home

[97] Mr. Molyneaux's doctor made no mention of any restrictions relating to pushing, pulling, lifting, etc. There was also no indication in any of Mr. Molyneaux's correspondence with the NAC that he was being forced to work outside the restrictions set out in the July 2019 FAF.

[98] In his SOP that he adopted as his evidence, Mr. Molyneaux did state that he was forced to go against the recommendations set out in the FAF filled out by his doctor because he was required to work alone. However, he did not provide specifics as to which recommendations he was forced to disregard other than the recommendation regarding the limited use of stairs.

[99] The fact that someone has a heavy workload and has to work without the assistance they expected does not, by itself, amount to adverse differentiation based on disability. Weighing the evidence as a whole, I find that it does not establish, on a balance of probabilities, that Mr. Molyneaux was forced to exceed the functional restrictions regarding standing/sitting/bending/lifting/carrying/etc. contained in the FAF filled out by his doctor. I address the limitations set out in the FAF in relation to the use of stairs below.

[100] Limited climbing of stairs: The July 2019 FAF completed by Mr. Molyneaux's doctor indicated that he had a "limited ability" to climb stairs. Mr. Molyneaux's doctor included this restriction once again in the questionnaire he submitted for the NAC's July 2020 reassessment of Mr. Molyneaux's accommodations.

[101] Mr. Molyneaux testified that he had to often climb stairs between the kitchen and the Green Room. However, there was no dispute that there is an elevator that connects the Green Room to the main kitchen. Mr. Molyneaux had access to the elevator to transport food or otherwise make his way from the Green Room to the kitchen and back. However,

Mr. Molyneaux testified that the elevator was frequently busy and that he was forced to use the stairs if he was pressed for time—for example if he had to use the deep fryer which was located in the kitchen downstairs. The evidence did not show that the instances in which Mr. Molyneaux could not have feasibly taken the elevator were so frequent that they exceeded the limited use of stairs recommended by his doctor.

[102] Mr. Molyneaux also testified that he would need to use the stairs if the elevator was ever out of service or in the event of a power outage. However, there was no evidence before me of the NAC's elevator being out of service in the time that Mr. Molyneaux worked there. In addition, the NAC's Executive-Chef testified that the Green Room would be closed in the event of a power outage.

[103] Overall, I do not find that the evidence establishes, on a balance of probabilities, that the frequency with which Mr. Molyneaux was required to use the stairs instead of the elevator exceeded the "limited" use recommended by his doctor. Therefore, he has failed to establish any adverse differentiation based on disability due to his having to use the stairs in situations when using the elevator would not have been feasible.

[104] Having considered all of the evidence in this case, I find that it does not establish that Mr. Molyneaux was forced to exceed the functional restrictions set out in the 2019 FAF due to his heavy workload or lack of sufficient assistance.

(iii) Summary on whether Mr. Molyneaux has established a *prima facie* case of adverse differentiation based on disability

[105] For the reasons set out above, Mr. Molyneaux has failed to make out a *prima facie* case of discrimination with respect to most of the allegations he has raised in this case. However, I am prepared to find that he has met his onus of establishing a *prima facie* case of discrimination with respect to two issues: (i) any requirement that he work a five-day week and (ii) any requirement that he work without some kind of cushioning to alleviate fatigue. Therefore, I will examine whether the NAC has established a justification, including meeting its duty to accommodate to the point of undue hardship, with respect to these two issues.

D. Has the NAC established a justification for any adverse differentiation based on disability, including meeting its duty to accommodate?

(i) Request for four-day work week

[106] In my view, the NAC met its duty to provide reasonable accommodations for Mr. Molyneaux's functional limitation preventing him from working five days per week on a regular basis.

[107] The NAC granted Mr. Molyneaux's request for a four-day work week, starting July 21, 2019. The NAC's former Senior Manager did express doubts in a letter as to whether a four-day work week was required by Mr. Molyneaux's disabilities. Nevertheless, he confirmed that the NAC was prepared to grant the request. The NAC also confirmed that it would continue to grant the accommodation to Mr. Molyneaux in subsequent reviews of his accommodations.

[108] Mr. Molyneaux believed that, after requesting a four-day work week, he was scheduled to work two Mondays in addition to the regular Tuesday to Friday schedule to which he was assigned. However, the documentary evidence before me indicates he was only scheduled for one five-day work week following his request. The staffing schedule for the week of September 9, 2019, showed that the NAC scheduled Mr. Molyneaux to work five days that week. Executive Sous-Chef Connor McQuay, who handles NAC scheduling, testified that he had mistakenly scheduled Mr. Molyneaux to work a five-day work week because he was new to the scheduling role. This was the only time Mr. Molyneaux was scheduled to work a Monday, in addition to his regular Tuesday-to-Friday schedule, between July 2019 (when his doctor's recommendation was made) and his last day of work in 2022.

[109] Mr. McQuay did not recall whether he provided Mr. Molyneaux additional time off to make up for the scheduling mistake. However, Mr. Molyneaux's pay stub for the pay period in question shows that he worked the 64 hours per two weeks that would be associated with a four-day per week work schedule.

[110] The case law clearly states that accommodations need not be perfect, only reasonable: *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970 at

p. 995. In my view, the one scheduling error, resulting in Mr. Molyneaux working one five-day week in two and a half years, does not undermine the general reasonableness of the accommodation provided by the NAC. This is especially the case since Mr. Molyneaux did not exceed his usual 64 hours during the pay period in question.

(ii) Cushioning to alleviate fatigue from standing

[111] In my view, the NAC met its duty to provide reasonable accommodations for Mr. Molyneaux's functional limitation that prevented him from being able to work on an un-cushioned surface.

[112] As noted above, Mr. Molyneaux's doctor recommended that the NAC provide him with a cushioned mat at his workstation in the NAC kitchen. After shadowing Mr. Molyneaux in July 2019, the NAC's Health and Safety Manager, Stephen Jackson, wrote a report in which he expressed a concern that a cushioned mat may not be appropriate in the kitchen environment for sanitary reasons. At the hearing, Mr. Jackson testified that cushioned mats were not recommended in a kitchen environment due to the potential for contamination.

[113] Both Mr. Molyneaux and Mr. McQuay testified that some organizations do use cushioned mats in their kitchens. However, the NAC's Executive Chef, Mr. Leier, testified that Ottawa Health authorities did not recommend the use of mats in commercial kitchens, as they are hard to clean and may harbour bacteria. He also testified that cushioned mats can be hazardous in a high-traffic kitchen like the one at the NAC. He said that the wheels of carts could catch on the mats, which could lead to health and safety risks.

[114] Mr. Jackson testified that he had years of experience in industrial environments in which employees used ergonomic insoles to provide cushioning when required to stand for long hours in the workplace. In his view, the ergonomic insoles might work better for Mr. Molyneaux than a cushioned mat, as they would provide cushioning wherever he was located, rather than only at his kitchen workstation.

[115] Labour Relations Officer, Catherine Campos, testified that, after discussing the issue with Mr. Jackson and Mr. Leier, she determined that the NAC could not provide

Mr. Molyneaux with a cushioned mat, but that she tried to find the best alternative, in the form of the ergonomic insoles recommended by Mr. Jackson.

[116] Mr. Molyneaux wore the insoles provided by the NAC. Mr. Jackson testified that he followed up with Mr. Molyneaux after the observation to ask how the insoles were working for him. Mr. Molyneaux confirmed that they were working well. Nevertheless, Mr. Molyneaux's physician continued to recommend that the NAC provide Mr. Molyneaux with a cushioned mat. However, he did not provide any explanation for why the ergonomic insoles were unsatisfactory. At the hearing, Mr. Molyneaux testified that he had worked with a mat before, and he believed that it provided better cushioning than the ergonomic insoles furnished by the NAC. He also sought to rely on his previous experience working with a mat in his previous job at a spa to dispute the testimony from the NAC's witnesses about the potential health and safety hazards associated with the use of cushioned mats in commercial kitchens. I have carefully considered Mr. Molyneaux's evidence on this point. However, on balance, I find that Mr. Molyneaux's evidence about his experience with mats in a different setting is insufficient to undermine the reliability of the NAC's evidence concerning the potential hazards of cushioned mats in a busy commercial kitchen like the one at the NAC.

[117] Taking into account all of the evidence, I find on a balance of probabilities that the NAC met its duty to provide reasonable accommodations to Mr. Molyneaux by furnishing him with the ergonomic insoles. The duty to accommodate under the CHRA does not require employers to provide employees with their preferred accommodations: *Croteau v. Canadian National Railway Company*, 2014 CHRT 16 at para 44(2). Instead, employers must provide employees with reasonable accommodations. I have carefully taken into consideration Mr. Molyneaux's view that ergonomic insoles provide less cushioning than a cushioned mat. However, on balance, I am satisfied that the ergonomic insoles provided to Mr. Molyneaux by the NAC were reasonable accommodations that balanced his need for cushioning against relevant health and safety considerations.

[118] For the above reasons, I agree with the NAC that it provided reasonable accommodations to Mr. Molyneaux on the two matters set out above.

E. Has Mr. Molyneaux established a *prima facie* case that the NAC refused to continue to employ him based on his disabilities?

[119] No. Mr. Molyneaux argued that he was forced into retirement because of NAC's failure to provide reasonable accommodations for his disabilities. I have found above that Mr. Molyneaux's allegations of adverse treatment based on disability were either not made out or justified as *bona fide* occupational requirements under section 15 of the CHRA. Therefore, he has failed to establish that he was forced to retire due to any *prima facie* discriminatory conduct or failure to accommodate by the NAC.

VII. ORDER

[120] For the above reasons, I must dismiss this complaint.

Signed by

Jo-Anne Pickel
Tribunal Member

Ottawa, Province
August 29, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-3055-24

Style of Cause: Kenneth Molyneaux v. National Arts Centre Corporation

Ruling of the Tribunal Dated: August 29, 2025

Appearances and written representations by:

Kenneth Molyneaux, Self-represented

Lauren Jamieson and Brett Hynes, for the Respondent