Federal Court  Cour fédérale

Date: 20100504

Docket: T-55-08

Citation: 2010 FC 490

Ottawa, Ontario, May 4, 2010

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

RUTH WALDEN, ARLENE ABREY, GLORIA ALLAN, CINDEE ANDRUSIAK, ELIZABETH ANTONY, SANDRA ARMITAGE, KAREN ATTRIDGE, MARGARET HELEN ATTWOOD, AGNES BABA, KIMBERLY BARBER, GINGER BARNES (HAINES), PATRICIA BASSO, LINDA BATES, LÉA BEAUCHAMP-CHARLTON, ROXANNE BÉDARD, NICOLE BEGGS, SHERYL ANN BELL, AFFRENE BENJAMIN, SYLVIE BENOIT-LEMIRE, DIANA BERARDINETTI, GISÈLE BÉRIAULT, JOANNE BEVILACQUA, JOY BISHOP, ALTHEA BLAGROVE, DIANA BLANCHARD-MCALPINE, JOY BOBIER, SHARON BOLAND, JANET BO-LASSEN, LINDA BOND, CHRISTINE BONGERTMAN, SHARON BOOKER, ALINE BOUILLON, KRISTINE BOWES, ANNE BOYLAN CURRIE, LAURETTE BRADEMANN, JOAN BREUER, SUSAN BRIDGES, MORAG BROAD, CONNIE BROWN, NANCY BROWN, SUSAN BUOTT, JUDY BURKE, CINDY BUTLER, KARLA BUTTERFIELD, PAULA CALLAHAN, JAN CAMERON-GIONET, JOANNE CARROTHERS, DIANE CARSON, NINA CASTLE, ESTHER CAVANAGH, BRENDA CEASAR, MAGGIE CHAN, MICHELE CHARLEBOIS, PAUL CHARETTE, KATHLEEN SANDRA CHARETTE, TRUDY CHARRON, ELIZABETH CHASE, AMY CHEN, SHEILA CHRIST, GERALDINE CHRISTOPHER, SHELLEY CHUCKREY, CORY CIAMPA, CHRISTINE CLOUTIER, DANISE COLLINS, LINDA COLLINS, JACQUELINE COMBDEN, KYLA

CONNERS, SALLY CONSTANTINE, FAY CORMIER, NORMA CORSTORPHINE, LISA COTA (BOWEN), LOIS COULTIS, TANISHA COULTIS, LYNDA CRAIG, MARTHA CROSS, MARIE CUDA, AGNES G. CUNNINGHAM, TRACY DAKIN, DIANNE DARCH, MIRANDA DARE, LYNN DARROW, CAROLE DAVIDSON, CHARLENE DAVIES (JENNER), CONNIE DAVIS, EMILY DEL CASTILLO, MARIAN DEVINE, JANICE DEYNE, JULIA DHILLON, JUBLEE DHISNA, JOANNE DIETRICH, MELISSA DINGWALL, DEBRA DOBBERTHIEN, JANET DONALDSON, FRANCES DONELY, CHERYL DOTY, MONIQUE DOUGLAS, SUSAN DRYSDALE, ELIZABETH DUHAIME, KIM DUKE, LINDA DULONG, BARBARA DUNCAN, LOUISE DUNCAN, SUSAN DUQUETTE, ANNA T. DURAND, ELAINE DURLING, CHARLENE DYKSTRA, DENISE ELY, DENISE FEAVER, BONNIE JEAN FENTON, ALLISON FERREIRA, ROXANNE K. FERRIER, VANDA FIKUS, PAM FITZSIMONDS, MICHELLE FLEURY, BARBARA FLYNN, DONNA FONTAINE (JONES), JEAN T. FORBES, LEE FRANCZAK, ELIZABETH FRANKLIN, BARBARA FRASER, RUTH FRAYNE, CONNIE FREEMAN, LAURIE FREEMAN, SUSAN FREW, SIMONE GARDEZY, FRANCES GARDINER, JUDY GAUTHIER, NICOLE GAUTHIER-TSCHUPRUK, KARRIE GEVAERT, CHANTAL GIGUERE-CARRIERE, KATIE GIRARD, RHODA GODIN, DZIDRA GOOR (DECEASED), NANCY GRAHAM, JACQUELINE GRATTON, HAZEL GRAY, SUZANNE GREEN, CARRIE GRONAU, JANET GUDEL, SHERRY GUIKAS, BRENDA GUTOSKE, ANGELA HALES, SHEILA HALLS, JEAN HALPENNY, VANESSA HAMBERGER, JAMIE HANLEY, PAUL HARRIS, SUSAN HARRIS, MARLENE HARRISON, BRENDA HART, LESLIE HASSAN, LISA HATCHER, MARIE-JEANNE HAWLEY, JACQUELINE HEALY-LENTZ, PATRICIA HÉBERT, CAROLE HELEY, LARRAINE HENDERSON, MARGARET HENRY, SUSAN HERTZ, JANET HESS, MARILYN HEWITT, SANDRA HIGHGATE, MARIA HILLMAN, YVONNE HODDER, JEAN HODGSON, JOY HOLT, DONNA HOOPER, PAMELA HORNING, JUDY HOWARD, LYNDA G. HUESTIS, MARIAN E. HUMPHREY, CAROLYN HYNES, LISE IRELAND, DALE JAMESON, MAUREEN JOHANSSON, KATHARINE JOHNSON, MARY B. JOHNSON, DONNA JOHNSTON, PAULETTE JOLICOEUR-WELLS, BARBARA KADER-FARBER, KATIE KASSAM, RICHARD KAVANAGH, SHARON KEAN, MARY LYNNE KELLY, MARY LOU KIGHTLEY, GAIL LYNN KIRKPATRICK, CAROL KNOWLES, BETH KOEHLER, LOUISE KOEN, VERONIKA KREAGER, SALLY KRESS, GERI KRIETEMEYER, HIKKA KUOKKANEN, JOYCE KUTNIKOFF, LISA LACOMPTE, SHABINA LADHA, COLLEEN LAFLEUR, JENNIFER LAKE, RUTH LANKTREE, DENISE LAPLANTE, CATHY LAVERY, ANN LAWN, JO-ANNE LAWRENCE, JOANNA LAWSON, MARY ANN LAWTON-BETTS, CHRISTINE LEACOCK, FRANCOISE LEBEL, DONNA LEBLANC, GISÈLE LEBLANC, KAREN LEBLANC, NANCY LEBRETRON, COLLEEN LEDREW, ANNE LEE, CAROLE LEGROS, FLORENCE LESSARD, JOCELYNE LESSARD, MARSHA LETT, MARIELLE LEVESQUE, BERTRANDE LIBERTY, ELIZABETH LINGENFELTER, TIFFANY LINK, KATHLEEN LOGAN, SOPHIA LONG, SHIRLEY E. LOWTHIAN, JANET LUCKETT, JANINE LYNCH, JOAN MACEACHERN, HEATHER MACNEIL, DIANE MACPHERSON, ROSA MADSEN, ARLENE MAHADOO, CAROL ANN MAHAR, SUZANNE MALTAIS, GLENDA MANNING, SUSAN MANNING, JANET MARSH,

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WITTY, MARGARET WOODROW, DEBORAH WORTMAN, COLLEEN WOZNY, ANNETTE WYLIE, ANNA YAN-SANG, BRENDA YOUNG, LEAH YOUNG

and

THE CANADIAN HUMAN RIGHTS COMMISSION

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] Although there are some differences in the day-to-day responsibilities of Medical Advisors and Medical Adjudicators involved in the assessment of applications for *Canada Pension Plan* disability benefits, the "core function" of each position is the same. Both positions require the application of professional knowledge and expertise in determining applicants' eligibility for benefits.

[2] Medical Advisors are medical doctors. Their positions are classified within the Health Services Group in the Public Service of Canada classification scheme, and they are compensated accordingly. A significant majority of Medical Advisors are male.

[3] Medical Adjudicators are registered nurses, and the vast majority of them are female. Their positions are classified within the Public Service's Program and Administrative Services Group. This affects the compensation and benefits to which they are entitled.

[4] The human rights complaint filed by Ruth Walden and over 400 other complainants asks why it is that when a CPP doctor makes a determination of disability, he is practicing medicine, but when a CPP nurse makes a determination of disability, she is delivering a program.

[5] No reasonable, non-discriminatory answer to this question was provided to the Canadian Human Rights Tribunal by Social Development Canada, the Treasury Board of Canada and the Public Service Human Resources Management Agency of Canada (collectively "the Government of Canada"). As a consequence, the Tribunal found that the Government's refusal to recognize the professional nature of the work performed by Medical Adjudicators in a manner proportionate to the professional recognition accorded to the work of Medical Advisors amounted to a discriminatory practice within the meaning of both sections 7 and 10 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6.

[6] This is an application for judicial review of that decision. For the reasons that follow, I have concluded that the Tribunal did not err as alleged by the Government, and that its decision was reasonable. As a consequence, the application for judicial review will be dismissed.

II. Background

[7] In order to appreciate the Government of Canada's arguments, it is necessary to have some understanding of the roles and responsibilities of both Medical Adjudicators and Medical Advisors. It should be noted that the Government does not challenge any of the Tribunal's factual findings in

this regard. What it takes issue with is the analysis flowing from these findings, and the conclusions arrived at by the Tribunal.

[8] The *Canada Pension Plan* came into being in 1966. The Plan provides various forms of benefits to contributors, including disability benefits. Individuals are eligible for disability benefits if they have contributed to the Plan for at least five years, and have a "severe and prolonged mental or physical disability": see paragraph 42(2)(a) of the *Canada Pension Plan*. R.S.C. 1985, c. C-8.

[9] Because five years of contributions were required before an application for disability benefits could be brought, it was not until 1971 that medical doctors were hired to assess claimants' eligibility for benefits. As a result of the high volume of applications, these doctors were unable to process all of the applications in a timely manner, and a backlog soon developed. In 1972, registered nurses were hired to work with the doctors in assessing applicants' eligibility for disability benefits.

[10] All of these individuals originally worked for Health and Welfare Canada. As the allocation of responsibilities between Ministries has changed over the years, responsibility for the administration of the *Canada Pension Plan* shifted first to Human Resources Development Canada, and then to Social Development Canada.

[11] The evidence before the Tribunal was that approximately 80% of the medical doctors involved in the determination of CPP disability claims are male. In contrast, 95% of the nurses involved in the assessment of applications for disability benefits are female.

[12] Whether the assessment of a claim for disability benefits is carried out by a doctor or by a nurse, medical knowledge on the part of the assessor is required to understand and evaluate the documentation submitted in support of the application. Neither Medical Advisors nor Medical Adjudicators ever provide any direct care to patients.

[13] As the Tribunal noted, the classification of positions within the Public Service of Canada is important, as it determines the professional recognition, pay, benefits, and opportunities for continuing education and career advancement that employees will receive.

[14] In determining how a position should be classified within the Public Service system, regard is had to the primary function of the position in question. Positions are first allocated to an Occupational Group. Occupational Groups are comprised of jobs that are grouped together on the basis that they involve common duties or similar work. Occupational Groups are sub-divided into Classification Standards that reflect the specific type of work performed.

[15] The Health Services Occupational Group is defined as including "positions that involve the application of medical or nursing knowledge (among other professional specialties) to the safety, and physical and mental wellbeing of people". The Health Services (SH) Group includes a Nursing (NU) Classification Standard and a Medicine (MD) Classification Standard, among others.

[16] The Program and Administrative Services (PA) Occupational Group includes the Programme Administration (PM) Classification Standard, among many others. This Occupational

Group is made up of positions that "primarily involve the planning, development, delivery or management of administrative and federal government programs to the public".

[17] Doctors assessing applications for CPP disability benefits are known as "Medical Advisors" and are classified as MD's within the Health Services Group. Nurses assessing such applications are known as "Medical Adjudicators" and are classified within the Program and Administrative Services Group.

[18] According to the Tribunal, Medical Advisors have always been part of the Health Services Group because "the definition of 'medical officer' has historically included positions that have, as their primary purpose, responsibility for the assessment of medical fitness for the determination of disability and other federal government benefits".

[19] In contrast, Medical Adjudicators have always been classified as "PM's" within the Program and Administrative Services Group. The Tribunal found that positions within the PA Group "do not involve the application of a comprehensive knowledge of professional specialties such as nursing or medicine".

[20] Medical Adjudicators have long felt that they have been treated unfairly in this regard. From 1988 until shortly before the Tribunal hearing, Medical Adjudicators had repeatedly sought to be recognized as health professionals by having their positions reclassified as part of the Nursing Classification Standard within the Health Services Group, without success. While classification

reviews were carried out by the Treasury Board and the Public Service Human Resources Management Agency of Canada, each review confirmed that Medical Adjudicators were properly classified within the PA group. The Public Service Labour Relations Board (or "PSLRB") came to a similar conclusion in a 2006 decision.

III. The Human Rights Complaints

[21] Ruth Walden filed her human rights complaint with the Canadian Human Rights Commission in 2004. Her complaint alleged that she was being subjected to discrimination on the basis of her sex, contrary to the provisions of sections 7 and 10 of the *Canadian Human Rights Act*. Copies of the relevant statutory provisions are attached as an appendix to these reasons.

[22] Over the next three years, more than 400 other Medical Adjudicators joined with Ms. Walden in the complaint.

[23] A review of Ms. Walden's complaint form discloses that the focus of her complaint is on the classification issue.

[24] Ms. Walden asserts that "CPP doctors have always been recognized as medical professionals under the federal job classification scheme", and are compensated accordingly. In contrast, Ms. Walden says that "CPP nurses have never been recognized as health care professionals by our employer. We are called Medical Adjudicators or Service Delivery Specialists but are classified as Program Managers/Program Administrators (PM3)". According to Ms. Walden "[t]his

classification does not recognize our status as Registered Nurses" and results in Medical Adjudicators receiving lower pay than that received by other nurses working for the federal government, and also provides them less in the way of professional development opportunities.

[25] Ms. Walden's complaint discusses the work performed by Medical Advisors and Medical Adjudicators over the years, and concludes with the statement that "[p]ut simply, my employer is saying that when a CPP doctor makes a determination of disability, he is practicing medicine, but when a CPP nurse makes a determination of disability, she is delivering a program". According to Ms. Walden, treating two groups of health care professionals differently when they are employed for the same purpose amounts to sex discrimination.

IV. The Tribunal's Decision

[26] In a lengthy and detailed decision, the Tribunal examined the nature of the work performed by both Medical Advisors and Medical Adjudicators since the inception of the CPP, as the work performed by each group evolved over time.

a) *The Tribunal's Findings with Respect to the Establishment of a Prima Facie Case*

[27] The Tribunal concluded that the complainants had established a *prima facie* case that the work that Medical Adjudicators have performed since1972 was the same as or substantially similar to the work performed by Medical Advisors. According to the Tribunal, the "core function" of both types of position is the application of professional knowledge to determine eligibility for disability benefits under the *Canada Pension Plan*.

[28] The Tribunal further concluded that the Medical Adjudicators had been denied professional recognition as health professionals by being classified as Program Administrators. This resulted in the denial of salary and benefits, including vacation allowance, payment of professional fees, educational and training opportunities and career advancement that would have flowed from the classification of Medical Adjudicator positions within the Health Services Group.

[29] Given the statistical evidence of strong gender predominance within the Medical Adjudicator group, the Tribunal found that the classification of Medical Adjudicators within the Program and Administrative Services Group rather than the Health Services Group negatively affected a disproportionate number of women.

[30] According to the Tribunal, these findings were sufficient to establish a *prima facie* case of discrimination under the provisions of section 7 of the *Canadian Human Rights Act*.

[31] The Tribunal also found that the complainants had established a *prima facie* case of discrimination under section 10 of the Act. That is, the Tribunal found that the Government of Canada had, since 1972, pursued a practice of treating Medical Advisors and Medical Adjudicators as though they were doing different work, and classifying them accordingly, when they were doing substantially similar work. Because this practice had a disproportionate impact on women, this was sufficient to establish the connection between the impugned practice and the prohibited ground of discrimination.

[32] As a consequence, the Tribunal found that the burden shifted to the Government of Canada to provide a reasonable, non-discriminatory explanation for its conduct.

b) ***The Tribunal's Consideration of the Government's Explanation***

[33] The Tribunal considered the evidence adduced by the Government of Canada with respect to the similarities and differences between the Medical Adjudicator and Medical Advisor positions. While the Tribunal accepted that there were some differences between the two types of positions, these differences were not, in the Tribunal's view, extensive enough to explain the wide disparity in treatment between Medical Advisors and Medical Adjudicators.

[34] In particular, the Tribunal found that the Government of Canada failed to provide a reasonable, non-discriminatory explanation as to why it is that Medical Advisors are recognized as health professionals, and compensated accordingly, when their primary function is to make eligibility determinations, and yet, when Medical Adjudicators perform the same primary function, they are designated as Program Administrators and are paid half the salary of Medical Advisors.

[35] The Tribunal rejected the Government's contention that the 2006 decision of the PSLRB holding that Medical Adjudicator positions did not belong in the Health Services Group provided a reasonable explanation for the differential treatment.

[36] The PSLRB found that although Medical Adjudicators used their medical knowledge in assessing applications for CPP disability benefits, they did not provide direct health care to

applicants. As a consequence, the Board found that Medical Adjudicators were more properly classified as Program Administrators.

[37] The Tribunal observed that the PSLRB was not called upon to compare the classification of Medical Adjudicators to the classification of Medical Advisors, nor did it consider the classification issue in the context of the *Canadian Human Rights Act*. As a consequence, the Tribunal concluded that the PSLRB decision was of limited assistance in deciding the issue before it.

[38] The Tribunal did not accept the explanation offered by Patricia Power, the Acting Director General of Classification, Policy and Strategy at the Public Service Human Resources Management Agency of Canada, for the differences in the way that Medical Advisor and Medical Adjudicator positions were classified.

[39] Ms. Power testified that Medical Advisors are included within the Health Services Group because they meet the Health Services Group Definition and the Medicine Classification Standard. Medical Adjudicators are not included within the Health Services Group because they do not meet the Health Services Group Definition or the Nursing Classification Standard.

[40] According to Ms. Power, in order to be included within the Health Services Group Definition, a position must meet the “umbrella definition” for the Health Services Group Definition, and then fall within an “inclusion statement” for the MD or the NU Classification Standards.

[41] The umbrella definition for the Health Services Group provides that the Group is comprised of positions that are primarily involved in the application of a comprehensive knowledge of professional specialties in the fields of medicine and nursing (among others) to the safety and physical and mental well-being of people.

[42] Ms. Power stated that Medical Advisor positions meet the umbrella definition for the Health Services Group, while Medical Adjudicator positions do not. Ms. Power explained that this is because medical adjudication does not involve the use of nursing knowledge to provide direct patient care.

[43] However, the Tribunal observed that Medical Advisors also do not use their medical knowledge to provide direct patient care in a clinical setting. As a result, the Tribunal found that if Medical Adjudicators do not meet the umbrella definition of the Health Services Group because they do not provide direct patient care, then neither do Medical Advisors.

[44] Ms. Power explained that Medical Advisors come within the MD Classification Standard within the Health Services Group because these positions match one of the "inclusion statements" for that Standard. That is, "inclusion statement 5" allows for the inclusion of positions within the MD Classification Standard that involve "the assessment of medical fitness for the determination of disability and other federal government benefits …" It appears that there is no comparable inclusion statement for the NU classification within the Health Services Group.

[45] Such an inclusion statement was incorporated into a new definition of the Health Services Group during the Universal Classification System process in 1999. Ms. Power testified that had this new definition been applied to Medical Adjudicator positions, it would have allowed Medical Adjudicators to be classified within the Health Services Group.

[46] However, the new definition was subsequently modified and inclusion statement 5 was not applied to the Adjudicators because it would have meant that Medical Adjudicators would no longer be part of the bargaining unit represented by the Public Service Alliance of Canada, but would instead be represented by the Professional Institute of the Public Service of Canada.

[47] Ms. Power explained that in 1993, Treasury Board had been mandated under the *Public Service Reform Act* to reduce the number of Occupational Groups within the Public Service. One of the conditions set out in the legislation was that the reduction in Groups was not to result in changes to bargaining unit affiliation. To preserve bargaining unit affiliation, inclusion 5 was explicitly excluded from the NU Classification Standard, and was included in the MD Standard.

[48] Ms. Power conceded that if the 1999 UCS process introduced or re-introduced gender bias into the classification process, it would have been Treasury Board's responsibility to re-define the Group Definitions and Classification Standards in order to remove the bias. She also acknowledged that Treasury Board has the exclusive authority to determine classifications in accordance with section 7 of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2, and that the approval of the affected bargaining agents is *not* required to make changes to the Classification Standards.

[49] The Tribunal found that the need for bargaining agent approval was nevertheless part of the explanation provided by Treasury Board and the Public Service Human Resources Management Agency of Canada for refusing to change the NU Classification Standard or the Health Services Occupational Group definition.

[50] That is, in 2004, Social Development Canada presented a “Business Case” seeking the reclassification of the Medical Adjudicator positions into a proposed new sub-group to be created within the NU Classification Standard in the Health Services Group, recognizing that the work performed by Medical Adjudicators falls within the scope of nursing practice. Part of the response of Treasury Board and the Public Service Human Resources Management Agency of Canada was that such a change could only occur with the support of the affected bargaining agents.

[51] This response reiterated that the primary purpose of Medical Adjudicator positions was not the application of nursing knowledge to the safety and physical well-being of people or the assessment of medical fitness, but was rather the administration of a government program.

[52] The Tribunal found as a fact that if Medical Advisors are considered to be applying their medical knowledge to the safety and physical well-being of people and assessing medical fitness in determining eligibility for benefits for the purposes of determining their classification, then so too should Medical Adjudicators. As a consequence, the Tribunal found that the Government of Canada had failed to provide a reasonable and non-discriminatory explanation for the differential application of classification principles as between Medical Advisors and Adjudicators.

[53] The Tribunal thus held that the Government had failed to explain its refusal to recognize the professional nature of work done by a predominantly female group of workers performing essentially the same core function as a predominantly male group of workers whose work does receive professional recognition.

[54] Given that the Government failed to adduce any evidence relating to the cost of accommodating the Medical Adjudicators, the Tribunal also found that a *bona fide* occupational requirement had not been established.

c) ***The Tribunal's Conclusion on Liability***

[55] The Tribunal concluded that the complainants had established that the Government of Canada's refusal, since March of 1978, to recognize the professional nature of the work performed by Medical Adjudicators in a manner proportionate to the professional recognition accorded to the work of Medical Advisors, constituted a discriminatory practice within the meaning of both sections 7 and 10 of the *Canadian Human Rights Act*.

[56] According to the Tribunal, the effect of this discriminatory practice was to deprive Medical Adjudicators of professional recognition and remuneration commensurate with their qualifications. The Tribunal also found that Medical Adjudicators were denied the payment of their licensing fees, and the training and career advancement opportunities that were provided to Medical Advisors.

[57] The Tribunal did not decide the issue of remedy at the time that it made its liability finding, but remained seized of the matter in the event that the parties were unable to resolve the issue between them. I am advised that the Tribunal has since rendered additional remedial decisions. These decisions are the subject of applications for judicial review and are not before me at this time.

[58] With this understanding of the matters giving rise to this application, I will next consider the issues raised by the Government, commencing with the Government's arguments regarding what it says are the implications of the "reformulation" of the complaint by the complainants and the Commission.

V. The "Reformulation" of the Complaint

[59] The Government asserts that Medical Adjudicators have historically sought to be classified as part of the Nursing Classification Standard within the Health Services Group. It was only when the complainants and the Commission delivered their Statement of Particulars in 2007 that the focus of the case changed to suggest that Medical Adjudicators do the same work as Medical Advisors, and the differential treatment between the two groups therefore amounts to discrimination.

[60] It is very clear from the wording of Ms. Walden's human rights complaint that the fundamental basis for her complaint is her claim that although Medical Advisors and Medical Adjudicators perform similar functions, Medical Adjudicators have always been denied the professional recognition accorded to Medical Advisors, as well as the compensation and benefits to which they believe they are entitled.

[61] It is also very clear from the complaint form that the complainants are of the view that the source of this adverse differential treatment lies in the application of the Government's classification scheme. This is illustrated by the summary provided at the conclusion of the complaint where Ms. Walden states that "[p]ut simply, my employer is saying that when a CPP doctor makes a determination of disability, he is practicing medicine, but when a CPP nurse makes a determination of disability, she is delivering a program".

[62] I will revisit this issue when dealing with the question of whether the Tribunal erred in finding that liability should be assessed as of March of 1978. At this point, I would simply observe that while I agree that the Statement of Particulars could have been expressed more clearly as it related to the classification issue, there is no question but that the Government understood the nature of the allegations against it, and the case that it had to meet.

[63] I note from a review of the opening statements of counsel for both the Commission and for the complainants that their position before the Tribunal was that although the Government classification scheme was neutral on its face, it was being applied to Medical Adjudicators in a discriminatory fashion. It was also clearly asserted that the work performed by Medical Advisors was the same as that done by Medical Adjudicators: see the transcript of Tribunal hearing at pages 36-40 and 55-59. No concern was raised by counsel for the Government at the commencement of the Tribunal hearing that this represented a change in the position of the complainants and the Commission, or that he was taken by surprise in any way.

[64] Counsel for the Government confirmed that this was not a situation where it was prejudiced in some way by a change in the position of the complainants and the Commission, or that different evidence could have been led if it had properly understood the nature of the claim. In response to questions from the Court, counsel expressly confirmed that the issue was not one of fairness, and that the Government understood the nature of the allegations and the case that it had to meet.

[65] Rather, as I understand counsel's concern, it is that the Tribunal's analysis is flawed, and does not properly respond to the issues that it was called upon to decide. I will deal with this allegation as I examine each of the issues raised by the Government.

VI. Did the Tribunal Err in its Choice of Comparator Group?

[66] The Government argues that in identifying an appropriate comparator group for the purposes of this complaint, the Tribunal should have had regard to the level of skill, effort and responsibility involved in the position of female Medical Adjudicator and the comparator group. In this regard, the Government cites the decision of the British Columbia Human Rights Tribunal in *Prpich v. Pacific Shores Nature Resort Ltd.*, 2001 BCHRT 26.

[67] The Government says that in carrying out its discrimination analysis, the Tribunal should properly have compared the situation of female Medical Adjudicators to that of male Medical Adjudicators, as these are the two groups actually performing similar work, requiring comparable levels of skill, effort and responsibility.

[68] The Government further contends that the fact that these two groups have always been treated in an identical fashion highlights the fact that the complainants are not suffering from gender-based adverse differential treatment. As a result, the complainants failed to establish a *prima facie* case of discrimination.

[69] The Tribunal rejected this argument as unreasonable, holding that male Medical Adjudicators are not a separate group, but are part of the predominantly female group of Medical Adjudicators. By virtue of their membership in this group, male Medical Adjudicators are themselves subject to any potential discriminatory difference in treatment vis-à-vis Medical Advisors.

[70] According to the Tribunal, a comparison of male Medical Adjudicators' work with that of the female Medical Adjudicators would also not be a meaningful indicator of equal treatment of the overwhelmingly female population in the group. The Tribunal observed that the complainants alleged that their inferior working conditions were a function of the strong gender predominance of their occupational group. This allegation could not be properly tested by examining the working conditions of the small male minority within their ranks.

a) What Standard of Review Applies to the Tribunal's Choice of Comparator Group?

[71] The first question to be decided in considering the Government's argument is the appropriate standard of review to be applied to the Tribunal's choice of Medical Advisors as the appropriate comparator group.

[72] The Government submits that the choice of comparator group is a question of general law "that is both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise" as contemplated by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 60. As a consequence, the Government says that this aspect of the Tribunal's decision should be reviewed against the standard of correctness.

[73] In contrast, the Canadian Human Rights Commission argues that the Tribunal's choice of comparator group should be reviewed against the standard of reasonableness. The complainants have made no submissions in this regard.

[74] The determination of the relevant comparator group in a specific case depends heavily on the facts of the particular case at hand. It does not involve a question of law of central importance to the legal system as a whole.

[75] Nor is the choice of comparator group a matter outside of the Tribunal's specialized area of expertise. Indeed, the Supreme Court of Canada has determined that the identification of the relevant comparator in a given case is a core function that lies at the very heart of the Tribunal's expertise: *Canada (Human Rights Commission) v. Canadian Airlines International Ltd.*, 2006 SCC 1, [2006] 1 S.C.R. 3 at para. 42. As such, a high degree of deference is owed to the Tribunal's finding in this regard: *Canada Post Corp. v. Public Service Alliance of Canada*, 2010 FCA 56, [2010] F.C.J. No. 272 at para. 182, per Evans J.A., dissenting, but not on this point.

[76] In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible acceptable outcomes which are defensible in light of the facts and the law: see *Dunsmuir* at para. 47 and *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at para. 59.

[77] With this in mind, I will next consider whether the Tribunal's choice of Medical Advisors as the relevant comparator group was reasonable.

b) Was the Tribunal's Choice of Comparator Group Reasonable?

[78] Equality is an inherently comparative concept. In order to determine whether there has been adverse differential treatment on the basis of a proscribed ground, it is therefore necessary to compare the situation of the complainant group with that of a different group.

[79] A review of Ms. Walden's complaint form discloses that the essence of the complaint is the allegedly inferior treatment of Medical Adjudicators - a female-dominated occupational group - relative to the treatment accorded to a different, male-dominated occupational group, namely Medical Advisors. In particular, Ms. Walden and the other complainants object to the lack of professional recognition accorded to Medical Adjudicators relative to that accorded to Medical Advisors under the Federal Public Service job classification scheme.

[80] While the issues of classification and compensation are undoubtedly intertwined, this is not simply a wage discrimination case. While the complainants are undoubtedly concerned about their level of compensation and the extent of their employment benefits, they have also complained of the professional recognition allegedly denied to Medical Adjudicators as a result of their exclusion from the Health Services Group.

[81] The complaint is *not* about preferential treatment allegedly accorded to male Medical Adjudicators vis-à-vis female Medical Adjudicators. Indeed, any adverse differential treatment suffered by Medical Adjudicators relative to Medical Advisors would be experienced equally by both male and female Medical Adjudicators. As Justice Evans observed in his dissenting opinion in *Canada Post*, above, it is entirely possible to have males who are disadvantaged by being members of a female-dominated occupational group: at para. 185.

[82] As a consequence, comparing the situation of female Medical Adjudicators to that of male Medical Adjudicators would not allow for a meaningful examination of the fundamental basis for the complaint, and would thus make little sense. The Tribunal's identification of Medical Advisors as the appropriate comparator group was reasonable.

[83] I do not agree with the Government that the fact that there may be differences in some of the day-to-day duties and responsibilities of Medical Advisors and Medical Adjudicators necessarily means that Medical Advisors cannot be the appropriate comparator group for the purposes of the Tribunal's discrimination analysis.

[84] The evidence before the Tribunal was that positions are allocated to an Occupational Group having regard to the primary function of the position in question. According to Ms. Power, positions within the Health Services Group involve the application of a comprehensive knowledge of professional specialties in the fields of medicine or nursing to the safety and physical and mental well-being of people. As a result, an examination of the fundamental nature or primary or "core" function of the work performed by Medical Adjudicators and Medical Advisors was appropriate.

[85] It was open to the Government to adduce evidence before the Tribunal as to the differences between the work performed by Medical Adjudicators and that carried out by Medical Advisors, as it in fact did. Evidence of this nature could, if accepted by the Tribunal, potentially provide a reasonable and non-discriminatory explanation for the differences in treatment between the two groups. It does not, however, mean that Medical Advisors could not be the appropriate comparator group for the purposes of the Tribunal's discrimination analysis.

VII. Did the Tribunal Err in Finding that Statistical Evidence of Professional Segregation is Sufficient to Establish a *Prima Facie* Case of Sex Discrimination Under Sections 7 and 10 of the *CHRA*?

[86] The Government's next argument is that the Tribunal erred in allegedly finding that statistical evidence of gender-based professional segregation is sufficient to establish a *prima facie* case of sex discrimination. Before addressing this issue, it is once again necessary to identify the appropriate standard of review to be applied to this aspect of the Tribunal's decision.

a) What Standard of Review Applies to this Aspect of the Tribunal's Decision?

[87] According to the Government, this issue also involves a discrete and specific question of law, with the result that this aspect of the Tribunal's decision should be reviewed against the standard of correctness.

[88] The Canadian Human Rights Commission once again argues that the reasonableness standard should be applied to this aspect of the Tribunal's decision, and the complainants have made no submissions in this regard.

[89] There is pre-*Dunsmuir* jurisprudence establishing that the formulation of the test for a *prima facie* case is a question of law, and is reviewable against the standard of correctness: *Morris v. Canada (Canadian Armed Forces)*, 2005 FCA 154, 334 N.R. 316 at para. 23.

[90] In the present case, the Tribunal identified the test for a *prima facie* case in paragraphs 5, 7 and 38 of its decision. Although it did not refer to the case by name, the test identified by the Tribunal is that articulated by the Supreme Court of Canada in *Ontario (Human Rights Commission) v. Simpsons Sears Ltd*., [1985] 2 S.C.R. 536 [*O'Malley*].

[91] That is, a *prima facie* case of discrimination is one that covers the allegations made, and which, if believed, is complete and sufficient for a decision in favour of the complainant, in the absence of a reasonable answer from the respondent: *O'Malley* at para. 28. Once a *prima facie* case

of discrimination has been established by a complainant, the burden will then shift to the respondent to provide a reasonable explanation for the conduct in issue.

[92] What the Government takes issue with here is not the test applied by the Tribunal, but rather the Tribunal's finding that a *prima facie* case had been established under both sections 7 and 10 of the *Canadian Human Rights Act*.

[93] Whether there was sufficient evidence before the Tribunal to constitute a *prima facie* case involves the application of the legal test to facts of this specific case. As a question of mixed fact and law, the Tribunal's finding in this regard is reviewable on the standard of reasonableness: *Morris* at para. 33.

b) Did the Tribunal Err in Finding that a Prima Facie Case had been Established Under Sections 7 and 10 of the Canadian Human Rights Act?

[94] According to the Government, the Tribunal erred in finding that the complainants had established a *prima facie* case of sex-based discrimination under sections 7 and 10 of the *Canadian Human Rights Act* simply by showing that Medical Adjudicators are predominantly female whereas Medical Advisors are predominantly male.

[95] In so doing, the Government says the Tribunal erred by treating Medical Adjudicators' complaints as allegations of systemic discrimination which would be more properly dealt with under the pay equity provisions contained in section 11 of the Act.

[96] In order to appreciate the Government's argument, it is first necessary to have some understanding of the similarities and differences between complaints under sections 7 and 10 of the Act, and pay equity complaints brought under section 11 of the Act.

[97] Subsection 7(b) of the *Canadian Human Rights Act* makes it a discriminatory practice to differentiate adversely between individuals in employment on the basis of a prohibited ground of discrimination. Subsection 10(a) of the Act makes it a discriminatory practice to establish or pursue policies or practices that deprive or tend to deprive an individual or class of individuals of employment opportunities on the basis of a prohibited ground.

[98] Section 11 of the Act is intended to address systemic discrimination resulting from the long-standing societal undervaluation of work performed by female-dominated occupational groups. To this end, the scope of protection offered by section 11 of the Act "is delineated by the concept of 'equal value'": *Syndicat des employés de production du Québec et de l'Acadie v. Canada (Human Rights Commission)*, [1989] 2 S.C.R. 879, 62 D.L.R. (4th) 385 (*S.E.P.Q.A.*), at para. 80, per L'Heureux-Dubé, J. dissenting, but not on this point.

[99] That is, section 11 of the Act allows for the comparison of very different types of work being performed by groups of employees working within the same establishment, in order to determine whether there has been wage discrimination. This is done by measuring the value of the work performed by each group against certain specified criteria, namely skill, effort, responsibility and working conditions. The *Equal Wage Guidelines, 1986*, SOR/86-1082, issued by the Canadian

Human Rights Commission in accordance with subsection 27(2) of the Act provide additional assistance in assessing the relative value of different types of jobs.

[100] As Justice Evans observed in *Canada (Attorney General) v. Public Service Alliance of Canada*, [2000] 1 F.C. 146, 176 F.T.R. 161, the nature of systemic discrimination is such that it is often difficult to prove that the disadvantaged position of many members of particular groups in the workplace is based on the attributes associated with the groups to which they belong: at para. 151.

[101] Justice Evans went on to note that section 11 of the *Canadian Human Rights Act* addresses the problem of proof by creating a rebuttable presumption of gender-based discrimination when it can be shown that men and women working in the same establishment are paid different wages for work of equal value: at para. 152. See also *Canada Post Corp. v. Public Service Alliance of Canada*, 2008 FC 223, [2008] 4 F.C.R. 648 at paras. 227-228.

[102] According to the Government, the Tribunal erred in this case by importing the section 11 presumption into its analysis in support of its finding that a *prima facie* case of discrimination had been established, without first going through the rigours of a full section 11 pay equity analysis.

[103] That is, the Government asserts that the Tribunal presumed that any differences in the treatment of Medical Adjudicators relative to that accorded to Medical Advisors was a result of the fact that the Medical Adjudicator group was predominantly composed of women.

[104] The Government says that in the absence of evidence to the contrary, any differential treatment as between Medical Adjudicators and Medical Advisors "would simply reflect prevailing assumptions regarding the relative worth of nurses' and doctors' work. Doctors are assumed to have superior knowledge, and more onerous tasks and responsibilities compared to nurses regardless of whether they are men or women": see the Government's memorandum of fact and law at para. 68.

[105] As the Federal Court of Appeal observed in *Morris*, the legal definition of a *prima facie* case does not require the complainant to adduce any particular type of evidence to prove the facts necessary to establish that he or she was the victim of a discriminatory practice within the meaning of the *Canadian Human Rights Act*: see para. 27.

[106] Indeed, the Federal Court of Appeal has specifically rejected the appropriateness of having a precise formula or test for the establishment of a *prima facie* case, noting that a flexible legal test is better suited to advance the broad purpose underlying the *Canadian Human Rights Act*. The Court noted that "[d]iscrimination takes new and subtle forms" and that it was "now recognized that comparative evidence of discrimination comes in many more forms than the particular one identified in [the jurisprudence]": *Morris* at para. 28.

[107] Moreover, the determination of what type of evidence will establish a *prima facie* case in a given set of circumstances is a matter more within the expertise of the Canadian Human Rights Tribunal than that of the Court: *Morris* at para. 29.

[108] The Government's argument in this case appears to be based upon the discussion appearing at paragraphs 38-41 of the Tribunal's reasons. Of particular significance is the statement in paragraph 39 that "[s]tatistical evidence that apparently neutral conduct negatively affects a disproportionate number of members of a protected group is sufficient to establish a *prima facie* case under sections 7 and 10".

[109] I agree with the Government that statistical evidence of professional occupational segregation, by itself, is not sufficient to establish a *prima facie* case of sex discrimination under either section 7 or section 10 of the *Canadian Human Rights Act.* Indeed, the Canadian Human Rights Commission concedes as much at paragraph 61 of its memorandum of fact and law, although the complainants do not agree.

[110] That is, a *prima facie* case of sex-based discrimination under sections 7 and 10 of the Act would not be established simply by demonstrating, for example, that the majority of secretaries working in a military hospital are female and the majority of neurosurgeons are male. Without more, this demonstrates nothing more than the existence of gendered occupational segregation.

[111] I would also note that statistical evidence of professional occupational segregation, would not, by itself, be sufficient to establish a *prima facie* case of wage discrimination under section 11 of the Act, in the absence of other evidence establishing the equal value of the work under consideration: *S.E.P.Q.A.* at para. 82.

[112] However, when one examines the Tribunal's reasons, it is clear that it did not rely solely on the statistical evidence of occupational segregation in coming to its conclusion that a *prima facie* case of discrimination had been established both under section 7 and section 10 of the Act.

[113] Before discussing the other evidence considered by the Tribunal which supported its *prima facie* case findings, I will start by addressing the significance of the statistical evidence in this case. It will be recalled that this evidence demonstrated that the vast majority (95%) of Medical Adjudicators are female and that a significant majority (80%) of Medical Advisors are male.

[114] As Justice Richard observed in *Canada (Canadian Human Rights Commission) v. Canada (Department of National Health and Welfare) (re Chopra),* (1998), 146 F.T.R. 106, 79 A.C.W.S. (3d) 126, statistical evidence can be useful in human rights complaints. Such evidence may constitute circumstantial evidence from which inferences of discriminatory conduct may be drawn: see para. 21, citing *Blake v. Minister of Correctional Services* (1984), 5 C.H.R.R. D/2417 (Ont.), which was in turn citing *Davis v. Califano*, 613 F. 2d 957 (1979) at 962.

[115] Statistical evidence can also be an important tool for placing seemingly inoffensive employment practices in their proper perspective: *Chopra* at para. 20, citing *Senter v. General Motors Corp.*, 532 F. 2d 511 (1976).

[116] Indeed, the Supreme Court of Canada has observed that statistical evidence of professional segregation "is a most precious tool in uncovering adverse discrimination" under sections 7 and 10

of the *Canadian Human Rights Act*: *S.E.P.Q.A.* at para. 80, per L'Heureux-Dubé, J. dissenting, but not on this point.

[117] That said, the evidence relied upon by the Tribunal in finding that a *prima facie* case had been established demonstrated more than the mere fact that individuals occupying positions as Medical Advisors are predominantly male, whereas the vast majority of those working as Medical Adjudicators are female.

[118] I will return to consider the evidence adduced by both sides in relation to the similarities and differences between the work of Medical Advisors and Medical Adjudicators in the next section of these reasons. Suffice it to say that there was considerable evidence put before the Tribunal by the complainants with respect to the similarities in the nature of the work performed by Medical Adjudicators and Medical Advisors.

[119] This evidence was carefully examined by the Tribunal, which found that while there were some differences in the work performed by the two groups, the "core function" of both Medical Adjudicator and Medical Advisor positions involved the application of professional knowledge to the determination of eligibility for CPP disability benefits: see Tribunal decision at para. 11.

[120] The Government has not challenged this finding.

[121] It was not disputed that Medical Advisors have always been recognized as health professionals under the Public Service classification scheme, whereas Medical Adjudicators have not. In this regard, the Tribunal found that application of Medical Advisors' medical knowledge in the determination of eligibility for CPP benefits has always been reflected in their classification as MD's within the Health Services Group.

[122] In contrast, the application of the Medical Adjudicators' knowledge and expertise has never been reflected in their classification as program administrators within the Program Administration Group: see Tribunal decision at para. 75.

[123] It was also not disputed that health professionals (including Medical Advisors) within the Health Services Group have always received more vacation allowance than Medical Adjudicators. Medical Adjudicators also receive less in the way of pay and other employment benefits.

[124] All of this evidence was carefully considered by the Tribunal in coming to its conclusion that a *prima facie* case of discrimination under section 7 of the *Canadian Human Rights Act* had been established: see the Tribunal decision at paras. 42-81.

[125] In light of the above, I am satisfied that the Tribunal's conclusion that the evidence adduced by the complainants, including, but not limited to the statistical evidence of gendered occupational segregation, was sufficient to establish a *prima facie* case of discrimination under section 7 of the *Canadian Human Rights Act* was one that was reasonably open to it on the record before it.

[126] Similarly, the Tribunal did not rely solely on the statistical evidence of occupational segregation in coming to the conclusion that a *prima facie* case of discrimination under section 10 of the Act had been established.

[127] The Tribunal found that since 1972, the Government had pursued a practice of treating Medical Advisors and Medical Adjudicators as though they were doing different work, and classifying them accordingly. However, there was evidence before the Tribunal showing that the core function of the two positions was the same, and that the work performed by Medical Adjudicators was the same as, or substantially similar to the work done by the Medical Advisors.

[128] All of this evidence was considered by the Tribunal in determining whether a *prima facie* case of discrimination under section 10 of the Act had been made out: see the Tribunal decision at paras. 82-101.

[129] Moreover, the statistical evidence before the Tribunal showed that the Government's practice had a disproportionate adverse effect on women, as a result of the predominance of women in nursing generally, and in Medical Adjudicator positions in particular.

[130] In dealing with allegations of discrimination such as those in issue in this case, it is not necessary for the complainants to demonstrate that the Government had a discriminatory intent pursuing a particular policy or practice in order for a *prima facie* case of discrimination under

section 10 of the Act to be made out: see, for example, *C.N.R. v. Canada (Canadian Human Rights Commission)*, [1987] 1 S.C.R. 1114 at paras. 34 and 40 [“*Action Travail des Femmes*”].

[131] That is, it will be sufficient if the complainants can show that the *effect* of the Government’s policy or practice is to withhold or limit access to opportunities, benefits, or advantages to one group that are made available to another: see *O’Malley*, above, at para. 12, and *Law Society British Columbia v. Andrews*, [1989] 1 S.C.R. 143, 91 N.R. 255 at para. 37.

[132] The evidence before the Tribunal established that the unintended effect of a Government practice was to expose a disproportionate number of women to unfavourable treatment by depriving them of employment opportunities that are available to men who are performing the same core function, and the same or substantially similar work. This was sufficient to establish a *prima facie* case of discrimination under section 10 of the Act, thereby shifting the burden to the Government of Canada to provide a reasonable explanation for the conduct in question.

[133] Before leaving this issue, reference should be made to the Government’s argument that in the absence of evidence to the contrary, any differential treatment as between Medical Adjudicators and Medical Advisors would simply reflect prevailing assumptions regarding the relative worth of nurses’ and doctors’ work.

[134] With all due respect, it is these sorts of “prevailing assumptions” regarding the relative worth of work performed by male-dominated and female-dominated occupations that are precisely

what the *Canadian Human Rights Act* seeks to address through provisions such as sections 7, 10 and 11: see, for example, *Action Travail des Femmes*, at para. 34, and *Public Service Alliance of Canada v. Canada (Department of National Defence)*, [1996] 3 F.C. 789 (F.C.A.) at paras. 11-16 [“*NPF*”].

VIII. Did the Tribunal Make Inconsistent Findings Regarding the Similarity of Work?

[135] The Government submits that the Tribunal’s finding that Medical Adjudicators and Medical Advisors do the same or substantially similar work was inconsistent with its finding that Medical Advisors’ work differed from that of Medical Adjudicators in certain respects. According to the Government, either the two positions are substantially similar, or they are not because there are important differences between them.

[136] There is no suggestion by the Government that the Tribunal’s description of the similarities and differences between the two positions is inaccurate, nor is there any suggestion that any evidence in this regard was overlooked or misconstrued by the Tribunal. Rather, the Government’s argument is that having concluded that there were differences in the work performed by the two groups, it was simply unreasonable for the Tribunal to conclude that Medical Adjudicators and Medical Advisors do the same or substantially the same work.

[137] A question as to a potential inconsistency in the Tribunal’s factual findings involves the Tribunal’s appreciation of the facts of the case. As such, the findings are reviewable against the standard of reasonableness.

[138] In its reasons, the Tribunal carefully reviewed the evidence adduced by both sides as to the similarities and differences in the duties and responsibilities of Medical Adjudicators and those of Medical Advisors as they evolved over time. The Tribunal concluded that throughout the history of the CPP disability benefit program there has been, and continues to be, "a significant overlap" in the functions performed by Medical Advisors and Medical Adjudicators.

[139] As noted earlier, the Tribunal found that the "core function" of both types of position was the same and that both Medical Advisors and Medical Adjudicators applied their professional qualifications and expertise in determining the eligibility of applicants for disability benefits under the *Canada Pension Plan*.

[140] The Tribunal did accept that Medical Advisors' work differs from Medical Adjudicators' work in certain respects. The Tribunal found that unlike Medical Adjudicators, Medical Advisors have always provided an oversight and advisory role in the determination of eligibility for benefits. According to the Tribunal, this involved the provision of medical advice on difficult files, training, and final decision-making responsibility at certain levels of the process. In addition, Medical Advisors provide expert medical testimony before the Pension Appeals Board - something that Medical Adjudicators do not do.

[141] The Tribunal thus found that Medical Advisors bring a different kind of knowledge to the program, perform some different tasks, and have been given some different responsibilities than Medical Adjudicators.

[142] The Tribunal concluded that these differences provided a reasonable, non-discriminatory explanation for some of the differences in salary and benefits between the two groups of employees. The differences in job function also explained why Medical Advisor and Medical Adjudicator positions might occupy different levels within a classification standard within the Health Services Group.

[143] However, the Tribunal also found that the differences in the work responsibilities between the two positions were not extensive enough to explain the wide disparity in treatment between Medical Advisors and Medical Adjudicators. In particular, the Tribunal observed that:

> [T]he [Government] has failed to provide a reasonable non-discriminatory response to the following question: why have the advisors been recognized as health professionals, and compensated accordingly, when their primary function is to make eligibility determinations and yet, when the adjudicators perform the same primary function, they are designated as program administrators and are paid half the salary of the advisors? [at para. 121]

[144] In my view, there is no inconsistency in the Tribunal's findings that would render its conclusions unreasonable.

[145] As was noted earlier, the focus of Ms. Walden's human rights complaint is on the classification issue. Her concern is that Medical Advisors are recognized as medical professionals within the Health Services Group and are compensated accordingly, whereas Medical Adjudicators

have never been recognized as health care professionals by their employer and have suffered as a result.

[146] Medical Adjudicators are classified as Program Managers/Program Administrators, a classification that does not recognize their status as registered nurses. This results in Medical Adjudicators receiving less in the way of pay and benefits than that received by other nurses working for the federal government, and also gives them less in the way of professional development opportunities. Indeed, the evidence before the Tribunal indicated that Medical Adjudicators earn between $10,000 and $13,000 less than clinical nurses employed by the Government, and approximately half of what Medical Advisors are paid. The classification of Medical Adjudicators as Program Managers/Program Administrators also means that they are denied employment benefits that are available to Medical Advisors.

[147] According to the evidence before the Tribunal positions are categorized within Occupational Groups having regard to the primary function of the position, rather than the professional qualifications of the incumbents. The Health Services Group is comprised of positions that are primarily involved in the application of a comprehensive knowledge of professional specialties in the fields of medicine and nursing (among others) to the safety and physical and mental well-being of people. Neither Medical Advisors nor Medical Adjudicators provide care directly to patients. Nevertheless, Medical Advisors are included within the Health Services Group and Medical Adjudicators are not.

[148] It appears from Ms. Power's testimony that the reason that Medical Advisors were historically included within the Health Services Group even though they do not provide patient care is because "Inclusion Statement 5" in the MD definition allows for the inclusion of medical doctors involved in the assessment of medical fitness for the determination of disability and other federal government benefits. There is evidently no similar "Inclusion Statement" currently in the Nursing definition. Although such an Inclusion Statement was part of the definition of the Health Services Group for a brief period between 1999 and 2003, it was not applied to Medical Adjudicators because its application would have resulted in a change in their bargaining unit.

[149] It was in this context that the Tribunal found that the primary or "core" function of both Medical Advisors and Medical Adjudicators was the same. Both types of positions required the application of medical qualifications and expertise in determining the eligibility of applicants for disability benefits under the *Canada Pension Plan*, and the Tribunal found that there was "a significant overlap" in the functions performed by both groups.

[150] It once again bears repeating that the Government has not challenged these factual findings.

[151] It was also in this context that the Tribunal asked itself why Medical Advisors have always been recognized as health professionals, and compensated accordingly, when their primary function is to make eligibility determinations and yet, when Medical Adjudicators perform the same primary function, they are designated as program administrators and are paid half the salary of the Medical Advisors.

[152] It is thus clear that the focus of this aspect of the Tribunal's reasons was on the essential nature and character of the work performed by both Medical Advisors and Medical Adjudicators, as opposed to the precise day-to-day responsibilities and duties of each position. The Tribunal's finding that the essential nature and character of the work performed by both groups is the same is not inconsistent with its finding that there are, in fact, some differences in the day-to-day responsibilities and duties of each group.

[153] Nor is there any inconsistency between the Tribunal's finding that the essential nature and character of the work performed by both groups was the same, and its finding that the differences in the responsibilities and duties of the two groups could nonetheless justify some of the differences in salary and benefits, and could also explain why Medical Advisor and Medical Adjudicator positions might occupy different levels within a classification standard within the Health Services Group.

[154] That is, the Tribunal found that the fact that Medical Advisors may fulfill an oversight and advisory role could potentially justify a higher level of pay and benefits than that accorded to Medical Adjudicators. This does not, however, take away from the Tribunal's finding that the essential nature and character of the work performed by both groups was the same.

[155] Nor do the differences in the day-to-day responsibilities and duties of each group explain why it is that, to quote Ms. Walden's human rights complaint, "… when a CPP doctor makes a determination of disability, he is practicing medicine, but when a CPP nurse makes a determination of disability, she is delivering a program".

[156] As a consequence, I am not persuaded that there is any inconsistency in the findings of the Tribunal that would render the decision unreasonable.

IX. Did the Tribunal Err in Finding that Sections 7, 10 and 53 of the *Canadian Human Rights Act* Demand that the Employer Offer Proportionate Pay for Proportionate Work?

[157] The Government submits that having found that the differences in work responsibilities between Medical Adjudicators and Medical Advisors are not extensive enough to explain the wide disparity in their treatment, the Tribunal created new law by finding that sections 7 and 10 of the *Canadian Human Rights Act* require that employers pay "proportionate compensation for proportionate work".

[158] In support of this contention, the Government points to paragraph 143 of the Tribunal's decision where it states that:

> I find, on a balance of probabilities, that the Complainants have established that the [Government's] refusal since March of 1978, to recognize the professional nature of the work performed by the medical adjudicators in a manner *proportionate* to the professional recognition accorded to the work of the medical advisors, is a discriminatory practice within the meaning of both ss. 7 and 10. The effects of the practice have been to deprive the adjudicators of professional recognition and remuneration *commensurate* with their qualifications, and to deprive them of payment of their licensing fees, as well as training and career advancement opportunities on the same basis as the advisors. [the Government's emphasis]

[159] The Government says that the Tribunal erred in this regard, as it is not a discriminatory practice under either section 7 or section 10 of the Act for an employer to pay different wages to employees performing different work. Moreover, the remedial powers of the Tribunal identified in section 53 of the Act do not extend to authorize compensation, in the absence of a discriminatory practice having been established. According to the Government, in so doing the Tribunal erred in law, and this aspect of the Tribunal's decision should be reviewed against the standard of correctness.

[160] Even if I were to accept the Government's contention that correctness is the standard of review to be applied to this aspect of the Tribunal's decision, I do not agree that the Tribunal erred as alleged.

[161] A fair reading of the Tribunal's decision as a whole reveals that the Tribunal did not purport to impose an obligation on employers to pay proportionate compensation for proportionate work. Rather, the Tribunal's concern was with the failure of the Government to recognize the professional nature of the work performed by the Medical Adjudicators in the way that the work of Medical Advisors was recognized through the inclusion of these latter positions within the Health Services Group.

[162] This is made very clear in paragraph 11 of the Tribunal's decision where, in summarizing its findings, the Tribunal stated that:

> The core function of both positions is applying professional knowledge to determine eligibility for

> CPP disability benefits. The Respondents have failed to provide a reasonable, non-discriminatory explanation as to why this function is medical work when the advisors do it, and program administration work when the adjudicators do it.

[163] It was this denial of professional recognition through the classification process for positions performing the same "core function" (and many of the same duties) that was identified as the discriminatory practice by the Tribunal.

[164] It is true that pay levels within the Federal Public Service are largely determined by the classification of positions within an Occupational Group and sub-group, and by the level of positions within the relevant sub-group. As the Government conceded in the hearing before me, the issues of compensation and classification are closely intertwined and it is difficult to disengage one from the other.

[165] It is also true that the reclassification of Medical Adjudicators to include them within the Health Services Group could increase the wages paid to Medical Adjudicators, and could also improve their employment benefits. However, this would be the consequence that flows from Medical Adjudicators receiving the professional recognition accorded to others performing the same "core function". It is not the result of the imposition of a purported legal obligation by the Tribunal requiring the Government to pay proportionate compensation for proportionate work.

X. Did the Tribunal Err in Finding that Liability Should be Assessed from March of 1978 to the Present Time?

[166] The Government's final argument is that the Tribunal erred in finding that liability should be assessed from the point at which the *Canadian Human Rights Act* came into force in March of 1978, up to the time of the Tribunal hearing.

[167] According to the Government, the facts of this case do not warrant a departure from the "ordinary practice" of awarding remedies for no more than one year prior to the filing of the human rights complainant.

[168] I agree with the parties that reasonableness is the appropriate standard of review to be applied to this aspect of the Tribunal's decision.

[169] In support of its position, the Government relies on the comments of the Federal Court of Appeal in *NPF*, above, at paras. 46-49, where the Court discussed the "appropriate cut-off date" for an award of damages for lost wages in a section 11 pay equity case.

[170] The Court noted that the claim in that case was specifically limited to the period commencing one year prior to the date of the filing of the complaint. There was also evidence before the Tribunal that it was the Commission's practice to limit claims in this fashion. According to the Court, there was arguably some justification for this practice in light of the one-year limitation period contained in paragraph 41(e) of the *Canadian Human Rights Act.*

[171] The Federal Court of Appeal went on in paragraph 49 of its reasons to observe, in *obiter*, that “there must be some reasonable time frame fixed around any claim for retroactive pay”. While recognizing that the provisions of the Act are remedial rather than punitive, the Court noted that it may represent a considerable hardship to an employer to have to face claims for retroactive wages going back many years. An employer may be disadvantaged by the passage of time in its ability to marshal evidence regarding the duties of the jobs in issue, their value, and the wages paid. The Court further observed that “the presumption that systemic discrimination will have produced the same effects in the past as it does in the present clearly becomes weaker the further it is extended into the past”.

[172] As a result, the Federal Court of Appeal stated that it would be unreasonable to allow a complainant to sustain a claim for wage discrimination for an unlimited period of time. The Court was of the view that, in ordinary circumstances, the Commission's practice of limiting claims to one year prior to the filing of the complaint struck “a reasonable balance between the competing interests involved”. The Court went on to recognize, however, that like any limitation period, the one-year period was somewhat arbitrary, and could be varied in cases where it could be demonstrated that a longer or shorter period was warranted: *NPF* at para. 49.

[173] In considering the Government’s argument, it is important to put the comments of the Federal Court of Appeal in *NPF* into context. In *NPF*, the Government had admitted liability under section 11 of the Act. What was at issue before the Tribunal, and, subsequently, the Federal Court

of Appeal, was whether the remedy should include a retroactive wage adjustment for a period extending back one year prior to the filing of the original complaint: see *NPF* at para. 11.

[174] As a consequence, all of the Federal Court of Appeal's comments were made in relation to the exercise of the Tribunal's discretionary remedial power under section 53 of the *Canadian Human Rights Act*.

[175] As the Tribunal observed in this case at paragraph 31 of its reasons, one has to distinguish between the determination of liability for discriminatory conduct under sections 7 and 10 of the Act, and the exercise of the Tribunal's remedial discretion under section 53(2) to compensate victims for losses caused by the discriminatory conduct. As the Tribunal noted, these are "related, but separate questions".

[176] In this case, the Tribunal first had to determine whether the conduct of the Government of Canada constituted a discriminatory practice under either section 7 or section 10 of the *Canadian Human Rights Act*. Assuming that a discriminatory practice was found to have occurred, part of the Tribunal's inquiry required a finding as to when the discriminatory practice had commenced.

[177] The complainants alleged that the discriminatory practice began with the hiring of the first nurses to work as Medical Adjudicators in 1972. The Tribunal did not accept this argument. Relying on decisions such as *Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84, 75 N.R. 303, at para. 20, the Tribunal observed that the *Canadian Human Rights Act* only came into force in

March of 1978, and does not generally have retrospective application to conduct and practices which occurred prior to that date: see Tribunal decision at para. 27.

[178] The Tribunal also rejected the Government's contention that its potential liability for discriminatory conduct or practices should be further limited to one year prior to the filing of Ms. Walden's complaint in 2004. As the Tribunal noted, this would mean that it would be required to dismiss the complaints of those complainants who left the CPP disability benefit program prior to 2003.

[179] As the Federal Court of Appeal observed in the *NPF* decision, there is a one-year limitation period contained in paragraph 41(1)(e) of the *Canadian Human Rights Act*. This limitation period is not absolute, however, and the Commission has the discretionary power to accept complaints regarding discriminatory practices allegedly occurring more than one year prior to the filing of the complaint. This is what appears to have happened with respect to many of the complaints in this case.

[180] It was in this context that the Tribunal made its finding that the discriminatory practice in issue in this case - namely the Government's refusal to recognize the professional nature of the work performed by Medical Adjudicators in a manner proportionate to the professional recognition accorded to the work of Medical Advisors – began in March of 1978, with the coming into force of the *Canadian Human Rights Act*: see Tribunal decision at para. 143. This was a finding that was reasonably open to it on the record before it.

[181] The Government argues that it would not be fair for it to be "on the hook" for back wages extending over a period of more than 30 years. In particular, the Government says that the Medical Adjudicators did not clearly articulate their complaint prior to filing their Statement of Particulars in April of 2007. This deprived the Government of the opportunity to make representations to the Commission as to why it should not exercise its discretion under paragraph 41(1)(e) of the Act to deal with acts or omissions which occurred more than one year before the filing of the complaint.

[182] The Government says that throughout the history of this dispute, Medical Adjudicators have only sought reclassification as nurses within the NU Classification Standard. The suggestion that Medical Adjudicators do the same work as Medical Advisors, and that the differential treatment between the two groups therefore amounted to discrimination, was clearly articulated for the first time only in April of 2007 with the delivery of the complainants' Statement of Particulars.

[183] I would start by observing that although their approach to the issue may have evolved over time, it is clear from the record that the Medical Adjudicators have long been consistent in their position that they were being treated unfairly by the Government in the way that their positions were classified, and that the failure of the Government to include their positions within the Health Services Group meant that they were being denied the professional recognition to which they believed that they were entitled.

[184] It is also clear that the Medical Adjudicators have made no secret of their dissatisfaction with the situation, and that it has been an ongoing source of friction between the Medical Adjudicators and their employer for many, many years.

[185] Moreover, Ms. Walden's 2004 complaint form makes it very clear that the Medical Adjudicators were of the view that the differences in the treatment accorded to them relative to that accorded to Medical Advisors constituted discrimination on the basis of sex. In this regard, it will be recalled that Ms. Walden's complaint concludes with the statement that:

> Put simply, my employer is saying that when a CPP doctor makes a determination of disability, he is practicing medicine, but when a CPP nurse makes a determination of disability, she is delivering a program.

[186] As I understand it, after Ms. Walden filed her human rights complaint, other Medical Adjudicators joined in the complaint. It appears that this was done by simply adding these individuals to Ms. Walden's complaint, rather than having them file separate complaint forms. Thus, the allegations made by all of the complainants are exactly the same.

[187] As a consequence, the Government would - or should - have been aware at the time that these additional complainants joined in the complaint that it faced allegations of discrimination involving Medical Adjudicators going back many years, and that these complaints related to the professional recognition denied to Medical Adjudicators in comparison to that accorded to Medical Advisors.

[188] It should also be noted that there is a positive obligation on employers to provide a workplace that is free from discrimination. There is no corresponding obligation on employees to put the employer on notice of a potential discriminatory practice before liability can start to run.

[189] The Tribunal recognized that the complainants do not have to show that the Government knew or ought to have known that the impugned practices were discriminatory. It will be sufficient if the *effect* of their practice was to deprive the Medical Adjudicators of an employment benefit on the basis of a prohibited ground.

[190] That said, the Tribunal clearly understood that the question of knowledge or intent could be relevant to the issue of compensation under s. 53(3) of the *Act*: see Tribunal decision at para. 93. Moreover, paragraph 53(2)(c) of the Act empowers the Tribunal to award compensation for "*any or all of wages lost* as a result of the discriminatory practice" [my emphasis]. Consequently, it is clear that there is no absolute right on the part of a complainant to be automatically compensated for *any and all* losses flowing from the discriminatory practice. In addition, as the Federal Court of Appeal observed in *NPF*, there must be some reasonable time frame fixed around any claim for retroactive pay.

[191] There may be any number of reasons in a given case as to why a limit should be imposed on remedial awards made pursuant to section 53 of the Act, including matters relating to the conduct of the complainants: see, for example, *Chopra v. Canada (Attorney General)*, 369 N.R. 207 at para.40.

Indeed, the Tribunal specifically recognized that it was open to it to impose a limit on the compensable losses caused by the discriminatory practice in issue in this case.

[192] It is thus clear that the Tribunal left the door open to considering the Government's arguments in its consideration of the scope of the appropriate remedy under paragraph 53(2)(c) of the Act: see Tribunal decision at para. 146. How the Tribunal ultimately decided to exercise its remedial discretion is the subject of other proceedings, and is not before me at this time.

Conclusion

[193] For these reasons, I have concluded that the Tribunal's decision was reasonable in that it meets that standard of justification, transparency and intelligibility identified by the Supreme Court of Canada in *Dunsmuir*. I am also satisfied that the Tribunal's decision falls within the range of possible acceptable outcomes which are defensible in light of the facts and the law. As a consequence, the application for judicial review is dismissed.

Costs

[194] I see no reason why costs should not follow the event insofar as the complainants are concerned. Given that all of the complainants appearing on this application were represented by the same counsel, only one set of costs will be awarded. Having regard to its public interest mandate, the Commission did not seek its costs, and none are awarded.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed, with one set of costs to the respondents Ruth Walden, et al. The Canadian Human Rights Commission shall bear its own costs.

"Anne Mactavish"
Judge

APPENDIX

Canadian Human Rights Act

7. It is a discriminatory practice, directly or indirectly,

(*a*) to refuse to employ or continue to employ any individual, or

(*b*) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.

7. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :

a) de refuser d'employer ou de continuer d'employer un individu;

b) de le défavoriser en cours d'emploi.

10. It is a discriminatory practice for an employer, employee organization or employer organization

(*a*) to establish or pursue a policy or practice, or

(*b*) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment, that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

10. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite et s'il est susceptible d'annihiler les chances d'emploi ou d'avancement d'un individu ou d'une catégorie d'individus, le fait, pour l'employeur, l'association patronale ou l'organisation syndicale :

a) de fixer ou d'appliquer des lignes de conduite;

b) de conclure des ententes touchant le recrutement, les mises en rapport, l'engagement, les promotions, la formation, l'apprentissage, les mutations ou tout autre aspect d'un emploi présent ou éventuel.

11. (1) It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.

11. (1) Constitue un acte discriminatoire le fait pour l'employeur d'instaurer ou de pratiquer la disparité salariale entre les hommes et les femmes qui exécutent, dans le même établissement, des fonctions équivalentes.

(2) In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.

(2) Le critère permettant d'établir l'équivalence des fonctions exécutées par des salariés dans le même établissement est le dosage de qualifications, d'efforts et de responsabilités nécessaire pour leur exécution, compte tenu des conditions de travail.

(3) Separate establishments established or maintained by an employer solely or principally for the purpose of establishing or maintaining differences in wages between male and female employees shall be deemed for the purposes of this section to be the same establishment.

(3) Les établissements distincts qu'un employeur aménage ou maintient dans le but principal de justifier une disparité salariale entre hommes et femmes sont réputés, pour l'application du présent article, ne constituer qu'un seul et même établissement.

(4) Notwithstanding subsection (1), it is not a discriminatory practice to pay to male and female employees different wages if the difference is based on a factor prescribed by guidelines, issued by the Canadian Human Rights Commission pursuant to subsection 27(2), to be a reasonable factor that justifies the difference.

(4) Ne constitue pas un acte discriminatoire au sens du paragraphe (1) la disparité salariale entre hommes et femmes fondée sur un facteur reconnu comme raisonnable par une ordonnance de la Commission canadienne des droits de la personne en vertu du paragraphe 27(2).

(5) For greater certainty, sex does not constitute a reasonable factor justifying a difference in wages.

(5) Des considérations fondées sur le sexe ne sauraient motiver la disparité salariale.

(6) An employer shall not reduce wages in order to eliminate a discriminatory practice described in this section.

(6) Il est interdit à l'employeur de procéder à des diminutions salariales pour mettre fin aux actes discriminatoires visés au présent article.

(7) For the purposes of this section, "wages" means any form of remuneration payable for work performed by an individual and includes

(7) Pour l'application du présent article, «salaire » s'entend de toute forme de rémunération payable à un individu en contrepartie de son travail et, notamment :

(*a*) salaries, commissions, vacation pay, dismissal wages and bonuses;

a) des traitements, commissions, indemnités de vacances ou de licenciement et des primes;

(*b*) reasonable value for board, rent, housing and lodging;

b) de la juste valeur des prestations en repas, loyers, logement et hébergement;

(*c*) payments in kind;

c) des rétributions en nature;

(*d*) employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans; and

d) des cotisations de l'employeur aux caisses ou régimes de pension, aux régimes d'assurance contre l'invalidité prolongée et aux régimes d'assurance-maladie de toute nature;

(*e*) any other advantage received directly or indirectly from the individual's employer.

e) des autres avantages reçus directement ou indirectement de l'employeur.

53. (1) At the conclusion of an inquiry, the member or panel conducting the inquiry shall dismiss the complaint if the member or panel finds that the complaint is not substantiated.

53. (1) À l'issue de l'instruction, le membre instructeur rejette la plainte qu'il juge non fondée.

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

(2) À l'issue de l'instruction, le membre instructeur qui juge la plainte fondée, peut, sous réserve de l'article 54, ordonner, selon les circonstances, à la personne trouvée coupable d'un acte discriminatoire :

(a) that the person cease the discriminatory practice and take measures, in consultation with the Commission on the general purposes of the measures, to redress the practice or to prevent the same or a similar practice from occurring in future, including

a) de mettre fin à l'acte et de prendre, en consultation avec la Commission relativement à leurs objectifs généraux, des mesures de redressement ou des mesures destinées à prévenir des actes semblables, notamment :

(i) the adoption of a special program, plan or arrangement referred to in subsection 16(1), or

(i) d'adopter un programme, un plan ou un arrangement visés au paragraphe 16(1),

(ii) making an application for approval and implementing a plan under section 17;

(ii) de présenter une demande d'approbation et de mettre en oeuvre un programme prévus à l'article 17;

(b) that the person make available to the victim of the discriminatory practice, on the first reasonable occasion, the rights, opportunities or privileges that are being or were denied the victim as a result of the practice;

b) d'accorder à la victime, dès que les circonstances le permettent, les droits, chances ou avantages dont l'acte l'a privée;

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

c) d’indemniser la victime de la totalité, ou de la fraction des pertes de salaire et des dépenses entraînées par l’acte;

(d) that the person compensate the victim for any or all additional costs of obtaining alternative goods, services, facilities or accommodation and for any expenses incurred by the victim as a result of the discriminatory practice; and

d) d’indemniser la victime de la totalité, ou de la fraction des frais supplémentaires occasionnés par le recours à d’autres biens, services, installations ou moyens d’hébergement, et des dépenses entraînées par l’acte;

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

e) d’indemniser jusqu’à concurrence de 20 000 $ la victime qui a souffert un préjudice moral.

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

(3) Outre les pouvoirs que lui confère le paragraphe (2), le membre instructeur peut ordonner à l’auteur d’un acte discriminatoire de payer à la victime une indemnité maximale de 20 000 $, s’il en vient à la conclusion que l’acte a été délibéré ou inconsidéré.

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

(4) Sous réserve des règles visées à l’article 48.9, le membre instructeur peut accorder des intérêts sur l’indemnité au taux et pour la période qu’il estime justifiés.

FEDERAL COURT

SOLICITORS OF RECORD

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