

**Date:** 20071218

**File:** 166-33-35106

**Citation:** 2007 PSLRB 119



*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**MICHELLE COURTEMANCHE**

Grievor

and

**PARKS CANADA AGENCY**

Employer

Indexed as  
*Courtemanche v. Parks Canada Agency*

In the matter of a grievance referred to adjudication pursuant to section 92 of the  
*Public Service Staff Relations Act*

**REASONS FOR DECISION**

***Before:*** [Georges Nadeau, adjudicator](#)

***For the Grievor:*** [Carolyn LeCheminant-Chandy, Public Service Alliance of Canada](#)

***For the Employer:*** [Adrian Bieniasiewicz, counsel](#)

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Heard at Montréal, Quebec,  
February 26 to March 1, 2007.  
(P.S.L.R.B. Translation)

**I. Grievance referred to adjudication**

[1] On March 23, 2004, Michelle Courtemanche (“the grievor”) filed a grievance (Exhibit S-14) contesting decisions that she considered to be unfair and arbitrary. The wording of the grievance was essentially related to two decisions: the decision to suspend her without pay for one day and the decision to transfer her temporarily to the Lachine area. The grievance was referred to adjudication on September 14, 2004.

[2] At the outset, the representative for the Parks Canada Agency (“the employer”) objected to the jurisdiction of an adjudicator appointed by the Public Service Labour Relations Board (“the Board”) to decide anything other than the one-day suspension, noting that the provisions of the *Public Service Staff Relations Act* only conferred jurisdiction on disciplinary measure grievances resulting from suspensions, dismissals or financial penalties. He submitted that the decision relating to the administrative transfer could not be the subject of an arbitral award, and he asked me not to hear evidence related to that matter.

[3] The grievor’s representative replied that it is only through hearing the evidence that it will be possible to understand that the transfer was a disciplinary penalty made in bad faith for the same reasons as the suspension.

[4] I agreed to hear the evidence and reserved my decision on my jurisdiction to rule on the transfer.

[5] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 (“the former Act”).

**II. Summary of the evidence**

[6] The employer’s representative called as his first witness Francine Émond, Director, West Quebec Management Unit, Parks Canada. The territory covers Estrie to Fort Témiscamingue and contains 17 historical sites, including 5 canals and Fort Chambly.

[7] Ms. Émond testified that she was responsible for overseeing program development for protecting and enhancing the historical sites in that territory. The

programs welcome clients to historical sites and canals by offering interpretation activities. The canals are also operated for pleasure boaters. She was also responsible for maintaining real property assets. During the peak summer season, she had about 240 employees under her responsibility.

[8] Ms. Émond indicated that at the time of the incidents giving rise to the grievance, the grievor reported to Johanne Gagné, a superintendent under her direction. She also stated that the employer was in the midst of an administrative reorganization and that one of the new area managers had just assumed management of the Fort Chambly area. The transition was to have completed by April 1, 2004. Ms. Émond testified that the grievor had reported indirectly to her since 2001. The grievor was a seasonal employee who worked nine months of the year.

[9] The Fort Chambly team consisted of the superintendent, Ms. Gagné, her assistant Jean Longpré, two permanent full-time employees, two seasonal employees who worked nine months of the year — namely, the grievor and Danielle Bruneau — and other seasonal employees who worked for less than nine months, including Marco Croteau. If the student-interns were included, close to seven employees worked at the Fort during the peak season.

[10] Ms. Émond recounted that sometime between December 2003 and January 2004 she learned of a poster that Ms. Gagné and Mr. Longpré found on the grievor's locker at Fort Chambly (Exhibit E-1). The following statement was written on the poster: "I should like to see, and this will be the last and most ardent of my desires, I should like to see the last king strangled with the guts of the last priest." Ms. Émond considered the quote to be a hateful message against authority and decided to meet with the grievor to ask her about it and to obtain her version of the facts. The meeting was set for March 16, 2004.

[11] Ms. Émond testified that at the meeting, held in the presence of Ms. Gagné and Lise Guérette, a union representative, the grievor stated that she customarily affixed posters to her locker and that it was a joke. Ms. Émond added that at that time of year only two employees were working at Fort Chambly. Ms. Émond did not accept the explanation and decided to send the grievor a letter of suspension (Exhibit E-2).

[12] Ms. Émond testified that the work environment was unhealthy at Fort Chambly. The grievor had filed a harassment complaint against Ms. Gagné in September 2002.

The decision rendered in June 2003 following an investigation indicated that the allegations could not be considered harassment. During the investigation, the grievor reported directly to Ms. Émond and was teleworking. Because the grievor wanted to return to work at Fort Chambly, after the investigation Ms. Émond, in collaboration with the Labour Relations Section, proposed a mediation session to the union and the grievor. Ms. Émond testified that she met with the grievor and the local managers in an effort to turn the page and rebuild team spirit. She indicated that she examined the situation in December 2003 with the management team and found that the team was far from having any team spirit. The grievor filed two grievances in December 2003 (Exhibits S-1 and S-2), against Ms. Gagné and Ms. Émond respectively.

[13] Ms. Émond testified that she interpreted the quote on the poster affixed to the grievor's locker (Exhibit E-1) as a violent quote against management and as something that should not be posted in the workplace. She added that the quote was contrary to the work environment that she wanted to create. She saw the quote as a message saying, "[translation] I will go as far as it takes." In her view, it created fear. Ms. Émond stated that she then made the connection between the quote and what Ms. Gagné had told her on several occasions when she met with her to handle the file: "[translation] She wants my hide, she will not stop until she gets what she wants."

[14] Ms. Émond stated that there was a sort of relentlessness against her, which was visible in all of the facts and observations. In her opinion, the quote had created fear. She added that human beings are complex and that in such situations we have to ask just how far they can go. She could not consider the quote as harmless in light of the other facts that had been brought to her attention or that she had personally experienced.

[15] Ms. Émond testified that when one sees such a message, one asks oneself just how far someone who is relentless might go. She added that such a situation could not be tolerated under Parks Canada's values policy.

[16] As for the meeting on March 16, 2004, Ms. Émond indicated that the grievor told her that the quote was black humour and that the grievor did not express any remorse. The grievor also raised the fact that a colleague had posted on the wall a montage of a picture of the Queen and boxing gloves. Ms. Émond noted that the grievor spoke differently to Ms. Gagné. Ms. Gagné's tone, look and manner of answering were not the same when Ms. Gagné spoke to her. Following the meeting and after receiving advice

from Labour Relations, she decided to impose a one-day suspension as a disciplinary penalty. She felt that the quote was an act against authority. The grievor had not removed the poster from her locker, in what Ms. Émond felt was a deliberate act.

[17] Ms. Émond also testified that it was in the days before the disciplinary penalty was issued that the decision was made to temporarily transfer the grievor. The situation at Fort Chambly had been difficult since the grievances were filed. The manager, Ms. Gagné, became ill on March 17, 2004 and was then absent for two months. The assistant, Mr. Longpré, also had a medical certificate indicating that he should be resting. Mr. Longpré was the colleague that the grievor referred to who had posted the picture of the Queen. Since she no longer had a superintendent and risked losing the assistant who was unable to do the work, and given the grievor's request for a healthy work environment, Ms. Émond decided to temporarily transfer the grievor. She stated that in her opinion, she had to act in the employees' best interests. The grievor was transferred to the Lachine Fur Trade sector. She was required to work in an office in the Guy Favreau building in an equivalent position at the same classification level. Provisions were made to reimburse the grievor for her meal costs, to provide her with entitlement to a Parks Canada vehicle and to modify her work schedule to include the necessary travel time to her office.

[18] Regarding the relationship between Ms. Gagné and the grievor, Ms. Émond testified that she was present during the March 16, 2004 meeting and during the meeting that she organized prior to the grievor's return to Fort Chambly in 2003. During that meeting, Ms. Gagné had to repeat herself twice to explain the objectives of a task to be performed. Ms. Émond added that she found the grievor argumentative and that the discussion became an intellectual "[translation] sparring match" in which Ms. Gagné ended up just staying quiet.

[19] As to whether she transferred the grievor because of the poster incident, Ms. Émond testified that the transfer was the result of the cumulative effect of several factors. The work environment was not improving and the situation became a crisis with the superintendent's illness and the assistant's reduced effectiveness. The team no longer wanted to work together, and a solution needed to be found. The situation had gone on for a year-and-a-half.

[20] Under cross-examination, Ms. Émond acknowledged that the superintendent, Ms. Gagné, was in an acting position. Ms. Émond also acknowledged that during a

meeting on September 18, 2003 at the administrative office, in the presence of Ms. Guérette, Ms. Gagné, the grievor and Mr. Bachand, a labour relations advisor, by telephone, she committed to monitoring labour relations at the Fort. When asked whether at the meeting Ms. Gagné said to the grievor, “[translation] Are you not afraid of getting sick again if you go back to work at Chambly?” Ms. Émond indicated that the statement was false. Ms. Émond confirmed that she had no other meetings with the grievor until the March 16, 2004 meeting and that the information that she had about the situation at Fort Chambly came from Ms. Gagné or from the union as part of the grievance process. Ms. Émond confirmed that there were no restrictions on communications but that each time she wanted to contact the grievor, she went through the union. Ms. Émond confirmed that she had never given Ms. Gagné’s December 4, 2003 memo (Exhibit E-3) to the grievor and that she had never obtained the grievor’s version of the facts. Ms. Émond also stated that she had not discussed the work environment with the grievor between September 2003 and March 2004.

[21] Regarding her conversations with Ms. Guérette, Ms. Émond denied having said that there were two problem employees at Fort Chambly, and she strongly denied stating that she always took management’s side. She also denied wanting to retract her statements by telling Ms. Guérette afterwards that she hoped that she had not discredited those employees in Ms. Guérette’s opinion by saying that they were problem employees. Ms. Émond also denied telling Ms. Guérette that the grievor should have been disciplined.

[22] Asked if she had seen the original poster, Ms. Émond stated that in January 2004, Mr. Bachand sent her an electronic copy of a picture of the poster (Exhibit S-13). She confirmed that the poster included the name of the author of the quote. She did not examine the locker on which the poster had been affixed. During visits to Fort Chambly, she had not noticed quotes on the grievor’s locker. Ms. Émond also confirmed that she had not spoken to the grievor about the quote before March 16, 2004, despite the fact that the grievor had been back at work since the third week of February 2004.

[23] Ms. Émond maintained that the quote was not humorous and stated that it was not appropriate to have such a quote on an employee’s locker. However, she acknowledged that a quote could illustrate the spirit of an era and that it was possible that there were various historical quotes of an aggressive nature in the Fort Chambly

exhibit halls, which were there to interest visitors. She stated that she did not recall forwarding a copy of the quote to Carole Sheedy, Director General for Eastern Canada, Parks Canada. She acknowledged that it was only after the two grievances were filed in December 2003 that the matter of the poster was raised.

[24] Ms. Émond stated that she did not recall the manner in which she started the meeting of March 16, 2004 and that she could not confirm whether she had said that she did not want to assign intent regarding the quote. She stated that she wanted to shed light on the matter and hear the grievor's version. She confirmed that the grievor told her that she had had several quotes posted one on top of the other on her locker for about 12 years and that just before she left at the end of the season, she removed the quotes, except for the first one, which was pasted directly to the locker. Ms. Émond confirmed that the grievor told her that she planned to remove the last quote when she returned. The grievor also gave her a copy of other quotes, along with a copy of the pages of the book from which the quote at the centre of the dispute originated.

[25] Asked if at the March 16, 2004 meeting Ms. Gagné had confirmed that she did not feel targeted or threatened by the quotation, Ms. Émond testified that she did not recall the question or Ms. Gagné's answer. She agreed that it was important to determine in such situations whether people felt targeted or threatened. She also confirmed that she had not explicitly mentioned that she felt targeted but stated that the quote challenged authority. She also confirmed that at the meeting, the grievor mentioned Mr. Longpré's display at Fort Chambly and submitted photos of it (Exhibit S-4). The grievor alleged that there was a double standard. Ms. Émond indicated that she told the grievor that she had to raise the matter with her supervisor, Ms. Gagné, at another time because the purpose of the meeting was not to discuss her colleague's situation. Ms. Émond confirmed that after the meeting the grievor filed two other grievances alleging that she was being harassed by Ms. Gagné and Ms. Émond (Exhibits S-5 and S-6).

[26] Ms. Émond confirmed that the grievor has 18 years of service and that she had not received any disciplinary measures in recent years. Responding to the question of whether the grievor had asked to be transferred, Ms. Émond answered that she had mentioned that she was seeking a healthy work environment. Responding to questions about who was responsible for the poor work atmosphere, Ms. Émond stated that specialists had conducted an independent investigation in 2002 and that Ms. Gagné

was the manager and should have exercised her management responsibility. It was Ms. Émond's view that the grievor had not accepted the findings of the investigation. Ms. Émond also stated that she had encountered situations in which the grievor had not accepted management exercising its rights.

[27] Ms. Émond acknowledged that following her temporary transfer (Exhibit S-9), the grievor had asked to be reinstated at Fort Chambly (Exhibit S-7) and that the request had been denied (Exhibit S-8).

[28] Ms. Émond indicated that the day after the March 16, 2004 meeting, Ms. Gagné fell ill and management was in a crisis that was unhealthy both for the grievor and for the other affected employees. She confirmed that the decision was made after the March 16, 2004 meeting to impose a disciplinary measure and that the transfer decision was made around that time. In her opinion, the transfer was an administrative decision and was to take effect on March 25, 2004 (Exhibit S-9). It was temporary in nature to allow time for clear thinking and to respect the 30-day notice period. The grievor was to report to Julie Talbot at the Guy Favreau complex in Montréal. Ms. Émond confirmed that she sent a letter dated April 28, 2004 to the grievor indicating that the transfer was to become permanent (Exhibit S-10). She acknowledged that she did not speak or send correspondence to the grievor between March 23 and April 28, 2004, except for the letter dated April 6, 2004 (Exhibit S-8), which denied her transfer request.

[29] With respect to the permanent transfer communicated to the grievor on April 28, 2004, Ms. Émond indicated that it was an important decision requiring an evaluation of the situation. She wanted to make sure that it was the best decision in the circumstances, and the permanent transfer resulted from the evaluation.

[30] Ms. Émond testified that she only consulted the evaluation reports that Ms. Gagné created (Exhibits S-11 and S-12). She confirmed that she had witnessed interactions between Ms. Gagné and the grievor on two occasions, during a meeting in August 2003 when the issue was the objectives of a project that had been assigned to the grievor and during the March 16, 2004 meeting. Ms. Émond stated that after the meeting and an exchange of correspondence, the mandate assigned to the grievor was carried out.

[31] Ms. Émond confirmed that following the August 2003 meeting the grievor returned to work at Fort Chambly at her request and that of the union.

[32] Ms. Émond stated that Ms. Gagné told her that the grievor's actions against her were ongoing.

[33] Ms. Émond confirmed that she did not impose any restrictions on the grievor, both when she returned to work on February 23, 2004 and after the March 16, 2004 meeting. She did not take any security measures to protect herself or to protect the employees at Fort Chambly. However, management was to inform her of any incidents.

[34] Under cross-examination, Ms. Émond stated that she considered the quote important because it was a hateful and violent message against authority. She indicated that she wanted a harmonious atmosphere at Fort Chambly and that the poster was contrary to Parks Canada's policy of respect. The grievor had not expressed any regret. Ms. Émond's opinion was that the grievor deliberately left the poster in place. She added that Ms. Courtemanche filed two grievances on December 12, 2003 and that several elements suggested to her that the work atmosphere was unhealthy.

[35] Ms. Émond confirmed that measures had been taken regarding the montage using a picture of the Queen.

[36] Ms. Émond testified that she had always wanted Ms. Gagné to manage her resources properly. In her opinion, Ms. Gagné supervised her employees well and had strong management capability. However, the grievor questioned Ms. Gagné's decisions. She added that employees dreaded a tense situation and that it could not continue; a permanent solution had to be found.

[37] Ms. Gagné was the second witness called by the employer. Ms. Gagné has worked at Parks Canada's Ontario Services Centre in Cornwall since February 27, 2006. Before that she was an acting superintendent at the PM-4 level at Fort Chambly. She began working at Fort Chambly in September 1999. She supervised both a permanent team and a temporary team of 8 to 10 employees. The permanent team consisted of an assistant who worked the entire year and three guides who worked on a seasonal basis. The seasonal employees worked from February to December. Employees at Fort Chambly reported to the director of the West Quebec Management Unit. The grievor held a position as a senior guide, classified GT-2. A senior guide performs the

duties of a guide-interpreter, manages projects or special activities, and trains other temporary seasonal employees.

[38] Ms. Gagné testified that after she arrived in 1999, her relationship with the grievor was satisfactory, as it was with the other employees. Tension existed between the permanent team and the temporary team; the temporary team was seeking more creative projects, while the permanent team seemed to suffer from a certain lassitude.

[39] Ms. Gagné went on to say that everything was going relatively well before the grievor filed the harassment complaint in September 2002. Ms. Gagné was surprised and had not expected it. The grievor had asked Ms. Gagné for permission to take one day of leave without pay per week and had commented, “[translation] What I need to do is not holidays.” She also recalled that when she took her own vacation time, the grievor said to her, “[translation] Have a great holiday, you will need it.”

[40] Ms. Gagné testified that the investigation began in fall 2002 and lasted several months. Its findings were known by June or July 2003, and the harassment complaint was dismissed. Ms. Gagné also stated that when she returned from her holidays in September 2002, the grievor was on sick leave. The grievor returned to work in spring 2003 but reported directly to Ms. Émond at the office of the Management Unit because the investigation was ongoing. Management also decided to remove one other employee until the results of the investigation were known. Ms. Gagné added that when Ms. Émond informed her that a complaint had been made against her, she became upset.

[41] As to the reaction of the on-site team to the complaint’s filing in September 2002, Ms. Gagné stated that efforts were made to ensure that regular activities continued. She added that employees took more creative initiatives and felt freer to do things differently. There was less tension in the air since the grievor was absent.

[42] Ms. Gagné stated that between March and fall 2003, she met with the grievor three or four times, always in Ms. Émond’s presence. Ms. Émond asked her to identify projects that the grievor could perform while teleworking. One of the projects was to create identification cards for the objects contained in an archaeological display. Initially, the grievor expressed some resistance, and it took two meetings to agree on the card’s format. Then problems arose with the number of hours required to perform

the work. She added that the project was never completed and that she was unable to say why.

[43] Ms. Gagné indicated that one meeting involving the union was held at Ms. Émond's office about a week before the grievor's return to work. She stated that she also met with the Fort Chambly employees prior to the grievor's return to work. They were Mr. Crosto, who held a GT-1 position, Ms. Bruneau, who held a GT-2 position, and Mr. Longpré, the assistant. Mr. Longpré reacted by saying that she had to come back sometime, while Mr. Crosto raised his eyes upward. Ms. Gagné did not expand on the matter. In September, it was already the low season, and the main tasks involved welcoming groups and inventorying the costumes and display equipment. The grievor left for the season toward the end of November 2003 at the same time as Ms. Bruneau.

[44] Asked about incidents that occurred between the grievor's return to work and her departure at the end of the season, Ms. Gagné related one incident that occurred on Remembrance Day when the grievor complained that she had not been informed of the activity and that that was not the way to work. Ms. Gagné stated that Mr. Longpré told her that it was written on the activities calendar.

[45] Ms. Gagné also testified that in September 1999 the grievor had expressed reluctance around the schedule change, which required greater availability on weekends. The number of special events had been increased in an effort to increase attendance, which was down.

[46] Asked about the discovery of the poster, Ms. Gagné testified that at the beginning of December she was in her office when Mr. Longpré telephoned and asked if she had seen the quote. She asked him what he was talking about. He indicated that it was the quote on the grievor's locker and added that he did not like what he was reading. She sensed from his voice that it was important.

[47] Ms. Gagné went to the locker room to see what the issue was, and she read the quote. Mr. Longpré was there, gesturing and demanding that the quote be removed. He said that it was disgusting and that he did not want to see things like it in his workplace.

[48] Ms. Gagné went on to say that she called the labour relations officer, Mr. Bachand. A picture was taken of the quote. The paper was firmly attached to the locker with adhesive tape used to wrap parcels. She felt somewhat targeted by the quote and was not sure what to think; it was hateful. In her opinion, the paper was clean and looked new.

[49] Ms. Gagné indicated that grievor returned to work on February 23, 2004. After a team meeting, she met with the grievor alone and broached the subject of the poster with her. She prepared a summary of the meeting, which she sent to Mr. Bachand on February 27, 2004. (Exhibit E-6). The discussion of the poster did not last long since the grievor did not wish to continue it without her union representative present. However, she did state that she had not removed the quote because it was difficult to remove and that she wanted to do it when she returned. The atmosphere was somewhat tense, and Ms. Gagné stated that she was unsure if the grievor was laughing at her.

[50] Ms. Gagné testified that she was present at the March 16, 2004 meeting. Ms. Émond took the lead. She tried to find out the motivation behind the quote on the locker. Ms. Gagné stated that the day after the meeting, she went on sick leave.

[51] Regarding the December 4, 2003 memo (Exhibit E-3), Ms. Gagné testified that it was a report prepared for Ms. Émond covering the period from September 24 to the beginning of December 2004. She was reporting on the list of incidents and on how work was progressing. She concluded that the grievor did not wish to return to work.

[52] Under cross-examination Ms. Gagné indicated that even though she ate in the room containing the lockers, she had not noticed the posters on the grievor's locker. Mr. Longpré brought the quote to her attention. She stated that in her opinion, the piece of paper on the locker was new. She added that the paper was torn because it was attached with large adhesive tape. She put the pieces in an envelope that she sent to Mr. Bachand.

[53] Ms. Gagné acknowledged that there are several posters at Fort Chambly containing quotes of a historical nature to support comments or a theme. However, she could not confirm their contents.

[54] Ms. Gagné confirmed that she wrote the grievor's performance evaluations (Exhibits S-11 and S-12) and that except for a comment suggesting that the grievor could share her experience more with the team, "[translation] things seemed to be fine." She did not recall telling the grievor at the meeting in May 2002 to discuss the evaluation that she never knew what the grievor was doing. She confirmed that in her opinion, everything was going fine until the first harassment complaint was filed in 2002.

[55] As for the Remembrance Day incident, Ms. Gagné acknowledged that it was possible that the incident occurred in 2002 and not in 2003. She also acknowledged that she might have said to the grievor, "[translation] Are you not afraid of getting sick again if you come back to Fort Chambly?" when the grievor returned to Fort Chambly in September 2003. She recognized that it is important for a manager to closely monitor the situation when an employee returns from lengthy sick leave. She confirmed that between September 18, 2003 and March 2004, there were no meetings with the grievor except for a few team meetings. She also confirmed that she and the grievor overlapped three days per week because the grievor worked weekends. She was not involved in the decision to transfer the grievor. Ms. Gagné indicated that the purpose of the comment that "[translation] a change is needed" in the last line of the December 4, 2003 memo (Exhibit E-3) was not to ask Ms. Émond to get rid of the grievor but rather to find a way of facilitating dialogue within the team.

[56] Ms. Gagné stated that she was informed in mid-December 2003 of the grievances that the grievor and Ms. Bruneau filed alleging that reprisals had been taken against them.

[57] Ms. Gagné confirmed that she sent an email to Mr. Bachand on January 13, 2004 regarding the poster. At that time, she had not discussed the poster with the grievor, who was not at work. She felt targeted "[translation] to some degree" by the quote.

[58] Ms. Gagné acknowledged that during the March 16, 2004 meeting, in response to a question from the grievor, she told her that she did not feel threatened or targeted by the quote. Ms. Gagné added that she did not want to show the grievor that she had been upset by the quote. She left the next day on sick leave. She stated that it is possible that Ms. Émond told her at the start of the meeting that she did not want to assign intent. She vaguely recalled that the grievor indicated that the quote had been on her locker for almost 10 years and that she had the book from which the quote had

been taken. It was also possible that the grievor mentioned that there were other quotes on her locker and that she mentioned Mr. Longpré's display. She remembered that Ms. Émond dismissed the pictures of Mr. Longpré's display. She confirmed that the grievor mentioned that she felt she was being harassed and that she had filed a complaint against Ms. Gagné and Ms. Émond. Ms. Gagné denied that Ms. Émond described the grievor as a problem employee and that she should have been disciplined.

[59] Ms. Gagné confirmed that the grievor never asked her for a transfer. She learned of the grievor's transfer but did not know the details.

[60] Asked about the picture of the quote (Exhibit E-1), Ms. Gagné indicated that the grievor's name appeared on the sheet of paper showing the quote.

[61] Questioned about the December 4, 2003 memo (Exhibit E-3), Ms. Gagné explained that while the grievor attended the team meetings, she did not contribute to them. She confirmed that the grievor read in the documentation room and that it was part of her work. She indicated that it is possible that the grievor gave the updated inventory to Mr. Longpré. As for Mr. Longpré's display, it had probably been in place since the summer.

[62] Ms. Gagné testified that she felt that she was the target of the quote and that she took measures regarding her safety by calling home before leaving at night. She never mentioned it because at that time, the grievor had already ended her season and was no longer working at Fort Chambly.

[63] Ms. Gagné stated that Ms. Émond did not consult her about the grievor's transfer and that she did not discuss the situation at Fort Chambly with the grievor before she wrote the December 4, 2003 memo (Exhibit E-3).

[64] Under re-examination, Ms. Gagné stated that she called her husband before leaving work, that she left at the same time as Mr. Longpré and that friends of her husband went with her when she jogged in the park.

[65] The grievor testified. She holds a seasonal interpreter position at the PM-2 level at the Fur Trade Historical Site in Lachine. She is on academic leave until September 2008. She is completing a doctorate in anthropology.

[66] The grievor began her employment with Parks Canada as a casual guide-interpreter in 1986 at Carillon and was transferred to the Chambly Canal in 1987 and then to Fort Chambly in 1989 where she worked until 2004. From a casual employee at the GT-1 level, she became a permanent employee in 1995 in a seasonal position. In spring 2006, the GT-2 positions were reclassified PM-2.

[67] The grievor adduced the work description for the officer position, Interpretation Services (Exhibit S-17). She indicated that the work that she performed during her annual employment period varied depending on whether or not Fort Chambly was open to the public. During spring and fall, she designed and created new activities or exhibits that were presented in the summer. She also did documentation research and trained guides.

[68] The grievor testified that from the time of her arrival at Fort Chambly she was considered the resource person for everything related to archaeology, Amerindian subjects and women's clothing. In spring and fall, the interpretation staff was cut back to three people: Ms. Bruneau, Mr. Crosto and the grievor.

[69] The grievor indicated that Fort Chambly represents the French presence in the Richelieu Valley in the 18th century. It contains various thematic displays related to the military and its social impact, food, the Amerindian presence and military architecture.

[70] In fall 2003, in addition to the interpretation staff, Ms. Gagné, Mr. Longpré, an intern and a volunteer at reception on weekends worked at Fort Chambly.

[71] The grievor testified that until 1997-1998, her work was evaluated each year (Exhibits S-18.1 to S-18.11). In 1997-1998, she received a draft that was never completed. Ms. Gagné prepared two evaluations (Exhibits S-11 and S-12). The grievor subsequently received evaluations for her work at the Lachine Canal (Exhibits S-18.12 and S-18.13). She also adduced documents showing that she was entitled to acting assignments (Exhibit S-19). The evaluations show that she received fully satisfactory evaluations of her work and, on three occasions, excellent evaluations. The grievor added that at no time and in no way did she understand from her superiors that there was a problem with her behaviour. She never received any disciplinary measures before the one-day suspension. Similarly, her work at the Lachine Canal was always satisfactory.

[72] The grievor testified that she began working with Ms. Gagné at Fort Chambly in September 1999. Ms. Gagné replaced the superintendent. During her evaluation in May 2002 (Exhibit S-12), the grievor commented to Ms. Gagné that she sometimes said unkind things, such as: “[translation] I never know what you are doing.” The grievor stated that Ms. Gagné was her immediate supervisor, the person who set her objectives and assigned her work and to whom she reported. That type of comment upset her. Ms. Gagné replied at the time that the grievor had misinterpreted the comment. The grievor stated that she let the matter drop.

[73] The grievor stated that Ms. Gagné’s hostility increased after that. It was increasingly difficult to work in such an atmosphere. At the end of July, she left on vacation. Her vacation turned into sick leave after meeting with her physician. It was after that that she filed a letter of complaint of psychological harassment with Ms. Émond. She said nothing to Ms. Gagné because Ms. Gagné was too hostile toward her. In July, the grievor asked for a day of leave without pay to look after her mother, who was beginning to have health problems. Ms. Gagné told her to use up her annual leave days. She does not recall making a comment to Ms. Gagné before Ms. Gagné left for holidays.

[74] The grievor stated that she tried to return to work in early November 2002. However, Ms. Gagné’s behaviour had not changed. She was not informed of activities and had to ask a colleague to learn about things. On October 31, 2002, with the support of her union, she filed a grievance (Exhibit S-20) against the psychological harassment that she claimed Ms. Gagné was exercising against her. The grievor considered the Remembrance Day incident to be an example of the lack of communication. She subsequently went back on sick leave until the end of the season.

[75] The grievor states that on her return to work in February 2003, she was assigned to work in a telework capacity. Her union representative, Ms. Guérette, met with Ms. Émond as part of the process of investigating her complaint. Ms. Guérette reported to the grievor that Ms. Émond considered her a problem employee. The investigation had not yet begun. The grievor indicated that at that time, she had met once with Ms. Émond and a human resources person to discuss the content of her letter of complaint. She added that it was not an easy meeting. She also indicated that Ms. Guérette told her afterwards that Ms. Émond had retracted her comment that the grievor was a problem employee.

[76] The grievor testified that while she was assigned to telework, she had to perform work for various sites and communicate with the superintendents of those sites to obtain work. Ms. Émond's attitude toward her was always very severe. One day, Ms. Émond said to her in front of Ms. Guérette, "[translation] You should have been disciplined." She found the comment upsetting. Regarding her relationship with Ms. Émond, she had the impression that Ms. Émond was always trying to corner her. The grievor stated that Parks Canada's investigation of her initial harassment complaint found that the complaint was unfounded. In the letter that she received from Ms. Émond in June 2003, she was not told that she could appeal the investigation's findings.

[77] The grievor stated that the telework situation ended in June 2003. From then on she was to report to the district office in Chambly. She was given the mandate to document the objects in Fort Chambly's archaeological display. When she completed the cards, she emailed them to Ms. Gagné. The grievor recalled that there was a meeting with Ms. Gagné and Ms. Émond regarding the project in July 2003 at which the grievor asked Ms. Gagné to tell her specifically what was expected of her. During the meeting, Ms. Gagné told her, "[translation] It seems to me that what we are asking of you is not difficult?" Ms. Émond did not intervene.

[78] The grievor testified that there was another meeting in late August before she returned to Fort Chambly. Ms. Émond, Ms. Gagné, Mr. Bachand, Ms. Guérette and the grievor were present (in person or by teleconference). Ms. Émond indicated at the meeting that it was time to turn the page. She gave her personal assurance that everything would go well from then on at Fort Chambly. Ms. Émond again told her that she should have been disciplined. The grievor said that she interpreted the comment as a warning to "[translation] behave herself." She stated that during the meeting Ms. Gagné asked her if she was not afraid that she would get sick again by returning to Fort Chambly, given the atmosphere there. The grievor perceived the comment as a veiled threat.

[79] The grievor testified that she returned to work at the end of September 2003. Her workweek was from Wednesday to Sunday. Ms. Gagné worked Monday to Friday. On the first day of her return to work, she attended a team meeting involving Ms. Gagné, Mr. Longpré, Mr. Crosto and Ms. Bruneau. After that there were no meetings with Ms. Gagné until her departure at the end of the season. She did not receive any

objectives or feedback from Ms. Gagné and never spoke with her again afterwards. At the team meeting, she asked Ms. Gagné if there was anything new, and Ms. Gagné answered that there was nothing new. However, the grievor indicated that she noted afterwards that a new display and new facilities to receive school groups had been installed.

[80] On the grievor's return to work in March 2004, a team meeting was held in the guides' room with Mr. Longpré, Mr. Crosto, Ms. Bruneau, Ms. Gagné and herself. At the end of the meeting, Ms. Gagné asked the grievor to follow her to her office. The grievor added that from the time of her return to work in September 2003 until the meeting on March 16, 2004, she heard no mention of Ms. Émond.

[81] Asked about the December 4, 2003 memo, the grievor stated that she had not seen it before the hearing. As for its content, the grievor stated that the only issue that she can remember is one about holidays (Exhibit E-3, page 2). The grievor testified that none of the memo's comments concerning relationships had ever been discussed with her. As for the comments about guided visits, the grievor indicated that there were always discussions among employees about them. Regarding the team meetings, the grievor stated that she had asked if there was anything new. She added that she had a habit of asking questions for clarification. She testified that she worked in the guides' room during the low season in spring and fall. During those times, Fort Chambly is open to the public and if the door to the guides' room is closed, it is still possible to hear the alarm signalling a visitor's arrival. She also had reading to catch up on. She did what she was asked to do and spent a lot of time handling the school visits on Wednesdays to Fridays. Mr. Crosto's seasonal work ended after Thanksgiving and only Ms. Bruneau and the grievor remained at Fort Chambly to handle all of the school visits. She had little opportunity for conversations with Mr. Longpré and Ms. Gagné, who both worked on another floor. The grievor maintained that she always used a normal tone with Ms. Gagné and never showed her a lack of respect. As for the inventory, she stated that when Ms. Gagné was absent, she and Mr. Longpré agreed to share tasks. When Ms. Gagné reproached her for that arrangement, the grievor told her that they had not been able to consult with her because she had been away. The grievor added that one day when she was supposed to attend a forum away from the office, she was unable to because of a last-minute family obligation. She made sure to inform Ms. Gagné through a colleague. Ms. Gagné chastised her for doing things in such a manner.

[82] The grievor testified that since returning to work in September 2003 she had wanted to work harmoniously. She believed in the commitment that Ms. Émond had made and focused on doing her work. She added that all of her evaluation reports showed that she was always a dynamic person and that she was loyal to her employer. Her initiative had resulted in a major tourism award for Fort Chambly. She had always been recognized for her leadership and, in her opinion, Ms. Gagné's criticisms were unjustified.

[83] The grievor testified that she met Ms. Bruneau at Fort Chambly. Initially excellent colleagues, they became friends.

[84] As for the quotes found in the Fort Chambly exhibit rooms, the grievor indicated that they are military, religious and social in nature. She offered Ms. Émond examples of them (Exhibit S-21). They have been at Fort Chambly for almost 25 years.

[85] The grievor explained that the guides' room is a large room on the ground floor of Fort Chambly. It is a large room containing a large table used for team meetings and meals, a documentation centre and a row of lockers for the guide-interpreters. Part of the room serves as a kitchenette. Behind the row of lockers there are cupboards containing the demonstration material. The grievor's locker was the first locker on the left, the last one opposite the wall directly beside the hallway.

[86] The grievor stated that Ms. Gagné ate in the guides' room. She added that the guide-interpreters customarily posted all sorts of things, including pictures or quotes, on their lockers and that they changed them over the years.

[87] The grievor testified that she had affixed quotes to her locker over the years and that the quote at the centre of the dispute had been the first one glued to her locker. She affixed quotes that she liked because of their imaginative qualities. All of the quotes were historical in nature and were clearly displayed at eye height in the guides' room. All of them were printed on deluxe marbled paper and, except for the first, were affixed in such a way as to make it possible to flip through them to read them one by one. The first was glued on the upper part of the locker. The quotes had been posted over the last 10 years. Managers and her fellow guides had commented on them from time to time.

[88] The grievor testified that she decided to clean out her locker on December 12, 2003, her last day of work for the 2003 season. In the process, she decided to remove all of the quotes, although she saved them. The last one was glued to the locker, and she was unable to remove it without tearing it. She decided not to remove it until her return in February 2004, at which time she could use a knife to do so. She had no vicious intent in leaving the quote on her locker. Ms. Bruneau was present at the time because she too was collecting her things that day. At about noon, they went together to tell Ms. Gagné that they were leaving. The grievor adduced a few of the quotes that she had saved (Exhibit S-22).

[89] The grievor went on to say that the quote (Exhibit E-1) attributed to Messelier came from a book that she used each year when training guides who had to present the activity related to the archaeological digs at Fort Chambly (Exhibit S-3). The quote is catchy and shows the major changes that transpire in societies over the ages.

[90] The grievor stated that when the season ended, she contacted Ms. Guérette because Ms. Gagné's behaviour toward her had not changed. She filed reprisal grievances against her and against Ms. Émond who, because of her lack of follow-up, was an accomplice to Ms. Gagné's actions. She also discussed the situation with Ms. Bruneau, who also decided to file grievances.

[91] The grievor testified that on February 23, 2004 when she returned to work after the group meeting, Ms. Gagné asked the grievor to follow her because she wanted to speak with her. Sitting at her desk, Ms. Gagné opened a file and threw the quote on the desk, asking her what it meant. The grievor told her that it was the quote on her locker. Ms. Gagné then said, "[translation] What is that? Is that what you consider humour?" The grievor indicated that she said yes, she had a dark sense of humour, but that she did not want to discuss the colour of her humour with Ms. Gagné. Ms. Gagné continued in an aggressive manner asking the grievor what she meant. The grievor added that she felt that Ms. Gagné wanted to make her say something. She did not understand where Ms. Gagné was going with the discussion. The grievor told Ms. Gagné that she did not want to continue the conversation without her union representative. She asked to have the quote back, but Ms. Gagné refused.

[92] The grievor testified that three or four days later she received an email from Ms. Guérette asking her to send a note explaining the presence of the quote on her

locker to a union representative. She contacted Ms. Guérette, and a meeting was arranged with Ms. Émond for March 16, 2004.

[93] The grievor described her meeting on March 16, 2004. She stated that Ms. Émond, Ms. Gagné and Ms. Guérette were present. The meeting was supposed to be about the quote on the locker. Ms. Émond began the meeting by stating that the purpose was not to assign intent. The grievor offered the book from which the quote was taken as well as some of the other quotes that were attached to her locker. The grievor tried to explain her version of the facts. Throughout the meeting the grievor insisted that she had a right to a healthy work environment and that it was impossible to have a discussion with Ms. Gagné. She wanted to be treated with respect and to have a healthy work environment. At one point, she realized that Ms. Émond was trying to get her to say that the quote was aimed at management, and she did not agree with the meaning that Ms. Émond wanted to give to the quote. The grievor then asked Ms. Gagné if she felt targeted by the quote, to which Ms. Gagné responded in the negative. She then said to Ms. Gagné and Ms. Émond, “[translation] What is the problem?” The grievor brought to Ms. Émond’s attention the display with the picture of the Queen (Exhibit S-4) and asked Ms. Émond if that was also an attack on authority. Ms. Émond replied that that was not the subject of the meeting. The grievor then mentioned that there appeared to be two standards at Fort Chambly. She stated that she would be submitting a psychological harassment grievance against Ms. Émond and Ms. Gagné. The meeting then ended quickly.

[94] The grievor testified that in the following days, she sent a complaint (Exhibit S-24) to management regarding the display of the picture of the Queen and the fact that she could not get a proper hearing. She also took a picture of the front of the locker (Exhibit S-26) to show that the quote had been torn off the front of the door.

[95] When she returned to work at Fort Chambly after the meeting, the grievor worked with Ms. Bruneau and Mr. Crosto since Ms. Gagné was on sick leave. She received calls from Ms. Émond who wanted to meet with her alone. The grievor insisted that Ms. Guérette be present. A meeting was arranged for March 23, 2004.

[96] The grievor testified that the meeting on March 23, 2004 took place in the presence of Ms. Émond, Mr. Bachand and Ms. Guérette. At that time she was given the letter for the one-day suspension and the letter for the temporary transfer to the

Lachine Canal. The grievor felt humiliated and completely crushed: Fort Chambly had been her entire career.

[97] The grievor stated that she collected her things from Fort Chambly on March 24, 2004 and reported for work at the Guy Favreau building in Montréal from where the Lachine Canal work is done. She wrote to Ms. Émond on April 1, 2004 (Exhibit S-7) asking if she could return to Fort Chambly. Ms. Émond told her that she would not approve her request (Exhibit S-8). On April 28, 2004, Ms. Émond informed the grievor that she was permanently transferred to the Lachine Canal (Exhibit S-10).

[98] The grievor testified that she lives 3 km from Fort Chambly, while she must travel 35 to 40 km to get to the Guy Favreau building. The Lachine Canal is 53 km from her home. The employer provided the grievor with a vehicle to get to work until May 3, 2004, the effective date of the permanent transfer. It takes the grievor over an hour to get to work.

[99] The grievor stated that she never requested a transfer to the Lachine Canal. She had been transferred in the past on a voluntary basis when she moved from the Chambly Canal to Fort Chambly.

[100] The grievor testified that the psychological harassment grievances that she filed in December 2003 and in March 2004 (Exhibits S-1, S-2, S-5 and S-6) were dismissed at the final level of the grievance process. She also filed another grievance against the permanent transfer. That grievance was not sent to adjudication. The grievor adduced an extract from the collective agreement (Exhibit S-15), which deals with notice of transfer.

[101] The grievor indicated that it was during testimony at adjudication that she heard for the first time about the fear that the quote created for Ms. Gagné and Ms. Émond. She stated that she is not a violent person and that the comments sullied her reputation. Her evaluations since her transfer to the Lachine Canal are all positive (Exhibits S-18.12 and S-18.13).

[102] Under cross-examination, the grievor explained that her relationship with Ms. Gagné began deteriorating in spring 2002. During the performance evaluation meeting, Ms. Gagné made the comment that she never knew what the grievor was doing, gave unpleasant, even contemptuous looks and showed a lack of consideration

about the grievor's projects dealing with a discovery questionnaire for children. Ms. Gagné's attitude and her reaction at the meeting that the grievor had misinterpreted her convinced the grievor that Ms. Gagné did not really want to discuss the situation. After that, when the grievor asked her questions, Ms. Gagné sometimes responded and sometimes did not.

[103] The grievor reiterated that she felt that Ms. Émond was very harsh with her. She recounted an incident about a request for leave for family obligations. She stated that she had a normal working relationship with Mr. Longpré. After she returned to work at Fort Chambly in September 2003, the grievor hoped that the situation would simply "[translation] work itself out." The relationship with Mr. Longpré began deteriorating at that time. The grievor was on her guard.

[104] Responding to questions about the increased work on weekends beginning in 2001, the grievor stated that she had always worked weekends and that her work schedule had considerable flexibility. She denied that she complained to Ms. Gagné that too much work was being given to a writing intern.

[105] The grievor explained that she waited until September 2002 to file her first complaint because she was on sick leave all summer and needed time to collect her thoughts. An investigation was launched after the grievance was filed. The grievance (Exhibit S-20) was filed on October 31, 2002. The grievor stated that in the middle of September she had written a letter complaining about harassment but that it was not a formal complaint. She felt that she needed the support of her union, which is why she filed a grievance.

[106] As for the investigation's findings, the grievor explained that she felt that she could not challenge the report and that it was not until time had expired that she learned that it was possible to do so, but it was too late. Nevertheless, on September 5, 2003, she filed a grievance against the way in which the investigation had been conducted.

[107] Asked about an email that she sent to Ms. Guérette on June 24, 2003 (Exhibit E-8), the grievor stated that it was a communication with her union representative and that the comment about managing by grievance was only a comment. The grievor noted that she uses the legal means available to her to raise the

problems she encounters. She acknowledged filing six or seven grievances since returning to work in September 2003.

[108] The grievor explained that she was the only one on duty on Remembrance Day in 2002. She was not in charge of the outside activity but she was involved in it. Ms. Gagné had not informed her of the scope of the event nor of her presence. She never raised her voice to Ms. Gagné.

[109] The grievor reiterated that Ms. Gagné's hostility increased beginning in summer 2002. She was subjected to looks, sighs and gestures of impatience or was completely ignored.

[110] The grievor testified that she did not confront Ms. Émond about her comment that she was a problem employee. Ms. Émond was the director. The grievor said that she did not dare raise the matter with Ms. Émond, who was above her in the hierarchy. Ms. Émond had a harsh attitude.

[111] The grievor stated that at the meeting before her return to work in September 2003, Ms. Émond asked everyone to turn the page and assured the grievor that she would be following up. After the grievor returned to work, she did what Ms. Gagné asked of her. At team meetings, discussions focused on technical points that did not require any comment from her. She denied swearing as she left Ms. Gagné's office.

[112] The grievor reiterated the explanation given in direct examination concerning the quotes affixed to her locker. The papers had been there for several years. She explained that the quote has to be considered in its historical context and repeated that the quote was not aimed at Ms. Gagné. The quote was the first one pasted on the locker and an X-Acto knife had to be used to get it off. The grievor acknowledged that she did not inform Ms. Gagné of the quote being posted on her locker but that she did not see why she should have. The grievor stated that at the February 23 meeting where the quote was the issue, Ms. Gagné was quite aggressive.

[113] As for the picture of the Queen, the grievor stated that she became aware of the display when she returned to work in September 2003. At that time, she did not dare mention it to Ms. Gagné.

[114] The grievor confirmed that during her temporary transfer, the employer compensated her for the inconveniences that the transfer created by providing her with a car, allowing her to travel to work during her work hours, paying for her meals and continuing to pay her at the PM-2 level. The payments and privileges ceased when the employer designated the transfer as permanent, causing her significant losses.

[115] Under re-examination, the grievor stated that when she wrote the emails to Ms. Guérette, which were adduced in evidence (Exhibits E-8 and E-9), she sent them from her home because she was teleworking at that time.

[116] The next witness called by the grievor's representative was Ms. Bruneau. Ms. Bruneau has worked at Fort Chambly since 1991. She holds a communication and interpretation officer position, classified at the PM-2 level. It is a seasonal position for 10.5 months a year. She reported to Ms. Gagné. Ms. Bruneau met the grievor at Fort Chambly in 1991 and became her friend over the years.

[117] Ms. Bruneau testified that the guides' room is a multi-purpose room. It serves as a documentation centre, utility room and kitchenette. The lockers are arranged so that they are highly visible. The guides tend to personalize the lockers in which they store their personal belongings.

[118] Ms. Bruneau confirmed that the grievor had posted quotes for several years. The quotes were written on a standard-sized piece of paper. Each year the grievor added a new quote over the old one. The quotes were taken from her historical reading. Everyone working at Fort Chambly used the guides' room. Employees ate there. Ms. Gagné used the room.

[119] Ms. Bruneau confirmed that there are many quotes posted at Fort Chambly, explaining that it is an interpretation centre. She recognized the quote that she saw on the grievor's locker. She confirmed that the quotes were pasted one on top of the other on the locker and that there had been quotes on the locker for the last 8 to 10 years.

[120] Ms. Bruneau testified that on her last day of work in December 2003, she asked for leave for the afternoon. At the end of the morning, she went to the guides' room to collect her belongings and found the grievor removing the quotes from her locker. The grievor left the last one, which was pasted directly to the locker door, saying that she would remove it when she returned. They then left together and went to say goodbye

to Ms. Gagné. She was on the telephone, and they simply waved to each other. Ms. Bruneau ate with the grievor.

[121] Ms. Bruneau testified that she finalized her reprisal grievance on the afternoon of the same day. She wanted to denounce the situation at Fort Chambly. She had contacted Ms. Guérette and they had agreed to file a grievance. The grievance was dismissed at the final level of the grievance process.

[122] Ms. Bruneau indicated that in her view, transfers at Parks Canada are made at the request of the employee and added that she had never requested a transfer.

[123] Under cross-examination, Ms. Bruneau explained how the quote was affixed with double-sided adhesive tape. She considered Mr. Longpré's display inappropriate for a federal government office. She never raised the matter with Ms. Gagne or Mr. Longpré. She had noticed that during fall 2002, the grievor was not being given work; she was not assigned any projects. Ms. Bruneau confirmed that as of the 2001-2002 season, Ms. Gagné asked employees to work on the weekends more often.

[124] The third witness that the grievor's representative called was Ms. Guérette. Ms. Guérette has been an employment insurance investigator with Service Canada since August 2006. She previously worked part-time for Parks Canada. She worked as a lock-bridge operator. She never worked at Fort Chambly.

[125] Ms. Guérette testified that she became the union representative in 2001 and that in July 2002 she accepted the position of president of the union local. The union local covers 17 historical sites between Temiscamingue and Montérégie. Fort Chambly fell under her responsibility.

[126] Ms. Guérette stated that the first contact she had with the grievor was in August 2002. The grievor contacted her to obtain information on her rights. In early September 2002, the grievor decided to file a harassment complaint, which was followed by a grievance dealing with the same issue.

[127] Ms. Guérette testified that she took notes (Exhibit S-27) during the meetings that she attended or right afterwards. After consulting her union, she advised the grievor to file a complaint and a grievance.

[128] Ms. Guérette explained that during the week of October 20, 2002, she met Ms. Émond in the hallway of the Chambly office, who asked her to follow her. During that meeting, Ms. Émond told Ms. Guérette that the grievor and Ms. Bruneau were good friends and that they were problem employees. Ms. Émond also indicated that she always took the employer's side.

[129] Ms. Guérette stated that the meeting to prepare for the grievor's return to work took place on November 1, 2002 at Fort Chambly. Ms. Émond and Ms. Gagné used quite a clipped tone with the grievor that they did not use with her.

[130] Ms. Guérette related the exchanges recorded in her notes between November 8, 2002 and the grievor's return to work on February 24, 2003. She also related the meeting of February 26 during which the grievor was informed that she could not return to Fort Chambly while the investigation was ongoing. On April 17, the grievor was given the opportunity to request a transfer. She refused. In an exchange of correspondence regarding requests for leave, management insinuated that the grievor was not following procedure.

[131] Ms. Guérette related the difficulties around obtaining approval for the grievor's request for annual leave. Ms. Guérette had to request the intervention of the union's vice-president to obtain approval. Ms. Guérette learned that Ms. Émond supported the findings of the investigation report dismissing the harassment complaint.

[132] Ms. Guérette testified that a meeting took place on July 4, 2004 during which the atmosphere at Fort Chambly was discussed. Ms. Émond again used a clipped tone with the grievor. She indicated that there were two factions at Fort Chambly. Ms. Guérette added that she met with Ms. Émond on July 22 and that at that time, Ms. Émond told her that the grievor was a stubborn woman, prepared to do anything to have heads roll. Ms. Émond told her that Ms. Gagné was ready in July 2002 to impose a disciplinary measure on the grievor.

[133] Ms. Guérette stated that she was not present at the August 12, 2003 meeting. She was present at the September 18, 2003 meeting to prepare for the grievor's reinstatement at Fort Chambly. At that meeting, Ms. Émond stated that it was time to turn the page and that she would be monitoring the situation. Ms. Gagné used an aggressive tone when she asked the grievor if she was not afraid of getting sick again by returning to Fort Chambly.

[134] Ms. Guérette indicated that the emails of March 10, 2003 and June 24, 2003 (Exhibits E-8 and E-9) are emails that she received from the grievor. They were submitted to the employer as part of the grievance process. The handwriting on the March 10, 2003 email is hers.

[135] Ms. Guérette also adduced the notes taken (Exhibit S-27) at the March 16 and 23, 2004 meetings. She stated that other than in the grievor's case, the employer, to her knowledge, had never required an employee to change work locations.

[136] Ms. Guérette indicated that she had several formal and informal meetings concerning the grievor between September 18, 2003 and March 16, 2004. She did not bring all of her notes because some dealt with other grievances.

[137] Under cross-examination, Ms. Guérette acknowledged that regarding the February 14, 2003 (Exhibit S-27) note, the employer was entitled to ask for a medical certificate. As for the offer to ask for a transfer proposed on April 17, 2003, Ms. Guérette explained that the grievor did not want to go that route.

[138] Ms. Guérette confirmed that the investigation following the complaint was conducted by an independent firm paid by the employer and that the union had approved the firm's selection. Ms. Guérette was not surprised that Ms. Émond agreed with the investigation's findings since, in Ms. Guérette's opinion, the findings were in keeping with what Ms. Émond wanted.

[139] Ms. Guérette stated that the emails of March 10 and June 24, 2003 (Exhibits S-8 and S-9) refer to the grievances filed on December 12, 2003 (Exhibits S-1 and S-2).

[140] Ms. Émond was again called to testify. She indicated that she met with Ms. Guérette following an email she had received from Richard Côté, a regional vice-president of the union. Mr. Côté questioned the delays in processing a number of files in the Management Unit, including the grievor's files. Ms. Émond stated that she reviewed the steps that had been taken in the grievor's file and indicated to Ms. Guérette that she was waiting for a response from the grievor about a mediation proposal. She asked Ms. Guérette if she was familiar with the work atmosphere at Fort Chambly. She did not make the comments that Ms. Guérette says she did.

[141] Ms. Émond maintained that she felt that the parties should be separated during the investigation. The employer ensured that the grievor had work from other historical sites.

[142] Ms. Émond denied that she made the comments attributed to her by Ms. Guérette in the notes of the July 22, 2003 meeting (Exhibit S-27). She never said that the grievor was a stubborn person, prepared to do anything to have “[translation] heads roll.”

### **III. Summary of the arguments**

#### **A. For the employer**

[143] The employer’s representative objected at the outset to my jurisdiction, as an adjudicator, to decide the permanent transfer issue. In his opinion, the grievance does not include the administrative decision to permanently transfer the grievor. The grievance’s wording (Exhibit S-14) does not refer to the permanent transfer. The grievance only covers the temporary transfer. The grievor was informed of the permanent transfer by letter (Exhibit S-10) more than a month after the grievance was filed. He added that the grievor filed a grievance following the notice of permanent transfer but that the grievance was not referred to adjudication. In this case, the temporary transfer and the permanent transfer are two different things. An adjudicator may not hear or decide a grievance that is not referred to adjudication.

[144] The employer’s representative was also of the opinion that an adjudicator does not have jurisdiction to hear the temporary transfer grievance because, in his view, it is an administrative measure. He referred to the provisions of section 92 of the former *Act*. He noted that the former *Act* only allows grievances on disciplinary action resulting in termination, suspension or a financial penalty to be referred to adjudication. He pointed out that the temporary transfer did not involve any penalty, termination, suspension or financial penalty. The grievor did not experience any financial prejudice because of the temporary transfer. The employer provided her with a car, allowed her to travel during work hours and reimbursed her meals, and her pay was not affected.

[145] The employer’s representative referred me to *Moreland v. Treasury Board (Post Office Department)*, PSSRB File No. 166-02-3080 (19780103), in which the adjudicator concludes that he does not have jurisdiction to decide a grievance of an employee who

was transferred without any financial impact. He also brought to my attention *Ager v. Treasury Board (Department of Transport)*, PSSRB File Nos. 166-02-3411 and 166-02-3412 (19780905), in which the adjudicator finds that she does not have jurisdiction in a case where there is no decrease in pay, even though certain bonuses could have been affected by the employee's transfer. He referred me to the Federal Court of Appeal's decision in *Bobinski v. Canada (Treasury Board)*, [1985] F.C.J. No. 244 (QL), in which the expression "financial penalty" is defined as the requirement to pay a sum of money as a punishment for a disciplinary breach. He also adduced *St-Onge v. Treasury Board (Agriculture Canada)*, PSSRB File No. 166-02-16481 (19871112), which relies on *Bobinski* to reach the same conclusion. He also stressed *McKee v. Treasury Board (Fisheries and Oceans)*, PSSRB File No. 166-02-21003 (19910321), in which the adjudicator finds that the transfer in that case amounts to a measure that is separate and disciplinary but that does not result in a financial penalty.

[146] The employer's representative pointed out that the letter informing the grievor of her temporary transfer (Exhibit E-4) was clearly an administrative measure. He added that the real reason that the grievor was transferred is that she was no longer performing adequately at Fort Chambly. The purpose of that measure was to enable the grievor and other employees to have a healthy work environment. The representative stressed that the dynamics at Fort Chambly were not appropriate. They were unhealthy. Given the situation, the employer had a responsibility to act and to help both the grievor and the other Fort Chambly employees. The grievor's temporary transfer was needed to provide some time to find an appropriate measure to resolve the situation and to give the grievor the healthy work environment that she wanted.

[147] The employer's representative pointed out that Ms. Émond testified about the situation at the time at Fort Chambly. She described a situation that had evolved toward a crisis. Ms. Émond had to act quickly and had no other choice. The employer's representative pointed out that the grievor acknowledged that she was not on very good terms with Ms. Gagné and that she did not consider her work environment healthy.

[148] The employer's representative also pointed out that the evidence revealed the extent of the animosity between the grievor and Ms. Gagné. The grievor mentioned in her testimony Ms. Gagné's unkind comments, Ms. Gagné's hostile behaviour toward her and the fact that she did not feel comfortable raising her concerns with Ms. Gagné.

[149] The employer's representative noted that the grievor's emails (Exhibits E-8 and E-9) to Ms. Guérette are also eloquent. In the June 24, 2003 email (Exhibit E-8), the word "manager" is in quotation marks. He points out that that is not very flattering to Ms. Gagné. He considers it equally sarcastic and disdainful. He also mentioned the comments about Ms. Gagné in the March 10, 2003 email (Exhibit E-9). The employer's representative concluded that things were not working between those two people and that the dynamic was full of animosity.

[150] The employer's representative noted that the grievor testified that when she was under Ms. Émond's direct supervision, Ms. Émond was very harsh with her and that the grievor felt watched by Mr. Longpré, who was very close to Ms. Gagné. He added that the grievor indicated that she was not able to tell Mr. Longpré what she thought about the display and that she was on her guard in his presence.

[151] The employer's representative pointed out that Ms. Gagné described the impact of the grievor's absence from Fort Chambly. Employees took more initiative to change things. The atmosphere was lighter. He also stated that when the grievor returned to Fort Chambly, one team member said, "[translation] She had to come back sometime."

[152] The employer's representative concluded that the facts show that the grievor's presence as part of the Fort Chambly team was creating a difficult and stressful work environment.

[153] The employer's representative noted that according to Ms. Émond, the situation at Fort Chambly had reached crisis level. Ms. Gagné and her assistant had fallen ill. Operations at Fort Chambly were threatened. Immediate action had to be taken to ensure that Fort Chambly was operational.

[154] He argued that it could not be claimed that the employer acted in bad faith between September 2002 and March 2004. He noted that before September 2002, the situation was under control. The employer initiated an independent investigation of the harassment allegations and indicated readiness to participate in mediation. When the grievor returned to her workplace, the employer held a meeting to ensure an optimum return to Fort Chambly.

[155] The employer's representative maintained that the employer had no intention of punishing the grievor by transferring her to the Lachine Canal section. It did so to

enable her to work in a healthy environment and to improve the performance of the other Fort Chambly employees.

[156] He concluded that for all of those reasons, I do not have jurisdiction to hear the temporary transfer grievance.

[157] As for the one-day suspension, the employer's representative pointed out that three issues need to be addressed to determine if the suspension was justified. The first is whether the poster was aimed at management. The second is whether the poster warranted a disciplinary penalty and lastly, the third is whether the one-day disciplinary penalty was appropriate.

[158] As for the grievor's statement that the poster was not targeting management in any way, the employer's representative urged me to examine the circumstances of the poster. It was found by Mr. Longpré, who informed Ms. Gagné about it at a time when they were the only two employees at Fort Chambly. It was very firmly affixed to the locker. The employer's representative questioned the grievor's motives for attaching the poster so firmly. He suggested that the grievor attached it in that manner so that it would be difficult to remove. He noted that the grievor admitted in her testimony that she was fully aware that the double-sided adhesive tape was difficult to remove.

[159] The employer's representative noted that Ms. Gagné testified about Mr. Longpré's emotional state, saying that she felt that he was agitated and that she too was upset. He also stated that the poster's paper was new, without any trace of adhesive from other posters pasted on top of it.

[160] The employer's representative pointed out that there is no doubt that the quote incites violence and hate toward kings and priests, which are a society's leaders. He noted that unlike the grievor, Ms. Bruneau acknowledges that it is a violent quote. In his opinion, any reasonable person would agree that the quote carries a message of hate and violence against leaders. It is not unreasonable that Ms. Gagné was shaken and that she and Ms. Émond were afraid.

[161] The employer's representative noted that when the grievor left Fort Chambly on December 12, 2003, she was aware of the relationship dynamics at that time and knew that Ms. Gagné was remaining at Fort Chambly during the low season. The employer's representative questioned the reasons that led the grievor not to inform Ms. Gagné

that she was leaving a poster on her locker that she would remove when she returned. The employer's representative concluded that the grievor deliberately left the poster on the locker to send a threatening message to Ms. Gagné.

[162] The employer's representative pointed out that the message worked because Ms. Gagné took measures to ensure her safety by calling home before leaving work, by having Mr. Longpré accompany her to the office's entrance and by having her husband's friends go jogging with her. According to the employer's representative, there is no doubt that when Ms. Émond learned of the quote, she too was afraid; she thought about it a lot at night. The employer's representative accepted Ms. Gagné's explanation that she denied being afraid at the March 16, 2004 meeting because she wanted to show the grievor that she was strong.

[163] The employer's representative concluded that Ms. Gagné and Ms. Émond felt threatened. He pointed out that threats of violence in the workplace must be taken seriously. All employees must be able to work in an environment that is free from threats, violence, harassment and intimidation.

[164] The employer's representative went on to say that by imposing a one-day suspension the employer wanted to send a message that such threats or intimidation would not be tolerated at Fort Chambly. Eliminating the suspension would send the opposite message, a message that violence may be tolerated.

[165] The employer's representative referred me to *Massip v. Canada* (1985), 61 N.R. 114, concerning the length of the suspension.

## **B. For the grievor**

[166] The grievor's representative began her arguments by stating that while Messelier's sentiments heralded the French revolution, there is no question that Messelier could never have imagined that he would be at the centre of an adjudication.

[167] The grievor's representative has the view that the suspension and transfer are disciplinary measures imposed in bad faith. She pointed out that the evidence established that Ms. Émond believed that the grievor should have received a disciplinary penalty well before 2003, without ever explaining the reasons for that assertion. She noted that Ms. Émond told Ms. Guérette that the grievor was a problem employee after a harassment complaint was filed against Ms. Gagné. She also noted

that Ms. Émond imposed the disciplinary penalties consisting of the suspension and the transfer after she was herself the object of a harassment complaint.

[168] The grievor's representative also noted that the evidence showed that throughout the process, the employer failed to respect two major principles of natural justice and that that failure in itself constitutes evidence of bad faith. The employer did not respect the principles that the other party should be heard ("*audi alteram partem*") and that no person can be a judge in his or her own case.

[169] With respect to the first principle of natural justice, the grievor's representative explained that the evidence showed that Ms. Émond never gave the grievor an opportunity to respond to the allegations in the December 4, 2003 memo (Exhibit E-3). Ms. Émond did not even discuss it with the grievor. However, it was the main factor in the conclusions about the work environment at Fort Chambly. The grievor's representative also noted that although she denies it, Ms. Émond told Ms. Guérette that she always took management's side.

[170] As for the principle that one cannot judge one's own case, the grievor's representative noted that Ms. Émond was the subject of a grievance filed on December 12, 2003 and of a grievance filed on March 16, 2004 (Exhibits S-2 and S-6). By transferring the grievor, Ms. Émond judged her own case.

[171] As for the poster, the grievor's representative objected to the employer's arguments that the poster with the Messelier quote constituted a threat. In her opinion, that is a serious accusation that damages the grievor's reputation. She pointed out that the use of threats is a much more serious offence than that mentioned in the suspension letter (Exhibit E-2). The employer is bound and limited by the content of the suspension letter and may not make more serious accusations. She cited *Katchin v. Canadian Food Inspection Agency*, 2003 PSSRB 24, and added that it was at the adjudication hearing of her grievance that the grievor learned for the first time of the fears alleged by Ms. Gagné and Ms. Émond.

[172] The grievor's representative pointed out that according to Brown and Beatty in *Canadian Labour Arbitration*, at paragraph 7:3430, in cases involving allegations of threats, motivation is the determining factor in analyzing the grievor's action. According to the representative, in this case, the testimonies of Ms. Bruneau and Ms. Guérette support the grievor's version. Even though both versions were plausible,

the employer allegedly did not establish the merit of the disciplinary measure on the balance of probabilities. She referred to *Katchin*, which deals with the decision to be rendered in a situation where both versions are plausible.

[173] The grievor's representative summarized *Joss v. Treasury Board (Agriculture and Agri-Food Canada)*, 2001 PSSRB 27, which deals with workplace harassment. She noted that the adjudicator in that decision stated that harassment is unacceptable workplace behaviour and that it must be proved both objectively and subjectively. The adjudicator writes:

...

*... The objective element is that the conduct must be objectionable and be demeaning, belittling, or have caused personal humiliation or embarrassment. The subjective element is that the victim or object of the conduct must have found it to be offensive for one of those reasons.*

...

[174] The grievor's representative also added that the adjudicator believed that harassing behaviour must be deliberate or that its objectionable or offensive nature must be reasonably obvious.

[175] The grievor's representative pointed out that Ms. Émond acknowledged during cross-examination that the quotes are a way of understanding the spirit of an era. She added that Ms. Émond and Ms. Gagné acknowledged that the quotes adduced (Exhibit S-21) by the grievor and recognized by Ms. Bruneau could have been posted at Fort Chambly and that they had a hateful and violent connotation.

[176] She pointed out that Ms. Bruneau and Ms. Gagné, along with the grievor, indicated that the guides were accustomed to decorating their lockers in the guides' room.

[177] The grievor's representative pointed out that the quote at the centre of this dispute is taken from a book (Exhibit S-3) used by the grievor as part of her work and added that the author and the date of the quote were clearly displayed on the poster attached to the locker. She noted that the quote is of the same era as Fort Chambly.

[178] The grievor's representative submitted that while the quote is violent in nature, it cannot be considered a call to violence given its historical nature at a historical site.

Using hateful or violent quotes is not only tolerated by the employer, they are also an integral part of the posters used to inform the public visiting the historical site.

[179] The grievor's representative submitted that according to the testimonies of Ms. Bruneau and the grievor, the poster had been affixed to the locker for some time. She also pointed out that the evidence shows that the quote attributed to Ononthio (Exhibit S-3), which was affixed to the locker on top of the Messelier quote, was put there in 2001, the year of the celebration of the Great Peace of Montréal. The quotes had been on the locker for some time, and management never intervened to inform the grievor that they were inappropriate.

[180] The grievor's representative pointed out that Ms. Gagné's memo to Mr. Bachand, dated February 27, 2004 (Exhibit E-6), clearly establishes that Ms. Gagné was aware that posters had been on the grievor's locker because Ms. Gagné reported to Mr. Bachand that she had asked the grievor why she had changed her poster. In the opinion of the grievor's representative, Ms. Gagné's testimony that it was a new piece of paper was not credible. She added that the employer's representative did not produce the original document. She asserted that I must rule against the employer on that issue because I was given no explanation as to why the original was not adduced. The original would have made it possible to determine the age of the document and how it was torn when removed from the locker. The grievor's representative also noted that Ms. Émond was not able to determine the age of the document because she never saw it. Moreover, Ms. Gagné's memo to Mr. Bachand, dated January 19, 2004 (Exhibit S-13), clearly indicates that Ms. Gagné informed Mr. Bachand that she could not remove the poster without tearing it, which supports the grievor's testimony. The grievor's representative pointed out that it should have been important for Ms. Émond to verify the document's age. Further, the traces left by the adhesive are quite clear in the picture of the locker (Exhibit S-26).

[181] The grievor's representative maintained that the grievor had no intention of sending any message. On the contrary, she planned to remove the poster when she returned to work the following February, which Ms. Bruneau confirmed in her testimony.

[182] The grievor's representative used the history of the relationship between Ms. Gagné and the grievor to show the bad faith of the employer's representatives in this case. Among other things, she mentioned that Ms. Gagné stated that she believed

that she had a good relationship with the grievor and that she believed that everything was going fine until the moment when the grievor filed her first harassment complaint in 2002. However, Ms. Gagné does not recall telling the grievor during the meeting to discuss the performance evaluation that she misinterpreted her actions. The grievor's representative also noted that in her testimony, Ms. Gagné said that the altercation about Remembrance Day activities occurred in 2003, while the grievor said that it happened in 2002. However, there is no mention of that altercation in Ms. Gagné's December 4, 2003 memo (Exhibit E-3). The grievor's representative maintained that the grievor's version of events is much more credible.

[183] The grievor's representative maintained that it is not surprising that the grievor expressed her frustrations in the emails of March 10, 2003 and June 24, 2003 (Exhibits E-9 and E-8). The sources of the frustration were the problems at work and obtaining approval of her leave.

[184] She noted that Ms. Gagné did not do much to help create a positive atmosphere by asking the grievor at the meeting before her return to work in September 2003 if she was afraid of becoming sick again. The grievor's representative also noted that Ms. Émond promised, at that same meeting, to monitor the situation. The grievor trusted that commitment. However, Ms. Émond never spoke to the grievor between September 18, 2003 and March 16, 2004. The grievor's representative also noted that Ms. Gagné never met with the grievor individually even though she was aware of the importance of properly monitoring an employee after a long absence. She noted that both the grievor's testimony and Ms. Bruneau's agree that the grievor asked Ms. Gagné, on her return to work, if there was anything new in the work at Fort Chambly and that Ms. Gagné simply replied negatively. She also pointed out that Ms. Bruneau observed that the grievor was not given any work.

[185] The grievor's representative noted that none of the other employees testified and no evidence other than hearsay was adduced regarding the work atmosphere. Ms. Gagné never showed her December 4, 2003 memo (Exhibit E-3) to the grievor or discussed the issue with her. She sent her memo to Ms. Émond. However, Ms. Émond was working in another building and had no direct knowledge of the situation at Fort Chambly. Even when she received Ms. Gagné's memo, Ms. Émond did not take any action to resolve the situation and did not follow up on it. The grievor's representative

maintained that Ms. Gagné refused to turn the page after September 2003 and that she did not communicate professionally with the grievor.

[186] The grievor's representative submitted that the January 13, 2004 email from Ms. Gagné to Mr. Bachand (Exhibit S-13) shows that the poster was sent even before the grievor was asked for an explanation. She noted the difference in the way that management treated the grievor when another employee's display resulted in no action being taken.

[187] The grievor's representative also noted Ms. Émond's comments about the grievor that she was a problem employee and that she should have been disciplined and the comment that she always supported her managers. Although Ms. Émond denied the comments, the grievor's representative submitted that the union representative, Ms. Guérette, in her notes (Exhibit S-27), confirms that Ms. Émond did indeed make such comments. Ms. Émond's denial of those facts confirms her bad faith.

[188] As for the subjective element of the fear caused by the quote posted on the locker, the grievor's representative submitted that if Mr. Longpré had never brought the poster to her attention, Ms. Gagné never would have seen it. She added that fear described more than three years after the events is not credible. Questioned by the grievor at the March 16, 2004 meeting, Ms. Gagné clearly stated that she did not feel that she was the target of the poster or that it threatened her. The grievor's representative added that Ms. Gagné's explanation that she did not want to appear weak in front of the grievor is not credible. She added that there is no evidence that the fears were even shared with Ms. Émond. Furthermore, Ms. Gagné did not hesitate to meet with the grievor and question her about the poster when she returned to work in February 2004. The poster had been in place for over five years in a location where Ms. Gagné went daily. There is no objective and logical reason for having such a reaction.

[189] The grievor's representative pointed out that Ms. Émond's testimony about the content of the poster and the fears that it raised is exaggerated. She noted that the testimony goes well beyond what is mentioned in the suspension letter (Exhibit E-2). The grievor's representative added that Ms. Émond was made aware of the poster in January 2004 and that no action was taken before mid-March 2004, well after the grievor's return to work in February 2004.

[190] The grievor's representative pointed out that although Ms. Émond stated at the beginning of the March 16, 2004 meeting with the grievor that she did not want to assign intent that is exactly what she did.

[191] The grievor's representative emphasized that objectively, the quote is compatible with a workplace such as Fort Chambly. She submitted that one cannot reasonably read a historical quote with a historical source in a French fort of the same era and draw the conclusion that a reference to a king and a priest is a reference to management. That was never the grievor's intent.

[192] The grievor's representative submitted that other factors should also have been taken into consideration in this case, including the grievor's good record and performance evaluations.

[193] As for the fact that the transfer constitutes a financial penalty, the grievor's representative pointed out that the definition of financial penalty is very broad, citing *Bobinski*. She submitted that the adjudicator in *St-Onge* misinterpreted *Bobinski* in assigning an overly restrictive meaning. Furthermore, the grievor's situation is different from that of Mr. St-Onge since he exercised certain options that resulted in additional costs, while the employee in this case had no options. She noted the comment at page 6 of the arguments in *St-Onge*, taken from *Guertin* (PSSRB File No. 166-02-36), which indicates that the decision to transfer an employee need be motivated only in part by disciplinary considerations to be considered a disciplinary measure. The grievor's representative also pointed out *MacLean v. Treasury Board (Revenue Canada - Customs and Excise)*, PSSRB File No. 166-02-22580 (19930507), which, citing *Massip* (see pages 16 and 17), states that “. . . In choosing its words, Parliament did not, and had no reason to, foreclose access to adjudication entailing disciplinary action resulting indirectly in a financial penalty.”

[194] The grievor's representative submitted that the comments about good faith in *Moreland* support the Board's jurisdiction to deal with a transfer made in bad faith. She noted the comments in *Canada (Attorney General) v. Penner*, [1989] 3 F.C. 429 (F.C.A.), stating that an adjudicator does not have jurisdiction to hear a grievance about a rejection on probation as soon as he or she is satisfied of the employer's good faith. She submitted that on the contrary, if the evidence shows that the employer acted in bad faith, the adjudicator has jurisdiction to hear the grievance.

[195] The grievor's representative submitted *Dhaliwal v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2004 PSSRB 109, in which good faith is described as a manner of conduct based on honesty of intentions and fairness of treatment. The adjudicator in that decision asked the question of whether the rejection on probation was, in fact, a sham or a camouflage. The grievor's representative also pointed out the comment that the employer's right to reject an employee on probation is not entirely unrestricted and that the principles of fairness and natural justice must be applied.

[196] The grievor's representative submitted that a grievance referred to adjudication gives the Board-appointed adjudicator the jurisdiction to consider the facts and actions that led to the decision and everything that results from it. In her opinion, the evidence shows that the decision to permanently transfer the grievor was a decision made by the same person, Ms. Émond. The grievor's representative submitted that the grievance was filed in response to the two letters received March 23, 2004 but that it is very clear that the grievor was seeking to have the transfer to the Lachine Canal rescinded and to be reinstated at Fort Chambly. Since the context is one in which the grievor was transferred against her wishes, it follows that if the grievance is allowed and the decision reversed, all of the actions that flow from that decision must be rescinded.

[197] The grievor's representative submitted *Blouin Drywall Contractors Ltd. v. United Brotherhood of Carpenters and Joiners of America, Local 2486* (1975), 8 O.R. (2d) 103 (Ont. C.A.) in which it is stated that the wording of a grievance should be liberally interpreted so that the real problem is dealt with and the appropriate remedy provided. She also pointed out to *P&H Foods and United Food & Commercial Workers Union, Local 175* (1996), 60 L.A.C. (4th) 214, in which it is stated that even though a remedy may be requested in one grievance, it does not prevent an adjudicator from applying that remedy to another grievance.

[198] The grievor's representative submitted that the grievor's permanent transfer arose from the temporary transfer and constituted injury arising from the decision to transfer her on a temporary basis. She noted Ms. Émond's letter of April 6, 2004 (Exhibit S-8), which establishes the link between the temporary transfer and finding a permanent solution. She also submitted that there was no evidence as to the reasons that the union did not pursue the grievance dealing specifically with the permanent

transfer and therefore conclusions cannot be drawn from the fact that the grievance was not pursued.

[199] The grievor's representative noted that the decision to make the transfer permanent is confirmation of the original decision to transfer temporarily. Ms. Émond was clearly reacting to the same facts. At no time between the temporary transfer and the decision to permanently transfer the grievor did Ms. Émond speak with the grievor or with Ms. Gagné. Although she claims that she wanted to evaluate the situation, no evaluation was done. The grievor's representative submitted that Ms. Émond allowed time for reflection but did not consider anything new.

[200] The grievor's representative submitted that I must liberally interpret the grievance, and the grievor clearly wants to return to work at Fort Chambly. She added that the decision to transfer her was communicated on the same day as the decision to suspend her. She also submitted that the no advance notice was given, as set out in clause 30.01 of the collective agreement (Exhibit S-15). At no time did the grievor ask to be transferred to another position. Although the grievor is complaining about being the victim of harassment, she is the one who was transferred. That is a completely unacceptable approach in a situation where the employee has not requested such action.

[201] The grievor's representative submitted that the transfer is a second disciplinary measure for the same incident. She submitted that Ms. Émond was the subject of harassment complaints that the grievor submitted in the form of grievances (Exhibits S-2 and S-6). Ms. Émond did not have the necessary independence to make the decision in this case.

[202] The grievor's representative submitted that the discovery of the poster with the quote was a pretext to take two unjustified disciplinary actions. The decisions were made in bad faith, without considering all of the facts and without hearing the other side, by a person who was judging her own case. For her part, the grievor always used legal means to exercise her rights and to express her problems in her workplace.

[203] The grievor's representative asked that I allow the grievance and grant all of the remedies that it requests.

**C. Employer's reply**

[204] In reply, the employer's representative submitted that Ms. Émond denied saying that the grievor should have received a disciplinary penalty in the past and that the grievor was a problem employee. In his opinion, the testimonies of Ms. Guérette and of the grievor in that regard are merely hearsay. He submitted that I should give Ms. Émond's testimony strong credibility.

[205] As for the fact that Ms. Gagné never discussed the content of the December 4, 2003 memo (Exhibit E-3) with the grievor, the employer's representative submitted that it must be understood that Ms. Gagné sent the whole thing to Ms. Émond to provide her with her observations and that she was eventually going to meet with the grievor. In his opinion, there is no evidence that Ms. Gagné refused to meet with the grievor. He added that the memo clearly shows that the grievor was not interested in any dialogue with Ms. Gagné.

[206] The employer's representative was also of the opinion that I should give strong credibility to Ms. Gagné's testimony. He pointed out that the union was unable to show that Ms. Gagné gave false testimony. He submitted that I must accept the testimonies of Ms. Émond and Ms. Gagné over those of Ms. Bruneau and the grievor.

[207] The employer's representative also submitted that Ms. Émond denied saying that she always took management's side by explaining that that assertion was false despite the fact that it appears in Ms. Guérette's notes. He added that Ms. Émond is not biased because she supported the findings of the independent harassment investigation and because she was the subject of two subsequent grievances. In his opinion, the union did not show that Ms. Émond was biased.

[208] The employer's representative submitted that contrary to the statement of the grievor's representative, the employer showed that the poster was offensive and that the two managers felt harassed and threatened. Ms. Émond clearly indicated that such a poster cannot be tolerated under any circumstances. The testimonies of Ms. Gagné and Ms. Émond show how they perceived the poster. The employer's representative submitted that the situation must be examined within the labour relations context at Fort Chambly and stressed that Ms. Bruneau acknowledged the violent nature of the quote.

[209] The employer's representative noted that even the grievor acknowledged that the poster is violent and offensive at first glance but that it needs to be examined in greater detail. He submitted that given the work context, Ms. Gagné and Ms. Émond should not be required to take the time to sit down and look beneath the surface of the quote for its meaning. The employer's representative urged me to make a distinction between the posters found in Fort Chambly's exhibit rooms and those found in the employees' room. Simply because an employee works at the War Museum does not mean that he or she can post violent quotes in a location reserved for employees, especially if that employee has a stormy relationship with management. He submitted that the poster was inappropriate in light of the situation in the workplace.

[210] The employer's representative stated that he acknowledged that the grievor had never been told that it was inappropriate to post violent quotes. He submitted that it should not be necessary. The employer should be able to rely on its employees' good judgment.

[211] He pointed out that there is no reason not to believe Ms. Gagné when she says that the poster's paper was new. He submitted that no conclusion can be drawn from the fact that the employer did not adduce the original poster. He added that even if the poster had been there for a long time, it would be appropriate to reproach the grievor for not removing it or at least for not informing Ms. Gagné of its presence on her locker. In his view, it is difficult to understand why the grievor or Ms. Bruneau did not inform Ms. Gagné accordingly when they left.

[212] The employer's representative submitted that the evaluations that the union adduced date back to before 2002 and that there is no evaluation during the period of the escalated conflict. He added that it should not be surprising that Ms. Gagné was surprised to be the subject of a harassment complaint in September 2002 when the only indication of a problem is the grievor's comment to Ms. Gagné during the meeting about the performance evaluation in May 2002.

[213] The employer's representative submitted that Ms. Gagné had plenty of time to observe the grievor's inappropriate behaviour in the fall of 2003 since they were in each other's presence for at least nine weeks based on three days per week. He pointed out that the December 4, 2003 memo (Exhibit E-3) contains several examples of the grievor's behaviour that could be considered problematic. He added that it is interesting to note that when the grievor is given an opportunity to communicate, she

does not do so. At meetings, she did not comment or ask questions. He noted that Ms. Gagné testified about the work assigned to the grievor during fall 2003.

[214] The employer's representative maintained that the last paragraph of the memo cannot be interpreted as a request by Ms. Gagné to transfer the grievor. He pointed out that Ms. Gagné clearly rejected that interpretation.

[215] As for Ms. Guérette's notes, the employer's representative pointed out that they are comments that she reported and that they are hearsay. He emphasized that it is easy to take a comment out of context.

[216] The employer's representative submitted that Ms. Gagné explained why she did not indicate at the March 16, 2004 meeting that she was upset and noted that she went on sick leave the day after that meeting.

[217] As for the question of the Board's jurisdiction to deal with the transfer, the employer's representative pointed out that there are two decisions that clearly state what constitutes a financial penalty. He referred me to *MacLean* and to *Massip*. As for *P&H Foods and United Food & Commercial Workers Union, Local 175*, the employer's representative submitted that it is a decision from the private sector and that it should be understood that an arbitrator may have different powers than those accorded to Board adjudicators.

[218] The employer's representative submitted that the decision to permanently transfer the employee was a separate decision, which was the subject of another grievance that was not pursued. For that reason, the Board may not rule on that transfer in this case.

#### **IV. Reasons**

[219] Deteriorating relationships in a small workplace is definitely one of the most difficult problems to resolve. Such situations require intervention and close monitoring to avoid degeneration into endless conflict. Unfortunately, it is quite clear that there was a problem not only in providing the necessary monitoring but also in ensuring an impartial analysis of the situation. The result was that management created an incident from nothing, which had significant consequences for the grievor's professional life.

[220] Having examined all of the testimony presented during this hearing, I conclude that the grievor never intended to threaten her managers in any way or to challenge authority. The grievor clearly, and in a credible manner, explained the origin and context of the poster, and I see no reason to impose any measure. At the most, it might have been appropriate to ask her to remove it. Accordingly, there are no grounds for imposing a one-day suspension.

[221] I am also perplexed by Ms. Émond's decision to transfer the grievor to another position supposedly to provide her with a healthy work environment. It is clear that the real reasons for that decision are found elsewhere. Ms. Émond made a commitment when the grievor returned to work in September 2003 to monitor the situation to ensure the smooth operation of the Fort Chambly team. However, there was no follow-up and the input from various sources was not positive. In early December 2003, the grievor filed two new harassment complaints in the form of grievances, one against Ms. Gagné and the other against Ms. Émond. For her part, Ms. Gagné prepared a memo stating that a change was needed to ensure the proper operation of the Fort Chambly team. It is appropriate to mention here that although Ms. Gagné outlined her complaints to Ms. Émond, at no time during the fall did she share her dissatisfaction with the grievor. When a person takes on supervisory responsibilities, it is crucial for that person to be able to share his or her dissatisfaction with the employees being supervised. Appropriate follow-up by Ms. Émond would have been useful to ensure that Ms. Gagné's concerns were properly addressed. Even when informed of the situation, Ms. Émond did not intervene to assist Ms. Gagné in resolving her supervision problems. Instead, she adopted an authoritarian approach and summoned the grievor to a disciplinary meeting for an incident that was blown out of proportion. That meeting was followed the next day by the supervisor going on sick leave.

[222] I must say that I attach no credibility to the fears concerning the poster expressed by Ms. Gagné and Ms. Émond during the hearing. It seems to me that if the posting of the quote had been interpreted as a threat, management would have taken administrative measures to ensure security, and the disciplinary measure would have been much more severe.

[223] In my opinion, the real reasons for the transfer are found both in Ms. Gagné's request in the December 4, 2003 memo (Exhibit E-3) to transfer the employee and in

the managers' reactions to the grievances that the grievor continued to submit. Although she denies it, Ms. Émond considered the grievor to be a problem employee who should have been disciplined. Ms. Guérette's notes taken at various times are convincing regarding that fact. The credibility of Ms. Émond testimony is seriously undermined by the fact that she denies the evidence under oath. Nothing in the grievor's behaviour warrants such a conclusion, and I find that Ms. Émond acted in bad faith in imposing a transfer for the reason given, which was to provide the employee with a healthy work environment. I conclude that the transfer was a disciplinary suspension of her functions, from her position, for an incident that did not warrant any penalty. The disciplinary transfer is the result of the same incidents and the same circumstances that led to the one-day suspension. The transfer cannot be considered an appropriate consequence to the employer's alleged concerns.

[224] Several elements lead me to conclude that the employer acted in bad faith toward the grievor. The first is the fact that the employer denies using the transfer as a means of discipline. It is not coincidence that the grievor was informed of the transfer at the same time as the disciplinary suspension. I give no credibility to the employer's testimony that the transfer was purely administrative. The evidence shows that the suspension and transfer were disciplinary measures stemming from the poster incident, which the employer blew out of proportion. I also note that the employer did not assign work to the grievor after she returned from sick leave, a sign that the employer wanted to isolate her. Demeaning remarks were also directed at the grievor, such as whether she was afraid of getting sick again by returning to her position at Fort Chambly and the comment that she was a problem employee who should have been disciplined and then subsequently denying or forgetting such comments.

[225] The employer's representative objected to the jurisdiction of a Board-appointed adjudicator to hear the part of the grievance dealing with the temporary transfer and also objected to the request that the permanent transfer be an integral part of the remedy.

[226] In my opinion, as soon as I determine, as an adjudicator, that the employer acted in bad faith in imposing a disciplinary penalty, I have full jurisdiction to impose the remedies that are needed given the situation at that time and the manner in which that situation evolved. The description of the transfer as temporary in the March 23, 2004 letter (Exhibit E-4) is, in my view, pure fiction. I believe that Ms. Émond

never intended to bring the employee back to Fort Chambly. Between the time of the temporary transfer and the letter communicating the permanent transfer, neither Ms. Émond nor Ms. Gagné had any discussions with the employee to find a solution to the situation. Ms. Émond's response (Exhibit S-8) to the employee's request to be reinstated in her position also leads me to conclude that she never intended to bring the employee back to Fort Chambly. At the time that she filed her grievance, the employee asked to be reinstated in her position at Fort Chambly. I accept that request, which I consider an appropriate remedy in the circumstances.

[227] Accordingly, I allow the grievance and I rescind the one-day suspension without pay and the disciplinary suspension of her duties as senior guide-interpreter at Fort Chambly. I order that the grievor be reinstated in her position at Fort Chambly.

[228] For all of the above reasons, I make the following order:

*(The Order appears on the next page)*

**V. Order**

[229] I order that the one-day suspension be rescinded, that the suspension of her duties be rescinded, that the grievor be reimbursed for the financial loss caused by the suspensions and that the grievor be reinstated in her position at Fort Chambly.

[230] I retain jurisdiction on this grievance for a period of 60 days to address any issue related to the application of this order.

December 18, 2007.

P.S.L.R.B. Translation

**Georges Nadeau,  
adjudicator**