MICHEL BEAUREGARD

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

CANADA POST CORPORATION

Respondent

REASONS FOR DECISION

2004 CHRT 4
2004/01/28

MEMBER: Michel Doucet

[TRANSLATION]

I. INTRODUCTION

[1] The complainant, Michel Beauregard ("Beauregard"), alleges he was discriminated against on the basis of a disability in that the Respondent, Canada Post Corporation ("the Corporation"), refused to accommodate him and terminated his employment, contrary to section 7 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 ("the *Act*").

II. FACTS

A. Relationship between the Complainant and the Respondent

[2] Beauregard started working for the Respondent in 1993. During his employment, he held various positions, including driver, letter carrier and clerk. On August 31, 1997, he applied for a position in the automated area of the St. Laurent letter processing plant ("LPP")[1]. He obtained the position and was assigned to the evening shift with a schedule of 3:30 p.m. to 11:30 p.m.

[3] On September 7, 1997, he was temporarily assigned to the daytime swing shift at the bulk processing plant ("BPP") in the same plant. His assignment was to last until the employee who normally held that position returned or until September 5, 1998 at the latest. In this position, he worked the day shift from 7:30 a.m. to 3:30 p.m.

[4] On July 2, 1998, he was loaned to the swing shift at the Retail Sales Operations Branch. The letter confirming his being loaned to this branch states, "*you are considered on loan and will retain your position*" [translation].

Beauregard stated that he understood he was keeping his position on the daytime swing shift, which is surprising because this was a temporary assignment and was to end on September 5, 1998 at the latest.

[5] On September 14, 1998, his employer asked him to return to his former position at the St. Laurent plant. Beauregard stated that when he returned, he was not put back into his position in the parcel area (BPP) but in the letter area (LPP) instead.

[6] He said that he came to work on the morning of September 14, 1998, to the BPP area at 7:30 a.m. and that the supervisors told him that he had "*no business*" [translation] being in that area but that since he was there, they would keep him for the day but that the next day he would have to return to his position at the LPP, on the evening shift.

[7] The next day, September 15, he appeared for work, at the LPP, at 3:30 p.m. but stated that he left work shortly after. He testified that, at the beginning of his shift on September 15, Réal Caron, the evening shift superintendent, came to see him and said, "*You are not here to make trouble. You are here to work, and I hope you're going to work so my numbers are good*" [translation].

[8] Réal Caron testified that he did not know the Complainant and that he never had to work with him before. He stated that he was not informed about his case until October 1, 1998, when Beauregard left a message on the answering machine saying that he would not be coming to work due to illness.

[9] Beauregard described his working conditions at the LPP as follows: "*They would watch over us constantly. They made little comments to me when they passed through my area. There was a very cold atmosphere, there were no windows, it was noisy, dusty, very hot near the machines where the letters are processed. There were a lot of problems and I did not feel very well starting... on the 14th, going back was difficult, but the 15th was even worse than what happened on the 14th*" [translation]. He added that he entered the "plant" backwards and that he did not feel well until he left in the evening, "*When I would leave in the evening after working in the plant, it was very relaxing to leave the plant*" [translation]. A little further on he added, "*It was such a relief. The employees had a term that they used that went, inside it's like a prison without bars. So, everyone used that expression and I think even a doctor said inside and outside. Also, that same expression can describe the difference in the work mentality between the plant areas and the postal stations. So, inside means the plants and outside means the postal stations. And they used the expression prison without bars. Everybody used that expression*" [translation]. In cross-examination, he explained, "*Obviously I would have preferred to stay at the stations. It's a career choice to*

work either at the stations or the plant. There are staff who love working in the plant. But I'm maybe someone who is better suited to the outside" [translation].

[10] After leaving work on September 15, 1998, Beauregard did not return until October 7, 1998.

[11] According to Réal Caron, nothing particular was brought to his attention about the Complainant between September 15 and October 1, 1998. On October 5, 1998, while indicating he was still sick, his supervisor Renée D'Amours tried unsuccessfully to reach him.

[12] On October 6, 1998, the Complainant consulted a physician, Dr. Allen Payne, for a sinus problem and also, according to him, for lack of sleep, no appetite and stress.

[13] On October 7, 1998 he went to work. For part of that day, he received training outside of the automated area. Around 7:00 p.m., after finishing his training, he submitted a medical certificate to his supervisor. Caron stated that D'Amours contacted him in the 10 minutes that followed. Caron then went down to the "floor" to meet with Beauregard because the document he had submitted to D'Amours was an occupational injury document and that certain forms need to be filled out in such cases. The document was actually an official document from the Commission de la santé et de la sécurité du travail du Québec (the "CSST"). It is used for opening a claim file with the CSST.

[14] According to Caron, the employer must complete a report explaining in detail the occupational injury. He said that he had gone down to the "floor" with D'Amours for this purpose and that he had contacted the union to inform them of the situation. Richard Gagnon, a union representative, arrived on the premises. Beauregard did not show up. Caron, D'Amours and Gagnon were informed that Beauregard had gone home and that he had just called in sick.

[15] On October 13, 1998, Réal Caron sent Beauregard a letter by priority post with signature[2], in which he requested that Beauregard contact him to provide more information about his medical certificate dated October 7, 1998.

[16] Beauregard said that he did not receive this letter until October 28, 1998. The letter was sent to him by priority post with signature and since nobody was home when the letter carrier tried to deliver it, it was returned to the postal depot. Beauregard added that he then had 15 days to pick it up.[3]

[17] On October 14 and 15, 1998, Caron said that he had tried several times to contact Beauregard by telephone. On the 14th, there was no answer. On the 15th, he said that he spoke with someone whom he assumed was Beauregard's father and that he left a message for Beauregard to contact him. On October 16, Beauregard contacted the administration and informed the receptionist that the employer should not phone him at home anymore. [4]

[18] On October 19, 1998, Caron sent Beauregard another letter, by priority post without signature. In that letter, Caron referred again to the medical certificate from October 6, 1998 and to a medical certificate from October 13, 1998. Caron indicated that Beauregard had to comply with the procedures regarding occupational injuries and explained that he was giving him 48 hours, from receipt of the letter, to contact him. Otherwise, disciplinary action would be considered.

[19] The Complainant states that he received this letter on November 4, 1998, exactly 15 days after it was sent.

[20] In a third letter dated October 23, sent by priority post with signature, which Beauregard stated he received on October 28, 1998[5], Caron informed him that he was being given a one-day suspension for not having obeyed to the request in the October 19 letter. He gave him an additional 48 hours to contact him.

[21] On October 23, 1998, the PPP's Occupational Health, Safety and Environment Department in St. Laurent sent Beauregard a letter by priority post with signature asking him to appear for a medical assessment on October 28 at the office of Dr. Marc Guérin. The letter carrier left a card in the mailbox on October 26. The letter was claimed at the retail postal outlet on November 10, one day before the 15-day period expired.

[22] On October 28, 1998, the employer sent Beauregard a fourth letter, this time by priority post without signature. It was left in Beauregard's mailbox, and he said he received it on October 29, 1998. In the letter, Caron indicated that since he did not show up for the appointment with Dr. Guérin, the employer was giving him a two-day suspension. Another medical assessment appointment was set for November 6, 1998.

[23] On November 3, 1998, Beauregard went to the employer to fill out the CSST document entitled "Employer's Notice and Reimbursement Claim".

[24] In the meantime, he also received another letter on October 29, by priority post without signature. He said he received this letter on October 30. This letter informed him of a three-day suspension, from November 6 to 10. Therefore, when he went to the employer on November 3, he knew he was suspended for three

days. It is surprising that he subsequently stated that he had been surprised to receive a November 4 letter indicating that he was suspended.

[25] The November 4 letter was an amendment to the October 29 letter. It simply changed the dates of the suspension from November 6 to 10 to November 9 to 12 because, according to the employer, Beauregard was to appear for a medical examination with Dr. Guérin on November 6.

[26] At the meeting on November 3, 1998, Caron indicated that he had asked Beauregard about the circumstances in which the injury occurred and that he had responded with "*it's written on the sheet"* [translation]. He then asked him where the injury occurred, and he responded, "*in the LPP"* [translation]. Caron asked him for clarification and he responded, "*I don't have to answer your questions. It's written on the sheet*" [translation].

[27] Beauregard reacted as follows to Caron's comments "*as I said earlier in the other document, he wanted me to specify a person involved in my problem. He didn't want me to specify a work location, but a person. He seemed to want me to pick a name and tell him that name. I told him that I did not have a name to provide, that it was a location and series of events*" [translation]. However, referring to Dr. Payne's notes regarding the medical consultation on October 6, 1998, he indicates "*noticed symptoms starting from the day of his transfer to the plant on 14-09-98, unpleasant, his supervisor causes him a great deal of stress*" [translation]. (My underlining.)

[28] The Complainant added that he could not be more precise because, in his words, "*I had no examples to give him*" [translation]. However, on December 9, 1998, in a letter to France Villeneuve of the CSST, he gave three pages of examples with names and dates of events. In this document, he did not mention any events occurring at the automated plant on September 14 or September 15, 1998. The only events he mentioned having occurred between September 14 and October 1 are as follows:

> "*On the 24th, I applied as an AP-2, telemarketing representative, and I was informed that I had been selected.*
>
> *On the 28th, for the position mentioned above, I was informed that I was not selected because I did not have all the requirements (bilingual imperative BBBB), which is false because I speak English fluently.*" [Translation]

[29] On November 6, 1998, Beauregard met with Dr. Guérin. I will discuss this appointment further on.

[30] On November 12, 1998, he received another letter from Réal Caron giving him another three-day suspension because of his attitude during the examination with Dr. Guérin.

[31] In a November 16 meeting, the employer informed Beauregard that it was still unaware of exactly what he wanted in terms of assignement or what his functional limitations were. Beauregard mentioned that he would be seeing his physician on November 19, 1998 and that, at that point, he would be better informed about his illness.

[32] On November 25, 1998, another meeting was held to discuss his redeployment. Caron offered Beauregard an assignment to Matane, in a full-time position as a clerk. Beauregard stated that he had never filled out a transfer request for Matane. When informed that he had filled out such a request on May 16, 1997, he responded that the request was no longer valid because, according to the collective agreement, a transfer request is only good for one year.

[33] Beauregard's refusal to accept the assignment to Matane is surprising in light of his statements to Dr. Payne and Dr. Gérard Cournoyer, psychiatrist. In Dr. Payne's case, during a visit on November 3, 1998, a few weeks before he was offered the assignment to Matane, he explained that due to a seniority problem, he could not get the type of assignment he wanted. He then stated that he wanted to go to Baie Comeau, that in the end he was prepared to go anywhere to get out of Montreal.

[34] He mentioned to Dr. Cournoyer that he was free to go where he wanted because he did not have a spouse or children. In the words of Dr. Cournoyer in his report, *"he went to great lengths in filling out, in the space of about two weeks, approximately 240 transfer requests to assure his employer that he was truly prepared to work anywhere in Quebec so that he would no longer have to be `inside', a jargon term used among Corporation employees to refer to the automated plant where the working environment is, in the eyes of many, much more difficult than `outside'"* [translation]. If that is the case, then why did he turn down the offer of the assignment to Matane? Why did he not refer to this offer during his visit with Dr. Cournoyer? At the hearing, he stated that, at the time, there were changes in his personal life, which was why he did not want to go to Matane. But why did he not talk about these changes with Dr. Cournoyer, leaving him instead with the impression that he was free to go anywhere?

[35] He stated that he did not remember those transfer requests because they were good only for one year and that he did not keep them after that. He said that he was unable to say if 240 was correct or whether it was he or Dr. Cournoyer who suggested that number. I personally do not see why or in whose interest Dr. Cournoyer would talk about 240 transfer requests if the Complainant had not brought up that figure.[6]

[36] As to the transfer requests, he added,

[Translation]

> *Q. Now, I see there are many locations, it's marked Trois-Rivières, Sept-Îles, Mont-Joli, Alma and we are going through the whole stack. There are some for Ontario.*
>
> *A. There are some for Ontario, yes.*
>
> *Q. And there is one for Matane at the top of the pile. After that I see Roberval, and all that.*
>
> *A. Yes.*
>
> Q. And these are the locations that you were prepared to go to. Correct?
>
> *A. When I signed that transfer request, yes, because of my situation in 1997, but from the union's perspective, when someone puts in a transfer request, there is nothing requiring him/her to accept or not accept it because at times there are things in life that can change from day to day.*
>
> *Q. I understand.*
>
> *A. So there is nothing requiring him/her to accept. It's just a request to keep one's name on the list. So you put your name on the Matane list, for example, and then when someone offers you the job ... it's good for a year. So a year from May 16, 1997. But it is in no way an obligation. It's just to keep your option open in the event that you may need it.*
>
> [...]

Q. But let's say, Mr. Beauregard, that you make applications like that to Matane, Sept-Îles, Roberval, Guelph and that you are in fact not interested in going to any of those places, could it be said that those requests were made in bad faith?

A. It cannot be said that they were made in bad faith because you fill them out and wait to see if anything comes available there, whether it will serve your purpose. It's a way of improving your situation. So, if you look at the route presented to you at that time and that route does not suit you, you are entitled to turn it down.

Q. But for example, Mr. Beauregard, I understand for a Montreal letter carrier putting in a request for a letter carrier route in Matane, he can look at what route would be suitable in Matane, but for an employee at the automated plants in St. Laurent and who absolutely does not like being at the automated plants in St. Laurent, do you choose a letter carrier route based on the number of floors or the number of staircases?

A. Yes, exactly. You choose by number of floors and number of staircases and each step is counted. So, for example, if it is a route like the one I had in Youville, which has 230 staircases in a day, then you think about it.

Q. You would rather stay at the plant.

A. And the number of doors too. The number of doors varies greatly depending on the route and on the amount of sorting to do in the morning. So, if it's a route with a lot of sorting or not much sorting, these are all things you need to consider when the employer offers you a position.

[37] On November 20, 1998, after meeting with the psychologist Léoline Daigle[7] on November 2, Dr. Luc Morin on November 18, and Dr. Payne on November 19, he sent a letter to Réal Caron in which he requested an assignment under paragraph 54.02(b) of the collective agreement.[8] This paragraph provides that, where an employee becomes physically handicapped because of health reasons and that the need for an assignment is supported by a certificate issued by a qualified medical doctor, upon written application, the employee may be assigned to any appropriate vacant position in his or her group. According to Beauregard, Dr. Payne's results showed that he could not be reinstated in his position at either automated plant. I do not intend to deal here with the issue regarding assignment

under section 54 of the collective agreement because the grievance arbitrator has already dealt with it[9].

[38] On December 1, 1998, Georges Dolan, evening shift manager, gave Beauregard a copy of Dr. Guérin's medical assessment report. Dolan also asked him if Dr. Payne and Dr. Guérin could meet to discuss his case. Beauregard first answered "yes" to this request. However, when Dolan gave him the authorizations to sign, he asked if he could meet with his union representatives before signing the documents.

[39] He stated that he discussed the issue with his union and that it suggested that he not sign the authorizations. Therefore he refused to sign them.

[40] On December 3, 1998, he informed Georges Dolan, in a letter, that he had seen Dr. Payne again since the December 1 meeting and that Dr. Payne reconfirmed that he was able to go back to work outside of the two automated plants with no restrictions. The letter was countersigned by Dr. Payne.

[41] On December 9, 1998, Caron responded to the December 3 letter and indicated that there was nothing in it showing that Beauregard could not do the work in his own position. He therefore ordered Beauregard to appear for work on December 14, 1998, in his position on his own shift, "*otherwise disciplinary action, not excluding discharge, would be considered*" [translation]. Beauregard replied that this demand was contrary to Dr. Payne's recommendation and that "*in addition, the CSST has not [yet] rendered its decision*" [translation].[10]

[42] On December 16, 1998, Caron informed Beauregard that his employment with the Respondent was terminated as of December 17, 1998.[11]

B. The visits with Dr. Allen Payne

[43] Dr. Allen Payne is a general practitioner. He has a general practice and, according to what he says, he has also been doing CSST medicine since 1995. When a patient comes to see him following an occupational injury, he becomes the attending physician for CSST purposes. He provides all medical follow-up. He has no particular specialty in psychology or psychiatry.

[44] In 1998, Dr. Payne was working out of both his general practice clinic and the Polyclinique Médicale Populaire on Sainte-Catherine St. in Montreal. People can drop in to the Polyclinique without an appointment. A large percentage of the Polyclinique's clients are workers. Dr. Payne indicated that the Polyclinique handles an "*industrial quantity*" [translation] of CSST cases.

[45] Dr. Payne said he saw Beauregard on October 6, 1998. Beauregard said he had gone to that clinic because he had to drive someone to the Papineau subway station that day near the clinic and that it was a union-recommended clinic. He stated that he felt comfortable going there.

[46] In cross-examination, he admitted that he had already consulted Dr. Payne. In fact, Dr. Payne remembered seeing the Complainant in 1997 for another problem. However, in the two medical reports filled out on the CSST forms during the 1997 visits, in the section entitled "*Diagnosis and progress of the pathology and treatment*" there is the expression "*situational depression*" [translation]. When questioned about these visits, the Complainant stated that he had no memory of these documents because the copies, he stated, were illegible. His responses about the events surrounding his visits to Dr. Payne in 1997 were vague and less than convincing. It is also surprising that, in his testimony, Dr. Payne did not draw a connection between the 1997 medical reports and the 1998 ones, considering that he was the attending physician in both cases

[47] In any event, the Complainant went to the Polyclinique on October 6, 1998, with what Dr. Payne described as "*sinus congestion, wakefulness at night, no recovery, poor appetite, low morale, wants to lie down after being up for only 2 hours*; *noticed symptoms since his transfer to the plant on 14-09-98, unpleasant, his supervisor causes him a great deal of stress, problem of `inside', slow of train and content of thought, will try to return to work in December, daily headaches, does not really like taking medication, appointment with Dr. Morin psychiatrist on 18-11-98*" [translation]. (My underlining.)

[48] In cross-examination, when counsel for the Respondent asked Beauregard which supervisor he was referring to, he said he did not remember. He also added that he was speaking "generally", that it was not one supervisor in particular who was causing him stress, but the workplace. However, according to Dr. Payne's notes, it was a "supervisor" who "causes him a great deal of stress".

[49] Dr. Payne stated that he had spent 10 to 15 minutes with Beauregard during his October 6 visit. Beauregard said he explained the entire situation to Dr. Payne at that visit. However, he stated that he neglected to inform Dr. Payne that he had been on sick leave since October 1. Dr. Payne acknowledged that the consultation was short "*because there were other people waiting*" [translation].

[50] In his testimony, Dr. Jacques Gagnon, an expert witness in psychiatry, indicated that a proper psychiatric examination should take 40 to 50 minutes. He is of the view that a ten-minute examination is not thorough and that the resulting assessment is definitely not based on evidence. He added that the diagnosis should be based on a minimum number of significant symptoms. Another psychiatrist, Dr. Gérard Cournoyer, witness for the Commission and for

Beauregard, added that he does not think that a psychiatric examination can be done in the space of a few minutes. He added that an examination of this sort should take at least an hour, sometimes longer. He stated that, before psychiatrists issue an opinion, they must be sure that they have truly gathered all the information on which to base that opinion. In his view, the first visit should last, on average, at least an hour or an hour and a half, because time must be taken to go through the person's entire background and medical history.

[51] Dr. Payne stated that he arrived at his diagnosis by asking Beauregard certain questions. He added that he was attempting to assess the patient's higher mental functions, the risk of suicide and what he referred to as the "*inside*", in other words the patient's ability to have insight into his own situation. He stated that, at that time, he wanted to gather data on the circumstances and context surrounding the symptoms.

[52] He said he recalled Beauregard's condition when reviewing his notes, but added "*that there was nothing particular. You must understand that, at 50, 60, 70 patients a day...there was not necessarily anything more particular with Beauregard than with any other*" [translation]. He added that he had come to see him with a sinus problem first and that he then said, "*By the way, Doctor, I don't feel well, etc.*" [translation]. He stated that he was able to arrive at this conclusion by looking at his notes "*[b]ecause I marked down the reason for the consultation as congestion, then after I started talking. So, that means that logically he discussed his sinus problem with me, then it came out, when I questioned him a little further, that he did not feel well, that he had no appetite, etc., as I wrote in my notes*" [translation]. He added that the sinus problem was not connected with Beauregard's psychological state.

[53] Dr. Payne stated that he asked a series of thorough questions as required by the Régime d'assurance maladie du Québec (the "RAMQ"). He acknowledged that consultations carried out by psychiatrists are much different. He said that he asked Beauregard how he was feeling. Beauregard mentioned that he would wake up during the night, that he had difficulty recovering from that, that he lost his appetite, that his morale was flat, as he described it, that he was tired, that he wanted to lie down after a couple of hours. He said he had had those symptoms since September 14, 1998.

[54] The doctor acknowledged that it is important for a patient in a depressed state to be aware of his/her state of mind, his/her mental or psychological condition. In this regard, he noted that Beauregard was not crying and that he had not mentioned having cried at any point. He added that, to determine a state of mind, he looks at whether the information is delusional. Is the patient's speech normal or slow? Is the patient having trouble making connections?

[55] He stated that, after ten minutes of this type of questioning, he had enough information to arrive at the diagnosis that Beauregard appeared to have work-related depression.

[56] On the medical certificate[12] from October 6, 1998, Dr. Payne wrote "*Reactive depression*" [translation] as the diagnosis. The date of the event is identified as September 14, 1998. Dr. Payne based this on what Beauregard told him: "*It is the worker who ultimately determines the date of the event*" [translation]. He added that, in a psychological case, the date of the event is usually based on the worker's memory of the date when symptoms began.

[57] On the medical certificate, Dr. Payne also wrote "*RT 71098*", meaning "return to work on October 7, 1998". In his notes he wrote, "*will try to return to work in December*" [translation]. He stated that Beauregard had said this. However, Dr. Payne had written in the medical report that the return to work was planned for the following day. He added that, since it was a situational problem and not major depression, there could be administrative adjustments. Therefore, a relatively speedy return to work was possible. In his examination, Beauregard stated that he was the one who insisted on returning to work on October 7. He indicated that he had told Dr. Payne, "*I've had a few days rest, now. So on the 7th I want to try to work and function normally*" [translation].

[58] I have no reason to challenge Dr. Payne's version, and I maintain that it was Dr. Payne, not Beauregard, who suggested going back to work the next day.

[59] When comparing the copies from the medical certificate that Dr. Payne issued on October 6, 1998, we see an annotation on the worker's and employer's copies that does not appear on the physician's copy. This annotation adds, "*we suggest a change in work location*" [translation]. Beauregard said he could not explain why this addition appeared on those copies but not on the physician's copy. The doctor could not provide a satisfactory explanation either.

[60] On October 6, 1998, Dr. Payne also issued another document entitled, "*Medical Report*" [translation], again on a CSST form. Dr. Payne explained that, because the medical certificate form in 1998 did not include a box for indicating whether the patient is referred to a specialist, physicians at that time would prepare a medical report that did have such a box. In this case, Beauregard was referred to Dr. Luc Morin, a psychiatrist.

[61] At the time, Dr. Morin was a psychiatrist at the Polyclinique. He left the Polyclinique in December 2001. Dr. Morin was not called upon to testify. According to Dr. Payne, it would appear that he has passed away or is very sick.

[62] Dr. Payne said he decided to refer Beauregard to Dr. Morin because he had a psychiatric problem. He also added that the fact that he suggested a change in work location also influenced him to make the referral because "*[it] could be a suggestion that the employer may or may not be happy with or may lead to problems, second opinions and all that. Therefore, at that time, it was also a question of specialist coverage, you could say. It is a standard procedure for generalists*" [translation]. (My underlining.)

[63] On October 13, 1998, Beauregard had another visit with Dr. Payne. During this visit, Dr. Payne prepared a "*Medical Progress Report*" [translation]. The diagnosis was still the same, "*situational depression*", this time with the words "*(work)*" and "*(location)*" [translation] added to clarify, according to Dr. Payne, that the situation was work-related. Below these annotations, he added, "*appointment, sick leave, October 20, 1998*" [translation]. He therefore extended the sick leave to October 20. This appointment lasted only five minutes. Dr. Payne acknowledged that he did not re-examine Beauregard.

[64] In his notes, Dr. Payne indicated, "*agrees to see psychologist, referred to Ms. Daigle, sinus X-ray*"[13] [translation].

[65] Dr. Payne stated that, during this visit, he was not surprised to learn that he had not returned to work on October 7, 1998. Beauregard explained to him that his situation was complex and that resolving it required more time from an administrative perspective and that it could not be done in 24 hours. Dr. Payne said he extended his sick leave because the problem had not yet been resolved from an administrative perspective.

[66] Dr. Payne added that the adjustment disorder diagnosis was primarily an administrative management issue for which drugs are not prescribed. Instead, time is given to allow administrative management to resolve the problem.

[67] On October 13, 1998, Dr. Payne noted an ongoing unmanageable depression. This condition was characterized by the fact that Beauregard said he had no appetite, low morale, no energy-the same characteristics he had identified at the examination on October 6, 1998. However, he acknowledged in cross-examination that it was not Beauregard who described these symptoms to him, but that during the five-minute visit, he noted that "*he seemed a bit downcast. He appeared to have the same types of symptoms*" [translation].

[68] At the time of that visit, Beauregard was still waiting to see a psychiatrist, and Dr. Payne also invited him to make an appointment with the psychologist Léoline Daigle.

[69] Beauregard saw Dr. Payne again on October 20, 1998. He said he had had an appointment with the psychologist Daigle between October 13 and 20. However, no evidence of this visit or what was said during the visit was presented at the hearing. He stated that he had also made an appointment with Dr. Morin during this period for November 18. However, in his notes for October 20, 1998, Dr. Payne indicated "*will make an appointment with the psychiatrist Morin*" [translation]. It appears, then, that on October 20, 1998, there was still no appointment made with Dr. Morin.

[70] In the "Medical Report" that Dr. Payne filled out during the visit on October 20, 1998, the diagnosis was still the same, "*situational depression*" [translation]. The sick leave was extended to November 5, 1998.

[71] On November 3, 1998, Dr. Payne performed another examination, this time lasting nearly 10 minutes. According to Dr. Payne, Beauregard was in the same psychological state as he was during his first visit on October 6, 1998. The doctor said he arrived at this conclusion by watching his actions, from his tone, the way he described the events and the copious details he provided. He concluded that Beauregard was emotionally disturbed. He stated that he was not in a position to provide objective clinical signs of this emotional disturbance since psychiatry is, according to him, rarely objective. He also added that Beauregard was not suffering from major depression.

[72] He said that he was better able to identify subjective signs of an emotional disturbance. Among other things, he noted that Beauregard had what he described as "circumstantiality". He added that his thinking was not delusional, but that it was not "focused" either. He was not obsessive. He went into copious detail to describe a situation that could have been summed up in a few words.

[73] Dr. Payne recommended a sick leave due to "*situational*" or "*reactive depression*" [translation], which are the same thing in his view. He added that he would now describe his diagnosis as "*adjustment disorder*" [translation]. Dr. Payne never used this expression in his diagnoses. It first appeared in Dr. Luc Morin's note.

[74] According to Dr. Payne, "*situational or reactive depression*" or "*adjustment disorder*" are equivalent, and the signs and symptoms are subtle as opposed to those of major depression. He added that drugs are not used to treat them.

[75] Dr. Gagnon testified that adjustment disorder is a reaction to a significant event in a person's life. Everything usually returns to normal relatively quickly when the stressor is removed. He added that, in Beauregard's case, as soon as he

was removed from his work environment, he should have returned to normal functioning within a few days, not in six weeks as Dr. Payne indicated.

[76] Dr. Marc Guérin, another expert witness in psychiatry, mentioned that depression can take several forms but that it is characterized for the most part by a mood disorder, in other words the mood is sad. The sadness is generally accompanied by a relatively high level of anxiety. The main symptoms of depression are sadness and anxiety. Both of these lead to other symptoms such as difficulty concentrating. A person who is very anxious has difficulty concentrating. This results in a breakdown in emotional control. People who are sad often cry, they are less able to control themselves and are more sensitive. Anxiety generally leads to insomnia. With depression, what is seen most often is initial insomnia or early-morning insomnia: the person wakes up very early and cannot fall back to sleep. He finds that most people experience times when they wake up at night but manage to get back to sleep. It is not pathological in that case. What is more typical in depression is initial or terminal insomnia. Long-term insomnia will increase concentration problems because mental fatigue sets in, and the person will also complain of physical fatigue. Appetite problems are also involved. The person either loses his/her appetite, which is more common, or eats more and becomes bulimic. In severe cases, when it becomes incapacitating, agitation or psychomotor retardation problems can arise. The person is so anxious that he/she is disturbed, and is unable to stop moving or slows down mentally and physically. These are all pathological cases that can be considered major.

[77] Dr. Guérin continued, indicating that adjustment disorder is a lesser form of depression. In the U.S. classification, the symptoms of adjustment disorder are essentially the same as the ones just described but are somewhat less intense. Adjustment disorder is usually directly connected with something identifiable: financial or family worries or problems at work. It is something that is at the end limit of normality.

[78] When the pathology is self-sustaining, it is referred to as either situational or neurotic depressive disorder. In other words, the symptoms are out of proportion with what the person is experiencing in the external world. These people feel sad even if there is no real reason to feel sad. The pathology is more significant because it is out of proportion with or cannot be explained by the individual's normal or natural reactions. Dr. Guérin talked about extreme cases involving people on the verge of losing contact with reality. They are so sad that they start blaming themselves for everything bad. Their situation is virtually delusional.

[79] According to Dr. Guérin, there is a gradation in depression symptoms. When a patient goes to see the doctor and says, "*I have such and such a symptom, for example I'm not sleeping as well...I have less interest, I'm worried, I'm having difficulty concentrating*", the physician should question him/her to determine if

there are other symptoms associated with this condition. The physician should try to determine how great the symptoms are. Dr. Guérin stated that there are people who say, "*I'm having difficulty concentrating*", but after a half-hour interview, the physician notices that they are concentrating well, not losing their train of thoughts, and answering questions well. If a person says, "*I don't have much appetite*", the physician must determine if the person has lost weight. According to Dr. Guérin, the physician must take these steps in an attempt to objectify the pathology.

[80] On November 19, 1998, the Complainant saw Dr. Payne again. According to Dr. Payne this appointment lasted about five minutes. During this appointment, Dr. Payne prepared a final report. Such a document is issued when the patient has reached, in the CSST's words, a "*state of consolidation*" [translation]. The final report is different than the other documents because it asks different specific questions. For example, "*will there be a permanent injury?*" [translation] and if "yes" is checked, it continues, "*will there be functional limitations*?" [translation]. If "yes", then, "*is this an aggravation of previous functional limitations*" [translation]. If the answer is yes, an assessment report must be prepared. In Beauregard's case, this assessment report was never prepared.

[81] When asked why he did not prepare this assessment report, Dr. Payne responded, "*Excellent question. Perhaps it has to do with not being able to reach Mr. Beauregard, lack of availability, or because Mr. Beauregard had an administrative process and I was waiting for that? I can't answer you.*" [translation].

[82] The "consolidation" date on the final report is indicated as November 23, 1998. Dr. Payne stated that he could not say for certain how he arrived at that date. According to him, from an administrative perspective, patients are normally consolidated two or three days after their visit. He also added, "*It can be that, because it is Thursday, for example, the patient is consolidated on Monday. And it's logical, if the 19th is a Thursday, the 20th, the 23rd, that's Monday. It's usually only for administrative reasons that we put the consolidation date a few days after*" [translation].

[83] When asked whether it is normal for the "consolidation" date to be determined based on a day of the week, he responded, "*That depends. We're talking about administrative management here, and administrative management means that there will be an administrative, not just medical, consolidation. Consolidation must also be done from an administrative perspective, in other words, giving him the time to contact his employer*" [translation].

[84] However, the "consolidation" date, for CSST purposes, is defined as the date of the therapy plateau of an occupational injury**.** Dr. Payne defines therapy plateau more broadly than in a strictly medical definition. He sees it as the date when it is the most convenient and practical for the worker to return to work, particularly in a case like this one because the problem is, in his view, more administrative than medical. In addition, Dr. Payne describes the Complainant's psychological examinations as "*venting, but I am not certain that it would call for a major medical treatment*" [translation].

[85] He stated that, by an administrative problem, he meant that managing and resolving it are essentially administrative. He added, "*we are dealing with a problem that is mostly administrative and somewhat medical. ...To assign a percentage, you could say it's 80 [administrative]-20 [medical] or 85-15*" [translation].

[86] Dr. Payne had difficulty explaining what problem the Complainant had with his work, "*it seemed to be an issue involving difficult labour relations with several people*" [translation]. However, in his written report of the appointment on October 6, 1998, he wrote, "*his supervisor causes him a great deal of stress*" [translation], in the singular. Beauregard did not give him a name, nor did Beauregard tell him during their appointments what he did not like about the individual(s). But it was obvious to Dr. Payne that it was a labour relations issue. However, Beauregard apparently said that the automated plant was the problem, "*no windows, noisy, dusty*" [translation].

[87] The November 19th medical report indicated the following diagnosis: "*situational depression. Return to work in accordance with paragraph 54.02(b) outside of 2 plants with no night hours. Day or evening 23-11-98, permanently according to psychiatric advice*" [translation]. Why does it talk about two plants?

[88] Dr. Payne stated that he made this new diagnosis following the appointment between Beauregard and Dr. Morin. As to paragraph 54.02(b) of the collective agreement, Dr. Payne testified that the Complainant had asked him to refer to it; he himself was not aware of the provision.

[89] He added that he had recommended that the Complainant work outside the two plants because of Dr. Morin's recommendation. However, if the problem is a question of labour relations with several people, it is hard to see how this recommendation would resolve the problem, especially if the supervisors are not the same at both "plants".

[90] He explained that he made these recommendations for the "two plants" because the "two plants" have the same work characteristics and because that was

what caused the problem. As such, the problem is no longer work conflicts with supervisors but rather a work location problem.

[91] Dr. Payne testified that Dr. Morin also recommended working "*outside the two plants*" [translation]. However, referring to Dr. Morin's handwritten note that he prepared after his examination of Beauregard, we see that he refers to "plant" in the singular, not the plural, "*Rec: Change of position and location (plant)*" [translation]. Moreover, there is nothing leading us to believe that Dr. Morin was aware of the second plant.

[92] Dr. Payne eventually acknowledged that Beauregard requested that he restrict him, through a medical certificate, from the "two plants" and from the night shift, but added that his recommendation was not based on this request, but gave no further explanation. He also admitted that Beauregard explained to him that he had made an application under paragraph 54.02(b) of the collective agreement and asked him to write that recommendation on the certificate. Dr. Payne admitted that he was not familiar with the paragraph in question and recognized that it is not a medical provision, and added that administrative management is required for this case anyway.

[93] He said that he had suggested "with no night hours" because he considered Beauregard fragile, which made it difficult for him to adjust to working nights. The noise, isolation, stress and night work are, according to him, factors that could bring on a relapse. He recognized, however, that it very well could have been that Beauregard asked him to restrict him from the night shift, but he is not as certain about this as he was regarding the suggestion about the "two plants".

[94] As to the appointment with Dr. Morin, the only evidence we have about this is Beauregard's testimony and Dr. Morin's note. This appointment apparently lasted about 45 minutes. Dr. Morin's questions dealt specifically with the work location and the Complainant's state of mind when he was inside his workplace and when he was outside. Beauregard indicated that Dr. Payne had asked Dr. Morin this specific question, "*Should the patient be transferred or relocated to a job outside the two plants*" [translation], and Dr. Morin responded in the affirmative. However, Dr. Payne never referred to that question in his testimony or his notes. As to the "two plants", it should be remembered that Dr. Morin in his note referred to "plant" in the singular.

[95] Moreover, Dr. Morin's note was very brief, and I reproduce it here in its entirety, "*Working at Canada Post since June 93 in an automated mail-processing plant. Complains of management harassment. Has been a replacement employee at postal stations. Felt that the work was pleasant supervisor ∅ superintendent. Occupational injury: work-related situational depression (Dr. Payne) versus suspension according to management. Environment (plant:*

noise - isolation - stress. Diagnosis: acute stress + adjustment disorder in the working environment with anxio-depressive mood. Recommend change in position and environment (plant)" [translation].

[96] Dr. Morin's diagnosis referred to "acute stress". In Dr. Payne's interpretation, "acute stress" is something that happens within a short period of time and brings on an emotional affect. Dr. Payne stated that, in his examination of Beauregard the day after his appointment with Dr. Morin, he did not note any acute stress. Dr. Gagnon stated that it was difficult to support a diagnosis of "acute stress" because the primary element is missing: a reaction to an event. An acute stress reaction is equivalent to a state of post-traumatic stress, but does not last very long. In Beauregard's case, there had never been a traumatic event.

[97] Dr. Payne stated that, during the appointment on November 19, 1998, Beauregard was a bit agitated. He remained standing for the entire interview. However, Dr. Payne stated that he did not ask the patient any questions since Dr. Morin had seen him the previous day. The appointment lasted 2 to 5 minutes. In this short time, Dr. Payne completed a medical report and the final report. He acknowledged that in the final report he checked off "*yes*" to all the questions in the section entitled, "*permanent physical or psychological injury and functional limitations*" [translation]. He said, though, that he mistakenly checked off "*yes*" to the question "*if yes, did this limitations aggravate previous functional limitations*" [translation] since this question usually applies to individuals who have had an earlier occupational injury. He said that this mistake could be due to lack of attention because he had to be quick, but that it could also be explained by the fact that, at that time, he was not as familiar with the administrative workings.

[98] In the final report, he also checked off "*yes*" to the question "*did you prepare the assessment report in accordance with the scale of bodily injuries*" [translation] but admitted that this report was never prepared.

[99] As previously mentioned, during the November 19th appointment, Dr. Payne again diagnosed situational depression. According to Dr. Gagnon, such a diagnosis on that date (Beauregard had not been working since October 1 (is surprising to say the least because, according to him, a person suffering from adjustment disorder or reactive or situational depression will improve as soon as he/she is out of the situation causing the disorder since the stressor no longer exists. He added that it is difficult to believe that a person's depression could persist for several weeks without the attending physician taking any medical steps to treat it.

[100] On November 26, 1998, Dr. Payne prepared another medical report. Preparation of the report did not involve a clinical consultation or examination. According to Dr. Payne, the document was an administrative certificate that

restated the existing recommendations. In the diagnosis, we read, "*consolidated on 19-11-98, sick leave in accordance with paragraph 54.02(b), outside the 2 plants etc., until application in accordance with 08665*" [translation]. What this document means, according to Dr. Payne, is that until what he describes as the Complainant's permanent limitations are made effective, the Complainant will remain on sick leave.

[101] A medical report was prepared on December 15, 1998. The diagnosis in this document indicated, "*work outside the plant is mandatory in accordance with section 54. Known depression*" [translation]. Dr. Payne said that he wrote "*mandatory*" because it was obvious that there were problems with the administrative management of the Complainant's file and that, in his view, working outside the plant was the solution.

[102] In his notes for December 15, 1998, Dr. Payne wrote, "*relapse, aggravation because he was put back in the plant*" [translation]. According to him, Beauregard re-entered a more difficult psychological state because he was put back in the plant. In cross-examination, he explained that it was a mistake to consider it a relapse and that he should have indicated instead that it was a continuation of the same problem.

C. The appointment with Dr. Marc Guérin

[103] Dr. Marc Guérin is a psychiatrist. His experience falls into three main fields: psychiatric and psychoanalytical practice in hospitals and in private; the teaching of psychiatry at McGill University and psychoanalysis at the Canadian Institute of Psychoanalysis; and forensic assessment, which has been his sole field of activity since the end of 1996. Dr. Guérin said he has twenty years' experience in interviews and assessments of the kind he had with Beauregard. He added that in his professional life he has interviewed at least 10,000 patients, which is nearly 500 per year.

[104] Dr. Guérin qualifies as an expert in psychiatry.

[105] On November 6, 1998, Dr. Guérin met with Beauregard to perform an assessment at the request of the Respondent. The interview was very short. It did not last longer than 15 or 20 minutes because Beauregard refused to cooperate and answer the doctor's questions. Dr. Guérin did not see the point in persisting and he ended the interview. Beauregard explained that his reluctance was due to not being prepared and informed about what a psychiatric assessment is all about. He said that he understands better now what was expected of him and that it was the reason why he asked to see Dr. Guérin again and stated that he was prepared to cooperate with him 100%. The Respondent did not follow up on this request,

which in my view is unfortunate, but immaterial for the final disposition of this case.

[106] Dr. Guérin conducted the assessment using the method he said he uses in all his cases. He starts by identifying himself. He then informs the patient of his purpose. He explains what questions he will be asking. He said that he wants to ensure that the person knows who referred him. He also explained that he prepares a report after the examination. He then issues a form on which he gives the contact information of the person to whom he will send the report. Finally, he proceeds with his questions. He begins by gathering factual data: age, date of birth, etc. He then questions the patient about his/her medical and psychiatric history and about the problem that brought the patient to him.

[107] He said that this was the exact process he followed with Beauregard but that Beauregard did not want to answer his questions. All Beauregard said to him was that he could not work at the automated plants and that there was a conflict, but did not elaborate on the nature of the conflict.

[108] When he questioned him about his symptoms, the Complainant responded, "*that he could not tell me about it further until he could see his doctor*" [translation]. According to Dr. Guérin, this is a very unusual response. He acknowledged that people coming to him for an assessment do not do so willingly; they are always sent by someone. They are therefore a little apprehensive when they arrive and are somewhat reluctant. But he added that when he explains his purpose and role to them, they generally cooperate well. He said that occasionally there are people who do not cooperate as well. However, it is very rare that people are uncooperative to the point where they cannot go ahead with the questions and a thorough or satisfactory examination. He said that, in his 20-year practice, this has happened only a few times.

[109] Dr. Guérin mentioned that the people who usually come to see him are sent because they have a problem, and his job is to identify the problem and, where appropriate, offer treatment suggestions. People know, even those who are somewhat reluctant upon arrival, that they are with a doctor who is going to try to help them as much as possible. Therefore, despite their initial hesitation, it is in their best interest to cooperate and talk about their symptoms.

[110] Dr. Guérin testified that he was unable to determine any psychiatric pathology in Beauregard during the examination. He said that what he could tell from the discussion with Beauregard is that he was unhappy at work and that he seemed to have some sort of conflict. Beauregard did not report any psychiatric symptoms to Dr. Guérin. The doctor observed that there were no obvious signs of psychiatric pathology: "*his speech was coherent; he was alert and well-oriented;*

and throughout the interview he did not exhibit any problems concentrating or any pathologies" [translation].

[111] In his report, Dr. Guérin acknowledged that Beauregard was obviously unhappy at work and that he did not want to work in his position at the automated plant. He added that he mentioned that he had to leave work due to internal stress and pressure at the automated plants. However, he did not want to elaborate on these issues and when Dr. Guérin questioned him about the symptoms, he answered that he had to see his doctor again and that then he would know what to say.

[112] During the brief interview, Dr. Guérin was able to observe that Beauregard looked well and seemed to be in good health. His sensorium, in other words his temporal orientation, seemed clear. He did not note any anomalies in cognitive functioning, in other words his ability to concentrate, his memory and his comprehension. There was no agitation or psychomotor retardation, which are the signs observed in a person with, for example, a relatively serious case of anxio-depressive syndrome. In these instances, there is either motor restlessness and psychological agitation caused by anxiety or slowness in the case of deep depression. Beauregard exhibited none of these.

[113] His mood was normal; he did not seem sad. His affect was, in Dr. Guérin's words, "*mobilizable*" [translation]. He concluded that there was no evidence of a pathology that could be described as a mood disorder of the depressive or manic type. During the examination, Beauregard did not appear anxious. His thinking was normal and his speech was coherent. However, it was impossible for Dr. Guérin to get a good idea of the psychological content since he refused to answer questions. But he added that he was clearly not delusional and did not present any suicidal thoughts.

[114] Since he did not observe any obvious pathologies, Dr. Guérin stated that he was unable to issue any restrictions or treatment recommendations. There was no evidence of disability and no evidence of psychiatric limitations with respect to his work. According to Dr. Guérin, if there was indeed a problem, it was administrative and should therefore be addressed from an administrative perspective, which does not involve the medical field. This partly coincides with Dr. Payne's conclusions.

[115] If this were a medical issue, Dr. Guérin indicated that, for anxio-depressive symptoms, the two most common forms of treatment are psychotherapy and drug therapy. There are drugs, either tranquillizers or antidepressants, that may be prescribed if the symptoms are serious enough to warrant it. These drugs all have side affects, so they are not prescribed if the person is not sufficiently disturbed.

In this case, the total lack of treatment leads one to believe that, according to Dr. Guérin, there is slight impairment, if anything.

[116] Beauregard did not inform Dr. Guérin that he had seen a psychologist on November 2, 1998, just four days before the appointment with him. Neither did he indicate that he was going to see Dr. Morin on November 18, 1998. There was also nothing in Dr. Morin's notes indicating that Beauregard had informed him about having seen Dr. Guérin on November 6, 1998.

[117] In his report, Dr. Guérin concluded that the brief examination did not allow him to arrive at a psychiatric diagnosis. As a result, he indicated that his opinion was based on the short interview with Beauregard and that his opinion should be taken with some reserve because it may be that Beauregard had specific problems that he did not talk to him about.

D. Dr. André Gamache's assessment

[118] Dr. André Gamache is a psychiatrist. The Commission and the Complainant called on him to testify as a witness. However, neither the Commission nor the Complainant thought it appropriate to consider him an expert witness. Therefore, without challenging his competence as a psychiatrist, I must take Dr. Gamache's opinions in his testimony with some reserve.

[119] In 1999, Dr. Gamache was working as an emergency psychiatrist at Louis-H. Lafontaine Hospital in Montreal. From 1999 to 2001, he also was working at the Medical Review Board (MRB) one day a week on average, where he conducted assessments. The MRB is a government organization. Physicians in different specialties work there as arbitrators in disputes relating to CSST cases. It is an arbitration board called upon when medical reports differ. A joint employer/employee committee appoints physicians to the MRB. These physicians are independent and are not hired by the employees, the employers or the unions. They must carry out non-partisan examinations to settle disputes. They must eventually say which of the two physicians is correct. In this case, Dr. Gamache had to decide between Dr. Payne's and Dr. Guérin's assessments.

[120] The procedure provides that the MRB physician may be called upon to decide several issues that are subject to the *Act respecting industrial accidents and occupational diseases*[14]. In Beauregard's case, Dr. Gamache was asked five questions. They dealt with the diagnosis, consolidation date, care or treatment, permanent injury and functional limitations.

[121] In the section of his report from February 26, 1999 entitled, "*History of the problem*" [translation], Dr. Gamache said,

> "*On September 14, he* [Beauregard] *was ordered to return to work at the automated plants as a letter clerk. He said that was when he felt that the employer was using pressure tactics. Today he gave me some examples, such as his employer would stand behind him and watch over him. They would also check to see if he was taking too much time in the bathroom or on breaks. He also mentioned to me that he was not allowed to talk to his neighbours, even to ask for information pertaining to his work. He told me about an example where he had a parcel and did not know how to sort it, so he asked his neighbour what to do in those situations. They forbade him from doing that and told him to ask his supervisor instead. He mentioned to me that he was even told, with supporting evidence, that his supervisor told him that if he did not do it that way (his work), they would `kick his ass' out the door*." (My underlining) [Translation]]

[122] Thus, according to the history that Beauregard related to Dr. Gamache, September 14 was when the employer started using pressure tactics. He then mentioned a series of events that could not have occurred on September 14 or after, since he left work on September 15 and did not return again except for part of the day on October 7. Moreover, in his letter to France Villeneuve of the CSST dated December 9, 1998, in which he gave three pages of examples with names and dates of events, no events were identified for September 14 or 15, 1998. Finally, a supervisor's remarks about him, reproduced in the last sentence of that section in Dr. Gamache's report, were not said directly to him. According to Réal Caron's and Richard Gagnon's testimonies, the remarks were made on October 7 when Caron, Gagnon and D'Amours were waiting for him and he did not show up. In addition, Caron, without denying that he had used those words, stated that he said them to his colleague D'Amours, not to Gagnon, and definitely not to Beauregard, who was not present.

[123] In his report, Dr. Gamache also noted that the attending physician mentioned "*workplace adjustment disorder with anxio-depressive mood...permanent psychological injury: 5%*" [translation]. This means that, when Dr. Payne examined him, he was exhibiting the psychological after-effects of his adjustment disorder. At 5%, he agreed that this is mild neurosis.

[124] In the "*Progress of the Problem*" [translation], Dr. Gamache indicated "*It was relatively difficult at first with Mr. Beauregard to determine exactly what he was suffering from on October 1, 1998. I should mention that, at the beginning of the interview, he was a little wary, but that his wariness subsequently dissipated*" [translation]. He added that this difficulty seemed normal at the beginning, but once he explained the MRB's role, his wariness dissipated. In cross-examination, Dr. Gamache acknowledged that he only notes a patient's wariness in cases where he considers it significant.

[125] Dr. Gamache indicated that a psychiatrist must ask certain questions when assessing a patient. However, he admitted that he did not ask any questions about Beauregard's psychosocial behaviour, such as the type of person he is, how he conducts himself in society, what his personality traits are, or what his main psychological or personality characteristics are. He acknowledged that, given the problem, these questions would have enabled him to determine how Beauregard reacts to authority in a supervised work environment and to instructions and orders, information that could have been used in the diagnosis.

[126] Dr. Gamache added in his report, "*he mentioned that his attending physician had written a paper about this, in which he discussed anxio-depressive reaction to work-related stress. I told him, however, that Dr. Payne had not mentioned any symptoms and that I would like to explore that with him*" [translation]. (My underlining.) Dr. Gamache therefore could not identify any symptoms in Dr. Payne's medical reports.

[127] Dr. Gamache admitted that, during the examination, he did not observe any of the symptoms required for diagnosing adjustment disorder and, since there were no symptoms in Dr. Payne's report to use to reach the conclusion that Beauregard was suffering from adjustment disorder, he said he left it to Beauregard to describe his symptoms to him.

[128] In his diagnosis, Dr. Gamache concluded, "*in my opinion, Mr. Beauregard exhibited adjustment disorder with mixed anxiety and depressed mood, code 309.21*" [translation]. Code 309.21 refers to the DSM-IV (Diagnostic and Statistical Manual for Mental Disorders) which contains the nomenclature for mental illnesses and diagnoses. The DSM-IV is used in clinics, assessments and medical reports. Dr. Gamache said he came to the conclusion he did because Beauregard told him that, as of October 1, 1998, he was having sleep problems, would wake up frequently and that he felt exhausted, tired and anxious. In addition, he added that "*at the automated plants, he did not feel like he was being treated like a human first, that he could not see outside at all, that there were no windows, that there was a lot of dust, that they were watched constantly, in short just robots. For him it was an untenable situation and he asked several times for an assignment under, as he said, section 54 of the collective agreement. He told me that he did indeed want to work but not in a place where he did not feel well psychologically, that his employer always denied him job redeployment*" [translation].

[129] The symptoms then, according to Dr. Gamache, were tiredness, exhaustion and anxiety. The doctor added that it can be concluded that someone in a stress situation who, because of the stress, develops these symptoms in the weeks, days and months that follow, is suffering from adjustment disorder with anxio-depressive mood.

[130] In the "*reasoned opinion*" in his report, Dr. Gamache concluded that he agrees with Dr. Payne's diagnosis of the case. However, he gives as a diagnosis adjustment disorder with mixed anxiety and depressed mood and does not maintain the situational or reactive depression, which is not a diagnosis in the DSM-IV. According to him, the symptoms more closely match the code for adjustment disorder with anxio-depressive mood. Again, the symptoms that led him to this conclusion came from Beauregard.

[131] According to Dr. Gamache, adjustment disorder is characterized by symptoms of anxiety or depression or both following stress experienced by the individual. He added that, in psychiatry, there is no objective examination, like a blood test for example, for making a diagnosis. Psychiatrists must trust what their patients tell them and what they know about human nature. According to Dr. Gamache, it is highly likely that Beauregard did exhibit adjustment disorder following the events he experienced.

[132] When Dr. Gamache performed his assessment of Beauregard on February 25, 1999, Beauregard was not having nightmares, his mood was good, he was sleeping well and his appetite was good. He therefore had no psychological problems at that point and he had no after-effects, which confirmed, in his opinion, that once the stress was removed, the symptoms disappeared. However, he added that if the stress reappears, there is the chance that the symptoms will return. He testified, "A*ccording to what I read in my assessment, Mr. Beauregard mentioned that, at the automated plants where he was working at the time, if I recall correctly, it was primarily his employer's attitude, who as I mentioned was watching over him: `Did you take 15 minutes to go to the bathroom' and things like that. So, obviously, that was very difficult for him to deal with. So it was stressful for him and in addition he was working nights, if I understand correctly, he was working at the automated plants, there was no light, and it was dusty. I don't remember if he was working nights, days or evenings, but for him that was stressful too. Therefore, many factors contributed to his experiencing a stressful situation at the automated plants where he was working and the fact of removing him from that, the fact of removing him, then at that time there were no longer any symptoms. But if they put him back, there is the chance of reappearance of... I don't know if that's clear*" [translation]. (My underlining.)

[133] According to Dr. Gamache, there is no treatment, psychotherapy or drug therapy for this situation. Even if he were prescribed tranquillizers or antidepressants, it would not change anything. Only time can rectify things and remove the stress. When a person has adjustment disorder and the stress is removed, the symptoms disappear. However, in November 1998, Beauregard had been away from the automated plant since mid-September 1998, and Dr. Payne's diagnosis was still adjustment disorder.

[134] When he examined Beauregard, Dr. Gamache said that he had no injury and that his mental state was normal. He did not see any after-effects or functional limitations because he did not have sleep, attention, concentration or mood problems. He was normal and was prepared to work, just not in the same work as before, according to Dr. Gamache.

[135] In the section of his report entitled "*Nature, necessity, sufficiency or duration of care*" [translation], Dr. Gamache indicated "nil" because the stress was gone. He added that a doctor cannot suggest treatment when there are no symptoms.

[136] A little further on in the section entitled, "*Existence or percentage of the worker's permanent psychological injury*" [translation], Dr. Gamache indicated "none". In Dr. Payne's medical report from January 1, 1999, however, he had indicated that Beauregard had a 5% permanent injury. On February 26, 1999, Dr. Gamache indicated that there was none. Dr. Gamache said that he did not remember why Dr. Payne had determined that percentage. However, he added that, even if there were no permanent injury, that did not mean that Beauregard could return to the "automated plants" because there was still the chance of a relapse.

[137] In cross-examination, Dr. Gamache admitted that a permanent injury is not something that goes away in a few weeks. Thus, since Dr. Payne determined that Beauregard had a permanent psychological injury and that Dr. Gamache, a month later, said that there was no permanent injury, it is obvious that either Dr. Payne was wrong or Dr. Gamache was wrong. I tend to favour Dr. Gamache's diagnosis on this point.

[138] Then in "*Existence or assessment of the worker's functional limitations*" [translation], he concluded that the Complainant had no functional limitations from a psychiatric perspective. When Dr. Gamache examined him, his was sleeping well, his appetite was good, he was not anxious, he was well-oriented, and his affect was "mobilizable". His mental examination was normal. He said that he was ready "*to go back to work tomorrow, he said, but at a different location*" [translation]. He had no symptoms.

[139] Dr. Gamache mentioned " *...it would be good if there were an administrative agreement with his employer for a change of position and work location as stipulated by his attending physician...*" [translation]. But he took care to add, "*However, I'll say it again that, from a psychological perspective, his mental state is normal and he has no functional limitations*" [translation]. He stated that, by "administrative agreement", he did not mean that the problem was solely administrative. What he was suggesting was a dialogue between

Beauregard, his employer and his union to determine the possibility of finding him a position elsewhere, due to his adjustment disorder.

E. Dr. Gérard Cournoyer's examination

[140] Dr. Gérard Cournoyer has been a psychiatrist at Louis-H. Lafontaine Hospital for 20 years. He was not considered an expert witness and his testimony, with respect to his opinions, should be taken with reserve.

[141] According to Dr. Cournoyer, several times in his career, he has agreed to perform psychiatric assessments. It was in this capacity that he met with Beauregard on September 25, 2000**,** at the request of Ms. Marie-Christine Dufour, counsel for the postal workers' union. The examination lasted two hours.

[142] Dr. Cournoyer's task required him to issue an opinion on Beauregard's ability to return to work, taking into consideration the presence or absence of functional limitations. On September 28, 2000, he submitted his psychiatric assessment report.

[143] The fact that Beauregard had made 240 transfer requests made a strong impression with Dr. Cournoyer. When he questioned Beauregard about this, Beauregard explained that there was nothing in the collective agreement limiting the number of transfer requests that an employee can submit. He told him that he was completely free to go anywhere because he had no spouse or children.

[144] In cross-examination, Dr. Cournoyer stated that he had questioned him on his real reasons regarding the transfer requests.

> *Q. You noted in your examination that this person's 240 transfer requests were for the purpose of going anywhere in Quebec. He told you that?*
>
> *A. Yes, because I had asked him that question since I considered it to be a lot of requests. What I wanted to find out was whether he put in those requests just for the sake of it or if it was actually possible for him to accept a job anywhere in Quebec, in French or English. He told me, `Yes. I have no preference. All I want is a full-time position and I am not married, I have no children and I am available to go.'* [Translation]

[145] However, we have seen that Beauregard spoke of changes in his personal life as justification for refusing to go to Matane. It is surprising then that he did not mention this fact to Dr. Cournoyer.

[146] Dr. Cournoyer continued,

> *If memory serves me correctly, I don't know how... I think his bosses asked him the same question. It seems to make perfect sense to me, if someone puts in so many requests, to say `What are you doing? Are you serious? You could go anywhere?' If the person says, `Yes I am serious. I can go anywhere,' then I think they would take his requests more seriously and not think he was just putting in requests for the sake of it.*
>
> [...]
>
> *Q. In your opinion, in evaluating the situation that day, did you believe Mr. Beauregard when he told you, `I am available to go anywhere'? Did you believe it was in good faith?*
>
> *A. I believed him. He convinced me of that when he told me that he did not have a wife or children, which, for most people are factors limiting their choice of work* (My underlining.) [Translation]

[147] Beauregard explained to Dr. Cournoyer that, at the automated plant in St. Laurent, there were very noisy areas and that, in general, employees prefer not to work at this plant. They prefer to work elsewhere, either on the road, as a letter carrier, on the trucks, in the postal stations or even in the post offices.

[148] However, Dr. Cournoyer did not believe that working in an environment such as the Complainant described could cause adjustment disorder, "*since many people work in very noisy locations and if everybody had adjustment disorder... I am not saying that it can't happen to some people, but in general, no. In my mind, noise is certainly not pleasant, but it's more likely the climate of conflict, which was the original stressor I identified, than the noise*" [translation]. (My underlining.)

[149] Dr. Cournoyer's diagnosis is "*[that in] September 1998, Mr. Beauregard was suffering from adjustment disorder and the disorder persisted as long as he was faced with the possibility of returning to work at the automated plant*" [translation]. To arrive at this diagnosis, he said he used the history that

Beauregard related to him and his emotional symptoms documented by Dr. Payne.

[150] Dr. Cournoyer indicated that, in this case, there was an identifiable stressor, namely the difficult situation that the Complainant was experiencing at work. He noted that Dr. Luc Morin diagnosed an acute stress reaction and that Beauregard had anxiety symptoms and a depressed mood. According to Dr. Cournoyer these symptoms were consistent with a diagnosis of adjustment disorder.

[151] The most significant symptom of a state of major psychological distress, according to Dr. Cournoyer, is seen in the Complainant's statement that he could no longer function normally. In his report, he wrote, "*on October 6, 1998, when I consulted with Dr. Allen Payne, he was not functioning normally*" [translation]. According to him, this is a symptom consistent with major psychological distress. If a person is sleeping poorly, does not get restorative sleep, loses his/her appetite, has low morale, then the person is relatively depressed. If, two hours after getting up, that same person states he/she feels so tired and feels the need to lie down again, then that, according to Dr. Cournoyer, is rather significant because the situation is preventing him/her from functioning normally during the day. Add to that that there are stressors because this same person feels anxious at the thought of being at work, and has a slowing down of the thinking process and headaches. According to Dr. Cournoyer, Dr. Payne put Beauregard on sick leave because he could no longer function normally. He added that the severity of the clinical symptoms and the change in the person's overall functioning were the reason for the sick leave.

[152] According to Dr. Cournoyer, describing the stress as "*acute*" refers to the fact that the symptoms manifested quickly. The symptoms recorded in the doctor's file and the facts as reported by Beauregard are, in his opinion, consistent with a diagnosis of acute stress.

[153] Dr. Cournoyer is of the view that the Complainant had a functional limitation preventing him from working at the automated plant even though, at the time of his examination, he admitted there were no symptoms. His psychological analysis is based in the conflict situation that Beauregard said he was experiencing at work and which was making him psychologically unable to return. For Dr. Cournoyer, the stressor is the work conflict.

[154] Dr. Cournoyer added that it is possible for people to experience conflict situations that are significant enough to cause them psychological problems and that the only way to resolve the problem is to remove them from the conflict situation. He considers it wishful thinking to believe that, from a psychological perspective, Beauregard could return to the same location with the same people, where there is "*a complex and unpleasant history for everyone*" [translation].

[155] In his report, he said that he observed "*[w]hen I brought up the possibility of his returning to work one day at the automated plant, he appeared tense, anxious and he said he was getting a headache just at the thought of it*" [translation].

[156] The conflict, which was the stressor according to Dr. Cournoyer, originated from the fact that Beauregard wanted a full-time position. According to the facts he related to Dr. Cournoyer, he obtained a full-time position in 1995 or 1996, but after three weeks, he was informed that, due to an administrative error, he was being transferred to another position and lost his full-time status. In the summer of 1998, he was working as a clerk in a postal station replacing employees away on vacation. When he returned to the automated plant on September 14, 1998, he said that he was not put back into the position he had before the summer in the parcel area. Instead he ended up in the letter area. However, he did not inform Dr. Cournoyer that this was a temporary position and that his assignment was to end September 5, 1998, at the latest. Since he was not happy with the work environment and preferred very much to leave the automated plant, he said that he started to fill out the transfer requests. However, Dr. Cournoyer is of the view that these facts alone are not enough to arrive at a diagnosis of adjustment disorder.

[157] As another item in the work conflict, Dr. Cournoyer mentioned a call that the Complainant made to the Respondent's Vice-President[15], which, according to Beauregard, created tension between him and his superiors. From then on, he told Dr. Cournoyer, he was "*targeted*" [translation] in his work environment by his supervisors. In addition, in September 1998, he did not feel good returning to the automated plant, in a position he did not like and where he once again had to face managers that he was already in conflict with.

[158] Dr. Cournoyer concluded, "*It seems wishful thinking to me to think that this man could work normally, given the psychological stress that can result from the exceptional circumstances he was in*" [translation]. By "exceptional circumstances", he said he was referring to the work conflict. For an employee experiencing a conflict to call the Vice-President of the Corporation is exceptional, in Dr. Cournoyer's view; this same person putting in 240 transfer requests is also exceptional. However, there is nothing exceptional about being at an automated plant and having supervisors. There is nothing exceptional about having grievances against one's employer or personal dissatisfaction. What is exceptional here, according to Dr. Cournoyer, is the accumulation of facts in the conflict's history. The accumulation gives the impression that there was adversity in the workplace.

[159] The adversity was caused by people, according to Dr. Cournoyer. Therefore, since we have a dilemma here and it is psychologically unbearable, and that there are people who can no longer tolerate each other, the solution is to

separate the protagonists, "*but medically, it's not a reason for saying, `to avoid arguments, we'll call it functional limitation'. It's not right to say that*" [translation]. (My underlining.)

[160] However, in his conclusion, Dr. Cournoyer added, "*In my opinion, Mr. Beauregard has a functional limitation for working at the automated plant*" [translation]. In cross-examination, in response to the question whether Beauregard could work at a another automated plant, Dr. Cournoyer answered that this question never came to mind, but that if he had asked him that question, he probably would have said that he could since, according to him, everything that had happened involved people working at a specific automated plant. Dr. Cournoyer did not seem aware of the existence of another automated plant downtown. However, Beauregard stated that he had talked to him about everything and explained that it could be that he did not specifically mention the automated plant downtown, but that he was sure he had indicated to Dr. Cournoyer that there were other automated plants in Ottawa, Quebec and Trois-Rivières!

[161] Dr. Cournoyer's conclusion that the stress resulted from a work conflict is inconsistent with Beauregard's testimony, which identified the workplace as the stressor and not his supervisor(s). Since the doctor's conclusion was based on facts that Beauregard related to him, to me it appears inconsistent with the facts presented at the hearing and does not identify a conflict situation between Beauregard and his superintendent or supervisor as of September 14, 1998. It could very well be that the facts retained by Dr. Cournoyer could lead to the identification of adjustment disorder symptoms, but they still have to be consistent with what actually took place. However, I am not putting the blame for this situation on Dr. Cournoyer who, in good faith, trusted what Beauregard told him.

F. Dr. Jacques Gagnon's assessment

[162] Dr. Jacques Gagnon has been practising medicine since 1965: from 1965 to 1970 as a physician and since 1970 as a psychiatric specialist. He currently spends two thirds of his time in psychiatry. He is involved with a day hospital (HMR) where he mainly sees people with mood disorders. He has also had a career in teaching (over 25 years). He is an assistant professor of the Université de Montréal clinic. He teaches to residents in psychiatry and to residents and non-residents in family medicine. He has also done administrative medicine at the Maisonneuve-Rosemont Hospital, which is a teaching hospital. Since 1995, he has performed over a hundred assessments per year, while still maintaining a clinical component.

[163] Dr. Gagnon qualifies as an expert witness in psychiatry.

[164] Dr. Gagnon examined Beauregard on November 17, 2000 as part of an assessment for the Respondent. The main question Dr. Gagnon was asked was whether Beauregard had any functional limitations of a permanent psychological nature, as Dr. Cournoyer indicated. That was the first time he had met him.

[165] Dr. Gagnon said he remembered that appointment, even though it had taken place three years earlier, since he "*had been one of the most difficult patients I have ever had to interview in my entire practice*" [translation]. Beauregard was reticent. He refused to sign the authorization for communicating the information but still agreed to have Dr. Gagnon proceed with the examination and prepare a report.

[166] Dr. Gagnon explained that patients are sometimes reticent, but once he has explained to them the reasons for the examination and once the initial reservation passes, people usually cooperate. Dr. Gagnon said that, with Beauregard, he got the impression "*of treading on sensitive ground and having to make him feel as comfortable as possible and handling him very delicately in order to obtain his cooperation*" [translation]. Despite that, however, he managed to make the interview last almost an hour.

[167] In the report prepared following that examination, Dr. Gagnon noted "*on the employee's application*[16]*, it mentioned situational depression ...and that this disorder persisted as long as he faced the possibility of returning to work at the automated plant*" [translation]. A little further, "...*Mr. Beauregard exhibited adjustment disorder with mixed anxiety and depressed mood*" [translation]. Dr. Gagnon acknowledged that he was unable, with the information in his possession, to make a diagnosis on the Complainant's health in 1998.

[168] However, Dr. Gagnon added that, according to him, what was causing his problem was clearly his perception of his work environment. Many of his complaints were due to the fact that he felt he was being watched by his superiors. From that he deduced that it was a harassment strategy on the part of the employer. For Dr. Gagnon, however, there was nothing unusual about the facts he related.

[169] When Dr. Gagnon asked him what was troubling him, he answered that he had situational depression. According to Dr. Gagnon, this was obviously a learned response because the average person does not state that as a problem. Instead, people usually say they are sad or anxious or nervous, that they are sleeping poorly or have no appetite. However, it must be remembered that the Complainant had known for over a year that this was Dr. Payne's and Dr. Morin's diagnosis and he was simply repeating the information he had received from his doctors, which seems perfectly normal under the circumstances.

[170] Dr. Gagnon said that Beauregard's answers to his questions were vague and very laconic throughout the examination.

[171] After going over the list of symptoms identified by Dr. Payne, he mentioned that it is not enough for a person to simply state that he/she has insomnia. It must be determined whether it is initial or terminal insomnia because they mean different things. He added that a person waking up in the night but going back to sleep afterwards is normal. Thus, to determine if someone truly has insomnia, several questions must be asked; the doctor cannot just settle for the patient saying he/she has difficulty sleeping.

[172] When asked about his sleeping and appetite problems, Beauregard explained that he would sometimes wake up at night and that his appetite was up and down. As for his weight, he indicated that he does not weigh himself but that he noticed that his waist was smaller "*by one belt hole*" [translation]. Regarding his mood, he talked primarily about his irritability at work, an aggressiveness that he said was controllable. He did not cry and did not appear particularly sad.

[173] Dr. Gagnon felt that those are the questions that must be asked when looking for depression. Significant mood disturbance must be identified, either sadness or irritability. He added that if someone does not cry and does not appear sad, that greatly reduces the likelihood of it being true depression.

[174] Dr. Gagnon said he had asked him questions about his concentration. He answered that, outside the automated plant, he was fine. According to Dr. Gagnon, people who are significantly depressed have concentration problems. If a person says that outside work he/she can concentrate, then the lack of concentration at work does not necessarily lead to a diagnosis of depression. Other factors could explain the lack of concentration.

[175] Dr. Gagnon also questioned him about whether he had thoughts of persecution because it may happen that a person feels watched over in the pathological sense. The person may think certain people are conspiring against him/her, that they have something against him/her, that they are following him/her everywhere. That is not the case here.

[176] He has no hallucinations or obsessions either. Dr. Gagnon indicated that people with anxiety problems sometimes have obsessive-compulsive disorder. He mentioned that these are routine questions in this type of examination.

[177] He said that he noticed Beauregard was preoccupied with his work environment, which he considered unworthy. Which is not, according to Dr. Gagnon, an obsession in the medical sense.

[178] Dr. Gagnon also questioned him about phobias because there are people who experience partial or total disability as a result of major phobias: specific exaggerated fears. For example, people with a phobia of heights should not be placed in a work environment where they have to work high up. In Beauregard's case, there are no phobias.

[179] He observed that Beauregard had no delusional thoughts and no delusions of persecution. He did not have what Dr. Gagnon described as Schneiderian symptoms, in other words psychotic symptoms; no hallucinations, no obsessions and no phobias.

[180] According to Dr. Gagnon, he was very alert. He was attentive and able to concentrate. His memory was functional, which means that, throughout the entire interview, he was in perfect command of what he was saying. The examination of his higher mental faculties showed them to be within the normal range.

[181] Dr. Gagnon felt that his questioning was quite thorough, but that, even so, it could have been more satisfactory. It was unsatisfactory because of Beauregard's distrust and mental rigidity during the examination.

[182] Dr. Gagnon acknowledged that anxiety attacks, thoughts of persecution, hallucinations, phobias or even obsession are not essential for a diagnosis of adjustment disorder. He added, however, that when a mental examination is performed, those questions must be asked to determine if the anxiety is the result of a more serious illness. Therefore, for an accurate adjustment disorder assessment, the more serious illnesses must be ruled out, including major depression, severe anxiety disorder, panic disorder, phobic disorders, obsessive-compulsive disorders or psychoses.

[183] For Dr. Gagnon, a person with major personality disorder is someone who, throughout their adult life, has had adjustment difficulties because of the way he/she interacts with others. There are several prototypes of major personality disorder. Dr. Gagnon stated that, during his examination, he did not detect major personality disorder. However, he did observe some items about the Complainant's personality: coldness, distrust, and rigidity in his thinking.

[184] He said that he questioned him about the treatment he had received. He found that he had not been prescribed any medication (Beauregard mentioned that he was against taking medication) or psychotherapy[17]. According to Dr. Gagnon, the accepted treatment for major depression is antidepressants, which have an anxiolytic effect. In this case, with the reported symptoms, there was no reason, according to Dr. Gagnon, to prescribe medication or any other treatment. The lack of a prescription is indicative, according to him, of the scope of the illness. If a

person's illness is severe or long-lasting, it is normally expected that they will receive appropriate medical treatment.

[185] According to Dr. Gagnon, one aspect that was a bit unusual in his examination of Beauregard was his distrustful attitude, but everything else was within the normal range.

[186] Dr. Gagnon's examination did not reveal any active pathologies, but he still believed that there was probably a personality problem that could explain the extent of the conflict. He indicated that he said "probably" because he did not have all the information at hand for deciding the matter. He said that, by personality problem, he was referring to a conflict that was still unresolved. However, he indicated that he did not mean personality disorder when he spoke of personality problem.

[187] Dr. Gagnon concluded that Beauregard did not have an active psychiatric pathology. He was in good health. It could be that he was experiencing minor adjustment difficulties, but according to Dr. Gagnon, these difficulties do not constitute illness.

[188] Dr. Gagnon added that, when someone is cold or distrustful, it could be said that, at a minimum, they have some "maladaptive" traits. He added, however, that it could not necessarily be concluded that he/she has a major personality disorder. It has to be qualified. With reserve, he believes that Beauregard exhibited some traits of a paranoid personality, which is based on distrust. People with paranoid personality disorder are afraid that people are doing things behind their back, are afraid that others are against them. However, he added that a paranoid personality does not become psychotic, in other words they are not delusional, but are very reserved, very distrusting. He said, however, that Beauregard's lack of cooperation during the examination required him to issue this opinion with reserve.

[189] Dr. Gagnon also found that Beauregard was not open about his personal life. The only thing he brought up of any significance, according to the physician, was his feeling of indignity in his work environment. In his report, he explained that, "*he talked about noise-related stress, stress due to unworthy work and the aggressiveness between employees and the union*" [translation]. The only stressor that he brought up was his difficulty dealing with the work environment. Therefore, as soon as he would be removed from his work environment, it could be expected that his anxiety would disappear in the ensuing days and weeks.

[190] Dr. Gagnon stated that he had difficulty with the opinion of the physicians who gave a diagnosis of adjustment disorder. They should have indicated instead

that he had, at most, anticipation anxiety, anxiety related to his perception of his work environment. People generally learn to manage this anxiety, which is not an illness. With a diagnosis of chronic adjustment disorder, it is understood that the individual has ongoing disruption of his/her sleep, appetite or functioning, which none of the physicians who examined Beauregard mentioned.

[191] He added that when someone has anticipation anxiety, it can be due to personal preferences or difficulty managing a conflict. If there is a conflict at work, the employer should try to resolve it. However, for it to be an illness, it should be based on symptoms that would lead to such a conclusion.

[192] According to Dr. Gagnon, the Complainant's actions should be interpreted in this case as "*a strong desire to go somewhere else*" [translation], but he added that there are mechanisms in the collective agreement that provide for these situations. This situation is not of medical competence. If a physician determines that the problem is administrative, he/she should indicate this to the employer or the interested party, thereby turning the problem back to the company's management. It is not for the physician to decide whether someone should or should not work at a particular plant or location unless it can be demonstrated that there is a pathology.

[193] He went on to say that in the case of an illness, if the person wishes to return to his/her work environment, he/she can take medication, to calm anxiety for example, or can learn from a psychologist how to handle the situation. However, if the employee does not want to return to work, it is difficult to offer the treatment and support he/she needs.

III. GENERAL OBSERVATIONS REGARDING MICHEL BEAUREGARD'S CREDIBILITY AS A WITNESS

[194] For much of the evidence, I had to choose between Beauregard's testimony and those of the other witnesses. I must now explain why, where the evidence conflicted, I chose the other witnesses' testimonies over Beauregard's. Without challenging his honesty in other respects, Beauregard did not seem to me at the hearing to be a credible witness. Several examples support this conclusion.

[195] First consider the reason he gave for choosing Dr. Allen Payne as the attending physician. When counsel for the Commission interrogated him about this, the Complainant seemed to attribute his choice to chance. He was taking a family member to the Papineau subway station and said that he had noticed in his union booklet that the Polyclinique was not far. He forgot to add, however, that Dr. Payne had already treated him in 1997 for epicondylitis in his right elbow and

for situational depression. When counsel for the Respondent questioned him about this, he said that he did not remember that.

[196] He also testified that the first time he heard about "situational depression" was in October 1998. However, we have just seen that this is the diagnosis Dr. Payne made in 1997 as well.

[197] Another example: on November 25, 1998, the Respondent offered him an assignment to Matane. He first stated that he had never filled out a transfer request for Matane. When informed that he had indeed filled out such a request on May 16, 1997, he responded that it was no longer valid because, according to the collective agreement, a transfer request is valid for only one year. He then added that, at that time, there were changes in his personal life and he therefore did not want to accept a transfer outside of Montreal. He also mentioned that several other factors have to be considered before accepting a transfer and that he was not actually required to accept any.

[198] This response is surprising to say the least, given his statements to Dr. Gérard Cournoyer that he was free to go where he wanted since he had no wife or children, that he was prepared to go anywhere to get away from the automated plant. If that was the case, then why did he turn down the offer of an assignment to Matane? Why did he not refer to this offer during his visit with Dr. Cournoyer? Why did he not tell Dr. Cournoyer about the changes in his personal life?

[199] As to the 240 transfer requests, he first said that he had forgotten about these transfer requests because they were only good for a year and had not kept them. He then added that he could not say whether the figure 240 was right or whether it was he or Dr. Cournoyer who came up with that figure.

[200] In reaction to Dr. Cournoyer's statement in his testimony that he was not aware of another "plant" downtown, he first stated that he had talked to him about it. He then added that he may not have specifically mentioned the automated plant downtown, but that he was sure he had indicated to Dr. Cournoyer that there were other automated plants in Ottawa, Quebec and Trois-Rivières.

[201] There are inconsistencies with several other points in his testimony, but I will not go through a detailed list. I will also pass over the continuing confusion regarding the dates of receipt of the mail that the Respondent sent to him. I do wish to make one comment, however, namely that I was surprised by the Complainant's attitude. Although it was true, according to the regulations, that he had fifteen days to pick up the letters, was it not in his best interest to do so as soon as possible and to cooperate with the Respondent so that the situation could be dealt with as quickly as possible?

IV. THE LAW

[202] Before dealing with the issues raised by the *Act*, I would like to address a preliminary issue submitted by counsel for the Respondent that the grievance arbitrator, Mr. R. Blouin, had already inquired into the same issue. As a result, the Respondent submitted that the Tribunal does not have jurisdiction for deciding this case. A close reading of the two decisions rendered by arbitrator Blouin shows that the grievances he was asked to decide do not raise issues of discrimination or allegations of human rights violations, and the arbitrator did not in fact deal with issues of this type. The issues submitted to the arbitrator and those that I am called upon to decide in this case are very different. I consequently dismiss the Respondent's preliminary issue without further ado.

[203] Mr. Beauregard's complaint was submitted pursuant to section 7 of the *Act*, which stipulates that it is a discriminatory practice to differentiate adversely in the course of a person's employment on a prohibited ground of discrimination.

[204] According to section 3 of the *Act*, disability is a prohibited ground. Section 25 indicates that "disability" includes mental disability. The first issue I will respond to, then, is whether Beauregard had, at the relevant time in this case, a mental disability, and therefore a disability within the meaning of the *Act*.

[205] In a case of this nature, it is the Complainant's responsibility to establish a *prima facie* case of discrimination.[18] If a *prima facie* case is established, the onus shifts to the Respondent to provide a reasonable explanation for the conduct in issue.[19]

[206] A *prima facie* case is one which covers the allegations made, and which, if believed, is complete and sufficient to justify a verdict in favour of the Complainant in the absence of an answer from the Respondent.[20] The allegations made by the Complainant must be credible to justify the claim that a *prima facie* case has been established.[21]

V. ANALYSIS

[207] In this case, the Commission and the Complainant have not successfully established a *prima facie* case of discrimination because I am not satisfied that they have established that the Complainant has a disability.

[208] The conclusion I have reached in this case does not question the possibility that an adjustment disorder can, in the right circumstances, be a sufficient

disability within the meaning of the *Act*[22]. The *Act* does not contain a list of acceptable and unacceptable mental disabilities. It is not just the most serious or most severe mental disabilities that are entitled to remedy under the *Act*. Additionally, it is not solely those that result in a permanent injury that must be considered. Where appropriate, even mental disabilities described as minor with no permanent injuries could be entitled to remedy under the *Act*. However, sufficient evidence still needs to be presented to support the existence of the disability.

[209] In most cases, the issue of whether there is a disability is not disputed. In this case, however, the Respondent submitted that the Complainant does not have a disability.

[210] Beauregard claimed that, on September 14, 1998, he sustained an injury while at work.[23] He said that, as a result, he was off work from October 1, 1998 until December 17, 1998. His attending physician for a CSST claim diagnosed situational depression that left him with permanent functional limitations, specifically that he could no longer work on the night shift at either of the Respondent's two plants in Montreal: the one downtown and the one in St. Laurent. As far as the Commission and the Complainant are concerned, this condition constitutes a disability within the meaning of the *Act*.

[211] The Complainant also claimed that by ordering him to return to work on December 9, 1998, and terminating his employment on December 16, 1998 for refusing to return to work, the Respondent is in violation of section 7 of the *Act*.

[212] The Respondent submitted that the Complainant does not have a disability within the meaning of the *Act* and that it therefore did not engage in a discriminatory practice towards him.

[213] There is no doubt that adjustment disorder with anxio-depressive mood or even "situational" or "reactive" depression are psychological pathologies that can result in a "disability" within the meaning of the *Act*.

[214] However, I agree with the Respondent's statement that it is not enough for a physician to state that a person has this condition to acknowledge automatically that it exists. Evidence still needs to be presented to the Tribunal in support of the traits specific to this pathology and that leads to the conclusion that the illness exists.

[215] What, according to the evidence submitted to the Tribunal, are the traits specific to adjustment disorder with anxio-depressive mood? To answer this

question, we must first acknowledge that any pathology has symptoms and a cause.

[216] The evidence presented at the hearing showed that the following are symptoms of adjustment disorder with anxio-depressive mood[24]: loss of appetite, weight loss, loss of sleep, sad mood, loss of concentration, and stress.

[217] Only Dr. Payne, Dr. Morin and Dr. Guérin examined the Complainant at a time contemporaneous with the events. In his medical reports, Dr. Payne did not mention any symptoms. Moreover, he acknowledged that the Complainant had come to see him for a sinus problem and that he had said "*By the way, Doctor, I don't feel well, etc*." [translation]. He added that the sinus problem was not connected with the Complainant's psychological state. In a note written on June 8, 1999, he noticed in his entry for October 6, 1998, "*wakefulness at night, no recovery, poor appetite, low morale ... since his transfer to the plant on 14-09-98*" [translation]. However, he does not give any details about the symptoms. Dr. Gamache, who saw the Complainant after the events, stated that he was unable to identify any symptoms in Dr. Payne's reports. In his short note, Dr. Morin did not identify any symptoms either. And Dr. Guérin, after conducting his examination, concluded that, in the Complainant's case, there were no active pathologies.

[218] None of them reported any sadness in the Complainant. As to the loss of sleep, there was very little detail, if any. Dr. Payne stated that the Complainant's thoughts seemed slow, whereas Dr. Guérin stated that he found him normal in this respect. There was no evidence of loss of concentration.

[219] All the experts and psychiatrists testified that adjustment disorder symptoms usually disappear when the stressor disappears. Yet Dr. Payne indicated that the Complainant still showed signs of anxio-depressive mood in November 1998, more than a month after he stopped working. If that is case, the situation seems to me to be more serious than first diagnosed and should require a more aggressive medical treatment, yet no treatment was prescribed. Moreover, Dr. Payne's conclusion in November is surprising to say the least since, at the Complainant's first visit, the alleged depression was so minor, according to his testimony, that he prescribed a return to work the next day.

[220] In *Chamberlin* quoted by the Commission, the Complainant in that case had also been diagnosed by his physician as having adjustment disorder. The symptoms and causes are described in paragraph 11 and 12 of that decision. In that case, where the facts appear to describe a more severe situation than the one in this instance, the attending physician had prescribed two to four weeks leave and a reassessment at the end of that period to determine whether the Complainant was fit to return to work. We can conclude from this that if the situation had been serious, Dr. Payne would have prescribed a longer leave and

that since he considered that one day was sufficient, he must have considered the depression minor, if anything.

[221] Dr. Payne's diagnoses must be taken with some reserve, from a facts perspective. By his own admission, the Complainant's examinations at the Polyclinique had to be done rather quickly because there were many patients waiting. The Polyclinique handles an "*industrial quantity*" [translation] of CSST cases, to use Dr. Payne's expression. None of the appointments with the Complainant exceeded 10 or 15 minutes. Some lasted only 2 to 5 minutes and a medical report was issued without an examination. Dr. Payne admitted that some of the comments in his diagnoses were suggested to him by the Complainant, including the "*outside of the two plants*" [translation] restriction, the reference to a section in the collective agreement, and the night shift restriction. I also notice that there remains the unexplained issue regarding the annotation on the employer and employee copies of the medical report from October 6, 1998 that does not appear on the physician's copy. He acknowledged that he made some mistakes on other medical reports. Finally, he admitted that the Complainant's problem is primarily administrative and "*somewhat medical*" [translation].

[222] I conclude from this that, in the fall of 1998, there was no evidence that the Complainant had symptoms of adjustment disorder with anxio-depressive mood or any other psychiatric symptoms and as such there is no disability within the meaning of the *Act*.

[223] Nevertheless, I will now discuss the evidence presented that would explain the causes of the Complainant's alleged condition, in case my conclusion regarding the symptoms proves to be incorrect. There are many causes of adjustment disorder with anxio-depressive mood.[25] The expert witnesses all testified that, for adjustment disorder to be triggered, there needs to be a stressor.

[224] Dr. Cournoyer testified that the Complainant's workplace can not be considered a stressor. Dr. Guérin agreed when he indicated that the type of location where the Complainant works cannot in itself create the type of pathology that is alleged here.

[225] What Dr. Cournoyer considered as the stressor was the work conflict. However, upon reading the history of the conflict, as related by Dr. Cournoyer in his report, we cannot help but notice that he used a version of the facts that diverges on several points from the version the Tribunal heard. In this case, either Dr. Cournoyer was misled or the Tribunal was misled.

[226] Dr. Cournoyer, in good faith, developed his medical opinion using those facts. Among other things, he was convinced that, when the Complainant left his

position on September 15, 1998, he was surrounded by supervisors that were harassing and watching over him. However, the evidence, uncontradicted at the hearing, showed that, before September 15, Réal Caron did not know the Complainant and that he had never had to work with him. In addition, no evidence was submitted describing the events from September 14, 1998 onwards, which would lead me to the same conclusions as Dr. Cournoyer's in this regard.

[227] In addition, the Complainant did not explain to Dr. Cournoyer why, on September 14, 1998, he had to report to the LPP on the night shift and not the BPP, creating the impression that the employer was being arbitrary in its treatment of him, whereas the facts show that his temporary assignment at the BPP had ended.

[228] Neither did the Complainant consider it necessary to inform Dr. Cournoyer of the second Montreal "plant" like the one in St. Laurent. When informed of this situation at the hearing, Dr. Cournoyer acknowledged that the Complainant could work at the other "plant" because there was no reason to believe that the conflict with the supervisors at the St. Laurent plant - the stressor - would move to the other "plant".

[229] Dr. Gamache, who stated that he found no adjustment disorder symptoms in Dr. Payne's medical reports, said that, for his examination, he relied on the facts as told to him by the Complainant and concluded that the stressor was a labour relations problem. In his report, he wrote that the problems began on September 14, 1998, when the Respondent ordered the Complainant to return to work at the automated plants as a letter clerk. Once again, the Complainant did not explain the circumstances surrounding this situation as they were related to the Tribunal. Dr. Gamache then produced examples the Complainant had given him of situations which, as of that date, demonstrated that the employer was using pressure tactics on him. Only one of these examples was produced at the hearing. In addition, the evidence showed that only one of these events could have occurred after September 14, 1998. Only one, the last event that Dr. Gamache mentioned, occurred after September 14, 1998: "*he was even told, he mentioned to me, with supporting evidence, that his supervisor told him that if he did not do it that way (his work), they would `kick his ass' out the door*" [translation]. Réal Caron did not deny using the words "they would kick his ass out the door", but states that he said it to Renée D'Amours, on October 7, 1998, in the evening when he was waiting to meet with the Complainant to discuss the medical report the employer had just received. In addition, it should be remembered that Gagnon, the union representative, had heard these remarks, which he surprisingly wrote at the bottom of his minutes from the meeting of December 1, 1998. In any event, the remarks were never said directly to the Complainant who, moreover, was not at the October 7 meeting.

[230] In Dr. Gamache's view, then, the problems started on September 14, and it was from the facts as related to him by the Complainant that he had, in good faith, prepared his medical report.

[231] Therefore, Dr. Payne, Dr. Cournoyer and Dr. Gamache all had the impression that, in September 1998, there was a work conflict between the Complainant and his supervisor(s), which was the event - the stressor - that justified a diagnosis of adjustment disorder with anxio-depressive mood.

[232] The Complainant himself testified that his problems started at the LPP in St. Laurent on September 14, 1998. Yet in a letter to France Villeneuve of the CSST on December 9, 1998, in which he said he detailed the facts about what caused his situational depression, there was no significant facts for the period between September 15 and October 1 and definitely no facts demonstrating that there was a conflict with his supervisor(s) at the LPP. In addition, the names of Réal Caron, his superintendent, and Renée D'Amours, his supervisor, did not appear in this period.

[233] In assessing the evidence presented to me, I have to conclude that the alleged stressor or alleged cause of the pathology is a work conflict at the LPP in St. Laurent. However, there is no evidence before me that enables me to determine whether the work conflict is real or perceived. The evidence does not enable me to conclude that the alleged stressor exists to warrant psychological stress and therefore a disability within the meaning of the *Act*.

[234] I am convinced that the Complainant is unhappy at a job he does not like and that he finds "*degrading*" [translation], to use his own expression. For him the "plant" is a source of frustration and job dissatisfaction. However, that does not justify the conclusion of a disability within the meaning of the *Act*.

VI. DISPOSITION

[235] As a result of the foregoing, Michel Beauregard's complaint under section 7 of the *Act* is dismissed.

Michel Doucet

OTTAWA, Ontario
January 28, 2004

[1]The St. Laurent plant is physically divided into three units: the administrative unit; the West depot, which is a letter carrier depot, and inside the plant is another unit with two functions, one for processing letters (LPP) and the other for processing parcels (BPP, known today as the PPP).

[1]The LPP is organized into several work areas: the manual area, the automated area, the shipping area and the international area. At the BPP, there is the "admail" area, the "receiving and distribution" area and the "oversized" area**.** For parcels, there is also an area called "priority courier" which was set up in 1997.

[1]The BPP and the LPP are physically separated by a cement wall that has about five doors. The LPP is about 500 feet by 672 feet, and the BPP is about 800 feet by 672 feet. There are conveyors and a parcel-sorting machine in the BPP. The noise is louder there. There is automation in the LPP as well, but it is different than in the BPP.

[1]As to the organization of work, LPP employees look after mail that is collected from mailboxes and mail dropped off right at the plant. The employees essentially prepare and process the mail for delivery. Some employees manually process letters; others, the coders, are trained to process mail using machines. There are also multi-line optical character readers or bar code sorting machines that speed up mail processing.

[1]As to the bulk or parcel processing plant (BPP), trucks transport the parcels, which are then processed for shipping. The work is less automated. The employees' work is more physical. There are also clerks in the oversize parcel area who process over-sized parcels. At the loading docks, shippers load and unload the trucks.

[1]The work at the BPP and the LPP is organized into three shifts: the day shift from 7:30 a.m. to 3:30 p.m.; the evening shift from 3:30 to 11:30 p.m. and the night shift from 11:30 p.m. to 7:30 a.m. The evening shift has between 125 and 150 employees. Each shift has superintendents. There are also supervisors under the superintendents. Superintendents and supervisors are assigned either to the LPP or the BPP. Above the superintendents in the hierarchy are managers: two at the LPP and two at the BPP. At the top of the hierarchy is the director.

[2] For a letter sent by priority post with signature, the letter carrier must go to the recipient's home and obtain his/her signature before handing him/her the letter. If the recipient is not at home, a card is left in his/her mailbox stating where the letter can be picked up.

[3]Canada Post's items delivered bill indicated that Beauregard took delivery of this letter on October 29th, not the 28th. Beauregard stated that the date on the bill was incorrect. However, Danielle Billod, the employee at the Canada Post retail outlet at the Bachir convenience store in Anjou, where Beauregard would pick up his mail, testified that he insisted that she fill out the document in front of him so he could ensure there were no mistakes. The complainant stated that, when he went

to pick up the letter at the retail postal outlet, he did not remember if there was another letter there for him. Ms. Billod stated that when he would come to pick up his mail, the complainant did not necessarily take all the mail that was addressed to him; he would just take the information, saying he would come by again later. It would sometimes happen that he would take some envelopes and leave others.

[3]

[4]Regarding the ways the employer could contact him, Beauregard testified that he did not want anyone calling him at home because the number belonged to his father and that the latter did not like to receive calls. He also added that he uses his cell phone for personal calls but had not authorized the employer to contact him at that number. He added that if the employer wanted to reach him, it should do so in writing. According to him, the best way to contact him was by priority post without signature. In this case, the letter was delivered the next day to the mailbox at his home.

[4]

[5]However, according to Canada Post's "priority courier tracking and tracing system", this letter was delivered on October 26, 1998.

[6]Beauregard's testimony is vague, to say the least, with respect to the number of transfer requests he prepared. On one hand, he stated that he might have put in between 20 and 40 transfer requests per year. In cross-examination, he said he no longer knew whether it was he or Dr. Cournoyer who spoke of 240 transfer requests. He stated that he did not have the transfer requests with him at the time of that visit, only a blank form as an example. A little further on, he said that he filled out these requests about 40 per week, over a period of 6 weeks. On the other hand, he talks about 40 requests per day, in 6 days. If we look at the impressive number of transfer requests presented as evidence during the hearing, they are all dated May 16, 1997.

[7]No evidence of this appointment was presented at the hearing other than Beauregard's conclusion that Ms. Daigle had arrived at the same diagnosis as Dr. Payne did, namely that there should be a change in workplace.

[7]

[8]54.02 Work Reintegration for Employees in Groups 1, 3, 4, and 5. Where an employee has become physically handicapped because of:

[8](a) a compensable injury; or

[8](b) non-compensable health reasons, and the need for assignment is supported by a certificate issued by a qualified medical doctor, upon written application he or she may be assigned to any vacant position in his or her group. Where such a position is described by the provisions of section 43, the first assignment shall be made only for the period required for applying that section. However, if the employee accepts appointments in the assigned classification, he or she shall be deemed to belong to the assigned classification and the normal rules of seniority shall apply.

[8]

[9]*Canadian Union of Postal Workers v. Canada Post Corporation (Beauregard's grievance, STTP 350-95-18617, Blouin, arbitrator)*, [2001] D.A.T.C. no. 645.

[10]On December 29, 1998, the CSST informed him that it could not accept his claim because it did not involve an occupational injury. According to the CSST, the case did not lead to the conclusion that there had been an unforeseen and sudden event. As a result, compensation would not be paid. In a letter dated March 10, 1999, France Villeneuve of the CSST stated that the diagnosis was "adjustment disorder with mixed anxiety and depressed mood, code 309.21". According to the CSST, this did not result in a permanent injury. A little further on, it found that, given the date of consolidation of the injury and the lack of functional limitations, Beauregard was able to perform his duties.

[11]The disciplinary action that the Respondent took against Beauregard and the discharge were the subject of two labour arbitration rulings. In an initial decision on July 21, 2000, (Canadian Union of Postal Workers v. Canada Post Corporation (Beauregard's grievance, STTP 350-95-18617, Blouin, arbitrator), [2000] D.A.T.C. no. 467), the grievance arbitrator, R. Blouin, ruled that the discharge and disciplinary action against him were unjust. He ordered that he be reinstated and that the disciplinary letters be deleted from his record. However, the arbitrator indicated that he would retain jurisdiction on any problems that may arise from the enforcement of his decision. In a second decision dated September 7, 2001 (Canadian Union of Postal Workers v. Canada Post Corporation (Beauregard's grievance, STTP 350-95-18617, Blouin, arbitrator), [2001] D.A.T.C. no. 645) dealing with the redeployment request and the issue of the quantum of damages, the arbitrator ruled, on the first issue, that the stressor was the work conflict at the automated plant and that it could be a personality conflict. He added that he did not have evidence of a work conflict. He noted that the issue was that Beauregard felt he was being watched over, but he stated that there was no evidence for verifying whether this was perceived or real. In the end, he found that the evidence did not lead him to the conclusion that the existence of the alleged stressor justified psychological stress. Therefore, the request for redeployment under section 54 was not justified. The application for the quantum of damages is also closely linked with the redeployment issue and since the latter was unjustified, the arbitrator found that Beauregard could not justify a monetary claim on it. In addition, since the employer considered him to be on unpaid sick leave and since he had no more sick leave credits, he could not claim for this item either.

[12]The initial medical certificate is a CSST document in quintuplicate. Copies 1 and 2 go to the CSST, copy 3 is the physician's copy, copy 4 is for the worker, and copy 5 goes to the employer. The worker gives copy 5 to the employer.

[13]During this visit, Dr. Payne prescribed Flonase for him, a sinus medication. The Complainant was not opposed to the prescription, but he appears not to have taken the medication, nor to have gone for the X-ray. The sinus problem seems to have improved on its own.

[14]R.S.Q., c. S-2.1.

[15]On April 28, 1998, Beauregard telephoned Mr. Blanchette, the Respondent's Vice-President, to inform him of some grievances.

[16]He acknowledged that this was poorly worded. Instead he should have said the employee's "*form*".

[17]He did not mention his appointment with the psychologist.

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

[18]

[19]*Israeli v. Canadian Human Rights Commission,* 4 C.H.R.R. D/1616, p. 1617 (aff'd 5 C.H.R.R. D/2147 (Review Tribunal).

[19]

[20]*O'Malley*, supra, p. 558.

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

[22]To this effect, see *Boucher v. Canada (Correctional Service)* (1988), 9 C.H.R.R. D/4910; *Chamberlin* v. *599273 Ontario* (1989), 11 C.H.R.R. D/110; and *Zaiyski v. Loftsgard* (1995), 22 C.H.R.R. D/256.

[23]See the complaint form.

[24]The evidence also showed that not all of these symptoms need to be present for a diagnosis of adjustment disorder.

[25]See *Chamberlin v. 5992273 Ontario Limited*, supra, para. 30