

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN**

**LONDON DISTRICT CATHOLIC SCHOOL BOARD**

**-and-**

**ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION**

**GRIEVANCE OF MYRIAM MICHAIL**

**INTERIM CONSENT AWARD**

Arbitrator: Richard Brown

For the Union: David Bloom

For the Employer: Chris White

Hearing: May 25, June 15, November 8 and 20, 2012  
London, Ontario

This matter involves a grievance dated April 13, 2011 which, together with a letter dated January 17, 2011 (which letter the parties agree should actually have been dated January 17, 2012) further particularizing the matters which are the subject of the grievance, is attached as Schedule "A" to this Interim Consent Award.

The parties were able to achieve agreement on a number of procedural and substantive issues including compensation for Ms. Michail's monetary loss, an arrangement for Ms. Michail's ongoing accommodation in a position consistent with her medical restrictions and an agreement that I would be given jurisdiction with respect to any future issues between the parties arising out of Ms. Michail's employment with the Board.

Unfortunately, the parties were unable to achieve a resolution on the question as to whether the Board violated the Collective Agreement and/or the Ontario *Human Rights Code* as well as the

issue of any additional remedies (e.g. remedies for emotional distress, breaches of the Ontario *Human Rights Code* etc.) to which Ms. Michail might be entitled as a consequence of the conduct of the Board and its alleged failures as set out in Schedule “A”, or as required by law. It was, however, agreed that this issue would be submitted to mediation-arbitration pursuant to s. 50 of the *Labour Relations Act*, with me acting as the mediator-arbitrator. If appointed as mediator-arbitrator, I would be empowered by s. 50(8), when acting as arbitrator, to “limit the nature and extent of evidence and submissions.”

Accordingly, I hereby issue an interim consent award incorporating the terms and conditions agreed by the parties, as follows:

1. The Board shall pay the Grievor the sum of \$17,500.00 subject to those deductions required by law. The payment shall be made to Ms. Michail within two (2) weeks of the date of this Consent Award, if it has not been previously provided.
2. Ms. Michail shall indemnify and save harmless the Board in respect of any claims, demands, payments etc. by third parties, including governmental authorities, required as result of the payment made to her pursuant to paragraph 1, above.
3. Ms. Michail shall continue to be assigned as a guidance teacher at Regina Mundi College for the balance of the 2012/13 school year.
4. Based on the medical information provided by Ms. Michail, it is hereby confirmed that Ms. Michail is disabled such that she requires ongoing accommodation as follows:
  - i) permanent assignment as a guidance teacher;
  - ii) no placements outside the City of London; and
  - iii) no on-call assignments
5. In accordance with paragraph 4, above, Ms. Michail shall be placed in a permanent assignment as a guidance teacher commencing with the 2013/14 school year. The Board and the Association shall coordinate Ms. Michail’s placement having regard to the accommodation requirements outlined in paragraph 4, above.
6. Ms. Michail shall be provided with two (2) additional professional development days in the 2012/13 school year. It is anticipated that the professional development days will occur at John Paul II Catholic High School and will involve mentoring and job-shadowing activities within the guidance department at that school.

7. Ms. Michail shall be provided with a letter in the form attached as Schedule "B" to these Minutes of Settlement.

8. Each of the parties and Ms. Michail having agreed and undertaken that it is necessary that they should work together in good faith to facilitate a successful and positive working relationship, without limiting the generality of the foregoing, it is ordered as follows:

- i) in the event of a change in her medical condition, Ms. Michail shall provide the Board with updated information respecting her disability, medical restrictions and accommodation requirements;
- ii) having regard to the ongoing nature of the accommodation obligation, the Board will take reasonable steps to ensure a healthy work environment for Ms. Michail; and
- iii) the parties and Ms. Michail shall utilize the Board's Health and Wellness team to facilitate ongoing communication respecting the management of issues arising out of Ms. Michail's disability and accommodation.

9. It is hereby noted that the Board and the Association have agreed and undertaken that this Consent Award and the terms and conditions set out herein shall not be relied upon or referenced by either of them in any other proceedings between them (i.e. those which involve grievances dealing with members of the Association other than Ms. Michail), except those which may be commenced directly pursuant to the Consent Award. It is understood that the Association may seek to rely on any findings in this proceeding against the Board in any future dispute pertaining to the Board's treatment of Ms. Michail.

10. Ms. Michail has further confirmed that she has been advised of the respective rights and obligations of the parties and her under the Ontario *Human Rights Code* and that she has voluntarily and freely communicated her concurrence that this Consent Award should be issued.

11. Having regard to the agreement and undertaking of the parties and Ms. Michail, I shall remain seized of any issues involving the interpretation, application or enforcement of this Consent Award, together with any and all future issues that may arise between the parties which are connected to the Grievor's employment by the Board and the terms and conditions of such employment, including ongoing accommodation of her disability. It is understood that any future issues that may arise shall be dealt with as a continuation of this proceeding and that I may consider any findings of fact previously made in this proceeding. The processes to be utilized shall be determined in accordance with the provisions of the Collective Agreement or as may be otherwise agreed by the parties.

DATED this 12 day of April, 2013.

  
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R. M. Brown

# SCHEDULE "A"

ONTARIO ENGLISH  
**Catholic**  
**Teachers**  
ASSOCIATION

LONDON DISTRICT UNIT  
380 Adelaide Street N., Unit 10  
London, Ontario N6B 3P6

April 13, 2011

VIA E-MAIL

Maureen Bedek, Executive Officer, Human Resources Services  
London District Catholic School Board

Dear Maureen:

**Re: London District Catholic School Board and OECTA London District  
Grievance - Human Rights - Medical Privacy and Duty to Accommodate  
[8949 LD BM]**

Please be advised that I am filing a Teacher Grievance in accordance with Article 6.04 of the Collective Agreement.

The circumstance that gives rise to this grievance is the Board's failure to protect my medical privacy and failure to fulfill its duty to accommodate me at Regina Mundi College. Specifically, despite my request not to attend a meeting held on February 25, 2011, the Board called me to a meeting with my colleagues, revealed details of my medical condition, chastised me in front of my colleagues, and failed to offer me an opportunity to voice my concerns regarding the way in which I was treated during the accommodation. The aforementioned meeting exacerbated my medical condition and rendered me unable to work. Subsequent to that meeting, the Board sent correspondence to my Doctor that does not accurately reflect the content of the meeting held on February 25<sup>th</sup> nor does it accurately reflect the actual accommodations provided by the Board. Such correspondence was placed in my personnel file at the Board office.

In addition, I contend that the Board did not fulfill its duty to accommodate my medical condition because it did not adhere to the discussed and agreed upon role as per the meeting held on January 20, 2011, it did not provide me with a suitable work station or appropriate support to fulfill my duties, it did not intervene to ensure a work environment free of harassment and discrimination due to my medical condition, and it did not protect my medical privacy. I contend that the Board has violated Articles 4.01, Management Rights; 5.01, Just Cause; 16, Cumulative Sick Leave Plan; 28, Evaluation, the Ontario Human Rights Code, the Freedom of Information and Protection of Privacy Act of Ontario, the Labour Relations Act and any other relevant Article in the Collective Agreement or Statute or Regulation of the Province of Ontario.

The full redress sought includes but is not limited to:

1. that the Board acknowledge that it has contravened the Collective Agreement;
2. that the Board reimburse my sick leave register from February 26, 2011 immediately;
3. that as per the January 20, 2011 agreed upon return to work accommodation, the

- Board assign me to a reasonable accommodation in accordance with my doctor's return to work plan;
4. that the Board ensure that I am assigned to a work environment free from harassment and discrimination;
  5. that the Board include the Association in all meetings pertaining to my work accommodation and return to work;
  6. that the Board apologize to me in writing and forward such apology to Dr. Horne;
  7. that the Board remove all references to this matter from my personnel file; and
  8. damages and any other redress that may be advanced by the Association and deemed reasonable by an Arbitrator.

I am requesting a Step I meeting with you to discuss the matter.

Sincerely,

*S. Brescia, as per*  
Myriam Michail

- c. Wilma de Rond, Director of Education  
Karin Kristoferson, Human Resources Services  
Laura Doran, Human Resources Services  
Sheila Brescia, President, London District OECTA  
Bruno Muzzi, OECTA Provincial  
Grace da Silva, OECTA Provincial

January 17, 2011

Via E-Mail

2012

Maureen Bedek, Executive Officer, Human Resources Services  
London District Catholic School Board

Dear Maureen:

**Re: London District Catholic School Board and OECTA London District  
Grievance – Human Rights – Medical Privacy and Duty to Accommodate  
[8949 LD-BM]**

Pursuant to the Board's correspondence to Ms. Michail on January 9, 2012, the meeting held between OECTA and the Board on January 10, 2012 and the discussions between the parties regarding the aforementioned matter pertaining to Ms. Michail, the Association is writing to confirm that Ms. Michail retains all of her rights pertaining to the grievance filed on April 13, 2011 and the matters raised by the Association in mediation on December 6, 2011. In addition, the parties have agreed that the Association is not compelled to file additional grievances with respect to these matters.

As such, the parties agree that in addition to the issues expressly raised in the April 13, 2011 grievance, such grievance also encompasses the following matters:


- (i) the failure of the Board to place Ms. Michail in a permanent guidance position at Regina Mundi College in the fall of 2011;
- (ii) the reinstatement of sick leave credits for Ms. Michail from October 13, 2011 to October 28, 2011 and December 1, 2011;
- (iii) the loss of salary and the cost of benefits for Ms. Michail from October 28 to November 28, 2011 inclusive and the loss of salary on December 1, 2011; and
- (iv) the assignment of Ms. Michail to the vacant Guidance position at RMC created as a result of the transfer of guidance teacher Rita Hail from Regina Mundi College to St. Mary Secondary.

Please note that OECTA reserves the right to claim human rights charges, punitive damages, damages for mental distress, in addition to compensation for lost wages and a restoration of sick days. In addition, the Association reserves its right to file additional grievances regarding future grievous matters should they arise.

The Unit appreciates that the Board has placed Ms. Michail as an extra in the guidance department at John Paul II effective January 9, 2012 – February 24, 2012. Ms. Michail will

continue to work with her doctor over the course of the next few weeks in order that her medical condition is monitored.

Sincerely,

  
Sheila Brescia, President  
London District OECTA

- c. Roxanne Jones, Human Resources Services  
Karin Kristoferson, Labour Relations Officer  
Laura Doran, Human Resources Services  
Myriam Michail  
Bruno Muzzi, OECTA Provincial  
Grace da Silva, OECTA Provincial

## **SCHEDULE "B"**

### **LDCSB Letterhead**

Ms. Myriam Michail  
1103-744 Wonderland Road  
London, Ontario  
N6K 4K3

Dear Myriam:

I am writing to you on behalf of the London District Catholic School Board to express the Board's deep regret with respect to any difficulties you may have experienced in the course of the events which were the subject of your grievance of April 13, 2011 or the various dealings you have had with the Board since that time.

I want to acknowledge how upsetting this has been for you and confirm the Board's recognition of your very real commitment to teaching and the students who we all seek to serve.

We look forward to working with you to re-establish the trust which has been broken and to creating a positive and healthy workplace for you, your colleagues and our students.

With thanks for your willingness to move forward together, I remain,

Yours truly,

Maureen Bedek