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File: 566-02-3676

Citation: 2011 PSLRB 108



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

ROBERT DYCK

Grievor

and

**DEPUTY HEAD
(Department of Transport)**

Respondent

Indexed as

Dyck v. Deputy Head (Department of Transport)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: John J. Steeves, adjudicator

For the Grievor: Phillip Hunt, counsel

For the Respondent: Richard Fader, counsel

Heard at Vancouver, British Columbia,
May 10 to 13, 2011.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] This decision is about whether the respondent's decision to terminate the probationary status of Robert Dyck, the grievor, was consistent with the applicable jurisprudence and legislation. On September 22, 2008, he was hired as a civil aviation inspector, with expertise as a helicopter pilot and instructor, with a one year probationary period. He was advised on August 24, 2009 that his employment would be terminated effective September 23, 2009. The respondent is the deputy head of the Department of Transport.

II. Summary of the arguments

[2] The parties agree on the test to be applied to the dismissal of a probationary employee. As long as the respondent assessed the grievor in good faith for an employment-related reason, an adjudicator should not interfere with that assessment and its consequences, a dismissal. Before an adjudicator can intervene in the decision to dismiss a probationary employee, there must be evidence of bad faith on the part of the employer or evidence that the termination of the probationary employment was based on something other than an employment-related purpose. Further, probationary employees do not have access to the just-cause standard. Overall, they have a very high standard to meet.

[3] The respondent submits that the reasons for the termination of the grievor's probationary status were valid. These reasons included misrepresentation of his application for employment, inability to follow clear instructions, inability to make appropriate decisions about work plans, inability to advise his supervisor of operational changes and other matters. According to the respondent, many attempts were made to help the grievor improve his performance, but he did not meet the acceptable standards for continuing employment. The respondent seeks the dismissal of the grievance.

[4] The grievor and his bargaining agent submit that the grievor came to work for the respondent with significant expertise and experience as a helicopter pilot and instructor and, therefore, the usual standards that apply to probationary employees at the beginning of their career should not apply. Further, various assessments by the respondent of the grievor's work were in violation of a number of regulatory requirements. There is evidence of bad faith, according to the grievor and his

bargaining agent, and it is alleged that the respondent and the grievor's supervisor misrepresented various incidents involving the grievor. The grievor and the bargaining agent seek his reinstatement as a civil aviation inspector and an order that his probationary period be considered completed, effective September 22, 2009.

III. Summary of the evidence

[5] The respondent operates a number of programs and agencies related to transportation in Canada and internationally. One of these is Commercial and Business Aviation, where the grievor was employed as a civil aviation inspector. Commercial and Business Aviation is responsible for the inspection of rotary-wing aircraft (helicopters) as well as fixed-wing aircraft, among other things. The grievor was based at the respondent's operations in Vancouver, British Columbia.

[6] The grievor is Robert Dyck. There is no dispute that prior to his employment with the respondent, he had extensive experience as a helicopter pilot and instructor. He is also a member of the Canadian Federal Pilots Association (CFPA).

[7] A fully trained civil aviation inspector exercises his or her authority through what is called a ministerial delegation. This means that an inspector makes judgements and issues orders pursuant to the authority delegated to him or her by the Minister of Transport. In recent years, inspectors have been given partial delegation in specific areas in order for them to obtain full delegation over time. In general, inspectors are recruited on the basis of already established experience and even expertise in, for example, rotary wing aircraft. As will be seen, this was the case with the grievor.

[8] Despite the expertise that a person brings to the position of inspector, there is extensive training before he or she receives partial or full ministerial delegation and a training program is established at the beginning of a person's employment (training also continues throughout his or her career). This training includes specific courses (for example, in various technical areas) as well as extensive on-the-job training (OJT). A document of the respondent, entitled "Requisite Training to Obtain Ministerial Delegation of Authority, (Directive No. 7, Revision 4)," sets out the roles and responsibilities of various participants in the training process, including the inspector, the regional director and others. This directive arose from a serious airplane crash in 1998 at Dryden, Ontario, and a report into that crash that identified shortcomings in

various aspects of training. Directive No. 7 sets out four phases of training: initial training, supplementary training, recurrent training, and career development training. It is phase 1 training that is the focus of the grievance in this case.

[9] A number of other documents pursuant to Directive No. 7 set out different aspects of OJT, including modules and roles and responsibilities. OJT may take the form of a briefing, or may be completed through observation by an employee or by document familiarization and reference. As well, there can be practical training where the employee assists a qualified person in the performance of a task or the employee completes the task under the supervision of a qualified trainer. This is discussed in more detail below.

[10] Trevor Heryet, Regional Manager for Commercial and Business Aviation, testified about the hiring of inspectors generally and the specific hiring of the grievor. In 2008, the respondent had to fill vacancies for several positions and, according to Mr. Heryet, there were “lots of staffing processes going on.” The position of civil aviation inspector, the position the grievor ultimately filled, was posted, and applications were invited. Mr. Heryet knew the grievor through the industry and testified that he was “expecting [the grievor] to apply” for one of the positions. After the competition closed, Mr. Heryet received a telephone call from the grievor, asking whether his application had been received. This call was made after the closing of the posting, after the initial screening and after the elimination of some candidates. Following the call from the grievor Mr. Heryet made some inquiries within his department, and learned that the grievor's application had not been received. Mr. Heryet then asked his staff what happened to it. As he put it, the competition system was “pretty robust,” and he “could not figure out how [the grievor's application] was missed.”

[11] In his telephone conversation with Mr. Heryet, the grievor explained that he had made the application online because he had been out of the country at the time. Mr. Heryet thought the grievor had said he had been in South America. Mr. Heryet discussed the matter with his human resources staff and he asked why the grievor's application was missed. He was also interested in recruiting the grievor because his expertise in rotary aircraft was “pretty rare”. Mr. Heryet then learned from his staff that the grievor had in fact made an application but only half the application was completed, and it had not been processed for that reason. Mr. Heryet decided to accept

the grievor's application as late. He did this because the grievor had initiated the application and he "clearly intended to apply." In his evidence Mr. Heryet acknowledged that this was "unusual," but it was justified because there was "a small pool" of people with the grievor's qualifications and experience.

[12] The grievor then submitted a full application, he was interviewed at least once by a panel (that included Mr. Heryet) and he was ultimately offered a position as a civil aviation inspector. A letter of offer dated September 5, 2008 set out a number of things, such as salary, duties, issues of confidentiality and other matters. The letter also included the following paragraph:

...

In accordance with Section 61 of the Public Service Employment Act, employees appointed from outside the public service are subject to a twelve (12) month probationary period, excluding any periods of leave without pay, full time language training or leave with pay in excess of thirty (30) consecutive days and any off duty periods in the case of seasonal employees. Your probationary period will continue with any subsequent appointments or deployments until the probationary period has been completed.

...

[13] The grievor accepted this offer of employment on September 11, 2008 and his first day of work was September 22, 2008. It is agreed that the probationary period for the grievor was 12 months in length.

[14] With regards to the probationary status of new employees and their performance, an undated document of the respondent, titled "Guidance on Probationary Reviews for Managers", gives the following direction to managers:

...

An employee is subject to probation only once and that is the period immediately following their initial appointment to a position in the core public service. Probation provides you [the manager] with an opportunity to conduct a more in depth assessment of the employee than was possible during the initial selection process. You can take more time to assess the employee's performance and conduct and become satisfied that the employee is suitable for the position into which they have been hired.

...

[15] I next turn to the evidence about the grievor's performance during his probationary period.

[16] Mr. Heryet testified that, "very early" in the employment of the grievor, the grievor approached him and the two men had a "casual conversation". During this conversation the grievor said that he did not have his instrument reading rating, sometimes called "IFR" or "Group 4" rating. Mr. Heryet asked the grievor why he did not have the rating and the grievor explained that it had lapsed. Mr. Heryet was surprised and he told the grievor that "it did not make any sense" because the IFR rating was an essential qualification for the position of inspector. The grievor replied by saying that he must have sent an older resume that incorrectly described the rating as current. Ultimately it turned out that the grievor's IFR rating had lapsed for a significant amount of time, long enough to require him to complete new training and write an exam. This development was of some concern to Mr. Heryet and he told the grievor, "you are not qualified to even be working here" [as an inspector].

[17] Mr. Heryet undertook an investigation to determine how the grievor's lack of a current IFR rating could have gotten through the hiring process. He concluded that it occurred because of his decision to allow the grievor to make a late application. Because it was late, it did not receive the full initial screening that other applications had received at the beginning of the process. Among other things, that initial screening confirmed the essential qualifications for the position, such as a current IFR rating.

[18] The grievor did not mention his lapsed IFR rating in his evidence-in-chief. It had been raised in questions that were part of the cross-examination of the respondent's witnesses (who testified first), but a question in cross-examination is not evidence. When the grievor was cross-examined, he was asked about the suggestion by his counsel (in the cross-examination of the respondent's witnesses) that he disclosed to the panel who interviewed him (for the inspector position) that his IFR rating had lapsed. The grievor confirmed that that is what happened; he testified that Mr. Heryet was on the panel and he (Mr. Heryet) said "it would be taken care of". In his evidence Mr. Heryet denied this took place because the IFR rating was so essential to the inspector position. He also said that the other members of the interview panel would have objected to the absence of an essential qualification such as the IFR rating.

[19] After discovering the problem with the grievor's IFR rating, and after reviewing how it arose, Mr. Heryet considered what to do. In his evidence, he said he gave some weight to the fact that the grievor had already been hired as an inspector and that he had attractive and unusual qualifications and experience. For those reasons, Mr. Heryet concluded that the grievor should be given an opportunity to requalify for his IFR rating. Mr. Heryet told the grievor that he needed to get the IFR rating but the direct expenses (such as tuition) would be his to bear. Mr. Heryet agreed that the respondent would pay for the grievor's time while he did the training. The training was completed on October 17, 2008, and the IFR rating was renewed on October 25, 2008.

[20] In December 2008 the grievor, Shona Hirota (his supervisor) and others attended a flight simulator in Florida, United States. The purpose, according to the respondent, was to test and certify inspectors on multi-engine helicopters such as Sikorskys. Ms. Hirota testified that inspectors did not fly these aircraft but they needed to be certified for flying them because they were sometimes the subject of inspections. The grievor denied that he knew the purpose of the trip to Florida. The grievor failed his first test. Ms. Hirota obtained approval for funding a second test, and the grievor passed it the same day. Everyone then left to catch a plane back to Canada. The grievor alleges a number of errors in the Florida test and these are discussed below.

[21] There was also an issue between the grievor and Ms. Hirota about flying Robinson or R22 helicopters. This is recorded in notes the grievor took during a meeting on February 23, 2009, during which the Florida test and flying Robinson aircraft was discussed:

- Shona requests a private meeting

- We go to [name deleted] old office, door closed.

- Shona confronts me with the fact that I refuse to fly R22's. I denied that an [sic] said I [sic] not like them and would prefer not to fly them because they are small and I am a big guy. I said yes I would fly them if given proper training.

- Shona starts to talk about flight safety and apologizes for putting me through the pressure of a flight test. I complained that

1. She said we were only there to do training.

2. It was not fair to rate my performance as I had not flown A/C [type of helicopter] in over 6 years

3. Had I known a test was coming I would have requested training! To which she replied: "I know and that is why I didn't terminate you after that performance!"

I was (and still am) shocked and puzzled by this remark!

*Is my employment in jeopardy??
Can she terminate my employment??*

[22] In her evidence, Ms. Hirota described Robinson helicopters as being used extensively in helicopter training, and she mentioned this in the grievor's Employee Performance Report in April 2009, discussed below. Further, when she talked to the grievor about flying them, it was to establish if he could fly them or not. However, Ms. Hirota testified that, although he said he did not like Robinson aircraft, "he was never very clear . . . I asked if size was an issue but he never refused to fly them". In cross-examination, Ms. Hirota acknowledged the girth of the grievor but she said it was important to find out if the grievor was "unwilling or unable" to fly Robinson aircraft. However, the grievor never gave a firm answer.

[23] The grievor completed a number of other courses as part of his OJT. He was involved in the development of this training so that, for example, he prepared an individual learning plan (ILP) that was reviewed and approved by his supervisor, Ms. Hirota. The ILP included courses related to ministerial delegation, pilot examiner status, management and budgeting skills, and other matters. The grievor completed this document on April 16, 2009 and it was approved with some minor changes by his supervisor (Ms. Hirota) and manager (Mr. Heryet) in the same month.

[24] Ms. Hirota testified that the training of civil aviation inspectors is very expensive and it can range from \$100 000 to \$200 000. The concept is that it is a multi-year training process that encourages employees to expand their "vision," according to Ms. Hirota. With regards to the ILP, described in the previous paragraph, Ms. Hirota testified that "we had identified issues at this point," but she did not "recall a decision to" reject the grievor on probation; ". . . we just felt we needed to put a lot more into training." Nonetheless, it was clear the grievor was not qualified to have a full or partial ministerial delegation at this point, April 2009.

[25] The grievor's Employee Performance Report is dated April 16, 2009. This is sometimes referred to as a "PRAP." Ms. Hirota testified that this document was to cover the more than six months that he had been employed. It was intended ". . . to outline

expectations for the employee so that they know where they stand and it is easier for them to create goals”, as she put it. It was also intended to provide “clear expectations,” bearing in mind that it was not a “cookie cutter” and it had to be specific to each individual. The following performance objectives and performance measures were described in the report:

<i>Performance Objectives</i>	<i>Performance Measures (1 - 3 objective)</i>
<i>Ability to follow clear instructions</i>	<i>Successful completion of tasks, utilizing the instructions given.</i>
<i>Ability to make appropriate decisions regarding individual work plans</i>	<i>Successfully plan and complete the tasks assigned. 2 week meetings were previously discussed, to monitor progress.</i>
<i>Ability to ensure that Supervisor is advised of any operational changes/needs of the employee</i>	<i>Maintain appropriate communication with Supervisor to ensure all parties are in agreement with operational plans and changes to the plans.</i>
<i>Ability to ensure that all overtime is preapproved, and that the Supervisor is advised of any overtime pending as soon as possible.</i>	<i>Pro-approval [sic] of all anticipated overtime. Communication with supervisor when able to address OT not anticipated.</i>
<i>Ability to observe a respectful workplace</i>	<i>Adherence to the Values and Ethics Code for the Public Service</i>
<i>Attain H-18 delegation</i>	<i>Completion of all required CAD 7 courses. Demonstration to Supervisor that delegation activities are understood and actioned appropriately.</i>
<i>Effectively work with fellow co-workers in the effort to complete the section's work plan, and continue to deliver effective and efficient oversight to industry.</i>	<i>Successfully plan and complete the tasks assigned. 2 week meetings were previously discussed, to monitor progress.</i>
<i>Development of an individual learning plan</i>	<i>Completion of the approved learning plan.</i>

[26] This same report contained a narrative assessment, as follows:

Rob joined Transport on September 22, 2008, as a Civil Aviation Safety Inspector (CAI-02) within the Commercial and Business Aviation division. Rob was hired primarily for his extensive background in rotary wing instruction, and his IFR background. As such, Rob will be asked to perform the majority of the wing flying school annual instructor/PE monitor rides.

Although a requisite at the time of hire, Rob's Instrument Rating was not current, thus requiring Rob to renew his helicopter instrument rating. A subsequent check ride on the S76A [Sikorsky helicopter] simulator located in West Palm Beach, Florida, indicated a weakness in instrument flight ability. As a result, additional training was provided to Rob in order for him to meet the required standards.

During the fiscal year the following was noted by his supervisor: Rob failed, many times, to keep his supervisor informed of work, over time and travel plans as instructed. Rob indicated to his supervisor and the Superintendent of Safety Oversight his lack of enthusiasm for continued flight instruction orientated duties and the need for currency on the Robinson helicopters. Rob has indicated that he would prefer not to fly the Robinson aircraft as he feels they are too small for him, and he voiced safety concerns regarding the aircraft type. It should be noted that the Robinson aircraft are fully certified and are used extensively in the flight training industry. Rob displayed some reluctance at remaining in Ottawa an extra 2 - 3 days following his Commercial and Business Specialty training course (two weeks) to complete PE training. The situation was ultimately resolved when the supervisor had to direct Rob to remain for the added days. Rob's concerns were due to the length of time away from home. These concerns were taken into account but the eventual decision was made to address the operational requirements of the division and to complete the training he required for his position.

Some incidents with Rob's behaviour have led to concerns with his individual decision making. In one instance, Rob was directed several times to report to work downtown and from there travel to a training course utilizing a department vehicle. Despite clear direction, which included the need to advise his supervisor of any requested changes, Rob decided to travel with a fellow course attendee to the training facility without informing his supervisor. Although no overtime was claimed, a phone call to his supervisor should have been made to discuss the situation. Another example was an evening when traveling in a department vehicle from a training course being held in Richmond, to his home in Abbotsford. Snow began to fall and there were reports of delays and accidents along his intended route. A phone call to discuss the situation with his supervisor would have sufficed, however Rob decided to return to the hotel where the training was being held and spend the night. His supervisor had no idea of this occurrence until two days later, and shortly after that, an email request, then travel claim was filed, claiming a room and expenses for the evening.

Rob was asked to make travel arrangements to Yellowknife in order to receive training on an HU50. Rob's selection of travel times were not in the best interest of the operational group. Other more suitable times were available, but Rob chose not to utilize these times, and again, when asked to change the itinerary, Rob arbitrarily decided to disregard the directions, because he felt there would be an added cost to change the itinerary.

Rob has also displayed difficulties observing the respectful workplace policy. He had an encounter with one of his coworkers that required another Manager's intervention. These behaviours are of great concern, as they reflect the existing concerns of several departments.

Rob needs to understand that when working within the federal government infrastructure, that job's assigned and direction's given need to be followed, unless appropriately discussed and alternative arrangements have been agreed to. Rob must not arbitrarily make decisions that may not be considered responsible or in the best interest of the Department. Discussions with his supervisor on short-comings and rectifications of these, have resulted in challenges and lack of acceptance of direction provided by his supervisor.

This forms part of Rob's probationary report for the period of September 22, 2008 to September 21, 2009.

[sic throughout]

[27] At the end of the performance report, the comments of Mr. Heryet, the grievor's manager, were recorded as follows:

Thank you for your efforts thus far Rob. That said, you must put in more effort in order to meet your supervisors [sic] expectations. Your supervisor's expectations are in line with T.C. [Transport Canada] goals and expectations, therefore mandatory to achieve. Hard work, cooperation and dedication to the task at hand will be required.

[28] Ms. Hirota testified that the performance report identified some "areas of concern" and "... some were fairly major that we were trying to overcome."

[29] In cross-examination, Ms. Hirota was asked about a meeting she had with the grievor to discuss the performance report. She was asked whether she had made a specific appointment with the grievor to discuss the report and she replied that she was "... not sure if an actual appointment was made, I always approach employees to

go through the performance report,” and she agreed that a specific appointment may not have been made. They went to a private office to read the report. Ms. Hirota testified that, before the meeting, “she was concerned” about what the grievor’s reaction might be because it was a negative evaluation. She thought he might be upset; “[my] anticipation was based on what my response would have been if it was me, but I did not get that.” Instead, the grievor stated, “There’s nothing new here,” and “I look like an ass,” according to Ms. Hirota. To this Ms. Hirota replied that that was not her intent, and she testified, “I was trying to be factual.” As well, Ms. Hirota and the grievor reviewed the performance objectives and the narrative in some detail, and she advised him that he could make his own comments in writing. She denied that the meeting with the grievor took 15 minutes because she left at one point to let the grievor read the narrative “. . . without me looking over his shoulder.” The grievor did not testify about the length of the meeting.

[30] Ms. Hirota was asked in cross-examination whether the performance report was the first time that the grievor was made aware of problems with his performance. Ms. Hirota replied, “. . . absolutely not, there were lots of documents although not formally like this [the performance report], it was made quite clear to him earlier.” She agreed that the grievor commenced employment in September 2008 and that this was the first written performance evaluation. She stated it was not appropriate in September 2008 to record the performance problems in writing, although they were raised with the grievor a number of times. Ms. Hirota denied that she had concluded in April 2009 that the grievor was unsuitable to be given ministerial delegation as a civil aviation inspector. She stated: “[W]e were trying to get him there [to ministerial delegation] . . . at the time he could not perform the duties but we were trying our best to correct that and we were not willing to give up on him.”

[31] On April 16, 2009, the same date as the performance report, the grievor provided a written reply, as follows:

Re: Flight Instruction Orientated Duties

This was misunderstood. I do and am looking forward to performing these duties!

Re: R22

My concern is strictly an issue of me feeling too big for the aircraft. As long as everything is in accordance to the

regulations of the rotor flight manual, I am happy to fly the R22.

[32] The grievor provided further comments on the performance report in an email to Ms. Hirota, dated April 20, 2009 stating, as follows:

After reviewing the PRAP I noticed another error. It was not the C&BA Specialties course but the DOIT course and the concern was that my medical would lapse at the end of April. So flying the first week of May wasn't an option as there was no time to get the medical done prior to my departure for Cornwall. Therefore, the statement:

"The situation was ultimately resolved when the supervisor had to direct Rob to remain for the added days."

is not correct as it was decided to do the additional training on the weekend of April 25/26. This would also require a change to the rest of the paragraph:

Rob's concerns were due to the length of time away from home. These concerns were taken into account but the eventual decision was made to address the operational requirements of the division and to complete the training he required for his position.

Finally, the issue of the paragraph below referencing the R22 and my correction was not mentioned in this PRAP so I need to re-iterate that my concerns were strictly that I feel the aircraft was too small for me. As I stated, as long as everything is legal in accordance to the Flight Manual, I am more than happy to fly the R22. Also, at no time did I ever (and this was confirmed with the Superintendent of Safety Oversight) display any lack of enthusiasm for continued flight instruction orientated duties.

Rob indicated to his supervisor and the Superintendent of Safety Oversight his lack of enthusiasm for continued flight instruction orientated duties and the need for currency on the Robinson helicopters. Rob has indicated that he would prefer not to fly the Robinson aircraft as he feels they are too small for him, and he voiced safety concerns regarding the aircraft type. It should be noted that the Robinson aircraft are fully certified and are used extensively in the flight training industry.

I request these corrections be made to the PRAP. Thank you.

[33] Ms. Hirota replied in an email dated April 22, 2009:

Rob, thank you for your response.

As all the information in your Employee Performance Report was previously discussed with you, and you have a written rebuttal attached to said record, I will add the additional information regarding your medical to your Employee Performance Report by attaching a copy of your email. We had discussed your medical date previously, and it was understood that it was not an issue, as we had options available to us regarding your medical.

[34] In his evidence, Mr. Heryet, Ms. Hirota's supervisor, also explained his role in the performance report. As above, he provided written comments at the end of the report. Mr. Heryet also testified that it was his practice to meet with employees during a performance review, but in this case, the grievor asked to see him about the report. Mr. Heryet testified that the grievor was obviously upset with it, and he told Mr. Heryet that it "makes me look like an asshole." The grievor, as Mr. Heryet put it, ". . . agreed that we had been talking about this for some time . . . overall there were some real performance deficiencies." Mr. Heryet said to the grievor that "you need to pull up your socks."

[35] In cross-examination, Mr. Heryet emphasized that he told the grievor that he needed to listen to his supervisor, Ms. Hirota, and to "really make some improvement" to address the deficiencies in the performance report. He acknowledged a reference in an email of May 28, 2009 to a "quick discussion" with the grievor regarding the performance report. Mr. Heryet could not say how long the meeting with the grievor lasted but, "[W]e concluded what we had to talk about."

[36] The respondent relies on a number of documents to record the performance problems of the grievor. The grievor challenges the accuracy of these documents and he alleges they were prepared in bad faith. I will simply set out the documents here and I will consider the disputes over them below.

[37] There is an undated document titled, "Rob Dyck Competency Summary Document". This was prepared by the respondent, primarily by Ms. Hirota with the assistance of human resources' staff, after the termination of the grievor's employment. For convenience I have added headings using "A", "B" etc. As well, I have made some formatting changes to make the document fit within the borders of this

decision. Also, for privacy reasons, I have deleted the names of individuals not involved with this grievance, I anonymized some other names (for example, I use "XYZ Helicopters" and "ABC Helicopters") and I have deleted the names of locations where they might have led to the identification of people or organizations.

A. Event or Incident – Introduction to TC, Values, and job specific duties.

Competencies: [None listed]

How did TC assist him in the job so that he could meet the competencies:

Mr. Dyck's employment began on September 22, 2008.

He was provided a copy of the Ethics and Values Code with his letter of offer, which he signed that he had read when he accepted the offer.

Mr. Dyck received delegated officer training, which included the DOIT course. DOIT is a mandatory Training Program for delegated officers recruited since Jan 03, 2003. This one course incorporates 5 basic components (Orientation to TC and Civil Aviation, Communication Skills, Ethics and Values, Basic Aviation Enforcement, and Emerging Management Practices which includes Risk Management). Mr. Dyck also received the Orientation to the Public Service (E131), which in part included "concepts of the values, ethics and responsibilities that they will draw upon throughout their careers in the Public Service of Canada". Through these offerings and courses, TC provided Mr. Dyck with the training to ensure that he understood the TC values and ethics, which he has clearly failed to demonstrate regarding these events.

An informal orientation meeting had occurred on Rob's first day, orientation continued on a daily basis with new inspectors. It is the intent of the orientation to assist new inspectors in their transition to the roll of a Civil Aviation Inspector. "Orientation at a Glance" was provided, as well as web links to the travel directive and TC competency websites.

An orientation meeting was conducted as per the recommended "Orientation for new employees". Rob was provided the "Orientation for new employees", and web sites outlining the competencies required for a Transport employee, and a more specific "Competency Profile for Delegated Officers Civil Aviation".

Date of Meeting: 22-Oct-08

Where is it documented (email, PRAPS, etc):

There was an email, and a calendar appointment, as well as the summary document. I was unable to recover email from this meeting, it was too late for Ottawa to retrieve them.

Corrective Measure/How we assisted him to overcome these gaps: [none listed]

B. Event or Incident -Incident at [XYZ] Helicopters (October 23, 2008)

Rob was participating in OJT to conduct a Pilot Proficiency Check and ACP monitor, when the aircraft he was riding in was damaged due to a mismanaged simulated emergency. The damage was substantial, it was a relatively new aircraft. The original repair estimates were close to 1 million but after some inspection and negotiations with the engine and drive manufacturers, the final estimate was between \$200,000 - \$250,000. It caused the operator to lose the use of the aircraft, grounding it for several days, with the potential to affect the aircraft in the future. Transport Canada was blamed for this event, the Operator had instructed Rob and Med to report this event to TC management immediately.

Rob did not bring this forward. He failed to report said incident at any time. The incident was brought to our attention when the Operator contacted Transport Canada.

The industry protocol, as well as TC protocol, is to provide immediate disclosure of any unusual operational events, especially those that may affect ultimately affect safety.

Competencies:

Values & Ethics, Communications, Team Work, Organizational Awareness, Service Delivery, Aviation Safety Framework Awareness, Risk Management, Leadership, Business Partnering and Ability to Follow Directions.

How did TC assist him in the job so that he could meet the competencies:

Mr. Dyck was hired based on his experience in the industry, it is standard through industry, TC included, that any aircraft event such as this (where an aircraft is damaged), must be reported to one's superior. It is a matter of course, no training or briefing should be required to convey this concept as it impacts on the safety of the aircraft.

It is common sense that any experienced pilot should understand the seriousness of such an event, and the potential impact that it could have on safety, their employer and the stakeholder. Values and Ethics dictate that any such serious event, must be immediately reported. Mr. Dyck had already received a copy of the ethics and values, and was told during his orientation meeting, the day previous to the incident, that he was expected to collaborate with his supervisor, should any operational changes/events arise. He had been advised that his supervisor was available to him at any time via cell phone and email.

The objectives of the 'Values and Ethics Code for public employees' clearly indicates that integrity is a core value. "It will service to maintain and enhance public confidence in the integrity of the Public Service". Without quoting the entire values and ethics documents, it is clear that honest and accurate communications are essential. These attributes are clearly not demonstrated by Mr. Dyck, when he chose not to honor the request of the stakeholder to inform his supervisor of the event, and by not providing the information regarding a significant event that could potentially damage the reputation of, as well as have been very financially damaging to, to his supervisor and the minister.

Date of Meeting: 28-Oct-08 left message, 5-Nov-08 meeting

Where is it documented (email, PRAPS, etc):

Supervisor's log and Summary document.

During the meeting with his supervisor, Rob was requested to create a written statement regarding this event.

Corrective Measure/How we assisted him to overcome these gaps:

Mr. Dyck's actions were contrary to ethics and values by industry standards, as well as TC expectations. He was exposed to TC values through formal and informal training.

It was reiterated the importance of following directions, expectations and protocols. It was stressed to Mr. Dyck that TC and departmental welfare and objectives, also needed to be considered. Rob was reminded that his supervisor was always available via cell phone. This was something that was constantly stressed to the new inspectors. There was always counsel available to them. As soon as this event was reported to TC, late on October 27th (the event occurred on Oct. 23rd), by the stakeholder, Rob received immediate feedback. Rob was instructed to inform his supervisor of any operational

changes/incidents in order to collaboratively assess and address such events.

Where in the training do we say that? Inspectors are hired for their expertise in the industry. It is an industry standard, as well as a regulatory requirement that any time an aircraft is damaged that it be reported. It would be no different than if an individual was driving a company vehicle, and damage was sustained, and they chose to not report it, despite the request of the other involved party. When did he get the training? Training should not have been required, as demonstrated above, but Mr. Dyck had been briefed numerous occasions during his OJT that any operational changes or abnormalities should be discussed/reported to his supervisor. Should he have been aware of this before? Absolutely, as indicated previously.

C. Event or Incident -Yellowknife Trip (February 16,9 2009)

While the Supervisor was booking her travel to Yellowknife, she realized that Rob's travel arrangements were very inappropriate. She consulted with the Regional Manager and they both agreed that it was not financially responsible to approve it, it had to be changed. She immediately met with Mr. Dyck and instructed him to change the arrangements via e-mail as well as voicemail. He was told to change his travel itinerary himself or to call Donna to have her change it, as no over time would be paid if he failed to make the requested changes. (see itinerary printed by Air Canada). Rob had time to change it but did not comply. In his rebuttal he said that it would have cost \$800 plus to make the change but he didn't consider the overtime costs to TC.

The costs of Mr. Dyck's failure to follow the clear and concise directions are difficult to calculate, due to the fact that there are both direct and indirect costs. The direct costs would amount to a minimum of \$600.00 in overtime. The indirect costs include loss of trust, inability to bestow the requisite ministerial delegation, and inability to complete the work plan. These indirect costs are impossibility to quantify, but are extremely important.

Competencies:

Values and Ethics, Problem Solving & Decision Making, Planning and Organizing, Adherence to departmental policies, and following directions as prescribed by Rob's supervisor, namely that he inform her of any operational changes/incidents.

As Rob's planning was not in harmony with departmental policy, he should have followed the directions to consult with his supervisor, prior to making such arrangements.

How did TC assist him in the job so that he could meet the competencies:

Every piece of the previous document shows that Mr. Dyck was provided constant feedback, continuous OJT and peer mentoring. Many formal and informal meetings have been held, clearly indicating expectations, and departmental policies. Mr. Dyck's colleagues had attempted to impress upon him the requirements and expectations of the department and the team.

Date of Meeting: 18-Feb-09, various verbal discussion on 19 and 20th of Feb.

Where is it documented (email, PRAPS, etc):

Emails, phone messages on February 16th and 17th, supervisor's log, and the Summary document which includes the summary of the discussion as attachment #3.

Corrective Measure/How we assisted him to overcome these gaps:

As Mr. Dyck did not follow the directions formulated by his supervisor in consultation with her Manager, it was imperative to reiterate the expectations, and stress the importance of following directions, departmental policies, the travel directive etc. Mr. Dyck's supervisor met him at the first possible opportunity, during the lay over at Calgary airport, to discuss these many important issues, including overtime, the collective agreement, expenses, etc. The meeting was captured in a summary document by Mr. Dyck's supervisor.

D. Event or Incident - Overtime and unplanned hotel claim when attending the a course at the Delta Hotel in Richmond (February 25, 2009)

The day after the course, Mr. Dyck sent an e-mail inquiring about his ability to claim a hotel bill for the night before. That night there was a snow storm which he advises prevented him from getting home. The course was in Richmond, he lives in Abbotsford. He was advised by his mother and a friend not to drive to Abbotsford so he elected to turn around and drive back to Richmond, where he stayed overnight. After researching the travel conditions, there was no reasons that prevented him from getting home. He reported that there were road closures and accidents but no stations reported road closures and there were no reported

highway closures on the BC Highways website. Helijet has a few pilots that live in Abbotsford and they traveled around the same time. Helijet advised that no pilots were prevented from getting home. None of the personnel from Nav Canada were prevented from getting home. One individual that traveled to Abbotsford at approximately the same time indicated that there was no snow when they left Boundary Bay, but there was a foot of snow in Abbotsford. They did not advise of any difficulties with their commute.

He did not call to seek prior approval for the hotel stay. His claim was therefore denied.

Overtime was authorized after the fact but was advised again that preapproval must be sought before overtime can be approved in the future.

Competencies:

Ethics and Values, Problem Solving & Decision Making, Planning and Organizing, Adhering to departmental policies, and directions prescribed by Rob's supervisor to report any operational changes/incident.

How did TC assist him in the job so that he could meet the competencies:

Mr. Dyck had been given the Ethics and Values Policy. He had received constant on the job training and mentoring. It is clear from the previously documented meetings and emails that Mr. Dyck had received clear and concise instructions regarding any operational changes/incidents.

Date of meeting: 9-Mar-09 Meeting

Where is it documented (email, PRAPS, etc):

Supervisor's log, emails from February 27, Mar 1, 3 etc.

Corrective Measure/How we assisted him to overcome these gaps:

In Mr. Dyck's own words in his email of Feb 26th, he described this event as "an emergency situation", which he chose to not inform or consult with his supervisor about, contrary to the procedures that he had been told to follow. This removed the supervisor's ability and opportunity to help identify options for him to get home.

At the first opportunity, Mr. Dyck's Supervisor met with him on Mar 9th, to discuss his claim regarding this incident, and to

advise him that it had been denied. Mr. Dyck was advised of his right to grieve this decision.

Mr. Dyck was (again) provided printed sections of the travel directive and had the link to the travel directive e-mailed to him by his Supervisor.

Mr. Dyck was given clear and concise directions and procedures to follow regarding his Pilot Examiner Course for the following week (see next row). His travel arrangements were very prescriptive, and he was reminded that it was imperative that he follow the directions that were given to him.

E. Event or Incident -Pilot Examiner Course (PE) (March 10-11, 2009)

On March 4th, Mr. Dyck was given clear and concise instructions, both verbally and in writing, regarding his travel and overtime arrangements for the Pilot Examiner Course. He was given these directions again several times over the next few days both via email and via phone to report to the Regional office to pick up a government vehicle and then drive to the course.

On March 4th, Rob sent an email suggesting he follow a different procedure. He was told to follow the directions that he had been given the previous day. On March 6th, Rob sent an email stating that he was unable to follow directions, as there were no cars available for him to book. He was contacted by phone, and told that a car had been arranged for him, and that he was to follow the clear and concise directions that had been given to him. On March 9th, during a face to face meeting regarding Mr. Dyck's failure to follow protocol and procedures, he was again reminded of the directions that he had been given to follow. Every opportunity had been provided for Mr. Dyck to successfully follow the directions provided. He had been given written and oral directions on many occasions, provided with the necessary tools, and he had been constantly reminded to follow the expected procedure of calling his supervisor if there was any operational changes/incidents.

Mr. Dyck failed to follow the directions regarding his travel to and from the PE course. He failed to advise his Supervisor that he had unilaterally chosen a different method of travel.

Competencies:

Ethics and Values, Problem Solving & Decision Making, Planning and Organizing, Adhering to departmental policies,

and directions prescribed by Rob's supervisor, namely that he inform her of any operational changes/incident.

How did TC assist him in the job so that he could meet the competencies:

Mr. Dyck had been given clear and concise directions regarding his travel arrangements during his Pilot Examiner Course. Due to his inability to follow directions the previous week, the travel arrangements were laid out precisely for Mr. Dyck, at that time, and many more times.

Date of Meeting: 18-Mar-09 Meeting

Where is it documented (email, PRAPS, etc)

Summary 08-09 document, March 9th Meeting, many emails, such as from March 4, 6, etc, and phone calls from cell log, such as from March 6th.

See email of March 4, 2009.

Corrective Measure/How we assisted him to overcome these gaps:

Mr. Dyck received timely feedback regarding this issue. He was again counselled on the importance of following directions, and the need to contact his supervisor whenever there were operational changes/incidents.

On March 11th, he did not contact the supervisor to advise that he would be traveling with a friend and did not report to the Regional office that day as he was told to, nor did he advise that he was traveling via another means to get to the course.

Mr. Dyke again did not follow the directions of his supervisor and failed to advise her of the changes. He noted that he did this to minimize travel and overtime yet did not feel it was necessary to consult with his supervisor. The vehicle documents show that he had cancelled the car the next day and that there was no intention of complying.

Mr. Dyck was advised that the next level would be disciplinary, if he continued to not follow directions.

Mr. Dyck should have, and could have consulted with his Supervisor, as he had been instructed, prior to changing the agreed protocol unilaterally. This behaviour demonstrates a lack of respect for his Supervisor. Travel and overtime were discussed, as well as his duty day.

The Employee Assistance Program was discussed and offered to Mr. Dyck.

F. Event or Incident -[ABC] Helicopters (July 27-28, 2009)

Mr. Dyck arranged to conduct a Program Validation Inspection (PVI) on [ABC] Helicopters. He was to conduct his first flight with non-departmental personnel, and his Supervisor as passengers. He arrived late, and his planning for both the flight and the PVI were lacking. There was absolutely no planning for the inspection, even though Rob had just finished a Process Assessment course, which reiterated the basic requirements of an Assessment or inspection, such as the company should have at the very least been notified, etc. He was ill prepared in all aspects of planning, including where he would obtain fuel on the way back.

Mr. Dyck failed to demonstrate the required competencies for delegation. It is documented that he failed to demonstrate effective communication techniques, and appropriate self management. Mr. Dyck's problem solving and decision making skills were unsatisfactory. He also failed to demonstrate good leadership skills as there was no planning and organizing completed for the trip.

Mr. Dyck failed to demonstrate the conditions for exercising the authorities of delegation, such as the ability to make sound decisions which maintain and promote public service values, or professional behaviour in carrying out activities with integrity, fairness and a sensibility to representation and participation of all segments of the population in the Public Service.

Competencies:

Ethics and Values, Communication, Team Work, Organizational Awareness, Service Delivery (Planning and Organization), Aviation Safety Framework Awareness, Risk Management, Leadership, Business Partnering, Interpersonal Skills, Judgement.

How did TC assist him in the job so that he could meet the competencies:

Mr. Dyck had participated in approx. 23 training courses, as well as department specific training such as SUR-006 training and Rotary department specific PVI OJT training provided by a Transport SMS representative.

In addition, Mr. Dyck had participated in ongoing OJT and peer mentoring. He had been provided with reasonable

access to all pertinent training materials, as well as exposure, and time to familiarize himself with the Transport Canada Intranet site and the information pertinent to his position as a CAI, such as the Treasury Board travel policy, the Ethics and Values policy, the Transport Canada Competencies, the H-18 delegation and requirements to obtain the delegation, etc.

Specifically to this incident, Mr. Dyck had just participated in our divisional PVI training on May 19 - 28th, and had just completed the Process Assessment training the previous week on July 21, 22. He had also participated recently in the Cascade 705 Assessment, and had therefore been engaged in training and activities regarding these processes for almost the entire month preceding this event.

There are also staff instructions on SMS Assessment and Program Validation Inspection Procedures.

Mr. Dyck had also been advised that the Employee Assistance Program was easily readily available to him.

Date of Meeting: 29-Jul-09

Where is it documented (email, PRAPS, etc)

Many, many emails, see original documentation

July 29th Meeting recap, August 5th meeting recap, and [ABC] Performance Review.

Corrective Measure/How we assisted him to overcome these gaps:

Mr. Dyck was asked to explain his shortcomings. He could not explain his behaviours, and kept insisting that it was a misunderstanding. The meeting synopsis must be read to understand what transpired. Mr. Dyck insisted that he needed to review all the emails to figure out where he 'misunderstood'. I was not sure what he meant, but I agreed to meet with him again regarding this issue as soon as possible. I requested that we meet on August 5th, and that he go home and enjoy his weekend, then he could contemplate what had gone wrong next week.

Mr. Dyck's continual insistence on verifiable untruths is unacceptable, and when pressed regarding these untruths, Mr. Dyck continually asserts that he "doesn't know why he said those things". As his initial account varies drastically from his account a week later, it is apparent that the truth changes in his mind. Mr. Dyck's Supervisor counselled him that his performance was entirely unacceptable. He was

asked if he remembered the competencies that had been shown to him and he had been directed to in the past. He stated that he remembered the competencies. It was pointed out to him that he had been unable to demonstrate the required competencies for the issuance of a delegation, and as such, that his Supervisor would be recommending rejection on probation.

G. Event or Incident -All of the above

Competencies: All of the above.

How did TC assist him in the job so that he could meet the competencies:

Mr. Dyck had attended approx. 17 training courses to this date. He had participated in ongoing OJT and peer mentoring, as well as third party training that included aircraft type training, Quality Assurance, First Aid, Initial Audit and Procedures, etc.

Mr. Dyck had received constant and timely feedback from both his Supervisor and colleagues. He was provided departmental policy, expectations, and clear and concise directions through all mediums, email, meetings, informal briefings, OJT, peer mentoring, formal training, etc.

The Employee Assistance Program had been offered and discussed with Mr. Dyck, as documented. This demonstrates dedication and commitment in assisting Mr. Dyck to progress, and in attaining ministerial delegation.

Date of Meeting: 16-Apr-09

Where is it documented (email, PRAPS, etc)

Supervisor's log, PRAP form, Mr. Dyck's personal file

Corrective Measure/How we assisted him to overcome these gaps:

Mr. Dyck's Supervisor met with him to review his Performance Review. He stated that nothing was "new". He indicated that he would have to do better. Mr. Dyck was encouraged to meeting the goals as set out in the Performance Review.

[sic throughout]

[38] The same document includes the following (I have reformatted it as well):

OTHER OCCURRENCES/OBSERVATIONS/PATTERNS - for background reference only

A. Behaviour and conduct is not correctable

Competencies: [None listed]

How did TC assist him in the job so that he could meet the competencies: [None listed]

Date of Meeting: 25-Jun-09 Date of recorded observation

Where is it documented (email, PRAPS, etc):

08-09 Summary Document You indicated that he is appropriately remorseful and apologetic. Can you provide examples of this. Please add anything else to assist Linda out in understanding the situation.

This pattern was clearly demonstrated during the Yellowknife incident, the PE course travel incident, the PRAP process, the [ABC] inspection incident, etc. The related documentation regarding these incidents and associated supporting documents are contained in previous submission.

Corrective Measure/How we assisted him to overcome these gaps:

Although Rob can be a very personable individual; to date; I have observed a behavioural pattern in Rob that is disruptive and disturbing to the department. Rob has demonstrated a pattern of disobedience and disrespect for the department, his supervisor, and his colleagues. When he is confronted about such behaviours, he is appropriately remorseful, and apologetic. Within hours or days, he will send an email of defiance, attempting to justify his misdeeds. When his defiance is challenged, he will curtail his inappropriate behaviours for a time, but inevitably the pattern repeats itself. Rob's basic nature appears to be recalcitrant, unruly, insubordinate, and unmanageable.

Such cyclical behaviour that requires constant monitoring is very disruptive to the department. Some of Rob's co-workers have indicated that they are lacking trust in him, as his actions are easily observable, and have the potential to threaten the team balance.

It has been observed by many of his colleagues, as well as myself, that he seems to be very self-serving. This has not made it easy to facilitate Rob's OJT, as no inspectors are volunteering to assist in Rob's training.

B. Disrespectful behaviour (January 22, 2009)

Mr. Dyck distressed a co-worker by taking a photo using a cell phone. When he was asked to delete it, he was disrespectful (dismissed her and departed). The employee felt there was no option but to elevate her concern to her Manager to have the photo deleted.

Competencies:

Values and Ethics, Teamwork, Communications, Interpersonal, Problem Solving & Decision Making

How did TC assist him in the job so that he could meet the competencies:

Mr. Dyck was provided a copy of the Ethics and Values document with his letter of offer, which he signed, acknowledging that he had read it when he accepted the offer.

Date of Meeting: 22-Jan-09 The manager of the employee involved met with Rob a few days after the incident.

Where is it documented (email, PRAPS, etc):

The employee's manager intervened and requested that the photo be deleted. He also explained the gravity of the situation to Mr. Dyck. He then complied with the request.

Recorded in the supervisor's log and the Summary document.

Corrective Measure/How we assisted him to overcome these gaps:

This demonstrates Rob's disregard for his fellow co-workers. Even when he was requested to delete the photo, by the employee, he disregarded her requests, and departed. The manager of the employee involved met with Rob a few days after the incident to intervene on the employee's behalf. The manager requested that Rob delete the photo, and he complied.

The manager felt that Rob had demonstrated the appropriate level of remorse.

C. Disrespectful behaviour

Mr. Dyck had asked for assistance, and when his Supervisor walked him to another department to obtain the answers he needed, as part of his OJT, Mr. Dyck stopped and engaged in

personal conversation with two office staff as he passed the photocopier with his Supervisor. She waited a few seconds for him, and then proceeded to obtain the information that Mr. Dyck requested. When she returned with the information, she passed Mr. Dyck, still involved in conversation with the two admin staff. Mr. Dyck's Supervisor left the information he requested on his desk.

Competencies:

Values and Ethics, Teamwork, Communications, Problem Solving & Decision Making

Failure to demonstrate team work, through cooperation and work ethic. Failure to demonstrate initiative and personal commitment to accomplish the task at hand. Demonstrates poor communication by not ensuring that the communication has achieved the desired result, as well as poor problem solving and decision making.

How did TC assist him in the job so that he could meet the competencies: [None listed]

Date of Meeting: 07-Apr-09

Where is it documented (email, PRAPS, etc)

Supervisor's log

Corrective Measure/How we assisted him to overcome these gaps:

Mr. Dyck was not consulted on this matter. His Supervisor did not feel that it would be helpful to confront Rob regarding this incident. He had already demonstrated a disregard for fellow employees and his Supervisor on many occasions.

D. Fort Nelson OJT (November 27-28)

Rob indicated that he was interested in participating in an OJT. However in reviewing the overtime requested, he was advised to cancel the trip.

Rob had called to discuss his trip, when I requested that he cancel it. His initial reaction was to be defiant, and demand why he wasn't being 'allowed' to accompany the inspector. Mr. Dyck was again requested to cancel the trip, and was told that it would be discussed and explained to him at the next available time that we were in the office. This was one of many small indications that I had observed, that started to form a pattern of rebellious and insubordinate behaviours.

Competencies:

Values and Ethics, Teamwork, Organizational Awareness, Service Delivery, Problem Solving & Decision Making, Strategic Outlook, Interpersonal, Following Directions.

How did TC assist him in the job so that he could meet the competencies:

Mr. Dyck had been instructed in the importance of following directions and collaborating with his supervisor. He had signed that he understood the TC ethics and values with his letter of offer.

Date of Meeting:

The exact date of this event was lost, it was around the end of October. There was no formal meeting, but I met with Mr. Dyck the next time we were in the office to discuss this event, as per normal OJT, and as I had discussed with Mr. Dyck on the phone. The needs of the department and financial responsibilities were again explained to Mr. Dyck.

Where is it documented (email, PRAPS, etc):

Email (copy of the email needed) Email was not recoverable.

Corrective Measure/How we assisted him to overcome these gaps:

Rob was counselled regarding the best practices for the department, and the allocations of resources. Expectations regarding travel and overtime were reiterated again. As time was of the essence regarding this OJT assignment, the directions to cancel the trip needed to be followed immediately. Rob chose to challenge the directions, and when the instructions were reiterated, again, he chose to argue. Mr. Dyck was instructed to follow the directions given to him. It was clear that this OJT assignment was not in the best interests of the department. The reasons for this were explained to Rob immediately upon his return to the office. This incident indicates a lack of strategic outlook, and a disregard for teamwork, as well as for his supervisor. This is a pattern that becomes repetitive, despite the efforts of both Rob's supervisor and his Manager. It is imperative that an inspector be able to follow the directions and guidance set out. Inspectors are inherently in the field, around the world, on their own, and must be able to be trusted to maintain the highest standards, values and ethics.

E. TATC grievance

Competencies:*Judgement, Values and Ethics*

Rob had failed an Instrument Rating Test in December 2008. He was retrained to proficiency on the same day, and repeated the test successfully. Rob had indicated at the time that he did not have any desire to pursue his right to grieve the failure, as Transport was going to pay to train him to proficiency immediately. After Rob was rejected, he decided to grieve his failure from almost a year previously. At no time in the previous year, did Rob indicate any dissatisfaction regarding the failed flight test.

How did TC assist him in the job so that he could meet the competencies:

Mr. Dyck received peer mentoring regarding ethics and values, as well as guidance from his Supervisor. Ethics and Values was also an element of Mr. Dyck's training through the DOIT course.

Date of Meeting: [None listed]

Where is it documented (email, PRAPS, etc): [None listed]

Corrective Measure/How we assisted him to overcome these gaps:

Rob had been trained to proficiency, and had completed another IRT flight test several months later in the BH12 simulator, renewing his instrument rating again. In light of this, it was not contrary to the public interest to remove the failure from Rob's record as he had requested. It was felt that TC wanted to demonstrate that they did not harbour any ill will towards Rob, and that both parties interests were better served by dedicating the available time to the ongoing grievance.

F. Concerns starting around his flight test and aircraft proficiency.**Competencies:**

Values and Ethics, Problem Solving and Decision Making, Planning and Organizing

How did TC assist him in the job so that he could meet the competencies:

Rob was counselled on the expectation that all CAI's be able to maintain a Group 4 instrument rating on a Multi-engine

aircraft on many occasions, by both his supervisor, and his manager. He was informed of the clear expectations, and offered study material, which he declined. Rob was given time to study and obtain his Group 4 instrument rating in order to fulfill the qualifications for the job. This training was more than adequate to refresh Rob's instrument procedures, as he successfully completed a flight test following the training, less than 8 weeks previous to his multi-engine flight test.

This incident was most disconcerting. As Mr. Dyck had just completed recurrent training and successfully passed his Group 4 IFR on a single engine aircraft, as such, it was demonstrate that Mr. Dyck had received adequate training, as indicated above.

Date of Meeting: 19-Dec-08 Many face to face meetings took place prior to Mr. Dyck's trip to the simulator in Florida.

Where is it documented (email, PRAPS, etc):

The expectations were communicated verbally by both Rob's supervisor and his manager.

Corrective Measure/How we assisted him to overcome these gaps:

Rob was immediately provided training to proficiency, and retested successfully the same day. This incident is another example of poor self management and continuous learning among other competencies such as values and ethics, problem solving/decision making, results management and planning and organizing.

G. Group 4 Instrument Rating

Competencies:

Planning and Organizing, Judgement

How did TC assist him in the job so that he could meet the competencies: [None listed]

Date of Meeting:

As soon as it was discovered by Trevor that Rob did not meet the SMOC, there were many meetings with Rob, explaining the expectation that he obtain his group 4 Instrument Rating, and that TC would provide the training and retesting on a multi-engine aircraft (S76), as soon as possible.

Verbal, discussed between Mr. Dyck, his Supervisor and his manager. It was documented on Mr. Dyck's calendar. Mr. Dyck's attendance at the training course on October 17th, at Pro IFR, during work hours, was also documented by the provider.

Where is it documented (email, PRAPS, etc):

As it was an error on our part, that we had not confirmed the information contained in Mr. Dyck's resume, it was decided to facilitate Mr. Dyck's obtaining the missing Group 4 Instrument rating.

One day was provided to Rob to facilitate his acquisition of the required criteria, and was documented on his calendar (Friday October 17, 2008) when he attended an IFR refresher course. Study time at work was also provided, but there was no documentation of the study time provided.

Corrective Measure/How we assisted him to overcome these gaps:

Mr. Dyck researched and paid for the training on his own but TC approved study time during working hours and October 17th was provided, to allow him time to attend an IFR refresher course. (Mr. Dyck chose to complete this training, to help facilitate his successful completion of an IRT flight test, in order for him to obtain a Group 4 Instrument Rating, which was a condition of employment). I attempted to foster a helpful, and supportive work environment that Rob would feel comfortable in. Rob was informed that all inspectors are expected to be able to maintain their Group 4 instrument rating on a multi-engine aircraft. Rob was told that he would be expected to be able to renew his Group 4 instrument rating in December on the S76 simulator, as per the normal process for inspectors. Rob was reminded of this expectation on many occasions, including the time when training/study materials were offered to Rob, which he refused, stating that he had been to the simulator before, and that he had his own study materials.

[sic throughout]

[39] One of the incidents referred to in the above document is the one that took place at ABC Helicopters in July 2009. A document titled "[ABC] Performance Review" was prepared by Ms. Hirota on July 28, 2009. It was referred to in other documents and it was disclosed by the respondent at the request of counsel for the grievor. According to the grievor this document is further evidence of the bad faith of the respondent. It is as follows:

[ABC] Performance Review

July 28, 2009

[ABC] PVI (Process Validation Inspection)

Passengers: [three names deleted], Shona Hirota

The Trip

- Rob I [the grievor] had failed to inform all his passengers of his intended departure time. He had spoken to Wayne regarding the hotel arrangements between July 23 and July 25th, at which time, Wayne advises me that Rob had indicated that they should be there for an 8:00 a.m. departure. [Name deleted] and myself were never advised of the departure plans. All passengers arrived at ASD prior to 7:00 a.m.
- Rob arrived at 8:14 a.m.
- Rob did not have any flight planning done when he arrived, and was looking for the necessary maps.
- Rob had expired flight planning information. TC supplies all the inspectors with the current materials, and when I questioned Rob during the flight, as to why he did not have current material, he said it was his wife's fault, as he takes materials home, and she puts them away.
- Rob needed to be prompted to check the fuel situation in Kamloops, due to fires, and he still failed to assess the fuel situation at destination. See note 1.

[ABC] PVI (Process Validation Inspection) July 27 - 28, 2009
This PVI was assigned to [name deleted] and [name deleted] via the TAXR Work Plan, posted on the G:\drive.

BACKGROUND

In June, [names deleted] had expressed a desire to inspect [ABC] Helicopters in [location deleted]. I had forwarded their request to the inspectors, to see if anyone could accommodate them.

Rob had volunteered very early on, and had emailed [names deleted]. I did not respond to Rob's first request, as I had missed the email, but in a few weeks, [name deleted] sent Rob a reminder, asking if he could still take them to [location deleted]. In the interim, Rob had discovered that [name deleted] was unavailable at the time the passengers wanted to travel. They had made plans to go in the end of August instead. This is the email that I received:

*Email from Rob July 16, 2009 “[names deleted] would like to fly to [location deleted] for an inspection and were requesting a ride with the 407. I Bcc’d you an earlier e-mail. [ABC] Helicopters is one of the companies that I am **scheduled to do a PVI**. [Name deleted] and I have plans to get there at the end of August but if **someone else was available to go on this trip now we could get it out of the way?** Whatever you decide, I am happy to help out”.*

*Email to Rob July 16, 2009 “I would be the only one available **to assist you with a PVI** at that time, so you are stuck with me. I have booked CGDOT for Monday, July 27 and Tuesday, July 28th for you. [Names deleted], let Rob know if that will work for you. Rob, can you please fill out a flight request with [names deleted] listed, and I’ll get it over to ASD.”*

This email reiterated that the trip was Rob's responsibility, and that the passenger coordination, and aircraft request was to be done through Rob. That is why I requested that he submit the flight request. Given the worst case scenario, Rob would have had at least 2 days to prepare for his PVI, following his Process Based Assessment Course on the 21 and 22. He could have prepared on July 23 & 24. Since Rob was anticipating this trip since last June, it is more likely that he had much more time available.

The PVI

- Rob had not issued the appropriate paperwork to the company preceding a PVI. See note 2.*
- Rob had not populated the work plan, as directed in person, and via emails. See note 3.*
- Rob had not completed the document review process. He did not have a copy of the Company Operations Manual. See note 4.*
- Rob had not prepared any PVI materials. He had no work sheets, no guidance material, ie SUR-001, no Company Operations Manual, no interview questions prepared. There was no way to conduct a Process Validation Inspection, as Rob did not have anything prepared or available. See note 2 & 4.*
- During an interview with the Operations Manager, a girl that Rob had known, said hi to Rob through the door, a noisy hello ensued, and Rob disappeared out of the office, as I continued the interview. This behaviour has been documented before. It was very inappropriate for Rob to depart, in the middle of an interview. This was very unprofessional, and very embarrassing to me.*

This behaviour is a clear demonstration that Rob is lacking some of the core competencies required of Civil Aviation

Delegated Officers. He fails to communicate well, and demonstrates poor decision making, and strategic planning.

Note 1. I had to prompt Rob to check the fuel situation due to the fires burning in the Kamloops/Kelowna areas. When I questioned where Rob intended to stop for fuel, he informed me that we would be stopping in Kamloops. The fuel sales had been restricted this year already, when fires were burning in the area. Fuel was only sold to aircraft participating in fire fighting activities. An article by Robert Koopmans, Kamloops Daily News June 23, 2009 confirms the fuel restriction was in place, only one month ago. Rob had not considered that it might happen again.

After we arrived in [location deleted], Rob and I approached the Operations Manager to see if he would be able to sell us fuel. Rob had indicated that we could go to the airport for fuel if we could not get it at [ABC Helicopters].

We were informed that there was no fuel for the helicopter at the [location deleted] airport, and that there never was.

We had 300 lbs of fuel on board, and the nearest place to refuel would require an absolute minimum of 500 lbs. We had no where near enough fuel to get anywhere, and there are no car rentals available in town.

It was a good thing that this particular operator was in a position to be able to sell fuel (many operators are not insured to sell fuel, they can only supply their own aircraft", and was willing to sell fuel to us.

The lack of flight planning illustrated by the unknown fuel situation is clear, and another embarrassment, that could have had very serious consequences.

Note 2. Rob had just had the process assessment training a week ago, on the 21 and 22nd. We had done our department training, which was very specific on May 19 to 28th, only four weeks prior, and in between those two training sessions, Rob had participated in the 705 Cascade assessment, so he had been involved in training and assessments almost non-stop for the previous month. Training received immediately prior to this assignment was over and above what would be necessary to understand and conduct a PVI on [ABC] Helicopters.

Note 3. Rob was clearly aware of the work plan, as it is the only place that he would have been able to find his current assignments. As he had contacted [name deleted] regarding the three companies assigned to the two of them in the general area, he clearly had knowledge and access. The work

plan, and assignments had been discussed at our staff meeting on April 14th, as well as disseminated in emails and face to face discussions. I had made it clear that all the inspectors were to assist each other as much as necessary.

Note 4. As indicated in Note 2, Rob should have had a grasp of the most basic elements of a PVI in light of his very recent and extensive training on process audit and assessment procedures, as well as the OJT he had participated in, involving both an assessment, and a process validation inspection.

The document review is a cornerstone of the process, and if not done, it is virtually impossible to complete a PVI. I was shocked and disappointed to discover that Rob had not even obtained the Company Operations Manual. (the document review is based on the Company Operations Manual)

The week before this event, on July 24th, I received an email from Rob. He was looking for the [XYZ] Company Operations Manual. I informed him that I had it with me for my current inspection of the [XYZ] base at [location deleted]. I would hope that this correspondence would have reminded Rob of the paramount importance of reviewing the Company Operations Manual for a PVI (process validation inspection). This also shows that despite the fact that I was out of the office, Rob had access to myself, and was able to contact me on several occasions. If he had any questions, he obviously knew that he could reach me.

Also, it should be noted that Rob attended the Process Based Training the week before we departed. He would have had a very knowledgeable instructor, and a room full of fellow inspectors at hand, to answer any questions that he might have had.

CONCLUSIONS

- I have observed that Rob Dyck has received all requisite training for the required delegation of his position as a Civil Aviation Inspector.
- I have observed that Rob Dyck has received extensive training that goes beyond his requisite training, such as the Process Based Assessment Course, the Proactive Interviewing Skills Course, SUR-001 PVI training specific to 702/703 operators, Pilot Examiner Course, etc.
- Rob had a very poor Employee Performance Review that captured his first six months with Transport. As Rob Dyck is on probation, he was reminded that it was very important that he demonstrate continued

improvement. Rob was adamant that he would improve.

- I have observed that Rob Dyck has failed to consistently show improvement.
- I have observed that Roby Dyck is unable to fulfill the basic requirements of his position as a Civil Aviation Inspector, as demonstrated in this review. Despite adequate training, and guidance, Roby Dyck has failed to demonstrate the required attributes of a Civil Aviation Inspector.
- Competencies such as but not limited to; Planning and Organizing (Organizational Skills, Strong Strategic Planning, Ability to Adapt, Manage multiple priorities), Communication skills both orally and in writing (Consultation skills), Research and Evaluation (Information gathering), Problem Solving and Decision Making Skills, Influence (Consultation skills) and Values and Ethics, etc., are clearly missing in Rob Dyck's performance.
- This review demonstrates the absence of all of the conditions required to exercise the required authority of a Civil Aviation Inspector, as listed below.
- As such, my recommendation is Rejection on Probation, due to an inability of Rob Dyck to fulfill the requirements of his current position.

The core competencies required to exercise Ministerial Delegation are listed as:

- Knowledge of relevant legislation, policies and guidelines and other applicable authorities;
- Ability to make sound decisions which maintain and promote public service values; . . .

[sic throughout] [emphasis in original]

[40] On July 29, 2009, Ms. Hirota recorded in writing a meeting she had with the grievor about the ABC Helicopter incident, "immediately following the trip". Her notes are as follows:

I met with Rob regarding his performance regarding the [location deleted] trip and the [ABC] PVI.

I told Rob that I was very disturbed by his performance that I had observed during the trip and PVI at [ABC] Helicopters on Monday July 27, and Tuesday July 28th. I had observed absolutely no planning or document review for the PVI. I had also observed that there had been no preparation or flight planning for the trip to [location deleted].

I informed him that I was extremely concerned about his poor performance, especially due to the fact that he was still on probation. I pointed out that we had just recently completed our PVI training, and I referred to many points in the training and the ramifications that we had been taught about.

I asked him to explain why he had not done ANY preparation for the PVI. (He had just had the process assessment training a week ago, on the 21 and 22nd. We had done our group training, which was very specific on May 19 to 28th, only four weeks prior, and in between, he had participated in the 705 Cascade assessment, so he had been involved in training and assessments almost non-stop for the previous month.)

Rob kept telling me that he had dropped the ball and that he had not intended to do a PVI, he thought he was just going to fly the CTA and DG people, and apparently myself (for what other reason I would be there, he could not explain.)

(The email chains indicate that Rob clearly understood that he was going to [location deleted] to conduct a PVI.)

*Email from Rob July 16, 2009 “[name deleted] and Georges St. Pierre would like to fly to [location deleted] for an inspection and were requesting a ride with the 407. I Bcc’d you an earlier e-mail. [ABC] Helicopters is one of the companies **that I am scheduled to do a PVI.** [name deleted] and I have plans to get there at the end of August but if **someone else was available to go on this trip now we could get it out of the way.** Whatever you decide, I am happy to help out”.*

I asked him why I would go along, if he was only ferrying people? I had clearly stated in my email that: Email to Rob July 16, 2009 “I would be the only one available **to assist you with a PVI** at that time, so you are stuck with me”.

He once again restated that he had dropped the ball, and that he misunderstood. He wanted to review the emails to see why he didn’t understand.

I told him that I could not comprehend why he hadn’t been prepared, and that he was not explaining why he had done such a poor job.

I agreed to his request to review the emails, and informed him that I would send him a calendar invite for the earliest possible date, and we would sit down together, and go through all the email, and ascertain where/why things went wrong. I informed him that it would have to be next week

some time, as I was out of town the rest of the week when he was available. He was agreeable to that.

I told him that we would review the emails together, and that we would sit down and figure out if/where our communication went so terribly wrong.

I informed him that the regardless of his poor performance regarding the PVI, he had arranged to do a passenger trip, which he had failed to complete satisfactorily.

His passengers (including myself) had informed me that they had not been told when the departure time would be, and when they were expected to be at Aircraft Services. The passengers arrived at 7:00 a.m., and Rob did not arrive until 8:14. I asked him to explain why he would have not advised his passengers, and would arrive unprepared. He stated that he had got up very early (5:30), but traffic was a problem, and he had a personal issue (he did not expand on this). He insisted that his late arrival wasn't a factor, as we departed by 8:30 a.m. anyways. (We had departed at 9:00 a.m., because I had prepared the aircraft and put the appropriate head sets in, removed and put away all the life jackets and the life raft. I had also packed and stowed some water for the passengers. If had had not done these things, we would have left much, much later.) Rob's flight close time with ASD was 14:00 local on the blue sheet. As he had flight planned 2 hrs of flight time (he had advised me of this when I asked), with a stop for fuel, it shows that he did not anticipate leaving until after 10:00.

I also noted that on our return flight through [location deleted], Rob initiated contact with the FSS, requesting departure clearance. This is a common error, as an FSS is not a 'controlling agency'. Rob was advised to depart his discretion. I was surprised when Rob then proceeded to depart the ramp east bound from the FBO, in an arcing right turn, crossing over the active runway, and continuing southbound, without ever broadcasting his intentions at any time prior to or during our departure. As the fire base was just behind us, and it was extremely active, I was very surprised that Rob did not broadcast his intentions, at the very least, prior to crossing over the active runway. When we lifted off, I noted that there were two helicopters airborne at the fire base. One was on a long line, and the other appeared to be hovering low level between the fire base and the runway. Rob did not indicate whether he had been aware of the activity.

Rob expressed his own concerns, saying that since his performance review, he has been trying very hard, and that

he was very disappointed with himself. He continued to say that he had 'dropped the ball' and he didn't know why.

I asked him if he felt he could not approach me if he had been unable to prepare in time, or needed more help. He assured me that was not the case.

[sic throughout] [Emphasis in original]

[41] On August 5, 2009, a second meeting took place between Ms. Hirota and the grievor about the ABC Helicopters trip. Ms. Hirota's notes of that meeting are as follows:

We met at 14:00 in the 9th floor boardroom.

I went through all the email I had printed out, chronologically with Rob, as he had asked to review the emails at our initial meeting, in order to ascertain why his performance had been so poor. He thought there might have been a misunderstanding somewhere in the preceding email chains.

"that's not the way I read it" was the response to every document presented to him.

When I pointed out several times that one of the emails that I had sent to him, clearly stated:

*Email to Rob July 16, 2009 "I would be the only one available **to assist you with a PVI** at that time, so you are stuck with me. I have booked CGDOT for Monday, July 27 and Tuesday, July 28th **for you.** [Names deleted], let Rob know if that will work for you.*

***Rob, can you please fill out a flight request** with [names deleted] listed, and I'll get it over to ASD."*

*Cheers:
Shona*

Rob continued to say that he read it differently, and in his opinion, it clearly meant that I would be doing the PVI. In our previous meeting he had said he didn't think that we were doing an inspection at all on the trip, and when I had pressed him, by asking why I would have gone, if there had been no intention to do a PVI, he had just said that he didn't know. Previously, during the trip up, I had asked him if he had mailed out the proper notification letters, and he had apologized, and said that he had 'dropped the ball', and that he had not sent out the proper letter. He mentioned that he thought that [name deleted] did it automatically. (none of the

OJT or courses that Rob had attended, ever mentioned that the letters were generated by any one other than the inspector. He had recent training, almost constant training and OJT on PVT's and assessments, in the previous 3 months). This indicates that he did believe that we were going to do a PVI, otherwise, he would not have 'dropped the ball' by not sending out the notice to the company.

I asked Rob if he remembered that we went over the protocol for sending out the notices in both his training, and OJT on the Blackcomb PVI, but also during our Staff Meeting. I asked him if he remembered me explaining that the letters were supposed to be sent to the companies at least 6 weeks prior to the PVI, as per SUR-001, but as that may often not be possible, I had stressed that it was very important that if the PVI was scheduled with less than 6 weeks notice to the company, that I be notified, and that I would advise the Convening Authority. Rob said that he remembered.

One of the next emails said Email from Rob Dyck July 17, 2009 "I am not sure if this trip will be 1 or 2 days. **If we get it done in 1 day** I believe there would be some overtime involved. This e-mail is to request pre-approval of overtime should the need arise."

I asked Roby what "it" was, and why "it" needed to be "done". I understood that he was referring to the task of performing the PVI, as that was the only reason for us to be doing the trip to [location deleted]. I had explained that at length to him face to face when I had received his inquiry about this trip on June 20th. I knew it was important to explain to Rob the protocol for taking other department personnel with us, during the course of our duties. I asked him if he remembered that discussion and he said yes.

He continued to say that he read the email differently.

I decided that it was in no one's interest to argue, since Rob was clearly avoiding issues by continue to say that his interpretations had been different than what the printed words said. Many of the items he "read differently" are clearly not open to interpretation.

I pointed out, that a month had transpired since he had initially inquired about the protocol for this trip, when I had clearly told him that we "are not a taxi service". I had explained to him that we accommodate other departments when we can, if it coincides with our work plan. I made it clear that we do not fly people around in the aircraft, unless we had a purpose of our own such as a PVI, flight test, or a monitor ride, etc. to be done for/at the clients. Since Rob said that he remembered this meeting, he should have known

that we were going to [location deleted] to conduct a PVI, regardless of how he interpreted the email. If he had 'read' anything differently, his training, OJT, briefings and meetings should have enable him to recognize that we should not have been doing the trip, if there was no work scheduled. He once again failed to assess the situation properly, and he did not act in the manner that he had been trained and constantly reminded of. I pointed this out, and asked why he had not called. He had no explanation. I showed him the list of PVI training and OJT training for PVT's and assessments that he had received in the previous two months. It was almost every week, and the last training had been the week before we left. If he had any questions, he had a room of inspectors who were taking the Process Based Assessment Training with him. He failed to utilize any of the previous training.

I explained that I had become concerned on Sunday night, when I had not been briefed on a departure plan, or any PVI plans. I had been up late flight planning, and preparing some PVI materials, just in case Rob had not, and I discovered the next morning, that he had not even done flight planning. When he arrived, he was looking for maps. As this was the first passenger trip that Rob had done with TC, I was shocked and disappointed to see that he had not come prepared. He asked me why I had not phoned him. I explained that I had gotten home at 22:00 Sunday night, and that there was not enough time for him to make any changes, as we were leaving first thing in the morning. Proper planning would have revealed the need for an early departure, as per Rob's training, it would take at least two full days to complete the PVI. (This was also reiterated to Rob by [name deleted] in an email on June 22nd. Rob was trying to arrange to do the PVI's for 3 companies, one of which was [ABC], and [name deleted] indicated to Rob, that 5 days would probably not be enough time to do 3 PVT's. Rob decided to propose 2 PVT's, and [ABC] would probably not get done.)

During our meeting he continued to switch back and forth from stating that he thought we were not doing a PVI and stating that he thought I was going to do the PVI. I decided that it was in no one's interest to argue, since Rob was clearly avoiding issues by continue to say that his interpretations had been different.

I told Rob that regardless of the PVI mission, I was terribly disappointed in his trip to [location deleted]. I told him that his passengers had not been informed at what time they were to arrive for the flight, or what they could/should bring. (I had an email from [name deleted] confirming that he had not been notified. [Name deleted] had advised me that Rob

had spoken to him, and told him to arrive for 8:00 a.m., I had not been informed of a departure time).

Rob showed me an email that he had sent on July 20th to [names deleted], which read: Email from Rob Dyck, July 20, 2009 "No problem. Let's plan to launch at 0800 - 0830).

(this was in response to an email from Georges the same day: Hey Rob, I just spoke with Shona. She has booked the aircraft for Monday and Tuesday next week. Wayne's boss is in town and planning to join us. I asked Shona if it would be OK to have 4 passengers. She says she doesn't see a problem with that, however as you are flying the aircraft the final decision is yours. Are you ok with having Shona, [name deleted], Me and [name deleted]'s boss on the flight? Let us know. Also what time do you want us there on Monday morning?)

It should be noted that neither [names deleted] are pilots. "Plan to launch" time is very ambiguous, and most non-pilot's would not know how long prior to "launch" time they should arrive. As Rob is new at TC, and does not know everyone, I was surprised that he was not more specific. I apologized to Rob. [Name deleted] must not have sent he email, as he assured me he had not been given a time.

I asked Rob why he would select such a late departure time, when he had sent me an email, requesting preauthorized overtime, and it had been approved. As I had previously stated, he did not leave enough time for the work that needed to be done, through lack of planning.

He did not have an explanation.

Rob had arrived late. I asked why, and he indicated that the traffic had been terrible. (he had told me in our initial debrief, that he had a personal issue, and that the traffic was bad). I alluded to the fact that he had given me a different reason the last time we spoke, and he reiterated that the traffic was very bad.

I asked him why he had given me different reasons the last time, and he said he didn't know.

I asked him why, during our initial briefing, he had insisted that his being late hadn't made much difference, as we were airborne by 8:30 anyways. We were not, and I had verified that. He knew I was with him, so why would he tell me something that was not true? He told me that it wasn't him, he didn't know why he would say that. He said that he hadn't been prepared for the debrief, and that wasn't him.

I asked him why he would have told me so many different things. He asked if I was calling him a liar. I said, yes, what you told me was not true, therefore, it is a lie. I told him that what he had demonstrated was in violation of the Code of Ethics and Values. Ethics and Values are a core competency that he had not been able to successfully demonstrate, among others.

He again said he didn't know why he would say those things.

I told him that I was very disappointed and that I was obligated to inform him that I was considering Rejection on Probation.

I asked him why he had not been prepared, and he said that he had left his house early, in order to do his flight planning and ASD. I pointed out that I had spent almost an hour getting the aircraft ready, and packing the passenger's luggage. I am used to doing this, he is not. If he had done the work required, we would have been delayed by several hours in total. He agreed, and insisted that it was because of the traffic. It is clear that this was poor planning. I pointed out that this is not a task specific to TC, and that it was helicopter flying 101. His performance was unacceptable.

I pointed out that I had to prompt him to check the fuel/fire situation for our trip up. This was also incredibly poor planning.

Further, when we arrived at [ABC], Rob had not checked to see if we could purchase fuel from the company, as many operators are unable to sell to outside parties due to liability issues. Making the situation even more critical, Rob had indicated to me that we could buy fuel at the airport, if the company didn't have fuel, or would not sell to us. When I questioned the company, they agreed to sell us fuel, and told us that there was no fuel available at the airport, and that there never was. Rob was surprised. I was appalled and embarrassed. I asked Rob to explain this oversight. He was defensive and asked me if I knew for sure, if fuel was not available at the airport. I asked him if he had checked the Flight Supplement, and he sheepishly said 'no'. (I had, and there is no fuel for the helicopter available at the airport). I explained the severity of the poor performance.

Rob stated that I was 'gunning' for him.

I said that with all the training and help I had given him, despite his very poor performance review, which he agreed had been an honest evaluation, I had continued to encourage him, not micro manage him, make myself available at all times for him, continually counsel, and try to make my

expectations clear for him; could he honestly say that he believed that I was trying to purposely trip him up, and make his life difficult?

He conceded that he didn't believe that, and he 'wasn't taking this personally', he explained that he understood that it was my job to do this, and that he would 'just have to step it up'.

I told him that I had tried everything that I felt I could to help him learn and adapt, and that I was at a loss as to what the best way to proceed would be. I asked him if he had any suggestions, and he said that he just needed to 'continue, and get out and do the job'. I told him that was what I had just tried to let him do, and that he was unable to do that. He did not have any other ideas, as to how to proceed. I informed him that I would seek Trevor's guidance - perhaps he would have other suggestions. I told Rob that I would touch base with him next week, just to get together, and make sure that he knew that I had not forgotten, and to ensure that he didn't need anything, or I need anything. I told him that as soon as I had talked to Trevor, I would set up a meeting to discuss our options. I informed Rob that we would have to revisit this performance review, as we clearly had not come to any consensus. He insisted that it was a communication issue. I informed him that I had taken the emails to HR, who are not familiar with our day to day work, to ensure that my communication had been clear. They had no trouble interpreting the emails. As communication skills is a core competency, I told him that I had concerns that he was unable to demonstrate and exercise the required core competencies.

I asked him if he remembered the core competencies that we had discussed in his Orientation. I had not given them a copy, but I had asked them to go through our site, and get familiar with them. I had given them the link as well. I asked him if he remembered seeing the core competencies that are expected of all TC employees, and the very specific group required for Delegated Officers. He said he remembered the meeting and the competencies. I told him he should review them, as he clearly did not meet the requirements for me to issue him his delegation. As such, I told him that in all fairness and as per the required transparency, I had to inform him that I was considering Rejection on Probation, due to his consistently poor performance, and inability to demonstrate and exercise the core competencies required for the issuance of his delegation.

[sic throughout] [Emphasis in original]

[42] The grievor also took notes during the August 5, 2009 meeting. They are as follows:

Notes Re: Trip to [location deleted] and Meetings that Followed!

Aug 5/09: 14:00 meet with Shona in 9th floor boardroom. She asks my take about the trip to [location deleted]. I agree it was a mess and say that after looking at the emails, it is apparent to me that we had a breakdown of communication! To me it was clear that I had not planned or was in the planning of a PVI to [ABC].

- My email discussing a PVI was a suggestion that I would be willing to assist. Although I have had PVI training, I would still expect a senior inspector to take the lead and show me the ropes.

- I was very open in "cc'ing" emails to Shona and keep her in the loop.

- At no time did she as my supervisor tell me I was in charge of this inspection.

- She started to bring out the emails and pointing to various words like "we" and "I" stating this proved that I knew I was in charge. I disagreed.

Shona continued to press that she was right and I was wrong. I stated repeatedly that I felt this was a miscommunication between the parties (us) and that I could not agree with her because I would then be lying.

At this point in the meeting I noticed her face and neck area start to flush and she was raising her voice slightly into a more confrontational tone.

At this point in the meeting I realized that we were in disagreement and nothing would be resolved there.

She degraded my piloting skills by saying my flight planning was horrible and worse than a 100 hour pilot.

She stated that we landed with 300 lbs. of fuel in [location deleted]. She stated that was 20 minutes of fuel.

Landing with 20 minutes of fuel in the tank is the minimum requirement and shows my planning and numbers were accurate.

She stated that I had no idea if we could get fuel in [location deleted] and that I jeopardized the A/C when in fact I had checked the CFS at home as well as the industry knowledge I have and finally a phone call to [name deleted].

I had the wrong CFS on the trip. I took the old one from home instead of the latest version which I forgot at home after completing my flight planning.

Meeting ended 1450 with Shona saying we need to revisit this again later.

Start of Day: July 27, 2009

My flight planning for this trip, and like every trip I have taken for the last number of years, was done for the most part at home. By the time I left my house for what is normally a 55 minute drive to the Vancouver Airport, I had checked the following via the internet:

- GFA's*
- METARS and RAF's*
- NOTAMS [Notice to Airmen]*

I left my house at 0600 with the intent of arriving at 0700 at the airport. Unforeseen traffic issues delayed my arrival to the airport by 30 minutes. Shona and my passengers were already there. I apologized, mentioned the traffic and went to the flight planning room.

Shona came into the flight planning room and offered to pack the A/C since I was late. I said yes, thank you. I completed a weight and balance as required and printed the weather (which had been checked previously) filed a flight plan and got a YVR code. At this point Shona came back and asked if I was ready to which I replied "Just waiting for the log book". She went and sat with the passengers. I went to the flight duty room to wait for the log book and advise Lydia as to our plan for the day. By now it was after 0800 and I was wondering about the log book and went to the passengers and said "Just waiting for the log book" to which they said "no problem". I went back to the flight planning room and the log book was there. I went outside to complete a pre-flight of the A/C. Then went and got my passengers, gave them a safety briefing, loaded the A/C and departed. I am unsure of exact t/o time but suspect it was late.

We flew YVR to YKA where we fuelled the a/c.

...

Note: Shona admonished me for not checking NOTAMS regarding the availability of fuel in YKA. As she was already confrontational (this at the meeting) I was silent even though NOTAMS had all been checked with no issues found! (meeting held Aug 5th at 2:00 p.m.)

...

On the flight from YKA to [location deleted], we started to discuss the upcoming PVI. I said something along the lines of "Just tell me what you want me to do". At this point she asks "They know we are coming right?" I replied "[name deleted], they know we are coming right?" Shona: "Did you send a letter?" Rob: "Letter? Uh, going to say no on that". Shona: "Ok, don't worry, we'll wing it".

The inspection went fine. Fuel was available (as I knew it would be), we departed the next day. Arriving in YVR at approx 1800.

After arrival at YVR and our passengers left, Shona said we have to debrief. We went into an office at Richmond ASD (this meeting at approximately 1730 - 1800 July 28th). We discussed various aspects of the trip that she did not like:

Shona: "Did you not get my email that specifically stated you were in charge of this PVI?"

Rob: "No, you never were specific. I thought you were lead".

Shona: "The fact that our passengers had no idea when we were departing shows total unprofessionalism on your part!"

Rob: "Not true. They were advised."

Shona: "No they were not. I talked to [location deleted]."

*I was proved correct later when Shona called [location deleted] and I produced an email I sent to Georges stating t/o at 0800 - 0830 sent July 20, 2009 at 3:33 p.m. and an email sent to Wayne dated July 24th, 2009 at 7:54 a.m. Emails produced at meeting held in Rm 950 - 800 Burrard from 1400 - Approx 1450.

Richmond ASD - Flight Debrief, July 28, 2009 17:30 - 18:00

At this meeting Shona was again flushed and in a voice slightly elevated and to me, confrontational. Anything I said was quickly rebuked. I realized she had her own determination of the events and was not open to my side of the story. I apologized about the confusion and said there was obviously some miscommunication. To which she replied

“there is no miscommunication, I was very clear in my emails that you were in charge of this PVI and you failed to do anything!” She further stated “I am seriously concerned as to how you handled this entire trip and as you are on probation this does not look good for you”.

Note: At the Aug 5, 2009 meeting she stated that she was seriously considering termination on probation because of this trip.

The meeting at Richmond ASD ended at 1800 with Shona saying she needed to think about what happened and would plan a meeting in the near future to further discuss these things. She also said at the end of the meeting; “go home and don’t worry about this, we will figure out how to fix this so it does not happen again”. Easier said than done when you have just been told “...as you are on probation, this does not look good for you”.

When I arrived at work August 6, 2009 and opened my emails, I received an email notifying me of another meeting with her on August 11, 2009 Rm 950 at 1:00 p.m. - 1:30 p.m. I responded that I was available.

Another topic brought up at the meeting held in Rm 950 - 800 Burrard St. August 5, 2009 at 1400

Shona said that she felt my conduct fell short of what was required for an inspector under the Code of Conduct and Values and Ethics.

I responded by stating: “That sounds like you are calling me a liar”. To which she replied in (again) an elevated and (I felt) confrontational tone: “Well you have been lying to me this whole time”. That’s why I find it may not be possible to give you your delegation!!

I then told Shona I was more than willing to do what was required of me to bring me to an operative level that would satisfy her. She asked what I thought needed to be done. I replied that more OJT (on the job training) with senior inspectors would be a good start. She asked if I would mind if she brought this up with Trevor. I said “not at all, whatever she thought was best”.

The meeting ended with her saying: "OK, I'll talk to Trevor [Mr. Heryet] and get back to you".

During the meeting on August 5, 2009 in Rm 950 at 800 Burrard St. Time between 1400 - 1450

We discussed the issue of team lead. I stated at no time did Shona assign me the role of team lead. She told me that wasn't required and that even so, it was clear in the emails.

On the Pacific Region C&BA Program Validation Inspection Checklist

Under planning, the second box to be checked states: "Regional Superintendents assign team leaders".

I was never assigned team lead.

[sic throughout] [Emphasis in original]

[43] Ms. Hirota and the grievor testified about the ABC Helicopter incident in July 2009. There is a reference in the evidence to a flight plan for this trip but no such plan was entered in evidence.

[44] In her testimony Ms. Hirota emphasized that the grievor was responsible for the overall conduct of the trip, including its management as well as the inspection. The inspection was assigned to the grievor as part of his annual work plan, there had been some email exchanges and it "looked like it was shaping up as a good training experience". The problems began when another department wanted to travel with the inspection team but at a different time. The grievor tried to accommodate this request and ultimately it took place. One result was that Ms. Hirota went along as the grievor's supervisor. This was her first trip with him in a helicopter and she "did not want to step on his toes". As discussed in the above documents, the grievor was late. Ms. Hirota raised this point with the grievor at the time and his explanation was that it was because of traffic. She testified that she was "taken aback" by that explanation because it was the grievor's first flight with his new supervisor and passengers were waiting. Ms. Hirota loaded the baggage to get things under way.

[45] She also testified that the grievor "did not seem to have done the appropriate flight preparation." For example, it looked like he did not have the correct maps with him and she had to ask him whether he had his maps. She asked him about the preparation he had done for the flight, he said he had not done it and he was "a bit

upset", according to the evidence of Ms. Hirota. She asked the grievor if he had sent the letter of notification to ABC Helicopters, the company being inspected. He said he had not done so and he assumed the passengers would do it. He was "immediately apologetic" according to Ms. Hirota and he said "I dropped the ball". The result was that the grievor "did not have one piece of paper to perform his oversight duty", according to Ms. Hirota. In the end she said to the grievor, "don't worry" because they could fall back on an older procedure and perform the inspection if the company agreed.

[46] Ms. Hirota discussed the fuelling of the helicopter for the ABC Helicopters trip in her evidence. She testified that she said to the grievor before they left Vancouver that sometimes companies will not sell fuel to Transport Canada and the grievor replied by saying "don't worry, we can get fuelled up at the airport" where ABC Helicopters was located. In the end the company did agree to sell fuel for the trip but it was, as Ms. Hirota put it in her evidence, "hugely embarrassing" to make the request of the company that was being inspected. As well, there was no fuel at the airport and there "never has been," according to Ms. Hirota. Further, in her evidence Ms. Hirota expressed concern about low fuel levels in the event that fuel was not available somewhere on site; she was concerned about "running on fumes" for the return trip if they could not get fuel. Overall, the grievor insisted he had local knowledge about the availability of fuel but he did not.

[47] In his evidence the grievor spoke briefly about the ABC Helicopters incident. He testified that the inspection was assigned to him and another senior inspector. However, "nothing was given to me" and he understood the senior inspector would "be in charge . . . I assumed I was there to assist and learn." He had "not planned anything". Ms. Hirota was the senior inspector, the grievor assumed she was in charge and "there was nothing in writing to tell me otherwise". He relied on an appointment letter for another inspection of a different company as an example of the kind of direction he expected. At that time, July 2009, he was not trained to conduct a full PVI; "I did not have the experience and if I was asked to do one I would have said I could not do it and I needed training." In cross-examination, the grievor denied that he said to Ms. Hirota that he "dropped the ball."

IV. Rejection on probation

[48] In August 2009, the respondent considered the issue of whether the grievor should be rejected on probation; that is, whether to end his probationary status following the 12 month probationary period because of performance problems. Ms. Hirota concluded that there were grounds for rejection and that it was necessary to terminate the grievor's employment as a probationary employee. She prepared a "Rejection on Probation Report", dated August 13, 2009. It is as follows:

...

Issue

Rejection on Probation

Background:

Mr. Dyck was hired on as an indeterminate AO-CAI-02 Civil Aviation Inspector in Commercial and Business Aviation on September 22, 2008. He is currently on probation until September 21, 2009.

In his role as a Civil Aviation Inspector he is responsible for providing regulatory oversight through activities such as, but not limited to, audits, inspections, assessments, program validation inspection of Commercial Air Operators and training facilities to ensure safe operations and compliance with the Aeronautics Act, Canadian Aviation Regulation, Commercial Air Service Standards and Company Operations Manual by inspecting the operator's facilities, dispatch and flight watch system, training records, operational control and flight planning documentation. In addition, he acts as Pilot-in-command and maintains proficiency by flying Transport Canada aircraft for transportation, training and inspection flights and maintains currency and competency on other assigned aircraft.

Some of the skill sets that Rob was hired for were his license qualifications and past experience that included rotary wing flight instruction and Multi-IFR crew experience.

Facts:

Principles of Fairness:

1. Employment Related Reason

Mr. Rob Dyck has not met the requirements to hold or exercise a full or partial Ministerial Delegation.

2. Good Faith, Fairness & Transparency

(a) Outlining expectations at the onset of employment

- A minimum of 13 meetings, and a phone call were documented, but there were many more informal briefings conducted by [name deleted] and myself. I conducted meetings on Oct 13, 2008; Oct 22, 2008 (in West Palm Beach); Dec 30, 2008; Feb 13, 2009; Feb 18, 2009 (in Calgary); Feb 19, 2009 (in Yellowknife); Mar 4, 2009; Mar 9, 2009; Mar 18, 2009, Apr 14, 2009; Apr 16, 2009 (Employee Performance Review); July 28, 2009

I outlined very clear expectations and specific, concise directions regarding Rob Dyck's Pilot Examiner Training via phone on Mar 6, 2009; and those expectations and instructions had been conveyed via several emails (Mar 4, 2009, and Mar 9, 2009) and face to face discussions. The expectations were not met, and the directions were not followed.

- The number of guidance/instructional emails were too numerous to count and unfortunately, many were not documented. A recap Email was sent following our Orientation meeting on Oct 22, 2008, as well as after meetings on Feb 13, 2009 and Mar 18, 2009.

An electronic copy of Rob Dyck's Employee Performance Report was sent to him on April 19, 2009, following our Employee Performance Meeting on Apr 16, 2009.

- I have attempted to assist Rob in his transition to his roll as a Civil Aviation Inspector, by endeavouring to always provide clear guidance, maintain an approachable demeanor, and always encourage questions from him. I have attempted to expand his abilities, and hopefully motivate him in a positive manner, by obtaining new aircraft type training for him. When it was discovered that Rob did not hold the required ratings for the position of Civil Aviation Inspector, I facilitated his obtaining that rating by providing him time at work to study towards obtaining the requisite rating, which I was in no way obligated to do.
- Rob had completed quickly all the requisite training to obtain his Ministerial Delegation in approximately 6 - 7 months; with the exception of the Quality

Assurance course, which he obtained a few months ago. Unfortunately, Rob Dyck has demonstrated a lack of the required competencies, as listed in the analysis section of this report, to issue a Ministerial Delegation. The supporting documentation clearly confirms the observations. I do not feel that I can, in good faith, recommend Rob Dyck for Ministerial Delegation.

- A copy of Rob Dyck's Employee Performance Review is attached. We met to review and discuss his Employee Performance Review. A synopsis of that meeting is attached. Rob Dyck wrote a rebuttal, which I addressed, and it is also attached.

(b) *Informing the employees right away when not meeting expectations, what the expectations are and the consequences*

- A minimum of 13 meetings, and a phone call were documented, but there were many more informal briefings conducted by myself, regarding expectations and consequences. Some of the informal discussions were spurred by colleagues who had voiced concerns to myself, that they perceived that Rob Dyck's behaviours did not represent the needs of the department, or his colleagues.

I conducted meetings on Oct 13, 2008; Oct 22, 2008; Dec 19, 2008 (in WPB); Dec 30, 2008; Feb 13, 2009; Feb 18, 2009 (in Calgary); Feb 19, 2009 (in Yellowknife); Mar 4, 2009; Mar 9, 2009; Mar 18, 2009; Apr 14, 2009; Apr 16, 2009 (Employee Performance Review); July 28, 2009.

- Many emails and phone messages, as well as the documented meetings listed above; have been sent to Rob outlining the expectations of his position and the consequences. An example of this is the phone messages and emails on February 16 & 17, 2009) that outlined clear instructions and expectations for Rob to follow regarding his travel arrangements. Rob chose to ignore the instructions, and accept the consequences of not being reimbursed for the unnecessary overtime he incurred, due to poor decision making, which continued with his decision to ignore the clear instructions left for him to rectify the situation.

Another documented instance of the same behaviour that is even more mutinous would be regarding

Rob Dyck's Pilot Examiner Training. After several face to face conversations, in which expectations and consequences were discussed, and several emails were sent (Mar 4 & 9, 2009), as well as a phone conversation on Mar 6, 2009; in which I reiterated how important it was that he follow the directions given, and I ensured that I reviewed the instructions many times with Rob via the emails, phone calls and face to face discussions. Over the two day Pilot Examiner Course, Rob was instructed to report to the 800 Burrard St. office each morning, and proceed to the course using a company vehicle that had been booked for him. He was instructed to drop the TC car off at the end of each day. Based on past experience, I approved 1 - 1.5 hrs of overtime/day. Rob did not follow the instructions given. The second day he did not report to the office as instructed, and he did not travel via TC vehicle. When I emailed to ask if he had cancelled the vehicle when he dropped it off after his first day, he confirmed that he had. This clearly indicates that he intended to disregard the extremely clear and repetitive instructions that he had been given, the day before he actually blatantly ignored the directions. Rob had also been instructed on many occasions, via email, meetings, and phone calls, that he was to call me if anything changed operationally, or if he had any questions at all. Rob failed to follow those very precise, and clear directions as well.

Many more examples have been documented for review in the supporting documentation.

- *Rob Dyck has received On the Job Training from both myself, and his colleagues. He has been exposed to the appropriate aspects of a Civil Aviation Inspector position, as applicable to his time with Transport Canada. He has had a bit more exposure to On the Job Training, as Rob was hired for his flight training background, which expands the areas that he is working in, beyond what most inspectors are involved in.*
- *Rob Dyck has received all the requisite training for his Ministerial Delegation. He has also been able to attend some other job related courses.*
- *Rob Dyck's Employee Performance Review of April 2009 does not reflect an individual who is suitable, and capable of performing the duties required of a Civil Aviation Inspector. The [ABC] Performance Review of July 29, 2009 indicates that the same is still true, despite having three additional*

months on the job since his Employee Performance Review, as well as having additional extensive training, and On the Job Training that were specific to the tasks assigned to Rob for the [ABC] Program Validation Inspection.

3. Departmental Standard

- Due to the availability of some courses, it can take 6 - 12 months to complete the required training to obtain Ministerial Delegation. I have observed that most individuals who have entered into a Civil Aviation Inspector position, are often issued partial delegation after the first 4 - 6 months, if it appears that there will be a course availability issue. In the absence of a full Ministerial Delegation, I have observed that it is common practice within the inspectorate group for most individuals to be granted limited Ministerial Delegation, based on, but not limited to current level of training, merit, demonstrated performance, decision making, ability to observe a respectful workplace, and of course the required "Conditions for the Exercise of Authorities" have been demonstrated satisfactorily and consistently.

Analysis:

The core competencies required to exercise Ministerial Delegation are listed as:

CONDITIONS FOR THE EXERCISE OF AUTHORITIES

- Knowledge of relevant legislation, policies and guidelines and other applicable authorities;
- Ability to make sound decisions which maintain and promote public service values;
- Professional behaviour in carrying out activities with integrity, fairness and a sensibility to representation and participation of all segments of the population in the Public Service.

<http://tcinfo/humanresources/policies/authorities/menu.htm#3>

The supporting documentation; including the [ABC] Performance Review, document the absence of the conditions required to exercise the required authority of a Civil Aviation Inspector, as listed above.

I have observed that Rob Dyck is unable to fulfill the basic requirements of his position as a Civil Aviation Inspector.

Despite adequate training, and guidance, Rob Dyck has failed to demonstrate the required attributes of a Civil Aviation Inspector.

Competencies such as but not limited to; Planning and Organizing (Organizational Skills, Strong Strategic Planning, Ability to adapt, Manage multiple priorities), Communication skills both orally and in writing (Consultation skills), Research and Evaluation (Information gathering), Problem Solving and Decision Making Skills, Influence (Consultation skills) and Values and Ethics, etc., have been demonstrated as lacking, in Rob Dyck's observed performance during his probationary period.

This evidence and supporting documentation, indicate that Rob Dyck does not qualify to hold a full or partial Ministerial Delegation.

Recommendations

Based on the competencies and training that are required to hold a Ministerial Delegation, it is my belief, based on Mr. Rob Dyck's performance since he began with TC in September 2008, that he does not possess the competencies that are required for the Minister to issue him his Ministerial Delegation. Throughout his employment, Mr. Rob Dyck has been aware of the expectations of the job and has been given every opportunity to improve on his performance.

It is my recommendation that Mr. Rob Dyck be rejected on probation.

[sic throughout]

[49] This report and its recommendations were accepted by Mr. Heryet and he advised the grievor in a letter dated August 24, 2009 that his employment as a probationary employee was terminated, effective September 23, 2009. I reproduce that letter as follows,

Re: REJECTION ON PROBATION

In your letter of offer dated September 5, 2008, you were informed that your initial appointment to the public service would be subject to a one-year probationary period, which is in accordance with the regulations establishing periods of probation. The effective date of your appointment was September 22, 2008.

I regret to inform you that as a result of shortcomings in your performance, I have concluded that your work

performance does not meet acceptable standards for continuing employment with Transport Canada. Despite many attempts to assist you, you have been unable to demonstrate either your suitability or your ability to carry out, in a satisfactory manner, the duties related to your position as a Civil Aviation Inspector, AO-CAI-02.

By the authority delegated to me by the Deputy Head under subsection 62(1) of the Public Service Employment Act, I hereby provide you with 1 month's notice of my decision to reject you during probation. Please note that the notice period begins immediately. Your employment with Transport Canada will therefore cease on September 23, 2009 at the end of business day. For the duration of your notice period, you will be considered to be on leave with pay and will not be required to report to work or perform any of the duties related to your employment. You will be required to complete the pre-severance report (form) as soon as possible.

As per the Treasury Board Guidelines for Rejection on Probation and your collective agreement, a person who is rejected on probation may grieve the decision by filing an individual grievance at the appropriate level of the grievance procedure.

If you have any questions regarding the above, feel free to call me at [telephone number deleted].

Good luck in your future endeavours.

V. Reasons

A. The legal context

[50] As set out in the letter of offer dated September 5, 2008, the grievor was subject to a probationary period of employment, as required by section 61 of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (*PSEA*). There is no dispute that the grievor was a probationary employee when he was dismissed. The length of probation for an employee is set by regulation and there is similarly no dispute that the probationary period in the grievor's case was 12 months, from September 22, 2008 to September 23, 2009. Section 62 of the *PSEA* authorizes the termination of the employment of a probationary employee at the end of the applicable probationary period, as noted in the respondent's letter of August 24, 2009. The grievor's termination was effective September 23, 2009.

[51] The status of probationary employees and their rights have been commented on by a number of previous decisions. For example, a leading decision from the Federal Court of Appeal, *Canada (Attorney General) v. Penner (F.C.A.)*, [1989] 3 F.C. 429 (citing *Smith v. Treasury Board (Post Office Department)*, PSSRB File No. 166-2-3017 (19771007)), summarized the approach adjudicators are required to take:

...

In effect, once credible evidence is tendered by the Employer to the adjudicator pointing to some cause for rejection, valid on its face, the discharge hearing on the merits comes shuddering to a halt. The adjudicator, at that moment, loses any authority to order the grievor reinstated on the footing that just cause for discharge has not been established by the Employer.

...

[52] In that case, the Court of Appeal considered alternative interpretations of the applicable legislation but concluded that the above statement was the ". . . only one that the legislation really supports." In another judgement, in 2001, the Federal Court confirmed that the principles set out in *Penner* were still applicable and pointed out that the test for an adjudicator in the case of a probationary employee is not the just-cause standard (*Canada (Attorney General) v. Leonarduzzi*, 2001 FCT 529, at para 44). Once the employer has discharged its initial burden that the rejection on probation was for an employment-related reason, the onus then shifts to the grievor to demonstrate that the employer's actions are in fact "a sham or a camouflage." (*Leonarduzzi*, at para 45). Even when there are legitimate concerns about the way an employer has assessed his or her suitability, such as insufficient time to adequately assess the suitability, an adjudicator loses jurisdiction to review the rationale of the decision to reject on probation once the employer has shown an employment-related reason for rejection and the grievor has failed to prove that a sham or camouflage occurred (*Owens v. Treasury Board (Royal Canadian Mounted Police)*, 2003 PSLRB 33, at para 75).

[53] A more recent decision, following amendments to the *PSEA*, *Tello v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 134, at para 111, put the test in similar terms:

...

. . . the Treasury Board Guidelines for Rejection on Probation require that the letter of termination of employment of a probationary employee set out the reason for the decision to terminate employment. The deputy head is still required to tender the letter of termination as an exhibit (normally through a witness) to establish that the statutory requirements of notice and probationary status have been met. That letter will usually state the reason for the decision to terminate the employment of the probationary employee. The burden then shifts to the grievor. The grievor bears the burden of showing that the termination of employment was a contrived reliance on the new PSEA, a sham or camouflage. If the grievor establishes there were no legitimate "employment-related reasons" for the termination (in other words, if the decision was not based on a bona fide dissatisfaction as to his suitability for employment, . . .) then the grievor will have met his burden. .

..

[54] Counsel for both parties in the grievance before me pointed out in argument that the result of the analysis in *Tello*, in the context of changes to the PSEA, may be that there is a change to the burden of proof as it applies to a deputy head in the case of a probationary employee. Further, a change to the issue of who proceeds first in presenting evidence may be necessary. However, counsel agreed in this case that the respondent would proceed first. Subject to that comment, the parties agreed that the statements from the above decisions are an accurate statement of the legal status of probationary employees and the approach required by adjudicators.

[55] Applying that approach in general terms to the grievance in this case, the issue is whether the respondent terminated the probationary status of the grievor for an employment-related reason. That can be demonstrated by evidence from the respondent about the grievor's probationary status and the probationary term. As above, these issues are not in dispute in this case and, therefore the respondent has satisfied its burden to that extent. The respondent is also required to provide evidence as to the employment-related reason underlying its decision to terminate the grievor. That issue is very much in dispute in this case. Assuming the respondent can demonstrate an employment-related purpose for the termination, the burden then shifts to the grievor to demonstrate that the dismissal was done in bad faith and not based on an employment-related reason. This is a ". . . very high standard or threshold for the grievor to meet" (*Owens v. Treasury Board (Royal Canadian Mounted Police)*, 2003 PSSRB 33, at para 74). The grievor in this case alleges bad faith.

[56] I am urged by counsel for the grievor to treat the grievor's undisputed and strong qualifications when he started his employment with the respondent as requiring a different standard than would apply to other probationary employees. This is because the grievor was not applying for an entry level position as a helicopter pilot. Instead he was applying for a position that required substantially more flying hours than, for example, even a commercial pilot. Another way to put the point is that the grievor came to work for the respondent near the end of his career, rather than at the beginning. The logic of this submission is that the appropriate standard is one that provides him more employment security than the usual probationary employee and the respondent must meet a more rigorous test than for other probationary employees who are just starting their career.

[57] I repeat that there is no disputing the qualifications and experience of the grievor as a pilot when he commenced employment with the respondent in September 2008. Nonetheless, in order to successfully complete the probationary period as a civil aviation inspector he, like any probationary employee, had to meet certain standards. Some of these standards relate to technical expertise and some of them relate to the high level of trust placed on inspectors and their ability to work independently. The objective is to train the probationary employee so he or she can be given delegated authority to represent the Minister of Transport within Canada and internationally. These standards are the context or comparison for inspectors during their probationary period; the comparison is not the context or standards for other employees in other positions (entry-level or otherwise). For these reasons I conclude that, although there is a different specific context for the probationary assessment of a civil aviation inspector, the same general legal standard (as discussed above) applies to the grievor in this case.

[58] I will next consider some of the employment-related reasons relied on by the respondent for the termination of the grievor's employment. I will also consider the grievor's allegations that the respondent's stated reasons for his dismissal are motivated by bad faith.

B. Inspection of ABC Helicopters

[59] The evidence about this incident is set out in some detail above and, as can be seen, there are a number of factual disputes about what happened. Upon careful

review of all of the evidence, I find that the following is the probable explanation for what occurred.

[60] An inspection of ABC Helicopters was to take place. In an email dated July 16, 2009 the grievor wrote to Ms. Hirota, "[ABC] Helicopters is one of the companies that I am scheduled to do a PVI Process Validation Inspection." As will be seen this email is very much in dispute but I find that there can be no serious dispute that the grievor was assigned this inspection. The factual dispute concerns the extent of his responsibility for it; he testified he was only there to learn and, essentially, the inspection was to be done by the senior inspector, Ms. Hirota. In contrast, the respondent is of the view that the grievor was to take some responsibility during the inspection although it is acknowledged that he was still being trained and this was his first inspection. Such was the evidence of Ms. Hirota and Mr. Heryet.

[61] The grievor relies on a document dated May 1, 2009 for the kind of authority or direction he expected to receive for the ABC inspection and for the extent of his responsibility as an inspector. That document was given to the grievor by the respondent and it sets out the "terms of reference" for the inspection of another company (i.e., not ABC Helicopters). He was not given this kind of document for the inspection of ABC Helicopters and it is submitted on behalf of the grievor that he could not know his responsibilities at the ABC Helicopters inspection without this document. However, the evidence is that this document relates to the inspection of fixed wing operators rather than rotary aircraft such as operated by ABC Helicopters. I prefer the evidence of Ms. Hirota that the practice for the inspection of rotary aircraft does not include the same formal directions to inspectors as for fixed wing aircraft. Whether, as a policy matter, there should be more or less direction to inspectors of helicopters, is not for me to decide.

[62] There is no dispute that a letter of notification of the inspection to ABC Helicopters was required. The grievor's notes of August 5, 2009 confirmed Ms. Hirota's evidence that he did not send the letter of notification; when he was asked about the letter, his notes say he replied "Letter? Uh, going to say no on that". To this Ms. Hirota said "we'll wing it", according to these notes, and I take this to be the alternative approach she described in her evidence. In any case, the grievor did not arrange for the basic enabling authority for the ABC Helicopters inspection and that was an error on his part that is relevant to the evaluation of his work performance.

[63] Returning to the level of responsibility expected of the grievor during the ABC Helicopters inspection, there are some problems with his description of this issue. First of all, it was not challenged in the evidence that he was to fly the aircraft to the inspection site. It is similarly not in dispute that the grievor was late for the flight. Mr. Heryet testified that, when he flies, his practice is to arrive at least an hour before departure time so that the necessary paperwork and checks can be completed. The grievor's notes of August 5, 2009 largely confirmed the evidence of Ms. Hirota on the details of the grievor's tardiness: he was late because of traffic, the passengers were there before he arrived, he apologized to everyone and Ms. Hirota loaded the luggage. I find that was an unsatisfactory explanation from an experienced pilot and from an inspector on his first inspection with his supervisor in attendance. The grievor's responsibility, at a minimum, surely included ensuring that the flight left on time without unnecessary explanations to the passengers.

[64] I also return to the grievor's email of July 16, 2009 to Ms. Hirota, and there is a second email of the same date, containing a reply from Ms. Hirota. These were the subject of considerable disagreement between the parties about the extent of the responsibility given to the grievor for the inspection of ABC Helicopters. For convenience, I reproduce the full version of these emails from Ms. Hirota's "[ABC] Performance Review". That document is contentious but it has an accurate recording of the emails (I have included the emphasis added by Ms. Hirota),

[From the grievor to Ms. Hirota, July 16, 2009]:

[names deleted] *would like to fly to [location deleted] for an inspection and were requesting a ride with the 407. I Bcc'd you an earlier e-mail. [ABC] Helicopters is one of the companies **that I am scheduled to do a PVI.** [Name deleted] and I have plans to get there at the end of August but if **someone else was available to go on this trip now we could get it out of the way?** Whatever you decide, I am happy to help out.*

[Reply from Ms. Hirota to the grievor and others, July 16, 2009]:

*I would be the only one available **to assist you with a PVI** at that time, so you are stuck with me. I have booked CGDOT for Monday, July 27 and Tuesday, July 28th for you. [Names deleted], let Rob know if that will work for you. Rob, can you please fill out a flight request with [names deleted] listed, and I'll get it over to ASD.*

[Emphasis in originals]

[65] The reason for the discussion at all was that the grievor was trying to accommodate the schedule of employees from another department, and they could not travel the date originally set. As Ms. Hirota indicated in her email she was the only supervisor available on the date the passengers could travel. In her evidence, she explained that she was agreeable to others travelling but the needs of her (and the grievor's) department came first. In the end the trip went ahead with the passengers on the new date.

[66] In my view, these emails should be taken to mean what they say. The first one is from the grievor to Ms. Hirota and it says that he was "scheduled to do a PVI." Again, this can only be taken as a corroboration of Ms. Hirota's evidence that the grievor knew before the trip that he was responsible for the inspection. Her evidence is that he was still in training and this was his first inspection. Therefore he was not expected to take full responsibility for the inspection. However, he was still expected to take some responsibility with Ms Hirota there to assist him. I do not accept the grievor's account that he was there to "learn" in the sense that he was there only to observe. He knew he was scheduled to do the PVI, his notes concede that he had been trained to do a PVI and he knew that a significant part of his training was on the job. It follows that I do not accept that the grievor's ambiguous statement in his email, after the fact, that he was "happy to help out" somehow relieved him of all obligations to take on some responsibility for the inspection, an activity that he was being trained for.

[67] Nor do I agree with the submission on behalf of the grievor that there is any significance to the fact that Ms. Hirota edited his email in her notes of August 5, 2009 by removing the reference to helping out. Apart from the conclusion I have made that the reference to helping out does not absolve the grievor of all responsibility, Ms. Hirota left the email intact in her previous notes of July 29, 2009. I find that she simply made an editing decision that has no significance for the purposes of this grievance.

[68] As the grievor recorded in his notes from the August 5, 2009 meeting with Ms. Hirota, they landed at the ABC Helicopters inspection site with the "minimum requirement" of fuel. Those same notes describe him as taking the wrong documentation from home. That error apparently contributed to his faulty information about fuelling sources for the trip. It is not entirely clear, and it was not addressed in

the grievor's evidence, but the notes seemed to say he looked at the correct documentation at home but took the wrong documentation with him. Whatever the particulars of the error, it did not reflect well on the grievor's judgement and it lead to unnecessary uncertainty about fuel for the return trip.

[69] In his notes of August 5, 2009 the grievor stated, "The inspection went fine. Fuel was available (as I knew it would be)". However, it is not in dispute that the aircraft landed with the minimum amount of fuel and Ms. Hirota's evidence that the grievor incorrectly predicted that fuel would be available at the airport was not seriously challenged in cross-examination or by the grievor's evidence-in-chief. His statement in his notes that fuel was available "as I knew it would be" was not corroborated in oral evidence. It is also ambiguous and capable of more than one meaning. A generous interpretation is that he knew fuel would be available somewhere, but that is a vague statement that carries obvious risk. In the end fuel was available from the company being inspected and there is merit to Ms. Hirota's point that it was embarrassing for the respondent to request fuel from the company it was inspecting. I find that the grievor's judgement about what might happen and his after the fact defence of his judgement were both problematic, especially for an experienced pilot seeking to take on significant responsibility as an inspector.

[70] Finally, the grievor's responses to Ms. Hirota at the interviews of July 29 and August 5, 2009 are of concern. Looking at only his notes of the August 5, 2009 meeting, the grievor recorded that he said, "I agree it was a mess and say that after looking at the e-mails, it is apparent to me that we had a breakdown in communication! To me it was clear that I had not planned or was in the planning of a PVI to ABC." Later on in the notes he took the position that he was not the "team leader". Assuming he was not the leader, again, does not mean that he had no responsibility. I find that these notes corroborate Ms. Hirota's evidence that the grievor said to her something along the lines that he "dropped the ball".

[71] Overall, the grievor's actions and responses during the ABC Helicopters incident demonstrate a reluctance to take on responsibility in a position that requires a good deal of it. This was his first inspection and no one expected him to take full responsibility. But taking no responsibility, and even denying any responsibility, were problematic behaviours relevant to judging whether he had the ability to be given partial or full ministerial delegation. His subsequent attempt to implicate Ms. Hirota in

the incident by saying that she was responsible for most of the problems on the trip, and that he was responsible for very little or nothing, reveals a serious misunderstanding of his duties as a probationary inspector.

[72] In my view, the grievor's conduct during and after the ABC Helicopters trip provided an employment-related reason to reject him on probation.

C. Compliance with directions and policy

[73] The respondent relies on a number of incidents for what is described as the grievor's inability to follow directions and to comply with established policies.

[74] In October 2008, soon after he started his employment, the grievor assisted another inspector during an inspection. The other inspector was a senior employee who took the lead for the inspection and the grievor's role was minimal. During the inspection the senior inspector made an error during an emergency simulation and this caused a governor failure while the aircraft was in flight. In the end, there was no damage to the engine but the error caused the aircraft to be grounded for several days and there was significant cost to investigate the potential for damage. At first the estimated cost was about \$1 million and then it was reduced to \$250,000.00. This was not a trivial incident.

[75] Ms. Hirota testified that neither the senior inspector nor the grievor told her about the incident and that is an accurate statement. Instead, she heard about it first from the company being inspected and she had to approach the senior inspector and the grievor to get an explanation. Ms. Hirota said in her evidence that all inspectors were required to report these kinds of incidents and she was "shocked" that neither inspector had told her about it. Ms. Hirota discussed the incident with the grievor, she obtained a written statement from him but he "had no explanation" for why she had not been told. The senior investigator was given significant discipline but he was not dismissed. The grievor was not disciplined. Ms. Hirota, in cross-examination, agreed that this incident was not in the grievor's performance report of April 2009. She nonetheless relied on it as a reason to reject him on probation. She strenuously denied she included this incident because the respondent's justification for rejection on probation was "hopeless" and that it had been included simply to make the grievor look bad. Mr. Heryet, in his evidence, confirmed that he talked to Ms. Hirota about the

incident and that he asked her to discuss it with the grievor and the senior investigator.

[76] In my view some latitude has to be given to the grievor because he was newly hired, he had a minimal role in the inspection and the error during the flight was made by the senior inspector. Nonetheless, the grievor was a very experienced pilot and it is surprising that he did not know the importance of advising his supervisor about the incident. It is self-evident that the incident reflected poorly on the reputation of the respondent and Ms. Hirota and Mr. Heryet were entitled to rely on the judgement of the inspectors on the scene to protect that reputation. In the end there were two problems; the error during the flight by the senior inspector and the decision by the senior inspector and the grievor not to tell the respondent.

[77] It is true that the respondent did not put this incident in the grievor's April 2009 performance report. However, when deciding whether the grievor should be rejected on probation the respondent was entitled to look at the entire period of probation. I might add that it is also of concern that in his evidence, more than 2 years after the incident, the grievor attempted to minimize the situation by saying he was not the team lead. That is, he did not acknowledge that he should have told the respondent about it. Instead he declined to take any responsibility. Unfortunately, that position demonstrates that he still does not understand the seriousness of the situation, his error in not reporting it and the need for inspectors to take responsibility for matters such as this.

[78] A second incident occurred in February 2009 when the grievor and Ms. Hirota scheduled a work trip to Yellowknife, Northwest Territories. The grievor did not testify about this incident. Ms. Hirota and Mr. Heryet were cross-examined about it but a question in cross-examination is not evidence. No grievance was filed about this incident.

[79] In her evidence Ms. Hirota described how she noticed that the grievor had not made appropriate travel plans for the trip. The problem was that the grievor had booked flights so that there was a longer lay-over than necessary and, therefore, more overtime was required. Ms. Hirota consulted with Mr. Heryet and they both decided that the grievor had to change his travel plans. She tried to call the grievor on his cell phone and sent him an email asking him to change his travel plans. The grievor did not reply and Ms. Hirota sent another email on February 17, 2009 as follows:

Hi Rob. I hope your course is going well. I left you a message on your cell yesterday, an [sic] sent an email regarding your travel arrangements for Yellowknife.

Since I haven't heard from you, I assume that you have not rescheduled your flights as requested in the messages. As there is no preapproved overtime, if you wish to continue with the itinerary as it is booked at this time, any overtime accrued will not be paid. I will leave you another message on your cell phone regarding this message.

Cheers;

...

[80] The grievor replied the same day:

Hi Shona.

The course went well. I only received your msg's about a 1/2 hour ago ... weird.

Tried to change the ticket but since I booked AC [Air Canada] and you booked Can North, I would get a \$400.00 credit for may [sic] AC portion but need to pay \$1000.00 for the one way Can North.

No sense in spending a \$1000 bucks so I will leave my ticket the way it is.

...

[81] In the end the respondent advised the grievor that he would not be entitled to a claim for overtime. I agree with Mr. Heryet's statement in evidence that the grievor's actions demonstrated a "poorly planned decision". It is true that by the time the grievor responded to Ms. Hirota it was too late to make a change but, as Mr. Heryet put it in his evidence, "Why were we even in that situation?" Mr. Heryet also expressed surprise that there were difficulties with the grievor accepting direction in light of his extensive work experience. It may be technically true that the grievor never specifically refused the direction from Ms. Hirota (this was put to Mr. Heryet in cross-examination and, again, the grievor did not testify about it). However, what can only be called the grievor's tactical delay in responding to Ms. Hirota is indicative of difficulty following directions, taking responsibility and suggests a potential for problems in the future.

[82] I also note two other incidents. First, in April 2009, the grievor asked Ms. Hirota for assistance on an issue related to his training. As they were walking to another

department to get what the grievor needed, he stopped to have a conversation with someone else. Ms. Hirota waited for the grievor but then left him to his conversation, obtained the information and put it on his desk. While walking back she noticed he was still involved in his conversation. On a second occasion, in January 2009, the grievor took a cell phone photograph of an employee in another department. She objected and reported it to her supervisor who raised the issue with the grievor. According to Ms. Hirota, the grievor gave a disrespectful response to the employee when she asked him to delete the photograph. In cross-examination, the grievor said he was "taken aback" by the reaction of the person he photographed and "I did not realize I had offended anyone." Further, he "deleted [the photograph] right away" and, at the suggestion of the other employee's supervisor he wrote a letter of apology which was accepted.

[83] I conclude that there are some objectionable aspects to these two incidents. For example, when the grievor walked away and ignored his supervisor, after asking her to help him, he was disrespectful to her. This is relevant to whether the grievor can be collegial with his supervisors and follow directions. As well, even on the grievor's account of the photograph incident, it required the intervention of the other employee's supervisor. While these are small matters, I do not agree with the submission of the grievor that they are trivial in the context of a probationary review. Put another way, I cannot find that they are irrelevant. By themselves they would perhaps not be significant but, unfortunately, there are other incidents that are discussed in this decision where the grievor was reluctant to follow directions and policy.

[84] Another incident relied on by the respondent is the allegation that the grievor had difficulty following directions for a claim for overtime and an unplanned hotel claim to attend a course in Richmond, B.C., in February 2009. Ms. Hirota testified about this; the grievor did not testify but his counsel cross-examined Ms. Hirota about it. There was no grievance filed by the grievor about it.

[85] It arose because the grievor decided to stay at a hotel in Richmond instead of driving to his home in Abbotsford because it was snowing that night. The next day he asked whether he could claim the hotel bill as an expense and he explained to Ms. Hirota that he had been advised by his mother and a friend not to travel that night. Ms. Hirota did not approve the claim. She investigated the travel conditions that night

and found out that there were no road closures and no accidents had been reported. Further, a local helicopter company reported that its pilots were all able to travel on the roads for work. There was more snow in Abbotsford than in Richmond.

[86] I appreciate the respondent's concern about controlling costs, and the grievor apparently accepted the cost of the hotel room without complaint. However, in my view, for reasons of safety, some deference to the judgement of the grievor is appropriate and I am unable to find that this incident involved any employment-related problem relevant to his probationary status when he exercised that judgement. I note that this conclusion is consistent with Ms. Hirota's testimony that it was "fair enough" for the grievor to want to stay in the hotel in the circumstances of a snowstorm.

D. IFR Rating

[87] As described above the grievor was hired in September 2008 and, according to the respondent, soon after that he disclosed to Mr. Heryet that he did not have his IFR rating. Mr. Heryet expressed surprise to the grievor because it was an "essential" qualification for the position of civil aviation inspector. The grievor's response to this was that he had sent in an older, out-dated resume or application by mistake. This was in the context of a hiring process that had been amended to accommodate the grievor's incomplete application in the first place. The application was accepted late and it apparently had missed the screening that would have taken place had it been vetted at the beginning of the process.

[88] It can be a serious employment offence for an employee to accept employment on the basis of an incorrect application. Early decisions of arbitrators treated this as a very serious employment offence, often resulting in dismissal. However recent decisions consider the facts of each individual case. For example, the fact that the incorrect information did not affect the employee's ability to do the work is relevant to any penalty, as is the fact that the employee performed satisfactorily over a long period of time before the respondent discovered the problem. See, for example, Brown & Beatty, *Canadian Labour Arbitration*, Fourth Edition, December 2010, at para 7:3324. I note that Mr. Heryet's and Ms. Hirota's evidence that an IFR rating was essential to the work of a civil aviation inspector was not disputed. I take the grievor's decision to disclose his lapsed rating very early on in his employment as a confirmation that he understood the importance of the IFR rating to his work as an inspector.

[89] The grievor offers two explanations for this situation. First of all, he testified that he sent a dated and incorrect resume with his application; this is essentially a submission that a minor error was made and admitted. Since an IFR rating is essential to the work of inspectors I do not agree that this was a minor matter. It is true that the respondent could have exercised greater diligence in the hiring of the grievor, although the reason for the lack of diligence was to accommodate his incomplete application. In any event, the primary obligation in these circumstances is on the grievor to ensure that his application is current and complete. I do not accept the grievor's explanation for how the problem arose in the first place to be of great significance.

[90] The grievor's primary defence to his lapsed qualification is that he disclosed it during his hiring interview. This did not come up in his evidence in chief. But in cross-examination he agreed to a number of things such as he told Mr. Heryet during the interview that he did not have the correct certification and that two other members of the hiring panel were present. When he was asked for the reaction of the panel the grievor stated, "They said it would be taken care of, [Mr. Heryet] said that." This was put to Mr. Heryet in cross-examination. He expressed surprise at this suggestion. He also denied he said it would be taken care of and he said that the other members of the panel would have made some comment if he had said anything. The result is that there is a factual dispute that must be resolved about what, if anything, was said during the hiring interview about the grievor's lapsed IFR rating.

[91] I note that the grievor did not give any evidence about the conversation with Mr. Heryet just after he started work as an inspector when he disclosed his lapsed certification. As noted above the extent of the grievor's evidence on this issue is his answers on cross-examination and those answers related only to his account of the interview before he was hired. Mr. Heryet's evidence is therefore the only version of the conversation after the grievor was hired. Mr. Heryet explained that the grievor approached him to advise that he did not have his IFR rating. When Mr. Heryet testified in the hearing of this grievance his initial surprise of the grievor's disclosure in September 2008 was still evident and genuine. This surprise related to the fact that the grievor was somehow hired without one of the essential qualifications.

[92] In my view, it is significant that, during the conversation with Mr. Heryet after the grievor started work, the grievor was not reminding Mr. Heryet about the comment during the hiring interview that the problem would be taken care of. On the contrary

the evidence is that during this conversation the grievor disclosed to Mr. Heryet that his IFR rating had lapsed. I find that this was the first time Mr. Heryet became aware of it. The evidence is also that the grievor explained to Mr. Heryet that the reason the problem arose at all was because the grievor submitted an incorrect and dated application. If the conversation was to confirm or discuss a commitment made during the hiring interview by Mr. Heryet (to take care of the problem) then the issue of whether the application was dated would not have come up or it would have come up in a different way. Finally, the respondent insisted that the grievor pay for the direct expenses of obtaining his IFR rating and the respondent paid for the grievor's time. It did so because it sought and obtained from the grievor a contribution to fixing a problem he was primarily responsible for. If a commitment had been made to the grievor during the hiring interview that the problem would be taken care of, I would expect at least some evidence that he disputed, or at least commented on, having to make any contribution at all. There is no such evidence and, in fact, the evidence is that the grievor accepted the shared expenses without any protest or comment.

[93] Taken as a whole, the evidence before me supports the following conclusions on this issue. The grievor submitted an incomplete and inaccurate application for employment; specifically the application stated that the grievor's IFR rating was current when it was not. The hiring process was altered to accommodate his application and the error was not discovered. The grievor was an attractive candidate because of his experience and he was ultimately offered employment (including a one year probationary period). During the hiring process, including the interview, the grievor did not disclose his lapsed IFR certification. The first time anyone associated with the respondent knew about the lapsed IFR rating was when the grievor disclosed it to Mr. Heryet after the grievor started work in September or early October 2008.

[94] The grievor submits that this incident happened a long time ago, it was dealt with by Mr. Heryet and he successfully obtained his IFR certification in October 2008. On this view, the matter was appropriately resolved by the parties and it is not a valid issue for the respondent to raise as a ground for dismissal almost a year later. I disagree. As Ms. Hirota pointed out in her evidence a probationary period is just that, a period of time during which employers have an opportunity to "conduct a more thorough assessment of the employee than was possible during the initial selection process", according to the respondent's guide to managers cited above.

[95] In this case, the grievor's probationary period was from September 22, 2008 to September 23, 2009. The respondent was entitled to examine the grievor's performance during this entire period and then make a decision about whether he had successfully fulfilled the requirements of the position of civil aviation inspector to the standard required of a new employee. As it turned out, that period of time included a number of other concerns so it cannot be said that the problem with the IFR rating was an isolated event early in the grievor's probationary period. I am unable to find that the serious problem of the grievor's lack of an essential qualification, a problem very much in his control, is not relevant or otherwise not to be considered as part of the whole probationary period in question.

[96] In my view, the grievor's inaccurate application for employment, which he revealed after he was hired, provides an employment-related reason to reject him on probation.

E. Bad faith and other issues

[97] As can be seen from the evidence, the respondent relied on a large number of incidents to support its decision to reject the grievor on probation. I have reviewed the merits of some of those incidents above and I have concluded that there are employment-related reasons to support the respondent's decision

[98] The grievor alleges that the respondent's decision to reject him on probation was motivated by bad faith. I will review a number of incidents relied on by the grievor for this submission.

[99] The first relates to the incident where the grievor took an instrument rating test in a simulator in Florida in December 2008 for multi-engine aircraft. He failed. Ms. Hirota (who was also there) contacted Mr. Heryet and obtained approval to pay for a new test. The grievor passed this second test. He raises a number of problems with both tests and urges me to find that the entire process did not meet the required standards or rules. Logically and perhaps surprisingly, the result would be that the grievor would not have his instrument rating and could not work as an inspector.

[100] In any event, I am asked by the grievor to apply a number of regulatory requirements to this incident. For example, there is a document titled "Approved Check Pilot Manual (TP6533)" that sets out a number of requirements for a pilot

proficiency check (PPC). These include a program description, approved check pilot (ACP) responsibilities and authorization, ACP nomination criteria, delegation and a number of other issues such as standardization, liability and conflict of interest. Daniel Slunder testified in support of the grievor about these requirements. He is a very experienced pilot and a former employee of the respondent. In the latter position he worked as an inspector and he had considerable responsibility for these regulatory matters, including drafting some of the policy. He is also the chair of the CFPA.

[101] In his evidence Mr. Slunder emphasized the importance of a rigorous PPC as a means of maintaining a high standard for pilot certification. He was specifically concerned about the testing of the grievor in Florida and that there had not been a pre-flight briefing or post-flight debriefing as required by the manual. In his opinion this meant that the grievor did not fail the test because it was not a valid test to begin with. As well, as Mr. Slunder put it, after a "busted ride" (i.e., a failed test) the proper approach is to tell the pilot the "trip is over", do a de-brief, tell the pilot he or she failed and advise the person of the right to appeal. Transport Canada would then issue a notice of suspension. Mr. Slunder was concerned about testing someone again right after a failed test because a person was "not in the mood" to do a "re-ride" right away. The next day would have been more appropriate. His concern was that the grievor was re-tested immediately.

[102] In his evidence the grievor described a rushed process to get him through the test and he said his failure of the first test was, in part, a result of not being advised that he was going to have a check ride in Florida. Ms. Hirota and Mr. Heryet, in their evidence, expressed considerable surprise that the grievor did not know why he was sent to the simulator. Mr. Heryet's evidence was that the grievor "should have known that". Ms. Hirota's evidence was that the test was not part of a formal ground school subject to the formal requirements described by Mr. Slunder. The respondent used the simulator to test inspectors for multi-engine helicopters so that they could fly them safely in their work as inspectors but the respondent did not operate these types of aircraft. There is no evidence of any grievance about the testing in Florida and there is also no evidence of any complaint or concern registered with the appropriate regulatory authorities. Everyone, including the grievor, appears to have accepted the result at the time that he was successful in obtaining his certification.

[103] I have some difficulty finding that this incident demonstrated bad faith on the part of the respondent in the sense of setting up the grievor for failure. I say this primarily because the respondent went out of its way to make sure that the grievor passed the required test. If there was bad faith, one would have expected the respondent to make sure the grievor did not have the opportunity to have a second test. The grievor testified that he did not know he was going to be tested on the simulator. Given that the trip was for the testing and the simulator was known by everyone to be for that purpose I have some problem accepting his explanation. However, assuming it was a surprise to him to be tested, it is not bad faith for the respondent to spend more money and more time to have a second test to make sure he passed. To the extent that the grievor and Mr. Slunder raise issues about the regulatory aspect of the Florida tests, that is an issue for another agency with the appropriate authority.

[104] The grievor also alleges that the review of his performance was motivated by bad faith. For example, it is alleged that the process that led to the April 2009 performance report was improper. The grievor did not testify about this report in his evidence in chief; in cross-examination he agreed he saw the report in April 2009 and that he did not grieve it. In re-direct he was asked why he did not grieve it and he answered that he was scared for his job because he was a probationary employee. Ms. Hirota and Mr. Heryet testified about the report at some length and they were cross-examined about it in more detail. Overall, the primary source of the evidence on this issue is from Ms. Hirota and Mr. Heryet.

[105] The grievor's allegation of bad faith involving the performance report is that Ms. Hirota prepared the document without discussing it with him and that he was not given an adequate opportunity to review it. He did not say this in his evidence; it is, again, an assertion. There was a meeting between Ms. Hirota and the grievor about the report and it is true that this was not pre-scheduled but I do not find that to be of great significance. The meeting took place in a private room where Ms. Hirota read out the performance objectives and then she left the grievor so that he could read the narrative. She talked to Mr. Heryet while she was out of the room and she came back in and they went over the narrative. Ms. Hirota testified she was surprised that the grievor was not upset, as she would have been if she was given such a negative report. Instead the grievor said words to the effect that the report made him "look like an ass" and there was "nothing new here". I find that that is an accurate statement of the

grievor's reaction to the report. It was put to Ms. Hirota in cross-examination that the grievor said to her "You have made me look like an ass" instead of "I look like an ass", but a question in cross-examination is not evidence.

[106] Ms. Hirota also testified about the length of the meeting. She disagreed that it lasted about 15 minutes and she explained this by saying she could not understand how it could have happened that quickly when she read the objectives, left the room for a while and then came in and they talked about the narrative. To her it "took an eternity", although this is clearly a subjective statement that reflects her stress of giving a negative evaluation to an employee. Since the grievor did not testify on the length of the meeting I must accept Ms. Hirota's estimate of the time as well as her account of what happened generally. I find the meeting took longer than 15 minutes. Ms. Hirota gave the grievor an opportunity to provide comments and he did so the same day. Mr. Heryet testified that he met with the grievor about the report and, unusually, the grievor initiated that meeting. The grievor said again that the report made him look like an ass and Mr. Heryet said to him that the report indicated "some real deficiencies and you need to pull up your socks". The grievor testified that Mr. Heryet said "his style was to work with his supervisors and he would send [Ms. Hirota] an email" and "there was no discussion beyond that." I am not sure there is a great difference between the two accounts but, where there are differences I find Mr. Heryet's account of the meeting more reliable.

[107] Considering all of this evidence I am unable to find any bad faith or anything else objectionable in the process used to present and explain the performance report to the grievor and the efforts of Ms. Hirota and Mr. Heryet to explain that the grievor had to improve his performance.

[108] The grievor also takes issue with the program of on-the-job training he participated in and he submits that this was also motivated by bad faith. This is because the OJT had to comply with two documents; "On-the-job Training (OJT) Program" (undated) and "Structured on-the-Job Training Program - Generic (SOJT)", (October 2002). For example, the latter document (section 5) provides "samples and explanations of four generic tools used in the SOJT Program". These are: a progress report, a master task list, a notice of completion, a program feedback and assessment form and a "Supervisor's List of Qualified Coaches". There is no dispute that the OJT given to the grievor by the respondent did not include these records. In another

section of the same document (section 2) there is a "Program Description" which establishes a methodology and it states that "[t]raining not documented is deemed not to have occurred." I am urged to find that any training given to the grievor must be deemed not to have occurred because it is not supported by the required documentation.

[109] The primary evidence on this point was given by Ms. Hirota and Mr. Heryet, in chief and under cross-examination. Ms. Hirota testified that she was not aware that there was documentation available about the grievor that is referred to in these documents. She said she did not use these documents as a structure for the OJT she supervised. In re-direct she said she was "not familiar with this structured form" and she used the OJT program that she and others went through in the past. In his evidence Mr Heryet said he thought these documents were available on-line and he described the requirements in these documents as "generic". He was part of the working group within the respondent that developed OJT. With regards to the document "Structured on-the-Job Training Program - Generic (SOJT)", Mr. Heryet said that the process set out there is carried out as part of the ministerial delegation process. When an employee is being recommended for delegation, then the document is followed but the grievor never got to that point.

[110] I accept Mr. Heryet's description of the application of the "Structured on-the-Job Training Program - Generic (SOJT)" document as setting up a process that is used for delegation purposes. There is no evidence to the contrary and, in fact, in a foreword, the document states that it is used to "qualify the delegated officer to exercise Ministerial Delegation of Authority and perform other related tasks." As well, its title identifies the program set out in the document as "generic" as Mr. Heryet testified. With regards to the other document, "Structured on-the-Job Training Program - Generic (SOJT)", the purpose of the document is to establish "guidelines" for OJT. Further, while there is considerable detail recorded in attached modules, the document also states:

...

OJT may take the form of a briefing, or may be completed through observation, document familiarization/reference, or practical training where the participant assists a qualified person in the performance of a task or completes the task under the supervision of a qualified person (trainer).

...

[111] For the purposes of this grievance I cannot find evidence of bad faith or any other relevant problem with the training in this case. It is true that the grievor's training did not follow the documents submitted on his behalf but the evidence is that these documents are what they say they are, generic guidelines. It cannot be said that there was no structure for the training of the grievor as evidenced by the individual learning plan in April 2009. I might add that my role in this grievance is to adjudicate whether the rejection of the grievor on probation was consistent with the applicable legislation and case law. I raise this issue because, to some extent, the submission of the grievor urges me to enter into various policy issues about, for example, the extent and quality of the training of pilots and inspectors. I have no doubt as to the importance of that training to the safety of the public, but I am not adjudicating that issue.

[112] I also do not accept the grievor's allegation that he was denied a bona fide assessment of his probationary status. The record is clear that he knew at the latest on February 23, 2009 that his employment was at risk, as he recorded in his own notes of that date. Then the performance report in April 2009 clearly identified performance problems. These were serious deficiencies that were discussed with the grievor by Ms. Hirota and Mr. Heryet and he was told he had to improve. The grievor obviously disagrees with his rejection on probation but it cannot reasonably be said that his rejection was a surprise. His performance problems were identified in considerable detail at an early date and they were discussed with him. Unfortunately, although he was given a reasonable opportunity to demonstrate his competence he could not do so.

[113] For completeness, I similarly do not accept it was bad faith for the respondent to go out of its way to allow the grievor to obtain an essential qualification (his IFR rating) when the reason for not having that qualification was primarily his doing. As well, it was not in bad faith for Ms. Hirota to keep a detailed record of incidents such as the ABC Helicopters inspection, for her to ask the grievor whether he was unable or unwilling to fly Robinson helicopters or for her to undertake a thorough review of what other employers and pilots did during the snowstorm in Richmond. These were legitimate issues for a supervisor to question and investigate. The fact that I reach a different result above by concluding that the snow storm incident was not an employment-related reason to reject the grievor on probation is not bad faith. Ms. Hirota was entitled to make that decision at that time as part of her responsibilities as a supervisor. I am also unable to find bad faith when Ms. Hirota

questioned the grievor about his role in the incident about the in-flight error by another senior inspector that required significant cost to either repair or investigate. It was a legitimate and important issue for her to question why she had heard about the incident from the company being investigated rather than from the inspectors on the scene.

[114] Finally, it is suggested on behalf of the grievor that Ms. Hirota was on something of a campaign against the grievor. In her notes of August 5, 2009 she recorded the grievor alleging that she was "gunning" for him. At one point during the hearing of this grievance this was described, unfortunately, as a "witch hunt." On this view of things, Ms. Hirota was a new supervisor and she was, at a minimum, overly zealous about assessing the performance of the grievor. Mr. Heryet was questioned about this on cross-examination and he expressed support for Ms. Hirota in all her decisions. Indeed, many of those decisions were made after consultation with Mr. Heryet or they were even a result of directions from him to Ms. Hirota (such as the refusal to pay overtime to the grievor for his poor planning for the Yellowknife trip). Mr. Heryet denied that there had been any reason to replace Ms. Hirota as the grievor's supervisor. As with other issues, the grievor's evidence on this point was minimal or indirect. For example, he testified that he told Mr. Heryet he "had issues" with his April 2009 performance report but he did not testify that he was being treated unfairly by Ms. Hirota.

[115] I accept that Ms. Hirota was perhaps over stating the situation when she described the grievor as "mutinous" on one occasion. However, that reflected frustration on her part rather than bad faith. I note also Ms. Hirota's assessment of the grievor's actions as being "insubordination" when, for example, she wrote about the grievor not responding to an email and phone call to change his travel plans to avoid overtime. The use of "insubordination" in those circumstances was consistent with the labour relations meaning of that term. It was certainly appropriate for a supervisor to question and direct an employee about travel scheduling and travel cost and expect a prompt response. Overall, the suggestion that somehow the grievor was being victimized by Ms. Hirota is not supported by the evidence at all. In fact, as shown, for example, by her efforts to make sure the grievor passed the Florida test a second time, she was obviously trying to get him the training and certification he needed to ultimately be qualified for ministerial delegation. The fact that he did not reach that point must be seen as the grievor's responsibility rather than his supervisor's.

[116] It follows that I do not find there was bad faith on the part of the respondent.

VI. Summary & conclusions

[117] The grievor was hired by the respondent as a civil aviation inspector in September 2008, with a one year probationary period. He brought to his new position considerable experience as a helicopter pilot.

[118] Very soon after he was hired he disclosed to the respondent that a certification that was essential for his new position had lapsed. His explanation for this was that he had mistakenly sent an out-dated resume. The respondent had altered the hiring process in order to accommodate the grievor's application and this meant that the vetting of the essential qualifications of the grievor was missed. After he was hired the grievor renewed his certification, with the respondent paying for his time and he paid for the expenses of the training.

[119] In April 2009 the respondent recorded in a performance report a number of performance issues and these were discussed with the grievor. He provided minimal comments on the report and he was advised that his performance had to improve. Subsequent to the performance report other issues about the grievor's performance arose. Ultimately the grievor was told that he was rejected on probation, effective September 23, 2009. The grievor challenges the respondent's decision to reject him on probation. He alleges that the decision was motivated by bad faith and it was done for a non-employment purpose. He gave limited evidence and in some cases no evidence at all on some of the issues in this grievance.

[120] It is agreed that if the respondent had employment-related reasons for the rejection of the grievor on probation, and it was not motivated by bad faith, an adjudicator is without jurisdiction to proceed further. As well, a just-cause standard does not apply to whether the respondent properly rejected the grievor on probation.

[121] The evidence of the incidents relied on by the respondent is reviewed above in considerable detail. It demonstrates the grievor's inability to follow reasonable directions from his supervisors, poor planning of his work, inability to accept responsibility in a position that requires a high level of responsibility as well as the problems with his initial application for employment. The respondent's assessment of the grievor's performance was not motivated by bad faith in any respect. Allegations

that the respondent violated various regulatory requirements related to training and testing are either unsubstantiated or not issues to be considered within the context of this grievance.

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

(The Order appears on the next page)

VII. Order

[123] The grievance is dismissed.

August 30, 2011.

**John J. Steeves,
adjudicator**