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File: 566-02-605

Citation: 2008 PSLRB 61



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

THU-CÙC LÂM

Grievor

and

**DEPUTY HEAD
(Public Health Agency of Canada)**

Respondent

Indexed as
Lâm v. Deputy Head (Public Health Agency of Canada)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Michele A. Pineau, adjudicator

For the Grievor: Jean Saint-Pierre, counsel

For the Respondent: Stephan J. Bertrand, counsel

Heard at Montreal, Quebec,
June 19 and 20, October 15 to 18, October 29 to November 1,
November 6 to 9, 20, 29 and 30, and December 7, 2007.
(PSLRB Translation)

I. Individual grievance referred to adjudication

[1] The grievor, Thu-Cúc Lâm, began her employment with the federal public service on April 15, 1998 as an employee of Health Canada. Since October 2000, she has been employed as a program consultant at the PM-04 level for the Public Health Agency of Canada (PHAC) at the Population and Public Health Branch (PPHB), Quebec Region. In general, her role is to support the implementation and financing of federal projects in the western sector of the Island of Montreal for the Community Action Program for Children (CAPC).

[2] The grievor's employment was terminated on July 12, 2006.

[3] The grievor contested the termination by way of a grievance filed on July 18, 2006 and presented at the final level of the grievance process. It was dismissed on September 25, 2006 because there was not enough evidence or mitigating factors to warrant overturning the decision to terminate her employment, which led to the present reference to adjudication.

[4] The letter of termination of employment lists eight pivotal "main events" influencing the employer's decision:

- a) inappropriate remarks at an official meeting;
- b) a complaint from an organization about service delivery;
- c) the intimidation of an employee at the PHAC;
- d) the blaming of a co-worker;
- e) the forgery of a document;
- f) absence without prior authorization;
- g) an intervention discrediting management at a team meeting; and
- h) repeated requests to use coffee breaks despite a signed agreement prohibiting such a practice.

[5] Before those events unfolded, the grievor had accumulated a disciplinary record as follows:

- a) August 13, 2003: first warning about the grievor's conduct;
- b) September 22, 2003: second warning, letter of reprimand for insubordination;
- c) September 24, 2003: two-day suspension for insubordination;
- d) February 3, 2004: 10-day suspension for her disrespectful attitude toward her supervisor and for refusing to support regional management's approach to clients; and

- e) October 28, 2004: 20-day suspension for having challenged management's decisions and for having behaved disrespectfully towards her co-workers and management.

[6] The 2-, 10- and 20-day suspensions were grieved, and a decision was rendered by Adjudicator Tessier on July 9, 2007 (2007 PSLRB 69). The disciplinary measures were upheld in their entirety.

[7] To support the termination, the Deputy Head of the PHAC ("the Deputy Head") relied on the lack of any change in the grievor's behaviour despite many warnings given and progressive discipline such that the relationship of trust, which is essential for employment at the PHAC, had allegedly been irrevocably lost.

[8] On December 7, 2006, the grievor advised the Canadian Human Rights Commission of her intention to raise an issue regarding the interpretation or application of the *Canadian Human Rights Act* in her reference to adjudication. The Canadian Human Rights Commission eventually indicated that it did not intend to make any representations about the issue raised by the grievor.

[9] No issue related to the interpretation or application of the *Canadian Human Rights Act* was raised before me at the oral hearing.

II. Description of the grievor's work environment

[10] The PHAC is part of the federal Health portfolio. The PHAC works together with partners to encourage the adoption of measures throughout Canada to renew the Canadian public health system and to support a sustainable health care system.

[11] The CAPC provides long-term funding to community groups, allowing them to set up and offer services that address the health and development needs of children (from birth to six years of age) who are living in conditions of risk. It relies on community organizations and provincial health and social services to define the needs of children and to identify the resources required to manage the projects those organizations and services propose. The CAPC targets children living in low-income or teenage-parent families, children experiencing developmental delays or behavioural problems, and abused and neglected children.

[12] The CAPC is governed by administrative protocols that identify funding priorities and set out the terms and conditions for managing projects in each province

or territory. In Quebec, community organizations must comply with provincial directions for health and social services to be eligible for the CAPC. Programs are managed by a joint management committee that includes PHAC representatives, health and social services organizations such as local community service centres (CLSCs), and community organizations. New projects are presented by consultants, and the joint committee determines the best way of meeting priorities and allocating funds. Projects are evaluated annually at the national, regional and local levels to provide information on the progress of programs and on the effects on the communities served.

[13] The role of a consultant in the PPHB is to ensure the proper functioning of programs financed by the PHAC by seeing to it that program objectives and financial commitments are met. By transferring his or her knowledge, the consultant supports organizations that sponsor projects. Among other things, the consultant presents and explains funding manuals and guidelines and advises organizations about PHAC requirements for obtaining funding. The consultant assesses funding applications from organizations in his or her sector to ensure that the proposals comply with established policies and recommends the approval or refusal of organizations' projects. The consultant checks whether the projects are carried out in compliance with contractual agreements and, if necessary, recommends maintaining or ceasing financing or taking corrective measures.

III. Evidence concerning incidents alleged against the grievor

A. Inappropriate remarks at an official meeting

[14] An information meeting about the CAPC was held on April 5, 2006 at the Direction de la santé publique in Montreal. The purpose of the meeting was to allow PPHB consultants to share information about health promotion initiatives with their provincial counterparts, with a view to implementing joint projects. Representing the PHAC at the meeting were Michel Gaussiran, the team leader and coordinator for the CAPC in the Quebec Region, and the grievor.

[15] Among other things, the meeting dealt with the roles and responsibilities of the PHAC in implementing the CAPC and the Canada Prenatal Nutrition Program (CPNP) and with the cooperation between the PHAC and the Agence de la santé et des services sociaux de Montréal in implementing the CAPC on the Island of Montreal.

[16] One of the subjects dealt with at the meeting was the project evaluation and evaluation support that could be given to organizations receiving contributions under the CAPC. During this discussion, Mr. Gaussiran presented an initiative from the Quebec regional office of the PHAC, namely, a “cross-section analysis,” where the main goal was to increase the evaluation capacity of organizations receiving CAPC funding. Mr. Gaussiran offered to share the results for the eastern Montreal sector and eventually for the West Island sector. After Mr. Gaussiran’s presentation, the grievor intervened, mentioning that the PHAC also used another standardized method for collecting and analyzing data for all of its programs, namely, the National Project Profile (NPP). She stated that cross-section analysis is a homegrown initiative containing data that is only valid for the year in which it is collected.

[17] During a conversation on June 2, 2006, or shortly before, Mr. Gaussiran told his immediate supervisor, Benoît Jarry, about what the grievor said. Referring to the grievor, Mr. Jarry told him that “many things” were happening and that Mr. Gaussiran should have immediately reported what the grievor said because it was contrary to PHAC guidelines.

[18] At Mr. Jarry’s request, Mr. Gaussiran drafted a written statement about the incident that occurred on April 5, 2006. In his statement dated June 2, 2006, Mr. Gaussiran explained that he did not raise the grievor’s comments during the meeting because he wanted to avoid a confrontation in the presence of important provincial partners. He added that even if the grievor did not favour the cross-section analysis approach, this method had been adopted by the Quebec Region, and the grievor’s comment served only to discredit him.

[19] In his testimony, Mr. Gaussiran explained that all projects receiving contributions from the PHAC are subject to an annual evaluation to ensure that the services delivered meet the original objectives. While the NPP is a national evaluation program, cross-section analysis is an initiative and a practice restricted to the Quebec Region. This practice does not exist as a written guideline but is mentioned in the minutes of the Quebec regional office. A manual explaining the evaluation process is handed out to organizations during regional training sessions given by the PHAC about its contribution program. The national evaluation is conducted independently from the regional evaluation process. Cross-section analysis evaluation is a cyclical process. It started slowly and is now used in 15 of the 16 regions served by the PHAC. However, no cross-

section analysis has been made of the grievor's projects in the west sector of the Island of Montreal since 2004. Because the consultant in charge of the east sector of the Island of Montreal has been on leave since 2005, no cross-section analysis has been done of that sector either.

[20] Mr. Gaussiran explained that he does not regularly attend meetings with provincial representatives because that is the consultants' responsibility. However, Mr. Gaussiran's new provincial counterpart, Yolande Marchand, asked him to attend the meeting on April 5, 2006 to explain the system of contributions to regional agencies and the sharing of responsibilities between the PHAC and provincial agencies under the CAPC.

[21] Mr. Gaussiran admitted that, at the time of the meeting, he considered the grievor's remarks rather inoffensive, although he realized that the grievor did not share the same ideas about the validity of either project-analysis method.

[22] On June 8, 2006, after Mr. Gaussiran's statement, Jean-Louis Caya, Director for the PHAC, Quebec Region, asked the grievor to comment. Mr. Caya noted the following:

[Translation]

...

... at a meeting held last April 5 . . . you allegedly made inappropriate remarks. According to Mr. Gaussiran, what you said against cross-section analysis was intended to discredit him and to voice your personal opinion against this practice, which is used by the PHAC Children's Programs Unit to support evaluation. These comments are especially serious in that they were made in front of provincial partners and they directly challenged information given to provincial representatives at this meeting by the CAPC program coordinator for the region. I would like to have your comments by next June 16

...

[23] The grievor replied to Mr. Gaussiran's written statement on June 28, 2006. She explained the purpose of the April 5, 2006, meeting and the discussion in question, which was not on the agenda. After Mr. Gaussiran presented the cross-section analysis, the grievor intervened, explaining that a cross-section analysis of reports from Montreal had been done only once in 2004 using a homegrown (manual) process. The

grievor went on to state that there was another evaluation report, the NPP, which was based on an electronic database updated annually. Following that explanation, Mr. Gaussiran asked her to give Ms. Marchand a template for the NPP-related questionnaires that are distributed every year for all CAPC projects. The grievor did so that same day.

[24] Mr. Caya then asked Mr. Gaussiran to comment on the grievor's answer. The comments were included in an electronic version of the grievor's answer and given to Mr. Caya. Mr. Gaussiran's comments were not given to the grievor.

[25] Ms. Marchand testified that the provincial partners expressed satisfaction with the meeting on April 5, 2006. Ms. Marchand did not note anything inappropriate in the exchanges of information between the grievor and Mr. Gaussiran. Although she had no specific memory of the conversation between the grievor and Mr. Gaussiran, Ms. Marchand's opinion was that the general atmosphere at the meeting was cordial, that the program was interesting and that the grievor had cooperated fully.

[26] Mr. Caya testified that when he assessed the consequences of this incident, he took note of the "disparagement" of the cross-section analysis, of certain intentions attributed to the grievor, including the allegation that Mr. Gaussiran had been invited only indirectly to the meeting, and of contradictions between the grievor's version of events and that of Mr. Gaussiran. Mr. Caya stated that he discussed this with the grievor when meeting with her on June 16, 19 and 29, 2006 and that he preferred Mr. Gaussiran's version.

B. Complaint from an organization about service delivery

[27] The Centre PRISME is one of the organizations that entered into a contribution agreement with the PHAC. The grievor acted as the CAPC consultant with this organization. The funded project is called "Cercle Magique." On March 14, 2006, Edmundo Pavon, Director General, Centre PRISME, and Ginette Quenneville, Secretary of the Board of Directors, Centre PRISME, sent Mr. Jarry a letter entitled "[translation] Request for Decision."

[28] The letter from the Centre PRISME mentioned the smooth operation and stability of its programs and noted that, in the Centre's opinion, the situation did not justify the imposition of conditions for renewing the contribution agreement as recommended by the grievor. The organization requested that another consultant be

appointed and that all conditions be lifted, except for one calling for the submission of reports prescribed by law in accordance with the schedules set out in the contribution agreement renewal document.

[29] Mr. Jarry met with Mr. Pavon and Zahia Agsous, Co-chairperson of the Board of Directors, Centre PRISME, on March 23, 2006. Mr. Pavon and Ms. Agsous reiterated the points mentioned in the letter dated March 14, 2006. Ms. Agsous said that she strongly disagreed with the conditions for renewing the contribution agreement. According to Mr. Pavon, the grievor did not seem to listen to what she was being told about the stability of the programming. Mr. Pavon and Ms. Agsous were of the opinion that the conditions called into question the organization's good faith. They added that since March 9, 2006, the grievor had been telling them that the renewal conditions were not negotiable.

[30] Mr. Pavon and Ms. Agsous found the grievor to be too demanding with respect to the information she requested and believed that she manipulated the information she received. Among other comments, the grievor wrote the following: "[translation] Responses such as 'I am useless with figures' are no longer acceptable." Such comments implied that Mr. Pavon was incompetent. According to Mr. Pavon, the event triggering the letter was a visit by the grievor in July 2005 after the offices were refurbished, which occurred while Mr. Pavon was on sick leave. The grievor allegedly said that because the Centre PRISME now had less space, fewer children would benefit from the subsidized project. Mr. Pavon responded that this was not the case. The grievor then allegedly threatened to reduce the amount of the grants. Mr. Pavon described the situation as "harassment."

[31] Moreover, the grievor stated that she had not received a document that Mr. Pavon had filed in person at the PHAC office and then blamed a co-worker when she found it. The grievor also refused to go to the Centre PRISME to meet with its representatives.

[32] In any event, the board of directors and the director general of the Centre PRISME no longer had any confidence in the grievor.

[33] Mr. Jarry met with Ms. Agsous and Mr. Pavon for a second time on April 12, 2006, when he gave each of them a statement that he had prepared for their

signatures. Mr. Pavon returned his signed copy on April 13, 2006 and Ms. Agsous returned hers on April 20, 2006. Neither of them made any changes to the statements.

[34] On March 27, 2006, Mr. Jarry met with the grievor about the Centre PRISME file. The grievor defended her actions. Basically, the situation was entirely different from what Mr. Pavon and Ms. Agsous described. The grievor had concerns about the proper conduct of the project funded by the PHAC. There had been significant employee turnover, the reports required by law were always submitted late, there was a worrying deficit, and proof of civil liability insurance was submitted late. Moreover, Mr. Pavon was not interested in financial matters and was of the opinion that because the PHAC only financed 30 percent of the project, there was too much follow-up and too many requirements. Although the grievor's concerns were only here and there, the conditions for the renewal of the agreement remained justified. According to the grievor, the organization's problems boiled down to a conflict between Mr. Pavon and Marino Balcorta, the vice-president who replaced him during his extended sick leave. The grievor suggested meeting with the organization to discuss those problems.

[35] During the meeting on March 27, 2006, Mr. Jarry mentioned a previous meeting held with the grievor during which the redrafting of one of the renewal clauses was raised as an issue. The grievor responded that it was her intention to discuss the matter with Ms. Agsous at a meeting to be scheduled with her, as a result of a call made on March 9, 2006. After the meeting on March 27, 2006, Mr. Jarry was to make a decision about the grievor. That same day, he decided to have Nathalie Pelletier replace the grievor as consultant responsible for the Centre PRISME.

[36] On May 9, 2006, Mr. Jarry sent the grievor an investigation report concerning the complaint made by the Centre PRISME and asked her to submit her comments before May 16, 2006. The report repeated the contents of the written reports of the meeting on March 23, 2006 with Mr. Pavon and Ms. Agsous, their subsequent statements, and a summary of the meeting with the grievor on March 27, 2006 (the documents in question were not appended to the report). Mr. Jarry reached the following conclusions after his investigation:

[Translation]

The testimonies of Ms. Agsous and Mr. Pavon corroborate each other and contradict some aspects of the testimony of

Ms. Lâm. Therefore, the likelihood and credibility of each of the testimonies must be determined.

Both testimonies from the PRISME were considered credible and trustworthy. It should be noted that it is not easy for directors of community organizations to make this type of complaint. The PHAC awards a contribution to this organization, and making a complaint could, in their eyes, compromise that contribution. Accordingly, this increases the likelihood that the facts actually did take place as described by Ms. Agsous and Mr. Pavon.

The allegations made by the directors of the PRISME describe harassment, unfounded questioning and manipulation of information. In addition, there is Ms. Lâm's excessive monitoring of and interference in the activities of the organization.

Mr. Pavon used the word harassment to describe the relationship with Ms. Lâm. The example speaks for itself. After an agreement had been reached, Ms. Lâm changed her mind about a time limit and did not explain her decision. With respect to unnecessary questioning, Ms. Agsous did not understand Ms. Lâm's intentions in asking those questions and was that much more fearful of such questions.

Mr. Pavon could no longer tolerate the manipulation of information. The statement to the effect that Mr. Pavon was not good at figures, repeated out of context in a letter sent to him by Ms. Lâm, was completely inappropriate and could not be excused. With respect to excessive monitoring, the example of demanding a weekly report in writing to correct a shortcoming in the project speaks for itself.

For her part, Ms. Lâm explained the present situation by mentioning that the difficulties were the result of Mr. Pavon's leave and the ensuing disputes between the Chairman and the acting Chairman after the Chairman returned to work. This is quite plausible, and the facts would have warranted giving even more assistance to this organization in the follow-up on its file with the PHAC, instead of all that was mentioned before.

Finally, the refusal by Ms. Lâm to meet them in person to negotiate the renewal conditions most certainly contributed to the present situation.

Having analyzed all the testimonies, I conclude that the relationship of trust between the PRISME directors and Ms. Lâm is irrevocably severed.

In light of the above, the decision to change consultants was made on March 27, 2006 and is effective as of that date.

[37] On May 25, 2006, after obtaining extensions to the time limit, the grievor commented on Mr. Jarry's investigation report and indicated she would submit supplementary information. Mr. Caya asked Mr. Jarry to comment on the grievor's comments. Mr. Jarry delivered his comments to Mr. Caya on June 20, 2006. Mr. Jarry then dismissed the grievor's explanations on every point, preferring the versions given by Mr. Pavon and Ms. Agsous. However, Mr. Caya did not give the grievor Mr. Jarry's second set of comments.

[38] On June 19, 2006, Mr. Caya had a meeting with the grievor, with Mr. Jarry and Alain Bélanger, the grievor's bargaining agent representative, in attendance. The Centre PRISME's complaint was dealt with, as were some of the other incidents discussed later in this decision. Mr. Caya once again asked the grievor to reply to Mr. Jarry's comments. The grievor was then relieved from duty until the next meeting. This was scheduled for June 29, 2006, so she could work from home and prepare her "submissions" on six files, including this one.

[39] On June 28, 2006, the grievor gave Mr. Caya comments and a reply concerning the Centre PRISME investigation, which consisted of a 9-page document with 10 annexed documents supporting her explanations.

[40] On July 6, 2006, the grievor submitted a final revised document on her files to Mr. Caya, which included additional comments about Centre PRISME. Mr. Caya then asked the grievor to put forward any facts or mitigating factors not already mentioned in her documents — whether personal or professional — that might affect his eventual decision about whether to apply disciplinary measures. He mentioned this request in an email and confirmed that the grievor was suspended with pay until he made a decision.

[41] The grievor responded to the email by asking Mr. Caya to specify which of her comments were not persuasive so that she could effectively meet his request. Mr. Caya did not respond to the grievor's email.

[42] On July 11, 2006, the grievor submitted her comments about the facts and mitigating factors in relation to all the allegations against her.

[43] At the hearing, four witnesses were heard on the Centre PRISME complaint. Mr. Jarry explained his role as recipient of the letter of complaint and as investigator.

He received the statements mentioned above and shared his comments with Mr. Caya. In his testimony, Mr. Jarry accused the grievor of inflexibility and a tendency to issue orders rather than advice. He did not find any of the explanations given by the grievor credible and preferred the version of the facts given by the representatives of the Centre PRISME.

[44] Mr. Pavon testified about the facts that led to the letter of complaint. These facts are essentially the same as those already mentioned. He emphasized that the conditions for renewing the contribution agreement were unreasonable, given that at that time the organization had existed for 18 years. He found the grievor too picky and insistent about the organization having to follow the PHAC's contribution renewal policies to the letter. He felt that he had been personally singled out as being unable to meet the grievor's numerous requirements. However, he admitted that the grievor had always been diligent in handling the Centre PRISME file in the past and had on more than one occasion explained to its representatives how to prepare the reports required by law. The organization went through difficult times in the summer of 2005: Mr. Pavon's absence for eight months; Mr. Balcorta's sudden departure upon Mr. Pavon's return to work; budgetary cutbacks; and the renovations made to reduce office space. Mr. Pavon compared that period to a "tidal wave." He confirmed that the Centre's board of directors were willing to forgo the PHAC grant rather than continue dealing with the grievor.

[45] On cross-examination, Mr. Pavon acknowledged that in 2004-2005 the Centre PRISME racked up a deficit of \$75,000 due to the failure of a social economy program and the subsequent loss of a major grant from Emploi-Québec. He did not advise the grievor of his extended absence, the dismissal of the coordinator in charge of the Cercle Magique project, the fact that refurbishing the premises could temporarily disturb the children's activities, or that a deficit would be reported in the audited financial statements. He admitted that the Centre PRISME's civil liability insurance policy had been cancelled, that the board of directors had been without a civil liability insurance policy from April 2005 to November 10, 2006, and that, under clause 26.01 of the contribution agreement, appropriate insurance was required. He acknowledged that the organization had never submitted the reports required by law within the time limits. He explained that he considered it harassment when the grievor moved up one of the organization's deadlines for submitting a legally required report. He did not remember the details of his meetings with the grievor.

[46] Mr. Caya testified that he was advised of the Centre PRISME's complaint a few days after receiving the letter dated March 14, 2006. He asked Mr. Jarry to investigate. Three issues attracted his attention: the grievor insisted that the PHAC could not give a grant to an organization that did not hold civil liability insurance; the grievor seemed to question the organization's honesty; and the grievor recommended that the renewal of the contribution agreement be subject to certain conditions. He did not remember the exchange of emails and correspondence between the grievor and the Centre PRISME that the grievor submitted to support her comments. Mr. Caya stated that the complaint made by the Centre PRISME was not the first one made against the grievor by an organization. In 2002, three complaints against the grievor were received: she was too demanding, not helpful enough, and focused on trivial shortcomings and intimidated people.

[47] Mr. Gaussiran testified that other organizations complained about the grievor in 2002 when he was her supervisor. However, no disciplinary measures were imposed at that time, and the contentious files were simply reassigned.

[48] Nathalie Pelletier testified that the Centre PRISME file was assigned to her on March 27, 2006. She noted that the application for the renewal of the contribution agreement was late and that Mr. Pavon wanted to proceed with its renewal. She reviewed the file prepared by the grievor, including the evaluation, and found that it was well prepared, complete and contained all the documentation required to proceed with the renewal. Nothing had to be redone or completed. She determined that the conditions suggested by the grievor were already included in general in the contribution agreement and its annexes, that the project seemed well managed, that the discrepancies were only minor, and that Mr. Pavon was acting in good faith. Even though the board's civil liability insurance was no longer in force, Nathalie Pelletier was of the view that it was possible to manage the risk. Accordingly, she recommended that the contribution agreement be renewed unconditionally.

[49] Nathalie Pelletier met with Mr. Pavon and the board of directors of the Centre PRISME on April 4, 2006, from 10:30 to noon, to sign the renewal of the contribution agreement. On cross-examination, she stated that some consultants only insisted that reports be submitted on the date required if warranted by the project, because the consultant's main role was to support the project. Organizations often submit their reports late. When she went to the Centre PRISME, Nathalie Pelletier had all the

documents that needed to be completed, which was done at the meeting. She was satisfied that Mr. Pavon took care of his business and that he was continuing to try to obtain civil liability insurance for the board of directors, although it would take some time to do so. She accepted Mr. Pavon's explanation that insurers had become wary of the Centre because of its financial deficit in 2004-2005.

[50] The grievor testified that the Centre PRISME offered integration services to immigrants. It managed four to five projects, each with several financial backers. The Cercle Magique project, funded by the CAPC, offered stimulating activities for children up to six years old. The project had three sources of income: the CAPC, for the salary of the project coordinator; Emploi-Québec, for the salaries of educators; and contributions from parents. The CAPC represented approximately one third of the project's income: 90 percent was for the coordinator's salary and 10 percent was for operating expenses. One of the conditions of the contribution agreement was that the grant not be used to pay off the debts of any of the organization's other projects. In the spring of 2005, when Mr. Pavon was away, Mr. Balcorta dismissed the coordinator of the Cercle Magique project. She was not replaced until fall 2005. Mr. Pavon did not explain how the funds earmarked for the coordinator's salary were used between the departure of the former coordinator in May and the arrival of the new coordinator in the fall.

[51] From the beginning of the Cercle Magique project, to make Mr. Pavon's job easier, the grievor often dealt with Mr. Gomez, the Centre PRISME's accountant, to obtain financial information. During a telephone conversation with the accountant in the winter of 2004-2005, the grievor learned that Mr. Pavon was on an extended leave of absence and that no date had been set for his return to work. She worried about who would prepare the reports required for the periodic advances paid out under the current contribution agreement. On February 21 and 22, 2005, she contacted Lise Pelletier, her supervisor at the time, to advise her of concerns that two projects had high staff turnover, one of them being the Centre PRISME. In March 2005, the grievor met Mr. Balcorta at a multiethnic training session. He told her that he would be replacing Mr. Pavon from that point on. She telephoned him a little later and scheduled an appointment for her annual follow-up visit.

[52] The meeting took place on May 20, 2005, with a set agenda. At that time, she was told by Mr. Balcorta that the preceding financial year had ended with a deficit

because Emploi-Québec had withdrawn financing. However, other funds had been paid out for educators under the CAPC. The grievor then asked Mr. Balcorta to send her a copy of the audited balance sheet of the Centre PRISME as at March 31, 2004, which had not been submitted in accordance with the specified timelines. Mr. Balcorta stated that he knew nothing about what was required under the PHAC contribution agreement. He did not want to touch Mr. Pavon's files and asked the grievor to send him a complete information kit so that he could understand the file and draft the legally required reports. The grievor informed him that the organization would receive a letter from the PHAC about the renewal of the contribution agreement because funding policies had changed. Lise Pelletier sent the letter to Mr. Pavon on June 21, 2005.

[53] After the meeting, the grievor prepared detailed minutes and reported the advice given so that the Centre PRISME could comply with the requirements of the contribution agreement. On May 26, 2005, the grievor sent Mr. Balcorta the requested information kit and a copy of the minutes of their meeting. The audited balance sheet of the Centre PRISME as at March 31, 2004 was submitted to the grievor on May 26, 2005. A few days later, Mr. Balcorta telephoned the grievor to advise her that he was leaving and that Mr. Pavon was returning on June 21, 2005. Mr. Balcorta did not follow up on the May 20, 2005 meeting.

[54] On July 13, 2005, Mr. Pavon contacted the grievor to advise her of his return. On the same day, the grievor sent him an email requesting an update on the file, given that the June 15, 2005 deadline for submitting the evaluation report had been missed. Mr. Pavon responded that he was not aware of the deadline for submitting the report, that the Centre PRISME had been neglected and that its offices were in the process of being renovated. A meeting was confirmed for July 29, 2005. The grievor sent him an email confirming the meeting agenda.

[55] On the day of the meeting, Mr. Pavon had her visit the "new" premises, which had been refurbished and reduced in size by one third to save money. They discussed three items: the issues concerning Mr. Pavon's return to work, a review of the items mentioned to Mr. Balcorta during the visit on May 20, 2005, and an action plan for upcoming commitments under the CAPC. They agreed that the renewal form for the contribution agreement that was supposed to have been submitted on June 15, 2005, could be delivered by September 15, 2005. The grievor also mentioned that the tight

office space could affect the contribution agreement if fewer children were able to participate in the Cercle Magique project. Mr. Pavon then became very agitated and showed her a diagram illustrating all the Centre's activities. He noted all the activities he was contemplating changing because the space was now more restricted. The grievor requested a copy of the diagram and that he change the decision that he was planning to make in that regard. She told him that while he could change the project, she had to be informed so that she could assist him in doing so in a way that would ensure the grant could be maintained. The grievor also asked him to pay more attention to the financial aspect of the project and to respect the schedules for submitting reports because the constant delays required reminders and constant follow-up on her part.

[56] On September 27, 2005, the grievor emailed Mr. Pavon to remind him that she had not received the application for the renewal of the contribution agreement for 2007 even though the deadline had been September 15, 2005. Mr. Pavon responded by saying that “[translation] we have a serious misunderstanding” because he understood that he had to submit only the evaluation reports, not the application for the renewal of the contribution agreement. He indicated that he had mailed the reports a few days late. The grievor said they had discussed this specific point at the meeting on July 29, 2005 and that there could not be any confusion, given that the letter sent by Lise Pelletier about the need to fill out the extension form had been addressed to Mr. Pavon personally.

[57] On September 29, 2005, Mr. Pavon replied that “[translation] things are going very bad” and that he wanted to have an emergency meeting with the grievor. He once again asked for the working documents because he could not find them since the “[translation] tidal wave of renovations.” On September 30, 2005, Mr. Pavon wrote once again to say that he found the letter from Lise Pelletier dated June 21, 2005, and that he still wanted a meeting, although there was no longer a pressing need. The grievor answered by forwarding him electronic files including the form for renewing the contribution agreement and the detailed budget for the Cercle Magique project. She asked him to return the form by October 12, 2005. On October 4, 2005, Mr. Pavon wrote to the grievor, saying that he would try to meet the October 12, 2005 deadline. On October 5, 2005, the grievor wrote to him once again, saying that she wanted to receive the extension form no later than October 7, 2005, but that she would accept it on October 12 if it was filed in person at her office on that date. She also suggested

two dates to meet with Mr. Pavon and the board of directors of the Centre PRISME. On October 6, 2005, the grievor asked Mr. Pavon to confirm one of the two meeting dates.

[58] On October 6, 2005, Mr. Pavon faxed a letter to the grievor saying that he would submit the renewal form for the contribution agreement on October 12, 2005. He added:

[Translation]

...

As far as the reorganization or restructuring of Cercle Magique is concerned, as I already indicated to you previously, I reiterate the fact that we do not intend to make any changes to the evaluation, the logical consequence being that there will be no change in service delivery.

...

Mr. Pavon stated that the only time the co-chairpersons of the board of directors of the Centre PRISME would be available to meet with the grievor was after 18:00 and asked her to contact him.

[59] On October 17, 2005, the grievor sent an email to Mr. Pavon suggesting a telephone conference on October 25 at 18:30 to review several points of interest concerning the management of the Cercle Magique project. She told him she was in an intensive period analyzing project renewal applications for 2007 but that she would perform the usual follow-up on emails and messages.

[60] In a letter dated October 24, 2005, Christine Fändrich, Co-chairperson of the Board of Directors, Centre PRISME, confirmed to the grievor that the organization had returned to its usual activities following the renovations, that no project financed by the CAPC had been modified in any way and that the organization did not intend to make any modifications. Ms. Fändrich stated that the organization's only failure to comply with the contribution agreement was the lack of civil liability insurance for the board of directors and that they were working to correct this situation. She stated that it would be preferable to meet in person, but it would be better to wait for an answer from the insurers.

[61] On October 25, 2005, the grievor sent Mr. Pavon an email acknowledging receipt of Ms. Fändrich's letter. In her email, the grievor emphasized that there was an urgent need to tighten up the management of the Cercle Magique project. She wished to have a telephone conversation with Ms. Fändrich or a short meeting with the board of directors of the Centre PRISME and Mr. Pavon at the grievor's office at 18:30 on a date to be scheduled.

[62] In her testimony, the grievor explained why she asked the board of directors of the Centre PRISME to meet with her at her office. The last time she had travelled to meet with an organization outside office hours, she had been denied payment for the time required to return the rental car used to travel and for her meal allowance. She had even received a warning on that subject. Since then, whenever a meeting had to be held outside of regular office hours, she asked the client to travel instead.

[63] Also on October 25, 2005, the grievor wrote to Ms. Fändrich stating that she agreed to cancel the telephone conference and replace it with a meeting in November because she was very busy with the renewal of 2007 contribution agreements. In the three-page letter, the grievor mentioned her concerns about the management of the Cercle Magique project after her July 29, 2005, meeting with Mr. Pavon. She suggested the following points for improvement: that the Centre PRISME advise her of staff turnover; that reports required by law be submitted according to the schedule in the contribution agreement; that the program plan and the annual evaluation report to be filed on May 1, 2005 be submitted according to certain timelines; that Mr. Pavon ensure tighter management of the project; and that an action plan be developed to obtain the missing insurance. With respect to the last point, the grievor asked for a weekly update by email. The grievor stated that she was always available to consult about these suggestions. A copy of this letter was forwarded to Mr. Jarry.

[64] On October 25, 2005, the grievor started a record of when quarterly financial statements were received from the Centre PRISME in the period from July 2003 to the end of the 2005-2006 fiscal year. According to the dates noted, except for October 2003, the reports from the Centre PRISME were systematically late.

[65] On October 26, 2005, Mr. Pavon sent the grievor certain documents that were missing from the application for the renewal of the contribution agreement, among them a list of the members of the board of directors of the Centre PRISME. The budget estimates were faxed. He explained that the civil liability insurance policy had been

cancelled (but does not specify which one) and that the general meeting of the organization was to be held in mid-November.

[66] On October 26, 2005, the grievor had a discussion with Mr. Jarry about two organizations she supervised, including the Centre PRISME. In an email, Mr. Jarry confirmed that he agreed that the contribution agreements of the two organizations should be renewed, subject to certain conditions:

[Translation]

...

Following our conversation this morning concerning the above-mentioned subject and after consulting Michel [Gaussiran], I agree with your suggestion to advise the Régie and then the organizations that, in these cases, there can be an extension subject to conditions.

...

Mr. Jarry approved the recommendation based on the file that the grievor submitted on December 14, 2005.

[67] On October 31, 2005, the grievor completed the evaluation grid to approve the application for renewing the contribution agreement of the Centre PRISME for 2006-2007, in which she notes that while the Cercle Magique project performed acceptably, some temporary instability occurred because of Mr. Pavon's eight-month absence. She recommended that the contribution agreement be renewed subject to three conditions: compliance with the deadlines for submitting the reports specified by law, sound management practices, and increased control by Mr. Pavon. It was subsequently noted in the report that the organization supplied one of the items proving that there was civil liability insurance on November 18, 2005.

[68] On December 2, 2005, the grievor followed up with Mr. Pavon about a letter sent to Ms. Fändrich and sent an email reminder of the deadlines for submitting the various reports and documents required by law. She concluded by telling him that some reports due on May 1, 2005, had yet to be filed, that they would have to be filed no later than December 9, 2005, and that that date was not negotiable. Mr. Pavon replied that the Cercle Magique project was performing well and that the activities were the same. He told her that the two documents she was looking for had been delivered in

person in September 2005, that the financial report had been submitted on October 12 and that the action and program plans had been included in the same document. Only the annual report was missing, and he would send it shortly. On December 8, 2005, the grievor sent Mr. Pavon another email saying that despite her efforts to find the documents in question, they had not been received, and she asked him to fax another copy or to submit it in person. She explained that the financial report she was seeking was not the audited financial statement Mr. Pavon referred to, but the quarterly report for the payment of the advances for that period. She reminded him that the annual evaluation report had to include the action plan for the coming year, not the current one. Therefore, she expected to receive the documents by December 14, 2005, at the latest.

[69] Mr. Pavon responded to her on December 9, 2005, stating that he had delivered the missing documents in person and that the grievor had already received the financial statement. He said he would send the quarterly financial report as soon as possible.

[70] On December 20, 2005, the grievor indicated to Mr. Pavon that the documents filed in September 2005 had been found. They had mistakenly been given to Pauline Tardif, a consultant in charge of another project. However, she told him that, in spite of everything, the documents still did not comply with the requirements of the contribution agreement and reminded him again to submit an annual evaluation report and an action plan no later than January 15, 2006. She once again sent him the electronic forms to simplify his task of preparing the requested documents.

[71] On December 21, 2005, Mr. Pavon sent a second copy of the documents he had submitted to the grievor in September 2005. On December 22, 2005, the grievor pointed out that one of the reports was incomplete and did not meet the requirements of the contribution agreement.

[72] On December 22, 2005, Mr. Pavon replied to her, stating that the report submitted included two reports in one. That same day, the grievor replied to him, stating that she had asked him to submit a single report, with two sections. She asked him to fill in the missing information. On January 19, 2006, the grievor acknowledged receipt of the third-quarter financial report for the Centre PRISME and stated that the signatory of the report had not been authorized to sign it in accordance with the form she had sent him on October 17, 2005. In order not to delay the payment of the grant,

she asked him to fill in and fax the appropriate form to her. She sent Mr. Pavon a copy of the contribution amendment agreement to be signed.

[73] On January 27, 2006, Mr. Pavon returned the authorized signature form (without the amendment agreement), but he forgot to have the signature approved by either a co-chairperson of the board of directors of the Centre PRISME or a resolution of the board of directors.

[74] On February 9, 2006, the grievor had a discussion with Ms. Agsous about the requirements to be met in order to obtain the grant. According to the grievor's notes, Ms. Agsous noted that the PHAC funded only one third of the Cercle Magique project. On February 13, 2006, the grievor reminded Mr. Pavon that the Centre PRISME had still not returned the contribution amendment agreement with the authorized signatures. On February 14, 2006, the grievor received a resolution from the board of directors of the Centre PRISME authorizing Mr. Pavon, Mr. Gomez and another person to sign all financial documents for the Cercle Magique project.

[75] On March 2, 2006, the grievor wrote to Mr. Pavon, telling him that she agreed to cancel one of the three conditions of the contribution amendment agreement, and she faxed him the revised annex for his signature. On March 4, 2006, Mr. Pavon replied to her that only the board of directors could approve a change in conditions and that it would meet within the coming two weeks. Therefore, he could not return anything before that date. On March 10, 2006, the grievor wrote to Mr. Pavon to notify him officially that she had not received the signed copies of the contribution amendment agreement and to remind him of the consequences if the contribution amendment agreement was not signed and returned before April 1, 2006. A copy of the letter was sent to Mr. Jarry.

[76] On March 14, 2006, the Centre PRISME sent its complaint to Mr. Jarry and advised him of its refusal to continue to work with the grievor.

C. Intimidation of an employee at the PHAC

[77] As mentioned above, on March 27, 2006, Mr. Jarry met with the grievor about the Centre PRISME file. Thiên-Thanh Nguyễn, Mr. Jarry's administrative assistant, attended the meeting, as did Mr. Bélanger. Ms. Nguyễn's role was to take notes, a role she regularly assumes during group meetings. At the beginning of the meeting, the

grievor made a comment about Ms. Nguyễn's presence. The meeting notes state the following:

[Translation]

...

Ms. Lâm wants to be sure that the notes will be taken objectively, not subjectively, and says that the fact that Ms. Nguyễn is from the same small Vietnamese community in Montreal makes her uneasy. Mr. Jarry confirms that by virtue of her duties as a executive assistant, Ms. Nguyễn is bound to ensure confidentiality.

...

After beginning this way and following Mr. Jarry's answer, the meeting continued without further incident. After the meeting, Ms. Nguyễn spoke to Mr. Jarry about her discomfort with what the grievor had said about her.

[78] An hour later, Ms. Nguyễn sent Mr. Jarry the following email:

[Translation]

Despite understanding Thu-Cúc Lâm's difficult and delicate situation, I wanted to advise you that I did not appreciate the way in which she mentioned her "uneasiness" about me being a member of the same Vietnamese community as she, that this community was small and, even though our families do not have contact with each other, they know each other by name, and that she wanted to be sure that the notes I took would be "objective" and not "subjective."

I found that comment insulting and inappropriate. I did not at all appreciate the fact that she questioned my professionalism, and I consider it totally unwarranted that she mentions my family and my "community" in a context in which I was present as an administrative assistant.

Finally, I wanted to let you know about the discomfort I felt from the comments and to thank you for having told Thu-Cúc that, as part of my duties, I must uphold the confidentiality of what is said and written down at meetings.

...

[79] Ms. Nguyễn testified that the grievor's statements had surprised her and had preoccupied her for some time. She felt discredited because of her background. What

was said also challenged her credibility and discretion. However, she testified that she did not feel threatened or intimidated.

[80] Following the email from Ms. Nguyễn, Mr. Jarry reported the incident and the email to Mr. Caya. Mr. Caya considered it a delicate situation and consulted Serge Beaulieu, Director, Labour Relations, Health Canada, who suggested that a detailed investigation be conducted by someone outside of the PHAC. On April 10, 2006, Mr. Caya decided to have a security investigation conducted into the incident. Mr. Caya wrote the following to Deborah O'Donnell on April 18, 2006:

[Translation]

...

This is to advise you that after a discussion with Serge Beaulieu from Labour Relations, I asked Mario Roy to conduct a security investigation following an event that recently occurred at the Public Health Agency of Canada, Quebec Region, involving one of my employees. Considering the nature of the facts reported and the complexity of the case, I determined that it was better to have the investigation conducted by someone neutral, which is why I called on Mr. Roy.

...

[81] Mr. Caya testified that he had met with Ms. Nguyễn to obtain her version of the facts before requesting an investigation. Ms. Nguyễn told him that she did not feel intimidated or physically threatened by what the grievor had said. However, Mr. Caya was of the view that this was indirect intimidation, which is contrary to the Health Canada *Policy on Prevention and Resolution of Harassment in the Workplace*.

[82] On cross-examination, Mr. Caya stated that, either at the end of May or the beginning of June 2006, he had given the grievor, for her comments, a copy of the report and conclusions of the investigation conducted by Mario Roy, Senior Investigator/Security Analyst, Safety, Emergency and Security Management Division, Health Canada, and Robert Provencher, Regional Manager, Security, Quebec Region, PHAC. Mr. Caya did not give any significance to the word “mischief” used by the investigators to describe the allegation made against the grievor. Following the grievor’s written comments on June 9, 2006, he met with her on June 19, 2006. On the same day, he sent her an email requesting her “[translation] submissions” regarding

that file and the six others dealt with during the meeting. Mr. Caya explained that his delay in meeting with the grievor was the result of his busy timetable that included, among other things, holidays, hearings before Adjudicator Tessier, a growing number of new complaint files involving the grievor, a series of incident reports concerning the grievor and meetings outside the office.

[83] Mr. Roy, who had previously been an investigator with the Royal Canadian Mounted Police, was assigned to the investigation. He was assisted by Mr. Provencher. In general, Mr. Roy investigated incidents involving security breaches, workplace violence and crimes. On April 10, 2006, Mr. Caya instructed him to investigate inappropriate conduct by the grievor toward Ms. Nguyễn. He advised Mr. Provencher of this. Appointments were made with the witnesses (Ms. Nguyễn and Mr. Jarry) on May 1, 2006, and with the grievor and Mr. Bélanger on May 2, 2006, to obtain their statements. In his testimony, he explained that, at the beginning of the investigation, Mr. Jarry had described the incident as indirect intimidation. However, after hearing their versions of the events, Mr. Roy concluded that Ms. Nguyễn had been upset by the incident but that it was not a case of threats or intimidation. Mr. Roy concluded as follows in the investigation report, which was co-signed by Mr. Provencher:

[Translation]

...

Considering the circumstances and the testimonies given in this case, the authors of this report are of the opinion that Ms. Lâm engaged in offensive conduct with respect to Ms. Nguyễn, contrary to the (Health Canada) Policy on Prevention and Resolution of Harassment in the Workplace.

I. RECOMMENDATIONS

Considering the serious nature of the accusations made against Ms. Lâm, the respondent in this case, the authors of this report recommend that management take appropriate measures.

[84] Mr. Roy explained that with hindsight he would make two changes to his report: he would replace the allegation of mischief with an allegation of inappropriate behaviour because the term mischief “[translation] is too strong for the behaviour in question.” In the second-last paragraph of the report, he would mention that what the

grievor had done was contrary to the *Policy on Prevention and Resolution of Harassment in the Workplace*.

[85] On cross-examination, Mr. Roy admitted that the word “*méfait*” was in this case a poor translation of the English word “misconduct.” He admitted that there had been no mention of harassment in the statements and that he had not questioned Ms. Nguyễn to determine whether she had felt harassed during the incident in question. He also admitted that the scope of his mandate was solely defined by the email received from Mr. Caya asking him to conduct an investigation. He was not given a detailed mandate.

[86] Mr. Roy testified that he had contacted Ms. Nguyễn and Mr. Jarry two weeks before their respective interviews so that they could prepare their statements. He admitted that the grievor had not been informed that there was an allegation of mischief until May 2, 2006 during her interview and that he did not give any disclosure consent forms or questions to her or to Mr. Bélanger before the day of their respective interviews. When she showed up for the interview, all the grievor had in her possession was a letter that Mr. Caya wrote on April 27, 2006, and it did not mention any investigation for mischief.

[87] According to Mr. Bélanger, the investigators interfered with his duty to represent the grievor by refusing to let him attend the interview with her. The investigators treated him like a witness rather than a bargaining agent representative. In a letter sent to Mr. Caya on May 8, 2006, Mr. Bélanger contests the investigation process, especially the allegation of mischief, since Ms. Nguyễn did not even use the word “complaint” in her email to Mr. Caya. Mr. Bélanger denounces the conduct of the investigators, who refused to allow the grievor to exercise her right to be represented by a bargaining agent representative during her questioning on May 2, 2006, as well as that of the employer, which did not use the informal conflict resolution procedure before proceeding with an official investigation. Mr. Bélanger once again became involved in this case when Mr. Caya gave the grievor certain documents on June 19, 2006, for comment. When he asked the employer to specify the allegations against the grievor, Mr. Bélanger was told, “[translation] it’s in the documents.”

[88] On cross-examination, Mr. Bélanger confirmed that he attended the meeting on March 27, 2007, as an observer for the grievor. He did not contest Ms. Nguyễn’s presence. He was unaware whether the grievor had contested Ms. Nguyễn’s presence

before the meeting. He stated that Ms. Nguyễn and the grievor were part of the same bargaining unit. Ms. Nguyễn does not hold a management position or a position of trust excluded from the bargaining unit.

[89] The grievor testified that two meetings had been scheduled before the one on March 27, 2006 and that both were cancelled because Mr. Bélanger was absent. She was nervous because Ms. Nguyễn was present and because the hearing before Adjudicator Tessier about her 2-, 10- and 20-day suspensions was to begin that afternoon. Because Mr. Bélanger showed up just before the meeting began, she did not have the chance to explain her concerns to him. Mr. Jarry began by asking her to explain her version of the facts concerning the Centre PRISME file. The grievor explained that she did not feel at ease in Ms. Nguyễn's presence because their families knew each other and because the Vietnamese community is small. Mr. Jarry reassured her about Ms. Nguyễn's discretion and competency, to which the grievor replied that she expected the notes to be taken objectively.

[90] Then, on April 27, 2006, on the day of her return from holidays, the grievor was ordered to report to Mr. Caya's office. Mr. Caya was absent, but Mr. Roy and Mr. Provencher met with her. According to the grievor, Mr. Roy was wearing a suit that resembled a uniform and his head was shaved, all of which intimidated her. Mr. Roy and Mr. Provencher informed her that she was summoned to a meeting. She requested that Mr. Bélanger attend the interview, but the investigators refused because he was also a witness to the incident on March 27, 2006. She was then given a letter signed by Mr. Caya. She returned to her office and opened the envelope. The letter read as follows:

[Translation]

...

Because of the allegations and facts brought to our attention, we must obtain additional information from you. I have therefore assigned two department security investigators, Mario Roy and Robert Provencher, to meet you in an interview to obtain your version of the facts as well as any other relevant clarification in this case.

We wish to clarify the facts surrounding your meeting last March 27 with Benoît Jarry, with Alain Bélanger and Ms. Thiên-Thanh Nguyễn in attendance, during which you said

things that some participants considered unacceptable. Accordingly, you are summoned to an interview . . . next Tuesday, May 2 At the interview, you may be accompanied by a person of your choice if you wish.

We would appreciate having your full cooperation in this process for verifying the allegations. If the allegations prove to be true, appropriate disciplinary measures may follow.

...

[91] The interview was scheduled for May 2, 2006. The grievor attended as scheduled with the Centre PRISME files in hand because the purpose of the meeting had not been explained to her, apart from the fact that on March 27 she had said things that were considered inappropriate. She believed that some aspects of the Centre PRISME file were considered erroneous. When she reported to security, Mr. Provencher was waiting for her at the elevator in the lower part of the building and accompanied her to the meeting room. She was frightened by that procedure and by the fact that Mr. Provencher did not speak.

[92] When the grievor entered the meeting room, Mr. Roy was waiting for her, seated in front of a laptop computer. After she sat down, Mr. Roy informed her that this was an investigation for mischief. The grievor questioned him as to which mischief he was referring. Mr. Roy did not provide any details and wished to begin the questioning.

[93] The grievor refused to cooperate unless she was informed of the allegations that had been made against her. Mr. Roy responded by giving her a diskette with a copy of the questions he intended to ask, requesting that she reply to them at home and informing her that a second meeting would be held on May 9, 2006. She returned to her office and read the questions. She then emailed her bargaining agent, requesting representation during the investigation. She emailed Mr. Provencher, asking for access to the allegations made by Ms. Nguyễn. Mr. Provencher then forwarded her the email that Ms. Nguyễn sent to Mr. Jarry. That was the first time that the grievor learned about the allegations that Ms. Nguyễn made about her. She requested that the meeting be postponed until May 10, 2006. Meanwhile, she obtained legal advice about the consequences that the allegations could have on her status as an immigrant and an opinion from her bargaining agent about her right to be represented. She learned that she was entitled to have a bargaining agent representative present and that this right had been violated at the first interview on April 27, 2006.

[94] On May 9, 2006, she received the investigation report prepared by Mr. Jarry about Centre PRISME's complaint, but it did not include the annexes or the summary of the March 27, 2006 meeting. She did not receive the annexes until June 19, 2006.

[95] On May 10, 2006, the grievor, accompanied by Mr. Bélanger, reported to the interview. Mr. Provencher informed her that Mr. Bélanger could not participate because he was one of the witnesses to the incident on March 27, 2006. Mr. Bélanger insisted on being present and informed Mr. Provencher that his refusal would constitute interference with the bargaining agent's representation of the grievor. Mr. Provencher, who was alone, telephoned Mr. Roy, who directed him to allow Mr. Bélanger to attend. The grievor refused to sign a disclosure consent form about the alleged mischief. However, she signed a statement in which she denied having said anything insulting or inappropriate about Ms. Nguyễn.

[96] On May 31, 2006, in the presence of Christiane Lefebvre, Senior Human Resources Advisor, Mr. Caya gave the grievor the report drafted by Messrs. Roy and Provencher. Mr. Caya asked the grievor to comment on the investigation report right away. Given that this was the first time that she had read the documents in the annexes, namely, the statements given by Ms. Nguyễn and Mr. Jarry, the grievor requested additional time. Mr. Caya gave her until June 9, 2006.

[97] The day before the deadline for her comments about the report by Messrs. Roy and Provencher, the grievor received an email from Mr. Caya asking her to comment, by June 16, 2006 at the latest, on Mr. Gaussiran's summary of the meeting held on April 5, 2006. During that official meeting, the grievor allegedly said inappropriate things (see the first incident). This was the first time that she heard of those allegations.

[98] On June 9, 2006, the grievor submitted her comments about the report by Mr. Roy and Mr. Provencher, as requested. At the meeting on June 19, 2006, mentioned above, Mr. Caya, in the presence of Mr. Jarry and Mr. Bélanger, also asked the grievor to summarize her comments about the report by Mr. Roy and Mr. Provencher.

D. Blaming of a co-worker

[99] Mr. Jarry testified that the incident concerning the blaming of a colleague was mentioned in the 10th paragraph of Mr. Pavon's statement about Centre PRISME's complaint. That paragraph reads as follows:

[Translation]

10) *In September 2005, Mr. Pavon went to the PHAC office in person to submit documents concerning the evaluation of the project. Ms. Lâm said that she did not receive the document, and when it was found, Ms. Lâm blamed a co-worker, telling Mr. Pavon that that co-worker did not know how to do her work;*

[Emphasis added]

[100] Mr. Jarry's attention was drawn to that excerpt from Mr. Pavon's statement because he had the opinion that "[translation] everything that happens to Ms. Lâm is always someone else's fault, like the lost document." Mr. Jarry did not recall discussing this incident with Mr. Caya when he prepared his investigation report about the complaint made by the Centre PRISME.

[101] Mr. Caya testified that speaking to a third party, namely, the director general of the Centre PRISME, about one of her co-workers in an inappropriate manner, in this case about one co-worker's perceived incompetence, tarnishes the PHAC's image. He believed that the incident was reported to the grievor in early June 2006, but in any event, it was part of the documentation given to the grievor for her comments.

[102] The grievor testified that she did not understand the nature of this incident until the pre-hearing conference for this oral hearing. She had always thought that it concerned an incident involving Nicole Doré, a junior consultant in the Children's Programs Unit, about a document belonging to one of her files that had been found in Ms. Tardif's office during her extended sick leave. She stated that during the meetings with Mr. Caya, no mention had ever been made about blaming a co-worker. The grievor notes that the fact that a document had been lost and then found was not an isolated event. It was a well-known fact that, due to the constant turnover in mailroom staff, documents were sometimes misrouted. She mentioned that to Mr. Pavon when she asked him to refile his document on December 20, 2005. The grievor's version of the facts was supported by a handwritten note from Rosaline Salois dated June 28, 2006, stating that a document belonging to one of her files had been found in another file.

E. Forgery of a document

[103] Ms. Doré was in charge of receiving mail about applications for the renewal of contribution agreements. Ms. Doré testified that on March 23, 2006, the grievor gave

her a form entitled “[translation] 2006-2007 Quarterly Cash Flow Forecast and Record of Expenditures,” received from an organization called La Maisonnette des Parents. The date stamp had been changed, and it was dated March 23, 2006, followed by the grievor’s initials. Ms. Doré asked the grievor why the date had been changed. The grievor responded that the date stamp had to be wrong because she had received the document on March 23, not March 21 as was stamped. Ms. Doré informed the grievor that changing the dates stamped on documents was not permitted. In the grievor’s presence, Ms. Doré verified the document’s registration date on the computer and noted that the document had been received and stamped on March 21, 2006. Ms. Doré requested that the grievor change the date back to March 21 and initial the change. The grievor did so. Ms. Doré brought the incident to Mr. Jarry’s attention in an email dated March 23, 2006. At Mr. Jarry’s request, she drafted a written statement on April 10, 2006. Ms. Doré testified that she is the only person authorized to change dates on documents and that she cannot do so without supporting documentation. On cross-examination, she confirmed that documents received by mail are placed in the appropriate consultant’s in-basket on that same day. However, she explained that because of the volume of mail received, a given document might not always be registered immediately. Ms. Doré did not recall whether the grievor had asked her on March 21, 2006, to verify receipt of the form in question.

[104] Mr. Jarry testified that he considered the changing of the document’s receipt date to be a very serious incident. As an example, he explained the consequences of a changed date in one of the files that he had to deal with in court. He reported the incident to Mr. Caya.

[105] Mr. Caya testified that, in his experience, a document’s receipt date can have legal consequences, for example the improper award of a grant, and that in any event it was not up to the grievor to change the dates on documents because managing this aspect of mail processing was Ms. Doré’s responsibility. He stated that he mentioned this to the grievor during his meetings in June 2006.

[106] The grievor testified that she heard nothing about this incident until June 19, 2006, when Mr. Caya gave her Ms. Doré’s statement for her comments. The grievor supported her testimony by referring to an email from Mr. Caya dated June 19, 2006, in which he mentioned that he would be submitting three new files to her for her comments, including the one concerning this incident. The grievor

explained that on March 21, 2006, she noted that the extension forms for two organizations, including La Maisonnette des Parents, were late. Accordingly, at 12:25, after the daily mail delivery, she emailed Ms. Doré, requesting that she verify whether the forms had been received. At 13:36, Ms. Doré replied that a form from La Maisonnette des Parents had been received by fax and had been forwarded to her, but it was not the form she was looking for. Ms. Doré suggested that the grievor request that the missing form be resent. Accordingly, the grievor contacted the two organizations to obtain the missing documents. Two days later, a copy of the document from La Maisonnette des Parents appeared in her mail basket. It was then that she changed the date of reception and initialled the document. She explained that in February 2006 there had been a problem with the computer program used to record the receipt of documents and that some information had been changed by hand without any consequences.

F. Absence without prior authorization

[107] Mr. Jarry testified that on April 6, 2006, the grievor was absent for three hours for a medical appointment without obtaining prior authorization by using the electronic form for this type of absence. Instead, the grievor wrote the absence in the agenda of the Children's Programs Unit, although that was not the usual manner of proceeding. Mr. Jarry referred to a letter dated December 14, 2005, in which the grievor had been warned that she had to apply for leave before taking it. The letter mentions that if she fails to do so, she risks two consequences: unpaid leave and disciplinary action. Although he pointed out that failure to the grievor, Mr. Jarry approved the leave on April 21, 2006, because she was entitled to that type of leave.

[108] Mr. Caya testified that Mr. Jarry informed him about the grievor's failure to request prior authorization for the leave. Because the grievor had already been warned that she had to have her leaves of absence authorized ahead of time, he considered this a repeat incident meriting disciplinary action.

[109] In her testimony, the grievor admitted her mistake in not having requested leave a half day in advance by using the electronic form. She remembered her medical appointment only the day before when the doctor's office called to remind her. It was then too late for a preauthorization. However, she mentioned it on the next day by submitting a late application for approval. She did not take any other unauthorized leave between the date of the warning letter and her dismissal. After the leave was

authorized, she did not hear anything about it until June 19, 2006, when she was asked for her comments about this “file.”

G. Intervention discrediting management at a team meeting

[110] On March 14, 2006, a meeting of CAPC consultants was held. During the round table at the end of the meeting, the grievor stated that she was awaiting management’s decision on a \$1000 budget for a mailing under her multiethnic training project. She had already asked Mr. Gaussiran, who did not attend the meeting, for that budget. The other managers present were not aware of the request and could not respond.

[111] Aline Bernier, then a CPNP coordinator, testified that she was present at the meeting in her capacity as a manager and that she considered what the grievor said to be inappropriate. According to Ms. Bernier, that type of request should have been made directly to the manager concerned. She perceived it as a way of discrediting management rather than as a real issue. She found the grievor unpleasant, even arrogant, because she was not aware of the request. She did not dare question the grievor, for fear of sparking a conflict within the team. According to Ms. Bernier, the round table is used to share information and highlight “jobs well done,” progress made and projects accomplished. It is not the time to make negative statements. On cross-examination, Ms. Bernier admitted that she had previously supervised the grievor’s work, had not gotten along with her and had asked to be replaced. It was not the first time that she complained about the grievor’s input at meetings. Among others, there was a complaint dated December 15, 2003. After March 14, 2006, Ms. Bernier participated in the preparations for the adjudication of the grievor’s suspensions before Adjudicator Tessier. It was during those meetings that she informed Mr. Caya of the incident. After testifying before Adjudicator Tessier, Ms. Bernier drafted a written statement and submitted it to Mr. Caya on April 10, 2006. She was unable to explain how, by coincidence, on the same day, Mr. Jarry prepared a statement concerning the same event and submitted it to Mr. Caya.

[112] Mr. Jarry testified that he was also present at the meeting on March 14, 2006. By the grievor’s tone, he understood that management did not seem to be responsive to her requests. He discussed that point with the grievor after the meeting and informed her that next time, she should speak directly to him. He consulted with Mr. Gaussiran, who informed him that no promise had been made about a budget for a mailing. In any

event, it was already too late for the year 2005-2006. Mr. Jarry discussed it with Mr. Caya but did not remember whether he prepared the statement at his request.

[113] The grievor testified that it was not until June 19, 2006 that she learned that allegations had been made against her about the meeting on March 14, 2006, when Mr. Caya gave her the statements of Ms. Bernier and Mr. Jarry and requested that she submit her comments by June 29, 2006. She recalled that, on March 14, 2006, she had been unaware of the CPAC amounts that had not been committed at the end of the 2005-2006 fiscal year. She was responsible for several projects, including updating the multiethnic training program. She had been instructed to negotiate additional budgets with Mr. Gaussiran. In December 2005, Mr. Gaussiran informed her that he would come up with \$1000 for a mailing, but nothing concrete resulted. She mentioned the budget for her project at the March 14, 2006, meeting because budgets were dealt with at such meetings and because the fiscal year was about to end, two weeks later, on March 31, 2006. She did not want to miss the chance to obtain the required amounts. After the meeting, Mr. Jarry approached her for an explanation; he departed without responding to her request.

H. Repeated request to use coffee breaks despite a signed agreement prohibiting such a practice

[114] Ms. Bernier testified that she had supervised the grievor from February 17 to November 26, 2004, as well as intermittently in mid-October 2005. In June 2004, she decided that she no longer wished to supervise the grievor because following the grievor's schedule was too much work. In October 2005, with her supervisor's consent, she approved the grievor's request to take her coffee breaks at the end of her scheduled workday as well as a period of telework for two weeks while awaiting Mr. Jarry's arrival, who was to be the grievor's new supervisor. On cross-examination, Ms. Bernier admitted that she was not aware of any other agreement concerning the grievor's work schedule at that time.

[115] Mr. Jarry testified that in 2005, considerable negotiations took place regarding the grievor's work schedule. Apparently, the grievor did not want to sign the variable schedule form that had been suggested to her. In September and October 2005, she was away from work, taking university courses on a temporary schedule. When she was on the verge of signing a permanent schedule, the grievor reneged and filed a grievance about continuing with the schedule that she had proposed. The grievance

was dismissed. On February 17, 2006, the grievor asked to reduce the length of her mealtime or to take her coffee breaks at the end of her schedule so that she could leave the office earlier. Mr. Jarry authorized it as a unique and exceptional request as specified in an agreement with Lise Pelletier. Mr. Jarry underlined that, without an agreement about the schedule for 2006, the grievor had to respect the usual schedule.

[116] Mr. Caya testified that in April 2006 he had been advised about the repeated requests to leave the office earlier by waiving coffee breaks. At that time, he had been receiving statements from Ms. Bernier and Mr. Jarry about other files involving the grievor. The grievor and her supervisors exchanged emails from May 2, 2003, to June 2, 2006, about this issue. What attracted Mr. Caya's attention was Ms. Bernier's reply that the grievor could not group and take her coffee breaks at the end of the day so as to leave earlier, unless it was done on an exceptional and unique basis. He did not recall whether he had been advised at that time about the 2005-2006 schedule, which included this exception. He recalled that negotiations with the grievor stretched from January to June 2005. The schedule was terminated because the grievor did not sign an agreement for 2006-2007. The grievor had the chance to comment about the work schedule at meetings in June and July 2006. In re-examination, Mr. Caya affirmed that the grievor's work schedule was never the same, as evidenced by the large number of emails requesting modifications to the schedule.

[117] The grievor testified that she had undertaken doctorate studies in bioethics in 2004, that the employer had approved the courses and that she was reimbursed as she successfully completed them. The course schedule changed every semester, and she had no control over it. Courses were usually given at the end of the day, and she had to adapt her work schedule accordingly. From January 15 to April 15, 2005, she asked to group her coffee breaks at the end of the day and to leave the office earlier to take her courses during the winter semester. Following a long negotiation, a document entitled "[translation] Declaration of Work Schedule — 2005-2006 Fiscal Year" was drafted and an agreement concerning hours of work was concluded retroactively. According to the grievor, the provisions of that agreement continued to apply because no other renewal of the work schedule was concluded.

[118] The grievor explained that, since the beginning of 2006, requests to change her work schedule were rare. She made a request on February 15, 2006, which Mr. Jarry accepted on February 17, 2006. She made another request on June 1, 2006, to make up

the time lost because she had arrived late that day after returning home for a file that she had forgotten. On June 2, 2006, Mr. Jarry replied in an email that he granted her request “[translation] exceptionally and on a unique basis.” The work schedule modification issue was raised only at the meeting on June 29, 2006, when Mr. Caya gave the grievor a copy of Mr. Jarry’s letter dated December 14, 2005, the 2003-2004 work schedule signed by Mr. Gaussiran and 40 emails exchanged with Ms. Bernier and Lise Pelletier. He asked for her comments before July 6, 2006.

IV. Summary of the arguments

A. For the Deputy Head

[119] The Deputy Head argued that the testimonies and the documentary evidence submitted in support of the eight events described in the letter of dismissal justify the decision to terminate the grievor’s employment. Even if the incidents, taken on an individual basis, do not warrant a dismissal, the doctrine of the culminating incident must be applied in connection with the grievor’s disciplinary record and the gradual increase in sanctions. The Deputy Head referred me to *Cloutier v. Treasury Board (Department of Citizenship and Immigration)*, 2007 PSLRB 50. It was obvious that the previous disciplinary measures did not change the grievor’s behaviour, and the ultimate disciplinary measure must be upheld. On that point, the Deputy Head referred me to *Doucette v. Treasury Board (Department of National Defence)*, 2003 PSLRB 66.

[120] The Deputy Head submitted that the culminating incidents in this case are not trifling matters, as they were all subject to disciplinary measures. Warnings were given in one way or another for each of them, and they were linked to previous disciplinary measures. Accordingly, the Deputy Head met the criteria established in *Doucette*. The grievor received letters of reprimand and suspensions, and the suspensions had been upheld by Adjudicator Tessier, who noted the numerous warnings that the PHAC had given and the connection between the previous conduct and the events invoked to support the dismissal.

[121] On the other hand, it is not necessary for the previous conduct and the events for which the employee is criticized to be absolutely identical as long as the behaviour is similar. The Deputy Head referred me to *Schuberg v. Treasury Board (Employment & Immigration Canada)*, PSSRB File Nos. 166-02-15123, 15159, 15350 and 15424 (19860318). The incidents are sufficiently similar in this case to apply the principle in *Schuberg*. The Deputy Head referred me to the letter of warning given to the grievor on

December 14, 2005, concerning unjustified absences from work. On that point, even though the grievor admitted her faulty conduct at the hearing, the Deputy Head submitted that the adjudicator did not have to consider it because the PHAC did not know about it when the decision was made. The events for which the grievor was criticized show her persistence in behaving reprehensibly towards her co-workers, the PHAC and her clients.

[122] The Deputy Head submitted that all the facts of this matter must be considered, taking into consideration the severity of the previous disciplinary measures, i.e., the 2-, 10- and 20-day suspensions, and the fact that they were upheld by an adjudicator. As in *Desrochers v. Canada (Attorney General)*, [2000] F.C.J. No. 505 (TD) (QL), the adjudicator must stand in the Deputy Head's shoes and consider all the relevant facts, the grievor's disciplinary record, the repeated misbehaviour and the fact that the bond of trust has been irrevocably severed.

[123] In this case, inappropriate language at an official meeting that seemed harmless at first was considered harmless no longer once the supervisor had a chance to reconsider the situation in its entirety and to speak to others about it.

[124] With respect to the intimidation of a PHAC employee, the grievor's explanation must not be given weight, only her reasons and the effect on the employee who was intimidated. The fact that the investigators used the word "mischief" or that Mr. Roy would have liked to have been more precise about certain details in his report does not change the objective of the investigation or its conclusions. In addition, the grievor had the chance to make her comments on more than one occasion concerning that event.

[125] The grievor's explanation about the forgery of a date on a document is not credible, considering that the mail is electronically registered and that the grievor should have known about the procedure to be followed.

[126] With respect to the intervention during the team meeting on March 14, 2006, that discredited management, the observations made by Mr. Jarry and Ms. Bernier concerning the grievor's tone must be believed rather than the meeting minutes, which do not give the context of what was said. The objective of what the grievor said must be examined and not the words that she may have used.

[127] With respect to the complaint made by the Centre PRISME, the testimonies given by Mr. Jarry, Mr. Caya and Mr. Pavon are damning. The grievor's explanations only cast blame on the client without acknowledging her share of the responsibility for the situation that developed. Organizations that receive subsidies do not make complaints of this type very often because they hesitate to complain for fear of not receiving any funds. In the grievor's case, this was the fourth complaint in three years.

[128] According to Mr. Caya's testimony, not one factor could have mitigated the decision to dismiss the grievor, even after asking her to mention some. The grievor does not have a clean record or long years of service. These are not isolated incidents or spontaneous reactions provoked by a co-worker or by a client. Likewise, this is not a misunderstanding of the meaning of the warnings already received or of the PHAC's omission to warn the grievor about her unacceptable behaviour. The admission of fault is not an excuse. On the contrary, the PHAC reported the reprehensible conduct, warned the grievor by gradually increasing disciplinary measures and stated that, if she persisted, more severe measures would be applied.

[129] The Deputy Head submitted that Adjudicator Tessier was right in underlining the fact that the grievor did not seem to understand the criticism made about her and the fact that she should consider that she had been warned to change her behaviour. Adjudicator Tessier's comments also apply to this case because, apparently, the grievor did not make amends. The grievor's testimony confirms that she is still uncompromising, that she still does not agree to change her behaviour and that she never takes responsibility for what happens to her.

[130] Even if the events that are reproached to the grievor are not of an alarming severity, in total they show a continuous problem of unacceptable behaviour. The Deputy Head has no other reason to believe that short of dismissal, a disciplinary measure more severe than a 20-day suspension would change things. The grievor has proven that she cannot be rehabilitated, no matter what disciplinary measure is applied. For those reasons, the bond of trust was irrevocably severed, and the dismissal was warranted.

B. For the grievor

[131] The grievor submitted that since she decided to pursue her rights through adjudication, the PHAC has tried to get rid of her by using all the difficulties as

reasons to threaten her employment. Among other things, the date of April 10, 2006, stands out since it is the day on which Ms. Bernier submitted her statement concerning a meeting on March 14, 2006, Mr. Jarry submitted his statement concerning the same meeting and Ms. Doré wrote a statement about a date being changed on a document received in the mail. Mr. Caya denied having requested these statements, but the witnesses affirm otherwise. On April 10, 2006, Mr. Caya consulted Mr. Beaulieu, who contacted Mr. Roy to initiate an investigation by the Security Department about a statement that Ms. Nguyễn had been the victim of indirect intimidation.

[132] The grievor submitted that what began as a request for decision regarding the conditions for the renewal of a contribution agreement and the administrative decision to replace her became an investigation into her behaviour. Mr. Jarry's investigation report concerning the Centre PRISME's complaint went far beyond the organization's initial complaint and concluded that, along with unfounded issues and doubts, there had been harassment, manipulation of information, excessive control, interference and a refusal to meet the organization. The grievor was punished for having applied conditions to the renewal of a contribution agreement that Mr. Jarry had previously approved in an email on October 26, 2005, following a consultation with Mr. Gaussiran. However, on April 4, 2006, based on the same conclusions the grievor had reached about the state of the file, Nathalie Pelletier cancelled the conditions, with no consequences.

[133] On March 27, 2006, Mr. Jarry met with the grievor about a letter from the Centre PRISME contesting the conditions for renewing the contribution agreement without telling her about the facts gleaned at his meeting with Mr. Pavon and Ms. Agsous a few days before. Moreover, on April 12, 2006, Mr. Jarry once again met with Mr. Pavon and Ms. Agsous and gave them the statements that he prepared for their signatures. The grievor was unaware of what she was being criticized for until she received Mr. Jarry's investigation report on May 9, 2006, for her comments. The copy of the report that she received did not contain the appendices that were used to draft the report, which were summaries of the meetings with Mr. Pavon and Ms. Agsous, their statements, and notes of the March 27, 2006 meeting, written by Ms. Nguyễn. The grievor submitted her comments on the investigation report for the first time on May 25, 2006. Mr. Caya asked Mr. Jarry to respond to the grievor's comments. On June 19, 2006, Mr. Caya asked the grievor to comment on the report, this time giving her the documents in question without Mr. Jarry's written comments. The grievor submitted her comments

on June 28 and July 6, 2006. The grievor received Mr. Jarry's comments only at the hearing before me. The grievor underlined the fact that Mr. Jarry's comments are laced with falsehoods and imprecisions. For example, the meetings with the Centre PRISME in the fall of 2005 are confused with the meeting with Ms. Agsous on March 9, 2006. The grievor submitted that because the information arrived in a trickle, she did not have the chance to fully defend herself.

[134] The grievor submitted that the same malice was shown in connection with Ms. Nguyễn's statement concerning "discomfort," which resembled a criminal investigation. On March 27, 2006, the grievor simply stated that she was ill at ease because a co-worker was present who was part of the same community as she was. She wanted the meeting minutes to be taken objectively and the meeting to be confidential. What she said was dramatized to justify an investigation, even though the matter could have been settled informally using the informal conflict resolution policies in force. The grievor referred me to the *Policy on Prevention and Resolution of Harassment in the Workplace*.

[135] The grievor was humiliated by the very formal procedure of being summoned because she had not been told ahead of time of the allegations made against her, including allegations of mischief, and because she had to attend a first meeting without bargaining agent representation. In addition, unlike Mr. Jarry and Ms. Nguyễn, the grievor did not know ahead of time the details of the investigation or the questions that she would be asked. The grievor submitted that the conclusions of the report are based on an allegation of mischief, even though no mischief was proven or established. Mr. Roy admitted this in his testimony, but Mr. Caya insisted that the grievor respond to that unfounded allegation. Nevertheless, the grievor was dismissed for this reason.

[136] The grievor also submitted that the events concerning inappropriate language at an official meeting on April 5, 2006, the modification of a document, the blaming of a co-worker and the statement to discredit management at a team meeting were brought to her attention several weeks and even several months following the events, without her being told why she was being criticized. This measure, under these circumstances, is abusive. That is also the case with Mr. Jarry's report concerning the complaint by the Centre PRISME, with Mr. Gaussiran's feedback about the meeting on April 5, 2006, and with the index and emails concerning repeated requests for coffee breaks. The procedure used to criticize her for other facts was also abusive. Mr. Caya questioned

the grievor and gave her documents for her to comment on more than once without telling her why she was being criticized. One of the incidents, blaming a co-worker, was buried in a statement made by Mr. Pavon. It was only at the hearing that the grievor learned of the incident for which she was being criticized. The agreement about the work schedule signed with Ms. Bernier and the authorizations for leave given by Mr. Jarry were not considered.

[137] The grievor submitted that even if there was fault on her part, failing to respect the complaint procedure for harassment in the workplace and failing to respect the obligation to act fairly invalidated the disciplinary measures applied.

[138] To support her position that the PHAC acted abusively, the grievor referred me to *Sûreté régionale des Riverains c. Fraternité des policiers des Riverains* (Lallemant), September 12, 2000 (Lussier). To support her position that the PHAC did not respect procedural fairness, the grievor referred me to the following decisions: *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *Université Laval c. Syndicat des chargées et chargés de cours de l'université Laval*, 1999 CanLII 13318 (Q.C.A.); *Pelletier v. Canada (Attorney General)*, 2007 FCA 6; and Bernier, Blanchet, Granasik and Séguin, *Les mesures disciplinaires et non disciplinaires dans les rapports collectifs de travail*, Éditions Yvon Blais, at para 2.345-2.352.

[139] The grievor also submitted that before even considering increasingly progressive measures and culminating incidents, fault must first be proven.

[140] The grievor submitted that the comments she made about cross-section analysis were simply to clarify the fact that this process applies only to the Quebec Region and were in no way insulting. It was an exchange of information, and what was said was true. In addition, during the meeting Mr. Gaussiran asked her to forward the template for the NPP data collection form to each of the participants for information purposes. Ms. Marchand testified that she did not notice anything abnormal during the meeting and that all discussions were cordial. Mr. Gaussiran admitted that when it was said, the grievor's statement was harmless. Mr. Gaussiran then changed his mind once he spoke to Mr. Caya and made his statement on June 2, 2006. The grievor vehemently argued that this is a trial of intention and that it does not reveal any fault that would warrant her dismissal.

[141] The grievor submitted that the investigation concerning the complaint made by the Centre PRISME was not conducted in a serious manner. Mr. Jarry simply accepted the version of the facts given by Mr. Pavon and by Ms. Agsous and decided that the grievor was wrong, without checking the facts she mentioned. Mr. Pavon admitted that he always submitted his reports late. Mr. Pavon also admitted that the “harassment” came from the grievor asking him to submit a report, which was already very late, a few days earlier than scheduled. Mr. Pavon used the expression “[translation] I am useless with figures” to explain to the grievor that he did not submit his reports on time. Mr. Jarry received a copy of the letter in which that expression was used. However, he did not react until he undertook an investigation on March 23, 2006.

[142] As far as excessive control is concerned, the grievor submitted that the weekly emails about obtaining civil liability insurance for the board of directors of the Centre PRISME was a means to ensure that the organization would respect the conditions of the contribution agreement that it had signed. In any event, Mr. Pavon decided to ignore that directive. The request for proof of civil liability insurance was not as big a problem as the Deputy Head alleged because on November 18, 2005, the grievor wrote a note in the file that the situation was settled. In either case, it was not the grievor’s “fault.”

[143] Following the July 2005 meeting, Mr. Pavon acted unfairly toward the grievor. He informed her that he had sent the file for the renewal of the contribution agreement to the Centre PRISME’s board of directors and that she had to deal with them from then on. Yet when the grievor wrote to Ms. Fändrich, the co-president of the board of directors, on October 25, 2005, Mr. Pavon replied and continued to reply to her emails. It was the board of directors of the Centre PRISME that sent the March 14, 2006, letter mentioning Mr. Pavon’s complaints.

[144] The grievor objected to the allegation that she refused to meet with the board of directors of the Centre PRISME. A telephone conference was cancelled at the request of the board of directors, but the grievor had already telephoned Ms. Agsous on March 9, 2006, and was waiting for a return call to schedule a date for the meeting in the coming month. The letter of complaint was received on March 14, 2006, and everything stopped at that time.

[145] In addition, the grievor kept Mr. Jarry posted on everything she did concerning the renewal of the contribution agreement with conditions for the Centre PRISME, as

follows: he received a copy of the letter sent to Ms. Fändrich on October 25, 2005, he sent his approval by email on October 26, 2005, and he signed the recommendation based on the file that the grievor submitted on December 14, 2005, which included the analysis grid mentioning the recommendation for renewal with conditions.

[146] The grievor also submitted that she had never been penalized or summoned in connection with complaints by customers in 2002. On the other hand, the complaint made by the Centre PRISME in 2006 is not of the same type as the other complaints. No reference was made to these complaints during the investigation concerning the Centre PRISME.

[147] With respect to all the events for which the grievor was criticized, she submitted that the PHAC asked her to comment on six events reported by other persons without telling her exactly what she was being criticized for and that the PHAC did not reveal the key aspects to her. For four of those events, the PHAC let the situations drag on to such an extent that the grievor could not adequately respond to them. For the other events, the PHAC's reaction was exaggerated. Something harmless mentioned at an official meeting became inappropriate following an official declaration. The complaint by an organization concerning the conditions on renewing a contribution agreement was transformed into an investigation into the grievor's behaviour. The statement of discomfort made by a co-worker following what the grievor had said became a quasi-criminal investigation. Her dismissal was based on her blaming a co-worker for a document that had been lost and then found. An insignificant change of date of no consequence became document forgery. The request for a budget during a team meeting was criticized two months later as an intervention to discredit management. A previously unauthorized absence that was subsequently authorized, just like two authorizations to catch up on lost time that were approved as being exceptional and one-time measures, all became subjects for dismissal.

[148] The grievor explained that if the events were as serious as the Deputy Head claimed, the PHAC should have told her about the criticisms and should have intervened immediately rather than accumulating everything to justify the ultimate decision to dismiss her.

[149] The grievor requested that her grievance be allowed, that the dismissal be cancelled and that she be reinstated with all her rights.

C. Reply by the Deputy Head

[150] The Deputy Head replied that the grievor's defence seemed to imply that things were set in motion following the three suspensions, but that was not the case. Seven of the eight incidents occurred between March 14 and April 6, 2006. The complaint made by the Centre PRISME was filed 26 days before April 10, 2006. The other events were progressively brought to management's attention and were studied in more detail at that time.

[151] The Deputy Head emphasized that the complaint made by the Centre PRISME was more than a mere request for decision to cancel the conditions for the renewal of the contribution agreement; it was a request to have the grievor withdrawn from the file, failing which the organization would cancel its application for a grant. The PHAC wanted to know why the organization took such a position. An employer is not prohibited from taking notes when it meets with witnesses. In this case, Mr. Pavon and Ms. Agsous had the chance to reread their statements before signing them. Those statements explain the conduct for which the grievor was criticized, i.e., the application of conditions for the renewal of the contribution agreement. Nevertheless, based on the same facts, the consultant who replaced the grievor considered that it was useless to insist on the conditions because they were part of the general criteria applicable to all applications for renewal.

[152] No matter when the grievor had knowledge of the various documents and facts that the PHAC was investigating, the grievor had the chance to make her comments at least two weeks before Mr. Caya made his decision to dismiss her. If there had been procedural unfairness, the *de novo* hearing before the adjudicator corrected any perception of injustice. However, that point does not make the final decision of the PHAC null and void. On that point the Deputy Head cited *Renaud v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2002 PSLRB 42, and *Tipple v. Canada (Treasury Board)*, [1985] F.C.J. No. 818 (CA) (QL).

[153] With respect to what the grievor said about Ms. Nguyễn, the Deputy Head maintained that it was not only awkward but also intentional. The grievor knew ahead of time that Ms. Nguyễn would attend because the meeting on March 27, 2006, had been postponed twice. She could have voiced her preoccupations ahead of time and thereby avoid a confrontation at the start of the meeting. The Deputy Head added that Ms. Nguyễn's statement could not have been subject to alternative dispute resolution

under the harassment in the workplace policy because no mention was made of harassment. It was a very serious situation involving an employee with a considerable disciplinary record who did not acknowledge her faults. Accordingly, the PHAC was warranted in undertaking an investigation, the means of which were adapted to the circumstances. The PHAC was also justified in excluding Mr. Bélanger from the interview with the grievor because he was also a witness to what she had said. Not all bargaining agent representation was refused to the grievor, only representation by Mr. Bélanger. Finally, Mr. Bélanger assisted the grievor at the final interview, and the grievor received a copy of the statement given by Ms. Nguyễn before the grievor made her own statement. The Deputy Head mentioned disagreeing with the grievor's submission that she was not dealt with as any other employee would have been.

[154] Mr. Roy admitted in his testimony that the word “*méfait*” was an awkward translation. No criminal charge had been brought against the grievor when he met with her to obtain her statement. On the other hand, the grievor always claimed that what she had done was not mischief, and Mr. Caya did not ask her to respond to such an allegation.

[155] The Deputy Head denied that the PHAC kept events hidden. Adjudicator Tessier dismissed that argument when it was made to him. The incidents happened between March 14 and April 6, 2006. They were dealt with as soon as possible and systematically as of the month of May.

[156] The Deputy Head added that all the criteria in *Pelletier* had been respected. The PHAC advised the grievor that her employment was in danger and gave her the chance to correct matters by increasing disciplinary measures as well as by having numerous meetings to gather the grievor's comments about the incidents for which she was blamed. The grievor submitted that she had not been penalized for previous complaints. The Deputy Head responded that the testimonies heard in this case do not create any doubt about the fact that it was repeat conduct, and the PHAC was entirely warranted in taking that into account. It was not credible for the grievor to claim that she did not know that her employment was at stake. There were no mitigating factors to consider because none exist. The grievor was dealt with like any other employee with a lengthy disciplinary record. She did not learn anything from the warnings that she had been given. Accordingly, she could not claim to be surprised by the PHAC's decision to terminate her employment.

V. Reasons

[157] The PHAC's decision to dismiss the grievor was based on an interpretation of the facts in this case rather than on an issue of law. Basically, did the PHAC have sufficient grounds to terminate the grievor's employment? The following principles apply generally in determining whether there were serious grounds for dismissal. The Deputy Head has the burden of proving the grounds for dismissal. He or she must prove misconduct or sufficiently important elements of misconduct, on a preponderance of evidence. The Deputy Head must also describe the grievor's misconduct with enough precision and detail to allow the adjudicator to determine the issues and to enable the grievor to respond in her defence. The grievor's misconduct must have been serious. The evidence in this case was analyzed based on those principles and on the culminating incident principle raised by the Deputy Head.

A. Alleged misconduct by the grievor

1. Inappropriate remarks at an official meeting

[158] This event took place on April 5, 2006. The grievor explained to the participants, at a meeting outside of the PHAC's premises, a method of collecting data that was different from that presented by a PHAC manager. The testimonies are contradictory. Mr. Gaussiran stated that, at that time, he considered that what the grievor said was harmless and that it was only when he spoke to Mr. Jarry about it that he understood that what she had said was inappropriate in the context of an official meeting. The grievor stated that what she said was simply a fact: cross-section analysis is an *ad hoc* way of gathering regional data and is performed only once. She added some information by stating that there was also a national method of collecting data. Mr. Gaussiran supported what the grievor said by asking her to forward to the meeting participants the template used for collecting national data, which she did. What the grievor said was noted in correspondence subsequent to the meeting. Ms. Marchand testified that she did not note anything inappropriate in what the grievor said and that the meeting was held in the strictest order. The Deputy Head did not establish that what the grievor said was wrong.

[159] The written comments that Mr. Gaussiran gave to Mr. Caya do not specifically describe the grievor's misconduct and do not explain why such misconduct warranted a disciplinary measure. In my opinion there is a contradiction between the fact that Mr. Gaussiran apparently acknowledged the relevance of what the grievor said by

asking her to distribute the NPP template to all participants at the meeting and then reneged on the correctness of what was said because she allegedly publicly contradicted him. Finally, no evidence explained how what was apparently initially harmless became “inappropriate language” for the purposes of dismissing the grievor.

[160] The PHAC brought the incident to the grievor’s attention only on June 8, 2006, two months later. If the incident was that serious, why did the Deputy Head not explain to me why the incident was not mentioned immediately, rather than two months later? Instead, the time elapsed implies that the event was actually harmless when it happened. I conclude that this incident was added to the other incidents for which the grievor was criticized only when the PHAC decided that there were sufficient grounds to proceed with the dismissal. Accordingly, this incident in itself cannot be considered as serious enough to warrant dismissal.

2. Complaint from an organization about service delivery

[161] The misconduct for which the grievor was criticized in connection with the proven facts can be summarized as follows. The Deputy Head criticized the grievor for having been too thorough in applying the policies for renewing the contribution agreement, for having required unreasonable conditions for the renewal and for not having respected the Centre PRISME. On the other hand, another consultant reviewed the file and, based on the same facts, concluded that the client did not represent a major risk and that no conditions should be imposed. The Deputy Head added that it was not the first time that an organization filed a complaint against the grievor.

[162] On the other hand, the grievor explained that she had serious difficulties with the Centre PRISME. The Director General did not keep her posted on the changes that could have affected the conditions for the grant, whether it was the premises, staff or programs. The organization had incurred a major deficit the year before. The Director General was not very interested in financial matters. The reports required under the contribution agreement were always late. She had to follow up continuously to ensure that the required documents were filed. The grievor submitted documentary evidence to support every one of her explanations. The Deputy Head did not contradict any of the facts mentioned by the grievor.

[163] The grievor’s job description, in force since May 5, 1999, specifies the following:

[Translation]

...

Information used by third parties

...

Supply to contractors and to promoter organizations general resources and specific comments about developing projects and drafting reports and about specific aspects of equipment, etc., to support them in preparing, presenting and following up their initiatives.

Analyze and draft proposals involving recommendations for approval to be submitted to managers in charge and, finally, to the Department that is requested to approve the financing.

...

[On page 4 of the document]

Budgeting

*Recommend the general award of subsidies and contributions or operating budgets and expenses within areas of responsibility.**

*Supervise the budgets for subsidies and contributions and the operating expenses in areas of responsibility.**

*Supervise expenses for approved individual projects and contract budgets.**

**The work described above is performed in compliance with the policies and procedures of the Branch, the Department and central organizations and in all cases impacts the viability of current or planned activities.*

...

[On page 5 of the document]

Supervision of conformity

Determine if applications for financing and bids comply with the Treasury Board and Departmental policies as well as with program guidelines. Recommend refusing or accepting proposals or bids.

Ensure that the performance of projects or contracts complies with contract agreements. Recommend maintaining or suspending financing or applying corrective measures.

...

[On page 6 of the document]

[164] These excerpts clearly show that the grievor is responsible for ensuring that clients are trained so that they respect their commitments. The grievor must analyze and draft proposals that will be subject to final approval by the Department. In granting subsidies the grievor must respect government policies and procedures. Finally, the grievor must ensure that the conduct of projects complies with contracts.

[165] At the hearing the Deputy Head admitted that the job description from which this excerpt was taken is still in force. I did not find anything that gives the grievor any discretion as to the thoroughness with which she must apply government policies. On the contrary, because the grievor's recommendations are used to commit financially the Department, she must be attentive and ensure that public funds are not misused and that the Department's decision is not compromised. The Deputy Head did not affirm the contrary. I consider that the finding in Mr. Jarry's investigation report was totally unwarranted when he stated that greater credibility must be given to the organization which complained because it risked not having its contribution renewed. No evidence was adduced to support that conclusion. On the contrary, Mr. Pavon mentioned in his testimony that the Centre PRISME was willing to forgo its grant.

[166] The criticism that the grievor wanted to apply unreasonable conditions to the Centre PRISME for the renewal of its contribution agreement seems completely unwarranted. The grievor discussed renewal conditions with Mr. Jarry. He agreed with the conditions for renewal. Mr. Jarry's agreement was mentioned in an exchange of emails on October 26, 2005. On behalf of the PHAC, Mr. Jarry signed an application for the renewal, with conditions, of the contribution agreement. In addition, copies of the letters dated October 25, 2005 and March 2, 2006 concerning the difficulties in connection with the Cercle Magique project were forwarded to Mr. Jarry. Considering that the grievor acted with the PHAC's approval, she should not have had to suffer the consequences for wanting to impose conditions for the renewal of the grant when those conditions were subsequently considered unreasonable.

[167] The letter of October 25, 2005, in which the grievor writes: “[translation] . . . a response such as ‘I am useless with figures’ is no longer acceptable . . .” may be interpreted as a lack of respect. Mr. Pavon mentioned as much at his first meeting with Mr. Jarry in March 2006. In his report, Mr. Jarry considers that incident as a new fact. However, a copy of the letter had been forwarded to Mr. Jarry when it was sent. If what the grievor said were that disrespectful, the PHAC should have acted immediately. I consider that the PHAC ignored the statement and could not criticize the grievor for it four months later.

[168] On the other hand, I found that the grievor’s testimony was more credible than Mr. Pavon’s about what had happened between his return from sick leave in June 2005 and the letter of complaint dated March 14, 2006. Mr. Pavon was just as imprecise in his testimony as the grievor was precise in hers about each step she took. Mr. Pavon did not remember any details about meetings with the grievor, even though she gave him the agendas and minutes. Mr. Pavon did not remember the content of a document that he himself had written about the possibilities of making changes to the Cercle Magique project. He barely remembered the numerous steps and requests for meetings with the grievor to obtain documents specified by law. He described the grievor’s legitimate steps as “[translation] harassing.” The PHAC accepted what Mr. Pavon stated without considering the facts mentioned by the grievor.

[169] I was not satisfied on a preponderance of evidence that what the grievor did was misplaced in the circumstances. She was dealing with a difficult organization that did not seem to cooperate. She had to continuously make reminders and ensure that a follow up took place. The fact that another consultant recommended renewing the contribution agreement after the grievor had been withdrawn from that task is not evidence that the grievor acted incorrectly. Considering the situation in which the grievor ended up, Nathalie Pelletier was not in a position to refuse to grant the contribution requested by the Centre PRISME. Nathalie Pelletier also testified that the file had been very well prepared by the grievor.

3. Intimidation of an employee of the PHAC

[170] This incident concerns a meeting with the grievor about a letter of complaint from the Centre PRISME. Mr. Jarry wanted to obtain the grievor’s version. The grievor requested that her bargaining agent representative be allowed to attend, and Mr. Jarry consented. At the beginning of the meeting the grievor told Mr. Jarry about her fear that

the subject of the meeting would be spread around because of the presence of Ms. Nguyễn, who is a member of the same Vietnamese community as the grievor. She requested that the minutes taken by Ms. Nguyễn be objective. Mr. Jarry assured the grievor of Ms. Nguyễn's professionalism and discretion, and he continued the meeting. After the meeting Ms. Nguyễn told Mr. Jarry about her discomfort with what the grievor had stated. The grievor's words led to an official investigation, which concluded that the grievor had behaved offensively towards Ms. Nguyễn, contrary to Health Canada's *Policy on Prevention and Resolution of Harassment in the Workplace*.

[171] In his testimony, Mr. Caya explains that, after consulting Mr. Beaulieu and to remain as neutral as possible, he proceeded with an official investigation.

[172] The objective of and the consequences sought by the official investigation leave me perplexed. In her email to Mr. Jarry, Ms. Nguyen states that she felt "[translation discomfort]" following the meeting and that she considered that the comment made by the grievor was "[translation] insulting and inappropriate." Mr. Caya's email to Ms. O'Donnell mentions that the "[translation] security investigation" concerns a complex matter. The investigation of Mr. Roy and Mr. Provencher is based on allegations of "mischief" committed by the grievor, while the report's findings are based on a policy infringement.

[173] It is surprising that Mr. Roy, an experienced investigator from the Royal Canadian Mounted Police, would not know the difference between mischief and misconduct. Ms. Nguyễn did not file a complaint of mischief against the grievor or a complaint of harassment. On May 8, 2006, Mr. Bélanger advised the PHAC that he objected to the allegation of mischief against the grievor. However, the Deputy Head only withdrew that word at this hearing when Mr. Roy mentioned that using the word "mischief" was improper. Finally, the investigation's findings do not respect the mandate given by Mr. Caya.

[174] It must be emphasized that the incident was dealt with a heavy hand and a manner that was humiliating for the grievor. She was called to a meeting in Mr. Caya's office and was greeted by two investigators whose presence had not been announced. They gave her a letter without explaining its content. During the first interview on May 2, 2006, the grievor was criticized for "mischief," i.e., an offence under the *Criminal Code*. The investigators were unable to explain the nature of the mischief to her, and she had to insist in order to obtain a copy of the email sent by Ms. Nguyễn to

be informed of the facts for which she was being criticized. None of this considered that a charge under the *Criminal Code* could have hindered the grievor's immigrant status.

[175] Although what the grievor said could be considered as insulting to Ms. Nguyễn, this matter could have been easily avoided. The meeting on March 27, 2006, was disciplinary because the PHAC had advised the grievor at the end of the meeting that it would be giving her a "[translation] decision." In fact, the PHAC allowed the grievor's bargaining agent representative to attend. However, the Centre PRISME file had already been reassigned. When the grievor opposed Ms. Nguyễn's presence, Mr. Jarry should have immediately agreed with her. The need for note taking did not legitimize Ms. Nguyễn's presence.

[176] Considering the above, and although what the grievor said could have been considered as a blunder, the PHAC's reaction was disproportionate. The PHAC also lacked delicacy by calling the grievor to this type of meeting knowing that the hearing for her grievances concerning her suspensions was to begin that very afternoon before Adjudicator Tessier. Without going so far as to say that the grievor was right, it must be acknowledged that the stress of the situation plays a part in explaining this incident. This incident cannot be considered as a reason for dismissal.

4. Blaming of a co-worker

[177] This incident concerns a remark made by Mr. Pavon in his statement in connection with the complaint by the Centre PRISME. The only evidence of this incident lies in what Mr. Pavon said. The PHAC mentioned this incident only when dismissing the grievor, although the PHAC had knowledge of it on March 23, 2006. The fact that the criticism was included in the documents given to the grievor during the meetings held in June and July 2006 does not excuse the failure to mention the misconduct and the importance of the incident.

[178] In addition, I am of the opinion that the evidence is insufficient to determine the gravity of this incident and the appropriateness of a disciplinary measure. Accordingly, this incident cannot be considered as a reason for dismissal.

5. Forgery of a document

[179] The grievor was criticized for having changed the date of receipt of a document and for having initialled it when she was not authorized to do so. As far as the employer was concerned, the misconduct results from the fact that a change of date may have legal consequences, among other things, on awarding subsidies.

[180] According to *Larousse*, forging a document means “[translation] voluntarily modifying to mislead.” According to *Le Robert*, forgery involves an element of fraud. Accordingly, forgery of a document is a very serious criticism.

[181] There is no evidence that the grievor intended to mislead anyone. In fact, the grievor’s explanation is plausible and is supported by the email she sent to Ms. Doré. When Ms. Doré asked her to confirm the initial date of receipt, the grievor did so. There is no evidence that the grievor committed any fraudulent act, that the change of date had any legal consequence or that a grant was endangered. This incident does not warrant a dismissal.

6. Absence without prior authorization

[182] This misconduct for which the grievor was blamed concerns a medical appointment made without preauthorization on April 6, 2006, for a period of three hours. Mr. Jarry subsequently authorized the grievor’s absence. The Deputy Head invoked the fact that the leave of absence was taken without being authorized in advance, even though the grievor had been warned in writing on December 14, 2005, that she had to request her absences in advance. The fact that the grievor had received a warning to the effect that she would be liable to disciplinary measures for repeated unauthorized absences was not contested. However, nothing consistently explains why the PHAC approved the absence in question on April 21, 2006, in spite of the warning. To be consistent, the PHAC should have simply refused the absence by invoking the warning already given. The PHAC would also have been justified in applying an appropriate disciplinary measure because of the warning. However, by authorizing the request for absence without any other consequence, the PHAC was estopped from subsequently considering this as a repeat absence and from applying disciplinary measures because of it. This incident does not warrant a penalty of dismissal.

7. Intervention discrediting management at a team meeting

[183] This incident concerns a statement that the grievor made during a team meeting on March 14, 2006, to request \$1000 for a mailing about one of her projects. Two managers who attended the meeting considered the statement to be inappropriate either because of the subject matter or because of the tone used. As they were not aware of the request, they considered that the grievor should not have mentioned this point during a round table at the end of the meeting. On April 10, 2006, Mr. Caya obtained statements from the managers present but spoke to the grievor about it only on June 19, 2006, along with other incidents.

[184] I took pains to read the minutes of the meeting, which the grievor submitted in evidence. The first point concerns the adoption of the agenda. At the item "Other Business," the following was noted: "[translation] Follow up of 2 periodic projects (Thu-Cùc), it was suggested that Thu-Cùc discuss it during the round table." During the round table, it was noted that the grievor "[translation] mentioned that she was waiting for confirmation of the funds for a mailing for a training project." No response to this request was noted in the minutes.

[185] The Deputy Head's criticism about what the grievor said is not clear. If the tone of the statement was not respectful, any manager attending the meeting could have mentioned it immediately. If the managers present were unable to provide the grievor with a response, it could have been noted and a reply given later. If the grievor's misconduct consisted of having mentioned this point during the round table, the meeting minutes provide an explanation for her action because she had been invited to raise the point at the final round table. In general, there is no objective evidence of wilful misconduct by the grievor. This incident does not warrant a penalty of dismissal.

8. Repeated requests to use coffee breaks despite a signed agreement prohibiting such a practice

[186] The Deputy Head based this criticism on the several occasions on which the grievor asked to modify her work schedule by shortening her meal break, grouping her coffee breaks at the end of the day or requesting a variable work schedule. According to the evidence, several requests to that effect were made from 2003 to 2005 in addition to the modification authorized by Mr. Jarry on February 17, 2006, as a unique and exceptional request following a signed agreement concerning the work schedule for 2005-2006.

[187] The grievor explained that until the beginning of 2006, requests to modify her work schedule were made to allow her to take her university courses at the end of the day and that an agreement was retroactively signed to allow those requests. For 2006, two requests to modify the work schedule were made: the first on February 15, 2006, authorized by Mr. Jarry on February 17, 2006; and the second, for a non-culpable lateness, on June 1, 2006, authorized by Mr. Jarry on June 2, 2006 “[translation] . . . exceptionally and for once only” The matter of modifying the work schedule was raised only at the June 29 meeting with the grievor.

[188] With respect to the modifications made to the work schedule for the grievor’s university courses, the PHAC contradicts itself. On one hand, it encourages the permanent education of its employees by reimbursing the costs and, on the other hand, it is not willing to allow any flexibility in work schedules to allow employees to take the courses in question. The grievor did not ask for paid time to take her courses. Instead, she was willing to forgo her meal and coffee breaks to give her full effort. The only thing she asked was to have her work schedule adjusted so that she could attend her courses. The Deputy Head did not establish that these requests, even if they were frequent, had an impact on the quantity or quality of the grievor’s work or that she neglected her files. If the Deputy Head intends to dismiss an employee for that type of request, a clear warning, as well as a chance to change his or her habits, must be given to that employee. The period of three years, which was the subject of the emails, was amply sufficient for the PHAC to take severe action, if that was its intention.

[189] In addition, I consider as inconsistent the fact that, on one hand, Mr. Jarry approves a modification to the work schedule on two occasions and that, on the other hand, the Deputy Head wishes to invoke the requests as one of the grounds for dismissal without any other warning. I consider that, by approving the requests to modify the timetable, the PHAC could not subsequently criticize the grievor for having made those requests. This incident does not warrant a dismissal.

B. Doctrine of the culminating incident

[190] The Deputy Head submitted that the evidence supports the decision to dismiss the grievor even if the incidents, considered individually, do not warrant a dismissal. The Deputy Head requested that I apply the doctrine of the culminating incident, considering all the facts and the progression of disciplinary measures.

[191] At paragraph 7:4314 of *Canadian Labour Arbitration*, 4th ed., Brown and Beatty write that to invoke the doctrine of the culminating incident to warrant dismissal, adjudication case law mentions the following criteria:

- *The culminating incident must be subject to disciplinary measures;*
- *The previous misconduct which the employer alleges must have been mentioned when it happened or shortly thereafter; some adjudicators have ruled that an employer cannot base his decision on incidents for which no disciplinary measure was applied when they happened.*
- *There must be a close relationship between previous misconduct and the culminating incident; however, adjudicators are not unanimous on this point.*

[192] The previous disciplinary measures are as follows. The grievor was given a written reprimand on September 22, 2003, about conflicts with PHAC staff and her clients, about requests for leave of absence submitted at the last minute or afterward and about a tendency to criticize management's decisions. On September 24, 2003, the PHAC suspended the grievor for two days for claims concerning her university training, which were made to a person other than her immediate supervisor, as well as for a lack of respect for her supervisors. On February 3, 2004, the PHAC suspended her for 10 days for a lack of respect towards her supervisors, a letter to an organization that showed doubt about the competency of an acting manager and the grievor's attitude about the use of residual monies. On October 28, 2004, the PHAC suspended her for 20 days for having questioned management's decisions on the following points: her work schedule, overtime that had not been approved beforehand, multiethnic training, the CPNP renewal committee and leaving work without authorization as well as for her disrespectful attitude towards management, including absences and being late for meetings.

[193] At first sight, some of those incidents have features in common with this grievance, i.e., the requests concerning the work schedule, the disagreement with the opinions of her supervisors and the complaints made by clients. However, there is no evidence in the record before me that these incidents are of the same type as those for which the grievor is presently being criticized. In addition, no evidence was submitted to me showing that the incidents for which the grievor is presently being criticized

entailed disciplinary measures, except for the decision to dismiss the grievor for all eight misconducts for which she is being criticized.

[194] With respect to what had been said at an official meeting, the PHAC only criticized the conduct that was considered unacceptable much later. In addition, the manager attending the meeting obviously supported what the grievor said because he asked her to forward to all participants the template for the method used to collect national data about which she had just spoken. No consequence or criticism resulted from this meeting before the decision was made to dismiss the grievor.

[195] The same thing applies to the complaint by an organization about the delivery of services. The misconduct for which the grievor was criticized was not clear because the conditions that she applied for the renewal of the organization's contribution agreement had previously been approved by her supervisor. The PHAC's decision to withdraw her from the file and to assign it to another consultant is not a disciplinary measure.

[196] The incident linked to an allegation of intimidation of an employee working for the PHAC was not proven. The investigation concluded that there was an omission about respecting a Health Canada policy, but that was not the incident for which the grievor was criticized. Blaming a co-worker and forging a document were reported to the grievor only when the Deputy Head was on the verge of dismissing the grievor.

[197] The grievor's intervention, allegedly done to discredit management during a team meeting, was not reported to the grievor when it happened. No consequence or criticism resulted from this meeting before the decision was made to dismiss the grievor.

[198] Finally, the requests to use coffee breaks are events dating from 2003 to 2005, before an agreement was reached about the work schedule for 2005-2006, which was partially retroactive to cover the requests for 2005. After that date, requests were made only on an exceptional basis, and the employer approved the two requests made in February and June 2006. The PHAC cannot approve leave and then apply disciplinary measures to the grievor for that leave. This event cannot be considered as repeat conduct.

[199] Accordingly, I am of the opinion that the misconducts for which the grievor was criticized do not meet the conditions of the doctrine of the culminating incident. It has not been proven that each misconduct was individually subject to disciplinary measures. None of the misconducts were reported to the grievor when they happened or shortly thereafter, and no evidence was submitted of a close relationship between the grievor's previous disciplinary record and the events that led to her dismissal. Although there is some resemblance to other incidents that were already subject to disciplinary measures, contrary to *Cloutier*, I was not satisfied that this behaviour warrants a disciplinary measure.

[200] For these reasons, I consider that the dismissal of the grievor was unjust. I must therefore deal with the appropriate remedy in this case.

C. Appropriate remedy

[201] In *Parry Sound (District) Social Services Administration Board v. Ontario Public Service Employees Union, Local 324 (O.P.S.E.U.)*, 2003 SCC 42, the Supreme Court of Canada underlined the fact that adjudication of grievances is a means to “. . . the prompt, final and binding resolution of workplace disputes . . .” in connection with a collective agreement. In *Alberta Union of Provincial Employees v. Lethbridge Community College*, 2004 SCC 28, the Supreme Court of Canada repeated that point and added that there is social value in the definitive settlement of grievances by a grievance arbitration process:

...

[34] *As noted earlier, the purpose of this grievance arbitration scheme, like all others, is to “secure prompt, final and binding settlement of disputes” arising out of the collective agreement: see Parry Sound, supra, at para. 17. Finality in the resolution of labour disputes is of paramount significance both to the parties and to society as a whole. Grievance arbitration is the means to this end; see Brown and Beatty, supra, at §2:1401, that “[t]his legislative framework has been recognized and accepted as establishing an arbitral mandate to fashion effective remedies, including the power to award damages, so as to provide redress for violations of the collective agreement beyond mere declaratory relief” (emphasis added).*

[35] *Clearly, the overarching purpose and scheme of the Code lend considerable support for the arbitrator to fashion*

a remedy to suit the particular circumstances of the labour dispute in question.

...

[40] *This Court's jurisprudence has recognized the broad remedial powers required to give effect to the grievance arbitration process. The need for restraint in the fettering of arbitral remedial authority was initially acknowledged by Dickson J. (as he then was) in Heustis, supra, at p. 781, wherein the policy rationale for judicial restraint was explained thus:*

The whole purpose in establishing a system of grievance adjudication under the Act is to secure prompt, final, and binding settlement of disputes arising out of interpretation or application of the collective agreement, or disciplinary action taken by the employer, all to the end that industrial peace may be maintained.

This Court's approach in Heustis foreshadowed an expansion of arbitral authority.

[41] *For instance, in St. Anne Nackawic Pulp & Paper Co. v. Canadian Paper Workers Union, Local 219, [1986] 1 S.C.R. 704, the Court expressly recognized the arbitrator's heightened competence in adjudicating breach of rights under collective agreements. Decisions such as Weber v. Ontario Hydro, [1995] 2 S.C.R. 929, its companion case New Brunswick v. O'Leary, [1995] 2 S.C.R. 967, and Parry Sound, supra, further explain how the arbitrator's role has grown to fill its mandate. In Weber, the Court acknowledged that arbitrators have exclusive jurisdiction over disputes arising from the interpretation, application, administration or violation of the collective agreement. Parry Sound expanded the scope of the arbitrator's jurisdiction to include human rights and other employment-related legislation. These decisions mark a trend in the jurisprudence toward conferring on arbitrators broad remedial and jurisdictional authority. Moreover, I cannot help but reiterate this Court's oft-repeated recognition of the fundamental importance of arbitral dispute resolution; see Heustis, supra; see also Blanchard v. Control Data Canada Ltd., [1984] 2 S.C.R. 476; Toronto Board of Education, supra, and Parry Sound. Arming arbitrators with the means to carry out their mandate lies at the very core of resolving workplace disputes.*

...

[202] Despite *Parry Sound* and *Alberta Union*, in *Gannon v. Canada (Attorney General)*, 2004 FCA 417, the Federal Court of Appeal ruled that under the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35, an adjudicator's power was limited to ordering the reinstatement of a civil servant dismissed without cause because, among other things, that *Act* did not provide for remedies as broad as those specified in subsection 242(2) of the *Canada Labour Code*.

[203] However, after *Gannon*, the *Public Service Labour Relations Act (PSLRA)*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, came into force. Subsection 228(2) of the *PSLRA* specifies that the adjudicator must render a decision and make the order that he or she considers appropriate in the circumstances. In addition, the preamble of the *PSLRA* is similar to that of other labour legislation, such as the *Canada Labour Code*, the *Ontario Labour Relations Act* and the *Labour Relations Code* of Alberta. The preamble of the *PSLRA* establishes the main objectives of the legislation, consisting of a commitment to “. . . fair, credible and efficient resolution of matters arising in respect of terms and conditions of employment . . .” and that “. . . harmonious labour-management relations is essential to a productive and effective public service. . . .”

[204] Although the provisions of the *Labour Relations Code* of Alberta, analyzed in *Alberta Union*, are not identical to those of the *PSLRA*, they are sufficiently similar so that the conclusions reached by the Supreme Court of Canada in *Alberta Union* may be used as a basis in this case. Accordingly, I consider that by enacting the preamble and subsection 228(2) of the *PSLRA*, Parliament gave the adjudicator not only the power to award a final remedy but also the power to decide on measures appropriate to the circumstances of each case.

[205] In this case, I have concluded that the grievor's dismissal was without cause and that, accordingly, she should normally be entitled to reinstatement. On the other hand, I consider that the evidence demonstrated that the PHAC doggedly persisted in doing everything it could to dismiss the grievor to such an extent, seldom seen, that her return to the same workplace would not be a reasonable and viable measure; it could cause her more harm than the dismissal itself. It must be remembered that several months following the incidents, the PHAC asked the grievor to answer for numerous incidents that, when considered alone, did not warrant disciplinary measures. She was asked this at the precise moment that she had to appear before Adjudicator Tessier for

the three suspension grievances. Because there are only a few employees at the PHAC office for the Quebec Region, it is difficult, if not impossible, to order a reinstatement free of the hassles that led to the grievor's dismissal. Considering these circumstances, I am of the opinion that ordering her reinstatement is not a reasonable or viable option and that it is more appropriate to consider what remedy may properly compensate the grievor in the circumstances.

[206] Because the parties in this case did not have the chance to make any submissions about an appropriate remedy for the grievor for the loss of her employment, I order that a hearing be scheduled to determine that issue.

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

(The Order appears on the next page)

VI. Order

[208] The grievance is allowed in part.

[209] None of the incidents for which the grievor was criticized warrants a disciplinary measure, and the dismissal is without cause.

[210] Reinstatement of the grievor is not a reasonable or viable option in the circumstances.

[211] A hearing will be scheduled as soon as possible to hear the parties only on the issue of an appropriate remedy to properly compensate the grievor for the loss of her employment.

July 29, 2008.

PSLRB Translation

**Michele A. Pineau,
adjudicator**