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*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

CLAIRE GAUTHIER

Grievor

and

**DEPUTY HEAD
(Department of National Defence)**

Respondent

Indexed as
Gauthier v. Deputy Head (Department of National Defence)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Renaud Paquet, adjudicator

For the Grievor: Vicky Ringuette and Nicolas Brunette-D'Souza, Association of Canadian Financial Officers

For the Respondent: Sean Kelly, counsel

Heard at Ottawa, Ontario,
April 22 to 25 and June 25, 2013.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] On October 14, 2011, Claire Gauthier (“the grievor”) filed a grievance contesting the decision of the Department of National Defence (“the employer”) to demote her from group and level FI-04 to group and level FI-03 as of September 21, 2011. Ms. Gauthier referred her grievance to adjudication under paragraph 209(1)(b) and subparagraph 209(1)(c)(i) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22; “the Act”), alleging that she had been demoted for disciplinary reasons (209(1)(b)) and for unsatisfactory performance (209(1)(c)(i)). During the hearing, Ms. Gauthier alleged that she had been demoted for disciplinary reasons.

[2] A letter from the employer dated September, 20, 2011, informing Ms. Gauthier that she had been demoted, includes the following passages:

[Translation]

...

1. *The purpose of this letter is to inform you of my decision about the administrative measure to be taken in response to the findings of investigations indicating that you do not have the required qualifications to hold a management position. You were made aware of the findings of the investigations on July 27, 2011.*

2. *In determining the appropriate action, I took into account the fact that you had harassed two other subordinates in 2009. Following those events, a number of measures were taken to help you improve your management and interpersonal skills. You completed the Diversity and Employment Equity course in November 2008 and a course on labour relations for managers and supervisors in March 2009. Moreover, in May 2010, you forwarded to us a personalized service offering from the firm Spiralix, which specializes in non-violent communication, to improve your interpersonal communication, assertiveness and leadership skills. Since this proposal was well targeted to achieving the desired results, it was approved. Specifically between June 23 and December 3, 2010, you completed 20 hours of coaching and took part in initial two-day training on open communication in Montreal. In December 2010, you requested additional coaching to continue to develop your communication and leadership skills. This request was also approved and, between January and March 2011, you completed an additional 13.5 hours of coaching.*

3. *Unfortunately, no improvement was observed, and the findings of the investigations clearly show that you did not*

benefit from all the efforts. Therefore, I must conclude that this behaviour is attributable to the fact that you do not have the interpersonal and management skills required to supervise employees. Therefore, I regret to inform you that you do not meet the requirements of your position.

4. I am convinced that you have the technical knowledge and skills to work in the finance field and I intend to maintain your status as an employee within the organization in a position that will enable you to use your skills more effectively. We explored all the options but were unable to find a non-supervisory position at group and level FI-04 within the Department. Thus, in accordance with the authority delegated to me under paragraph 12(1)(d) of the Financial Administration Act, I have determined that a demotion for unsatisfactory performance is the appropriate action.

...

[3] In her grievance, Ms. Gauthier also contests the findings of the investigation reports referred to in the first paragraph of the above letter. However, during the hearing, her representatives stated that they were no longer contesting the reports and that they accepted the findings.

II. Summary of the evidence

[4] The parties jointly entered into evidence three fairly large sets of documents. The employer called as witnesses Lieutenant-Colonel Annick Chantal, Sergeant Judy Hudec, Christian Stumpf, André Deschênes, Lieutenant-Colonel Pierre Bouffard, Claude Rochette, Major Christopher Côté, Mario Villeneuve, Jonathan Hood and Major-General R. P. F. Bertrand. Ms. Gauthier also testified. At the time of the incidents that concern them specifically, Lieutenant-Colonel Chantal (then Major) reported to Ms. Gauthier, as did Sergeant Hudec, Major Côté and Mr. Villeneuve, who was a military member at the time. Between May 2008 and September 2011, Mr. Stumpf, Mr. Deschênes, Lieutenant-Colonel Bouffard and Mr. Hood were successively supervised by Ms. Gauthier. Major-General Bertrand has worked for the employer in the Finance Branch since August 2010. With the exception of Mr. Rochette, all the witnesses reported to Major-General Bertrand at one time or another during the period in question. Between June 2009 and August 2010, Mr. Rochette was a military member with the rank of Brigadier-General and performed the duties of the position later held by Major-General Bertrand.

[5] Ms. Gauthier has been working for the employer in the finance field since 1997. She has two bachelor's degrees, one in business administration with an HR option earned in 1992, and the second in accounting science, earned in 1995. She also holds a master's degree in business administration, which she took part-time and completed in 2001. Between 1997 and 2003, Ms. Gauthier held several positions as a finance analyst at group and level FI-01 to FI-03. Then, in 2003, she was promoted to group and level FI-04. From 2003 to 2007, she held the position of Resource Advisor for the Canada Joint Delegation to NATO in Brussels. In September 2007, she was transferred to the position of Section Head, Financial Arrangements, at the Headquarters Office in Ottawa. In this last position, she supervised a team of 6 to 10 civilian and military employees.

[6] The work description for the position held by Ms. Gauthier from September 2007 to September 2011 lists the key activities of the position, including a series of duties related to administration and financial management. That last activity reads as follows: “[translation] Supervise a staff of up to (7) full-time employees.”

A. Ms. Gauthier's performance appraisal

[7] The parties entered into evidence reports on Ms. Gauthier's performance appraisals for fiscal years 2004-2005, 2005-2006 and 2006-2007, the period during which Ms. Gauthier worked for the employer in Brussels at group and level FI-04. In each report, Ms. Gauthier achieved outstanding results, and the comments praise her work, including positive comments made in June 2006 and April 2007 about her excellent skills in financial and human resources management.

[8] The parties also entered into evidence reports on Ms. Gauthier's performance appraisals for fiscal years 2007-2008, 2008-2009 and 2009-2010. In June 2008, Lieutenant-Colonel B.G. Pelletier appraised Ms. Gauthier's performance for the period from September 2007 to March 31, 2008. He indicated at the time that she had fulfilled all the requirements of the position and that she had contributed significantly to the organization's success. This report does not contain any negative comments about personnel management. On the contrary, the supervisor wrote as follows: “[translation]. . . Ms. Gauthier is a competent FI who is respected by others and who was able to raise awareness among DEFSSO personnel of their responsibilities.”

[9] In June 2009, Mr. Stumpf appraised Ms. Gauthier's performance for the period from May 1, 2008, to March 31, 2009, and gave her the same rating as the one she had received in her previous appraisal, in other words, that she had fulfilled all the requirements of the position. The reviewing officer wrote that Ms. Gauthier was very competent and that she had used her professional skills to achieve the organizational objectives. With respect to human resources management, the report contains the following comments:

[Translation]

...

Ms. Gauthier properly informed the personnel in her section of their responsibilities, duties and roles in order to support client needs. . . .

...

Ms. Gauthier has always done her best to inform and help members of her section as concerns career planning and training in order to enhance their knowledge, efficiency and career paths.

...

Ms. Gauthier gave her team every chance to seek language training (French and English). She managed the needs of her section properly, even though she lost five members in the past year.

...

I would like Ms. Gauthier to receive more training on personnel management with respect to taking everyone's needs into consideration, for example.

[10] In August 2010, Mr. Deschênes appraised Ms. Gauthier's performance for the period from June 1, 2009, to March 31, 2010, and gave her the same rating as the one she had received in the previous two appraisals, in other words, that she had fulfilled all the requirements of the position. The reviewing officer, Mr. Rochette, agreed with Mr. Deschênes's comments about the grievor's future potential for more senior positions. Mr. Deschênes's comments are very positive overall. With respect to human resources management, the report contains the following comments:

[Translation]

...

Ms. Gauthier supervised a group of six military and civilian employees at different levels, including three under her direct supervision. For several reasons, during the period from June 1, 2009, to March 31, 2010, four of the six employees were new to their positions. Therefore, Ms. Gauthier had to deal with a somewhat complex situation (levels, military vs. civilian) requiring great flexibility in her approaches. Although Ms. Gauthier performed very well in providing support to those employees from a professional development and performance standpoint, she will need to work on ensuring greater stability in the work environment.

...

Furthermore, Ms. Gauthier monitored developments in several files under her responsibility to ensure everyone was complying with the established terms and rules. She definitely has the intellect and professional capacity to progress to higher levels once certain aspects of personnel management have been refined.

...

[11] Between July 2010 and September 2011, Ms. Gauthier reported to Mr. Hood, who never appraised her performance. Mr. Hood testified that he had not completed a performance appraisal for Ms. Gauthier so as not to interfere with the investigation into the harassment complaints filed against her.

[12] All the witnesses who had supervised Ms. Gauthier directly or indirectly feel that she is very competent in managing financial arrangements.

B. Harassment complaints against Ms. Gauthier

[13] Following a complaint filed by Major Chantal (now Lieutenant-Colonel) on March 10, 2009, an investigation conducted by an external firm found on February 2, 2010 that Ms. Gauthier had harassed Lieutenant-Colonel Chantal on November 4, 2008, by criticizing her in a raised voice in front of other people, and then on January 23, 2009, by criticizing her judgment and uttering hurtful and inappropriate words given the circumstances.

[14] On February 2, 2010, the same external firm also submitted a report on an investigation conducted at the employer's request following an incident that had

occurred on March 13, 2009, involving Sergeant Hudec and Ms. Gauthier. The report indicates that, on that date, Ms. Gauthier was verbally aggressive towards Sergeant Hudec, speaking to her very loudly and shouting while at the office. The report also indicates that this was not an isolated incident.

[15] After the two investigation reports were submitted, Mr. Rochette summoned Ms. Gauthier to a disciplinary hearing held on March 30, 2010. Mr. Rochette found that Ms. Gauthier had harassed Lieutenant-Colonel Chantal and Sergeant Hudec and had breached the standards of conduct and the *Values and Ethics Code for the Public Service*. On May 4, 2010, he gave her a written reprimand and asked her to take a series of training courses. The following excerpts of the letter summarize the key points, as follows:

[Translation]

...

. . . I conclude that you have breached the standards of conduct and the Values and Ethics Code for the Public Service. You demonstrated harassing behaviour towards Major Chantal in November 2008 and Sergeant Hudec on March 13, 2009. This is unacceptable behaviour that will be neither condoned nor tolerated . . .

Therefore, in accordance with the authority delegated to me under paragraph 12(1)(c) of the Financial Administration Act (FAA), I have determined that a written reprimand is an appropriate sanction. In determining the appropriate disciplinary action, I took into account the findings of the investigation into the harassment, the information gathered during the disciplinary hearing held on March 30, 2010, and the fact that you have no prior history.

Please familiarize yourself with the standards of conduct and the Values and Ethics Code for the Public Service. I also urge you to take corrective action, which involves taking the following courses in the language of your choice by March 31, 2011.

...

You should take note of the seriousness of your conduct and behaviour and understand that other disciplinary action will be taken in the event of subsequent misconduct, whatever its nature or severity, including dismissal where appropriate.

...

[16] On October 29, 2010, Sergeant Villeneuve (now a civilian) filed a harassment complaint against Ms. Gauthier about a few incidents that had occurred between October 2009 and September 2010. In the investigation report dated July 4, 2011, the investigator found that one of the incidents constituted harassment. During that incident, which occurred on February 25, 2010, Ms. Gauthier spoke to Sergeant Villeneuve in an aggressive manner using a raised and sharp tone of voice and by shouting.

[17] Major Côté filed two harassment complaints against Ms. Gauthier with respect to 13 incidents involving intimidation, abuse of authority, and the use of inappropriate language and an abusive and demeaning tone. The first complaint was filed on October 5, 2010, and the second on January 11, 2011. In the investigation report dated July 14, 2011, the investigator found that eight of the incidents constituted harassment towards Major Côté. One incident dated back to 2009. In four of the incidents, Ms. Gauthier used an inappropriate, aggressive tone and had a disrespectful attitude towards Major Côté, who felt offended and humiliated. In a fifth incident, Ms. Gauthier asked a civilian to replace her during her vacation instead of following the established practice of appointing a military employee with the highest rank, which happened to be Major Côté. In a sixth incident, Ms. Gauthier tried to prevent Major Côté from attending a meeting in Alberta in which he was supposed to take part. In a seventh incident, Ms. Gauthier took away a mandate from Major Côté, which offended him because his professional responsibilities were subsequently withdrawn. In an eighth incident, Ms. Gauthier harassed Major Côté by neglecting to correctly appraise him and to discuss his professional performance with him, potentially causing him harm.

[18] In analyzing what does or does not constitute harassment, the investigator took into account the employer's definition of harassment and considered whether the conduct in question was inappropriate and injurious and whether it could cause offence or harm. The investigator also considered whether Ms. Gauthier would reasonably know that her conduct could cause offence or harm.

[19] On July 27, 2011, Major-General Bertrand informed Ms. Gauthier of the findings of the investigations into the harassment complaints filed by Sergeant Villeneuve and Major Côté. He told her that he agreed with the investigator's findings by saying: "[translation]. . . your conduct constitutes harassment." In the case of the investigation

report involving Major Côté, Major-General Bertrand ends his letter on the following note:

[Translation]

...

8. A meeting will be arranged with you shortly to discuss the administrative measure required following the determination that a number of allegations of harassment are founded, as indicated above. I would also like to inform you of my intent to hold a disciplinary hearing to which you will be summoned by separate correspondence.

...

The Major-General ends his letter concerning Sergeant Villeneuve's complaint by mentioning, in the last paragraph, the meeting to discuss the administrative measure to be taken but makes no reference to a disciplinary hearing to which Ms. Gauthier would be summoned.

[20] That same day, July 27, 2011, the Major-General sent Ms. Gauthier a letter with the following subject line: “[translation] NOTICE TO ATTEND A DISCIPLINARY HEARING [emphasis in the original].” After going over the harassment complaints and investigation reports, the Major-General writes as follows in the fourth paragraph of this letter:

[Translation]

4. In light of the foregoing, I would like to meet with you on Wednesday, August 17, at 9 a.m. This meeting will be a chance for you to explain the circumstances that led to the alleged acts. I will then be able to decide whether disciplinary action is required. Note that the purpose of this meeting is to gather information rather than to make a decision.

[21] Ms. Gauthier asked that the meeting of August 17, 2011, be postponed because she was returning from vacation on that day. The employer agreed to postpone the meeting, which finally took place on September 20, 2011. Another notice to attend was sent by Major-General Bertrand on September 1, 2011. The first paragraph of this notice reads as follows:

[Translation]

1. The purpose of this letter is to summon you to a meeting at which you will be informed of my decision further to the findings of the harassment investigations. Note that this meeting will not be a disciplinary hearing and will not be intended to discuss the findings of the harassment investigation. . . .

[22] According to Ms. Gauthier's testimony, the meeting of September 20, 2011, lasted six or seven minutes. Major-General Bertrand gave Ms. Gauthier a letter dated the same day as her demotion to level FI-03 (see paragraph 2 of this decision). Major-General Bertrand then stated that he did not want to discuss it and that the demotion was effective immediately. Ms. Gauthier returned to her office, gathered some documents and went home. She met with her physician a short while later and has been off work since, first on sick leave and then on disability. She stated that she is unable to work for the time being.

C. Factors considered in the demotion decision

[23] Major-General Bertrand testified that he himself had made the decision to demote Ms. Gauthier. First, he read the investigation reports prepared following the harassment complaints filed by Sergeant Villeneuve and Major Côté. He then took a considerable amount of time between late July and early September 2011 to read the reports again in detail as well as all the testimony from the individuals interviewed. He also received comments from HR specialists. In late July 2011, he had summoned Ms. Gauthier to a disciplinary meeting that was supposed to be held in mid-August 2011, but the meeting never took place. He then changed his mind and decided to impose an administrative measure.

[24] Major-General Bertrand explained that he was dealing with a manager who had been disciplined in May 2010 for harassing two employees, but who had not changed her behaviour because new complaints, which turned out to be founded, were subsequently filed against her. Under the circumstances, he did not feel he could allow Ms. Gauthier to continue to supervise employees. He did not observe any changes in her conduct following the disciplinary action imposed. The grievor never admitted to doing anything wrong. In light of this information and since he had no non-supervisory positions vacant at level FI-04, the Major-General decided to demote Ms. Gauthier. There was a FI-04 position in the organizational chart for the Branch, but according to Major-General Bertrand, this was a transitional position for qualified employees

returning from Brussels. They are assigned to this position temporarily before being appointed to another one. Therefore, he could not offer the position to Ms. Gauthier.

[25] According to the Major-General, it was not his intent to discipline Ms. Gauthier. She was competent in the field of finance and the Major-General decided to keep her employed. He also wanted to take care of his employees and there was no way that Ms. Gauthier could continue to supervise them. He says that it is not acceptable practice in a department to allow a manager to yell at and insult employees.

[26] In cross-examination, Major-General Bertrand reiterated that he had consulted human resources staff in making his decision, but that he had not discussed the situation with the directors to whom Ms. Gauthier was reporting or had reported in the past. Nor did he speak with the four employees who had been harassed by Ms. Gauthier. He admitted that Ms. Gauthier had not been warned in the past that she could be demoted if she did not change her behaviour. He also admitted that the employer did not obtain any medical or professional expertise determining whether Ms. Gauthier could change her behaviour.

D. Other evidence submitted by the parties

[27] The employer entered into evidence several documents attesting to the training sessions Ms. Gauthier had taken, particularly between 2008 and 2011. Among them are courses on management in the public service, management of civilian human resources, harassment prevention, conflict management and language in communications. The employer also approved reimbursement of training costs Ms. Gauthier incurred for individualized training or coaching on emotional integration and assertiveness in March 2010 and on communication and leadership from July 2010 to March 2011.

[28] The four civilian and military members who had been harassed by Ms. Gauthier testified about their experiences. I will not go over the details of this portion of their testimony because Major-General Bertrand made his decision based solely on the investigation reports. Moreover, Ms. Gauthier and her representatives said that she accepted the findings of the reports. Lieutenant-Colonel Chantal and Major Côté were under Ms. Gauthier's direct supervision from the summer of 2008 to February 2009 in the case of Lieutenant-Colonel Chantal and from September 2009 to September 2011 in the case of Major Côté. Sergeant Villeneuve and Sergeant Hudec were supervised by a

supervisor who reported to Ms. Gauthier. Sergeant Villeneuve was under Ms. Gauthier's indirect supervision from April 2009 to June 2011, and Sergeant Hudec from January 2007 to March 2009.

[29] According to Lieutenant-Colonel Chantal, Ms. Gauthier had a dictatorial, intimidating management style. The work atmosphere was diabolical. However, she also testified that Ms. Gauthier did on occasion recognize that she was doing good work. According to Sergeant Hudec, Ms. Gauthier's management and interpersonal skills were very poor. Major Côté and Sergeant Villeneuve made similar comments. Major Côté also testified that he had never worked in such a toxic work environment.

[30] Mr. Stumpf supervised Ms. Gauthier from May 1, 2008, to March 31, 2009. He said she was a strong manager on whom he could always rely. She would also step in for him as Acting Director in his absence. Sometimes, she was hard on staff and raised her voice. He said that he had told her that her limited personnel management skills could harm her career progression. Mr. Stumpf testified that Major-General Bertrand had neither spoken with him nor consulted him in making the decision to demote Ms. Gauthier.

[31] Mr. Deschênes supervised Ms. Gauthier from June 1, 2009, to April 30, 2010. He said she had considerable technical expertise. She strived for excellence and defined it according to her own criteria. Some aspects of her interpersonal communications needed improvement. According to Mr. Deschênes, the work atmosphere was difficult and Ms. Gauthier's employees felt nervous. He had frequent discussions with her about communicating with employees. Mr. Deschênes testified that Major-General Bertrand had not consulted him in making his decision to demote Ms. Gauthier.

[32] Lieutenant-Colonel Bouffard was a manager at the same organizational level as Ms. Gauthier. However, he was the acting director from May to July 2010 and supervised Ms. Gauthier in that capacity over the course of those few weeks. He said that Ms. Gauthier's management style was direct and that she did not mince words. However, he did not witness any situations in which she was disrespectful towards others. Lieutenant-Colonel Bouffard testified that Major-General Bertrand had spoken with him before demoting Ms. Gauthier. He had asked him whether he was aware of the complaints filed by Sergeant Villeneuve and Major Côté. However, he also testified that he had not known that Ms. Gauthier would be demoted.

[33] Mr. Hood supervised Ms. Gauthier from mid-July 2010 to September 20, 2011. He said that her management and communication skills were very limited. However, he did admit during cross-examination that he had never informed her of those particular shortcomings or of problems with her performance. Instead, he did mention to her on several occasions that she should be respectful towards staff. Mr. Hood never prepared a performance appraisal report for Ms. Gauthier because he was waiting for the results of the harassment investigations before doing so. Mr. Hood testified that Major-General Bertrand had consulted him in making his decision to demote Ms. Gauthier. Under the circumstances, he felt that the decision to demote the grievor was the right one.

[34] From June 2009 to August 2010, Mr. Rochette held the position later held by Major-General Bertrand. He often worked with Ms. Gauthier on files, but never directly observed her management style. He said she was an exceptional, conscientious and experienced employee. Therefore, he wanted to give her a chance after the first two harassment complaints, took the least severe disciplinary action and placed emphasis on training. Mr. Rochette never considered demoting Ms. Gauthier. Mr. Deschênes testified that Major-General Bertrand had not consulted him in making his decision to demote Ms. Gauthier.

[35] Ms. Gauthier testified that there was high turnover when she was appointed to the position she held at the time of her demotion. Many administrative processes were also being put in place. She said that, generally speaking, her superiors had made very positive comments about her performance. Mr. Hood encouraged her to continue in the same direction. Neither he nor anyone else ever told her that she could be demoted. She said she never received feedback on her performance from Major-General Bertrand. She met with him twice in 2010 to have him sign some documents but did not deal with him after that except to greet him when she ran into him or as part of the matter at hand.

[36] Ms. Gauthier also testified that she was exhausted in the fall of 2010 and that she often spoke about it with Mr. Hood. Management had even suggested at the time that she take sick leave, which she did not. In 2009 and 2010, her parents, both in their eighties, fell ill. Her mother underwent surgery, whereas her father was hospitalized numerous times.

[37] The parties also entered into evidence the employer's policies, as follows: *Policy on the Prevention and Resolution of Harassment in the Workplace*, *Harassment Prevention and Resolution Guidelines*, and *Guidelines for Termination or Demotion for Unsatisfactory Performance; Termination or Demotion for Reasons Other than Breaches of Discipline or Misconduct; and Termination of Employment During Probation*.

III. Summary of the arguments

A. For the employer

[38] The employer submits that the decision to demote Ms. Gauthier was administrative in nature under paragraph 12(1)(d) of the *Financial Administration Act* ("the *FAA*"). Given the facts in this case, it was reasonable for the employer to deem Ms. Gauthier's performance unsatisfactory. The grievor did not have the interpersonal skills or the ability to supervise employees. Despite the employer's efforts to offer her training, Ms. Gauthier harassed four employees on 12 separate occasions over a period of two years.

[39] The employer mentioned all the training Ms. Gauthier had been offered, the frequent discussions her supervisors had had with her on how to communicate with staff and on her interpersonal skills, and the reminders to this effect in her performance appraisals.

[40] As a result of the harassment complaints filed by Lieutenant-Colonel Chantal and Sergeant Hudec, Ms. Gauthier received a written reprimand in May 2010 about her conduct with those employees.

[41] The situation did not improve and new harassment complaints were filed against Ms. Gauthier. Investigations revealed that the complaints were founded. The employer then decided to demote Ms. Gauthier because it believed she did not have the interpersonal and management skills required to supervise employees.

[42] According to the employer, the measure taken is a demotion for unsatisfactory performance. To determine that this was a disguised disciplinary action, as Ms. Gauthier claims, the adjudicator must examine whether the action is "a sham or subterfuge." It should be noted that an employer's decision is not in itself disciplinary just because the grounds underlying that decision are in some way related to an employee's misconduct or wrongful behaviour.

[43] A decision to demote an employee who has personal suitability issues with his or her subordinates is not in itself of a disciplinary nature. In addition, the case law concerning rejection on probation confirms that such rejection due to personal suitability issues or harassment is not in itself a disciplinary decision.

[44] No evidence was submitted in the case at hand to show that the actions taken by the employer were a sham or subterfuge. The demotion letter clearly indicates that this was an administrative measure and that Ms. Gauthier does not have the qualifications required to hold a management position.

[45] An adjudicator's jurisdiction is fairly limited in cases of demotion for unsatisfactory performance. As soon as the adjudicator finds that the employer had appraised the grievor's performance in a reasonable manner, he or she has exhausted that jurisdiction. Therefore, the adjudicator's role is not to determine the appropriateness of the demotion. Rather, it is comparable to that of a higher court in the sense that it examines the reasonableness of the decision. The adjudicator must ask himself or herself whether the employer's conclusion about the employee's performance is a possible acceptable conclusion.

[46] Ms. Gauthier was very much aware of what was expected of her in terms of interpersonal skills and personnel management. Her managers all noted shortcomings in that area and pointed them out to her. Moreover, the employer gave her all the tools she needed to improve by allowing her to take a number of training courses. Ms. Gauthier was unable to put into practice what she had learned and was incapable of demonstrating that she had the skills required of a supervisor.

[47] The burden of proof to show that the demotion is a disciplinary action rests with Ms. Gauthier. Should the adjudicator determine that the demotion was a disciplinary action, the employer maintains that its decision was justified. Therefore, the adjudicator should determine whether there was misconduct and then decide whether the measure imposed was excessive. Ms. Gauthier has already admitted to misconduct.

[48] Even if the adjudicator were to agree with Ms. Gauthier's argument that the employer's decision was disciplinary, the employer was entitled to impose a permanent demotion due to the severity of the misconduct (harassment), the high number of incidents, the employee's disciplinary record consisting of a reprimand

following three incidents of harassment and the fact that Ms. Gauthier was in a position of authority, and because she has never acknowledged her wrongful behaviour.

[49] The employer referred me to the following decisions: *Stevenson v. Canada Revenue Agency*, 2009 PSLRB 89; *Canada (Attorney General) v. Penner*, [1989] 3 F.C. 429 (C.A.); *Habib v. Treasury Board (Veterans Affairs Canada)*, PSSRB File No. 166-02-26634 (19960414); *Ondo-Mvondo v. Deputy Head (Department of Public Works and Government Services)*, 2009 PSLRB 52; *Ducharme v. Deputy Head (Department of Human Resources and Skills Development)*, 2010 PSLRB 136; *Parsons v. Deputy Head (Department of National Defence)*, 2012 PSLRB 5; *Stamp v. Deputy Head (Treasury Board)*, 2012 PSLRB 73; *Raymond v. Treasury Board*, 2010 PSLRB 23; *Plamondon v. Deputy Head (Department of Foreign Affairs and International Trade)*, 2011 PSLRB 90; *Mazerolle v. Deputy Head (Department of Citizenship and Immigration)*, 2012 PSLRB 6; *Reddy v. Office of the Superintendent of Financial Institutions*, 2012 PSLRB 94; *Canada (Attorney General) v. Basra*, 2010 FCA 24; *Li v. Canada (Department of Citizenship and Immigration)*, 2011 FCA 110; *MacArthur v. Deputy Head (Canada Border Services Agency)*, 2010 PSLRB 90; *Narayan v. Canada Revenue Agency*, 2009 PSLRB 40; *Shek v. Bank of Nova Scotia*, [2001] C.L.A.D. No. 356 (QL); *Phillips v. Deputy Head (Canada Border Services Agency)*, 2013 PSLRB 67; *Tipple v. Canada (Treasury Board)*, [1985] F.C.J. No. 818 (QL) (C.A.); and *Maas and Turner v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 123.

B. For Ms. Gauthier

[50] From the outset, Ms. Gauthier has pointed out that she remained in her position and continued to supervise staff for 225 days after the last harassment complaint was filed against her and 68 days after the investigation report was received.

[51] As at September 20, 2011, at the time of the decision to demote her, the employer had not appraised Ms. Gauthier's performance. Major-General Bertrand made the decision alone without consulting the directors who were able to assess her performance, based solely on the investigation reports. However, all the reports on Ms. Gauthier's performance appraisals indicated that she had fulfilled all the

requirements of her position. Moreover, Ms. Gauthier had never been informed that she might be demoted if she does not improve certain aspects of her performance.

[52] It is clear that the decision to demote Ms. Gauthier is a disciplinary action. The employer claimed that it did not have a non-supervisory FI-04 position for Ms. Gauthier. That is not true. Furthermore, even though the employer did indeed help Ms. Gauthier by offering her training, it did not assess her conduct after the training, but rather before the end of that training. In fact, no harassment incidents had been reported following Ms. Gauthier's training.

[53] The issue in this case is not Ms. Gauthier's competence, but rather problem behaviour for which remedies were sought. Therefore, Ms. Gauthier's demotion was disciplinary, not administrative. The employer did not take into account the fact that she had no sanctions for 14 years of service. Therefore, the action was clearly excessive, given its permanency.

[54] Because of the employer's actions, Ms. Gauthier fell ill. The employer's decision had a major impact on her mental and physical health.

[55] By way of remedy, Ms. Gauthier is asking the adjudicator to revoke the demotion and to order the employer to reimburse her for the financial losses she incurred, withdraw the letter of September 20, 2011, credit her sick leave, offer her an apology, pay her \$10 000 in moral damages, assess the lost career prospects she has suffered and compensate her for them accordingly.

[56] Ms. Gauthier referred me to the following decisions: *MacArthur; Raymond; Mazerolle; Plamondon; Spawn v. Parks Canada Agency*, 2004 PSSRB 25; *Robitaille v. Deputy Head (Department of Transport)*, 2010 PSLRB 70; *Canada (Attorney General) v. Grover*, 2007 FC 28.

IV. Reasons

[57] According to the employer, the decision to demote Ms. Gauthier was made because the grievor did not have the qualifications required to hold a management position. Therefore, the demotion was due to unsatisfactory performance. According to Ms. Gauthier, her demotion is a disciplinary action. That is the first issue I must decide. I will then examine, if applicable, whether it was reasonable for the employer to determine that Ms. Gauthier's performance was unsatisfactory or whether the

demotion was an appropriate disciplinary action in light of the seriousness of Ms. Gauthier's misconduct and other factors to be considered.

[58] Irrespective of my decision on the first issue, the grievance may be referred to adjudication under paragraphs 209(1)(b) or (c) of the *Act*. If my finding is termination for unsatisfactory performance, section 230 of the *Act* must also be considered. Those provisions read as follows:

209. (1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to

(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;

(b) a disciplinary action resulting in termination, demotion, suspension or financial penalty;

(c) in the case of an employee in the core public administration:

(i) demotion or termination under paragraph 12(1)(d) of the Financial Administration Act for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct, or

(ii) deployment under the Public Service Employment Act without the employee's consent where consent is required;

230. In the case of an employee in the core public administration or an employee of a separate agency designated under subsection 209(3), in making a decision in respect of an employee's individual grievance relating to a termination of employment or demotion for unsatisfactory performance, an adjudicator must determine the termination or demotion to have been for cause if the opinion of the deputy head that the employee's performance was unsatisfactory is determined by the adjudicator to have been reasonable.

A. Was the demotion disciplinary or for unsatisfactory performance?

[59] Just because the employer claims that it demoted Ms. Gauthier for unsatisfactory performance does not mean I must automatically accept this explanation. I must first examine the facts and the decision-making process that led to the employer's decision to demote Ms. Gauthier in order to determine whether this demotion was for unsatisfactory performance, as the employer claims, or whether it was a disciplinary demotion, as Ms. Gauthier alleges. Even though the issue in the following case is different from the one I am tasked with, the Supreme Court ruled as follows in *Canada (House of Commons) v. Vaid*, 2005 SCR 30:

93 *The fact that the respondent Vaid claims violations of his human rights does not automatically steer the case to the Canadian Human Rights Commission because "one must look not to the legal characterization of the wrong, but to the facts giving rise to the dispute" (Weber v. Ontario Hydro, [1995] 2 S.C.R. 929, at para. 49; St. Anne Nackawic Pulp & Paper Co. v. Canadian Paper Workers Union, Local 219, [1986] 1 S.C.R. 704, at p. 721).*

[60] I must first analyze the evidence presented to me about Ms. Gauthier's qualifications and performance.

[61] Ms. Gauthier has two bachelor's degrees, the first in business administration with an HR option, and the second in accounting. Therefore, she has an undergraduate university education that pertains in part to human resources. Moreover, she holds a master's degree in business administration. Lastly, she has taken a number of courses offered or paid for by the employer, some of which pertained to personnel management or harassment prevention. In theory, Ms. Gauthier is very well educated. Although this in no way guarantees her competence and acceptable performance, it seems very clear to me that Ms. Gauthier has a high level of education in the specific field in which the employer argues she is incompetent.

[62] Ms. Gauthier was promoted to level FI-04 in 2003. The parties entered into evidence appraisals of her performance from April 2004 to March 31, 2010. In each performance appraisal, Ms. Gauthier had fulfilled all the requirements of her position according to the directors who supervised her. Generally speaking, each appraisal included very positive comments about Ms. Gauthier's performance. The last three appraisals concerned the duties Ms. Gauthier performed at the time of her demotion. I reproduced specific comments about staff supervision from the appraisals in

paragraphs 8, 9 and 10 of this decision. Those comments are far more favourable than unfavourable. None of the appraisals contains comments alluding to Ms. Gauthier's incompetence or poor performance with respect to personnel management, even though Mr. Deschênes and Mr. Stumpf said they felt Ms. Gauthier still had to work on some aspects of personnel management or take everyone's needs into consideration.

[63] Mr. Stumpf, Mr. Deschênes, Mr. Hood and Lieutenant-Colonel Bouffard all supervised Ms. Gauthier in the duties she performed before being demoted. Mr. Rochette supervised her indirectly. None of them testified that Ms. Gauthier lacked the qualifications required to hold a management position or that she performed poorly. Although they said she should improve some aspects of her personnel management, they (those who completed them) found her performance fully satisfactory in their appraisals. Therefore, there is quite a discrepancy with the conclusion that Ms. Gauthier was incompetent.

[64] Major-General Bertrand found that Ms. Gauthier did not have the qualifications required to hold a management position on the basis that she had harassed employees under her supervision. He testified that he had made this decision alone without consulting Ms. Gauthier's former supervisors. Mr. Stumpf, Mr. Deschênes, Lieutenant-Colonel Bouffard and Mr. Rochette confirmed that they had not been consulted. However, Mr. Hood said he had been consulted, but did not specify in what way. It is possible that Major-General Bertrand had discussed his decision with Mr. Hood before making it, but I believe Major-General Bertrand when he says that the decision to demote Ms. Gauthier was his alone on the basis of the harassment investigation reports.

[65] The reports outline Ms. Gauthier's conduct towards Major Côté and Mr. Villeneuve. Ms. Gauthier harassed them and clearly disrespected them by using an inappropriate, aggressive tone that was uncalled for, by shouting at them and by offending them. This improper behaviour is similar to Ms. Gauthier's past behaviour with Lieutenant-Colonel Chantal and Sergeant Hudec. Furthermore, the investigation reports find that Ms. Gauthier also harassed Major Côté by depriving him of an opportunity to temporarily act in a higher position, by preventing him from attending a meeting in Calgary, by taking responsibilities away from him and by failing to appraise him correctly.

[66] In light of the rest of the evidence, Ms. Gauthier's performance appraisals and testimony from her supervisors, is this a matter of deficiencies in skills or deviant behaviour in the eyes of the employer? In other words, did the employer want to correct misconduct for which Ms. Gauthier was accountable or was it a matter of actions beyond her control for which she is not to blame but in relation to which she is found to be incompetent?

[67] Treasury Board and Department of National Defence policies define harassment as follows: “. . . any improper conduct by an individual that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm [emphasis added].” Shouting at, insulting and humiliating subordinates by willfully depriving them of opportunities, as Ms. Gauthier had done, is much more indicative of voluntary deviant behaviour than incompetence. The definitions in question suggest *a priori* that harassment stems from a voluntary behaviour intended to offend and not the qualifications or incompetence of one person harassing another. It is on the basis of this definition and the concepts it entails that the investigator found that Ms. Gauthier had harassed her subordinates, and it is on the basis of this investigator's reports — and I must add on this basis alone — that Major-General Bertrand decided to demote Ms. Gauthier.

[68] Further to the investigation report submitted on February 2, 2010, finding that Ms. Gauthier had harassed two subordinates, Mr. Rochette imposed a disciplinary action on her in the form of a written reprimand. He informed her that other disciplinary measures would be taken in the event of subsequent misconduct. Therefore, Ms. Gauthier was formally advised that other disciplinary action would be imposed if she did not correct her improper conduct.

[69] Harassment complaints then followed from Major Côté and Mr. Villeneuve, which ultimately led to two investigation reports submitted on July 4 and 14, 2011. On July 27, 2011, Major-General Bertrand sent Ms. Gauthier a letter with the following subject line: “[translation] Notice to appear at a disciplinary hearing.” In this letter, he indicated that after the meeting, he would be able to decide whether disciplinary action is necessary. An agreement was reached to postpone this meeting. A new notice to appear was sent on September 1, 2011, this time mentioning that the meeting would not be a disciplinary hearing.

[70] The version of the facts as presented in the employer's documents seems to suggest that the employer changed its mind between July 27 and September 1, and that this, which has every appearance of being a disciplinary process, suddenly became a question of incompetence on the sole basis of the investigation reports, without consultation of Ms. Gauthier's performance appraisals or of her supervisors.

[71] As the Federal Court points out in *Basra*, I must ask myself, in light of the facts that have been presented to me, what was the employer's intention when it made its decision to demote Ms. Gauthier. Each fact taken on its own is not enough to convince me that the employer's intention to demote Ms. Gauthier was disciplinary, but an analysis of all those facts together clearly points to disciplinary intent.

[72] First, the employer considered Ms. Gauthier's behaviour to be deviant. This is why Mr. Rochette decided to discipline her for harassing two subordinates. This is also the approach Major-General Bertrand decided to take when he sent Ms. Gauthier the notice to appear in July 2011. Although Ms. Gauthier bears the burden of proof to show me that the employer's intention was disciplinary in nature, the employer should at the very least have provided me with a reasonable explanation for its change in approach. I have received nothing of the sort from the employer. Quite the contrary, Major-General Bertrand concluded that Ms. Gauthier did not have the qualifications to hold her management position without consulting her former supervisors about her performance, without reading or analyzing her performance appraisal reports and, might I add, without even speaking to her about the issues with her performance. In light of this, I find that Ms. Gauthier has proven that the employer's intention was not administrative but rather disciplinary in nature. The aim of the decision was to punish Ms. Gauthier for her conduct, which the employer rightfully deemed to be unacceptable. Furthermore, the employer did not have anything to back up its demotion of Ms. Gauthier for unsatisfactory performance.

[73] The employer referred me to a number of decisions involving rejection on probation or termination of employment for administrative reasons in which the adjudicator did not have jurisdiction. The issue in this case is not whether I have jurisdiction to decide the grievance, but rather to determine which particularly provision of the *Act* gives me the jurisdiction. Regardless, even if I were to follow this logic, I would find that the employer's intention was disciplinary in nature.

[74] In the case of rejection on probation, for example, once it has been established that the employee was on probation and that the employer believed that, in good faith, the employee did not have the qualifications required to hold the position, the adjudicator does not have the jurisdiction to decide the grievance (see *Penner*) unless the employer's decision is a sham, subterfuge or camouflage.

[75] Far be it from me to conclude that the employer's decision is a sham. Nonetheless, the overwhelming evidence leads me to believe that the decision to demote Ms. Gauthier on grounds of performance conceals the disciplinary intent by changing the appearance of the situation (camouflage) and using a clever and disguised way (camouflage) to justify incompetence, which was initially deemed by the employer to be voluntary deviant behaviour. I certainly do not want jump to conclusions about the employer's intent by concluding that there was intent to deceive, but ultimately, that is what happened.

[76] On the basis of the case law concerning rejection on probation, the employer argued that a supervisor's personal suitability issues with subordinates may lead to disciplinary action but that such shortcomings are not necessarily grounds for disciplinary action. I agree with the employer. However, in this case, the performance appraisal reports confirmed that, year after year, Ms. Gauthier had fulfilled the requirements of her position. I do not outright reject the impossibility of concluding that Ms. Gauthier no longer met the requirements of her position, but certainly not based on the facts that were presented to me.

[77] One of the decisions the employer referred me to was *Habib*. In this case, the adjudicator found that the employer was right to demote the grievor for poor performance in supervising staff. A parallel can certainly be drawn with this case, but the comparison stops there. Unlike in the case at hand, in *Habib* the employer had shown that the grievor did not have the skills to perform supervisory duties by informing him beforehand that his performance was unsatisfactory and by basing its decision on the performance appraisal that rated his overall performance as unsatisfactory. This is not the case for Ms. Gauthier, whose appraisals always rated her performance entirely satisfactory.

[78] The employer also referred me to *Raymond*, *Plamondon*, *Mazerolle* and *Reddy*, all cases of demotion or dismissal for unsatisfactory performance. I have already found that the demotion in this case is of a disciplinary nature. Having said that, I

want to add that the facts in those cases are very different from those presented in this matter. In *Raymond*, the grievor had had two successive performance appraisal reports with an unsatisfactory rating. In *Plamondon*, over a period of about years, the employer noted problems in the grievor's performance, of which the grievor was informed on a regular basis. In *Mazerolle*, the employer formally appraised the grievor's performance on 15 occasions over four years and had pointed out the grievor's shortcomings numerous times. In *Reddy*, the grievor had received a very negative performance appraisal before being dismissed for unsatisfactory performance. Moreover, the employer had met with him more than 60 times to discuss his shortcomings in the year before his dismissal.

B. Was the disciplinary action justified or excessive?

[79] Given Ms. Gauthier's misconduct, I have no doubt that the employer had a right to impose disciplinary action against the grievor. The evidence shows that she harassed her subordinates, which justifies discipline. As mentioned earlier, Ms. Gauthier's behaviour towards her subordinates was inappropriate and offensive. In exercising her authority as a manager, she shouted at, insulted and humiliated her subordinates and willfully deprived them of opportunities. During the adjudication hearing, Ms. Gauthier did not contest the fact that she had harassed her subordinates. Therefore, what must be determined is whether the disciplinary action imposed, namely the demotion, is excessive.

[80] The employer referred me to a few disciplinary decisions. In *Narayan*, a tax auditor had been dismissed for accepting bribes from taxpayers. The employer proved the alleged misconduct and the adjudicator maintained the dismissal. In *Shek*, the adjudicator maintained the dismissal of a bank branch manager who had placed himself in a situation of conflict of interest by doing personal business with a client and by harassing staff. In *Philips*, the adjudicator maintained the dismissal of an employee who had committed the same breaches as the ones for which he had previously been suspended on a number of occasions, with the last suspension lasting 20 days. The seriousness of the misconduct and the circumstances in each of those cases are different from those in the case at hand. Ms. Gauthier was never in a situation of conflict of interest or accepted bribes. She was disciplined only once before being demoted, the disciplinary action being minor in the form of a letter of reprimand.

[81] The parties referred me to two decisions rendered by Board adjudicators about permanent disciplinary demotions. In both cases, the adjudicators partially allowed the grievances by changing the demotions from permanent to temporary. In *MacArthur*, the grievor, a border services officer, had been demoted to a clerk position after causing, outside working hours, an accident involving serious injuries while intoxicated and fleeing the scene of the accident. The adjudicator cancelled the permanent demotion because he believed that the grievor had learned his lesson. In *Spawn*, the grievor, a supervisor, was demoted because he had stolen gas from the employer. The adjudicator cancelled the permanent demotion because she believed the punishment was too severe since the conduct in question had occurred during a very stressful time for the grievor.

[82] In both *MacArthur* and *Spawn*, the adjudicators expressed reservations about the use of permanent demotion as disciplinary action. The adjudicator in *Spawn* wrote that in terms of severity, such a measure is akin to dismissal. The adjudicator in *MacArthur* was of a similar opinion. According to him, such a demotion should be imposed only in exceptional circumstances. I feel paragraphs 122 and 123 of his decision are highly relevant:

[122] The leading case in the field of disciplinary demotions was referred to me by the grievor. In Air Canada, the learned arbitrator had this to say regarding demotions:

...

... If the demotion is to be used as a penalty, it must be administered with precise limitations and not have the effect of putting the grievor in the position of any other employee seeking a promotion to the grievor's former position. For the demotion penalty to be fair, the employee must know that the "pain" caused by the demotion is temporary and that with acceptable behaviour, she or he will be returned to the former position at a more or less specific point in time.

...

[123] It is my conclusion that disciplinary demotions are a tool at the disposal of an employer. Although this part has been formalized with the amendment to the FAA, in order to serve their purpose, demotions ought to be temporary in nature, except in the most exceptional of circumstances. In my opinion, the reason for the temporary nature of

demotions is consistent with the basic corrective premise surrounding the well-accepted principle of progressive discipline.

[83] Ms. Gauthier's misconduct is serious and involves repeated acts of harassment towards two employees. The fact that those employees were Ms. Gauthier's subordinates is certainly an aggravating factor. Moreover, this was not the first breach, since Ms. Gauthier had received a written reprimand in May 2010 as a result of other harassment complaints.

[84] However, the employer did not really follow the principle of progressive discipline, skipping from a minor action, i.e., a letter of reprimand, directly to an extreme, permanent action. Ms. Gauthier's conduct certainly justified a serious sanction but not a permanent one, in my opinion, like the one that had been imposed. Moreover, the employer had not taken into account Ms. Gauthier's personal circumstances with her parents and her health. Although this has little bearing on my decision, I note that the employer did not even ask her if there were personal reasons for her behaviour. Such circumstances do not justify Ms. Gauthier's misconduct, but may partly explain it. Finally, the employer also failed to consider the fact that the harassment incident involving Mr. Villeneuve took place on February 25, 2010, and one of the incidents involving Major Côté occurred in 2009, in other words, before Ms. Gauthier received a written reprimand and could correct her wrongful behaviour.

[85] This means that the severity of the disciplinary action must be determined in consideration of nothing but Ms. Gauthier's harassment of Major Côté. The incidents involving Lieutenant-Colonel Chantal and Sergeant Hudec should obviously not be taken into consideration because Ms. Gauthier had already been disciplined for them and cannot be punished twice.

[86] In *MacArthur*, the adjudicator gave the employer six weeks to reinstate the grievor at his former level. The permanent demotion was replaced with one that lasted a total of 30 months. In *Spawn*, the adjudicator gave the employer three weeks to reinstate the grievor at his former level. The permanent demotion was replaced with one that lasted a total of 31 months.

[87] In the case at hand, nothing justifies the imposition of permanent disciplinary action. The employer should have instead imposed temporary disciplinary action in accordance with the principle of progressive discipline to enable the grievor to correct

her wrongful conduct. Given the seriousness of the misconduct, a long-term suspension, i.e., of several weeks, or a long-term demotion would be appropriate.

[88] In light of the evidence presented, my analysis of it and the case law with respect to discipline, demotions in particular, I find that Ms. Gauthier should be temporarily demoted for a period of 24 months ending on September 20, 2013. As of the Monday following that date, the employer shall reinstate her in an FI-04 position in the National Capital Region. Harassment of an employee on a number of occasions is certainly serious misconduct, but it is less serious than stealing from the employer or committing criminal acts outside working hours, as was the case in *Spawn* and *MacArthur*.

[89] According to the applicable collective agreement, the lost wages as a result of the demotion from FI-04 to FI-03 amount to approximately \$1000 per month, and the average monthly salary of an FI-04 between September 2011 and September 2013 was approximately \$9000. This means that the lost wages resulting from a temporary 24-month demotion, or \$24 000, are roughly equivalent to a suspension without pay of two and two-thirds months, which can be considered a long-term suspension typically imposed in cases of serious misconduct. It seems to me that such disciplinary action suffices since the first action imposed was a written reprimand.

[90] Ms. Gauthier asked me to revoke the demotion and to order the employer to reimburse her for the financial losses she incurred, withdraw the letter of September 20, 2011, credit her sick leave, offer her an apology, pay her \$10 000 in moral damages, assess the lost career prospects she has suffered and compensate her for them accordingly. With the exception of cancelling the demotion as of September 23, 2013, I am not prepared to grant the rest of her requests, as her conduct was unacceptable.

[91] Even though I find that the measure imposed was too severe, I do not believe that the employer should compensate Ms. Gauthier for the negative consequences resulting from her entirely deserved 24-month demotion. She herself must bear the consequences of her own unacceptable conduct. I received no medical or objective evidence to establish that the employer caused Ms. Gauthier's illness. Under the circumstances, I am not willing to hold the employer responsible. As for the letter of apology and the damages, I am not prepared to include them in my order either. They

are punitive measures for the employer, and its actions certainly do not justify such sanctions.

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

(The Order appears on the next page)

V. Order

[93] The grievance is allowed in part.

[94] The employer shall reinstate Ms. Gauthier in an FI-04 position in the National Capital Region as of September 23, 2013.

[95] I shall remain seized of the grievance for 90 days to intervene as needed in the implementation of my decision.

August 2, 2013.

**Renaud Paquet,
adjudicator**