IN THE MATTER OF AN ARBITRATION
Pursuant to the *Labour Relations Act,* R.S. 1995

BETWEEN:

TORONTO COMMUNITY HOUSING CORPORATION

("Employer")

- **and –**

TORONTO CIVIC EMPLOYEES' UNION, LOCAL 416, CUPE

("Union")

(Grievance of J. Knight)

ARBITRATOR: Jasbir Parmar

On Behalf of the Employer:

William LeMay, Counsel
Michelle Folliott, Student-at-Law
Christina Henderin, Legal Counsel

On Behalf of the Union:

Danna Morrison, Counsel
Domenic Maugeri, Unit Chair
Joy Knight, Grievor

This matter was heard on September 18, 26, 27, 2012, and March 8, March 20, April 4, and May 7, 2013.

I. INTRODUCTION

1. This decision deals with a grievance filed by the Grievor on January 28, 2010, alleging the Employer failed to accommodate her.

2. The Grievor has also filed a complaint with the Human Rights Tribunal. The parties, including the Grievor, all expressly agree that the issues argued and being determined in this arbitration are identical to the issues raised in her complaint.

II. BACKGROUND

3. The Employer operates and manages a number of housing units. The Grievor has been employed by the Employer since 1991, becoming a full-time permanent employee in 1994. At the time of hire, her job position was titled General Maintenance Mechanic, and she performed largely cleaning/caretaker functions. At the time of the grievance, she was a member of Local 416.

4. The Grievor has a long history of health issues. Since 1996, she has had permanent physical restrictions which impacted on the performance of her job. The Employer has accommodated those restrictions over the years in a variety of ways, including changing her specific tasks, transferring her to different locations, and having other employees help with some of her tasks.

5. Unfortunately, the Grievor's physical health continued to decline, and by late 2005, she was medically fit to perform only light and sedentary duties. For a few months she was assigned temporary work in her Operating Unit in an office-type role. When it became evident that these restrictions were permanent, the Employer engaged in an assessment to determine what position may be suitable for the Grievor. This assessment included an

Independent Medical Assessment and an assessment by an ergonomic/rehabilitation consultant.

6. It was determined, and agreed to by the Union, that there were no positions in the Local 416 bargaining unit that were suitable for the worker. The Employer determined that the position of Maintenance Enquiry Clerk (MEC), in the call centre, which is in the Local 79 bargaining unit, was suitable and offered the Grievor this position. She accepted and started in that role in December 2006. Training was provided through job-shadowing. The Grievor remained in this role until February 28, 2007, when she fell and injured herself, and was off work for a period of more than two years.

7. The Grievor returned to her role as a MEC clerk on October 5, 2009. She was then provided training again, along with other new hires. This training consisted of both classroom training and job-shadowing. By all accounts, the Grievor had difficulties in this role. The essential nature of the job is to electronically monitor alarm signals that come from the various buildings managed by the Employer, and respond to the signals. If a fire signal was triggered, it was the Grievor's job to contact the fire department and dispatch them to the identified location. On December 17, 2009, after the Grievor, in response to a fire signal, had dispatched the fire department to the wrong address, the Employer removed her from the alarm-monitoring portion of that role (which is the main part of the job), and assigned her some administrative duties.

8. On January 26, 2010, the Grievor was advised, in a meeting with her union representative, that it had determined she was not capable of performing the MEC role, and that the Employer did not have any other suitable work for her. She was then sent home.

9. The Grievor subsequently filed a grievance. The Union and Employer agreed the Employer would engage in another search for suitable work for the Grievor. It is agreed the Employer did so, and this search included meeting with the Grievor to review her physical

limitations and also her skills and abilities. On July 7, 2010, the Grievor was advised the Employer did not have any suitable work for her, and she was asked to advise the Employer if her condition changed at any point in the future.

II. PARTIES' SUBMISSIONS

10. The Union submits that the duty to accommodate places a high burden on the Employer, and that the Employer has not met that burden. In this respect, the Union submits that the Employer has not met its duty to accommodate because it did not meet with the Union and Grievor to discuss available jobs. The Union doesn't actually suggest that the Grievor had in fact demonstrated that she was capable of performing the MEC role. Rather, the Union submits that there is no objective, quantifiable evidence that it would be a hardship to provide more training to the Grievor in the MEC role, or to place her in either a CCA clerk role or a Clerk 3 role, at least by way of a trial or with modifications in place. By way of remedy, the Union seeks an order directing the Employer to meet with the Union and Grievor when vacancies arise for positions that are within the Grievor's physical limitations to discuss whether such vacancy would be suitable for the Grievor.

11. The Union relied on the following: Ontario Human Rights Commission, *Policy and Guidelines on Disability and the Duty to Accommodate*, December 2009; *B.C. (Public Service Employee Relations Commission) v. B.C.G.S.E.U (Meiorin Grievance)*, [1999] 3 S.C.R. 3; *B.C. (Superintendant of Motor Vehicles) v. B.C. (Council of Human Rights)*, 1999} 3 S.C.R. 868; *Air Canada v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW – Canada) Local 2213 (Bird Grievance)*, [2001] C.L.A.D. No. 522; *Toronto (City) v. C.U.P.E., Local 79 (Clark Grievance),* [2003] O.L.A.A. No. 676; *Hydro-Quebec v. Syndicat des employees de techniques professionnelles et de bureau d'Hydro-Quebec, section locale 2000 (SCFP_FTQ),* [2008] 2 S.C.R. 561; *Scott's No Frills*

and U.F.C.W Canada, Local 1000A, 2011 CanLII 98746 (Nairn); and *Waterloo Catholic District School Board – and – C.U.P.E., Local 2512*, 2012 CanLII 51844 (Rayner).

12. The Employer submits that there is no breach of the collective agreement or the *Human Rights Code,* because despite its attempts, it simply is not able to provide the Grievor with any suitable work. The Employer submits the Grievor was placed in the MEC role with the understanding that it was the simplest role in the call centre and thus would be suitable for the Grievor. However, the Employer submits, despite providing the Grievor with extensive training and coaching, the Grievor was unable to perform the duties of the position. The Employer also submits that the other two positions suggested by the Union were in fact considered by the Employer but determined to be unsuitable. It was noted that the CCA role, which is also in the call centre, is more complex and requires a higher skill level than the MEC role. It was also noted that the Clerk 3 role requires similar skills to those which the Grievor had difficulty with in the MEC role. With respect to the suggestion that the Grievor should have been provided more training, the Employer submits that it is not required to provide training indefinitely. Furthermore, it notes that it did provide the Grievor with more training than other new hires are given, and that it was evident from the nature of the Grievor's difficulties that there was little value in additional training. The Employer also notes that its obligation under the *Code* is to accommodate the Grievor's physical disability; not to lower skill and performance standards which the Grievor is unable to meet without regard to her physical abilities.

13. The Employer relied on the following: *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (BCCA); *Robert Coulter v. C.H.R.C. v. Purolator Courier Limited*, 2004 CHRT 37; *Ontario Liquor Boards Employees' Union v. Ontario (Liquor Control Board)(Di Carol Grievance)*, [2005] O.G.S.B.A. No. 60; *OPSEU v. Ontario (Ministry of Community Safety and Correctional Services) (Hart-Day Grievance)*, [2011] O.G.S.B.A. No. 107; *Coast Mountain Bus Co.*

National Automobile, Aerospace, Transportation and General Workers of Canada, Local 111 (Young Grievance), [2005] B.C.C.A.A.A. No. 77 (Dorsey); *United Nurses of Alberta, Local 33 v. Capital Health Authority (Brake Grievance)*, [2002] A.G.A.A. No. 77, upheld, [2004] A.J. NO. 1471 (Alta C.A.); *Worobetz v.Canada (Canada Post Corp.),* [1995] C.H.R.D. No. 1; *Saskatchewan Union of Nurses v. Regina Qu'Appelle Health Region (Humphreys Grievance)* (2005), 139 L.A.C. (4th) 244; *Government of the Province of B.C. – and – B.C.G.S.E.U. (Paul Daniels Grievance*, [1993] B.C.L.R.B.D. No. 362; and *Groulx and Senate of Canada (Gentleman Usher of the Black Rod,* [1991] C.P.S.S.R.B. No. 77.

IV. ANALYSIS

14. There is no dispute in this case that the Employer has taken steps to accommodate the Grievor. The issue is whether, in doing so, the Employer has discharged its duty to accommodate the Grievor to the point of undue hardship.

15. It is useful to note, and of significance, that while this grievance was filed upon the Grievor being advised she was being removed from the MEC role and that the Employer did not have any suitable work for her, this is not a discharge grievance. It has not been alleged that the Grievor was removed from her position without just cause. Rather, the Union's concerns about the Grievor's removal from this position, and the workplace on the whole, is tied directly to the fact the Grievor has a disability.

16. It is also useful to review the evidence about the Grievor's time in the MEC role. There was little dispute about the key facts that occurred during that period. While there was some dispute about certain facts, in my view, those facts are largely immaterial to the issues in dispute.

17. The Grievor was placed in the position of MEC in an attempt to accommodate the fact that her physical condition was such that she was only able to perform light sedentary work, and there were no positions in her home bargaining unit which were suitable. The MEC position was consistent with those physical requirements. The nature of the MEC role involved working at a call centre, and was largely computer and telephone-based. Whether this role was a suitable role for the Grievor, in terms of being consistent with her skills, abilities, and aptitude, was somewhat questionable from the outset. The Grievor herself stated that she had concerns about this position, and in fact voiced those concerns, from the first time it was mentioned to her in 2006. The concerns stemmed from two facts: one, the worker's work experience was largely as a cleaner, which was not in an office environment, and two, the role involved alarm monitoring, which by its nature, of involving life safety issues, would have a certain level of stress. However, the Employer was of the view that she would able to perform the duties satisfactorily. It appears this view was based on the fact that she had some computer and customer service experience which they viewed as transferable, that there would be training provided, and that the MEC role was an entry-level position, and therefore the simplest in respect of skill requirements, in the call centre.

18. The Grievor was provided training for this role, and the key issue is whether she was provided sufficient training. While there was a fair bit of evidence about comments that were made by management about the length of training that would be provided, those comments were made at a time when training was done differently. I find the Grievor was provided sufficient training to be able to demonstrate the ability to do this job. In fact, not only was she provided training that was sufficient for other employees to succeed in that role, but she was provided more than that provided to other new employees. First, she had training by way of shadowing from December 2006 through February 2007. While this was followed by a lengthy absence from the workplace, it certainly provided her with greater context than the new employees who started with her in Fall 2009. Second, she received training by way of

shadowing for a couple weeks prior to the start of the classroom training, which other new employees did not receive. Third, I accept Mr. Lewis' evidence that he provided her with extra assistance during the classroom portion of the training, assisting her during breaks whenever requested. While the Grievor suggested that one of the other two new employees was provided more than she was, this assertion does not accord with what is probable. By the Grievor's own admission, Mr. Lewis did assist her during some breaks because she was having some trouble and the other employees were grasping concepts faster. It does not make any sense that Mr. Lewis would have provided greater assistance to the other employees if they actually did not need it.

19. I also accept Mr. Lewis' evidence that he provided the Grievor with extensive coaching after she began working in the role independently. This evidence was consistent with the numerous emails which documented the fact that the Grievor was provided further instruction in writing and that she was provided ongoing coaching and discussions. The Grievor acknowledged that Mr. Lewis did assist her and also did come and speak with her when she asked, but suggested that he became unavailable towards the latter part of her time in that role. However, there is an email dated December 7, less than 10 days before she was removed from the computers, where the Grievor requests Mr. Lewis speak with her about an issue, and he replies acknowledging her request and sets a time on her very next shift to do so. Whether or not Mr. Lewis may have been unavailable on some occasion, the evidence indicates he provided her with extensive assistance even after formal training was completed.

20. Despite this, all of the evidence suggests that the Grievor did not adequately perform in this role. I accept Mr. Lewis' evidence, documented via numerous emails, that the Grievor made many mistakes despite being trained on the proper procedures, and also repeated the same mistakes despite being advised of the proper procedures. I note that a number of

those emails contained instances of poor or inadequate performance being brought to Mr. Lewis' attention by other staff and supervisors. I highlight this because it independently confirms Mr. Lewis' view that the Grievor was not performing adequately. Furthermore, the Grievor's score of 19.4% on the written test supports this conclusion. Mr. Lewis noted that while 80% is considered an acceptable score, he did not know of any employee that received less than 50% on this test. This suggests that the Grievor's performance was well-outside the range of performance of other employees. The Grievor stated that she does not do well on tests (her explanation for this being simply that she hasn't done any tests for years). However, I observe that the score on the test, rather than being an aberration, is actually consistent with the description of Mr. Lewis about her performance in the role itself.

21. Notably, neither the Union nor the Grievor suggested the Grievor had demonstrated she was capable of performing the MEC role. Rather, the issue is whether the Employer, in order to meet its duty to accommodate, should have kept the Grievor in the role regardless of the fact that she hadn't.

22. The law with respect to accommodation is well-established. An employee who has a physical disability that impairs his or her ability to perform her job is entitled to be accommodated, to the point of undue hardship. In understanding whether the duty to accommodate has been met, it is important to understand the intended purpose of the duty. I refer to the following excerpt from *Hydro-Quebec*, where the Court quoted a passage from an earlier Supreme Court of Canada decision:

> [13]…….L'heureux-Dube J. accurately described the objective of protecting handicapped persons in this context in *Quebec (Commission des droits de la personne et des route de la jeunesse) v. Montreal (City)*, [2000] 1 S.C.R. 665, 2000 SCC 27, at para. 36:
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> > The purpose of Canadian human rights legislation is to protect against discrimination and to guarantee rights and freedoms. With respect to employment, its more specific objective is to eliminate exclusion that is arbitrary and based on preconceived ideas concerning personal characteristics which, when the duty to accommodate is taken into account, do not affect a person's ability to do a job.
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> [14] As L'Heureux-Dube J. stated, the goal of accommodation is to ensure that an employee who is able to work can do so. In practice, this means that the employer must

> accommodate the employee in a way that, while not causing the employer undue hardship, will ensure that the employee can work. The purpose of the duty to accommodate is to ensure that persons who are otherwise fit to work are not unfairly excluded where working conditions can be adjusted without undue hardship.

23. As demonstrated by the above passage, the purpose of accommodation is to ensure that the fact that an individual has a disability does not form a basis to exclude the individual from the workplace. In other words, accommodation is not about ensuring the individual remains in the workplace, but rather to ensure *the disability* is not a basis to exclude the individual. The requirement that the individual be "otherwise fit to work" remains unaltered.

24. This is significant, because the reasons for removing the Grievor from the MEC role, and the reasons for not placing her in the Clerk 3 and CCA roles, are not tied to the Grievor's physical disability. The Grievor's physical disability does not impact her ability to perform any of these roles.

25. Of the many cases cited by both the Union and the Employer, there are only a few that address the issue of an individual's rights with respect to a position where the performance of that position is not impacted by the individual's disability.

26. In *Robert Coulter, supra*, the employer was unable to accommodate the complainant in his role as a courier which he was not able to perform as a result of a physical disability. The employer offered to consider the complainant for a clerical position, a role which was consistent with his physical restrictions. The complainant wrote proficiency tests for two clerical positions and passed. He accepted the employer's offer to place him in one of the clerical positions. Some five months later, the employer terminated the grievor from this role on the basis of the poor quality of his work. The Complainant attempted to argue that the conditions around his placement in that role should be considered in the context of his discrimination complaint. The Tribunal rejected that argument with the following passage

> [130] Does the duty to accommodate require that the employment relationship be maintained at all costs? The duty to accommodate must be approached with some common sense. When the Complainant accepted a position that completely suited his abilities, he no

> longer required special accommodation for his limitations. The evidence does not show that the complainant had any limitation in his operator position. His problems in this position were essentially performance-related. From then on, he was subject to the same rules and performance evaluation as all the other employees.

27. In *Coast Mountain Bus Co, supra,* the grievor was unable to continue in her role as a transit operator because of a physical disability. The employer agreed to consider her for a vacancy as a call centre clerk, which was consistent with the grievor's physical limitations. The grievor underwent the written testing process, which assessed skill level, which all applicants were asked to complete. There was a threshold level of performance on the tests required to qualify for an interview. The grievor did not meet this threshold by 1%, and she was not afforded an interview. The union in that case argued that the standard should have been lowered, in order to afford the grievor access to a position that was suitable for her physical restrictions, or that she should have been afforded some training or a trial period in the job. The arbitrator rejected those arguments on the basis that the grievor's performance on the tests was unrelated to her disability. He stated the employer was not obliged to lower its standards in such a case. He also specifically rejected the suggestion the employer was obliged to provide skills training for a position the grievor was not hired to do, noting the grievor's disability didn't preclude her from acquiring other skills on her own.

28. The idea that there is an obligation to modify a position which is consistent with an individual's physical restrictions was also rejected in *Saskatchewan Union of Nurses, supra*. In that case, the grievor had applied for a position and been unsuccessful. While the union's initial argument was that the collective agreement job posting provisions were breached, in the alternative it argued that the denying the grievor the job was a violation of the duty to accommodate her disability. The arbitrator found that the employer's conclusion that the grievor did not have the required abilities to do the job was correct. In respect of the alternative accommodation argument, he stated that since her disability would not impact her performance in the role, there was no requirement to modify the position.

29. All of these cases suggest that there is no obligation on an employer to modify a job for a disabled employee to address performance/skill deficiencies that have nothing to do with the employee's disability. The Union suggested that this interpretation of the duty to accommodate could not be what was intended, because this would permit employers to place disabled employees in jobs that were beyond their skill level in such a manner that would result in their failure. I fail to appreciate the Union's concern in this respect. The duty to accommodate remains, such that an employer has the obligation to provide a grievor with work that addresses her physical restrictions. If there is a job that is consistent with her restrictions that she is capable of performing, the employer is obliged to offer it to her.

30. However, the underlying issue raised by the Union's position in this case is about when there is no such job. In the Union's submission, in such a case, if there is a job but the grievor does not have the capability to perform that job, then a grievor would be entitled to some accommodation in that job. In my view, the jurisprudence does not support such a conclusion. The purpose of accommodation is to ensure that disabled employees are not unfairly excluded as a result of a disability. There is nothing unfair about a person not being given a job because he or she doesn't have the skills to adequately perform that job for reasons unrelated to the disability. That is the case for all employees. An individual who happens to have a disability is not entitled to any different treatment, or any greater level of job security, when the existence of the disability is unrelated to whether he or she can meet the skill and performance requirements.

31. In the present case, the Grievor had significant performance-related issues in the MEC role, and there is no suggestion that any of these problems was impacted by her disability. I accept Mr. Lewis' opinion that, despite the training and coaching provided to the Grievor, she was not able to meet the performance standards of this position. My reason for doing so is that this opinion was based on his knowledge of the role as both a supervisor and a trainer.

This is not an “impressionistic” opinion, but rather actual observation of the Grievor’s performance in the role.

32. Notably, the Union doesn’t suggest that the Grievor, after all of this training and working in the job, had demonstrated she was able to meet the performance standards. Rather, it is submitted that the Employer should have provided her with even further training in the MEC role. First, I observe that training was provided and that the Grievor was actually given extra training and assistance than other new employees. Second, I observe, that the evidence suggests that further training would be of little value. As noted by Mr. Lewis, the Grievor’s performance on the written test was so poor that it demonstrated a fundamental lack of understanding of the work. In such a case, the Employer’s conclusion that further training would serve little purpose was reasonable. The jurisprudence is clear that even when there is some obligation to provide training, there must be some evidence to reasonably suggest that such training would actually result in the employee’s success (see *United Nurses of Alberta, Local 33, supra* and *Worobetz, supra).* In the present case, the Union has simply asserted that further training should have been provided. There was no evidence suggesting that further training would change things. In fact, the Grievor’s own evidence is very telling in this respect. The Grievor stated she knew she was making mistakes in the MEC role, but didn’t know that those mistakes were placing her continuation in the role at risk. When asked what she would have done if she did know that, she stated she would have contacted her union. When asked for what purpose, she didn’t say anything about obtaining assistance to improve her performance. Rather, she stated so the Union could help her get *a different* job. Similarly, when asked what she would like to happen after this hearing, she stated she would like to get back to work. When asked which job, even then she did not state the MEC job, but rather said she couldn’t really say. Quite frankly, the Grievor knows she simply does not have the skills to perform the MEC role.

33. I have a similar view about the other two jobs identified by the Union, the roles of CCA and Clerk 3. I accept the Employer's evidence, from Mr. Ramsamujh (Human Resources Consultant) and Mr. Leah (the Director responsible for HSI), that the Grievor was considered for these roles, but determined not to be suitable given her performance in the MEC role. I accept the Employer's evidence that the skills which the Grievor was incapable of properly performing in the MEC role were skills that were also necessary for the other roles. In such a case, it was reasonable for the Employer to conclude that she would not be able to meet the requirements of those roles.

34. The Union suggested that perhaps the Employer did not actually consider the Clerk 3 job, because while Mr. Ramsamujh stated he discussed this role with Mr. Lewis, Mr. Lewis stated that no one discussed the Clerk 3 role for the grievor with him. I'm not sure that this discrepancy between Mr. Lewis and Mr. Ramsamujh is sufficient to conclude that means the Clerk 3 role wasn't considered for the Grievor. An email from Mr. Ramsamujh clearly indicates he was exploring placing her in that role. I think it odd that he would have started exploring it, but then simply dropped it. I also note that Mr. Leah indicated he had discussions with Human Resources about whether the Grievor could be accommodated in other positions in his area. While Mr. Ramsamujh stated that Mr. Leah never responded to Mr. Ramsamujh's about the Clerk 3 role, it is possible that Mr. Ramsamujh is simply mistaken about with whom he had this discussion, rather than whether he had it at all.

35. I also note that even if that were not the case, and the Employer did not actually consider the Clerk 3 position at the time, that is largely irrelevant to the final outcome of this case. First, I note that as part of an agreement in early 2010, the Employer agreed to again canvas suitable work for the Grievor, and there is no issue that it complied with and fulfilled this agreement. There is no reason to assume that Clerk 3 positions were not considered. Second, the evidence about the duties of the Clerk 3 position does not support the

conclusion that the Grievor actually has the skills to do this work. This is a fast-paced, high volume position, requiring both computer skills and accuracy skills. These are the very skills the evidence indicates the Grievor failed to demonstrate competently in the MEC role. It is telling that the Union did not assert she was capable of performing this role, but rather that there would be no hardship in modifying the performance standards for that role or trying her in that role. As I stated above, given that the Grievor's skill level in respect of this role is not impacted by her disability, she must meet the same standards as other employees for this role.

36. I observe the only evidence to suggest the Grievor might actually have the skills to perform one of these roles was from the Grievor. She indicated she had performed certain duties during her tenure with the Employer which were subsequently transferred to the CCA role. This evidence is insufficient to draw the conclusion that the Grievor has the ability to adequately perform this role. First, there is no evidence those duties were being performed in the same manner by CCAs. Second, the CCA role clearly has numerous other duties which the Grievor has never performed and in fact is not even aware of given she has never worked in this area. I prefer the evidence of Mr. Leah who, as the director for this area, has a more thorough understanding of the nature of the CCA duties. I accept his evidence that the CCA role, while somewhat different from the MEC role, is in fact actually a more complex one requiring advanced skills as compared to the MEC role. I accept his opinion, given the Grievor's lack of success in the MEC role, and in particular her undisputed challenges around computer competency and speaking with individuals over the telephone while navigating the computer programs, that she would not be suitable for that role. As the reason for her unsuitability is based on her skills, rather than being related to her disability, she is not entitled to any modified performance standards in respect of that role.

37. The Union also argued that the duty to accommodate had been violated because the Employer did not meet with the Grievor and the Union to review possible jobs that were consistent with the Grievor's physical limitations. I am in agreement with the analysis of Arbitrator Dissanyake in *OPSEU v. Ontario (Min. of Community Safety and Correctional Services), supra,* wherein he concluded there is no independent procedural obligation to meet with the Grievor and the Union. The focus is on whether the duty to accommodate has been met. The failure to have such a meeting may be a relevant factor if an employer fails to consider all the relevant information. In the present case, there is no suggestion that the Employer failed to consider any relevant information, or even that the Union and Grievor could have provided any useful information to the Employer during such a meeting. Mr. Maugeri, Local 416 Unit Chair, was quite honest and frank in acknowledging that he would be unable to provide the Employer any useful information about potential jobs in Local 79 as he did not have any knowledge about those jobs, and that, as such, he would have had to rely on the Employer's opinion about the suitability of such jobs. Thus, in the present case, I find that the fact that such a meeting did not occur does not alter the outcome.

38. In summary, the Employer's most recent efforts at accommodating the Grievor have been reasonable. It turns out the Grievor was, unfortunately, correct when she had concerns about the MEC job. However, her removal from this job and the fact that she has not been given either the Clerk 3 or CCA jobs has nothing to do with her disability. It is because she does not have the skills for those jobs.

39. I want to mention also that these events should not be interpreted by the Grievor as the Employer having a negative view of her as an employee. Rather, they suggest the opposite. For years, the Grievor's ability to perform her job duties has been impacted by her physical disability, and the Employer made numerous efforts to ensure she was nonetheless able to remain in the workplace. Even now, there has been no suggestion that the Grievor did not

make a diligent effort to meet the performance standards of the MEC job, or that they did not want her to continue in the workplace. Even when the MEC role didn't work out, the Employer still tried to find her another position. However, the Employer's obligations to accommodate her disability only go as far as jobs for which she actually has the skills. The evidence indicates the Employer has looked, but, unfortunately, there is no such position.

V. DISPOSITION

40. The Employer's actions have been consistent with its duty to accommodate the Grievor to the point of undue hardship. There has been no breach of her rights under the collective agreement or the *Human Rights Code*.

41. The grievance is dismissed.

Dated this 5th day of June, 2013.

Jasbir Parmar