

LRB File No. 020-16

IN THE MATTER OF: An Appeal to an Adjudicator pursuant to Section 3-53 of *The Saskatchewan Employment Act*, S.S. 2013, Chapter S-15.1

Decision Appealed from: Occupational Health Officers Decision
January 27, 2016



BETWEEN:

KC

APPELLANT

-and-

Keewatin Yatthe Regional Health Authority
(now amalgamated with the Saskatchewan Health Authority)

RESPONDENT

-and-

Director of Occupational Health and Safety
Ministry of Labour Relations and Workplace Safety

RESPONDENT

Introduction

1. The Appellant, KC, has appealed the January 27, 2016 decision of the Occupational Health and Safety ("OH&S") officers (the "Decision"). The decision was regarding the written complaint made by KC to OH&S dated July 18, 2014, stamped as received by OH&S on August 5, 2014 (the "Complaint") (Exhibit A1).
2. The Decision was appealed by KC by a letter dated January 28, 2016, filed with OH&S on February 2, 2016. The Notice of Appeal reads in part as follows:

In accordance with Section 3-54 I am filing the following information:

...

- (a) Identifies and states the decision appealed against:

The OH&S officers' decision that "the investigation was fair, unbiased and thorough" and "the employer has met the legislative requirements of the OH&S legislation."

- (b) Sets out grounds of appeal

As requested by the officers, I provided them with a detailed summary of valid concerns regarding the investigation/investigator on December 9, 2016. The decisions made by the OH&S officers in their letter dated January 27, 2016 does not provide any specifics regarding their decision and therefore is not transparent.

- (c) Set out the relief requested, including any request for the suspension of all or any portion of the decision appealed against.

Relief requested:

- As legislated, a review (including a face to face with the Director if possible) of all documentation and information related to my concerns with the OH&S investigation results performed by Corinne Pauliuk of Vision Quest Advisors and my counterclaim made to the OH&S Officers.
 - As legislated, a detailed and transparent explanation of how the Director reaches his decision.
 - A suspension of the Officers' decision in their letter dated January 27/16 with any requisite follow-up.
3. This matter was initially assigned to a different Adjudicator. Due to delays in a decision being rendered KC brought an application to set aside the previous Adjudicator's selection and direct the Registrar to select another Adjudicator to hear the appeal pursuant to Section 4-7 of *The Saskatchewan Employment Act* (the "Act"). The Saskatchewan Labour Relations Board granted the application was granted the application pursuant an order of the Board dated July 20, 2020.

Preliminary Matters and Pre-Hearing Process

4. I was appointed as the Adjudicator for the appeal of the Decision on August 5, 2020. On October 5, 2020, I contacted the parties to schedule a Pre-Hearing Conference/Meeting which was held on October 16, 2020. The agenda for the call was:
- Efforts of the parties, if any, of resolving the issue and exploring alternative process options for resolution;
 - Review of hearing process;
 - Confirmation of issue(s) on appeal;
 - Disclosure in advance of the hearing;
 - Date and Location for the Hearing; and
 - Any other preliminary matters.
5. At the pre-hearing conference call on October 16, 2020, several procedural issues were raised and discussed including (i) willingness of parties to participate in mediation to see if the matter could be resolved by agreement; and (ii) the issues for appeal. The parties indicated a willingness to participate in mediation. In addition, when discussing the issues, KC submitted a request that the allegation of discriminatory action on the part of the employer be included in the scope of the appeal.

6. By an email on October 22, 2021, in follow up to the conference call held on October 16, 2021, I emailed the parties to confirm some process steps and timelines including the following:

In regards to the timelines for the process going forward please note the following:

1. The parties are to provide me with their submissions on the issue(s) for the purposes of the appeal by October 30, 2020. This is to be provided in writing and can be provided by letter or email with a copy to be provided to both parties.
 2. The parties are to advise of the dates that they would be available for mediation prior to November 15, 2020.
 3. The parties are to provide me with dates they would be available for a hearing of this matter during the period of November 15, 2020 and December 15, 2020 in the event the parties are otherwise unable to reach a settlement of the matter through mediation. This hearing would not be conducted in person but would be conducted via Zoom or alternative platform to be decided upon further consultation by me with the parties.
 - ...
7. By email received by me on October 30, 2020, both parties provided me with written submissions on the issues for appeal. KC submitted the issues for appeal were:
- a. Whether the OH& S Officers erred in determining that the employer by appointing Corrine Pauliuk to the harassment investigation based on four workplace incident reports and one employee respectful workplace report, met its' legislative requirement of Occupational Health and Safety legislation.
 - b. Whether the OH&S Officers erred in determining that the investigations performed by Corrine Pauliuk were fair, unbiased, and thorough.
 - c. Whether the OH&S Officers ignored and failed to follow up on documented concerns of the employer's discriminatory practices according to the legislation of the Saskatchewan Employment Act.
8. The Employer submitted the issues for appeal were:
- a. Did the OH&S officers err in determining that the Employer, by appointing Corrine Pauliuk to conduct an independent investigation and by taking corrective action as a result of that investigation, met their legislative requirements?
 - b. Did the OH&S officers err in determining that the investigation report was fair, unbiased and thorough?
9. The third issue that KC raised for consideration are alleged discriminatory practices by the employer. This was not part of the Complaint. By email to the parties on November 29, 2020 I advised the parties that I found it premature and was unable to make any type of definitive ruling on whether the issue of alleged discriminatory action on the part of the employer are properly within the scope of the appeal and/or if it falls within the ambit of whether the employer met its legislative requirements under the Act, and advised this issue could be raised by either party at the formal hearing of the matter.

10. There was further email correspondence on the issue with a request for further clarification. In the meantime, mediation was scheduled. I conducted individual intakes with each party on December 9, 2021. A joint mediation session was held on January 12, 2021. Mediation was unsuccessful in resolving the matter and it was confirmed the matter would proceed to adjudication.
11. On January 19, 2021 I informed the parties by email of the next step to schedule a video or conference call to address the following:
 1. Review of hearing process and platform to be used
 2. Confirm number of witnesses and estimated time required for the hearing
 3. Schedule dates for the hearing
 4. Any other preliminary issues
12. The pre-hearing conference call was scheduled for Friday, February 19, 2021, at 9:30 a.m. At that time, the hearing process was reviewed. I sent an email to the parties on March 1, 2021, confirming the dates for the hearing as Monday, April 12, 2021, and Tuesday, April 13, 2021, commencing at 9:30 a.m. each day, to be conducted via zoom.
13. On this call the scope of the issues and matters to be considered in this appeal were discussed, including the issue of alleged discriminatory practices on the part of the employer. At this time, I confirmed the issues that I would consider for the purpose of the proceedings before me were the broad issues of whether (i) the Employer met its obligations under the Act; and (ii) whether the investigation performed by the independent investigator, Ms. Corinne Pauliuk, was fair, unbiased, and thorough. I indicated that if during the hearing evidence of issues of alleged discriminatory practices came up, I would consider its relevancy and admissibility at the time in terms of the two broader issues that were identified.
14. It was obvious that there were several other employment related issues that came up during the same timeframe as the Harassment Complaints were made by KC and being addressed by the Employer. I did not consider it appropriate to address within the scope of this appeal, for the first time, a discriminatory action complaint, as this was not framed as such in the Complaint and was never addressed or reviewed as such by the OH&S officers. Throughout the timeframe of when KC filed the Complaint and when the Decision was rendered on January 27, 2016, the focus was on follow up with the Employer in terms of responding to KC's complaints of harassment.
15. On March 11, 2021, and in response to a request made by KC, I sent the following process direction respecting the general conduct of the hearing and guidelines for what to expect.

In Advance of the Hearing

1. The Hearing is scheduled for Monday, April 12, 2021, and Tuesday, April 13, 2021 (if necessary) commencing at 9:30 a.m. on each day.
2. The platform that will be used for the hearing will be Zoom.
3. Each party will be responsible to ensure that clients and witnesses that may be called have appropriate technology to participate via zoom.

4. Ms. Berthelet will provide the list of documents from the OHS file in advance of the hearing so that both parties will have access to these documents to refer to during the course of the hearing. I request that Ms. Berthelet provide a list and electronic copy of these documents by March 31, 2021.
5. If there are any other relevant documents to be exchanged, I ask that this be completed by March 31, 2021. If any issues arise with respect to disclosure of documents, either party may contact me and we will set up a process to deal with the issue.
6. Both parties will provide a list of witnesses to the other party in advance of the hearing. I request that this be provided by March 31, 2021. If either party needs a subpoena to compel attendance of a witness at the hearing please let me know.

Commencement of the Hearing

7. At the commencement of the hearing we will:
 - a. Confirm the documentary evidence, including the OHS file, that might be entered into evidence by agreement of the parties. This would be subject to any arguments the parties may make with respect to relevance, weight and admissibility during the course of the hearing.
 - b. Deal with any other preliminary issues that may come up.
8. During the hearing both parties shall be given the opportunity to present their side at the hearing.

Order of Evidence

9. Both parties will be entitled to make an opening statement. KC will go first followed by KYRHA.
10. KC will then be provided with the opportunity to present her case. In doing so:
 - a. KC will present her evidence first by testifying and presenting any relevant documents KC wishes to put in evidence.
 - b. KC shall then be entitled to call any additional witnesses to testify along with putting into evidence any relevant documents for those witnesses.
11. KYRHA shall be entitled to cross examine KC and each witness. KC will have the right to present rebuttal evidence/re-examine each witness on any new matters raised by KYRHA in cross examination.
12. KYRHA will then be provided with the opportunity to present their response. In doing so:
 - a. KYRHA shall be entitled to call each of KYRHA's witnesses to testify and present any relevant documents into evidence.
13. KC shall be entitled to cross examine each witness called by KYRHA. KYRHA will have the right to present rebuttal evidence/re-examine each witness on any new matters raised by KC in cross examination.

14. Witnesses who are called by a party to testify (with the exception of an instructing party) will generally be excluded until it is their turn to testify.
 15. During the course of the hearing, if I have questions I will ask them.
 16. Once both parties have had the opportunity to present their case each will be given the opportunity to summarize their evidence and make closing arguments. KC will go first followed by KYRHA.
 17. Following the close of the hearing both parties will be entitled to file written arguments based upon the evidence presented during the hearing. This is to be provided no later than Friday, April 16th.
 18. If either party finds it necessary to compel a witness to attend the hearing to give evidence please contact me and we can deal with issuance of a subpoena to that witness. The party calling such witness will be responsible for delivering the subpoena.
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16. Prior to the hearing Ms. Berthelet provided a list of documents of the record and an electronic copy from the OHS file in advance of the hearing. In addition, both parties provided additional document disclosure. Ms. Berthelet provided these in an email of March 31, 2021. KC provided a data stick to me and Ms. Berthelet containing certain additional documents for purpose of the hearing.
 17. On March 31, 2021, I received an email from KC inquiring as to whether it was possible to subpoena some medical documents and if so, what was the process. In response to this I sent an email to both parties on Tuesday, April 6, 2021, to set up a conference call to obtain more particulars about this request.
 18. A conference call was held on Thursday, April 8, 2021. KC provided the particulars of her request to Ms. Berthelet. KC's request was for disclosure of certain redacted nursing notes for patients that she allegedly saw in November 2013, plus 6 other unidentified charts and 3 unidentified charts referenced by KC in her document disclosure.
 19. On Friday, April 9, 2021, Ms. Berthelet advised that the Employer could not undertake to provide the confidential patient information because of patient confidentiality and compliance with *The Health Information Protection Act*. Ms. Berthelet asked whether KC intended to request that the documents be subpoenaed.
 20. On Saturday, April 10, 2021, KC sent an email requesting that the information be subpoenaed. On April 11, 2021, I informed the parties by email that I would deal with this issue at the start of the hearing on April 12, 2013.
 21. At the outset of the hearing on April 12, 2021, I confirmed the consent of both parties that documents provided in advance of the hearing, including the document binder containing the OH&S file be entered into the record, subject to any arguments with respect to relevance, weight, and admissibility.

22. In regards KC's request made on April 10, 2021, that she wanted to subpoena certain medical records, I advised that we would proceed with the hearing as scheduled and KC could present her case. If after KC presented all her other evidence, she wished to renew her request for me to compel production of the medical records she could do so. I made this decision having regard to the fact representatives for the Employer had travelled in for the hearing and in the interest of expediting this matter and avoiding further delays
23. The hearing did not conclude by the end of day on April 13, 2021. KC was given the opportunity to advise if she wished to renew her request for production of certain medical records. KC was not sure and inquired by email on April 14, 2021 as to whether she would be obligated to use them if she did. KC was requested to confirm whether she wished to proceed with this request then later confirmed she was seeking an order to have the medical records produced.
24. On April 30, 2021, the parties were given the opportunity via a conference call to make submissions on my jurisdiction to make such an order and whether such an order should be made in this case.
25. I issued a decision on this preliminary issue on July 14, 2021 (attached as Appendix A). The concluding paragraphs of that decision are reproduced below:

...

21. There were obviously other issues that arose in the employment relationship as described in paragraph 18 above, but such issues are not properly the subject of this appeal which deals with the Employer's obligation to properly respond to complaints of harassment in the workplace, and as such are beyond the scope of my jurisdiction to consider. My jurisdiction is limited to considering the Appellant's complaint of harassment as defined by *The Saskatchewan Employment Act* and whether the Respondent failed to comply with its obligations under the Act or regulations, in dealing with the Respondent's complaints, including whether the investigation into the harassment complaint that was conducted was fair, unbiased, and thorough.
 22. In addition to relevance not being sufficiently established for the purposes of this hearing I am also concerned with the further delay this would cause in the proceedings.
 23. I do wish to make it clear however, this does not preclude the Appellant from making any argument based upon the evidence presented at the hearing respecting the scope of the investigation conducted and the investigation process, in terms of whether it was fair, unbiased, or thorough.
 24. For the above reasons, the Appellant's request for an order that the Respondent produce the Personal Information is dismissed. I will be in touch with the parties to schedule the date for the hearing to be reconvened and concluded.
26. On July 27, 2021, I emailed the parties with some date options in August to reconvene the hearing. These dates did not work and some further dates in September were canvassed. The hearing was scheduled to reconvene at 1:30 p.m. on Friday, September 10, 2021.
 27. Both parties finished presenting their evidence and the hearing was scheduled to be reconvened and did proceed on Monday, September 13, 2021, for closing arguments.

28. The parties were given until Friday, September 17, 2021, to file written briefs. Both parties submitted written briefs to me on Friday, September 17, 2021.

The Harassment Complaints

29. The genesis of this complaint dates back several years. By way of background, KC was hired as a casual Primary Care Nurse by the Employer on or about January 1, 2011.
30. KC was placed on an unpaid educational leave in January of 2014 and was still on an educational leave when the Decision was rendered.
31. KC testified that she began to experience harassment from nurse practitioner, PT starting in February of 2011 and that this continued and escalated.
32. For a framework and perspective of the timeline involved I am going to describe each of the forms which document the written complaints which are all part of Exhibit A-1, the Confidential Questionnaire filed by KC with OH&S dated July 18, 2014:
- a. Staff Workplace Incident Report form dated March 18, 2013, describing interactions with alleged harassment by PT occurring on March 18, 2013, when KC was working with PT
 - b. Staff Workplace Incident Report form dated March 20, 2013, describing interactions with alleged harassment by PT occurring on March 20, 2013, when KC was working with PT.
 - c. Staff Workplace Incident Report form dated Dec. 2, 2013, referring to incidences dated Nov. 18-23/13 describing incidences of alleged harassment by PT as ongoing.
 - d. Employee Respectful Workplace Form dated Dec. 6, 2013, referring to occurrences occurring since Feb 4/ 11 ongoing per incident reports filed.
 - e. Employee Respectful Workplace Report Form dated January 27, 2014, with addendum to this form describing an incident that occurred on January 21, 2014, and alleging harassment by two different employees, PO, and SK.

(collectively referred to as the "Harassment Complaints")

33. In the Complaint filed with OH&S the allegations in the documents described in paragraphs 31 a. to d. above against PT were alleged to be repeated incidences that caused KC to be humiliated or intimidated and the allegation described in e. above was described as a single serious incident that has had a lasting harmful affect on KC.

The Positions of the Parties

34. I summarize the respective positions of the parties as follows.

- a. KC submits that the Employer failed to meet its obligations under *The Saskatchewan Employment Act* (the “Act”) to properly deal with and respond to KC’s complaints of harassment in the workplace. Specific concerns raised include:
 - i. The Employer did not take the complaints seriously and did not investigate them in a timely manner.
 - ii. The Employer ignored concerns of bias that KC raised about the investigator chosen by the Employer.
 - iii. The Investigator hired by the Employer inappropriately expanded the scope of her investigation and did not accord KC due process, failed to keep an open mind, and was biased against her.
- b. In response, the Employer submits that the employer did comply with its obligations. Specifically:
 - i. KC’s initial communications around the complaints with her Employer was that she just wanted to file them for the record
 - ii. The Employer took steps to deal with the harassment complaints when contacted by OH&S about the status of the investigation of KC’s harassment complaints. Specifically, the Employer:
 - 1. initially took steps to deal with the investigation internally but then reconsidered and hired a third party investigator;
 - 2. retained Ms. Corinne Pauliuk of Vision Quest to investigate KC’s complaint who conducted an investigation and issued two Investigation Reports in November 2015; and
 - 3. took corrective action including disciplinary action with respect to one of the alleged harassers and reported substantiated allegations of misconduct to the Saskatchewan Registered Nurses Association.

ISSUES

35. The broad issue in this Appeal is whether the Employer met its legal obligation under *The Saskatchewan Employment Act* in terms of dealing with KC’s Harassment Complaints. Following are specific issues raised in this appeal:
- a. Were the Harassment Complaints dealt with in a timely manner?
 - b. Was the investigation conducted by the third-party investigator fair, unbiased, and thorough?
 - i. Was the Investigator biased at the outset?

- ii. Did the Investigator inappropriately expand the scope of her investigation, display bias during the process and fail to keep an open mind?

Applicable legislation

36. The relevant provisions of the *Act* are as follows:

3-1(1) In this Part and in Part IV:

...

(l) “**harassment**” means any inappropriate conduct, comment, display, action or gesture by a person:

(i) that either:

(A) is based on race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin; or

(B) subject to subsections (4) and (5), adversely affects the worker’s psychological or physical well-being and that the person knows or ought reasonably to know would cause a worker to be humiliated or intimidated; and

(ii) that constitutes a threat to the health or safety of the worker;

...

(4) To constitute harassment for the purposes of paragraph (1)(l)(i)(B), either of the following must be established:

(a) repeated conduct, comments, displays, actions or gestures; or

(b) a single, serious occurrence of conduct, or a single, serious comment, display, action or gesture, that has a lasting, harmful effect on the worker.

(5) For the purposes of paragraph (1)(l)(i)(B), harassment does not include any reasonable action that is taken by an employer, or a manager or supervisor employed or engaged by an employer, relating to the management and direction of the employer’s workers or the place of employment.

Section 3-1(1)(o) of the *Act* states that “occupational health and safety” means:

- (i) the promotion and maintenance of the highest degree of physical, mental and social well-being of workers;
- (ii) the prevention among workers of ill health caused by their working conditions;
- (iii) the protection of workers in their employment from factors adverse to their health;
- (iv) the placing and maintenance of workers in working environments that are adapted to their individual physiological and psychological conditions; and
- (v) the promotion and maintenance of a working environment that is free of harassment.

Section 3-8 of the *Act* states in part that:

3-8 Every employer shall:

- (a) ensure, insofar as is reasonably practicable, the health, safety and welfare at work of all of the employer's workers;
- (b) consult and co-operate in a timely manner with any occupational health committee or the occupational health and safety representative at the place of employment for the purpose of resolving concerns on matters of health, safety and welfare at work;
- ...
- (d) ensure, insofar as is reasonably practicable, that the employer's workers are not exposed to harassment with respect to any matter or circumstance arising out of the workers' employment;
- (e) co-operate with any other person exercising a duty imposed by this Part or the regulations made pursuant to this Part;
- ...
- (i) comply with this Part and the regulations made pursuant to this Part.

37. Section 3-25(1) of *The Occupational Health and Safety Regulations, 2020* (formerly in section 36 of *The Occupational Health and Safety Regulations, 1996* and hereinafter referred to as the "OH&S Regulations") require an employer to develop a harassment policy that includes the matters described in subsections (a) to (j) therein and section 3-25(2) of the regulations require an employer to implement the policy.

Analysis and Review of Evidence

Issue #1: Were the Complaints dealt with in a timely manner?

- 38. KC's immediate supervisor was Sharon Kimbley. Sharon Kimbley was the Director of Population Health Services. Ms. Kimbley testified that she communicated to Ms. Kimbley on March 21, 2013 by email that she wanted to speak with her regarding concerns she had with one of the staff members as soon as possible. (Exhibit A22).
- 39. In cross examination Ms. Kimbley stated that she did speak with PT about her behaviour and expected it would stop and that after these discussions with PT she felt the issue was dealt with by informal resolution.
- 40. There was some confusion and conflicting evidence on the issue of when the March 18 Staff Workplace Incident Report and the March 20 Staff Workplace Incident Report were filed and with who.
- 41. KC testified that she wanted to deal with the concerns that she had in workplace with PT prior to leaving the community. I take this to mean the concerns outlined in the March Staff Workplace Incident Reports. KC unable to arrange to meet immediately with her immediate supervisor, Sharon Kimbley on or about March 21, 2013, testified that she reached out to Iris Clarke and Sharon Taylor in Ms. Kimbley's absence.

42. KC's evidence was that she met with both Iris Clarke, who was Director of Human Resources at the time, and Sharon Taylor, who was Regional Coordinator for Organizational Wellness in March and hand delivered the March Staff Workplace Incident Reports to them. KC states that she never received any follow up from her Employer in response to the March Staff Workplace Incident Reports that were delivered by her in March of 2013 despite evidence of enquiries made by her of follow up as indicated in the email exchanges which were part of Exhibit A22:

Email #4 dated April 26, 2013, re: Weekend of May 3rd

From KC to Sharon Kimbley:

Hi Sharon:

Have you had a chance to talk with Iris Clarke about this? I haven't heard from Don Macdonald yet but have sent another remail to him today. Have you discussed the incidents I wrote up with PT yet? Cheryl and I are still interested in sharing a position but working together. Pls let me know.

Tks,

KC

Email #5 dated April 30, 2013, re: Weekend of May 3rd

From Sharon Kimbley to KC:

Hello KC,

I have discussed this with Iris (also Laura Scott from SAHO who is here today) and if you are in a job share you would not work together, you would work half and then your job share would work the other half.

I have had discussions with PT, but not specifically about the reports.

Please let me know if you are still interested in the position, or if you are interested in more days of casual work.

Thanks

Sharon

Email #6 dated May 1, 2013, re: Weekend of May 3rd

From KC to Sharon Kimbley

Hi Sharon:

What do you mean? Are you wanting to cancel the shifts I have booked May 20-23? If so, let me know asap. Is PT willing to job share? I would be willing to work opposite her. Also, what has been done in regard to the incident reports I filed? To my knowledge, there have been many reports filed in regards to her behaviour. I'm confused how she is able to continue like this. Pls let me know what your plans are with the schedule asap. Tks, KC

43. Iris Clarke testified that she had a chance meeting with KC in March of 2013. This was the first time she had ever met KC. At this meeting Iris Clarke stated that KC advised her that she went to see Sharon Taylor and brought some documents to her, something that she wanted on the record regarding PT as she "had some history with PT" and that she wanted this on the Employer's file in case in the future PT brought some complaint. Ms. Clarke denied that KC personally handed her these March Staff Workplace Incident Reports at this meeting as suggested by KC.
44. Sharon Taylor, now retired, was called by the Employer as a witness. Prior to her retirement Sharon Taylor held the position of Regional Coordinator for Organizational Wellness. Ms. Taylor recollects KC coming into her office and handing her some documents, presumably the March Staff Workplace Incident Reports pertaining to PT. Ms. Taylor's recollection was that KC told her she just wanted these Incident Reports to be on the file. She did not want anything done at that time.

45. Ms. Taylor stated that she personally did not do anything further with the Incident Reports filed with her in March of 2013 but believes she would have forwarded the information along to her immediate supervisor, Carol Gillis, as she had never dealt with harassment before, and she would have been seeking some direction on what it was she was supposed to do.
46. I do accept KC's evidence that she provided these two Incident Reports to Sharon Taylor in March of 2013. I do not accept that she also handed them to Ms. Clarke when they met in the coffee room or that there was a meeting with all three of Ms. Clarke, Ms. Taylor, and KC present. I accept Ms. Clarke's evidence that KC stated she was having some issues and that she wanted these documents on the file for now in case PT made a complaint to the SRNA about her.
47. Other than some informal conversations that Ms. Kimbley had with PT, I accept that nothing further was done by the Employer in the next few months to formally address the concerns raised in the March Staff Workplace Incident Reports. KC asked Ms. Kimbley whether she ever spoke to KC after she had discussions with PT. Ms. Kimbley did not recall any.
48. It appears from the Employer representatives involved that they were under the impression that KC was not seeking to make a formal complaint. The Employer did nothing further other than the informal discussions Ms. Kimbley had with PT.
49. Several months did go by. The next significant event in this case occurred in December of 2013. KC's evidence was that there was a further Staff Workplace Incident Report dated and signed by her on December 2, 2013, referring to the incidences occurring during work shifts during the period of November 18th to 23rd, 2013 and that this was given to the Employer.
50. KC also filed the Employee Respectful Workplace Form dated Dec. 6, 2013, referring to incidences occurring since Feb. 4/11 ongoing as per incident reports filed. KC stated that she thinks she filed this by mail, but could not say exactly when, but it was beginning of December 2013.
51. KC testified that she provided the Employer with the further January 2014 Employee Respectful Workplace Report regarding the alleged incident occurring on January 21, 2014, and that the Employer did not respond to this at the time. KC testified that she provided this form to Jean Marc Desmeules, who was the CEO at the time.
52. In cross examination KC also testified that she reported PT to the SRNA and that one of the reasons she did was because PT was harassing KC and that SRNA dismissed the claim.
53. Other factual background to this is that during the time frame from around December of 2013 to January of 2014 KC was needing to undergo an assessment of what was referred to as Transfer of Medical Function in order to maintain certain qualifications to practice as a Primary Care Nurse. This assessment was performed by nurse educator, PO, and there were separate issues, in terms of this assessment, which filtered their way into the harassment complaint and investigation that ultimately was done.

54. This created some challenges during the hearing as KC repeatedly brought up evidence to discredit the assessment of her Transfer of Medical Function assessment that was done in January of 2014 (Exhibit A24). KC sought to question witnesses Ms. Kimbley and PO about very specific findings made regarding her charting. I generally disallowed this line of questioning on the basis that it was not relevant to these proceedings. This was obviously a significant issue for KC and the issue repeatedly found its way into this hearing.
55. As outlined in paragraph 25 above, I found the issues around KC's transfer of medical function to be beyond the scope of this appeal and irrelevant to the Complaints. The specific allegation of harassment made respecting the events that occurred on the evening of January 21, 2014, pertained to alleged conduct and action of PO and SK on that evening. Evidence of findings made in the Transfer of Medical Function assessment completed in January of 2014 by the nurse educator at the time was a separate issue and I found this not to be relevant to the proceeding before me, being how the Employer handled the Harassment Complaints.
56. There was also evidence that the Employer was also negotiating separate matters with KC with the Saskatchewan Union of Nurses, and KC confirmed that a settlement was reached in respect of such issues. KC also filed a complaint with SRNA regarding the conduct of the individuals named in the Complaints. Ms. Berthelet submitted these circumstances were part of the reasons for the delay on the part of the Employer in dealing with the Harassment Complaints.
57. One of the first things OH&S advised KC to do was to inform the Employer of her expectation that her harassment complaints would be dealt with. KC did this by sending a letter to Jean-Marc Desmeules, CEO of the KYHA dated September 13, 2014 (Exhibit A2). If there was any question about whether KC was filing a formal harassment complaint before this, it is clear from this documentation that she now was.
58. KC followed up with OH&S on September 21, 2014, as to whether they had any contact with the Employer (Exhibit R7). OH&S sent a letter to the Employer on September 29, 2014. (Exhibit A13) requesting an update as to the status of the investigation no later than October 17, 2014.
59. In the record from the OH&S file there is email correspondence between OH&S and Ms. Taylor dated November 21, 2014, in which Ms. Taylor indicated that the incident had been re-opened.
60. A teleconference call that was scheduled for January 9, 2015. KC, Iris Clarke, Sharon Taylor, and Don MacDonald, the union representative, were present on this call. I am satisfied there was evidence, including KC's own notes of this call (Exhibit A23), to indicate that the intention on the part of the Employer of this call was to deal with or start the process of dealing with KC's Harassment Complaints.
61. OH&S sent a further letter to the Employer to the attention of Sharon Taylor on dated May 1, 2015, requesting a response to the September 29, 2014, letter that had been sent by May 15, 2015 (Exhibit A14).

62. KC in an email of May 25, 2015, to Shawn Tallmadge of OH&S stated "I was interviewed by Sharon Taylor and Iris Clarke on January 9, 2015, via teleconference. My SUN ERO Don Macdonald was also present. It was stated by Sharon Taylor that this was the initial interview regarding my reports. I have heard nothing since that telephone call." In this email KC expressed concerns, including investigator bias if the investigation was conducted internally (Exhibit R10).
63. From all of this, it appears that the Employer was purportedly investigating the matter internally, but nothing was happening very quickly.
64. By an email dated June 4, 2015, Ms. Taylor informed OH&S that the Employer decided to refer the matter to an outside investigator. (Exhibit A15).
65. In response to a further follow up email from OH&S on July 27, 2015, Ms. Taylor informed OH&S of the name of the Investigator, Ms. Corinne Pauliuk, of Vision Quest Advisors (Exhibit A15).
66. OH&S sent a further letter to the Employer on October 13, 2015, to follow up requesting an update as to the status of the investigation no later than October 23, 2015 (Exhibit A16).
67. On December 8, 2015, OH&S sent a further letter to the Employer requesting information on the employer's actions in the handling of KC's harassment complaint (Exhibit A17).
68. As evidence KC also referred to some handwritten notes in the OH&S file (marked as Exhibit A18) in which she claims are notes of the Occupational Health Officer that the Employer was "trying to get rid of her". I have reviewed this note and it appears to be notes of a telephone attendance on KC and find the more likely interpretation is that the note taker (whoever this was) was making notes on the file of their conversation with KC. The document is entitled PHONE CONTACT INFORMATION SHEET and has a date of Aug.7, 2014.
69. Ultimately Ms. Corrine Pauliuk investigated the Harassment Complaints and rendered the two reports in November of 2015.
70. KC was provided with a copy of the Investigation Reports as was OH&S. KC sent the OH&S officers written concerns that she had with the Investigation Reports on December 9, 2021 (Exhibit A11, A12, R16 and R17). The OH&S officers issued the Decision Letter on January 27, 2016.
71. I accept there was a significant delay between when KC submitted these complaints and when they were ultimately dealt with by the Employer. While the Employer may initially have had some misunderstanding of whether KC wanted this to be treated as a formal complaint and/or it had been dealt with informally, the Employer was made aware in September of 2014 that KC wanted the matter to be dealt with in accordance with the Employer's Policy as per the letter that was sent to the Employer dated September 13, 2014, sent to the attention of Jean-Marc Desmeules. The Employer did set up the initial conference call of January 9, 2015, and there was evidence of some internal investigation being done by Sharon Taylor, but then the decision was made in or around June of 2015 to hire an external investigator.

72. Generally, having regard to the above timelines and sequence of events, I find the time that passed from September 2014, when the September 14, 2014 letter was sent by KC to the Employer, to when a formal investigation was finally undertaken and concluded in November of 2015 was unreasonably long. The need to deal with other employment related matters concerning KC does not excuse the Employer from its obligation to deal with the Harassment Complaints in a timely manner.

Issue #2 – Was the investigation conducted by the third-party investigator fair, unbiased and thorough?

Was the Investigator biased at the outset?

73. KC had concerns with the choice of the investigator which she raised in an email with the OH&S officers in an email dated July 31, 2015 (Exhibits A4 and A5). KC questioned why the investigator was not chosen from a list in a process where she was involved. KC also suggested that Ms. Pauliuk had previously worked for the Employer.
74. Despite these concerns KC did acknowledge in an email to the Employer that Ms. Pauliuk appeared to be well qualified but preferred someone from outside of Saskatchewan (Exhibit R-15).
75. Ms. Sharon Taylor and Ms. Iris Clarke testified that Ms. Pauliuk did provide some workplace training to the Employer earlier in the year and it was after this training that the Employer reached out to her about conducting the investigation as she appeared to have the qualifications to do so. Ms. Taylor emailed Ms. Pauliuk in June of 2015 (Exhibits R50 and R51).
76. I am not satisfied there was any evidence to establish bias on the part of Ms. Pauliuk at the outset when the Employer retained her to conduct the investigation or prior to her conducting the investigation. Even though the Employer's Policy (Exhibit R1) contemplates the possibility of a joint selection I do not find it problematic that this was not done in this case. I am satisfied that Ms. Pauliuk did not have any bias or interest in the outcome of the investigation just because she provided some workplace training to the Employer in or about May of 2015.

Did the Investigator inappropriately expand the scope of her investigation, display bias during the process and fail to keep an open mind?

77. Ms. Pauliuk completed two Investigation Reports:
- a. Investigation Report dated November 19, 2015 – KC versus PT (Exhibit A9 and hereinafter referred to as "Report 1"). The report stated the interviews were conducted during the time period of September 21 to November 5, 2015, and that 12 people were interviewed either as witnesses or for obtaining facts about process and procedures. This report covered the following complaints:
 - i. March 18, 2013, Staff Workplace Incident Report - The investigator divided the complaint into three allegations and found PT to be in violation of KYRHA's Respectful Workplace – Disruptive Behaviors Policy for one of them and not in violation for the other two.
 - ii. March 20, 2013, Staff Workplace Incident Report – the Investigator found both PT and KC in violation of KYRHA's Respectful Workplace-Disruptive Behaviors Policy.

- iii. November 18-23, 2013, Staff Workplace Incident Report – The Investigator divided this complaint into 10 allegations and found PT to be in violation of KYRHAs’ Respectful Workplace – Disruptive Behavior Policy for 4 of them.
 - iv. December 6, 2013 Employee Respectful Workplace Policy – There were allegations dated back to February 4, 2011. Investigator found there was not enough evidence to make a determination respecting this allegation which dated back to 2011.
 - b. Investigation Report dated November 19, 2015 - KC versus PI and SK (Exhibit A10 and hereinafter referred to as “Report 2”). The report stated the interviews were conducted during the time period of September 21 to November 13, 2015, and that six people were interviewed. There was one allegation of harassment made by KC occurring on January 21, 2021, as described in the Employee Respectful Workplace Report Form dated January 21, 2014.
 - c. In Report 2, regarding the crux of the allegation of harassment that KC made of what was said and how it was said during the interchange that took place at the clinic among KC, PO, and SK, on January 21, 2014, the Investigator found:
 - i. Respondent #1 (PO) to be in violation of KYRHA’s Respectful Workplace – Disruptive Behaviors Policy (SP-414), KYHR Employee Handbook and SUN’s Article 4 – NO Discrimination/Harassment of their Collective Bargaining Agreement and the Saskatchewan Employment Act.
 - ii. Respondent #2 (SK) was not found to be in violation of any policies or legislation.
 - d. However, the Investigator went much further in Report 2 and in the investigation and found the Complainant, KC to be in violation of: KYRHA’s job description (inappropriate nursing documentation); KYRHA’s Privacy and Confidentiality Policy; and SRNA’s Code of Ethics.
78. KC submitted that the Investigator expanded the scope of her investigation to matters beyond the harassment complaint that she made.
79. Page 5 of Report 2 stated that the following document formed the basis of the complaint:
- a. Employee Respectful Workplace Form dated January 21, 2014.
80. Ms. Pauliuk who was called as a witness by KC confirmed the stated objective in the reports were to (i) determine if event as reported by the Complainant occurred, and if the events occurred as reported determine if they did, do they meet the definition of harassment in all of the pieces of legislation and in the employer’s policy.

81. In the introductory section of both reports, in addition to reference being made to the Employer's Respectful Workplace policies there is reference to the definition of harassment in: the Collective Bargaining Agreement, Saskatchewan Human Rights, the Saskatchewan Employment Act (OH&S), and the Criminal Code (?). It also states that due to the work environment being a health care facility, one must also take into account the Health Information Protection Act (HIPA) and KYRHA's Access to Personal Health Information Policy.
82. The harassment related complaint of KC referred to in Report 2 was specific and related to events that unfolded after hours at the clinic on January 21, 2014.
83. When asked by KC why Ms. Pauliuk went beyond the Employer's policy in investigating the Harassment Complaints Ms. Pauliuk stated that she followed the policy but if there was a void in the policy that provincial legislation prevails.
84. In Report 2 Ms. Pauliuk, among other things, went on to consider the facts and circumstances surrounding and leading up to KC's Transfer of Medical Function Assessment, and the assessment itself. Report 2 went beyond investigating the alleged single incident of harassment described in the January 21, 2014 Respectful Workplace Form.
85. There was no evidence presented by the Employer regarding the scope of what Ms. Pauliuk's investigation was to cover, other than general reference to the fact she was retained as an independent investigator to investigate the Harassment Complaints. There is reference in both reports that Ms. Pauliuk was also performing what was termed as a "root cause" analysis.
86. The case of *Shoan v. Attorney General of Canada*, 2016 FC 1003 was cited as authority by KC regarding when bias will be found on the part of an investigator. An investigation will be found to be flawed when there is evidence that an investigator did not remain neutral and keep an open mind throughout the investigation process.
87. In *Shoan* the Court found the Investigator drew conclusions that were not within the Investigator's mandate or "suggested by the substance of the complaint." Expansion of the scope of the investigation rendered the investigation procedurally unfair and supported a finding that the Investigator was closed minded and not "examining the Complainant objectively and fairly" [paragraph 99].
88. To the extent in this case Ms. Pauliuk expanded the scope of the investigation and failed to make KC aware that she was considering whether KC herself was in breach of professional code violations, violation of *The Health Information Protection Act*, the Employer's Privacy Policy, and the performance of job duties, etc. I would find this to be procedurally unfair and an indication of closed mindedness.

89. All of that said, I find that the issue of whether the Investigator inappropriately broadened the scope of the investigation to include such matters, being matters separate and apart from the very specific Harassment Complaints made by KC, is outside of my jurisdiction under the Act and beyond the scope of the appeal proceedings before me. I am without jurisdiction to determine any issues around the scope of and appropriateness of the investigation expanding to include matters unrelated to the Harassment Complaints. I do note from review Report 2 that it appears KC provided information to the investigator on matters that were unrelated to the specific Harassment Complaints.

90. KC in her written brief did state that any references to Ms. Pauliuk's conclusions and recommendations:

... are not my disagreement with them or an attempt to re-litigate the conclusions or recommendations. They are referenced to support that the processes Ms. Pauliuk utilized in her investigations which violated five Principles; 1. Due Process – Natural Justice, 2. Balance of Probabilities, 3. Reasonable Person Test, 4. Rules of Evidence, 5. Jurisprudence. [para 43]

91. As far as the investigation conducted of the Harassment Complaints, I find these were dealt with in Report 1 and Report 2. Notwithstanding the delay in dealing with the complaints I am satisfied they were ultimately dealt with. KC admitted in cross examination that Ms. Pauliuk did allow KC to present her side with respect to harassment. KC stated it was not the results of the investigation that she was not happy with, it was the process, which she submits was flawed.

92. One issue that was not brought up or specifically addressed by the parties in the hearing process was the content of the Employer's Harassment Policy marked as Exhibit R9. I do not know whether this Policy is the current Harassment Policy of the Employer. I raise this issue because upon review I find the Policy marked as Exhibit R1 to be deficient in that it does not include several the specific requirements of the OH&S Regulations. For example, it does not, *inter alia*, contain: (i) a definition of harassment that includes the definition in the Act, or (ii) a statement that every work is entitled to employment free of harassment. This matter has been outstanding for some time and it may be that the Employer's current policy meets these requirements.

93. To summarize my findings in this case:

- a. I find the scope of my review in this case is to consider whether the Employer complied with its obligations under the Act and regulations in responding to KC's Harassment Complaints. The Investigation Reports did address the Harassment Complaints and found some of the harassment complaints substantiated. One of the Respondents was disciplined. As such, I am satisfied that KC's Harassment Complaints were ultimately addressed by the Employer although it was not done in a timely manner.
- b. Having regards to my observations in paragraph 92 above I am going to include an order for review of the Employer's current Harassment/Respectful Workplace Policy.
- c. I find I am without jurisdiction to consider matters in the investigation and Investigation Reports that were unrelated to the Harassment Complaints.

Conclusion and Decision

94. Section 4-6 of the Act limits the powers of an adjudicator on appeal to dismiss, allow or vary the decision being appealed. Having regard to all of the foregoing I find it appropriate to *vary* the decision being appealed as follows:

- a. I find the Employer met its obligations under the Act by having the complaints of harassment made by KC investigated by an independent investigator. In this regard, while I have found that the Employer did not deal with the Harassment Complaints in a timely manner, I am satisfied in the result that the Employer ultimately did respond to the complaints of harassment and took appropriate measures to deal with them
- b. I hereby order the Employer to review its current Harassment/Respectful Workplace Policy to ensure it meets the current requirements of Section 3-25 of the OH&S Regulations and to take steps to update the Policy if required.

Dated the 15th day of November, 2021



Darlene Wingerak, Adjudicator

LRB File No. 020-16

IN THE MATTER OF: An Appeal to an Adjudicator pursuant to Section 3-53 of *The Saskatchewan Employment Act*, S.S. 2013, Chapter S-15.1

Decision Appealed from: Occupational Health Officers Decision
January 27, 2016

BETWEEN:

KC

APPELLANT

-and-

Keewatin Yatthe Regional Health Authority

RESPONDENT

-and-

Director of Occupational Health and Safety
Ministry of Labour Relations and Workplace Safety

RESPONDENT

Ruling on Application by the Appellant for an Order that the Respondent Produce Certain Medical Records

I. Overview and Issues

1. This decision is limited to an application made by the Appellant to have the Respondent produce certain medical records.
2. The Appellant appealed the January 27, 2016 decision of the Occupational Health and Safety ("OH & S") officers (the "Decision"). The Decision was regarding the written complaint made by the Appellant to OH & S on August 5, 2014 (the "Complaint"). The Appellant appealed the Decision on February 2, 2016. According to the Notice of Appeal the decision appealed against was:

The OH&S officers' decision that "the investigation was fair, unbiased and thorough" and "the employer has met the legislative requirements of the OH&S legislation."

3. The grounds for appeal were set out as follows:

As requested by the officers, I provided them with a detailed summary of valid concerns regarding the investigation/investigator on December 9, 2016. The decisions made by the OH&S officers in their letter dated January 27, 2016 does not provide any specifics regarding their decision and therefore is not transparent.

4. This matter was initially assigned to a different Adjudicator appointed on March 8, 2016. There was an application by the Appellant to set aside the previous Adjudicator's Selection due to delay and a request that the Board Registrar select another Adjudicator to hear the appeal pursuant to Section 4-7 of *The Saskatchewan Employment Act* (the "Act"). The application was granted pursuant an order of the Saskatchewan Labour Relations Board on July 20, 2020. I was appointed as the Adjudicator for the appeal of the Decision on August 5, 2020.
5. The hearing was scheduled to proceed on April 12, 2021 and April 13, 2021. A process direction was provided to the parties by email on March 11, 2021 respecting the conduct of the hearing and guidelines for what to expect. Pursuant to this process direction the parties were required to exchange relevant documents by March 31, 2021. The Appellant sent an email to me on March 31, 2021 inquiring about whether it was possible to subpoena some medical documents and if so, what was the process. A conference call was scheduled with both parties on April 8, 2021 to address this issue. The Appellant was requested that she identify the medical records that she was seeking which she did later in the day on April 8, 2021 by email to the Respondent's legal counsel. Legal counsel for the Respondent responded to the request with an email on Friday, April 9th indicating that the Respondent could not undertake to provide the confidential medical records in advance of the hearing. The response from the Respondent stated that the Employer could not undertake to provide the information in advance of the hearing due to confidentiality and concern with requirements to comply with *The Health Information Protection Act* SS. 1999, c H-0.021. The Appellant was asked to advise if she intended to request that the documents be subpoenaed. The Appellant indicated by email on April 10th that she did.
6. The hearing commenced on Monday, April 12, 2021 as scheduled. I was not prepared to delay or adjourn the hearing for the purpose of dealing with the late request that was made for these medical records and indicated I would allow the Appellant to renew her request at the end of presenting her case if she felt the need to do so.

7. The hearing was not completed by the end of day on Tuesday, April 13, 2021. At the end of the hearing day on April 13, 2021 the Appellant indicated she would give some further consideration as to whether she wanted to renew her request for a subpoena of the documents. The hearing was adjourned to Thursday, April 29, 2021 to reconvene at 9:30 a.m. via zoom.
8. On April 14, 2021 the Appellant inquired about whether if she subpoenaed the medical records whether she was obligated to use them. The Appellant then later confirmed she was seeking an order to have the medical records produced. I scheduled a conference call for April 21, 2021 to hear from the parties on this issue prior to the hearing being reconvened on Thursday April 29, 2021. It was agreed that the date scheduled for conclusion of the hearing on April 29, 2021 would be adjourned to a later date, and instead on April 29, 2021 the parties would make their submissions to me respecting the Appellant's request for production of the identified medical records. Both parties were provided with the opportunity to make submissions on this issue via zoom on April 29, 2021.
9. Following are the issues being considered by me in this matter arising mid-hearing:
 - a. Is it within my jurisdiction as Adjudicator to order production of the identified medical records?
 - b. Should an order for production be made in these circumstances?

II. Analysis

Issue #1: Is it within my jurisdiction as an Adjudicator to order production of the medical records?

10. Section 4-5 of *The Saskatchewan Employment Act* provides as follows:

4-5(1) In conducting an appeal or a hearing pursuant to this Part, an adjudicator has the following powers:

- (a) To require any party to provide particulars before or during an appeal or a hearing;
- (b) to require any party to produce documents or things that may be relevant to a matter before the adjudicator and to do so before or during an appeal or a hearing;
- (c) to do all or any of the following to the same extent as those powers are vested in the Court of Queen's Bench for the trial of civil actions:

- (i) to summon and enforce the attendance of witnesses;
 - (ii) to compel witnesses to give evidence on oath or otherwise;
 - (iii) to compel witnesses to produce documents or things;
 - (d) to administer oaths and affirmation;
 - (e) to receive and accept any evidence and information on oath, affirmation, affidavit or otherwise that the adjudicator considers appropriate, whether admissible in a court of law or not;
 - (f) to conduct any appeal or hearing using a means of telecommunications that permits the parties and the adjudicator to communicate with each other simultaneously;
 - (g) to adjourn or postpone the appeal or hearing.
11. According to section 4-5(1)(b) an Adjudicator does have jurisdiction to compel the production of medical records before or during an appeal or a hearing that may be relevant to the matter before the adjudicator. I am satisfied I have jurisdiction to make an order for production of documents.

Issue #2 – Should an order for production be made in these circumstances?

12. The issues raised in the appeal notice was whether the Occupational Health Officers who rendered the decision erred in their findings that the “investigation was fair unbiased and thorough” and that that “the employer has met the legislative requirements of the OH&S legislation. “
13. The records being requested are nursing notes for two patients the Appellant allegedly saw in November of 2013 and 6 unidentified charts more particularly described by the Appellant in an email of April 8, 2021. (the “Personal Health Information”).
14. Counsel for the Respondent argued that the Personal Health Information is not in control of the Respondent and for this reason 9999999999999999 cannot be produced. On this point the written brief of the Respondent provides as follows:

When the Appellant filed her notice of appeal on January 28, 2016, the Respondent was its own entity. On December 4, 2017, the Saskatchewan Health Authority (the “SHA”) was created, amalgamating twelve regional health authorities in Saskatchewan into one authority. The Respondent was one of these regional health authorities, and is now a part of, and governed by, the SHA. Accordingly, the Respondent submits that it is the SHA who has legal control of the Personal Health Information requested by the Appellant.

15. The rights and obligations that that Respondent would have had prior to amalgamation would continue with the successor corporation, SHA, arising through amalgamation. For the purposes of this decision the reference to the Respondent means the successor corporation, SHA, arising from the amalgamation. There is no dispute that SHA would have legal control of the Personal Health Information requested by the Appellant and ability to disclose subject to compliance with *The Health Information Protection Act* SS. 1999, c H-0.021.
16. This now brings me to the issue of whether the Personal Health Records are relevant to the proceedings before me and whether they should be disclosed in the circumstances.

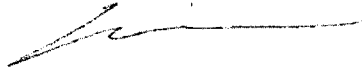
Are the Personal Health Records relevant to this appeal?

17. The Appellant submits the documents are relevant to the main appeal of the OH & S Officers decision of January 28, 2016 because they are directly linked to the appealable issues which the Appellant framed in her written brief as follows:
 - a. Did the OHS Officers err in determining that the Employer, met its legal obligations under the Saskatchewan Employment Act and Occupational Health & Safety Regulations by appointing Corrine Pauliuk to investigate harassment complaints on November 18 and 19, 2015, 2 ½ years after receiving written and verbal harassment concerns?
 - b. Did the OH& S Officers err in determining the investigation performed by Corrine Pauliuk on November 18 and 19, 2015 was fair, unbiased, and thorough?
18. According to the Appellant's written submission the charts are referenced in the Investigator's report, which forms part of the record of this appeal, and had a bearing on other issues arising between the Appellant and Respondent at the time of the alleged harassment. Specifically, there were allegations of poor nursing practice including patient care issues and proper charting by the Appellant. These other issues allegedly gave rise to or impacted complaints made about the Appellant to the Saskatchewan Registered Nurses Association and the assessment of the Appellant in terms of meeting the requirements for her "Transfer of Medical Function" (TMF) designation (the "Assessment").

19. The Respondent submits that the Personal Health Information is not relevant to any of the issues on this appeal as the circumstances of the Assessment were unrelated to the Appellant's allegations of harassment. The Respondent also submitted the application for production of the requested Personal Health Information should be dismissed for the following additional reasons: (i) the Appellant has not defined the requested the Personal Health Information in a manner that enables the Respondent to clearly identify what information is being requested; (ii) The Appellant filed her appeal of the decisions of the OH&S officers on January 28, 2016 and has had approximately 5 years to request the Personal Health Information and should not be permitted, at this stage in the proceedings, to further delay the hearing of the appeal; and (iii) Given the lack of probative value of the Personal Health Information to these proceedings, the public interest in ensuring privacy of patients' medical information far outweighs the Appellant's right to procedural fairness.
20. I have considered the submissions of both parties on this issue. I am not satisfied that it has been established that the Personal Health Information is relevant to the complaints of harassment that were the original subject of the complaint made by the Appellant to Occupational Health and Safety back in August of 2014.
21. There were obviously other issues that arose in the employment relationship as described in paragraph 18 above, but such issues are not properly the subject of this appeal which deals with the Employer's obligation to properly respond to complaints of harassment in the workplace, and as such are beyond the scope of my jurisdiction to consider. My jurisdiction is limited to considering the Appellant's complaint of harassment as defined by *The Saskatchewan Employment Act* and whether the Respondent failed to comply with its obligations under the Act or regulations, in dealing with the Respondent's complaints, including whether the investigation into the harassment complaint that was conducted was fair, unbiased, and thorough.
22. In addition to relevance not being sufficiently established for the purposes of this hearing I am also concerned with the further delay this would cause in the proceedings.
23. I do wish to make it clear however, this does not preclude the Appellant from making any argument based upon the evidence presented at the hearing respecting the scope of the investigation conducted and the investigation process, in terms of whether it was fair, unbiased, or thorough.

24. For the above reasons, the Appellant's request for an order that the Respondent produce the Personal Information is dismissed. I will be in touch with the parties to schedule the date for the hearing to be reconvened and concluded.

Dated at Saskatoon, Saskatchewan this 14th day of July, 2021



Darlene Wingerak, Adjudicator