

Date: 20130719

Files: 166-02-37094 and  
566-02-173 to 176, 395 and 1298

Citation: 2013 PSLRB 80



*Public Service Staff Relations Act and  
Public Service Labour Relations Act*

*Before an adjudicator*

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BETWEEN

**VALERIE BERGEY**

Grievor

and

**TREASURY BOARD  
(Royal Canadian Mounted Police)**

Employer

and

**DEPUTY HEAD  
(Royal Canadian Mounted Police)**

Respondent

Indexed as

*Bergey v. Treasury Board (Royal Canadian Mounted Police) and Deputy Head (Royal Canadian Mounted Police)*

In the matter of a grievance referred to adjudication pursuant to section 92 of the *Public Service Staff Relations Act* and individual grievances referred to adjudication pursuant to section 209 of the *Public Service Labour Relations Act*

**REASONS FOR DECISION**

***Before:*** Margaret E. Hughes, adjudicator

***For the Grievor:*** David Yazbeck, counsel

***For the Employer and Deputy Head:*** Caroline Engmann, counsel

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Heard at Prince George, British Columbia,  
on September 16 to 19, 2008 and April 20 to 23, May 4 to 8,  
October 26 to 30, November 23 to 27 and December 7 to 11, 2009 and  
at Ottawa, Ontario,  
on January 11 to 15, August 30 to 31 and September 1 to 3, 2010.  
(written submissions filed September 3 and 30, October 31 and November 19, 2010)

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## REASONS FOR DECISION

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### I. Introduction

[1] Valerie Bergey (“the grievor”) was a public servant (a civilian employee) who was terminated from her position as a detachment/operational (highway) traffic services clerk for the Royal Canadian Mounted Police (RCMP or “the employer”) in the Prince George, British Columbia, North District Office (“the North District Office”) of the RCMP’s Pacific Region, (including B.C. and the Yukon), also called “E” Division’s North District. The grievor had been employed with the RCMP for over seven years.

[2] On April 1, 2005, the *Public Service Labour Relations Act (PSLRA)*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, PSLRB File No. 166-02-37094, referred to adjudication, must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act (PSSRA)*, R.S.C., 1985, c. P-35.

[3] The grievor was classified at the CR-03 group and level. The collective agreement in force when the grievances were filed was between the Treasury Board and the Public Service Alliance of Canada (PSAC) for the Program and Administrative Services Group; expiry date June 20, 2007 (“the collective agreement”; Exhibit 8).

[4] The grievor held several positions with the Union of Solicitor General Employees (USGE). The USGE is a component of the PSAC. She served as a local president from approximately May 1999 until she resigned from that role on December 13, 2003.

[5] During the contested period, the employer made a number of decisions that ultimately led to the termination of the grievor’s employment. Its decisions at issue are the following:

- A 10-day suspension without pay imposed on the grievor on November 4, 2004 by Superintendent M.J. (Mike) Morris.
- The suspension of the grievor’s RCMP enhanced reliability status (“the RCMP reliability status”), imposed by Chief Superintendent Robert Lanthier on March 22, 2005, pending a further security review to determine if her RCMP reliability status should remain valid or would be revoked for cause.
- An indefinite continuation of the grievor’s employment suspension without pay, imposed by C/Supt. Barry Clark effective March 22, 2005, pending the

completion of the security review.

- The revocation of the grievor's RCMP reliability status effective July 22, 2005 by letter from C/Supt Lanthier.
- A continuation of the indefinite suspension imposed on August 4, 2005 by C/Supt. Clark until a decision on the grievor's employment with the RCMP could be made, because her RCMP reliability status had been revoked.
- The termination of the grievor's employment for cause on January 3, 2006 by letter from RCMP Commissioner Giuliano Zaccardelli due to the loss of her RCMP reliability status.

[6] The grievor filed several grievances with the Public Service Labour Relations Board ("the Board"), eight of which were referred to me. The final-level decisions made in the grievance procedure for all eight grievances (along with other grievances not before me) were sent to the grievor in one letter from Commr. Zaccardelli, dated December 8, 2005. All eight grievances were denied (Exhibit 172).

[7] The parties agreed at the hearing that one of the grievances (PSLRB File No. 166-02-37093, filed on February 28, 2006) had been withdrawn (by letter to the Board from the PSAC dated February 22, 2008). I treated that file as closed. I remain seized of the seven remaining grievances. They are dealt with in this decision.

[8] The hearing of these seven grievances was long, arduous and complex. There were 38 hearing days, and extensive written submissions extended over 2 years. The employer called 11 witnesses and introduced affidavit evidence from 2 other individuals, and the grievor testified on her own behalf. Hundreds of pages of documents were filed in evidence, including numerous emails exchanged between the parties, the grievor and her colleagues, and human resources personnel; several investigative reports; documentation the grievor had provided during investigations to support her position; and transcripts of statements made by people interviewed by the investigators, as well as transcripts from office conversations clandestinely recorded by the grievor in the North District Office during 2004 that she later transcribed. The testimony at the hearing was not recorded.

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**II. Individual grievances referred to adjudication**

[9] To ease understanding, I will list the grievances in chronological order of the employer's challenged decisions rather than in filing date order or in Board file number order. Some confusion exists with the terminology used in the grievances, and some content is duplicated. The grievances are the following:

- a) The first grievance (PSLRB File No. 166-02-37094; Exhibit 110) challenges the employer's decision of November 4, 2004 to impose a 10-day suspension without pay on the grievor. The grievance was dated December 12, 2004 but was not referred to the Board until February 28, 2006. In it, the grievor alleges that the discipline is unjust and unwarranted. The grievance was filed using Board Form 14 under the *PSSRA*. She requests, among other things, written apologies for the suspension and for a false accusation of a security breach; the rescinding of the suspension letter and her reinstatement with reimbursement of all pay and benefits lost; financial compensation for pain and suffering, stress and anxiety, humiliation, defamation, and slander; a compassionate transfer to a mutually acceptable location; a guarantee from the employer of job security for the next 20 years regardless of any reorganization in the RCMP; and the permanent removal from the workplace of her immediate supervisor, Staff Sergeant (S/Sgt.) Dave Beach, and North District Office Superintendent Morris.
- b) The second grievance (PSLRB File No. 566-02-1298; Exhibit 138; it replaced PSLRB File No. 166-02-37093) disputes the employer's decision of March 22, 2005 to suspend the grievor's RCMP reliability status pending a further security review. In it, she claims that the decision was disguised disciplinary action. She also disputes the employer's decision of March 24, 2005 to suspend her without pay indefinitely, effective March 22, 2005, because her RCMP reliability status was suspended, which meant that she no longer met a condition of her employment. The grievance was filed on April 15, 2005. In it, the grievor requests that the suspension letter be rescinded, that her RCMP reliability status be reinstated, and that she be reinstated into her position with the full reimbursement of pay and benefits. She also requests detailed general and exemplary damages for, among other things, negligence, breach of contract, pain and suffering,

- defamation, wilful and reckless behaviour, being subjected to someone acting in an insulting manner under disguised discipline, and the failure of a duty of care. She also requested interest on all damages.
- c) The third grievance (PSLRB File No. 566-02-175; Exhibit 140) challenges the employer's decision of July 27, 2005 to revoke the grievor's RCMP reliability status. The decision was conveyed to her by letter from C/Supt. Lanthier following a security review. She alleges that the revocation decision was a disguised disciplinary sanction rendered without just cause and in bad faith. The grievance was dated September 27, 2005 and was filed on February 28, 2006. In it, she requests a long list of corrective action, which includes the reinstatement of her RCMP reliability status; her reinstatement to her position with retroactive pay and benefits; the removal of numerous documents from her personnel file; compensation in the millions of dollars for hurt feelings, pain and suffering, stress, embarrassment and humiliation, slander, defamation, and assassination of character; general damages in the millions, tax free, for the employer's negligence, its wilful and reckless behaviour, and for acting in an insulting manner to her; and millions of dollars, tax free, for breach of contract.
- d) The fourth grievance (PSLRB File No. 566-02-174; Exhibit 139) challenges the employer's decision of August 4, 2005, conveyed to the grievor by letter of that date from C/Supt. Clark, that she no longer met the conditions of her employment and that she was unable to perform the duties of her position at the North District Office because her RCMP reliability status was revoked on July 27, 2005. She also challenges the employer's decision to continue her suspension without pay until she was further advised of her employment status. The grievor alleges that the employer's decisions were disguised discipline, rendered without cause and in bad faith. The grievance is dated September 27, 2005 but was not filed with the Board until February 28, 2006. In it, she lists detailed requested corrective action, including that her RCMP reliability status be reinstated, that she be deemed as meeting a condition of employment, that she be reinstated to her position and that she receive financial relief similar to that requested for the third grievance.
- e) The fifth and sixth grievances (PSLRB File Nos. 566-02-173 and 176) were



introduced in an abbreviated form as Exhibit 209, but complete copies are in the Board's file. The grievor signed both of them on September 27, 2005. They were filed with the Board on February 28, 2006. They are identically worded with respect to both the grievance description and the corrective action sought. They challenge the employer's action of not allowing union representation or access to union representation on the serving of the RCMP reliability status revocation and accompanying letter and documentation on the grievor. No date is specified for the challenged employer's action. I note on the evidence that the employer served a suspension of RCMP reliability status letter on the grievor on March 22, 2005 and an RCMP reliability status revocation letter on her on July 22, 2005. The grievor claimed that the employer's decisions and actions were disguised discipline rendered without just cause and in bad faith and that they were not warranted. She detailed a lengthy list of corrective action and damages sought for the employer's failure to allow union representation.

- f) In her seventh grievance (PSLRB File No. 566-02-395; Exhibit 144), the grievor disputed the employer's decision of January 3, 2006 to terminate her employment, conveyed by a letter from Commr. Zaccardelli, pursuant to paragraph 12(1)(e) of the *Financial Administration Act*, R.S.C. 1985, c. F-11 (FAA). The grievor alleged that the termination was disguised discipline without just cause, that it was done in bad faith and that it was unwarranted. The grievance was filed January 24, 2006. She requested corrective action that included reinstating her RCMP reliability status, reinstating her to her position with all pay and benefits, and reimbursing her for sick leave and annual leave, and compensatory and other damages amounting to \$50 million tax-free forever, additional damages for non-pecuniary losses, including 40 years' salary, tax free, and tax-free interest on all damages.

[10] All the grievances were referred to adjudication under section 209 of the *PSLRA*; most referred specifically to paragraph 209(1)(b) and subparagraph 209(1)(c)(i). The two grievances alleging a denial of union representation when the suspension and revocation decisions were served on the grievor alleged a breach of the provisions of the discipline article of the collective agreement and were referred to adjudication under paragraph 209(1)(a).

[11] Counsel for the employer submitted that the fifth and sixth grievances are duplicates. Counsel for the grievor did not disagree. Therefore, I will consider those grievances together.

[12] There is no timeliness dispute. The employer granted an extension of time to file the four grievances that the grievor signed on September 27, 2005 and that she filed with the Board on February 28, 2006.

[13] Since the issues raised by the grievances are interrelated, they were consolidated for the purposes of the hearing. However, counsel for the employer stressed that the grievances themselves were not consolidated. She stressed that each grievance, with the exception of the fifth and sixth, was filed against a discrete act by the employer and that each needed to be heard and considered on its own. On the other hand, counsel for the grievor stressed that, while the grievances were distinct and needed to be decided separately, they should not be viewed individually or in isolation but rather as showing a common unacceptable pattern of behaviour by the employer toward the grievor.

[14] The Chairperson of the Board appointed me as the adjudicator to hear and determine the matters.

### **III. Objection to the adjudicator's jurisdiction**

[15] Substantial correspondence was exchanged between the parties, the Board's registry and another adjudicator before I was appointed to hear these grievances.

[16] The employer did not challenge the jurisdiction of an adjudicator appointed under the *PSLRA* to hear the 10-day disciplinary suspension grievance. However, by five separate letters, all dated May 28, 2007, it challenged the jurisdiction of an adjudicator to hear grievances two through six, which challenge the employer's decisions to suspend and later to revoke the grievor's RCMP reliability status and to suspend her indefinitely without pay because she had lost that RCMP reliability status. The employer argued that those decisions were administrative, not disciplinary, and that disciplinary action is a requirement for an adjudicator to acquire jurisdiction under paragraph 209(1)(b) of the *PSLRA*. The employer also submitted that, to be adjudicable under subparagraph 209(1)(c)(i), the matter referred to adjudication must relate to a demotion or termination of employment under paragraph 12(1)(d) of the

FAA, which was not the case with the employer's decisions to suspend and revoke the grievor's RCMP reliability status and suspend her employment, which are challenged in the grievances before me. The employer argued that the proper forum for challenging those decisions, after they were rendered at the final level of the grievance process, was an application for judicial review before the Federal Court.

[17] The employer also argued that an adjudicator did not have jurisdiction under paragraph 209(1)(a) of the *PSLRA*, which covers grievances related to the interpretation or application of a provision of a collective agreement, to hear the grievor's challenge of a denial of union representation on the employer's service on her of the revocation and suspension decisions because they were not disciplinary. Therefore, she was subject neither to a disciplinary meeting nor to the rendering of a disciplinary letter, as is required before the union representation entitlement of the discipline article (article 17) of the collective agreement is engaged.

[18] At the beginning of the hearing, counsel for the employer renewed the employer's objection to my jurisdiction to hear the grievances and extended that objection to include the grievance in PSLRB File No. 566-02-395, in which the grievor challenged, under paragraph 209(1)(b) and subparagraph 209(1)(c)(i) of the *PSLRA*, the employer's decision to terminate her because she no longer met a condition of employment due to the revocation of her RCMP reliability status. The objection was on the same grounds as those stated in its May 28, 2007 letters to the Board. The employer requested that all except the 10-day suspension grievance be dismissed for lack of jurisdiction.

[19] Counsel for the grievor stated that he had no objection to the expanded breadth of the employer's preliminary objection to the Board's jurisdiction to hear all but the 10-day disciplinary suspension grievance.

[20] The employer argued alternatively and without prejudice that, if an adjudicator has jurisdiction to review its decisions to suspend and revoke RCMP reliability status, the jurisdiction is limited to determining if the decisions were disguised discipline or were made in bad faith or with a lack of procedural fairness. If it is found that the decisions were disguised discipline, it is clear that an adjudicator has no authority to reinstate an RCMP reliability status.

[21] Counsel for the grievor responded to the employer's objections by stating that an adjudicator under the *PSLRA* has jurisdiction because all the employer's decisions being challenged, despite its characterization of them as administrative, amounted to disguised discipline. As such, they constitute the necessary disciplinary action required by the *PSLRA*. The grievor also contended that the employer acted in bad faith and that it breached her right to procedural fairness in its decision making.

[22] The grievor further submitted that an adjudicator appointed under the *PSLRA* has jurisdiction over the decision to revoke her RCMP reliability status because the RCMP reliability status is a condition of employment. Subsection 12(1) of the *FAA* provides for only three ways in which a deputy head can terminate employment. The grievor has the right to challenge any decision of the deputy head in order to maintain her employment relationship.

[23] The hearing was initially scheduled by the Board's registry to deal with the employer's preliminary objection to my jurisdiction, although the registry instructed the parties to prepare to also argue the merits. At the start of the hearing, counsel for the employer requested that the employer's jurisdictional objections be dealt with as a preliminary matter. Counsel for the grievor strenuously argued that the hearing should not be bifurcated. He argued that the evidence on my jurisdiction was intricately intertwined with the evidence on the merits, particularly the grievor's arguments of disguised discipline, bad faith and lack of procedural fairness in the employer's decision making, and that the same witnesses, several of whom were travelling from great distances, would need to be called twice if the hearing were bifurcated.

[24] After hearing the parties, I concluded that I needed to hear evidence on the merits of the case before rendering a decision on jurisdiction, and I agreed that counsel could address the objections to jurisdiction more fully as part of their final arguments. Therefore, this decision deals with the employer's jurisdictional objections and with the merits of those grievances over which I have jurisdiction.

[25] The parties agreed that the employer had the burden of proof of establishing just cause to discipline the grievor. Therefore, it would present its case first, as in normal disciplinary grievances. It was further agreed that, because the employer's action eventually resulted in the termination of the grievor's employment, it would present the whole of its case first. However, it cautioned that, once it led evidence to satisfy me that the decision to revoke her RCMP reliability status was administrative

and not disciplinary, the burden of proof would shift to her to prove a disciplinary taint or a lack of bona fides in the employer's actions and a lack of procedural fairness.

[26] In contrast, the grievor argued that the employer had the burden of proof to establish not only that its decisions to suspend and revoke her RCMP reliability status were administrative and not disciplinary but also that they were reasonable before she had to prove that they were wrong in that they were disguised discipline or were made in bad faith or with a lack of procedural fairness.

#### **IV. Witnesses**

[27] As indicated, seven grievances were heard. The employer called 11 witnesses and submitted affidavit evidence from 2 other individuals, 1 of whom was also sworn in and was questioned by the grievor on his affidavit evidence. Given the complexity of this case, I will list the witnesses called by the employer and briefly describe, as adduced by the evidence, their careers, their positions at the relevant time, and their main role or roles with respect to the grievances before me.

[28] On the employer's behalf, I heard evidence from the following individuals, although not in the order listed:

- a) S/Sgt. Beach was the non-commissioned officer in charge of the Fraser/Fort George Traffic Services Unit, located in the North District Office, from March 10, 2003 to March 17, 2005 and was the grievor's direct supervisor. In March 2004, as a result of his complaint, an investigator was appointed to conduct a review to determine if she breached the RCMP's security policy when she allegedly removed documents from office files. As her direct supervisor for part of the period under review, he provided performance assessments and workplace guidance and directions to her, some of which she challenged.
- b) Supt. Morris: From 1998 until his retirement in December 2004 after almost 32 years of service, he was the superintendent and district officer of "E" Division's North District, in charge of the northern part of B.C. His office was located in the North District Office building in Prince George. His responsibilities included more than 1000 employees, 35 detachments where staff were posted, and municipal, court and provincial contract detachments,

- as well as numerous First Nations communities. He imposed the 10-day disciplinary suspension on the grievor on November 4, 2004. On November 29, 2004, he wrote to “E” Division’s North District Departmental Security Section in Vancouver, requesting a security review of the grievor. While he was retired at the time of the hearing, he will be referred to as Supt. Morris throughout this decision.
- c) C/Supt. Clark was Commander of “E” Division’s North District at the time of the hearing. He was appointed to the position in mid-January 2005 after Supt. Morris retired. C/Supt. Clark had been in “E” Division’s North District since June 1999. The operational units reporting to him as an inspector included the Traffic Services Unit in the North District Office in which the grievor worked. Between April 2004 and January 2005, he was an Inspector and the Assistant District Officer replacing Insp. Bob Wheadon, who had been responsible for the non-operational (personnel) side of operations. In October 2004, he, as the assistant district officer, requested an administrative review of an alleged departmental security complaint form that the grievor had filed against her direct supervisor, S/Sgt. Beach. In November 2004, he referred the results of an investigation of an alleged security breach by the grievor to the Pacific Region Departmental Security Section. As C/Supt., he sent the grievor the notices of indefinite suspension without pay effective March 22, 2005, after her RCMP reliability status was suspended, and on August 4, 2005, after her RCMP reliability status was revoked for cause. To avoid confusion, Mr. Clark will be referred to as Insp. Clark regarding the actions he took up to January 2005 when Supt. Morris was in charge of “E” Division’s North District and as C/Supt. Clark regarding his testimony at the hearing and the decisions he took, which included indefinitely suspending the grievor’s employment, after he became the Commander of “E” Division’s North District in January 2005.
- d) Bonnie Bailey was a public-servant employee. She belonged to the same USGE as the grievor. She was “E” Division’s North District Administration Manager, located at the North District Office. As such, she was part of Supt. Morris’s management team. She was classified AS-04 in 2003. She reported to Supt. Morris. After he retired, she reported to C/Supt. Clark. She was also a co-presenter with the grievor in a workshop on training on sexual

- harassment awareness in the workplace. She successfully brought a harassment grievance against the grievor in December 2003. As a result, the grievor received a three-day suspension in September 2004. She was the subject of a harassment grievance filed by the grievor in February 2004. After an investigation, that grievance was held unfounded.
- e) At the relevant time, Corporal Tom Adair was Harassment and Human Rights Coordinator and Advisor for “E” Division’s North District, based in Vancouver. He served in that position for approximately seven years before being promoted in 2009 to the position of Program Manager for the RCMP’s National Respectful Workplace Programs. Starting in October 2004, at the request of Supt. Morris, he initiated a number of actions to investigate the grievor’s allegation that harassment was rampant in “E” Division’s North District and that Supt. Morris did not take workplace harassment seriously. He appointed a team of two investigators from outside the North District Office to review the grievor’s harassment allegations against two co-workers.
- f) Debbie Stangrecki was a public servant with 30 years’ service with the RCMP. She worked with the grievor at one time in the Prince George Detachment Traffic Services Unit. She was the vice-president and chief shop steward of USGE in Prince George from approximately 2001 to 2003. The grievor was the president at that time, and the grievor filed a number of her own harassment complaints and grievances. Ms. Stangrecki became the president sometime after the grievor resigned in December 2003. The grievor later filed a harassment complaint against her.
- g) Staff Sergeant (S/Sgt.) Walter Gordon Flewelling was a corporal in “E” Division’s North District Traffic Services Unit in 2004. He served the grievor with an amended 10-day suspension letter on November 8, 2004 and reported to Supt. Morris on his discussion with her at the November 8 meeting about an October 29, 2004 printer incident in the North District Office. He is referred to as corporal Flewelling in this decision.
- h) S/Sgt. Keith Hildebrand was the non-commissioned officer in charge of the Quesnel Detachment, which is under the North District Office’s jurisdiction. He retired in April 2008 after 26 years of service with the RCMP, which he spent primarily in positions in Vancouver and the Lower Mainland. He

- investigated an alleged security policy breach by the grievor after S/Sgt. Beach reported that she had removed documents from North District Office operational files. His report is dated October 13, 2004.
- i) Sgt. D.E. Lennox was the non-commissioned officer in charge of “E” Division’s North District Border Integrity Program. He was with the RCMP until he retired in April 2005 after 34 years of service. His office was in the North District Office, but he did not report to Supt. Morris. In 2004, he conducted an administrative review of an alleged security breach that the grievor initiated against her direct supervisor, S/Sgt. Beach. His report is dated December 2, 2004.
- j) In 2005, C/Supt. Lanthier was Director General, Departmental Security Branch, RCMP, and his office was in Ottawa. As the RCMP’s Departmental Security Officer, he had overall responsibility for departmental security for the four RCMP regions across Canada. He made the decisions first in March 2005 to suspend and later in July 2005 to revoke the grievor’s RCMP reliability status for cause. He retired in 2007. At the time of the hearing, he was Director, Canadian Nuclear Safety Commission, Nuclear Security Division.
- k) R.A. (Bob) Briske was an RCMP member for over 37 years when he retired in 1999. After that, he did contract work for the RCMP. In 2005, he worked as a risk management analyst with the Pacific Region Departmental Security Section. His office was in Vancouver, and his role included reviewing files involving possible security breaches by any RCMP employee within the Pacific Region. It also included reviewing individuals’ suitability to be issued or to retain an RCMP reliability status. As the analyst responding to Supt. Morris’s memorandum of November 29, 2004 to the Pacific Region Departmental Security Section, he conducted the review and prepared the security report that was sent to the Departmental Security Officer in Ottawa, C/Supt. Lanthier, on February 12, 2005 recommending revoking the grievor’s RCMP reliability status.
- l) Mr. C.A. (Art) O’Donnell was the manager of the Personnel Security Section for the Departmental Security Branch. He was based in Ottawa, and he reported to C/Supt. Lanthier. His managerial responsibilities included



national security investigations involving alleged breaches of security and issuing RCMP reliability status and security clearances. He supervised the interaction between the four RCMP regional offices and the Departmental Security Branch in Ottawa. He had a supervisory and advisory role with the security review done by Rene Bourgeois, an analyst in the Personnel Security Section, in C/Supt. Lanthier's office before C/Supt. Lanthier made the decision to revoke the grievor's RCMP reliability status, which she challenged in her grievances.

[29] On the employer's behalf, I also received affidavit evidence from Dana Bouchard, who was a public servant working for the RCMP at the Quesnel Detachment. In April 2003, the grievor faxed papers from an operational file or files at the North District Office to her.

[30] I heard the grievor's evidence on her behalf.

## **V. Background**

[31] The parties' employment relationship became increasingly difficult and acrimonious as it deteriorated over the approximately five-and-a-half year period from spring 2001 to the termination of the grievor's employment on January 3, 2006. Both parties stressed the importance of the history and context of the seven grievances before me.

[32] The history of the grievor's employment with the RCMP was reviewed in detail. The parties provided extensive evidence on events, informal and formal investigations, past interactions, and communications between a wide range of individuals. However, they often presented sharply differing versions of events, investigations and exchanges and of the causes of the increasingly strained relationship between the grievor and management. Hundreds of documents and email exchanges were introduced in evidence, many not directly related to the grievances before me except for providing a general background context to explain or justify the parties' challenged behaviours or to show a pattern of inappropriate workplace behaviour.

[33] The employer argued that the evidence shows a pattern of lying and deceitful behaviour by the grievor over several years as well as a pattern of targeting anyone who tried to provide her with guidance and to correct her workplace behaviour. On the

other hand, the grievor argued that the evidence shows a pattern of the employer routinely dismissing her harassment complaints and treating her as lacking credibility. She also argued that she was micromanaged, reprimanded, subjected to psychiatric assessment and investigated, all in a manner amounting to harassment.

[34] I have summarized the evidence in two parts. The first part provides the background for the seven grievances. Due to the volume of the evidence presented and the fact that many of the events, exchanges and investigations were interrelated and often occurred at the same time but in different venues and between different people, I have chosen to describe the events gathered from the evidence primarily in chronological order from 2001 until the end of December 2004. The first grievance, challenging the 10-day suspension, was signed by the grievor on December 12, 2004. As there is no harassment grievance before me, and no performance evaluation complaint, I have chosen to limit the extensive historical evidence presented to what is relevant to the seven grievances.

[35] In the second part of the evidence summary, I concentrated the evidence that is more relevant to the remaining six grievances, and I organized it more by the testimonies of the witnesses than by strict chronological order. Part 2 includes expanded descriptions of some of the evidence presented in chronological order in part 1 as well as detailed evidence on the main events that led to the major investigations and the alleged non-disciplinary (security) administrative measures taken to revoke the grievor's RCMP reliability status, suspend her from employment due to that revocation and eventually terminate her employment.

[36] Two unusual features of this case must be noted. The first is the frequency and length of the emails written by the grievor during the time under review that, according to the employer, she often composed during the workday on the RCMP GroupWise email system or the RCMP Office Support System network (also its email system), which was contrary to the employer's instructions. Many of the emails contain after-the-event summaries of workplace events from the grievor's perspective. She was the local USGE president at that time, and she alleged that some of her emails were written in her role as president. In them, she sought advice from fellow union members, raising the issue of union expression. Many emails were sent to RCMP management, complaining about events, while others were sent to individuals outside the North District Office, such as harassment and human rights advisors, ethics

officers, and security investigators, and recounted the grievor's perceptions of events. Many emails were blind copied to other individuals. Often, the emails are repetitious, because she often emailed her views of workplace events to a number of individuals or groups separately on the same day. In several instances, both she and the employer introduced the same email in evidence, but the details of who had been copied on it were not identical and were shorter in her exhibits.

[37] The second unusual feature is the grievor's surreptitious recording of office conversations in the North District Office using a pocket recording device. The evidence is unclear as to when she began taping, but from the transcripts she submitted in evidence, it occurred at least from early August 2004, after she was served with a letter of expectation, until mid-November 2004, when she was suspended from employment and after which she never returned to the workplace. Both counsel referred to the poor quality of the recordings, and her transcripts show multiple inaudible exchanges. She testified that she felt she had no choice but to secretly record interactions because she was being harassed and bullied, and no one believed her versions of events. The evidence also shows that, when Insp. Clark asked her on at least one occasion if she were recording him, she denied it.

[38] I also note at this point that counsel for the employer requested that Exhibit 14 be sealed as it contains sensitive police information. Counsel for the grievor did not object.

[39] In *Pajic v. Statistical Survey Operations*, 2012 PSLRB 70, an adjudicator had to deal with a similar request for sealing exhibits. He summarized the applicable principles as follows at para 9 and 10:

*[9] . . . In dealing with such a request, I must act within the parameters developed into what is known as the "Dagenais/Mentuck" test. The rule is that Court and quasi-judicial tribunal proceedings are public and documents that are on the record of those proceedings, such as exhibits, are also public. However, a Court or a quasi-judicial tribunal may impose limits on the accessibility to their proceedings or record in certain circumstances, where in its view the principle of open justice should give way to a greater need to protect another important right. In Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41, the Supreme Court of Canada reformulated the Dagenais/Mentuck test as follows:*

...

- (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- (b) the salutary effects of the . . . order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

...

*[10] In Vancouver Sun (Re), 2004 SCC 43, the Supreme Court of Canada decided that the Dagenais/Mentuck test applies to all discretionary decisions that limit the right to information during judicial proceedings. More recently, the Supreme Court of Canada reaffirmed at para. 13 in Canadian Broadcasting Corp. v. The Queen, 2011 SCC 3, that “[t]he analytical approach developed in Dagenais and Mentuck applies to all discretionary decisions that affect the openness of proceedings. . . .” Further, as no arguments were presented to me in support of the public’s interest in the openness of these proceedings, I must take account of that interest without the benefit of argument: R. v. Mentuck, 2001 SCC 76, at para. 38; Vancouver Sun (Re), at para. 48.*

[40] Exhibit 14 contains specifics on the entering and removal of specifically identified unendorsed warrants on the Central Police Information Centre system and the identification of alleged errors by the grievor in making the entries, including one error that allegedly lead to an identified private citizen being the subject of an illegal arrest because of operator error in failure to remove the unendorsed warrant from the system in a timely fashion. Sealing Exhibit 14 is necessary in order to prevent a serious risk to the privacy interests of citizens and the salutary effect of the order on the efficacy of the administration of justice outweigh its deleterious effects on the right to free expression, including the public interest in open and accessible court proceedings. Accordingly, Exhibit 14 has been sealed.

**VI. Summary of the evidence, Part 1: 2001 - 2004****A. Office relocation and new duties and concerns**

[41] The grievor was employed by the federal government starting in 1993 with the Department of National Defence in Lazo, B.C. At that time, she was screened for the appropriate level of security clearance.

[42] In 1996, the grievor transferred to Prince George to work as a detachment clerk in the Prince George Traffic Unit for the RCMP, working at the Prince George Detachment. In March and April 2001, the section relocated to the new North District Office building and became autonomous. The grievor moved with it. She was the sole public servant in the provincial highway patrol section in the North District Office building, and her duties changed somewhat with the move. At the North District Office, she provided support to the eight or so uniformed members of section. She processed less traffic violation tickets and did more file maintenance.

[43] The North District Office building was the headquarters for RCMP operations in the northern part of B.C. (which comprised almost all the province north of Vancouver). Supt. Morris's office was located there. Over 100 of the 1000 "E" Division's North District employees worked in the North District Office building in Prince George.

[44] The three categories of RCMP employees were regular RCMP members, who were generally police officers; civilian RCMP members, who were not full-fledged police officers; and public servants, who worked within the RCMP structure but were not RCMP members but employees of the Treasury Board.

[45] Supt. Morris testified that, when the grievor moved to the North District Office in 2001, he did not know her personally and that he had no direct involvement with her. With his wide office and travel responsibilities, he normally did not have much contact with the North District Office public servants except to review and sign their annual performance review assessments, prepared by their direct supervisors, before forwarding them to the Pacific Region Public Service Human Resources Office in Vancouver. However, that normal practice turned out not to be the case with the grievor for a number of reasons.

[46] Supt. Morris testified that he retired in December 2004, about five years before the hearing, and that he did not take office files with him. While he recalled major

interactions with and about the grievor, he stated that the memos and correspondence he had written at the relevant times under review would be the most accurate recollection of the event details as he then saw them.

[47] The grievor's reported directly to the non-commissioned officer in charge of the Prince George Traffic Services Unit. When she moved to the North District Office in 2001, her immediate supervisor was Cpl. Wayne Czernicki. In spring 2003, that changed to S/Sgt. Beach. Holding an inspector's rank at that time, C/Supt. Clark was the head of operations and knew the grievor as he had ultimate responsibility for the Traffic Services Unit. C/Supt. Clark became C/Supt. in January 2005 following the retirement of Supt. Morris.

[48] At the time of her move to the North District Office, the grievor was the local president of the USGE (sometimes referred to in the evidence as the USGE). The local had approximately 40 to 45 members in 2001, spread around "E" Division's North District. About 10 to 15 of them worked in the North District Office. During her career, the grievor held several positions with the USGE, including as president of the local from approximately May 1999 until she resigned on December 13, 2003. She had also served as an anti-discrimination and human rights advisor for the USGE. The local's email list was the "newest local."

[49] Ms. Bailey, another public servant who was a member of the same USGE as the grievor, was District Administration Manager at the North District Office and a member of the management team. The North District Office housed a number of units, including the Major Crime Unit, the Drug Awareness Unit, the Informatics Section, the Operational Command Centre (which handled 911 calls), the Border Integrity Program Unit and the Traffic Services Unit, where the grievor worked. Ms. Bailey reported to the superintendent and district officer, who was first Supt. Morris and then C/Supt. Clark.

[50] Over her career, Ms. Bailey was reclassified from AS-01 to AS-02 and ultimately to AS-04 in 2003. Sometime later, in 2004 or 2005, she was determined to be exempt from union membership due to her labour relations duties. She testified that, after her reclassification was posted, the grievor questioned her on why she had received the upgrade.

[51] Ms. Bailey's earliest recollection of troubled interactions with the grievor was from 2001, when she was the local USGE president and when the union called for a

part-time strike, called “Workless Wednesdays.” Ms. Bailey, as a member of the local, had committed to bake cookies for the event, but she subsequently suffered a serious fall at work injuring both arms, causing her serious pain and preventing her from baking. When she called the grievor to explain, the grievor told her she had to provide the union with a doctor’s note; otherwise, the union could fine her.

[52] The grievor did not report to Ms. Bailey. However, as the North District Office district administration manager, Ms. Bailey helped the grievor when she needed some help when adjusting to her new duties in the North District Office Traffic Services unit. Shortly after the move, discrepancies surfaced about data entry and file maintenance. The North District Office had a central record system for administrative (financial and strategic planning) and operational files, which meant that records were kept in a central records office and that one person was responsible for opening and dealing with the administrative and operational records. The records were to remain in the central records room unless an RCMP member signed a record out to work on a given file. Ms. Bailey testified that the grievor was found maintaining her own operational file system in the Traffic Services Unit, contrary to instructions. Ms. Bailey testified that she provided guidance to the grievor on matters such as how to open mail and how to handle the files and on the need to let her know if the grievor was not going to be at work so that mail would not be left on her desk. She seemed receptive to Ms. Bailey’s directions and guidance. However, at times, something would come to light, and it seemed that the grievor had not been receptive after all. As an example, Ms. Bailey testified that she had to ask several times that the Traffic Services Unit not open operational files because of the central record-keeping file process that was to be followed in the North District Office.

[53] Cst. Barry Wolney was the North District Office’s resident records management expert. His job was to ensure that records were filed properly and that the records system stayed on track. He had no supervisory responsibilities. When file discrepancies were discovered, he was assigned to assist the grievor and to monitor her file compliance. Her lack of compliance and errors continued in spite of his direction. Supt. Morris testified that the grievor became defensive and extremely resistant to the guidance and direction she received from Cst. Wolney and from Ms. Bailey.

[54] On October 24, 2001, the grievor wrote Dellie Lidyard, President of USGE for the Pacific Region, stating that she had been informed in mid-June that she would no

longer be creating operational files on the Computer Integrated Information Dispatch System or the Police Information Retrieval System or entering scoring and that “[t]his was Cst. Wolney’s idea” (Exhibit 1, Tab 8-Q, at page 6). She stated that she had a bad feeling that the employer was going to take away as much of her job as it could and leave her with hardly anything to do, and then state that she was not needed in the Highway Patrol Section and that it wanted her as a file clerk in the file room full-time. She accused Cst. Wolney of appearing in the office without reason and of checking into what she was doing. She alleged that Supt. Morris went “way back” with Cst. Wolney, so nothing she said would ever be considered. She raised concerns that she did not want to have two bosses in two different sections. She raised the issue of possible harassment by Cst. Wolney.

[55] On October 24, 2001, Ms. Lidyard responded to the grievor, stating that “[p]lacing [her] under undue scrutiny is a form of harassment.” In a later email that same day, Ms. Lidyard repeated that comment and advised her that the employer had the right to reorganize its work site and to assign or reassign duties and that “. . . the only hope that we may have of retaining [her] position the way it is by filing a harassment complaint, i.e. abuse of authority” (Exhibit 1, Tab 8-Q, at pages 2 and 5).

[56] Ms. Bailey testified that she had never seen the correspondence between Ms. Lidyard and the grievor before reviewing the package of materials prepared for the hearing. She testified that no plan was ever made to change the grievor’s position so that she would report to two people, that the grievor was helping only temporarily, and that the allegation that there was a plan to take the “Highway Patrol steno” position, as the grievor viewed her position, away from the Traffic Services Unit and into the records office made no sense.

[57] Ms. Lidyard referred her October 24, 2001 response to Patricia Elliot of the USGE for comment. Ms. Elliot stated that Ms. Lidyard’s response was perfect and that she would not add a thing except that, “. . . if harassment begins, [the grievor] should just let them know that she knows what’s going on and is recording issues in the event she needs them.” Ms. Bailey testified that she was not aware at that time that the grievor was recording conversations in the workplace.

[58] Supt. Morris testified that he did not know Cst. Wolney until he hired him in 2001 with the move to the new North District Office building, that he knew him only as a work colleague and that he never socialized with him outside the office.



Cst. Wolney's job was to ensure the accuracy of the operational files. It would not have been his idea to change the grievor's job description.

[59] Supt. Morris also testified about the grievor's reference in her email dated October 25, 2001 to Ms. Lidyard in which she claimed that "we" had stated to Supt. Morris that, if she had time, she would be willing to help in other areas. He stated that he did not recall such a meeting and that, while he knew Ms. Lidyard and had spoken to her regularly about high-level provincial and national public-service issues, at his level he would not have attended such a job description meeting as the grievor described.

[60] Mr. Stephenson at the North District Office building was Bob Stephenson. He was a member of the B.C. Corps of Commissionaires. His job included staffing the front desk and interacting with members of the public who entered the North District Office building as well as dealing with postal deliveries and messages left for employees. He was a contract employee, and his position was not unionized. In May 2001, the PSAC was running a recruiting drive. The grievor, as USGE president, approached Mr. Stephenson during office hours and tried to recruit him.

[61] The grievor felt that Supt. Morris behaved in an anti-union manner in 2001. He testified that he had tried to get a public service position for the front desk when the North District Office opened but that his request was refused. He then had no choice but to hire an employee on contract, which he did through the B.C. Corps of Commissionaires. He testified that he did not know Mr. Stephenson until he hired him in 2001, that he had only normal office courtesy exchanges with him in the North District Office and that he had never socialized with him outside the office.

[62] Supt. Morris testified that the grievor confronted Mr. Stephenson, that she tried to pressure him into joining the USGE and that Mr. Stephenson complained to his organization, the B.C. Corps of Commissionaires, about her behaviour. The head of that organization then wrote to Supt. Morris's boss, complaining about the incident. Supt. Morris then received a letter from Pacific Region Public Service Human Resources Office, directing him to counsel the grievor to refrain from union recruiting during working hours. He did so. He testified that, from that point, the grievor demonstrated a dislike for Mr. Stephenson and that she targeted and persecuted him for his complaint about her behaviour.

[63] The grievor's version differed. She testified that she had approached Mr. Stephenson during office hours for recruitment purposes, but she testified that it was a friendly discussion. She did not confront him or pressure him to join the union. When he expressed disinterest, she backed off.

[64] After the recruiting incident, the relationship between the grievor and Mr. Stephenson grew tense. Starting sometime in fall 2001, she complained to Ms. Bailey that he was harassing her in that he stared at her and ignored her when she spoke to him. She accused him of repetitive rudeness.

[65] Ms. Bailey spoke to Mr. Stephenson about the grievor's concerns that he was being rude to her and that he was not showing her proper respect. He no longer trusted the grievor and limited his contact and need to speak with her.

[66] On many occasions, Supt. Morris had concluded that the grievor was not only extremely resistant to the guidance and direction she received from her supervisor and several work colleagues but also that she targeted and persecuted a number of her supervisors and work colleagues in retaliation for their concerns or complaints about her behaviour.

[67] Supt. Morris made specific mention of the grievor targeting and persecuting Cst. Wolney, the resident records management expert, who had been assigned to monitor file compliance; of her targeting and persecuting Mr. Stephenson, who had complained about her attempt to pressure him during work hours to join her union; and of her targeting and persecuting Ms. Bailey when she offered to help the grievor improve her skills as a co-facilitator of "E" Division's North District harassment awareness workshops. He noted that the grievor subsequently accused Cst. Wolney, Mr. Stephenson and Ms. Bailey of harassment.

[68] In her capacity as detachment clerk between 1996 and 2002, the grievor received a number of positive performance appraisals, including in October 2001 and in August 2002. In October 2001, the grievor also received a new job description, which included the key activities of compiling, reviewing and maintaining files and record systems; checking, scoring and concluding files on the Computer Integrated Information Dispatch System; downloading files to the Police Information Retrieval System; and making required additions and modifications and concluding files on the Police Information Retrieval System.

**B. Four events of note**

[69] Events continued to unfold, four of which I will specifically note.

**1. The Queen's Golden Jubilee Commemorative Medals**

[70] In early 2002, nominations were sought for worthy recipients for the Queen's Golden Jubilee Commemorative Medals ("the Queen's Jubilee Medals"). They were to honour RCMP employees across Canada who had made a significant achievement or had provided distinguished service to their fellow citizens, their communities or Canada. The process required sending written nominations on a standard form to the Divisional/Regional Selection Committee chairs. Each division was responsible for setting its own deadline for nominations, which would have been set for a date well before the Divisional/Regional Selection Committee chairs had to forward the list of recommended recipients to Ottawa, which was no later than August 30, 2002.

[71] On September 25, 2002, by letter from Sergeant Major Hugh Stewart, Executive non-commissioned officer to the Deputy Commissioner for the Pacific Region and Commanding Officer of "E" Division's North District, Ms. Bailey was informed that she had been awarded a QGJC Medal. Along with other members of "E" Division's North District RCMP, she received her QGJC Medal at a public ceremony on December 9, 2002. She testified that she knew nothing about her nomination for the QGJC Medal until she was notified by Sgt. Maj. Stewart.

[72] On January 22, 2003, at a joint union-management meeting of senior RCMP managers and union officials, which included the grievor and Supt. Morris, either the grievor or the union president whom she had informed announced that the grievor had nominated four public servants for the awards and that she had submitted her nomination forms to the office manager. The inference was that the office manager, Ms. Bailey, had failed negligently, if not intentionally, to put the grievor's recommendations forward to the nominating and selection committee in Vancouver. As a result, the four public servants were denied the opportunity to be considered for a QGJC Medal.

[73] It was a very serious allegation. Supt. Morris's boss directed him to investigate and report on it.

[74] Supt. Morris testified that he travelled after the meeting but that, when he

returned to the North District Office in early February, he met with the grievor to determine the details of the nominations she claimed to have submitted. He testified that she first claimed that she had put the nomination forms in an envelope on Ms. Bailey's desk. She later said that she told him that she had left the envelope addressed to Ms. Bailey in internal mail in the mailroom. The grievor could not recall when she had done so, and she was not able to provide him with copies of her nominations. He thoroughly checked the mailroom, which is adjacent to his office and not accessible by the public. He could find no evidence of the envelope.

[75] Supt. Morris concluded that the grievor was lying for a number of reasons. First, she changed her story as to where she had left the envelope. Second, she provided no dates as to when she had made the nominations. Third, two of the public servants that she claimed to have nominated did not even work at the North District Office. And fourth, there was no reason or need for her to leave the nominations with Ms. Bailey, even for the two public servants who worked in the North District Office, as the process was to send the forms directly to the nominating committee in Vancouver.

[76] Furthermore, Supt. Morris testified that the grievor told him that she had apologized to her nominees on the day of the presentation at the North District Office that their names were not on the list and that she did not know what had happened to the nominations she had forwarded. He testified that he made a number of enquiries. He spoke to the two individuals that the grievor claimed to have nominated who worked in the North District Office. Neither was aware of their nomination. They told him that they had received an email from her during early March 2003 requesting information on their employment and community service but that she did not advise them as to why she was requesting that information and that neither had received an apology from the grievor, as she had claimed.

[77] Ms. Bailey testified that she knew nothing about the grievor's allegation until she was questioned by Supt. Morris after the January 22, 2003 meeting, which was well over six months after the nomination submission deadline. She testified that she was very upset at the allegation that she had lost or neglected to forward the nominations, which was untrue. She testified that the grievor never asked her about the nominations and that there was no reason the grievor would have given her the forms. Ms. Bailey was not involved in any way in the nomination process, and she had not provided any information or directions to employees about the Queen's Jubilee Medals or the

nomination process. All public servants had received the same information from an RCMP central office about the Queen's Jubilee Medals and the nomination process. There was no reason for her as the office manager to sign the nomination forms before they were forwarded to Vancouver. She corroborated Supt. Morris's testimony that two of the four public servants who were supposedly nominated did not even work in the North District Office.

[78] On cross-examination, Ms. Bailey strongly denied the suggestion of the grievor's counsel that maybe the grievor was not lying and that it had just been a misunderstanding.

[79] Following his investigation, Supt. Morris met with the grievor and told her that he believed she was lying and that she had never nominated any public servants for the Queen's Jubilee Medals. He told her that she owed an apology to those she had implicated in her story.

[80] The grievor corroborated Supt. Morris's testimony that he had met with her and told her that he believed she had never made any nominations and that she owed people an apology, but her testimony differed on other details.

[81] The grievor testified that there was no need in the nomination process to notify nominees, so she did not notify them. She testified that she left the nominations for Ms. Bailey because the form required the signature of the supervisor or manager. The grievor testified that she made the nominations in May 2002 and that she put the nomination forms in an envelope in Ms. Bailey's slot in the mailroom with a sticky note for Ms. Bailey to sign. She also testified that she did not name Ms. Bailey at the January meeting and that she did not accuse Ms. Bailey of intentionally not forwarding the nominations. She had referred only to leaving the nominations with the office manager and that Supt. Morris then stated Ms. Bailey's name at the meeting.

[82] The grievor acknowledged that two of the four public servants that she nominated did not work within the North District Office but that they worked in "E" Division's North District. She acknowledged that the nomination forms did not need to be signed by management, that the nomination process was to send the forms directly to Vancouver and that she should have followed that process. She acknowledged that Ms. Bailey was the office manager and that she did not follow up with Ms. Bailey at any time either as to whether Ms. Bailey had forwarded the nominations or as to her lost

nominations after the awards were announced and none of her nominees received a QGJC Medal.

[83] The grievor testified that the background information she sought in late February and early March 2003 from several public servants in the North District Office that she had nominated for Queen's Jubilee Medals, such as Ms. Stangrecki, was to nominate them for a different award, for long service (Exhibit 55).

[84] On March 19, 2003, the grievor emailed C/Supt. Bill Dingwall, Officer in Charge ("officer in charge") of Human Resources for the Pacific Region. She listed the four individuals she said she had nominated in May 2002 for the Queen's Jubilee Medals, along with a short biography of each person, but she did not send any nomination forms as she could not find them in her papers. She did not copy Supt. Morris (Exhibit 32).

[85] On March 27, 2003, the grievor emailed Sgt. Maj. Stewart, and copied to 14 others, a statement in which she stated that she had made the nominations, although she was unable to come up with the exact date for Supt. Morris as to when she had done so, that she had even apologized to some USGE members on the day of the North District Office presentation because their names were not on the list, and that she did not know what had happened to the nominations she had forwarded. She wrote that "[t]his issue is not about the Office Manager" and that, "... whether it was an honest mistake, something forgotten to do later, the envelope misplaced, etc.," she had made the nominations (Exhibit 1, Tab 5-E).

[86] Supt. Morris testified that, when he read the grievor's email, he was amazed at her blatant disregard for the truth. He met with her and advised her that her email to Sgt. Maj. Stewart was unprofessional and that it did not reflect core RCMP values. Supt. Morris then sent an email on March 27, 2003 not only to Sgt. Maj. Stewart but also to C/Supt. Dingwall and Ms. Janine Major-Hurt at Pacific Region Public Service Human Resources Office, expressing his "great despair" on reading the grievor's email that she had not been truthful about making the nominations and at her inference that Ms. Bailey had not forwarded them.

[87] The grievor testified that she did not think that she had anything to apologize for and that she apologized only because Supt. Morris bullied her into it. She also testified that he wanted to censor her apology. Later in the afternoon of

March 27, 2003, she sent an email addressed to Sgt. Maj. Hugh Stewart and C/Supt. Dingwall, and blind copied to some other people, beginning with “Good Day Again Sir and to All Concerned,” referring to deliberations with “our very own Supt. Morris” and acknowledging that she could not object to Supt. Morris’s points. Those points were that she had not followed the nomination process policy, that she had nominated someone whom she had had no right to nominate, that she should have acted on her concerns and contacted Supt. Morris in 2002 when she noted that her nominees were not on the list instead of waiting for months until the January 2003 meeting, and that she insisted that she had made the nominations. (The emailed apology exchanges are Exhibit 1, Tab 5-E.)

[88] The Queen’s Jubilee Medals incident arose in evidence several times later in the hearing. In her subsequent correspondence to several individuals, the grievor referred to the incident. In an email of October 1, 2003, addressed to Ms. Stangrecki, and blind copied to others, the grievor stated that she forwarded the nominations and that her only wrong step was not following proper procedure and policy, for which she apologized. She claimed that Supt. Morris was furious with her for copying her reply to others. That he brought it up again when talking about her harassment complaint demonstrated his need for training to become a more competent and reliable manager and to improve his leadership and management skills (Exhibit 1, Tab 5-I).

[89] In her June 24, 2004 complaint to the ethics and integrity advisor in Ottawa, the grievor accused Supt. Morris of wanting control over the QGJC Medal nomination process and of a lack of ethics on a number of fronts. She had also emailed Ms. Lidyard (on February 26, 2003) making a similar but broader accusation, alleging that “certain people” wanted veto power for those nominated so that, if they did not like the nominees, the nominees would not receive the QGJC Medal (Exhibit 55).

[90] The grievor testified that she did not find her copies of the nomination papers she had submitted in May 2002 until April 2005 when she was putting her materials together for C/Supt. Lanthier.

[91] C/Supt. Lanthier raised the issue of the grievor’s credibility with respect to the Queen’s Jubilee Medals first as a ground for suspending her RCMP reliability status on March 22, 2005 and later as a ground for revoking her RCMP reliability status on July 27, 2005 (Exhibit 1, Tabs 4 and 5-B). In April 2005, in response to the suspension letter, the grievor produced copies of the four nominations that she said she had

submitted in May 2002. C/Supt. Lanthier testified that the nomination forms submitted to him in April 2005 were undated and unsigned by the nominees (Exhibit 1, Tab 8-E).

## **2. Harassment awareness workshops and whether an end date had been set**

[92] In November 2000, the grievor, as the union's anti-discrimination and human rights advisor, and Ms. Bailey, as the employer's representative, attended a "Train the Trainer" workshop in Ottawa designed to prepare facilitators from across the country to present mandatory harassment awareness workshops in their home districts. The intention was that the grievor and Ms. Bailey would co-facilitate the workshops for "E" Division's North District.

[93] Initially, the workshops were intended for management, but later, the intention was broadened to include offering them to all RCMP employees, whether or not they were public servants or regular members and whether or not they were supervisors. S/Sgt. Mike Racicot was added as a co-facilitator as a representative of "E" Division's North District RCMP members to provide a full-team approach even though he had not attended the Ottawa training.

[94] Disagreements subsequently developed between the grievor and Ms. Bailey over the organization, presentation and timing of the harassment awareness workshops. Multiple emails and notes were introduced in evidence. Some, sent in May 2002 (Exhibit 1, Tab 5-U, at pages 30 to 32), described communication and planning issues.

[95] The grievor and Ms. Bailey presented different perspectives in their testimonies as to whether the feedback from the participants was that the grievor's or Ms. Bailey's presentation skills required improvement. Ms. Bailey testified that she provided a wide range of resources and assistance to the grievor to help her improve her skills and that the grievor rejected the criticism and any offers of assistance. The grievor testified that she was not the facilitator who needed to improve and that the materials offered to her were not helpful. Supt. Morris testified that, around that time, the grievor appeared to begin targeting Ms. Bailey.

[96] Ms. Bailey testified that it was an ambitious program, delivering mandatory harassment awareness training to all employees and not just supervisors and to deliver it throughout "E" Division's North District because of its size. The projected



cost was substantial. In addition, the “E” Division’s North District provincial budget was cut by 11% in 2001, making it difficult to offer the workshops, but it was anticipated that new funding would be in place for the workshops after April 2002.

[97] Ms. Bailey testified that she was very surprised by an email she received from the grievor on January 27, 2003, stating that they were supposed to finish presenting the joint harassment awareness training by March 31, 2003 (Exhibit 1, Tab 5-D, at page 1). Ms. Bailey responded by email on January 30, 2003, stating that it was the first she had heard of the expected completion date. She asked the grievor where that direction had come from and why it had not been communicated in any fashion to all facilitators, to determine its feasibility. The grievor responded in an email of the same date and stated that Ms. Bailey was not to worry about it and that she was “. . . asking for the final date be waived for [the] North District with an anticipated end date of the end of summer that’s the latest [she thought they] should go for.” The grievor further stated that she knew the completion date had been pushed back for one other district to May or June, so she stated that she did not think that “we” had to worry. The grievor wrote that “[t]he final date was given to [them] in Ottawa at the training. This also came up at the Joint Union Management Meeting in Vancouver last week.” (Note that the quoted sentences are underlined in Exhibit 1, Tab 5-D, at page 1, but that they are not underlined in Exhibit 1, Tab 5-U, at page 25).

[98] Ms. Bailey asked the grievor to come to her office to clarify her position. Ms. Bailey testified that, when they met on January 30, 2003, the discussion was calm, with no anger, but that the grievor made disparaging and sarcastic remarks about the North District Office management team and complained about its unfriendliness and its lack of communication. She refused to provide examples or particulars of the alleged lack of communication. The grievor accused Ms. Bailey of overanalyzing everything. Ms. Bailey thought the meeting was going nowhere, so eventually, she advised the grievor in a measured monotone that the meeting was over. The grievor left.

[99] Ms. Bailey testified that she did not recall any end date to the mandatory harassment awareness training program being given to the attendees in Ottawa. She did not trust the grievor’s information as it was provided just after the grievor had accused her at the joint union-management meeting in Vancouver on January 22, 2003 of not forwarding the grievor’s package of nominees for the Queen’s Jubilee Medals.

After the meeting with the grievor, Ms. Bailey contacted Ms. Major-Hurt at Pacific Region Public Service Human Resources Office as well as the harassment awareness contact person in Ottawa to see if they knew anything about an end date being established. Both advised her that they were unaware of any end date being set.

[100] Ms. Bailey testified that the grievor had a history of inappropriate interactions and comments toward her and others, often by email, despite Ms. Bailey's attempts to be professional, courteous and open in her behaviour and communications with the grievor. She testified that meetings and events took place and that the grievor denied that they had occurred, so Ms. Bailey started to keep her own file notes so that she could recall specifics. Thus, after the grievor left her office on January 30, 2003, Ms. Bailey made notes for herself because she was concerned about the meeting and the grievor's accusations. The notes are in an email format because of the RCMP GroupWise email system, used in the North District Office, but Ms. Bailey testified that she did not intend to email them to anyone and that in fact she never did (Exhibit 1, Tab 5-D, at pages 3 and 4).

[101] Ms. Bailey testified that the grievor's claim that she made later to the Pacific Region Departmental Security Section (Exhibit 1, Tab 8-U, at paragraph 26 on page 10) that she and the grievor "...had a good level of communication, polite and professional to each other in the office" was untrue. In her view, the professionalism went only one way.

[102] Supt. Morris testified that, at one of the mandatory workshops, the grievor, on her own and without discussing anything with her co-facilitators or the union and without authorization, added content to the materials. It was considered a problem because of the mandatory nature of the workshops. As a result of the grievor's action, Supt. Morris testified that he wanted the workshops to continue but that he wanted the grievor replaced as a facilitator with another union representative. He wrote C/Supt. Dingwall in May 2004 with his request (Exhibit 29, Tab C-15).

[103] The grievor did not deny adding content to the workshop without first discussing it with her co-facilitators, but she testified that she added relevant material based on her own extensive experience as the union anti-discrimination and human rights advisor. She claimed that she did not change the mandatory course content but rather that she added to it and that her added materials were well received. She also testified that, after Supt. Morris's email, she was no longer involved in training.

[104] The grievor's testimony was that someone in Ottawa informed her during the training session that an end date of March 30, 2003 had been set for the completion of the initial harassment training. She testified that she could not recall whether in fact she had asked for the final date to be waived for the "E" Division's North District, as she had said she would.

[105] I note that the issue of the grievor's credibility with respect to the email she sent to Ms. Bailey on January 30, 2003 about the completion of the harassment awareness training, in which she claimed that it was to be completed by March 31, 2003, was raised by C/Supt. Lanthier in 2005 first as a ground for suspending her RCMP reliability status on March 22, 2005 and later as a ground for revoking it on July 27, 2005 (Exhibit 1, Tabs 4 and 5-B). In her reply to C/Supt. Lanthier on April 6, 2005, the grievor said the following: "As far as I know we did have an end date to the initial training. The information I gave was accurate" (Exhibit 1, Tab 8-E).

### **3. Harassment complaints and investigations**

[106] On March 3, 2003, the grievor went to Insp. Clark's office and, using strong language, accused Mr. Stephenson of refusing to let her into the first-aid room and abusing his authority. Within minutes, Insp. Clark spoke with Mr. Stephenson. He testified that the Health and Safety Committee had developed a protocol (primarily to monitor supplies and out of a concern about people self-medicating) and had posted it by the first-aid room door. It stated that only trained first-aiders could enter the room. Otherwise, a reason had to be provided to Mr. Stephenson for access. The grievor was a member of the Committee.

[107] Insp. Clark testified that Mr. Stephenson was calm and very straightforward about what he had asked the grievor, which was whether she was a first-aider. When she said that she was, he allowed her access. Insp. Clark found the first-aid room door sticky but not locked, as the grievor claimed. Insp. Clark concluded that Mr. Stephenson did his job by following the protocol, regardless of who wanted to enter the room, and he so informed the grievor.

[108] Shortly after that, the grievor sent Insp. Clark an after-the-fact email, giving her perspective of the incident and adding additional information, such as claiming that she had been "faced with an inquisition." Insp. Clark thought that that claim was an embellishment. He responded, reiterating why the Health and Safety Committee had

developed the guidelines for access and reminding her of Mr. Stephenson's assigned role. He did not believe Mr. Stephenson had overstepped his bounds. The next day, the grievor emailed Insp. Clark, stating that they needed to discuss the situation further, especially the part he did not understand about how Mr. Stephenson had abused his authority (email exchange: Exhibit 29, Tab C-1). A later investigation run by Catherine Chagnon reviewed the incident (it is described in Exhibit 60, at page 22).

[109] The grievor's testimony was that Mr. Stephenson had abused his authority by humiliating her because of how he stared at her and studied her for quite a while when she sought access to the first-aid room.

[110] In September 2003, the grievor met with Ms. Bailey and requested information on whether Mr. Stephenson was permanently assigned to the North District Office and on the specifics of his contract. She questioned why his was not a public service position. During the conversation, she requested information on how to get rid of him, telling Ms. Bailey that he had been rude and that it had gone beyond an apology.

[111] The grievor's testimony was that, by mid-September 2003, she had made her harassment complaints officially known to her supervisor, S/Sgt. Beach, and to Supt. Morris, but that she did not file formal harassment complaints against Mr. Stephenson until September 26, 2003 and against Cst. Wolney until October 29, 2003 (Exhibits 161 and 162).

[112] The grievor testified that her definition of harassment was "anything which would make a person embarrassed, humiliated or belittled." She said that the important viewpoint is that of the victim.

[113] S/Sgt. Beach testified that, in September 2003, he had a conversation with the grievor on her complaints about Mr. Stephenson's behaviour. S/Sgt. Beach testified that, based upon his information, there were no grounds to substantiate her complaints. During their conversation, the grievor mentioned that she was aware of another person in the Prince George Detachment who had been harassed and that the RCMP had paid that person a sum in the five-figure range. When S/Sgt. Beach asked her what resolution she was looking for, she advised that she hoped for a monetary settlement.

[114] Supt. Morris testified that, in September, he became aware of an incident in

which the grievor accused Mr. Stephenson of harassment. He called her into his office around mid-September, along with her supervisor, and asked her to relate the details of the incident. She described an incident that allegedly took place the previous morning in the North District Office foyer. In her details, she included Supt. Morris as a witness to the harassment. He told her that he was not a witness to any such event.

[115] The grievor testified that the meeting was held on September 12 and that she thought that Insp. Clark and S/Sgt. Al McCaig were also present. She testified that she never said that Supt. Morris was a witness to the September 11 incident but that she thought he was a witness because he had been standing there. The grievor subsequently wrote emails in which she noted that Supt. Morris had denied being a witness but that she did not believe his denial, and she accused him of a lack of impartiality because Mr. Stephenson was his friend.

[116] On September 17, a meeting was held in Supt. Morris's office. His version of events is as follows. The grievor told him that Mr. Stephenson and Cst. Wolney had been harassing her for some time and that she had documented each occasion. Supt. Morris asked for the documentation. The grievor replied that it was at her home. He instructed her to go home, retrieve the documentation and bring it to him. She left the office at 10:15 and did not return until 15:00. She produced three pages. When Supt. Morris questioned their validity because of the time it took her to produce them, she stated that the documentation she provided was supported by entries in her desk calendars. She was asked to produce the calendars.

[117] The grievor's testimony was that she went home to get the documentation. It took time to drive there, and it covered the lunch period. She stated that she was gone only from about noon until 15:00, which was less time than Supt. Morris claimed she took.

[118] The following week, the grievor presented the desk calendars and 14 pages of documentation to Supt. Morris in support of her allegations. He noticed that some entries related to the three pages that she had already given him but that the details had expanded. He also noted that the colour of the ink used for the calendar entries often differed from the other entries on the dates in question. He suspected that the entries had been added after the fact, and he questioned her truthfulness.

[119] The grievor's version was she compiled the 14 pages by going through her

planner and that she often had pens of different-coloured ink on her desk.

[120] In the documentation the grievor provided to Supt. Morris about her harassment allegations, one statement was of particular concern to him. She had written the following: "I hope Cst. Wolney does not accidentally discharge his firearm at my head or chest or in the meantime in an effort to cover up the damage he has done so I can't talk about it or hopefully not sent [sic] a member of the OMG [sic] to choke me out."

[121] The grievor testified that it was just a "bad metaphor" on her part.

[122] Supt. Morris testified that he was concerned about the grievor's comment. On September 29, 2003, he held a meeting in his office with her, C/Supt. Clark and S/Sgt. McCaig to discuss her harassment concerns. He advised her that he was very concerned over her comments and her level of fear, which he thought was unfounded, and suggested that she contact her family doctor or avail herself of the Employee Assistance Program (EAP). Supt. Morris testified that the grievor became very abusive and insubordinate with him and that she began making derogatory remarks about his leadership and integrity. She later conveyed as much in an email sent to others. Supt. Morris advised her that he considered her continual persecution of Mr. Stephenson and Cst. Wolney as harassment and that she was to stop immediately.

[123] Insp. Clark testified that the meeting deteriorated very quickly from talking about harassment issues to the grievor venting and going after Supt. Morris for his lack of leadership. She emailed S/Sgt. McCaig the next day, requesting his notes of the meeting and stating that she hoped she did not embarrass anyone by telling Supt. Morris that she wanted to see his leadership and management skills demonstrated, that he was "blowing smoke," that he was not being impartial, and that she wanted to see him follow the RCMP core values (Exhibit 29, Tab C-4).

[124] C/Supt. Clark testified that the grievor's language was a lot stronger at the meeting than she described in her email. He testified that Supt. Morris expressed concern about her comment about Cst. Wolney and her state of mind and suggested that perhaps she should consult with her doctor or avail herself of the EAP.

[125] On September 29, following the meeting, the grievor emailed Ms. Stangrecki, copying two other union officials, describing the meeting from her perspective and relating the same comments she had made to Supt. Morris (Exhibit 5-N, at page 43).

[126] On September 30, 2003, the grievor sent an email entitled, "Important Please Read" to approximately 50 people, including Ms. Bailey and Ms. Stangrecki, in which she stated that she was "... an Anti-Discrimination Advisor for all of you as well as a Harassment Awareness Facilitator in the Workplace." She included a lengthy section entitled, "Next Item and perhaps the most important!", in which she claimed that "[s]ome people" around the workplace did not take harassment seriously at that she did. She claimed that she had brought her experience to the district officer (Supt. Morris) and that, because she had no witnesses, although she had plenty of documentation, her complaint was dismissed as a communication problem. She stated that she was convinced that Supt. Morris's objectivity was being clouded by his friendship with the persons involved. She raised whether, when he told her that he had spoken to the person she claimed had told her that she had also felt degraded when speaking to Mr. Stephenson, the person had denied it. She asked whether she was "... to think that this man [Supt. Morris] was trying to pit [her] against a sister?" (See Exhibit 1, Tab 5-H, at pages 2 and 3.)

[127] Ms. Bailey testified that she understood that the grievor was referring to her as well as to Supt. Morris in the grievor's September 30, 2003 email and that she took harassment seriously.

[128] On September 30, 2003, the grievor also emailed Cpl. Adair. At the time of the hearing, he was the program manager for the RCMP's National Respectful Workplace Program. He testified that, in his advisor role, he dealt with harassment and human rights complaints from employees throughout the Pacific Region. He provided advice to complainants, respondents and management about providing a harassment-free workplace and about avenues to resolve conflict complaints. He also provided human awareness training for managers. He was familiar with the two harassment policies that were relevant at that time, one covering regular and civilian RCMP members, and one covering public servants, such as the grievor (Exhibit 59). He reported to the officer in charge of Professional Standards, Insp. Barb Fleury. He did not report directly to C/Supt. Dingwall.

[129] In her September 30, 2003 email to Cpl. Adair, the grievor described her complaint about Mr. Stephenson and requested that Cpl. Adair not share her comments with anyone else from the North District Office. She told him that she did not feel good about telling Supt. Morris that she was looking to see his leadership and

management skills demonstrated, that she had told Supt. Morris that she did not think that he was being impartial with respect to her complaint, and that he was just “blowing smoke.” She noted that Supt. Morris had reiterated many times over that, if anything happened, she was to bring it up immediately so that it could be dealt with (Exhibit 1, Tab 5-N, at page 42).

[130] On October 1, 2003, the grievor sent a five-page, single-spaced email to Ms. Stangrecki. The salutation read, “Basically ladies,” and testimony was received that it was blind copied to many other individuals. Most but not all of the recipients were union members. Some USGE members, like Ms. Bailey, were not sent a copy. Cpl. Adair testified that he had received a copy. Insp. Clark testified that he had not but that S/Sgt. McCaig had shown him his copy.

[131] It is hard to succinctly describe the tenor and content of that lengthy email. The subject line read, “complaint any suggestions?” (See Exhibit 1, Tab 5-I.) The grievor addressed a number of topics. She stated that she did not think that Supt. Morris was being impartial because Mr. Stephenson was his friend. She stated that Supt. Morris accused her of not working within the core RCMP values. She stated that he did not possess good management and leadership skills, that she had told him that she did not view him as a person showing or working within the RCMP core values, and that she wanted and expected to see him working within them. She stated that she “. . . could be wrong but [she] feel[s] Mike does not see harassment as a serious issue.” She claimed that harassment was rampant and that the North District Office, embodied by Supt. Morris, was doing nothing about it. She also stated that two public servants had come to her with harassment complaints, and she accused Supt. Morris of “pitting one sister against the other.”

[132] In the email, the grievor also stated the following:

*Just as it is harassment to make jokes, innuendoes, repetitive rudeness, it also is harassment in not talking to people at all, ignoring them and not being professional, since this matter has been brought to Mike Morris's attention, there has been contact with Bob within the office environment since September 19<sup>th</sup> of which and in every case Bob has deliberately chosen to ignore and not be mindful of courtesies like good morning, thank you, etc. to myself.*

[Sic throughout]



[133] The grievor alleged that Supt. Morris's impartiality was clouded by his friendship with Mr. Stephenson (Exhibit 51, page 5).

[134] About a week after that email, Supt. Morris, who was not blind copied on it, received a copy via regular post from outside Prince George. The anonymous sender did not agree with the grievor's comments. Supt. Morris later gave Ms. Bailey a copy. He was very concerned about the grievor's accusations and her statements that two public servants had come forward with harassment complaints and that he did not take harassment or harassment complaints seriously. He testified that he felt the grievor's email was a very subjective and serious attack on his character and that she made several derogatory references to Ms. Bailey. Her comments were potentially damaging to relationships and had the potential to undermine both his and the North District Office's credibility.

[135] Supt. Morris testified that, after he became aware of the grievor's email, he told her that he and Mr. Stephenson were not friends, as she alleged. He testified that he was very clear with her that he had no social relationship outside the office with Mr. Stephenson at that time. Yet, she continued repeating in her communications that he was friends with Mr. Stephenson and that he was therefore not impartial, such as in her email to Cpl. Adair, even though she knew that it was not true.

[136] Supt. Morris testified that he took the grievor's harassment concerns seriously. He did not delegate the matter to a harassment officer to investigate. He acted immediately when concerns were brought to his attention. When he followed up on each of her allegations with the persons she named, each indicated a lack of knowledge of any conversation with the grievor or reported that she did not have correct information. After he received a copy of her email and read her accusation that he did not take harassment or harassment complaints seriously, he contacted Cpl. Adair for advice and scheduled a mandatory harassment meeting for all unit heads and public servants in the North District Office for October 14, 2003.

[137] The grievor was informed of the mandatory meeting. She asked Ms. Bailey for more details about its subject, which she received (Exhibits 41 and 42). The grievor did not reply or inform anyone that she could not, or would not, attend. She did not attend. Minutes of the meeting were introduced in evidence.

[138] The grievor's testimony was that she did not attend because her daughter had a

tonsillectomy on that day.

[139] The grievor later wrote to several individuals, making two accusations about management acting improperly at the meeting. First, she accused Supt. Morris and Ms. Bailey of embarrassing her by bringing up her name and the facts of her complaint. Supt. Morris testified that that was not true. He did not name or identify the grievor at the meeting, although he noted that many of those attending, particularly the union members, had been blind copied by the grievor and therefore would have known about her allegations. Ms. Bailey testified that, while she was a member of the USGE, she was not blind copied on the grievor's email, and she did not receive a copy of it until Supt. Morris gave her one sometime after the October 14 meeting. He did so because he said he felt that it should be brought to her attention so that she would know what the grievor was saying about her.

[140] Three examples of the grievor's communications in which she repeats her first accusation, which was that Supt. Morris and Ms. Bailey embarrassed her by bringing up her name and the details of her complaint, are her email of December 31, 2003 to C/Supt. Dingwall (Exhibit 164), her email of January 15, 2004 to Cpl. Adair (Exhibit 94), and her email of June 24, 2004 to the ethics and integrity advisor in Ottawa (Exhibit 197).

[141] The grievor also complained in her emails to Cpl. Adair and to the ethics and integrity advisor that she was not present at the October 14, 2003 meeting and that she had no voice or opportunity to speak, implying that that made Supt. Morris's improper actions at the meeting even worse.

[142] The grievor's testimony and written position to Cpl. Adair, which was repeated to others later on, was that she wrote her October 1, 2003 email to a union member, Ms. Stangrecki, with the sole intent of obtaining advice and suggestions on dealing with a problem (Exhibit 104) and that Ms. Bailey took the email from the grievor's desk. She alleged that Ms. Bailey was unethical in securing and reading an email that was addressed neither to her nor for her and, because of what Ms. Bailey did, implied that it served Ms. Bailey right to read negative things about herself.

[143] No one at the October 14 meeting raised harassment concerns in the North District Office. The grievor's testimony was that the public servants present had harassment concerns but that they were reluctant to raise them in that type of meeting

with Supt. Morris.

[144] Cpl. Adair testified that, in mid-October, he met with Supt. Morris and Ms. Bailey, who were in Vancouver on other matters. He was shown a copy of the grievor's October 1, 2003 email. Supt. Morris said he would not pursue the grievor's comments about him, but he requested that Cpl. Adair visit Prince George and conduct an independent review of the perception of North District Office personnel about harassment in the "E" Division's North District and, in particular, whether people felt that Supt. Morris took complaints seriously. Ms. Bailey was upset about the grievor's comments about her in the email and wanted to know her options.

[145] As a result of Supt. Morris's request, Cpl. Adair visited the North District Office on October 29 and 30, 2003 and spoke with 18 individuals as part of his investigation into determining the perception of how Supt. Morris might address a harassment complaint. He testified that he did not know how the list of 18 individuals was chosen. He also spoke to S/Sgt. Beach, as he was the grievor's supervisor. Cpl. Adair's conclusion was that Supt. Morris took harassment in the workplace seriously, along with harassment complaints. He testified that he had later verbally told his conclusion to Insp. Clark, who was the North District Office's second in command at that time.

[146] Cpl. Adair testified that he told Supt. Morris that mediation should be the first step. He contacted the grievor, who was willing to proceed, as were the other parties, according to Supt. Morris. Mediation did not take place, as Cpl. Adair had difficulty finding mediators in October and November who were available to travel to Prince George in a timely manner. Before arrangements could be finalized, in early December 2003, Ms. Bailey filed a harassment complaint against the grievor and was not willing to mediate after that. Cpl. Adair then decided that, for consistency, the three harassment grievances should be treated similarly. He arranged for a team of two outside investigators to travel to the North District Office to investigate all three complaints, beginning with the grievor's complaints against Mr. Stephenson and Cst. Wolney. The investigative team was not appointed until early March 2004.

[147] Later on, the grievor sought copies of Cpl. Adair's notes of his interviews with North District Office employees. He provided her with his notes of his meeting with her but refused to provide his notes of his interviews with the other employees. He testified that he honoured the grievor's request that he not share her comments made in the interview with Supt. Morris.

[148] When her complaints were not dealt with to her satisfaction, the grievor filed formal harassment complaints on October 29, 2003 with Pacific Region Public Service Human Resources Office listing Mr. Stephenson and Cst. Wolney as respondents.

[149] One of the topics addressed in the grievor's October 1, 2003 email (Exhibit 1, Tab 5-1) was the harassment training program. She made a number of negative statements about her counterpart delivering the program, which Ms. Bailey testified was a reference to her, not S/Sgt. Racicot. Although Ms. Bailey stated that she was ready, the grievor alleged that Ms. Bailey was not ready to mount the joint program and that Ms. Bailey feared that "she'd fall on her face." The grievor stated that Ms. Bailey was indifferent to launching the training program and kept putting it off, as she was not ready. The grievor questioned Ms. Bailey's motives as well as her leadership, stated that Ms. Bailey was indifferent to the training and did not see it as a serious mandate, in contrast to the grievor, and that Ms. Bailey was parroting the comments the grievor had made for years about the seriousness of the mandate, which raised questions about Ms. Bailey's motives and her leadership. Ms. Bailey testified that she had never made the reported comments. They were fabrications, and they were insulting and stressful as well as untrue.

[150] In her email of October 1, 2003, the grievor referred to Ms. Bailey three times as "junior management" or a "Junior Manager" and stated that she had brought up with management a number of times the need to carry out the training more expeditiously but that she was put off again and again. She stated that, for some reason, management lacked the capability of deciphering what she was saying, although she believed that, "... at every instance, [she] was speaking English in person and in [her] emails." The grievor commented on her communication problems with management, stated that it was her personal opinion that Supt. Morris and Ms. Bailey "... must have a very special, great level of communication," and commented on how leadership, management and people skills were lacking. Ms. Bailey testified that the grievor's comments were untrue, sarcastic, insulting and demeaning.

[151] In late October, a difference of opinion arose between the grievor and Ms. Bailey as to whether the team held a debriefing after the workshop in Terrace, B.C., on September 10, 2003. It was the first workshop held as a separate session, as opposed to all the other workshops, which had been added to the supervisor workshops as an extra day. In an email sent on October 31, 2003, Ms. Bailey stated that, "... in the

debriefing afterwards, all facilitators agreed that it was logistically more beneficial to hold these sessions as the fourth day of the supervisor workshop” (Exhibit 1, Tab 5-U, at page 34).

[152] Later on October 31, 2003, the grievor responded by email, stating that “. . . there has been no debriefing for the Terrace trip as yet . . .” (Exhibit 1, Tab 5-U, at page 33). Ms. Bailey responded that the debriefing she spoke of was the team’s conversation in the vehicle on the way to the airport. She stated that “. . . it is a term that is appropriate to the discussion [they] had at that time and does not imply that there is not to be a further debriefing” (Exhibit 1, Tab 5-U, at page 33). The grievor immediately emailed that she understood perfectly what the term “debrief” meant. She wrote that she was not asking for the definition of it, that she did not recall any debriefing and that a little conversation in a vehicle did not constitute a debrief.

[153] The grievor testified that, in her opinion, the conversation in the car between the three presenters after the workshop about how it went did not constitute a debriefing, as she understood the word’s meaning.

[154] Ms. Bailey testified that she forwarded the October 31, 2003 email exchange to Supt. Morris on November 3, noting her failed attempts to develop a positive relationship with the grievor and the grievor’s very demeaning and undermining attitude. Ms. Bailey requested intervention, as she did not know what else to do (Exhibit 1, Tab 5-U, at page 33).

[155] In cross-examination, Ms. Bailey rejected counsel for the grievor’s suggestion that the debriefing exchange might have been just a misunderstanding,

[156] Ms. Bailey was referred to the grievor’s submission of January 27, 2005 to the Pacific Region Departmental Security Section in which the grievor refers to the Terrace training and states that she “. . . was in a debrief with Bonnie and S/Sgt. Racicot while Bonnie subtly humiliated [her]” (Exhibit 1, Tab 8-U, at paragraph 6 on page 5). Ms. Bailey testified that she had never seen the document at Tab 8-U before preparing for the hearing and that she had no idea what the grievor’s comment referred to. The grievor later filed a harassment complaint alleging “subtle” harassment by Ms. Bailey in her defining the term “debrief” in her October 31, 2003 email.

[157] Ms. Bailey testified that, on December 2, 2003, she filed a harassment complaint

against the grievor for a pattern of negative behaviour towards her that she believed was being done to undermine and denigrate her. In that complaint, she itemized and responded to many of the grievor's allegations in her October 1, 2003 email (Exhibit 1, Tab 5-U). Her complaint was later found substantiated.

[158] Ms. Bailey's December 2, 2003 harassment complaint was brought to the grievor's attention on December 24, 2003.

[159] On December 31, 2003, the grievor filed a lengthy complaint with C/Supt. Dingwall in which she questioned the validity of Ms. Bailey's complaint of December 2 and her motives for filing it. The grievor stated that her October 1, 2003 email was sent to union members looking for advice and that it was not intended for anyone else. She alleged that Ms. Bailey acted improperly both at the October 14 North District Office harassment meeting and in her email response to the grievor of October 31, 2003 when she subtly harassed the grievor by her explanation of the word "debrief." She alleged that Ms. Bailey's complaint of December 2, 2003 was made in bad faith, in retribution, as "tit for tat" because of the grievor's October 2003 complaint against Mr. Stephenson and that it was meant as a scare tactic to make the grievor abandon her complaints (Exhibit 164).

[160] Ms. Bailey testified that she never knew about the grievor's complaint and that she was never interviewed about it. She found out about it in 2005 when she was putting materials together, at the request of C/Supt. Clark, for forwarding to Pacific Region Departmental Security Section for the "Briske" security investigation. Supt. Morris testified that the grievor's complaint was viewed as retaliation to Ms. Bailey's December 2 harassment complaint against her.

[161] Ms. Bailey was referred to the grievor's later correspondence with the Pacific Region Departmental Security Section (Exhibit 1, Tab 8-U, at paragraph 26 on page 10) in which she again claims that Ms. Bailey's harassment complaint of December 2, 2003 was "in retaliation" for the grievor filing a complaint about Mr. Stephenson, whom Ms. Bailey supervised, and in retribution for the grievor sending an email asking for discussion with Ms. Bailey and S/Sgt. Racicot about the harassment workshops. The grievor alleges that "[t]his is the email where Bonnie harassed [her] very subtly." Ms. Bailey testified that the allegations were untrue. She filed her complaint because she felt harassed by the grievor. She testified that the grievor's October 31, 2003 email was as much a reason for her filing the complaint as was her October 1, 2003 email.

She testified that she never asked the grievor about what she meant by her “subtle harassment” comment because she never knew anything about the grievor’s allegation.

[162] The grievor testified that she felt that Ms. Bailey had filed her harassment complaint against her to interfere with her complaints against Mr. Stephenson and Cst. Wolney. She testified that her counterclaim against Ms. Bailey was never investigated. She did not know that it had been dismissed until she received the letter from Commr. Zaccardelli at the final level of the grievance process.

[163] When Supt. Morris received the grievor’s official harassment complaints against Mr. Stephenson and Cst. Wolney in late October 2003, he immediately contacted Cpl. Adair for advice on what courses of action he should consider. Cpl. Adair testified that he received the call from Supt. Morris before he had even received a copy of the grievor’s complaints.

[164] Cpl. Adair and the grievor had several contacts with each other while he was attempting first to arrange for mediators for the grievor’s two complaints and then, after December 2003, to arrange for independent investigators to travel to Prince George to investigate all three harassment complaints.

#### **4. Work performance**

[165] The grievor’s October 2001 job description included as key activities compiling, reviewing, and maintaining files and record systems; checking, scoring and concluding files on the Computer Integrated Information Dispatch System; downloading files to the Police Information Retrieval System and making necessary additions and modifications and concluding files on the Police Information Retrieval System.

[166] The grievor provided some of her performance reviews, dating from 1979. She emphasized one she had received shortly after her move to the North District Office that was dated August 29, 2002 and that was prepared by her supervisor, Sgt. Czernicki. Her reviews from October 2001 and August 2002 stated in general that her performance was good.

[167] The grievor testified that, before moving to the North District Office, she was one of two or sometimes three women at the Prince George Detachment who entered data on the Central Police Information Centre system. Several witnesses, particularly Insp. Clark, described the Central Police Information Centre system as the RCMP’s

“Holy Grail” and stressed that the accuracy and timeliness of entries were crucial. Arrests and releases were based on the information in the Central Police Information Centre system.

[168] The grievor was the only public servant at the North District Office. She completed more entries in the Central Police Information Centre system than in her previous position. She testified that she requested a course on the Central Police Information Centre system almost from the beginning of her work at the North District Office because, even though she was handling entries in the, they were complicated, and she wanted to do a good job. She testified that it was very important to make accurate entries in the Central Police Information Centre system.

[169] The employer did not think that she needed a formal course and that she could do the job with direction and guidance from her supervisor and from the public servants at the Prince George Detachment who also were doing entry work in the Central Police Information Centre system.

[170] Sgt. Beach testified that he provided the grievor with a copy of the Central Police Information Centre system manual and an opportunity to visit the Prince George Detachment. She would work with the clerk there, who was dedicated to making entries in the Central Police Information Centre system, to gain the necessary experience. The grievor turned down the opportunity. Her version was that S/Sgt. Beach gave her notes, not the Central Police Information Centre system manual, and that they were insufficient for her needs. She disputed his testimony and said that he did not offer her that opportunity.

[171] The grievor testified that the women at the Prince George Detachment were great. They helped her when she called for assistance, but this assistance was not the same thing as the employer sending her on a formal course to increase her skills as she had requested.

[172] The grievor accused Ms. Bailey of blocking her from taking a formal course.

[173] The grievor received a performance assessment dated July 29, 2003, which had been completed by S/Sgt. Beach. He had become her supervisor in spring 2003 (Exhibit 1, Tab 8-P, at pages 2 and 3). It was positive. Cpl. Adair testified that S/Sgt. Beach had positive things to say about the grievor’s performance in the



September and October periods when Cpl. Adair was at the North District Office because of her harassment complaints.

[174] S/Sgt. Beach testified that he was new to the job and that it was not until he gained experience that he began to change his opinion of the grievor's work performance.

[175] In early November 2003, Cst. Wolney audited the outstanding files in the Central Police Information Centre system. Several errors were discovered in nine operational files. He reported his findings.

[176] On November 14, the Burnaby Detachment executed an arrest warrant with respect to an "E" Division's North District file (file 2002-1263; "the problem file"). The arrest was illegal. It occurred because the warrant entry had not been removed from the Central Police Information Centre system, which the grievor should have done.

[177] The grievor's position was that not only her error had caused the illegal arrest but rather several errors combined, including one by the court.

[178] When S/Sgt. Beach became aware of the deficiencies discovered by Cst. Wolney, on November 20, 2003, he provided the grievor with written directions (a continuation report form; "the original continuation report form") about how to properly enter entries in the Central Police Information Centre system in similar files. He attached the original continuation report form to the problem file and gave a copy to the grievor to keep at her desk to prevent future errors. Later that day, he provided her with a second continuation report form to be used as a generic direction for entries in the Central Police Information Centre system and for endorsed and unendorsed warrants. He placed that second direction in all nine operational files that had been identified by Cst. Wolney, including the problem file. He gave the grievor a copy and placed another in her office personnel file. He then advised S/Sgt. McCaig that the problem identified by Cst. Wolney had been addressed with the grievor, that she had been mentored, that she had a copy of what to do at her desk and that the issue was resolved and closed.

## **C. Events in 2004**

### **1. January through March**

[179] On January 13, S/Sgt. Beach spoke to the grievor about her time taken off, which

he thought was caused more by mental than physical issues. He asked her to use the EAP or to see a doctor for help, as he thought she needed someone to talk to. He advised her that her time off was affecting her work and that he needed her on the job (Exhibit 26, Tab A-2).

[180] On January 15, 2004, the grievor and Cpl. Adair exchanged emails on the role he had played when he visited the North District Office in October 2003. He saw his role, at Supt. Morris's request, as exploring the possibility of mediation between the grievor and the individuals she had accused of harassing her. In addition, he was to obtain feedback from and speak to the public servants about the October 14, 2003 mandatory meeting that Supt. Morris had held with them and their supervisors about his position on harassment and harassment complaints. Cpl. Adair disagreed with the grievor's interpretation that he had conducted a fact-finding investigation of her harassment complaints at that time and informed her that, since Ms. Bailey had filed a harassment complaint against her and was not willing to mediate it, a formal investigation would be conducted into the grievor's two complaints against her colleagues as well as Ms. Bailey's complaint against the grievor. Cpl. Adair testified that that decision had been made for consistency in how the three North District Office harassment complaints would be handled.

[181] In her January 15 reply to Cpl. Adair, the grievor accused Supt. Morris and Ms. Bailey of embarrassing her at the October 14, 2003 meeting by bringing up her name and that she had filed a complaint. They specified against whom she had filed it, along with other details. The grievor wrote the following: "Do you know if that kind of thing ever has occurred before that you know of? Especially if it has [*sic*] done in the person's absence and they were not given an opportunity to speak?" (See Exhibit 94.) The grievor also informed Cpl. Adair that she had a lot to say about the accuracy of Ms. Bailey's responses and stated that she had recordings of her meetings with Ms. Bailey that she would not be happy about and that would constitute another reason that she would not be open to mediation.

[182] On January 30, 2004, the grievor interrupted Supt. Morris, as he had instructed her to do if she experienced harassment. He was in a meeting in his office with Insp. Wheadon and Insp. Clark. She stated that Mr. Stephenson had just harassed her in her office. Supt. Morris excused Insp. Wheadon and asked the grievor and Insp. Clark to stay. He called Mr. Stephenson to his office immediately so that he could

hear both sides of the dispute.

[183] The grievor accused Mr. Stephenson of harassing her when he came into the Traffic Services Unit and that he ignored her when she asked him if she could be of assistance. The testimonies of Supt. Morris and Insp. Clark were that Mr. Stephenson listened to the grievor's accusations and stated that he had visited that office to deliver a package to the range office. In a professional manner, he stated that he did not speak to the grievor because he no longer trusted her.

[184] Supt. Morris and Insp. Clark, in their version of what happened next, stated that the grievor immediately stood up, pointed at Mr. Stephenson's face and called him an "asshole" or a "lying asshole." Supt. Morris then excused Mr. Stephenson from his office and told the grievor that her language was unacceptable. He asked her to remain respectful and polite. She then made derogatory comments to him about his lack of leadership, integrity, impartiality and honesty. He asked her to leave. In his opinion, she was out of control.

[185] Supt. Morris later described the grievor's behaviour in his office on January 30, 2004 as rage and as very unprofessional.

[186] Insp. Clark testified that he generally got along well with the grievor. However, at the relevant time, he was on the operational side of "E" Division's North District operations, not the personnel side. His office was next door to that of Supt. Morris. He thought that his role at meetings such as the one on January 30, 2004 was as an impartial observer. He testified that the meeting was held in Supt. Morris's office between 10:00 and 10:10 and that he made notes of the incident at 10:25. His notes were introduced as Exhibit 1, Tab 5-J.

[187] Insp. Clark testified that, while he would not describe the grievor's behaviour at the January 30 meeting as "ranting," she did get carried away. He testified that he would describe her as having been "angry," "agitated," "pissed off" and "out of control." Her language was offensive, and Supt. Morris told her that her language was unprofessional and that she should apologize. He testified that Supt. Morris did not raise his voice or yell at her but that he finally told her to leave his office. He also testified that Mr. Stephenson maintained a calm, civil, direct and professional attitude throughout the meeting even when being challenged by the grievor in a very unprofessional way.

[188] Insp. Clark testified that the grievor seemed to have a “hate-on” for Mr. Stephenson and Cst. Wolney, which he could not understand. Her behaviour toward them was, in his opinion, unreasonable, and he thought that Supt. Morris was trying to discover the reason for her behaviour.

[189] The grievor’s version of events was that, in her opinion, Mr. Stephenson had twice admitted his harassment to those present. She could not understand why Supt. Morris would not do anything. She testified (and later wrote) that she told Mr. Stephenson that he was lying and that he was an asshole but she denied calling him a “lying asshole” and she said that her words had been a “slip of the tongue.” She testified that Supt. Morris threatened disciplinary action against her for the incident, and she accused him of not being impartial because of his friendship with Mr. Stephenson.

[190] The grievor testified that Supt. Morris lied when he later wrote in a report in November 2004 to Pacific Region Departmental Security Section that she was in an uncontrollable rage at the January 30, 2004 meeting. As proof, she introduced a transcript of a meeting she had secretly taped with Insp. Clark, after she had received a copy of Supt. Morris’s November report, in which she asked him repeatedly whether he would say that she had been in an uncontrollable rage at the meeting. He said that he would not describe her behaviour in that way but instead that she had been very upset.

[191] The grievor testified that, in her view, she did not act in an unprofessional manner at the meeting. From her perspective, she used an assertive tone, but she was not angry, aggressive or abusive.

[192] Immediately after the meeting ended, the grievor sent at least three emails, dated January 30, 2004 and entitled “Ongoing harassment in the workplace,” to a range of people. In them, she gave her view of what had transpired at the meeting and repeated her accusations against Supt. Morris’s lack of integrity and impartiality.

[193] All the emails are addressed to “Sir” without further identification. Each contains the same two paragraphs. However, the email in the employer’s exhibit (Exhibit 1, Tab 5-J, at page 2) shows that it was copied to eight management and union people, including Supt. Morris and Ms. Stangrecki. The same email appears in the grievor’s exhibits as Exhibits 95 and 96. Exhibit 95 shows that it was not copied to anyone but that Cpl. Adair replied. Exhibit 96 shows that it was copied only to

C/Supt. Dingwall and Ms. Stangrecki. The same email appears again as Exhibit 29, Tab C-9, this time addressed to Insp. Clark, C/Supt. Dingwall and Cpl. Adair and copied to two members of management and two union members. Exhibit 79 shows that the grievor also blind copied her email to Beverley A. Busson, Deputy Commissioner, Pacific Region, and Commanding Officer, "E" Division's North District. The grievor received a reply from the Deputy Commissioner's staff officer about the inappropriateness of addressing such an email to the Deputy Commissioner, given her adjudicator role in formal processes.

[194] In the email, the grievor stated that she had been harassed by Mr. Stephenson that morning and that, after she told him that he was not to come into her section again unless he was going to be professional and courteous to her, Mr. Stephenson pointed his finger at her and said that she was not to tell him what to do. She stated that Supt. Morris told her that she should apologize as she had called Mr. Stephenson an asshole but that she would not as he was an asshole and had harassed her. She also stated the following (Exhibit 1, Tab 5-J, at pages 2 and 3):

...

*[T]here is no point in my taking anything to Mike Morris because he does not see harassment as a serious issue at all, he isn't willing to deal with any of the issues I've brought forward which have been many and yet because I have a slip of the tongue for a nanosecond he wants to make a mountain out of that and discipline me. He is playing a tit for tat game and this is not funny. Again Mike has proven that and again he has proven he is taking his friends side. . . .*

...

[Sic throughout]

[195] The grievor added that Supt. Morris told her that she should leave his office. She replied that she was glad to as he was not willing to do anything to correct the situation she had brought to his attention. She asked that a copy of the harassment policy be given to him.

[196] Supt. Morris testified and later wrote that the events as described by the grievor were far from what actually occurred and that her uncontrollable rage and her inaccurate recollection of events heightened his concern over her mental well-being.

[197] Insp. Clark testified that, in her email, the grievor understated her

unprofessional comments to Supt. Morris at the January 30, 2004 meeting and misstated what he had said to her. He also testified that, after the meeting, he started to see a pattern of behaviour in her. His observation was that, when she had an interaction with him or with anyone, she would send out an after-the-event or after-the-fact email, describing her version of events and that, often, her version was not accurate. He described the emails she sent after the meeting as an example of that behaviour. His recollection of and perspective on the meeting events were quite different from hers.

[198] Cpl. Adair also received an email from the grievor, although he was uncertain whether he had been blind copied on her email to C/Supt. Dingwall or she had sent it directly to him (Exhibit 95). He replied to her later that same day, stating that he was in the process of finalizing arrangements for an investigation team to go to the North District Office and investigate the situation. He suggested that the grievor document her complaints and concerns for the investigators rather than send emails (Exhibit 29, Tab C-8).

[199] On February 5, 2004, Cpl. Adair responded to the grievor's January 30, 2004 email, copying his reply to others that she had copied. He testified and wrote in his reply that, as a rule, he did not "respond to all" when replying to emails but, as it was the second email he was aware of in which the grievor indicated that Supt. Morris did not take harassment in the workplace or harassment complaints seriously, and the grievor was copying senior RCMP management personnel on her emails, he felt that, as the harassment advisor, he had to respond. He outlined the steps that Supt. Morris had taken and stated that nothing in Supt. Morris's demeanour or attitude indicated to him that Supt. Morris did not take harassment seriously. He also took full responsibility for the delay securing the release of two suitable, trained investigators to travel to Prince George to conduct the formal investigation of the grievor's October 2003 harassment complaints (Exhibit 96).

[200] When asked in cross-examination about his perception of the grievor's concerns, Cpl. Adair stated that he had no doubt that she believed that Supt. Morris did not take harassment seriously but that that was not his perception.

[201] On February 17, 2004, the grievor filed a grievance against Ms. Bailey for failing to provide a workplace free from harassment (Exhibit 164). In it, she claims that Ms. Bailey's email of October 31, 2003 was "subtle" harassment by her reference

to “debriefing.”

[202] Ms. Bailey testified that she never knew about the grievor’s December 2003 complaint or her February 2004 grievance against her until she put the materials together later in 2005 for the Briske investigation at the request of C/Supt. Clark. She was never interviewed about the complaint or grievance, and the grievor never informed her of the complaint. Supt. Morris testified that the employer viewed the grievor’s complaint and grievance as retaliatory because of Ms. Bailey’s December 2, 2003 harassment complaint against her.

[203] On February 18, 2004, Supt. Morris contacted Pacific Region Public Service Human Resources Office for advice on how to force a medical appointment on the grievor for her safety and that of other employees. He testified that her office behaviour was so bizarre that he believed that a medical problem might be at the root of it. He did not want to take disciplinary action against an employee if the cause of his or her unacceptable behaviour were medical.

[204] On February 24, 2004, the grievor filed a grievance against Supt. Morris for his failure to provide a harassment-free environment. She provided or included three pages of requested corrective action, including many apologies. She specifically requested that the grievance be held in abeyance pending the outcome of the investigation, arranged by Cpl. Adair, of her earlier harassment complaints against Mr. Stephenson and Cst. Wolney (Exhibit 1, Tab 5-K).

[205] When the grievor filed her harassment grievance against Supt. Morris, she was President of USGE in Prince George, and Ms. Stangrecki was Vice-President and Chief Shop Steward. Ms. Stangrecki testified that, as the chief shop steward, her job was to handle any grievances filed by a member, which entailed signing and forwarding them to the right level. She worked closely with the grievor at that time.

[206] On February 24, 2004, when the grievor filed her harassment grievance against Supt. Morris, she requested that her supervisor, S/Sgt. Beach, sign the grievance report and transmittal slip. Ms. Stangrecki was present as the union representative to witness it. Both she and the grievor wished to bypass the first level of the grievance process because they thought it would be inappropriate for Supt. Morris to deal with the grievance at the first level as per the normal grievance process. They took the grievance to S/Sgt. Beach and requested that he sign off at the first level, in lieu of

Supt. Morris, and that he forward the grievance directly to the Pacific Region Public Service Human Resources Office to be dealt with at the second level. S/Sgt. Beach and Ms. Stangrecki signed the grievance notices. S/Sgt. Beach took one copy and left another in Supt. Morris's mailbox before he forwarded the grievance and transmittal documents to Pacific Region Public Service Human Resources Office Vancouver.

[207] The grievor and S/Sgt. Beach disagreed as to what was said about giving Supt. Morris a copy of the grievance before it was forwarded to the second level.

[208] Ms. Stangrecki. He testified that he had sought assistance from a number of people, including Pacific Region Public Service Human Resources Office staff, on handling the information but that no one was available to advise him. He told the grievor that he would provide a copy of the transmittal information to Supt. Morris, as he had a right to be kept apprised as "E" Division's North District superintendent. The grievor did not object. He placed a copy of the grievance in an envelope in Supt. Morris's mailbox before forwarding the grievance and transmittal documents. He did not speak to Supt. Morris about the grievance at that time.

[209] The grievor's version differs. She testified that she specifically told S/Sgt. Beach that he should not provide Supt. Morris with a copy as she did not feel that he had a need to know. S/Sgt. Beach did it anyway.

[210] Ms. Stangrecki testified that the grievor did not want Supt. Morris to have a copy of her grievance against him and that she was unhappy that he had received one from S/Sgt. Beach. She testified that she would have told the grievor that it really did not matter if S/Sgt. Beach gave a copy to Supt. Morris because, if a person is named in a grievance, the normal procedure is that that person is entitled to have a copy of it, so Supt. Morris would have been sent one once the Pacific Region Public Service Human Resources Office received the grievance. She testified that she was not sure whether she told the grievor of that fact before or after the meeting with S/Sgt. Beach and was not sure whether he was present when she told the grievor. She also was not sure whether, at the end of the meeting, he would give a copy to Supt. Morris. She also testified that she could not recall if the grievor had any discussion with her before the grievor filed her departmental security complaint form in June 2004, alleging that S/Sgt. Beach had committed a security breach by giving Supt. Morris a copy of the grievance.



[211] On March 3, 2004, on Cpl. Adair's recommendation, Pacific Region Public Service Human Resources Office appointed Catherine Chagnon of Ottawa and S/Sgt. Dave Hornung of Chilliwack as independent investigators from outside the North District Office to investigate the grievor's October 2003 harassment complaints against Mr. Stephenson and Cst. Wolney and Ms. Bailey's December 2003 harassment complaint against the grievor. The investigators agreed to look into not just the grievor's harassment complaints made between May 2001 and September 2003 but also her new complaints, made between September 2003 and January 2004.

[212] On March 3, the grievor entered the work area of Cst. Wolney, who was not present. She requested a draft of the fire orders and went to the overhead bin (containing papers and files), remarking that she had seen them there and that she wanted to check the bin to see if they were still there. Ms. Bailey, who worked in that area, testified that she told the grievor that there were not there and that they were being revised. The grievor replied that she had seen them there before and indicated that a piece of paper was important to her and that she wanted to get it. She went through the bin.

[213] On March 3, 2004, S/Sgt. Beach noted that the original continuation report form that he had provided to the grievor had been removed from all nine files requiring revisions in which it had been placed, including the grievor's personnel (working) file. The corrections had been made to the files, but the original continuation report form had been removed. S/Sgt. Beach testified that he rewrote the instructions and placed them back in the respective files to replace the missing copies. The grievor's testimony was that the original continuation report form was never missing from the files; therefore, there was nothing to replace.

[214] On March 7, 2004, the grievor received a favourable report from Cpl. Flewelling, with whom she worked on a special short-term project (Exhibit 151).

[215] By March, management expressed concerns over the grievor's performance and particularly her inappropriate use of the RCMP GroupWise email system to send many lengthy emails to union members and other individuals outside the North District Office, many of whom were blind copied, providing her views on several office matters. Concerns were also expressed about the work time used to write those emails. S/Sgt. Beach instructed the grievor to stop using the RCMP GroupWise email system for personal emails. He instructed her to limit her use of it to after 15:00.

[216] On March 22, 2004, S/Sgt. Beach restricted the grievor's For Official Business access so that she was allowed in the building only from 08:00 to 16:00. She testified that he made that restriction after she had returned to the office to deal with her email, staying one night until about 02:00. He said he was concerned about her well-being and felt that she needed more rest, but she found his actions humiliating and embarrassing and a subtle abuse of authority.

[217] On March 25, S/Sgt. Beach noted that the original continuation report form was back in the grievor's office personnel file but that it was out of sequential order. He prepared a departmental security complaint form and informed Insp. Wheadon.

[218] The grievor was on sick leave from March 31 to May 7, 2004. She returned to work on May 10, 2004 and worked until June 9, 2004. She then went off work until August 5, 2004. Sometime around July 7, her indefinite sick leave status was changed, although she remained off work, as she was then considered off work pending the completion of a fitness-to-work assessment.

## **2. April through June**

[219] On April 1, the provincial court inquired as to why all "E" Division's North District Traffic Services Unit members failed to show up in court the week before. They all claimed that they were not aware of any court commitments and that they had not received any notifications. A search of the grievor's work area revealed a considerable number of notifications that had been received two months in advance but that had not been distributed. S/Sgt. Beach testified that several letters, accident reports and other correspondence were found, dating back several months, all of which required action.

[220] Supt. Morris testified that, after an investigation, it was found that it was not an isolated incident. He suspected that the grievor purposefully overlooked the court notifications and other correspondence to bring discredit to her supervisor.

[221] The grievor's version of events differed. She testified that she kept careful track of the hearing notices that she had received after being falsely accused of not doing her job. She alleged that S/Sgt. Beach deliberately did not give her several of the traffic notices, to sabotage her. She testified that he was not happy with her because she had filed the harassment grievance against Supt. Morris in February 2004. She claimed that

S/Sgt. Beach showed poor leadership skills because he took sides. She claimed and later wrote in several emails that he had instructed S/Sgt. Beach to lean on her extra hard because of her actions, which was an abuse of his authority (see Exhibit 197, at page 10).

[222] On April 8, 2004, Insp. Wheadon requested a security investigation into the absence of the continuation report forms that had been placed in the Central Police Information Centre system files by S/Sgt. Beach. S/Sgt. Hildebrand was appointed to conduct it, which took place in September and October 2004.

[223] The grievor later claimed that Ms. Bailey had egged on S/Sgt. Beach to file the false departmental security complaint form against the grievor. Ms. Bailey denied any involvement.

[224] The grievor returned from sick leave on the morning of May 10, 2004. S/Sgt. Beach provided the grievor with a “form 1004,” outlining work directions.

[225] The grievor testified that, when she returned, S/Sgt. Beach told her that he no longer intended to forward an updated job description to upgrade her position. She saw his action as an abuse of authority.

[226] On May 27, 2004, S/Sgt. Beach wrote a performance log noting the grievor’s failure to make entries in the Central Police Information Centre system and changes the first priority of her job. He noted that making entries in the Central Police Information Centre system was part of her job description and that no problems had arisen in the past with her making them. He also noted that she would not speak to him without a witness. Her written comments on the log note stated that she did that because of something that happened behind closed doors due to a false allegation. She questioned why making entries in the Central Police Information Centre system had come to a complete halt, since she had been making them since 2001. She noted that she had been begging for a course on the Central Police Information Centre system for some time (Exhibit 26, Tab A-23).

[227] On May 27, 2004, the grievor sent an email to “E” Division’s North District, asking who its integrity and ethics advisor was. She was informed in a reply that it was Sgt. Maj. Stewart.

[228] On June 2, 2004, the grievor filed a departmental security complaint form

against S/Sgt. Beach in which she alleged that he had breached security in February 2004 by providing Supt. Morris with a copy of her February 24, 2004 grievance alleging a failure by Supt. Morris to provide a harassment-free workplace, before he forwarded it to Pacific Region Public Service Human Resources Office. She alleged that S/Sgt. Beach had breached security by disclosing protected information to Supt. Morris to which he ought not to have been privy at that time (Exhibit 1, Tab 5-V). S/Sgt. Beach received a copy of the complaint. It was witnessed by Ms. Stangrecki.

[229] On June 2, in response to a request from Ms. Chagnon, Supt. Morris forwarded a copy of the grievor's emails of September 30, 2003 and October 1, 2003, which had prompted him to call the mandatory public servant meeting on October 14, 2003.

[230] On June 7, 2004, the grievor wrote Cpl. Adair, alleging that S/Sgt. Beach was leaning harder on her "as instructed by the Supt." and expressing her concern that S/Sgt. Beach and Supt. Morris were trying "to write [her] up", alleging that she was a poor performer, even though there had never been a problem before her harassment complaint (Exhibit 101).

[231] The grievor testified that, on June 9, 2004, shortly after she had returned to work, she was harassed again by Mr. Stephenson and by her own direct supervisor, S/Sgt. Beach, who yelled at and was rude to her. She stated that it was unusual behaviour for him based on her experience with him until she left on sick leave at the end of March 2004. The grievor's later correspondence to PS-Pacific Region Public Service Human Resources Office also states that as her view at that time (Exhibit 1, Tab 8-N, at pages 4 and 5).

[232] The grievor went on indefinite sick leave on June 9, 2004 although not without some controversy over comments she wrote on her sick leave form that S/Sgt. Beach found derogatory (Exhibit 26, Tab A-26). While on leave, she was advised that she had to undergo a fitness-to-work evaluation before she could return to work.

[233] On June 10, 2004, S/Sgt. Beach wrote to Supt. Morris, documenting four different work problems he was experiencing with the grievor and the directions that he had provided her and concluding that the grievor was not an asset to the Traffic Services unit. He stated that, over the past year, he had found that her complaints were disruptive and vindictive and that they were made against several persons in the North District Office, based on his direct involvement as an impartial investigator of her

unfounded and unsubstantiated complaints. He believed that the motive for all her complaints was either paranoia or a preconceived plan to seek a monetary reward. S/Sgt. Beach concluded his memo to Supt. Morris by stating that he requested that she be found unsuitable as his traffic service clerk (Exhibit 26, Tab A-27).

[234] On June 10, 2004, Lynn Ray, USGE President, sent a letter on behalf of the grievor, which filed a complaint about how the grievor's harassment allegations had been handled to that date, particularly about how the employer did not physically separate the grievor and Mr. Stephenson. The letter called for a formal investigation.

[235] Cpl. Adair testified that he thought it was premature to separate the grievor and Mr. Stephenson at that time. They worked in different parts of the North District Office, there was no supervisory relationship between them, the type of harassment alleged was repetitive rudeness, Mr. Stephenson had been advised to limit his contact with the grievor and Ms. Chagnon's formal investigation was wrapping up.

[236] On June 18, S/Sgt. Beach wrote to Supt. Morris, outlining a number of errors in Central Police Information Centre system entries found in a file on prohibited driving (Exhibit 26, Tab A-30).

[237] On June 24, 2004, the grievor filed a 27-page single-spaced complaint with Michael Seguin, Ethics and Integrity Advisor, Ottawa, alleging numerous incidents in which RCMP ethics and integrity had been compromised at the North District Office and seeking advice on how to have S/Sgt. Beach charged with public mischief, sabotage and criminal harassment for filing an intentionally false departmental security complaint form against her, causing a security investigation to launch when none should have been, nitpicking her work and intimidating her.

[238] In her complaint, the grievor related the history of her harassment complaints made in the North District Office and alleged that North District Office management had attempted to interfere, impede and stop the investigation of her complaints by filing a false departmental security complaint form against her. She stated that she was a hard worker and that she had an absolutely impeccable record with 14 years' work experience with the federal government. She described the performance assessment disagreements she had experienced and alleged that North District Office management was trying to portray her as a poor performer, to get rid of her. She made a number of serious allegations in her complaint, including alleged intimidation, lack of ethics and

integrity, and retaliation by her supervisor, S/Sgt. Beach, because he was unhappy that she had filed a harassment grievance in February 2004 against Supt. Morris.

[239] The grievor also claimed that Supt. Morris had not done anything about her harassment complaints because of his friendships with Mr. Stephenson and Cst. Wolney. She claimed that Supt. Morris had heard what Mr. Stephenson had said to her on September 11, 2003, even though Supt. Morris had told her that he had not. She claimed that he wanted veto rights over the Queen's Jubilee Medals nomination process. She repeatedly alleged that he had told S/Sgt. Beach to lean on her "hard" or "extra hard." She questioned his ethics and integrity and alleged that he was guilty of abuse of authority as well as criminal harassment because he had threatened her economic livelihood through a dismissal. She also repeated allegations against Ms. Bailey, Mr. Stephenson and Cst. Wolney (Exhibit 197).

[240] On June 17, 2004, Mr. Andre Letourneau, Assistant Chief Human Resources Officer, Headquarters, Ottawa, contacted C/Supt. Dingwall. He inquired about the delay in receiving the report of the Chagnon investigation into the three North District Office harassment complaints, expressing concern about the delay and the fact that the grievor had gone on sick leave (Exhibit 29, Tab C-18).

[241] Supt. Morris testified that, on June 30, 2004, he wrote to Doreen Currie in Pacific Region Public Service Human Resources Office, stating that he was becoming increasingly concerned over the state of the grievor's health, which he felt was a significant factor in her unhappiness at work and possibly the reason for her irrational behaviour. He felt that, in normal circumstances, her behaviour would result in some form of discipline. However, because he believed her health was the root cause, he had chosen not to pursue discipline.

[242] In cross-examination, Supt. Morris testified that his concerns about the grievor's behaviour at that time were her continual lies, her embellishment of events and her persecution of several people in the North District Office. He testified that he would have disciplined another employee who exhibited such behaviour but that he would never discipline an employee whose behaviour he felt resulted from medical issues or substance abuse.

[243] Supt. Morris summarized the grievor's numerous harassment complaints, his several meetings with her as he investigated them, her behaviour at the

January 30, 2004 meeting and her later account of its events, which was far from reality, as he and Insp. Clark recalled it. He ended his letter as follows (Exhibit 29, Tab C-25, at page 2):

...

*What ever [sic] is causing Ms. Bergey to continually persecute a handful of individuals in this office and invent situations that did not occur, is getting worse. I am very concerned over the welfare of all employees in this building and feel their work environment is threatened by Ms. Bergey's behaviour. Your assistance in providing help to Ms. Bergey would be appreciated.*

...

[244] As a result of that letter, the grievor was told not to return to work until she underwent a fitness-to-work evaluation.

[245] The grievor testified that nothing was wrong with her health, that she had been on sick leave only for a short time, and that she viewed Supt. Morris's actions as devious and as an abuse of authority. She believed that he required a fitness-to-work assessment because he had found out that she had written the integrity and ethics advisor in June. She later conveyed the same beliefs in writing to Pacific Region Public Service Human Resources Office (Exhibit 1, Tab 8-N, at paragraphs 25, 26 and 27 on page 3). In addition, she wrote Cpl. Adair, explaining that she was required to speak to the Health Canada doctor because Supt. Morris wanted to have her deemed unfit mentally, when perhaps he needed a mental assessment (Exhibit 66, at page 2).

[246] Ms. Stangrecki was Vice-President and Shop Steward of the USGE in 2001 to 2003 before she assumed the grievor's responsibilities when she resigned as president in mid-December 2003. Ms. Stangrecki testified as to her perception of the working relationship between the union and North District Office management while she was vice-president. She described it as "generally good." Whenever she called Supt. Morris and requested a meeting, he was available.

[247] Ms. Stangrecki was asked about her perception of whether Supt. Morris took harassment and harassment complaints seriously. She testified that she went on a five-month secondment to the North District Office sometime in 2004 to be the training coordinator but also to see for herself how things were. During part of that secondment, the grievor was away on sick leave. She testified that she was initially

apprehensive because of the picture the grievor had given her of North District Office management. However, she changed her preconceived notions of both Supt. Morris and Ms. Bailey when she started to work with them. She provided several examples to illustrate why her perception became that the North District Office environment was not as described by the grievor.

[248] Ms. Stangrecki testified that, when she worked in the North District Office, she did not observe any of the incidents that the grievor related in her emails. She also testified that the grievor did not want her to bring the events that she described in her emails to management's attention at that time to try to resolve things. Ms. Stangrecki testified that it was "very frustrating" to try to resolve things because what the grievor asked for as relief were "way out there." She testified that she was not referring to the grievor's request for the harassment to stop but to such things as her demands for money and to be relocated at the RCMP's expense. She tried to get the grievor to reword her grievances more realistically but was unsuccessful. She testified that the final wording in any grievances belongs to the grievor.

[249] Ms. Stangrecki testified that, as the shop steward at that time, she spent approximately 20% to 25% of her time each month on grievances and almost all that time on grievances within the North District Office, where the majority of the 10 to 15 USGE members worked. But, only one of the public service members at the North District Office, besides the grievor, had filed a grievance, and she spent about 1% of her time addressing the other public service member's grievance and 99% of her time monthly on the grievor and her issues.

[250] Ms. Stangrecki also testified that, at a point at which she could not recall exactly, she knew that Supt. Morris had advised the grievor to stop sending emails on the RCMP GroupWise email system and copying them to everyone.

[251] Ms. Stangrecki testified that, in every meeting she ever held with S/Sgt. Beach, he was always calm and never raised his voice. If he was angry or upset, he never showed it. The same was true for her conversations with Supt. Morris. She also did not recall the grievor ever raising her voice in the meetings she attended with the grievor and with S/Sgt. Beach or Supt. Morris.

[252] Ms. Stangrecki testified that she and the grievor were friends at one time, when they were union president and vice-president. They often attended meetings together,



but they were no longer friends by the hearing. She testified that their relationship ended when they disagreed about the accuracy of Ms. Stangrecki's notes and recollections of meetings and events that they had attended together. The grievor then filed a harassment complaint against her.

### **3. July through September**

[253] In early July, the independent investigators submitted their report ("the Chagnon Harassment Report") to the Pacific Region Public Service Human Resources Office. They had conducted their investigation, had interviewed the grievor and the respondents and several other people, and had concluded that her six or eight (depending on how they were grouped) separate allegations of being harassed by Mr. Stephenson were unsubstantiated (Exhibit 60) and that her six harassment allegations against Cst. Wolney were unfounded (Exhibit 61).

[254] By a detailed memo dated July 21, 2004, C/Supt. Dingwall conveyed to the grievor that the investigation into her complaints had been completed and that her allegations of harassment were found unfounded and unsubstantiated. He informed her that she could request an independent review from the assistant chief human resources officer at RCMP Headquarters in Ottawa if she was dissatisfied with how her complaint had been dealt with. Later on, she requested such a review.

[255] Cpl. Adair testified that, while the normal practice would have been to forward Pacific Region Public Service Human Resources Office's decision by mail to the grievor, it was decided that he would travel to Prince George and personally meet with her when she returned from sick leave to present the reports and answer any questions she might have. Several human resources personnel were to travel with him to the North District Office. They were charged with trying to improve the overall quality of the North District Office workplace by reducing its tensions.

[256] On July 22, 2004, Dr. Prendergast of Health Canada wrote to Pacific Region Public Service Human Resources Office, confirming that he had conducted a detailed telephone interview with the grievor. Based on that medical assessment, he had determined that she did not suffer from any medical condition, physical or mental, which would result in work limitations. He noted that, in discussing his report on July 22, 2004 with Ms. Major-Hurt, he learned that management's view of events differed from that of the grievor and that only an administrative review could

determine the facts. His job was to determine if the grievor suffered from any medical condition that would contribute to her apparently irrational behaviour in the workplace. It was clear to him that she did not.

[257] Upon being informed of Dr. Prendergast's report, Supt. Morris insisted that the grievor obtain a note from her family doctor confirming her fitness to return to work. She knew that that was not normally required and believed that Supt. Morris was abusing his authority by requiring it. She did as requested.

[258] Supt. Morris, upon receiving Dr. Prendergast's report, concluded that, if the grievor's unacceptable behaviour was not rooted in a medical problem, then it must be intentional misconduct and that, in the future, discipline would be the appropriate method for any further attempts to change her behaviour. He had Pacific Region Public Service Human Resources Office prepare a letter of expectation to be served on her that would specifically refer to proper workplace behaviour. With the assistance of Ms. Bailey, S/Sgt. Beach compiled a list of performance expectations for use by Pacific Region Public Service Human Resources Office in preparing the letter (Exhibits 50 and 51).

[259] The grievor returned to work on August 5, 2004.

[260] On the morning of her return, the grievor met with Cpl. Adair, who presented her with C/Supt. Dingwall's decision on her harassment complaints.

[261] Supt. Morris served the grievor with the letter of expectation on either August 5 or August 6, 2004. Her recollection was that she received the letter in the afternoon of August 5, while Supt. Morris's documentation showed that, in S/Sgt. Beach's absence on August 6, he met with her and her union representative, Ms. Stangrecki, and that he served the grievor with the letter (Exhibit 1, Tab 5-M). Others present at the meeting were representatives from Pacific Region Public Service Human Resources Office and Jeff Morley, a union representative and regular member of the RCMP who was an alternative dispute resolution observer. Supt. Morris testified that he read the letter to the grievor to ensure that she understood its provisions.

[262] Supt. Morris testified that, after he presented the grievor with the letter, she declared him a terrorist leader and began discussing the deficiencies in his leadership and skills. He ignored her and reiterated the importance of following the letter of

expectation and that she would be disciplined should she not follow it.

[263] The grievor's version of the meeting was that the letter of expectation was served because S/Sgt. Beach had gone on a witch hunt while she was sick, looking for something that did not happen so that the employer could state that she was the problem. She testified that the letter of expectation was not meant to provide direction and guidance as the employer claimed but instead to undermine and intimidate her. She viewed it as discipline. She denied that she called Supt. Morris a terrorist leader and claimed that what she had said repeatedly was the following: "It is clear to me you are going to continue to manage by fear, manage by intimidation and manage by terror." She testified that she had recorded the entire conversation at the August 6 meeting and that the transcript (which she did not introduce in evidence), would prove her point. She later emailed the Pacific Region Departmental Security Section and made the same claims and provided the names of three witnesses who she said were present at the meeting and heard her statements (Exhibit 1, Tab 8-U, at pages 12 and 13).

[264] In that email, the grievor wrote that she was disgusted with Supt. Morris at the meeting, "... as he clearly had a good time presenting this letter of expectation, humiliating and belittling [her] and [her] work."

[265] The grievor testified that she secretly recorded her office interactions when she returned to work. She testified that she felt that she had no choice but to record them because no one believed her harassment complaints, and she believed that the harassment was continuing. She later wrote the same thing to Pacific Region Public Service Human Resources Office (Exhibit 1, Tab 8-N, at paragraph 7). She continued recording until she was suspended from work for 10 days on November 4, 2004 for other misconduct. She never returned to work after that. She introduced into evidence a number of transcripts that she had made from her recordings. Most of the time, she concealed the tape recorder in her pocket. The transcripts show that, at times, the recordings were inaudible.

[266] The letter of expectation set out management's expectations for the grievor's attendance and the performance of her duties. It reads in part as follows (Exhibit 1, Tab 5-M):

...

**Work Performance:**

*Your duties are to be performed as required and described in your work description. While I will review your updated duties and work responsibilities in greater detail in a separate meeting, the following are some specific areas I would like to draw your attention to:*

*RCMP systems including Groupwise must be used for work purposes only, and in accordance with policies and the “acceptable user practices” agreement.*

...

**Behaviour in the Workplace:**

*It is important to ensure that your day to day interactions with management, co-workers and others in the workplace are conducted in a professional and respectful manner. Should you encounter any difficulties or should you have a concern about someone in the workplace, you are to immediately bring the situation to my attention.*

*I trust that you will be able to make the changes necessary to improve your approach to your day to day work and your ability to work as part of a team. Your commitment to these changes is necessary in order for management to maintain a safe and respectful work environment for all employees.*

...

[267] Supt. Morris testified that, approximately two days after he served the grievor with the letter of expectation, he was working in his yard when he observed a vehicle similar to hers drive slowly past his residence. A few minutes later, it drove by again, slowly, and he recognized that the grievor was the driver. He testified that the street he lives on is on the opposite side of the city from the grievor’s neighbourhood, that it is used only by its residents and that she would have had little reason to be there.

[268] The grievor testified and she had previously written to the Pacific Region Departmental Security Section (Exhibit 1, Tab 8-U, at page 11) that she definitely did not drive by on the date Supt. Morris said she did “unless it was the day of the party for the district.” She did not deny driving by his house but argued that non-residents might drive on his street for many reasons and that it was a free county.

[269] The grievor’s testimony was that management harassed her throughout August and September 2004. She was given a constant flow of unnecessary performance

directives as S/Sgt. Beach papered the file. Management nitpicked and micromanaged her. She testified that she did not refuse to talk with her supervisor. She did not trust him and refused to talk to him behind closed doors without witnesses present.

[270] Cpl. Adair's response to the grievor on August 6, 2004 notes that her supervisor had to supervise, that it was his responsibility to bring issues to her attention, and that, although micromanaging can be annoying, it is not harassment, merely a management style. Cpl. Adair also responded that he did not know the specifics of her false departmental security complaint form, but when management or the employer believes that a problem exists with security issues or process, it is incumbent on it to determine if one actually exists.

[271] On August 10, the grievor referred her harassment complaints against Mr. Stephenson and Cst. Wolney to the assistant chief of human resources office in Ottawa, pursuant to the Administration Manual, as she was not satisfied with the results of the Chagnon investigation (Exhibit 173). She requested a review of the investigation process.

[272] On August 19, 2004, S/Sgt. Beach directed the grievor to transcribe a tape for Cst. Saunderson, which he said she refused to do. He then wrote a directive to her about her duties as per her work description outline, which she received and signed on August 19, 2004. According to S/Sgt. Beach's testimony, the grievor advised him that she did not need that directive and that it was harassment. According to her, it was harassment and part of the constant nitpicking.

[273] On August 20, 2004, the officer in charge of Pacific Region Public Service Human Resources Office rendered his decision on the harassment investigation and determined that Ms. Bailey's allegation of harassment by the grievor was substantiated. Supt. Morris was notified.

[274] On August 21, 2004, the grievor wrote Cpl. Adair, complaining about the quality of the investigation by Ms. Chagnon and S/Sgt. Hornung, detailing what she believed the investigators did not do right in finding her complaint against Mr. Stephenson unsubstantiated, stating that she did nothing improper by sending her October 1, 2003 email to union members, seeking advice and suggestions, and again claiming that Ms. Bailey had improperly taken it from her desk.

[275] On August 25, Supt. Morris informed the grievor that Ms. Bailey's harassment complaint against her had been substantiated and that he would impose discipline on her for her behaviour.

[276] On August 23, S/Sgt. Beach wrote a memo to Pacific Region Public Service Human Resources Office about work that was expected on a file that was returned without the work being done. He noted that he had advised the grievor that, should she continue to not do her requested work, it would not be tolerated and that he would recommend discipline against her (Exhibit 29, Tab B-24).

[277] On August 25, Ms. Bailey informed S/Sgt. McCaig that, in March 2004, she had received a request to assist an outlying detachment with data entry for traffic accidents. She testified that she was not sure how to handle the request and that she forwarded it to S/Sgt. McCaig so that he could deal with S/Sgt. Beach, whom she claimed had instructed her to discontinue entering that traffic accident data.

[278] The grievor emailed Cpl. Adair again on August 31, 2004 with comments similar to those she made in her August 21 letter, complaining that the investigators had failed to note that the complainant, Ms. Bailey, had taken the grievor's October 1, 2003 email from her desk, even though it was not addressed to her and was not for her. The grievor asked if the decision maker would decide her harassment accusation against Ms. Bailey about Ms. Bailey's email of October 2003 in which she embarrassed, demeaned and belittled the grievor by how she explained the meaning of the word "debrief." Cpl. Adair responded on September 1, 2004, reminding the grievor that Ms. Bailey had become aware of the email because the grievor had blind copied a number of people, one of whom had brought it forward. He asked for more details and noted her allegations of criminal harassment, stating that the situation did not meet the threshold for the criminal element. He also asked her if she was looking to make a harassment complaint against S/Sgt. Beach (Exhibits 104 and 105).

[279] The grievor was sent on a two-day course on the Central Police Information Centre system entries in Vancouver at the end of August.

[280] On September 9, the grievor sent a six-page single-spaced email to Cpl. Adair raising a number of issues, including her view of what the investigators did not do properly in concluding that she had harassed Ms. Bailey, claiming again that her email of October 1, 2003 to union members was not improper, stating that she did not recall

blind copying it to anyone, and claiming that Ms. Bailey had improperly, unethically and dishonestly taken it from her desk. She disputed the investigators' finding of conflict in the workplace, as opposed to differences of opinion. She challenged the quality of the investigation into Ms. Bailey's harassment complaint against her, repeating her allegation that she did not think she had blind copied anyone on her October 1, 2003 email. She stated that Ms. Bailey had taken it from her desk, thus raising issues of a lack of honesty, integrity and ethics on Ms. Bailey's part. She also accused Ms. Bailey of ensuring that the grievor did not receive the training or tools to do her job properly.

[281] In her email, the grievor also accused S/Sgt. Beach of harassing her through his fault finding and nitpicking of everything she did and stated that she never agreed to the heavy-handed letter of expectation. She also stated that whoever said she had called Mr. Stephenson a "lying asshole" at the January 30, 2004 meeting was wrong. She had said that he had lied and that he was an asshole. She explained why she had filed a departmental security complaint form against S/Sgt. Beach in June 2004 and stated that, in an answer to an email from Cpl. Adair, she did not file a harassment complaint against S/Sgt. Beach in the fall of 2004, although she should have, because it would not have served any purpose at that point.

[282] On September 14, Cpl. Adair emailed a lengthy reply to the grievor, in which he attempted to reply by paragraph to her comments. He disputed her narrow definition of conflict, reminded her that her October 1, 2003 email was addressed to "Ladies," and confirmed that she had blind copied others on it and that Ms. Bailey later received a copy. He stated that he never saw the letter of expectation but that he understood from speaking to Pacific Region Public Service Human Resources Office that it was not a very onerous document and that he did not know the public servant policy and procedures about whether she had to agree to the letter. He stated that he did not believe her allegation that S/Sgt. Beach was trying to shove her out the door. He asked if she was thinking of or if she wanted a transfer (Exhibit 106).

[283] On September 9, the grievor gave S/Sgt. Beach a package of materials addressed to her from the Mackenzie Detachment with a notation that stated, "these should go through McCaig - not sure why it came to me." The package contained information that required data entry in the Traffic Services Management Information Tool. S/Sgt. Beach testified that he called the Mackenzie Detachment and learned that the grievor had

contacted a member there at the end of August, requesting that they forward the traffic accident data to her. The package arrived at the North District Office on September 9.

[284] The grievor's evidence was that the Mackenzie Detachment made two requests for her help entering Traffic Services Management Information Tool data. One unsolicited request was received in March 2004 and requested her help inputting Traffic Services Management Information Tool data. She complied. The second request, received in September, was for assistance entering data on more recent traffic accidents from the Mackenzie Detachment (Exhibit 1, Tab 5-S).

[285] On September 16, Supt. Morris imposed a three-day suspension on the grievor for September 21 to 23 without pay as a result of Ms. Bailey's substantiated harassment complaint (Exhibit 29, Tab B-23).

[286] On September 17, the grievor emailed S/Sgt. Beach, objecting to the operational guidance he had provided to her on August 23, 2004. She accused him of belittling and embarrassing her and of threatening her job, as well as of abusing his authority by sending his August 23 memo to Pacific Region Public Service Human Resources Office. (Exhibit 1, Tab B, at page 6, and Exhibit 29, Tab C-24, at pages 3 and 4). S/Sgt. Beach found the content and language of the email offensive and forwarded it to Supt. Morris.

[287] Supt. Morris described the grievor's email as very adversarial and as insubordinate to her supervisor. He believed that she sent it in retaliation for the discipline he had imposed on her for her harassment of Ms. Bailey. He called the grievor into his office and reprimanded her. He told her that he would no longer entertain her misguided allegations and continued persecution of S/Sgt. Beach or any other member of his staff and that the RCMP's email systems were not to be used for such purposes as it was contrary to acceptable user practices. He sent her an email after the meeting confirming his comments (Exhibit 29, Tab C-24, at page 2).

[288] Approximately one hour later, the grievor sent Supt. Morris a two-page single-spaced email taking exception to his direction and comments (Exhibit 29, Tab C-24, at pages 1 and 2). She stated that she was not persecuting S/Sgt. Beach and that S/Sgt. Beach had filed a false departmental security complaint form against her, which was public mischief, sabotage and criminal harassment.



[289] The grievor testified that her September 17 email to S/Sgt. Beach was not sent in retaliation for the three-day suspension S/Supt. Morris had imposed on her earlier that day and that she did not interpret her meeting with S/Supt. Morris about it as a reprimand but a discussion.

[290] On September 20, 2004, S/Sgt. Beach attempted to speak to the grievor about her annual performance assessment, in which he outlined or documented work deficiencies and her refusal to comply with the directions he had provided her with. He testified that she became abusive and insubordinate and that she accused him of harassment and bullying. She left his office with a draft copy of her performance assessment to review.

[291] On September 24, S/Sgt. Beach verbally reprimanded the grievor about facts he claimed she had given him about work from the Mackenzie Detachment, which he believed were not accurate. He requested that, in the future, she provide him with accurate and forthright information when asked about work activities or reporting on them to him.

[292] The grievor's version was that the September 24, 2004 reprimand was bogus and a complete deception. She had been forthright in the information she had provided. S/Sgt. Beach never presented any evidence or gave her a single example of when she had not been forthright. She provided a transcript of that meeting, which she testified supported her testimony (Exhibit 1, Tab 8-J).

[293] On September 24, 2004, the grievor was informed that the review of the Chagnon Harassment Report by the assistant chief human resources officer at Headquarters in Ottawa was complete, that the investigation process was appropriate, given the nature of the allegations and their context, and that the investigator's conclusions were consistent with the statements and evidence gathered.

[294] The grievor testified that S/Sgt. Beach pushed her right arm and hit her on that arm in the photocopy room on September 24, 2004. At the hearing, she introduced a transcript of her recording of the meeting, which she said would substantiate her claim (Exhibit 1, Tab 8-J). She made the same claim in an email she wrote to Pacific Region Public Service Human Resources Office sometime in 2005 (the undated email is in Exhibit 1, Tab 8-N, at point 9 on page 1) and in her April 2005 reply to C/Supt. Lanthier after her RCMP reliability status was suspended.

[295] Supt. Morris testified that the grievor never said anything to him about that alleged assault. Had he been told, he would have investigated immediately.

[296] S/Sgt. Beach testified and introduced notes that he made at that time in support of his testimony (Exhibit 26, Tab 8-0) that he and the grievor were in the photocopy room and that he opened a drawer with the Central Police Information Centre system files. The grievor moved slightly, and the drawer touched her. They went on with their duties.

[297] On September 27, 2004, S/Sgt. Beach, along with either S/Sgt. McCaig or Cpl. Flewelling, met with the grievor. S/Sgt. Beach provided her with her performance evaluation and went through it with her. He had discussed it with her several days earlier and had given her a copy at that time to review. Later that day, she presented S/Sgt. Beach with the original copy of her assessment, on which she had written her own comments, which took exception to his assessment and his leadership skills. The grievor's comments (Exhibit 1, Tab 5-P) read as follows:

*Dave Beach has been blatantly [sic] dishonest between his last report to now, has basically admitted same and lacks proper supervisory skills. He deliberately has not added certain good reports in an effort to continually undermine me. My work has never deteriorated and he knows that.*

[298] The grievor's position was that she had a right to comment on her supervisor's critique of her performance and that her comments were to the point, reasonable and professional.

[299] S/Sgt. Beach testified that, during the week after he gave the grievor her performance evaluation, he tried on several occasions to provide her with documentation outlining her work deficiencies and that she refused to comply with his directions.

#### **4. October through December**

[300] Tension and strife escalated between the grievor and S/Sgt. Beach. Supt. Morris testified about management's efforts over time to provide guidance to her in making entries in the Central Police Information Centre system to ensure no further errors were made and about her blatantly disrespectful and unprofessional response to her supervisor's guidance. He spoke about the formal course on the Central Police

Information Centre system entries that she had attended. S/Sgt. Beach and Supt. Morris testified that she made the same data entry mistakes again and again. Supt. Morris testified that he believed that she intentionally entered inaccurate file numbers to make her supervisor and the detachment look bad to court personnel. He also believed that she had lied about a central file clerk whose advice she claimed she was relying upon that caused some of the errors. When contacted, the Prince George Detachment central file clerk denied giving the grievor that advice.

[301] The grievor's version was that she made some errors but that the work was complicated. It takes time, maybe a year, for the Central Police Information Centre system course training to really sink in. She also said the central file clerk who was contacted was not the person who had given her the advice at issue.

[302] The grievor's performance appraisal of September 27, 2004, including her comments, was forwarded to Supt. Morris as the North District Office reviewing officer before being forwarded to Pacific Region Public Service Human Resources Office. He was away from the North District Office at that time, but when he returned and reviewed her written comments, he considered them very inappropriate, as they were a personal attack on her supervisor and were unrelated to the performance of her duties. He felt that that was particularly the case in light of the letter of expectation, which stated that she was expected to interact with management in a professional and respectful manner. Sometime in early October, he contacted Pacific Region Public Service Human Resources Office for disciplinary advice on that and three other incidents that had occurred with the grievor that were of concern to him (Exhibit 115).

[303] The grievor testified that she spoke with Insp. Clark after receiving a copy of Supt. Morris's November 29, 2004 memo to the Pacific Region Departmental Security Section because Supt. Morris had described her as "raging uncontrollably" at the January 30, 2004 meeting. She wanted Insp. Clark's recollection of her behaviour. However, the transcript she provided of their meeting shows that it occurred on October 4, 2004 and that her concern at that time was Supt. Morris's description of her behaviour at the January 30, 2004 meeting that he included in his letter of June 29, 2004 to Pacific Region Public Service Human Resources Office. He wrote that letter in support of his request to require her to undergo a fitness-to-work assessment before returning from sick leave. Dr. Prendergast had either given her a copy of that letter or spoken to her about its contents.

[304] The grievor secretly recorded her meeting with Insp. Clark. Without telling him why, she asked him at least three times whether he would describe her behaviour at the January 30, 2004 meeting as “raging uncontrollably.” When he asked her why she was asking, she replied simply that it was because she had asked for a review of her complaint, which appears was a reference to her departmental security complaint form complaint. She also posed other pointed questions about the meeting and what Insp. Clark said or how Supt. Morris behaved, to which Insp. Clark either said he did not recall or denied her recollections of Supt. Morris’s words or actions (Exhibit 1, Tab 8, Appendix B).

[305] On October 13, 2004, S/Sgt. Hildebrand forwarded his final report (“the Hildebrand Security Breach Report”) on the complaint filed in April 2004 by S/Sgt. Beach, which alleged a security breach by the grievor. Insp. Clark was acting as the North District Office commander in the absence of Supt. Morris. The Hildebrand Security Breach Report concluded that the grievor did not breach security but that she breached policy. S/Sgt. Hildebrand criticized her behaviour during the investigation and stated that he drew a negative inference of her credibility as a result. Upon receiving the Hildebrand Security Breach Report, Insp. Clark referred it on November 4, 2004 to the Pacific Region Departmental Security Section for a security review and, at the same time, referred it to Pacific Region Public Service Human Resources Office, seeking advice from them about possible disciplinary action to be taken against the grievor for her actions as described in the report. The evidence about the report will be expanded on in Part 2 of the summary of the evidence in this decision.

[306] On October 14, the grievor wrote to Cpl. Adair (Exhibit 107), telling him that she was raising with Pacific Region Public Service Human Resources Office the oral reprimand that S/Sgt. Beach had given her on September 24, that she would proceed in the next couple of weeks to pull her grievances out of abeyance to have them dealt with, and that, while she would not file a formal harassment complaint against S/Sgt. Beach, she was considering filing a grievance against him and maybe also a code of conduct complaint. She commented on the heavy-handed letter of expectation and noted that, from the time she received it until the end of September, she had been given approximately eight memos of “direction” and one oral reprimand, which was a witch hunt and criminal harassment. She was considering a deployment elsewhere.

[307] Cpl. Adair responded first on October 15 and again on October 19 and October 28, 2004. All the emails were entitled “Re: request conflict resolutions assistance” (Exhibits 107 to 109). On October 15, he acknowledged the number of issues she raised that he wanted to address but stated that he would need to get back to her and try to bring all her questions together, which he subsequently did. Among his points, he notes that her union representative was present when she received the letter of expectation and that no objection was raised at that time. He also told her she had to make a decision about her grievances as they could not be held over someone’s head indefinitely.

[308] On October 21, 2004, Insp. Clark asked Sgt. Lennox to conduct an administrative review of the grievor’s June 2004 allegation of a security breach by S/Sgt. Beach. He was provided with the grievor’s departmental security complaint form. In cross-examination, he testified that he did not think he received any other documents at that time. He believed he was asked to carry out the review because, while his office was in the North District Office building, he did not report to Supt. Morris but directly to Insp. Bill Ard in Vancouver. Sgt. Lennox testified that he agreed to conduct the administrative review but that he made it clear to Insp. Clark that he could not begin the review immediately due to his operational requirements.

[309] S/Sgt. Beach testified that, in October 2004, the grievor was found to be making the same mistakes, entering inaccurate file numbers on the Central Police Information Centre system despite being aware of the importance of accuracy. When corrected and reprimanded by S/Sgt. Beach, she stated that the central file clerk had instructed her to do what she did. When the central file clerk was contacted to verify her claim, she emphatically denied instructing the grievor that way and was upset at being implicated in the grievor’s poor performance.

[310] On October 27, 2004, the grievor made a mistake in entering data in the Central Police Information Centre system entries. Cst. Archer detected it; he was the acting supervisor during S/Sgt. Beach’s vacation. Cst. Archer fixed the error and reported it. Supt. Morris testified that the grievor erred despite being counselled by S/Sgt. Beach on many occasions and despite him providing her with written guidance and sending her on the Central Police Information Centre system course. Supt. Morris considered that she erred intentionally, to discredit her supervisor and to bring liability upon the RCMP.

[311] The grievor's version was that she admitted her mistakes but that they were not intentional. While she took the Central Police Information Centre system course, she testified that it takes time, probably up to a year, for the training to fully take effect.

[312] On October 27, 2004, the grievor requested redeployment, stating that her request was due to having been wrongfully accused and criminally harassed (Exhibit 171). The employer's version was that, when Cst. Archer questioned her as to whether she feared for her personal safety, she replied that she did not. When he then advised her that her reason did not meet the test for criminal harassment, she immediately stated that she did fear for her safety. Her version was that she did not change her story and that Cst. Archer's summary of their meeting that he emailed to Supt. Morris on October 29, 2004 (Exhibit 114) was a more accurate description of their exchange than Supt. Morris's later summary in his November 29, 2004 report.

**a. October 28: in the morning**

[313] In the morning of October 28, 2004, S/Sgt. Beach and the grievor were the only people in the office. He testified that he printed two emails and then walked to the printer to retrieve them. The grievor also walked to the printer, arriving just before him. She took all the papers from the top of the printer. When he told her that some were his, she defiantly held them up and to her side, and he took them from her raised hand. He testified that she said with a raised voice that he did not have to grab them, that it was harassment and that he was criminally harassing her. He asked her if she knew what that meant. She replied that she did (Exhibit 1, Tab 5Q, at page 5, his note to Pacific Region Public Service Human Resources Office of October 29, 2004 describing that and other incidents).

[314] The grievor's version of events differed. She testified that S/Sgt. Beach was physically aggressive. He pushed her and grabbed the papers out of her hand. She told him that that was rude. She provided a transcript of the recording she had secretly made of the interaction as proof of her version (Exhibit 1, Tab 8-K, and Tab 8-N, at page 1).

[315] Evidence was adduced that, on that morning, S/Sgt. Beach spoke to "D.S.", a public servant at the Castlegar Detachment, about an email that she sent him on October 25, 2004 and that he received while on holiday. D.S. reported that she had received a weird call on October 25, 2004 from a female who she thought was

S/Sgt. Beach's assistant. That person asked her whether S/Sgt. Beach had supervised anyone at Castlegar. When D.S. replied in the affirmative that he had supervised six constables, the person asked whether he had supervised any support staff. D.S. replied that he had supervised 3.5 people and then reportedly asked the caller what her call was about as she was feeling uncomfortable with the questions. The caller hung up. D.S. received a second call shortly after that from the same person. The person asked more questions. When D.S. asked who was calling, the caller again hung up. S/Sgt. Beach testified that the grievor was the caller and that her calls were inappropriate. The grievor did not deny making the calls.

**b. October 28: in the afternoon**

[316] On October 28, 2004, Supt. Morris, as the reviewing officer, wrote comments on the grievor's September 27, 2004 performance evaluation form. He wrote as follows:

*I find Val Bergey's comments very inappropriate as they are a personal attack on her supervisor and do not relate in any way to the performance of her duties, particularly in light of her recent Letter of Expectation where she was expected to interact with management in a professional and respectful manner.*

[317] After writing his comments in the early afternoon, Supt. Morris went to the grievor's workstation in the Traffic Services Unit to speak with her about her comments on the performance evaluation form and to read her his comments before he forwarded it to Pacific Region Public Service Human Resources Office. At that time, he knew nothing of the events of that morning.

[318] The grievor was not at her workstation. S/Sgt. Beach's workstation was beside hers. Supt. Morris asked S/Sgt. Beach to tell her, when she returned, that he wished to speak with her about her performance assessment.

[319] When the grievor returned to her work area, S/Sgt. Beach told her that Supt. Morris wished to speak with her. There is some dispute as to how his request was worded and whether he testified that he told the grievor that it was about her performance assessment. She refused to speak with Supt. Morris until she had received 24 hours' notice so that she could arrange union representation for the meeting. The transcript of the recording of that interaction that the grievor adduced notes that S/Sgt. Beach said, "Can you come with me to Mike's office?" and that her reply was,

“Not without my rep. I’m not, no.”

[320] The grievor testified that she was concerned that her written comments might be viewed as culpable behaviour. She honestly believed that she was entitled to at least 24 hours’ notice of any meeting with management to discuss discipline and that she was entitled to be accompanied by a union representative.

[321] S/Sgt. Beach immediately informed Supt. Morris of the grievor’s unwillingness to meet with him without 24 hours’ notice. Supt. Morris again went to her workstation to speak with her.

[322] Supt. Morris’s version of events is that, when he started to tell the grievor what he wished to speak to her about, she cut him off in mid-sentence, saying that she needed to go to the bathroom, and she pushed by him. He said “Okay” and that he would wait for her. When she did not return, he returned to his office.

[323] S/Sgt. Beach testified that, when the grievor returned to her office, he told her that he would get Supt. Morris. She replied that he should not, as she was about to go on her break. When she finished her break, she returned to her workstation and made no attempt to find or contact Supt. Morris.

[324] The grievor’s version of events is that, when Supt. Morris began to speak, she told him that she had to go to the washroom. He blocked her exit, and she had to plead with him to get out of her way. He did, and she went to the washroom. When she returned, Supt. Morris was not in her office. She went on her coffee break. When she returned, she did not attempt to find or contact Supt. Morris. She testified that she had no reason to find him because she had already made it clear to S/Sgt. Beach that she wanted 24 hours’ notice of any meeting with Supt. Morris to discuss her performance assessment. She did not tell that to Supt. Morris, but she had already made it clear to S/Sgt. Beach, and it was up to him to inform Supt. Morris.

[325] When the grievor returned from her coffee break, she went on her computer to find the letter of expectation. She went to the mailroom to photocopy it. When she exited the mailroom, she encountered S/Supt. Morris.

[326] Supt. Morris’s version is that he saw the grievor later in the afternoon in front of his office on her way from the mailroom, and he advised her that he wanted to speak with her about her performance assessment. She pushed past him and stated, “Not



without 24 hours' notice." He testified that, as she walked away from him, she said either, "This is fucking bullshit," or, "That's fucking bullshit." Supt. Morris was forced to follow her as she walked back to her office because she would not stop and talk to him, even though he told her that it was not a disciplinary situation, that it did not require a union representative and that he wanted to give her a copy of his comments on her performance assessment.

[327] The grievor's version was that she made it clear that she did not want to talk to Supt. Morris about her evaluation without 24 hours' notice and without a union representative present. She testified that she did not utter any profanity. She introduced a transcript that she made of her recording of their interaction that, she testified, supported her version.

[328] Ms. Bailey testified that she went into the women's washroom in the early afternoon and observed the grievor, whom she recognized by her footwear, standing sideways in the stall. Ms. Bailey was in the washroom for at least five minutes and observed no change in the grievor's position during that time. She testified that the grievor was still in the washroom approximately 20 minutes later. She made a note of the grievor's movements as well as the fact that, around 15:25, the grievor walked by her desk, away from the records room area, muttering, with Supt. Morris walking behind her. The only phrase Ms. Bailey heard clearly was "fucking bullshit" as the grievor passed by her desk. Ms. Bailey was not sure if the grievor's profanity was directed at her. Ms. Bailey's note made on October 28 was introduced as Exhibit 44.

[329] On cross-examination, in response to being asked why she documented the grievor's movements that afternoon, Ms. Bailey testified that, after the grievor's October 1, 2003 email and her own harassment complaint filed against the grievor in December 2003, she kept track of workplace events. She also testified that the grievor looked upset and angry as she muttered and walked by Ms. Bailey's desk.

[330] Supt. Morris followed the grievor to her workstation and handed her a copy of her performance assessment with his written comments. He also advised her that her comments to her supervisor were inappropriate because they were a personal attack and were not related in any way to the performance of her duties. He mentioned the letter of expectation, which specified that she was expected to interact with management in a professional and respectful manner.

[331] After Supt. Morris handed the grievor a copy of her performance assessment with his comments and told her the substance of his comments, the conversation deteriorated. Each spoke over the other. Supt. Morris and S/Sgt. Beach, who was also in the work area, testified that, while Supt. Morris was trying to read his comments to her, the grievor kept interrupting him. S/Sgt. Beach's desk area was adjacent to hers. He tried to intervene, telling her that her comments were inappropriate. She replied that she was speaking to Mike. She testified that she was trying to give her side.

[332] Supt. Morris told the grievor that her behaviour was inappropriate and that the employer would not tolerate it anymore. He testified that, finally, he told her to listen to him carefully. She accused him of not listening to her because she had filed a grievance against him. She accused him of not telling the truth and of not living by the RCMP's core values.

[333] Supt. Morris finally said that, if the grievor continued to carry on in that way, he would have to send her home. She replied that, if he sent her home, it would be with pay. Supt. Morris told her that she was the rudest individual he had ever met as an employee. He left the Traffic Services Unit. As he was leaving, the grievor yelled at him to come back as she had not finishing speaking.

[334] The grievor's version was that she called out after him and that she politely asked him to come back, saying "Please."

[335] After Supt. Morris left, the grievor asked S/Sgt. Beach whether he was happy. She replied that he could make another false security accusation against her. S/Sgt. Beach testified that the grievor was becoming so wound up that he interjected, stating that, if she continued with her comments, he would have to ask her to go home and cool off until the next morning, when they could discuss things calmly, which he eventually did. The grievor replied, "Not if [she] got a doctor's note first." Her parting comment was that Supt. Morris and S/Sgt. Beach needed help and that she was fine.

[336] The grievor introduced a transcript of the October 28 exchange in support of her version (Exhibit 1, Tab 5-D). She also introduced Supt. Morris's letter to Pacific Region Public Service Human Resources Office, which was written the afternoon of the exchange (Exhibit 29, Tab C-27, describing the incident), and S/Sgt. Beach's notes and email of the next day describing the October 28 and other incidents. His notes end with comments that the grievor was not pleasant or cordial to him and was

argumentative and disruptive in the workplace and with a request for assistance before things went further (Exhibit 1, Tab 5-Q).

[337] The interaction between Supt. Morris and the grievor on October 28, 2004 led to her being suspended for 10 days. Supt. Morris imposed the suspension on her on November 4, 2004, but several events occurred between those dates.

[338] The grievor went to work on October 29, 2004 and submitted a leave request for the half-hour for which she was sent home on October 28.

[339] In the morning of October 29, 2004, a second printer incident occurred. S/Sgt. Beach's version of events is that he typed an email to Suzette Barlow of Pacific Region Public Service Human Resources Office about the grievor, printed a copy for his own records and walked to the office printer to retrieve it. When he arrived, the grievor was walking back from the printer. She held all the printed papers. He asked her if some were his. She replied that they were all hers. S/Sgt. Beach concluded that his email had not printed. He returned to his desk and printed it again.

[340] In his email, S/Sgt. Beach described a number of recent incidents he had had with the grievor. He ended his two-page email with, "PS Bergey is not pleasant or cordial to myself as her supervisor and is argumentive [*sic*] and disruptive in the workplace," and, "Your assistance and suggestions are urgently requested before this goes any further" (Exhibit 1, Tab 5-Q, at page 6).

[341] The grievor's version of events is that S/Sgt. Beach's email was left on the printer for three days to humiliate her in the eyes of the rest of the staff, so she took it. She testified that it was all about her and that it was entirely fabricated.

[342] On October 29, 2004, Sgt. Lennox informed the grievor that he had been appointed as the investigator but that he would begin investigating her departmental security complaint form against S/Sgt. Beach only on November 8, 2004. She informed him that she might not be in the office then but that he could call her at home.

[343] Supt. Morris was in contact with Pacific Region Public Service Human Resources Office about the incident letter that he forwarded on October 28, 2004. On November 2, 2004, he notified Pacific Region Public Service Human Resources Office that he would meet with the grievor the next day to discuss her insubordinate behaviour over the past week as well as her inability to live up to the spirit and intent

of the letter of expectation. Later that afternoon, he received a memo from Ms. Major-Hurt with an attached, signed letter from the Deputy Commissioner, dated November 4, 2004, imposing a 10-day suspension on the grievor. Included in Ms. Major-Hurt's memo were instructions on the need to give the grievor and her union representative 24 hours' notice before presenting her with the letter and instructions on having her sign it, acknowledging receipt (Exhibit 29, Tabs C-30 and 31).

[344] Supt. Morris denied receiving the signed letter from Pacific Region Public Service Human Resources Office before the November 3 disciplinary meeting. When he was shown Exhibit 29, Tab C-30, in cross-examination, he acknowledged his error.

[345] When asked in cross-examination how he could have received a signed 10-day suspension letter on November 2 when he was to meet with the grievor to hear her side of the story only the next day, Supt. Morris explained that, because he had been personally involved in the October 28 incident, he did not need to carry out the usual fact-finding investigation required had the incident happened with a supervisor. All that remained was to meet with the grievor to see if she could offer any mitigating factors. He could not think of any. He had been in contact with Pacific Region Public Service Human Resources Office by phone on a number of occasions since the October 28 incident and had determined that, subject to the grievor raising mitigating factors, she needed to receive a strong statement from management about her continuing insubordinate behaviour. In his opinion, a 10-day suspension without pay would be appropriate if the grievor did not present mitigating factors. He testified that, as North District Office Commander, he was the decision maker when it came to imposing discipline, even though Pacific Region Public Service Human Resources Office issued the discipline letter, with the Deputy Commissioner's signature, and, had the grievor presented him with mitigating factors, he could and would have adjusted the penalty.

[346] On November 3, a discipline meeting was held with the grievor and her union representative, Ms. Stangrecki. After the meeting, Supt. Morris completed a discipline report. He added a summary of the grievor's explanation and comments and signed it. He recommended that a 10-day suspension be imposed because the grievor had not said anything that caused him to change his mind that a 10-day suspension was appropriate.

[347] Supt. Morris testified as to why he thought a 10-day suspension was appropriate. He noted that, given the time that had passed since the incident and the adjudication hearing, he would refer to the reasons he had written in the discipline report after the November 2004 disciplinary meeting as an accurate reflection of his views at that time. The reasons stated in the report (Exhibit 29, Tab C-28, at page 2) were the grievor's insubordination on the afternoon of October 28, 2004, her failure to comply with the conditions in the letter of expectation, and her failure to comply with her supervisor's direction (emailed to her in March 2004 and on November 1, 2004) and the letter of expectation about her use of the RCMP GroupWise email system.

[348] Supt. Morris noted that, as the grievor related her explanation and comments, it became clear to him that she does not hesitate to lie, change events and make statements to support her "self declared [*sic*] innocence and victimization." He noted that she showed no remorse for any of the events and that she made no effort to change her ways or her interactions with her supervisor and management. He also noted that he had made it clear that the employer would no longer tolerate any insubordinate behaviour in the future.

[349] Supt. Morris served the 10-day suspension letter on the grievor on November 4. She signed it the same day.

[350] Ms. Busson's suspension letter of November 4, 2004, reads in part as follows (Exhibit 1, Tab 5-R):

...

*This letter is to inform you that you are being suspended from duty without pay. . . This suspension is taking place as a result of your unacceptable behaviour on October 28, 2004. In the afternoon of October 28<sup>th</sup>, you were disrespectful to management, you swore at your manager and used abusive language. Your actions and behaviour was [*sic*] very disruptive to other employees in the workplace. Furthermore, you continue to refuse to follow instructions and argue with your manager each and every time guidance is provided. This is insubordination and in direct conflict with the letter of expectation that was provided to you on August 5, 2004.*

...

*I must warn you that management considers your actions as extremely serious. Be advised that insubordination, swearing*

*and use of abusive language are viewed as very serious behaviour by the Royal Canadian Mounted Police. We are concerned for the health and wellness of all our employees and this type of behaviour will not be tolerated. Any recurrence of this or any other acts of misconduct will result in more severe disciplinary action up to and including termination.*

*I sincerely trust such action will not be necessary. This disciplinary action is being imposed in the hope that you realize the negative impact that your actions have on morale. Respectful behaviour in the office is absolutely necessary.*

...

[351] The grievor signed a grievance on December 12, 2004, disputing the 10-day suspension and claiming that the suspension letter was unjust and unwarranted. The grievance was not filed with the Board until February 28, 2006. The grievance, as PSLRB File No. 166-02-37094, was filed with a Form 14 under the *PSSRA*.

[352] I will briefly summarize the events of the remainder of November and of December 2004. They will be expanded in Part 2 of the summary of the evidence, along with the evidence for events from 2005.

[353] On November 8, 2004, Sgt. Lennox began his investigation of the grievor's departmental security complaint form against S/Sgt. Beach. The grievor was not available when he began his investigation, as she was serving the 10-day suspension. He called her at home several times on the November 9. She advised him that she would not return until November 24, 2004 and that she was to have no contact with the RCMP before then.

[354] Sgt. Lennox testified that he spoke to the grievor on November 23, 2004. She advised him that she was not available for an interview then or later that day. When he sought to talk to her on November 24, 2004, he was advised that she was off-duty indefinitely. He then tried contacting her at home several times on November 28 and 29, without success. She did not return his calls.

[355] Sgt. Lennox took taped statements from S/Sgt. Beach on November 30, 2004 and from Ms. Stangrecki on December 1, 2004 (see the transcripts in Exhibit 1, Tab 5-V). On December 2, 2004, Sgt. Lennox sent an interim report to Insp. Clark, summarizing his investigation (Exhibit 1, Tab 5-V).

[356] On November 8, 2004, Cpl. Flewelling, at the request of Supt. Morris, served the grievor with an amended letter of suspension. It was amended because of a date change for the 10-day suspension. Cpl. Flewelling Letter of Suspension Reported that, during the meeting, the grievor showed him a copy of a two-page email, dated October 29, 2004, addressed to Pacific Region Public Service Human Resources Office and written by S/Sgt. Beach, which she said she took from the printer on the morning of October 29, 2004 because it had been left lying around for several days for other people in the office to see. Cpl. Flewelling asked what she was planning to do with the email. He reported that the grievor said that she had already given a copy of it to the union representative and that she was going to sue the force. Cpl. Flewelling presented affidavit evidence on which he was then cross-examined. His notes are in Exhibit 29, Tab C-32.

[357] The grievor testified that she had shown Cpl. Flewelling the copy of S/Sgt. Beach's October 29, 2004 email to Pacific Region Public Service Human Resources Office that she had removed from the office because she had thought that she could trust him. She also testified that the email was all about her and that it was all a fabrication.

[358] On receiving Cpl. Flewelling's report on his meeting with the grievor, Supt. Morris concluded that he would hold another disciplinary hearing with the grievor when she returned to work for lying to her supervisor and that he would recommend another 10-day suspension (Exhibit 29, Tab C-34).

[359] On November 10, 2004, Supt. Morris wrote the officer in charge of Human Resources Management, Pacific Region, to the attention of Pacific Region Public Service Human Resources Office, describing in his words the grievor again acting in a deceitful manner and lying to her supervisor. He described the October 29, 2004 incident and Cpl. Flewelling's report, outlined previous incidents, and concluded that, when her suspension ended on November 23, 2004, he would advise her that she was no longer welcome in the North District Office.

[360] On November 19, 2004, Supt. Morris wrote a two-page memo about the grievor to three recipients, C/Supt. Lanthier, C/Supt. Dingwall and the non-commissioned officer in charge, Pacific Region Departmental Security Section (John Mitchell). Supt. Morris outlined some difficulties he had experienced with the grievor's deceitful conduct, and he asked for advice and guidance. He testified that he had never before

been involved in a security review to revoke an employee's RCMP reliability status. The memo was emailed on November 19, 2004, with a covering note, entitled "PS Valerie Bergey - Security Issue," explaining why he emailed it (Exhibit 29, Tabs C-34 and 35).

[361] Mr. Mitchell advised Supt. Morris that he would need to expand and document the chronology of the issues into a more comprehensive rationale.

[362] Supt. Morris asked S/Sgt. Beach to prepare a report on his dealings with the grievor. He then used S/Sgt. Beach's report, along with his own extensive office files, to compile a chronology of events to support his concerns over maintaining the reliability status of the grievor. His memorandum, dated November 29, 2004, was addressed to the Pacific Region Departmental Security Section (Mr. Mitchell) (Exhibit 1, Tab 5-B, and Exhibit 29, Tab C-40).

[363] Pacific Region Public Service Human Resources Office informed Supt. Morris that the grievor had been surreptitiously taping office interactions at the North District Office. That information made him even surer that discipline was no longer sufficient to deal with the risk she presented to other employees. He wrote the Pacific Region Departmental Security Section on December 17, 2004, providing Mr. O'Donnell with a copy of his November 29, 2004 email to Mr. Mitchell and informing him that Pacific Region Public Service Human Resources Office had faxed him a copy of a transcript of the disciplinary hearing on November 3, 2004. He stated that the grievor had obviously used a tape recorder and, while her clandestine taping was not criminal, it was still very unethical and was another example of her unethical and deceitful conduct. He also noted that a Health Canada doctor had recently examined the grievor and had advised Supt. Morris that she had nothing physically or mentally wrong from a medical perspective (Exhibit 29, Tab C-42).

[364] The grievor was instructed in November 2004 to undergo another fitness-to-work examination. She was examined by Dr. Prendergast of Health Canada on December 13, 2004.

[365] Dr. Prendergast reassessed the grievor after having read Supt. Morris's memorandum of November 29, 2004 and having spoken to the grievor's union representative, Ms. Lidyard, and to her family doctor. In his letter of December 21, 2004 to Pacific Region Public Service Human Resources Office, he



concluded that he considered the grievor unfit to work temporarily, pending a specialist's assessment of her mental health. He wrote the following:

...

*I am now concerned that Ms. Bergey may indeed be suffering from a medical disorder, one that I am incapable of diagnosing. I would like to seek an expert's opinion for a final determination of her medical fitness, and thus I am arranging a referral to a psychiatrist.*

...

[366] During the reassessment, Dr. Prendergast told the grievor about Supt. Morris's November 29, 2004 memorandum. She later secured a copy of it under an access to information order under privacy legislation.

[367] Dr. Prendergast then referred the grievor for a further medical assessment. Supt. Morris notified her on December 22, 2004 that her absence from work, since she returned from her 10-day suspension on November 24, 2004, was now authorized as sick leave with pay commencing November 24, 2004.(Exhibit 29, Tab C-43).

[368] The grievor's testimony was that Supt. Morris had fabricated evidence in his November 29, 2004 memo, to cause concerns about security and issues for her with Health Canada. She agreed to a psychiatric assessment, which Dr. Prendergast would arrange.

[369] The grievor never returned to the workplace after November 2004.

## **VII. Union expression**

### **A. Summary of the arguments**

#### **1. For the grievor**

[370] Counsel for the grievor argued that the employer's actions interfered with the grievor's union activity or union representation, in particular her right as a union official to speak freely and to criticize management. He referred me to *Shaw v. Deputy Head (Department of Human Resources and Skills Development) et al.*, 2006 PSLRB 125, *King v. Treasury Board (Canada Border Services Agency)*, 2008 PSLRB 64, and *Canada (Attorney General) v. King*, 2009 FC 922.

[371] Counsel for the grievor also submitted that the employer illegally used the grievor's emails, such as those of September 30, 2003 and October 1, 2003. They were private, personal conversations between the grievor and her union colleagues, in which she expressed her fears, frustrations and concerns. Counsel argued that her opinion, as a union president, was that harassment was running rampant in the North District Office and that Supt. Morris did not take harassment and harassment complaints seriously. Even if her perception was wrong on the evidence, she was entitled to express and test her perception with other union members. It was illegal for the employer to rely on the emails when disciplining her as it constituted illegal interference with union activities and illegal retaliation.

## **2. For the employer**

[372] The employer argued that the grievor's submissions on its alleged interference with her union activity were inadmissible at the hearing stage on the basis of the principle in *Burchill v. Canada (Attorney General of Canada)*, [1981] 1 F.C. 109 (C.A.), and *Shneidman v. Canada (Attorney General of Canada)*, 2007 FCA 192, which states the following at paragraph 26: "To refer a complaint to adjudication, the grievor must have given her employer notice of the specific nature of her complaints throughout the internal grievance procedure . . . ."

[373] The employer argued that the grievor was an experienced union president and that she was represented by her union steward at all relevant times. She never filed a grievance alleging a violation of her rights as a union official expressing concerns in that capacity. She failed to make any submissions at the final level of the grievance process. It was not open for her to raise those arguments now at the hearing stage of these proceedings.

[374] The employer argued in the alternative that, if the grievor's submissions were permissible at the hearing stage, the emails at issue were not protected union expression. The union never filed an unfair labour practice complaint (see section 190 of the *PSLRA*) and could not argue employer interference at the hearing. In addition, the employer argued that the expression at issue did not meet the applicable standard for protection that was articulated at paragraph 40 of *Shaw*, as it was malicious or knowingly or recklessly false. The grievor's emails continually accused management of not addressing her harassment concerns, when the evidence shows that management did, and her emails were direct personal attacks on her managers and were highly

accusatory and disparaging.

[375] The employer also submitted that the grievor's emails were a flagrant violation of paragraph H.5.b (5) of the RCMP's harassment policy, were disseminated to all public servants in the "E" Division's North District) and were blind copied to others both within and outside the RCMP. Even if the emails expressed her genuinely held views, they were made maliciously, within the meaning of the *Shaw* test, or, alternatively, were knowingly or recklessly false.

## **B. Decision**

[376] Subsection 209(1) of the *PSLRA* stipulates that an employee may only refer to adjudication an individual grievance "... that has been presented up to and including the final level in the grievance process ... ." When a grievor fails to raise an issue until after the grievance process has ended, *Burchill* applies, in that the grievor has not in fact presented a grievance about the newly raised issue "... up to and including the final level in the grievance process ... ." That is a bar to adjudication under any paragraph of subsection 209(1).

[377] I agree with the employer that, based on the principle in *Burchill*, it was too late at that stage of the proceedings for the grievor to raise the issue of employer interference with her right to freedom of speech. No grievance before me alleges a violation of her rights as a union president to speak freely and to criticize management. Neither she nor her union representatives raised that issue in her submissions at the final level of the grievance process.

[378] In the event that I am incorrect in my decision, I will briefly deal with the grievor's arguments on the merits.

[379] First, I note that *Shaw* and both *King* decisions are clearly distinguishable from this case. All those cases involved a grievance filed against a disciplinary suspension that had been imposed on a grievor, a union official, because of the grievor's speech.

[380] In *King v. Treasury Board (Canada Border Services Agency)*, 2008 PSLRB 64, the grievor was the vice-president of the Customs and Excise Union Douanes Accise (CEUDA). He grieved a disciplinary suspension that was imposed on him for a letter he wrote to the secretary of the United States Department of Homeland Security about Canada's border management practices.

[381] In *Shaw*, the grievor was the president of a local of the Canada Employment and Immigration Union (CEIU). He grieved a disciplinary suspension imposed on him for statements he made at a public meeting hosted by the Community Social Planning Council of Toronto to give community organizations an opportunity to discuss the government's new call for proposals system. The contracting out of bargaining unit work was an issue for the CEIU. Mr. Shaw also filed an unfair labour practice complaint, alleging that the employer's imposition of discipline under the circumstances constituted an unfair labour practice.

[382] The grievor was a USGE president for part of the period under review. However, the evidence did not establish that she was disciplined for an expression, either oral or written, criticizing management when she was union president or even for her later criticisms, expressed after she resigned as president in December 2003. She did not grieve any such penalty. In contrast to *King v. Treasury Board (Canada Border Services Agency)*, 2008 PSLRB 64, and *Shaw*, the grievor received a disciplinary suspension for her unacceptable and insubordinate behaviour in the office on the afternoon of October 28, 2004. The grievor was not a union official at the time of that incident. However, even had she been one, I do not believe that it would have justified her action, as an employee, of refusing to meet with management as requested, without 24 hours' notice, to review her performance evaluation. A union official is not immune from discipline for insubordination or other misconduct that falls outside the proper scope of union responsibilities.

[383] I agree that employer interference in confidential communications between union officials and their members is objectionable. However, counsel for the grievor did not articulate any illegal use by the employer of the emails that were cited as examples of private union communications.

[384] I note that, on September 30, 2003, the grievor sent a separate email to Cpl. Adair, containing the same accusations as in her union communication. He was not a union member. When she sent her October 1, 2003 email containing derogatory personal remarks about Supt. Morris and Ms. Bailey, she was the union president, and the email was addressed to the vice-president, Ms. Stangrecki. However, the salutation was "Ladies," and the evidence adduced clearly established that the email was blind copied to many other individuals, estimated to be over 50. The grievor claimed it was a union communication that she sent for advice from her fellow union members.

However, the evidence established that she did not blind copy it to all members of her USGE and that she blind copied it to others, who were not union members. For example, the evidence showed that Ms. Bailey was a member of the USGE local but she was not sent a copy, while non-union members, such as Cpl. Adair and S/Sgt. McCaig, who subsequently gave a copy to Insp. Clark, were sent copies. Therefore, I do not consider the October 1, 2003 email as a communication in the nature of a private, personal conversation with the grievor's union colleagues, as she portrayed. I also do not see on the evidence that she received any discipline for that expression of her opinions.

[385] On January 30, 2004, when the grievor sent emails accusing Supt. Morris of a lack of integrity and impartiality, she was no longer the union president. It cannot be said that she exercised any official union expression rights or that she engaged in a private conversation with union members. Nor can it be said that she expressed a general criticism of management policies and practices. I also note that those emails, of which at least three were introduced in evidence, were copied and blind copied to a number of both union and management personnel.

[386] In summary, if I had allowed the raising of the issue of union expression at this stage of the proceedings, I would have dismissed the grievor's claim that the employer's actions unlawfully interfered with the grievor's union activity or union representation.

### **VIII. The 10-day suspension grievance**

[387] I will deal first with the 10-day suspension grievance.

#### **A. Credibility**

[388] Before discussing the grievance, I will address a related credibility issue. I note that the parties raised many general credibility issues. I have attempted to separate those about the 10-day suspension grievance from those about the RCMP reliability status suspension and revocation grievances, particularly those about the issues of disguised discipline and bad faith.

[389] Counsel for the employer relied primarily on Supt. Morris's version of the October 28, 2004 incident to support the suspension. Counsel for the grievor relied largely on the historical evidence of conflict between the parties to support an

allegation that Supt. Morris and Ms. Bailey had an axe to grind with the grievor because she was vigilant in protecting her rights. He relied on Supt. Morris's testimony about related events, which occurred at other times, to question his credibility on his version of the events on the afternoon of October 28.

[390] First, I note that both Supt. Morris and the grievor testified in a calm and straightforward manner. While the demeanour of a witness is relevant to assessing credibility, it is just one factor. I also note that, in workplace disputes involving discipline, some degree of animosity between managers and affected employees is normal and that its existence is not a reliable factor for determining credibility. I believe that credibility is better measured through a careful examination of the evidence provided by the witnesses than through general accusations of parties with an axe to grind when determining whose version of events I should believe. I also did not find the grievor's testimony and exhibits [Exhibits 154 to 156] regarding the grievor's non-RCMP training and volunteer and part-time employment activities helpful in resolving the credibility issues before me. That said, I will deal in more depth later in my reasons with the other six grievances with the grievor's general accusation that Supt. Morris's credibility is suspect because, along with S/Sgt. Beach, he had an axe to grind with the grievor. I do not believe that that accusation is supported by the evidence. Much of the evidence raised strong concerns about the grievor's general credibility.

[391] Second, I have no issue with Supt. Morris's credibility with respect to the October 28, 2004 incident. His version accords fully with the version he provided in the incident report that he wrote that afternoon. His version is also supported by the versions of S/Sgt. Beach and Ms. Bailey, each of whom was present for some, but not all, of the incident.

[392] Counsel for the grievor submitted that Supt. Morris's credibility was in doubt as a result of his answers to questions in cross-examination about Exhibits 113 and 115 which were emails between Pacific Region Public Service Human Resources Office staff. With respect to Exhibit 113, he was asked whether he had received a copy of the 10-day suspension letter before meeting with the grievor on November 3, 2004. He stated that he was certain that he had not. However, when he was shown Exhibit 113, which showed that he had, he admitted his mistake. Similarly, with respect to Exhibit 115, when Supt. Morris was asked if he had seen the grievor's written

comments on her performance evaluation and had sought advice from Pacific Region Public Service Human Resources Office in October before the October 28 incident about discipline to impose on her because of it, he replied in the negative. However, when shown Exhibit 115, which is an email between two Pacific Region Public Service Human Resources Office advisors discussing his need for advice about three recent incidents in which he was concerned about the grievor's conduct, one of which was her comments on her performance evaluation, he acknowledged that he had recalled incorrectly.

[393] I do not believe that Supt. Morris's failure to recall the small details reflected in Exhibits 113 and 115 reflects negatively on his general credibility as to what happened on the afternoon of October 28, 2004, which led him to impose discipline on the grievor. The hearing took place five years after that incident. Many lapses in recall can occur for witnesses from such a passage of time. In addition, he retired in December 2004 and did not take office files with him. He testified in a very forthright way that, while he could remember the main events and interactions with the grievor quite clearly, with the passage of time, he could not recall some of the small details. His best recollection of events was what he wrote in the documents at that time. He readily acknowledged recalling incorrectly when shown the exhibits. I note that the grievor also forgot some small details and that she readily acknowledged her lapses in recall when corrected.

[394] I also note that no negative inference can be drawn from Supt. Morris seeking advice from Pacific Region Public Service Human Resources Office advisors in mid-October about possible disciplinary action for several incidents in which the grievor's behaviour caused him concern. He was not her direct supervisor, but he had overall responsibility as North District Office commander for all employees. He had been informed by mid-July that no underlying medical issues were causing her unacceptable behaviour. He had personally served her with the letter of expectation in the absence of her direct supervisor. He informed her that her unacceptable behaviour would from then on be viewed as intentional and that it would no longer be tolerated.

[395] On the specific issue of whether the grievor uttered a profanity in the October 28, 2004 incident, a material fact in this case, I am more satisfied on a balance of probabilities that Supt. Morris's account is essentially accurate. I have detailed my reasons for reaching that conclusion elsewhere in this decision.

[396] On the issues of whether management routinely dismissed the grievor's harassment complaints without investigation and whether her direct supervisor hit her, either on her arm or her buttocks, on the morning of October 28, 2004, thus constituting mitigating factors for her misconduct that afternoon, I am satisfied on a balance of probabilities that the grievor did not prove the first allegation and that, for the second allegation, S/Sgt. Beach's account is essentially accurate. I have detailed my reasons for reaching those conclusions elsewhere in this decision.

## **B. Summary of the submissions**

### **1. For the employer**

[397] The grievor was disciplined for her unacceptable workplace behaviour on October 28, 2004. Management determined that her behaviour was disrespectful (swearing), disruptive and a direct contravention of earlier guidance given to her and that it warranted some form of intervention.

[398] Counsel for the employer reminded me of the evidence adduced in support of its argument that a workplace disruption occurred on October 28, 2004. She submitted that the evidence provided through the testimonies of Supt. Morris, S/Sgt. Beach and Ms. Bailey is supported by the grievor's evidence in the form of her transcript of her meeting with Supt. Morris.

[399] The employer's evidence showed that management sought to have a discussion with the grievor about her performance evaluation. She was told that it was not to be a disciplinary meeting. She was resistant, and her language and actions were defiant. When S/Sgt. Beach notified her that Supt. Morris wished to see her, she refused to go to his office. After S/Sgt. Beach notified Supt. Morris of her refusal, Supt. Morris went to her office to speak with her. He testified that she pushed past him and that she told him that she had to go to the washroom. The grievor's transcript shows that she cut Supt. Morris off in mid-sentence with "I just want. . ." and that, when she pushed by him, he said, "I'll wait for you." When she did not come out of the washroom for some time, Supt. Morris went back to his office. When she came out, she went for coffee and then went back to her desk. She never sought Supt. Morris, despite knowing that he wished to speak with her. That lends credence to the employer's belief that she stayed in the washroom to avoid him. That conclusion is supported by the independent observation by Ms. Bailey, who testified that the grievor was in the washroom for over



25 minutes. Supt. Morris was the senior manager in charge of the “E” Division’s North District. It was clearly conveyed to the grievor that he wished to speak with her. Her avoidance behaviour was disrespectful and disruptive.

[400] The grievor’s position, although she did not state it to Supt. Morris at the time of the incident in her office, was that she wanted 24 hours’ notice so that her union representative could be present at the meeting. She did not tell him that until she encountered him later in the day, and he stated that he insisted on meeting with her.

[401] Supt. Morris’s testimony and notes of the incident show that he tried to locate the grievor, that he was advised that she was spending an inordinate amount of time in the washroom, and that he found her behaviour on that date sufficiently disruptive and disrespectful to lead him to take action.

[402] Little weight can be put on the fact that the grievor’s transcript of her secret recordings for the day do not show her uttering an expletive, as she would not tape herself uttering a profanity. It is more likely that she made the comment. The version of events presented by Supt. Morris and Ms. Bailey is preferred to the grievor’s version. Supt. Morris had no reason to make it up. Furthermore, when the whole of the grievor’s transcript is read, it confirms that a disruption occurred in the workplace that afternoon and that her language to management was inappropriate and defiant.

[403] Counsel for the employer submitted that it is important to examine the October 28, 2004 interaction between Supt. Morris and the grievor in the context of their entire interaction to that date because the October 28 incident did not differ from the interaction between them shown through the grievor’s numerous emails. For example, her emails of January 30, 2004 describe the January 30 incident, in which she directly berated Supt. Morris and accused him of lacking leadership skills, integrity and impartiality. He noted in the discipline report of November 3, 2004 that he served the grievor with the letter of expectation, that the letter dealt with the behaviour expected of her in the workplace and that it warned her of disciplinary action for future unacceptable behaviour. She showed no remorse for her behaviour on October 28. Earlier, she had received an oral reprimand from S/Sgt. Beach for such behaviour, and she had recently been disciplined for an unfounded allegation of harassment against Ms. Bailey. That shows that management had taken steps to get the grievor to modify her workplace behaviour, that she would not modify it and that the tolerance for her unacceptable workplace behaviour had ceased. In emails to others, the grievor

acknowledged that she had sometimes behaved inappropriately with Supt. Morris.

[404] At the discipline hearing on November 3, 2004, the grievor's evidence was that she wanted 24 hours' notice so that she could have a union representative present. As a union president and as an employee who had substantial grievance experience, she knew the "obey now, grieve later" rule, so her refusal to meet with management when requested to discuss her performance assessment was defiant, contemptuous of management and deserving of discipline.

[405] Counsel for the employer submitted that credibility was an important issue in this case, given the conflicting evidence. She submitted that, as for the grievor's unacceptable behaviour as alleged by the employer, such as her swearing and disrupting the workplace, based on all the evidence submitted, the testimonies of the employer's witnesses, Supt. Morris, Ms. Bailey and S/Sgt. Beach, should be preferred to that of the grievor, and I ought to find that her conduct was inappropriate and that it warranted some form of discipline.

[406] With respect to the amount of discipline imposed, counsel for the employer submitted that it was reasonable and appropriate and that it should not be reduced. While, when viewed in isolation, a 10-day suspension for the October 28, 2004 incident might seem too much, it is not when viewed in the context of this case. The grievor had previously received an oral reprimand and a 3-day suspension. By imposing the 10-day suspension, management, via progressive discipline, was trying to instil in her the understanding that her behaviour would no longer be tolerated.

[407] Counsel for the employer referred me to five Board decisions to support the argument that imposing the 10-day suspension without pay on the grievor was reasonable in the circumstances.

[408] First, counsel for the employer referred me to *MacLean v. Treasury Board (Revenue Canada - Customs, Excise & Taxation)*, PSSRB File No. 166-02-27968 (19990107), in which the grievor, like the grievor in this case, was sending communications in the workplace that were contemptuous of management. The tenor of the criticism and not the fact that the grievor criticized management deserved discipline in that case. The adjudicator found that a 10-day suspension was appropriate to send a message to the grievor that such behaviour would not be tolerated.

[409] Second, counsel for the employer referred me to *Cottenoir v. Treasury Board (Solicitor General - Correctional Service of Canada)*, PSSRB File No. 166-02-27324 (19971022), and *Tanciu v. Treasury Board (Veterans Canada)*, PSSRB File No. 166-02-27712 (19970815), as relevant examples of a grievor misleading the employer, resulting in dismissal in the first case, and displaying arrogant and impolite comportment and disrespectful behaviour toward management, resulting in a five-day suspension in the second case.

[410] Counsel for the employer referred me to *Mohan v. Canada Customs and Revenue Agency*, 2005 PSLRB 172. The decision details a finding of insubordination because of a grievor's failure to follow instructions and his display of a defiant attitude toward his supervisor. The grievor had an uneasy relationship with his supervisor. While the facts of *Mohan* are different compared to this case as the grievor disobeyed a clearly conveyed order, the grievor had called his supervisor "bond-headed" or a "bone-head [sic]." Although there were no witnesses to the incident other than the supervisor and the grievor, the adjudicator found that the name-calling amounted to insubordination and that the comment was not something that the supervisor was likely to make up. Counsel stressed that, in the case of the grievor, Ms. Bailey provided independent testimony that she heard the grievor utter the expletive that Supt. Morris said he heard at the same time. She thought that it was directed at her, given her recent interactions with the grievor.

[411] Counsel for the employer also referred me to *Focker v. Canada Revenue Agency*, 2008 PSLRB 7. Counsel submitted that the grievor in *Focker*, similar to the grievor, felt justified by the sincerity and strength of her conviction to act as she did. The adjudicator found that the grievor was not absolved from the obligation to comply with her supervisor's order because of her conviction and was insubordinate. The grievor was to follow the principle of "obey now, grieve later." Counsel argued similarly that the grievor's strong convictions and desires, which led her to avoid meeting with Supt. Morris to discuss her performance evaluation until she had 24 hours' notice to secure union representation, did not justify her insubordination.

## **2. For the grievor**

[412] Counsel for the grievor presented oral arguments on the 10-day suspension grievance and made two lengthy written submissions on September 3 and September 30, 2010, in which arguments and submissions on all seven grievances were

combined, to support his oral arguments. I will attempt to extract the grievor's submissions that are directly related to the 10-day suspension grievance.

[413] The grievor submitted three volumes of authorities. Volume 1 contained 19 cases on the topics of insubordination, insubordination via profanity and disguised discipline, although not all those cases were referred to in argument, and presented additional cases during oral argument.

[414] Counsel for the grievor's first broad submission was that the employer in its argument focused on October 28, 2004 and the grievor's behaviour, starting when S/Sgt. Beach told her that Supt. Morris wanted to speak with her. However, the context of that behaviour is important, particularly the difficulties and conflict between the grievor, Supt. Morris, S/Sgt. Beach and Ms. Bailey. Her difficulties with her employer began after the Traffic Services Unit was moved to the North District Office in 2001. She began to document harassment concerns involving the North District Office's commissioner and records maintenance expert. Management refused to deal with her harassment complaints and subjected her to a high level of unwarranted scrutiny, micromanaging her, reprimanding her and subjecting her to psychiatric assessment all in a manner that amounted to harassment and that led eventually to her termination. In addition, earlier in the day of October 28, 2004, before the incident for which the grievor was disciplined, a printer incident occurred in which S/Sgt. Beach snatched papers from her hand that she had taken from the printer.

[415] The second broad submission was that the employer had the onus of demonstrating that it had just cause to discipline the grievor and that I, as the adjudicator, must focus on the basis for the discipline, as alleged in the suspension letter of November 4, 2004. That letter sets out three distinct causes or conditions of discipline and the employer had the onus of establishing each one of them.

[416] With respect to the first alleged reason for the discipline, which was the grievor's disrespectful conduct to management, counsel for the grievor submitted that the employer's justification must be restricted to the grievor's conduct on October 28, 2004. Therefore, the disrespect must be found in her alleged avoidance of Supt. Morris when he wished to meet with her, by her spoken demeanour to management or in her language, which allegedly involved swearing at management or using other abusive language.

[417] The grievor submitted that, while Supt. Morris, in his October 28, 2004 email to Pacific Region Public Service Human Resources Office (Exhibit 29, Tab C-27) seeking advice on dealing with her, referred to the inappropriate comments that she had written on her performance evaluation about her supervisor, Supt. Morris did not refer to her comments about S/Sgt. Beach when he prepared the discipline report that afternoon (Exhibit 29, Tab C-28). Therefore, those comments cannot be part of the alleged disrespectful behaviour or the insubordination that the employer relied on to justify the 10-day suspension.

[418] Counsel for the grievor also submitted that the employer could not rely on the grievor's alleged anonymous phone calls to a former secretary of S/Sgt. Beach, inquiring about public servants he had supervised and his management record, as being part of her alleged disrespectful conduct because Supt. Morris never spoke to her to ascertain whether it was true. He just assumed it was true and that it was improper behaviour, and he reported it in his October 28, 2004 email to Pacific Region Public Service Human Resources Office (Exhibit 29, Tab C-27).

[419] Counsel for the grievor also submitted that the grievor's alleged refusal to meet with Supt. Morris does not form part of the misconduct justifying the discipline. Instead, it is to be viewed as part of the context or history of the discipline. He argued that discipline should have been triggered only when the grievor swore.

[420] Counsel for the grievor submitted that Supt. Morris's testimony referred to reports made to him of the grievor spending an inordinate amount of time in the washroom. However, he did not testify that she went into the washroom to avoid meeting with him. Additionally, the discipline report that he prepared on the October 28, 2004 incident and the discipline letter given to her do not state that she went to the washroom to avoid meeting with him. In addition, the grievor testified that she was unsure of how long she was in the washroom and that there was no reason for her to keep track of the time. All she could recall was that she was in the washroom for more than a few minutes. As she was not asked specifically about Ms. Bailey's testimony and notes (Exhibit 44), whether she was in the bathroom for a half-hour or whether she remained there to avoid meeting with Supt. Morris, under the rule in *Browne v. Dunn* (1894), 6 R. 67 (H.L.), I should put little weight on Ms. Bailey's evidence and not make findings of credibility on that event. Therefore, the grievor's alleged avoidance of Supt. Morris by going to the washroom cannot be used to support an

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allegation of insubordination. Counsel for the grievor referred to Paciocco and Stuesser, *The Law of Evidence*, 4th Edition, and *McCormick v. Canada (Attorney General)* (1998), 161 F.T.R. 82 (T.D.), in support of his arguments.

[421] Counsel for the grievor submitted that neither S/Sgt. Beach nor Supt. Morris made a clear order that the grievor refused to obey. Her transcript shows that S/Sgt. Beach asked her, “Can you go,” and that she replied, “No.” She stated that she wanted 24 hours’ notice before she met with Supt. Morris so that she could have union representation at the meeting. While she did not tell Supt. Morris that that was why she did not want to meet with him, she had told S/Sgt. Beach her reason, and it was up to him to tell Supt. Morris. Furthermore, counsel submitted that Supt. Morris testified that the grievor told S/Sgt. Beach that she would not speak with Supt. Morris without 24 hours’ notice. Thus, when Supt. Morris went to her office to speak with her, he already knew why she was unwilling to speak to him. She did not have to tell him.

[422] Counsel for the grievor also submitted that the evidence shows that the grievor met with Supt. Morris later that afternoon. The employer presented no evidence that the delay in meeting with him undermined management’s authority or had a prejudicial effect in the workplace. She wanted and thought that she was entitled to 24 hours’ notice. She insisted on her perceived rights and had no intent of challenging management’s authority.

[423] Counsel for the grievor submitted that the grievor did not swear or use abusive language at or after the meeting with Supt. Morris. However, should I find that she did, it was a momentary flare-up and was not a flouting of authority. Furthermore, in the range of profanity as noted in reported cases, “fucking bullshit” is on the low end. Counsel referred me to *Myler v. Treasury Board (National Defence)*, PSSRB File Nos. 166-02-22912 and 22913 (19930903), which involved profanity and a failure to obey an order, and to excerpts from Palmer, *Collective Agreement Arbitration in Canada*, 2nd ed., quoted in *Myler* in support of this argument.

[424] The grievor stressed the following excerpts from Palmer, quoted at pages 9 and 10 in *Myler* (Volume 1 of her “Authorities,” Tab 6, at page 7):

...

*As noted earlier the offense of insubordination is considered serious by arbitrators because it strikes at the*

*basis of managerial functions: the right to control the work force. Thus, arbitrators look for a “subversion” or “undermining of authority” as an element of the offense. Consequently, it has been defined as constituting “resistance or defiance of authority, disobedience, rebelliousness”. Thus, momentary flare-ups have not constituted a “flouting” of authority. Again, a mere failure to carry out orders is not equivalent to insubordination unless the delay in obeying is excessive. If one considers the order not to be a firm one, a similar result occurs. What is important is the “attitude” of the employee in question. . . .*

...

*In dealing with a case involving the grievor’s refusal to pay a cash shortfall, another arbitrator stated. [sic]*

*As to the main issue in insubordination cases, whether the grievor should have complied with the order and subsequently grieved, we can see no reason to uphold the discharge on this basis. The circumstances of this case constituted a simple dispute as to liability to pay; no danger to efficiency nor any affront to symbolic managerial authority arose from a case which could, and in our view ought to have been dealt with in a measured, formal way, in writing if necessary, with reasonable opportunity for the grievor to take advice and reflect on her position. This is not a case of insubordination but one of disputed facts at a stage when further investigation was possible and warranted. To allow a supervisor to foreclose a reasonable dispute of facts by the exercise of some imputed symbolic authority is, frankly, repugnant.*

...

[425] Her counsel submitted that that quote applied to the grievor’s situation, as there were disputed facts, was no urgency and was no flouting of authority. She had already written her comments on her performance appraisal expressing her disagreement with S/Sgt. Beach’s assessment. She knew that her comments might constitute culpable behaviour, so it is understandable that she might have been concerned about meeting with Supt. Morris without a union representative. She clearly explained to S/Sgt. Beach that she wanted 24 hours’ notice before meeting with S/Supt. Morris and that waiting 24 hours would have allowed the employer to investigate whether she was entitled to union representation.

[426] Counsel for the grievor referred me to *Grover v. National Research Council of Canada*, 2008 PSLRB 59, in support of the argument that the grievor was not given a

clear order to meet with Supt. Morris and that good human resources practices would require that, particularly following the letter of expectation, any management direction given to her would be crystal clear. That was not so in this case.

[427] Counsel for the grievor referred me to *Guenette v. Treasury Board (Post Office Department)*, PSSRB File No. 166-02-9185 (19820115), in support of the argument that, should I find that the grievor uttered a profanity, which she denies, the nature of the profanity, the time it occurred and the fact of whether it was repeated were factors to consider when determining the appropriate discipline. Counsel argued that the context of the remarks is important. The grievor muttered the alleged offending remarks to herself, in frustration, as she walked angrily away from her office to the bathroom. The employer has not shown that her remarks disrespected anyone.

[428] Counsel for the grievor also referred me to *Jensen v. Treasury Board (Transport Canada)*, PSSRB File Nos. 166-02-18259 and 18260 (19890412), and *Lucas v. Treasury Board (Canada Employment and Immigration Commission)*, PSSRB File No. 166-02-22752 (19921222). He submitted that, while it is difficult to determine what part the alleged profanity played in the 10-day suspension, it should have warranted at most a reprimand.

[429] Counsel for the grievor submitted that it is unrealistic to expect employees to say nothing negative in the workplace and that anything said was a blunt expression of the grievor's exasperation, stemming from her honest belief that she was entitled to 24 hours' notice of the meeting. An employee should not be disciplined for an expression of exasperation. Furthermore, if I find that she uttered a profanity, unlike the grievor in *Jensen*, the grievor in this case, by her language, did not show contempt, insolence or disrespect for any particular person. She muttered her comments to herself as she left her desk area and Supt. Morris on her way to the washroom. No one knew to whom her comments were directed. Even Ms. Bailey testified that, when she heard them, she thought they were directed at her. It was just a momentary flare-up by the grievor. She had no intention of undermining management.

[430] Counsel for the grievor further submitted that, even if I find that the grievor's behaviour can be characterized as disruptive or insulting or insolent toward and contemptuous of management (as those terms are used in *Jensen*), and even if I find that she did not comply with the letter of expectation, her alleged disrespectful conduct set out by the employer in the first item of the suspension letter, alone, merits



only a minor disciplinary sanction, such as a warning.

[431] With respect to the second stipulated cause set out in the suspension letter, which was the employer's allegation that the grievor's behaviour was very disruptive to other employees in the workplace, she submitted that, while uttering "fucking bullshit" was disruptive behaviour, it was not very disruptive. As the employer did not provide evidence that other employees were disrupted, I must uphold the grievance on that fact alone. In the alternative, counsel argued that, even if I find that her behaviour could be characterized as very disruptive, it merited only a minor disciplinary sanction.

[432] As for the third stipulated cause, which was the grievor's alleged refusal to follow instructions and her alleged arguing with her manager each and every time she received guidance, which allegedly constituted insubordination and were in direct conflict with the letter of expectation, counsel for the grievor submitted the following. First, the employer had to meet what it relied on when imposing discipline. It has not provided evidence to prove its sweeping statement that "each and every time" her manager gave her guidance, she argued with him, so I must uphold the grievance on that fact alone.

[433] Second, the phrase "continues to refuse to follow instructions" refers to a pattern of behaviour. The employer has not provided evidence to prove a number of examples in which the grievor refused to follow instructions. Furthermore, a review of the discipline report, prepared by Supt. Morris, shows that it is equally vague on the instructions that she refused to follow.

[434] Third, counsel for the grievor argued that the employer failed to meet its burden of showing how the grievor's behaviour was in direct conflict with the letter of expectation.

[435] Counsel for the grievor referred to a number of cases that he argued set out the law on insubordination and that made it clear that she had not been insubordinate. Counsel argued that, to support discipline for insubordination, the employer must prove the following:

- a) a clear order was given, understood by the grievor;
- b) the order was communicated by someone with the proper authority; and

c) the order was disobeyed.

[436] Counsel for the grievor referred me to *Hunter Rose Co. Ltd. v. Graphic Arts International Union, Local 28-B* (1980), 27 L.A.C. (2d) 338. It was submitted that the grievor's case was similar to that of the grievor in *Hunter Rose Co. Ltd.*, in which the employer sought to uphold the discharge of that grievor on the basis of an ongoing problem with her unwilling cooperation, which was reflected in her hostile attitude to her supervisors and fellow employees. While the arbitrator found that management believed that basis, simple belief is insufficient. To justify a discharge, an employer must prove the version of the events upon which it based its disciplinary action and must justify it. While the arbitrator found that the employer proved its version of the events upon which it based its disciplinary action, in the present case, the employer acted only on its management's beliefs, not the facts.

[437] Counsel for the grievor submitted that, just because an employee's actions cause problems for management, it does not make the employee's conduct insubordination. No clear order was given to the grievor, and the letter of expectation was very vague and identified only broad standards of behaviour. Drawing on the reasoning in *Hunter Rose Co. Ltd.*, counsel noted that an order cannot be considered clear when management's initial request appears more in the nature of a plea than an order. S/Sgt. Beach or Supt. Morris adduced no evidence that they made a clear order to the grievor such as, "We want to speak to you and want you to stay here and listen." S/Sgt. Beach testified that he asked the grievor, "Can you come with me to Mike's office?" That was a question, not a direct order. According to *Hunter Rose Co. Ltd.*, it did not sufficiently constitute a clear order.

[438] Counsel for the grievor further submitted that, even if S/Sgt. Beach's statement to the grievor was an order, she did not clearly understand it, because she thought that she was entitled to 24 hours' notice for a meeting. In addition, she had no intention of undermining management's authority by refusing to meet with Supt. Morris. She was prepared to meet with him, but she wanted 24 hours' notice. Thus, even were the grievor wrong about her entitlement to 24 hours' notice, no evidence was adduced that it was anything other than an honest belief on her part.

[439] Counsel for the grievor also referred to *Lilly Industries Inc. v. United Steelworkers of America, Local 13292-02* (2000), 86 L.A.C. (4th) 397, and *Nanaimo Collating Inc. v. Graphic Communications International Union, Local 525-M* (1998),

74 L.A.C. (4th) 251, as authorities for the proposition that three essential elements are needed to establish insubordination and that, if any of them is missing, the employer has not met its burden to establish its case. Counsel for the grievor drew an analogy to *Nanaimo Collating Inc.*, in which a grievor was discharged for alleged insubordination. He referred particularly to the section in which the arbitrator stated that the substance of that case was that the grievor was perceived as an irritant in the workplace, which was not sufficient to establish insubordination. Counsel for the grievor in this case noted that many of the employer's witnesses used the term "defiant" to describe her. He argued that she asserts her rights and stands up for herself. As such, he could accept that she might be considered or perceived as an "irritant" to management. However, the mere fact that an employee requires a lot of attention does not amount to insubordination.

[440] Counsel for the grievor further argued that, while there was clearly frustration at the RCMP about performance issues with the grievor, it was of the employer's making because it did not take an appropriate human resources approach to helping her deal with the perceived deficiencies in her performance. If, as the employer alleged, there were problems with her behaviour since 2002, and if, as S/Sgt. Beach testified, sometime around August 2003 something happened with her attitude and behaviour, then why did the employer wait until early August 2004 to make sure that she understood what was expected of her, in both her attitude and behaviour? Clearly, from the notes that Ms. Bailey and S/Sgt. Beach made over time, management perceived performance problems. However, they were not brought to the grievor's attention until the letter of expectation, and they cannot be considered at adjudication as insubordination or a failure to comply with directions.

[441] Furthermore, counsel for the grievor submitted that, even if the grievor violated the letter of expectation by her behaviour on October 28, 2004, it was the employer's fault. Virtually nothing was done to assist her between when the employer gave her the letter of expectation and when it gave her the suspension letter. The employer should have helped her deal with the many performance issues that it had identified. It did not. The employer was more interested in finding alleged mistakes and in building a record against the grievor than dealing with her concerns in a legitimate and proper human resources fashion. In the letter of expectation, the employer states that it will meet with her every two weeks to monitor the situation, which is a good human resources practice, but it did not. Counsel drew an analogy to the *Nanaimo* case, in

which the arbitrator stated the following:

...

*The Employer is frustrated with the Grievor and, assuming its perception of the Grievor as a consistently poor employee with a consistently poor attitude is correct, one would have to conclude that the Employer's response over time was astonishingly lacking. One would have to conclude that the Employer then overreacted to the events of . . . In any event there was no culminating incident of insubordination . . .*

...

[442] Counsel for the grievor also submitted that management consistently failed to fairly and thoroughly investigate the grievor's serious, ongoing concerns about harassment in the workplace, which she raised between 2002 and 2004. As a result, her anxiety and stress levels were elevated. In addition, her stress increased when management failed to physically separate her from Mr. Stephenson when requested, when it micromanaged and nitpicked her general job performance, and when it subjected her to an unreasonable level of personal scrutiny that amounted to harassment.

### **3. Employer's rebuttal**

[443] In reply, counsel for the employer pointed out that the evidence clearly shows that the grievor's workplace behaviour on October 28, 2004 was inappropriate and unacceptable and that it warranted discipline.

[444] Insubordination can express itself in many ways. Sometimes, insubordination is demonstrated in the classic sense, when management gives a direct order that the employee does not either acknowledge or comply with. The many cases put forward by the grievor are of that type and stand for the proposition that a case for insubordination cannot be made absent one of the three essential components. Those cases are distinguishable from this case because they involve a finding of whether the employer gave a direct order and whether it was clearly communicated to the grievor.

[445] Arbitral jurisprudence has recognized that an employee's general attitude and behaviour can constitute insubordination, even if no specific order is given. The employer referred me to *Trilea-Scarborough Shopping Centre Holdings Ltd. v. Service Employees International Union, Local 204* (1990), 14 L.A.C. (4th) 396, and to Brown and

Beatty, *Canadian Labour Arbitration*, 4th Edition, at para 7:3612 and 7:3660, which read as follows:

...

... even if no specific order is given, an employee may be found to have been insubordinate if the arbitrator concluded that he or she must have been aware of the duties expected and refused to discharge them. As well, in order to justify disciplining someone for insubordination, it is typically not necessary for the employer to prove that the employee intended to defy management or had a blameworthy state of mind, or that it suffered any financial loss, although the absence of any of these factors will usually serve to lessen the seriousness of the misconduct.

...

Conduct that is threatening, insolent or contemptuous of management may be found to be insubordinate, even if there is no explicit refusal to comply with a directive, where such behaviour involves a resistance to or defiance of the employer's authority... As a general principle, it has been suggested that discharge may be appropriate where it can be said that the employee's conduct, viewed in its totality, is "sufficiently contemptuous of authority as to justify the conclusion that the ongoing employment relationship... should be terminated."

[446] The grievor's inappropriate and unacceptable workplace behaviour stemmed from her deep-seated mistrust of management. In the decisions of *Bérard v. Treasury Board (Agriculture Canada)*, PSSRB File Nos. 166-02-22344 and 22914 (19930423), and *Sears Canada Inc. v. International Union of Operating Engineers*, [1997] O.L.A.A. No. 729 (QL), the arbitrators noted the pattern of an employee's insulting conduct as being incompatible with the employer-employee relationship.

[447] Supt. Morris and Ms. Bailey testified that they heard the grievor utter an expletive. She denied it, denied engaging in any inappropriate workplace behaviour and offered no mitigating circumstances. Her claim that Supt. Morris and Ms. Bailey had an axe to grind with her was not supported by the evidence. The employer's evidence is more believable and reliable than the grievor's denial that she did anything wrong. The fact that the transcript she provided of her recording did not show that she uttered an expletive should be given little weight. Furthermore, the employer disagrees with counsel for the grievor's suggestion that, if the grievor uttered the expletive, it was a momentary lapse in proper conduct on her part.

[448] The 10-day suspension should be upheld.

### **C. Decision**

[449] This decision is about whether the employer had just cause to suspend the grievor for 10 days for her workplace behaviour on October 28, 2004. The employer had the burden of proving that her behaviour constituted just cause for discipline and that, if so, the discipline imposed was reasonable in the circumstances.

[450] Both parties introduced extensive evidence about the tension and deep conflict at the North District Office over managing the grievor. The grievor argued that she was “. . . micromanaged, reprimanded, subjected to psychiatric assessment, investigated, all in a manner amounting to harassment,” and that she was ultimately “terminated without cause.” I note that there is no harassment or abuse of authority grievance before me and that it is not within my purview as an adjudicator hearing this grievance to revisit her performance assessment or to make any findings about the investigation process, the findings in the Chagnon Harassment Report or its review. Therefore, while I am completely familiar with the wide range of materials on record, I will deal only with the evidence and arguments that are relevant to the two issues raised by this grievance, namely, whether the grievor’s conduct on October 28, 2004 warranted discipline and, if so, whether the discipline imposed was appropriate. Anything that I deemed irrelevant to those issues was set aside.

[451] I also note that the grievor introduced in evidence selected transcripts from clandestine recordings she made of office interactions over the August to November 2004 period, including transcripts of the events on October 28, 2004 and the disciplinary hearing held on November 3, 2004. She testified that she had no choice but to secretly make recordings as Supt. Morris, S/Sgt. Beach and Ms. Bailey were bullying and intimidating her and trying to make her go crazy. She testified that she was glad she had taped the interactions with them because the tapes show that her version of events was correct.

[452] I note that, generally, I do not put heavy weight on a clandestine recording made by a participant to an exchange as I believe that, as a matter of common sense, the person recording will be very careful about what he or she says and will often try to manipulate the other person to compromise himself or herself. In addition, the tone and volume of the verbal exchange are not often captured by a transcript. I note that

I found the grievor's editorial comments on the transcripts and her use of capitalization of parts of conversations to show, as she testified, not that a person was yelling at her but that she thought the highlighted portion was important, self-serving and unreliable. That said, I have carefully reviewed her transcripts, and I will refer to their contents when I think it is helpful to resolving conflicting testimony.

[453] I have attempted to set out the disputed evidence in more detail than is usual as I suspect that the grievor still believes that she did nothing wrong and as she is not at all remorseful for her actions.

**1. Did the grievor's conduct warrant discipline?**

[454] The grievor was suspended on November 4, 2004, according to the employer, for her unacceptable behaviour on October 28, 2004. While no limitation was placed in the opening sentence of the suspension letter between her unacceptable behaviour in the morning of October 28 and her behaviour that afternoon, the employer made allegations only about her disrespectful behaviour that afternoon.

[455] The relevant portion of the suspension letter reads as follows:

...

*This letter is to inform you that you are being suspended from duty without pay for a period of ten working days from November 9, 2004 to November 23, 2004 inclusive. This suspension is taking place as a result of your unacceptable behaviour on October 28, 2004. In the afternoon of October 28<sup>th</sup>, you were disrespectful to management, you swore at your manager and used abusive language. Your actions and behaviour was [sic] very disruptive to other employees in the workplace. Furthermore, you continue to refuse to follow instructions and argue with your manager each and every time guidance is provided. This is insubordination and in direct conflict with the letter of expectation that was provided to you on August 5, 2004.*

...

[456] The grievor submitted that the employer could not rely upon her alleged disrespectful conduct in the morning of October 28, 2004 as the suspension letter does not refer to it and Supt. Morris did not know of it when the letter was written. Therefore, it was not part of the employer's justification for imposing the 10-day suspension. I note that, according to Supt. Morris's email of October 28, 2004 to Pacific

Region Public Service Human Resources Office (Exhibit 29, Tab C-27), he knew about her alleged anonymous calls that morning to a public servant at the Castlegar Detachment. I note that she did not deny making those calls. However, I also note that Supt. Morris did not refer specifically to that behaviour in the discipline report he wrote on November 3 (Exhibit 29, Tab C-28) or in the suspension letter.

[457] The grievor also submitted that the wording and punctuation of the suspension letter means that the alleged disrespectful conduct was evidenced only by her alleged swearing and use of abusive language and that it excludes any consideration of misconduct that occurred in the afternoon of October 28 before she swore or used abusive language. I do not agree. Basically, that interpretation would involve substituting the comma after the phrase “disrespectful to management” with the word “by,” which would change that part to “by swearing at your manager and using abusive language.” I find that that is too narrow an interpretation of the suspension letter wording.

[458] I find that the evidence adduced at the hearing supports, on a balance of probabilities, the employer’s allegations about the grievor’s behaviour in the afternoon of October 28, 2004 and that her conduct warranted discipline.

[459] With respect to the first allegation, the employer adduced evidence sufficient to prove on a balance of probabilities that the grievor was disrespectful to management when she refused to meet with Supt. Morris on October 28, as requested, without 24 hours’ notice. She also was insubordinate.

[460] On September 27, 2004, the grievor received a negative performance review from her supervisor, S/Sgt. Beach. After her meeting with him, she wrote the following comments on the performance assessment form:

*Dave Beach has been blatantly [sic] dishonest between his last report to now, has basically admitted same and lacks proper supervisory skills. He deliberately has not added certain good reports in an effort to continually undermine me. My work has never deteriorated and he knows that.*

[461] The grievor’s performance assessment was forwarded to Supt. Morris for review and signature before being forwarded to Pacific Region Public Service Human Resources Office. He was dismayed at what he regarded as the grievor berating her supervisor. He believed that she had a right to comment on her supervisor’s critique of



her performance. However, he believed that her comments were unprofessional and insubordinate, particularly in light of the letter of expectation he had personally served on her, advising her that she had to treat her managers, co-workers and other people in the workplace with respect.

[462] Supt. Morris sought advice from Pacific Region Public Service Human Resources Office about taking disciplinary action against the grievor for her comments on her performance review as well as for two other incidents in which he felt her behaviour had been inappropriate (Exhibit 115).

[463] On the afternoon of October 28, 2004, as the reviewing officer, Supt. Morris wrote comments on the evaluation form and went immediately to the grievor's desk in the Traffic Services Unit to speak to her about her comments and his response. She was not there.

[464] There is a difference between disagreeing with a management request and not understanding it. The grievor clearly understood from S/Sgt. Beach that Supt. Morris had been to her office to talk to her about her performance evaluation. Since she was away from her workstation, he asked S/Sgt. Beach to tell her when she returned that he wanted her to come to his office. She testified that, as confirmed by her transcript of the meeting, she told S/Sgt. Beach that she would not go to Supt. Morris's office without her representative (Exhibit 1, Tab 8-D, at page 1). Her understanding of what was asked of her was also confirmed by her transcript of the discipline meeting held on November 3, 2004. In that transcript, she clearly stated to Supt. Morris that her reason for refusing to meet with him to discuss her assessment was that she wanted her representative present and that she wanted 24 hours' notice (Tab 1, 8-L at page 1).

[465] The grievor also clearly understood when Supt. Morris appeared at her workstation, after receiving a phone call from S/Sgt. Beach, and stated that he wanted to talk to her about her performance evaluation. She pushed past him, cutting him off in mid-sentence, as shown by her transcript, to go to the washroom. She did not tell him why she did not want to meet with him. She testified that she had already informed S/Sgt. Beach of her reasons and that it was up to him to so inform Supt. Morris. Again, it showed that she understood the request and that she refused to meet with management without 24 hours' notice.

[466] When the grievor pushed by Supt. Morris on her way to the bathroom, he told

her that he would wait for her. His testimony is supported by the transcript that she provided. He eventually returned to his office. The grievor argued that the letter of discipline did not specifically refer to her avoiding meeting with Supt. Morris by going to the bathroom or by staying there for a long time. Therefore, it is not part of the unacceptable conduct for which discipline was imposed. I disagree with that argument. However, I will simply note that the important point is that, when asked in chief examination why she did not seek Supt. Morris after she returned from the bathroom and found that he had left her workstation and returned to his office, the grievor explained that her actions were reasonable because she had already made it clear to management that she wanted 24 hours' notice before any meeting with him. Thus, she had no reason to seek him.

[467] Ms. Bailey testified that the grievor remained in the washroom for over 25 minutes. When Ms. Bailey entered the washroom during that time, the grievor was standing in the stall with her back to its side. Ms. Bailey testified that she had good reason to be particularly sensitive to the grievor's movements at that time, and she made a note that afternoon of the grievor's actions (Exhibit 44).

[468] I am prepared to accept that the grievor had a legitimate need to use the washroom immediately when Supt. Morris confronted her in her office. However, Ms. Bailey's uncontradicted evidence led me to believe that the grievor remained in the washroom for an inordinate amount of time as a means of avoiding the conversation that Supt. Morris clearly wanted to have with her. My belief is buttressed by the uncontradicted evidence of what happened next. The grievor returned to her desk. S/Sgt. Beach tried to talk to her. She insisted on leaving for her coffee break. When she returned to her desk, she made no attempt to contact Supt. Morris, even though she clearly knew he wanted to talk to her. As noted, the grievor testified that she had no reason to seek him as she had already made it clear to management (i.e., to her direct supervisor, S/Sgt. Beach) that she wanted 24 hours' notice before any meeting with Supt. Morris.

[469] I find that the evidence does not support the grievor's characterization of S/Sgt. Beach's request as just a plea for her to go to Supt. Morris's office or her explanation that Supt. Morris's subsequent request was not sufficiently specific to constitute the first essential element of insubordination. However, even if I am wrong, I would still conclude that she was insubordinate. I note that arbitral jurisprudence has

recognized that an employee's general attitude and behaviour can constitute insubordination, even if no specific order was given, if an arbitrator or adjudicator concludes that, as I do, the grievor was aware of the duties expected and refused to discharge them. As noted in *Canadian Labour Arbitration*, conduct that is ". . . insolent or contemptuous of management may be found to be insubordinate, even if there is no explicit refusal to comply with a directive, where such behaviour involves a resistance to or defiance of the employer's authority . . . ." The grievor's refusal to meet with Supt. Morris and her intentional avoidance of him were contemptuous of management's authority.

[470] The grievor also did not deny that, when she encountered Supt. Morris outside the mailroom later that afternoon, he informed her twice that he wished to meet with her to discuss her performance evaluation. He told her that the meeting was not disciplinary and that she was not entitled to 24 hours' notice. She pushed past him and walked back to her office, refusing to stop to speak with him, which forced him to trail her down the hallway back to her workstation to speak with her.

[471] The grievor clearly challenged, and intended to challenge, the employer's authority, real and symbolic, to require her to meet with Supt. Morris, as he wished to on October 28 to discuss her performance assessment. She testified that she was being assertive, not defiant, in insisting on her right to 24 hours' notice. The fact that she had an honest and strongly held belief that she was entitled to 24 hours' notice of a meeting with Supt. Morris does not make her refusal and avoidance of him any less intentional. Her refusal was insolent and defiant of management.

[472] I must now determine if the grievor had a legitimate excuse for disobeying the directive to meet with Supt. Morris. She offered a number of explanations to justify her refusal.

[473] The grievor testified that she anticipated that the comments she had written on her performance evaluation about her direct supervisor, S/Sgt. Beach, could be culpable behaviour. She insisted on her right to 24 hours' notice of any meeting to discuss them so she could have her union representative present. That is not a proper answer and does not excuse her behaviour. As a former union president and as an individual who had filed many grievances, she clearly understood the "obey now, grieve later" principle. She should have complied with the request and grieved later if she felt her representational rights were violated. She understood the request, which

was reasonable. No evidence was adduced that she would not have been able to secure adequate redress through the grievance and adjudication processes had she complied with Supt. Morris's request. Finally, no evidence was adduced that complying with management's instructions would have endangered her health or safety.

[474] The grievor argued that she was not insubordinate because she did in fact meet with Supt. Morris later that afternoon in the hallway; he insisted on following her back to her office and talking with her. That was not a proper answer and did not excuse her earlier refusal to meet with him when she was clearly requested to.

[475] The grievor submitted that she entered her comments and signed her performance evaluation on September 27, 2004, that it was then forwarded to Supt. Morris as the reviewing officer, and that he took a month to respond. Because her comments were written on her performance evaluation and would not go away or be changed, management had no need to deny her request to give her 24 hours' notice so that she could arrange union representation. The fact that she felt that the requested meeting was not urgent is not a proper answer and does not excuse her refusal to meet with management when initially requested to discuss her performance evaluation.

[476] With respect to the second allegation, the grievor testified that she did not utter a profanity or use abusive language and offered her transcript of her recording of the meeting as proof to support her version of events. I note that, according to the transcript and the testimonies of the grievor, Supt. Morris and Ms. Bailey, the alleged uttering of the offending phrase occurred, if it occurred, as the grievor turned and walked away from Supt. Morris outside the mailroom, after he encountered her for the second time. It was not alleged to have occurred, as argued by counsel for the grievor, when she pushed by Supt. Morris on her way to the washroom during the first encounter.

[477] The employer adduced evidence sufficient to prove on a balance of probabilities that the grievor said, "This is fucking bullshit," or "That is fucking bullshit," as she walked away from Supt. Morris as he tried to get her to stop and meet with him. The evidence of both Supt. Morris and Ms. Bailey is that each heard the grievor utter that comment in the hallway as she walked away from Supt. Morris and walked by Ms. Bailey's desk on her way back to her workstation. Supt. Morris had no reason to make it up. Ms. Bailey testified that the grievor looked upset and angry as she walked by, muttering, and Ms. Bailey then made a note (Exhibit 44) of the grievor's

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words and actions, as she thought the comment was directed at her.

[478] The fact that the profanity is not reproduced in the transcript that the grievor provided of her recording of the incident is not persuasive. The recorder was in her pocket; she was walking angrily away from Supt. Morris, and as shown by a number of her transcripts, the recorder might not have been sensitive enough to pick up her comments.

[479] In his email to Pacific Region Public Service Human Resources Office on October 28 after the afternoon exchange, Supt. Morris states that the grievor “muttered” the profanity (Exhibit 29, Tab C-27, at page 1). In the transcript of the November 3, 2004 discipline hearing provided by the grievor, Supt. Morris is quoted as telling her that she said it as she turned around and kept walking away from him. He states that it was “quite low” but that he heard it and that he followed her all way back to her office. Ms. Bailey’s notes, made at the time of the incident, also state that the grievor “muttered” or “was muttering” as she went by Ms. Bailey’s desk. While the grievor denied saying, “This is fucking bullshit,” she argued in the alternative that, if she said it, she muttered the phrase to herself in frustration as she walked away and that she did not intend to be disrespectful. I find the most probable explanation is that the grievor muttered the profanity as she walked away from Supt. Morris and past Ms. Bailey. Her comment was not picked up on her recording device. Muttering profanity was disrespectful conduct in the circumstances.

[480] With respect to the third allegation, the evidence adduced supports on a balance of probabilities the employer’s assertion that the grievor used abusive language in addition to swearing on the afternoon of October 28, 2004. The parties did not provide a definition of abusive language, so I used the *Concise Oxford Dictionary’s* definition, which is “reviling, insulting or unkind speech.”

[481] I carefully reviewed the grievor’s transcript of the office interaction on October 28, 2004. I did not find the snippets of conversation recorded very helpful. They appear to be of two speakers continually cutting each other off. I accept that the exchange was heated and loud as both Supt. Morris and the grievor voiced their views.

[482] Supt. Morris testified that he wanted to read his comments to the grievor, even though she would eventually receive them from Pacific Region Public Service Human Resources Office, because he wanted her to know at that time that her comments were

unacceptable and that they violated the letter of expectation. The transcript provided by the grievor details Supt. Morris attempting to read his comments to her and her interrupting him several times until he finally tells her, in frustration, to be quiet and listen. She refused and accused him of not listening to her because she had filed a grievance against him. She told him that he was not honest and that he did not live by the RCMP's core values. He told her that she was the rudest employee that he had ever met.

[483] The transcript supports the testimonies of Supt. Morris and S/Sgt. Beach that the grievor was insulting to her direct supervisor, S/Sgt. Beach, when he tried to intervene. Basically, she told him to butt out and that she was talking to Supt. Morris. After Supt. Morris left, the grievor turned to S/Sgt. Beach, asked him if he was happy and asked why he would not just make another false security accusation.

[484] Both the grievor and Supt. Morris testified that the grievor called Supt. Morris to come back as he walked out of the Traffic Services Unit after the heated exchange. He testified that she "hollered" at him to come back, as she had not finished talking to him. He used that verb both in his letter of October 28 to Pacific Region Public Service Human Resources Office and in the discipline report he wrote on November 3. The grievor testified that she did not say that phrase and that what she said was more polite. While I acknowledge that the tone and volume of their exchange is not reflected in the written words of the transcript, I believe that the transcript supports the grievor's version. She called out politely for him to come back, using "Please."

[485] The grievor's comments to both Supt. Morris and S/Sgt. Beach when she was told to calm down or be sent home, and later when she was told to go home and return the next day after settling down, were insulting and disrespectful, as was her parting shot: "You guys both need help. You're the ones wrong [*sic*]. I'm perfectly fine."

[486] The suspension letter alleges that the grievor's actions and behaviour were very disruptive to other employees in the workplace. Over 100 people worked in the North District Office. Supt. Morris testified that the grievor spoke loudly while talking to him, that her comments were overheard by others in the open office area and that they were disruptive. The evidence shows that it was disruptive to Ms. Bailey, another public servant employee, who testified that she thought the grievor's profanity was directed at her. It clearly was disruptive to S/Sgt. Beach, who was also an employee and the grievor's direct supervisor. His desk was adjacent to hers. He tried to intervene.

I believe that it would have been disruptive to anyone else working in the open office area.

[487] The suspension letter also states that the grievor continued to refuse to follow instructions and that she argued with her manager “each and every time” guidance was provided to her. I agree with her that it was impossible for the employer to show that “each and every time” S/Sgt. Beach provided guidance to her over the course of their approximately two-year relationship, she refused to follow instructions. However, I disagree that that automatically results in the success of the grievance. Particularly for the period following the service of the letter of expectation on the grievor in August through September and October 2004, the evidence adduced established that, many times, S/Sgt. Beach provided her with directions. She strongly objected to them, telling him and others that she had done the job for years, that his written directions were unnecessary, and that he was just papering the file, nitpicking her and micromanaging her to the level of personal harassment.

[488] I find that the employer established on a balance of probabilities that the grievor’s conduct on the afternoon of October 28, 2004 was unacceptable and deserving of disciplinary action.

## **2. Was a 10-day suspension excessive in the circumstances?**

[489] Having found that the employer had just cause to discipline the grievor for her behaviour on October 28, 2004, I will now turn to a consideration of whether a 10-day suspension was an appropriate disciplinary sanction.

[490] I note that I read all the authorities and cases relied upon by counsel for the parties but that I recognize that arbitral jurisprudence and awards turn on the facts of each particular case. Decisions always involve different facts. While the earlier decisions may be helpful, they are not determinative.

[491] Supt. Morris testified that, initially, he had chosen not to use discipline for the grievor’s unacceptable behaviours that occurred before he received a fitness-to-work evaluation about her because, based on his personal experience, which he related at the hearing, he did not want to discipline her if the root cause of her problem was medical, which he suspected. Once he received Dr. Prendergast’s report in mid-July 2004, he no longer believed that a medical cause might be behind the

grievor's unacceptable behaviour. He concluded that it had to be intentional. He personally served the letter of expectation on her when she returned from leave in early August. It apprised her of her need to act professionally and respectfully toward management, her co-workers and others in the workplace. He told her that her unacceptable behaviour would no longer be tolerated, and he warned her of the consequences of not complying with the letter of expectation.

[492] At the time of the October 28 incident, the grievor's disciplinary record consisted of two penalties imposed relatively recently, a verbal reprimand by S/Sgt. Beach on September 24, 2004, for her not being accurate with him with her information about a work request, and a three-day suspension imposed by Supt. Morris on September 17, 2004 as a result of Ms. Bailey's substantiated harassment claim against her.

[493] In mid-October 2004, Supt. Morris sought advice from Pacific Region Public Service Human Resources Office about taking disciplinary action against the grievor for three separate incidents, proposing the imposition of lesser penalties for them (Exhibit 115). However, his experience with her on the afternoon of October 28 overtook matters.

[494] Supt. Morris testified as to why he chose to impose the 10-day suspension on the grievor. Noting that over five years had passed from the suspension to the hearing, he referred to the reasons in his discipline report of November 3, 2004 as an accurate reflection of his views at that time. The reasons stated in the report were her insubordination on the afternoon of October 28, 2004, her failure to comply with the conditions in the letter of expectation, and her failure to comply with both her supervisor's direction (emails of March and November 2004) and the letter of expectation with respect to her use of the RCMP GroupWise email system.

[495] Supt. Morris gave an example of other defiant behaviour that he was concerned about at that time that he believed showed the grievor's resistance to complying with the letter of expectation, which she viewed as discipline, not guidance. The example was the direction he had given her on September 17 about the proper use of the office internal email system. Shortly after that, she emailed him a detailed reply in which she took exception to his direction.

[496] The transcript of the disciplinary hearing provided by the grievor shows that the



concerns raised by Supt. Morris then about her behaviour were consistent with the reasons stated in the discipline report he wrote after that hearing.

[497] Supt. Morris believed that the grievor's actions on October 28, 2004, when he wanted to talk with her about her performance evaluation comments, demonstrated to him that she had no remorse and no intention of correcting her behaviour. He believed her behaviour was getting progressively worse. She refused to acknowledge that her behaviour was insubordinate or disruptive to others. She also had provided no mitigating circumstances to him during the disciplinary meeting. In his opinion, she continued to blatantly lie to support her self-declared innocence and victimization. He testified that he applied progressive discipline and that he needed to make her understand the seriousness of her continued unacceptable conduct.

[498] This may be a good time to note several submissions about the process followed in imposing the 10-day suspension and the grievor's transcript of the November 3 disciplinary hearing.

[499] I agree with the grievor that the fact that Supt. Morris had a disciplinary suspension letter, prepared by Pacific Region Public Service Human Resources Office in Vancouver and signed by Deputy Commissioner Busson, in his possession at the disciplinary hearing raises questions as to whether he was willing to hear her side of the story before imposing the suspension. As an explanation, he testified that, as the "E" Division's North District commander, he was the decision maker for any discipline to be imposed on her, even though the formal letter had to be prepared by Pacific Region Public Service Human Resources Office in Vancouver and signed by the deputy commissioner. Because he was personally involved in the incident, he did not need to carry out the usual investigation as to what occurred before deciding to impose discipline on her. At the meeting, he wanted to hear from the grievor whether there were mitigating factors. As he did could not think of any, he had had discussions with Pacific Region Public Service Human Resources Office before the meeting about an appropriate penalty if there were no mitigating circumstances and had determined that it would be a 10-day suspension. The signed letter was prepared and faxed to him the day before the disciplinary meeting. However, had the grievor presented him with mitigating factors, he could have imposed a different penalty.

[500] I note the employer's argument that the human resources advisor whom Supt. Morris dealt with, Ms. Barlow, was on annual leave from November 1 to 12

(Exhibit 113). It is possible that the timing of preparing the suspension letter can be explained by that circumstance. However, it might be Pacific Region Public Service Human Resources Office's general practice to prepare disciplinary letters in advance that may or may not eventually be served when it deals with regional offices. Neither party presented evidence on that matter.

[501] While the optics of that disciplinary hearing process are not good, I believe from the extensive evidence presented by both parties and from the transcript of the hearing provided by the grievor that she knew the case she had to meet. The disciplinary hearing provided her with a reasonable opportunity to bring forward any mitigating factors before Supt. Morris imposed the 10-day suspension. I also note, based on *Tipple v. Canada (Treasury Board)*, [1985] F.C.J. No. 818 (C.A.) (QL), that any defect in the procedure followed by the employer to impose discipline is corrected by a hearing de nova before an adjudicator.

[502] I also note that the disciplinary meeting was held in two parts. After a short break following the first meeting, the grievor returned with the union president, Ms. Stangrecki, and sought clarity on a number of matters discussed earlier. As I reviewed the questions and recalled that the grievor clandestinely recorded the meeting, I questioned whether she was seeking clarity at that time.

[503] The grievor submitted that the 10-day suspension was too severe a penalty in the circumstances as the employer failed to consider the contextual background of her actions. She argued that her behaviour on October 28, 2004 had to be viewed in the context of the conflict that existed in the workplace at that time, particularly between her and S/Sgt. Beach, Supt. Morris and Ms. Bailey. The grievor argued a number of mitigating factors. She argued that the profanity, if it did occur, which she denied, was a momentary flare-up and was at the lower end of the range of profanity. She submitted that, even had her workplace conduct been unacceptable, management had condoned it over time and that, had her behaviour been unacceptable, it was the employer's fault as it had done nothing to help her. In particular, it had not met with her every two weeks as provided in the letter of expectation.

[504] The grievor also submitted as a mitigating factor that she was frustrated and stressed at the time of the October 28 incident because of the employer's conduct. She alleged that S/Sgt. Beach had been physically aggressive towards her on two occasions. She claimed that he hit her in the photocopy room on September 24, 2004 and that her

transcript of that interaction would prove that allegation. She also submitted that he grabbed papers out of her hand at the printer on the morning of October 28. She further alleged that the employer had consistently ignored or failed to adequately address her harassment claims, which added to her overall stress. She argued that the employer began giving her unnecessary work directives and that it micromanaged and nitpicked her to a level of personal scrutiny amounting to harassment.

[505] In her emails to others, the grievor repeatedly accused Supt. Morris of giving orders to her direct supervisor, S/Sgt. Beach, to lean hard or extra hard on her and to micromanage, nitpick and find fault with her. She did not claim that she did not make the Central Police Information Centre system entry errors pointed out to her, but she explained that she had not received nearly enough training on the Central Police Information Centre system, that it takes time to master the Central Police Information Centre system and that there was no need for her supervisor to continue papering the file with directives.

[506] First, I do not accept that Supt. Morris had to warn the grievor that, given her extensive experience as a USGE president and as a grievor, if she failed to meet with him as he requested, her refusal would be viewed as insubordination. I also note that, while I agree that her profanity was at the lower range of the scale, its uttering must be viewed in the context of the defiant and contemptuous attitude toward management that she had displayed that afternoon.

[507] Second, the evidence does not support the grievor's allegation that management condoned her unacceptable workplace behaviour. She testified and acknowledged in several of her emails that she had not always spoken appropriately to Supt. Morris. There are many examples of her inappropriate behaviour in the evidence. For example, when Supt. Morris told her, in the presence of Insp. Clark, during the January 30, 2004 meeting in his office that her language at the meeting, when she called Mr. Stephenson an asshole or a lying asshole, was unacceptable and she needed to be respectful, she accused him of "blowing smoke," questioned his leadership, integrity and impartiality, and accused him of managing by fear, intimidation and terror.

[508] After she left the meeting, the grievor immediately sent at least three emails with essentially the same message but addressed or copied to different recipients, including senior RCMP management and union members. In her emails, she presented her view of the meeting. She also publicly accused Supt. Morris of a lack of integrity

and of impartiality because Mr. Stephenson was his friend, even though Supt. Morris and Insp. Clark had clearly told her that, when she made such accusations earlier, Supt. Morris was not a friend but the “E” Division’s North District commander, that his interactions with Mr. Stephenson were done only in his official office capacity and that he had no social relationship with him outside the office. She made similar public accusations of a lack of impartiality against Supt. Morris about his believing Cst. Wolney and Ms. Bailey because they were friends of his, even though she had been told they were not. Supt. Morris and Insp. Clark also testified that her description of the January 30, 2004 meeting was far from the reality of what occurred.

[509] While the evidence adduced shows that Supt. Morris did not discipline the grievor for her unacceptable behaviour on January 30, 2004, it does not show that he condoned her behaviour. Rather, it shows that he displayed great restraint and patience in dealing with her office behaviour and her widely disseminated, public accusations about his lack of honesty, integrity and impartiality. His actions support his testimony that he was concerned that the root of her unhappiness at work and her unacceptable behaviour might have been health problems. He believed that it would have been inappropriate to discipline her were that the case. Rather than discipline the grievor for her unacceptable behaviour on January 30, 2004, Supt. Morris wrote to Pacific Region Public Service Human Resources Office on February 14, 2004, seeking advice on how to force a medical appointment on her for her safety and that of other employees.

[510] The grievor presented no examples of unacceptable behaviour that were allegedly condoned or even tolerated after Supt. Morris insisted at the end of June 2004 that she undergo a fitness-to-work evaluation before being allowed to return to work from sick leave. After he received the fitness-to-work evaluation in mid-July, he personally served her with the letter of expectation when she returned to work, telling her that her unacceptable behaviour would from then on be viewed as intentional and that it would no longer be tolerated.

[511] Third, I find that the evidence does not support the grievor’s general allegations that her harassment claims were consistently ignored, routinely dismissed out of hand or inadequately addressed by management. On the contrary, the evidence shows that management expended extensive time and resources to investigate her several harassment claims.

[512] At the time of the October 28, 2004 incident, the grievor had made serious harassment complaints, over several years, against four different North District Office employees, Mr. Stephenson, Cst. Wolney, Ms. Bailey and S/Sgt. Beach, as well as against Supt. Morris. Supt. Morris's view, formed after several investigations, was that she targeted those individuals because they had tried to provide workplace guidance and directions to her at different times. Evidence certainly supports his assessment.

[513] While I received extensive evidence on all the grievor's harassment complaints about those individuals and the several investigations that were undertaken, I emphasize that I have no harassment grievance before me. I also emphasize that the grievance before me does not request a review or appeal of the Chagnon Harassment Report or of the subsequent review that she sought of, and received from, the assistant chief of human resources in Ottawa. Her multiple complaints against Mr. Stephenson were found unsubstantiated, and her complaints against Cst. Wolney were declared unfounded. The investigation process and findings were upheld on review.

[514] While the grievor's unhappiness and disappointment with the results of the investigations are understandable, and I accept that those disappointing results added to her frustration and stress, it does not mean that the investigations were inadequate. While I believe that the almost nine-month delay in completing the formal investigation of her complaints was undue and very unfortunate and undoubtedly added to her stress as she waited for the results, I am not convinced that, had the investigation been completed more quickly but still determined that her complaints were unfounded and unsubstantiated, her stress level at the time of the October 28, 2004 incident would have been any less and her behaviour any better. The same is true about the determination in August 2004 that Ms. Bailey's harassment complaint against the grievor was substantiated.

[515] The relevance of the extensive harassment evidence is mainly with respect to the grievor's submission that management consistently failed to adequately investigate her complaints, which added to her stress, and that stress was a mitigating factor in her behaviour on October 28, 2004. I will briefly deal with her extensive submission.

[516] The evidence shows that Ms. Bailey, as the office manager, quickly spoke to Mr. Stephenson when the grievor first raised concerns with her in 2001 about Mr. Stephenson's perceived rudeness and lack of proper respect for the grievor and again several times later, when she accused Mr. Stephenson of repetitive rudeness in

incidents like the March 2003 first-aid room access dispute. C/Supt. Clark also responded by investigating after the grievor brought the first-aid room incident to his attention. The Chagnon investigation also examined the first-aid room incident and determined the grievor's allegation unsubstantiated.

[517] Management also advised Mr. Stephenson to reduce his contact as much as possible with the grievor in the Traffic Services Unit until the official outside investigation was completed. Cpl. Adair's reasons for denying the grievor's request in June for a physical separation of her and Mr. Stephenson to be achieved by removing Mr. Stephenson from the building and hence from his employment pending the completion of the Chagnon Harassment Report, show that her request was considered and denied after a balancing of legitimate considerations. Such a drastic move was considered premature in the circumstances and this seems to have been confirmed by the results of the Chagnon investigation.

[518] Supt. Morris testified that he took harassment seriously. His actions, documented by the evidence presented, support his testimony. He did not delegate the investigation of the grievor's complaints to a staff member despite his very busy schedule as "E" Division's North District commander. While he found her initial allegations against Mr. Stephenson unsubstantiated, he reviewed her documentation carefully, and he had an open-door policy for her, which meant that he encouraged her to bring any incidents to his attention immediately if they reoccurred. She did so, and he promptly brought the parties together to get both sides of the incident, as shown by the events behind the January 30, 2004 meeting in his office. He also immediately held a mandatory harassment awareness meeting for all North District Office employees on October 14, 2003 once the grievor's widely circulated email of October 1, 2003, accusing him of not taking harassment or harassment complaints seriously, was brought to his attention anonymously by another public servant who did not agree with the grievor's views.

[519] Supt. Morris also quickly engaged Cpl. Adair and his human rights expertise in October 2003 when he first learned of the grievor's accusations that he did not take harassment seriously. Cpl. Adair testified that, based on his discussions with Supt. Morris, his private interviews with 18 employees at the North District Office in October 2003 and his discussions with others, he believed that Supt. Morris took harassment and harassment complaints seriously. He so informed the grievor, orally

and in writing. The evidence also shows that the grievor had uninhibited access to Cpl. Adair and his expertise for over a year and that they had regular and extensive written contact. It also supports Cpl. Adair's evidence that he always responded to her often very lengthy emails containing multiple complaints and questions.

[520] The evidence shows that Cpl. Adair arranged for the team of two independent, trained investigators from outside the "E" Division's North District to investigate the grievor's October 2003 harassment complaints against Mr. Stephenson and Cst. Wolney and Ms. Bailey's December 2003 harassment complaint against the grievor. Cpl. Adair took full responsibility in his testimony and in his communications with the grievor and senior management in February 2004 for the delay starting the formal investigation, which he attributed primarily to the difficulties he experienced securing two trained investigators, not just from outside the North District Office but still from Prince George but from outside the "E" Division's North District, who were willing and able to be released to Prince George for a lengthy investigation. In her correspondence with Cpl. Adair in February 2004, the grievor acknowledges the difficulties locating releasable trained investigators and notes her satisfaction with his efforts to secure outside experts to conduct the investigation.

[521] As noted, the Chagnon Harassment Report concluded that the grievor's multiple complaints against Mr. Stephenson were unsubstantiated and that her complaints against Cst. Wolney were unfounded. She sought and received a prompt independent review of her subsequent complaints about the inadequacy of the Chagnon investigation. The review upheld the investigator's conclusion that the investigation was done properly and that her complaints were unfounded.

[522] The grievor is dissatisfied with the results of the Chagnon investigation and alleged at the hearing that the outside investigators were not independent or impartial and that Supt. Morris was somehow improperly directing the investigation. The evidence adduced does not support that allegation.

[523] The grievor filed grievances in February 2004 against Ms. Bailey and Supt. Morris for their failure to provide a harassment-free workplace. Cpl. Adair testified that the grievor had requested in writing that her harassment complaint against Supt. Morris be held in abeyance until after the results of the independent investigation were released. Her request was granted. The grievance appears to have gone no further once the Chagnon Harassment Report was received in mid-July 2004.

That report found that her harassment complaints against Mr. Stephenson and Cst. Wolney were unsubstantiated and unfounded.

[524] The grievor's counsel argued that the grievor did not ask that her complaint against Ms. Bailey also be held in abeyance and that it should have been investigated sooner. On that point, I note that the grievor's October 14, 2004 email to Cpl. Adair suggests otherwise. In it, she states that she "... will be proceeding in the next couple of weeks to pull [her] grievances out of abeyance to have them dealt with." Furthermore, a reading of her December 2003 complaint and her February 2004 grievance against Ms. Bailey make it clear that the primary allegation of her complaint was that Ms. Bailey's harassment complaint of December 2003 against her had no substance and that Ms. Bailey filed it only in retaliation for the grievor filing her October 2003 complaint against Mr. Stephenson, whom Ms. Bailey supervised. In my view, given the specifics of the complaint and the grievance, management reasonably viewed her complaint as a retaliatory harassment complaint and did not pursue it further after Ms. Bailey's harassment complaint against the grievor was determined substantiated in August 2004. That resulted in the grievor's three-day disciplinary suspension in September 2004.

[525] Cpl. Adair testified. Evidence was adduced of correspondence between him and the grievor to corroborate his testimony that, in October 2004, after he had received several emails from her complaining about what she perceived to be S/Sgt. Beach's unnecessary guidance, directions and nitpicking amounting to harassment, he asked her in writing if she wanted to file a harassment complaint against S/Sgt. Beach. She replied that she did not want to file a formal harassment complaint but that she was considering filing a code of conduct grievance against him.

[526] Fourth, while I accept that the grievor was frustrated and stressed by how things were going in the workplace, I do not believe that the evidence established on a balance of probabilities that S/Sgt. Beach deliberately hit her on her arm on September 24, as she testified. He testified that they were in the photocopy room and that, as he pulled out a drawer containing the Central Police Information Centre system files, she moved slightly, and the drawer touched her. Her testimony was that "drawers don't have hands and fingers" and that he hit her with his hand, which her transcript corroborates. He denied the allegation. His notes prepared at that time support his version. The grievor's transcript consists of only approximately five



sentences. S/Sgt. Beach's comment, made just before the grievor said, "You don't have to hit me" is noted as "inaudible." There is no recording of him saying anything, audibly or inaudibly, after her accusation. It is not a believable complete transcript of such an exchange if he deliberately hit her with his hand, as she alleged (Exhibit 1, Tab 8-S).

[527] An allegation of physical assault is very serious. I note that it appears that the grievor did not make her allegation until her email to Pacific Region Public Service Human Resources Office, which is undated but was sent sometime in 2005 (Exhibit 1, Tab 8-N, at point 9 on page 1). It is also difficult to believe that, given that she has a well-documented history of raising her concerns with management and others whenever she feels aggrieved by what she views as inappropriate behaviour towards her, she would not have even mentioned the incident to someone in authority if it occurred on September 24, 2004 as alleged, particularly given the bad feelings that she had toward S/Sgt. Beach. One would think that, if he had hit her, she would have been motivated to report the incident immediately. Yet, she never complained about it at that time, and she never produced any transcript until her reply to C/Supt. Lanthier in April 2005 in her answer to the suspension of her RCMP reliability status.

[528] Supt. Morris testified that the grievor never said anything to him about S/Sgt. Beach hitting her and that he would have investigated if she had. She sent numerous emails to Cpl. Adair in fall 2004 complaining about many workplace events, but she never mentioned being hit by S/Sgt. Beach. In her October 14, 2004 email to Cpl. Adair, she complained about S/Sgt. Beach belittling her in an email he had written to Pacific Region Public Service Human Resources Office, raised the validity of his oral reprimand and stated that he had criminally harassed her by giving her approximately eight memos of direction and one oral reprimand since she returned to work from sick leave. Since she raised S/Sgt. Beach's behaviour on September 24, 2004 in her email to Cpl. Adair and yet said nothing in the email about his physical assault of her that allegedly occurred on the same day, I do not find her explanation credible that she simply failed to mention that he had also hit her on September 24, 2004.

[529] In her email to Pacific Region Public Service Human Resources Office (undated, but sent sometime in 2005; see Exhibit 1, Tab 8-N, at point 8 on page 1), the grievor alleged that S/Sgt. Beach "physically pushed" her on October 28, 2004 and that he snatched papers out of her hand. In her testimony, she alleged that he physically

“pushed her arm” and that he grabbed papers out of her hand in or near the photocopy room on the morning of October 28, 2004. The evidence establishes that he sent two emails to the printer and that, as he went to the photocopy room to collect them, he saw her pick up all the documents on the printer. His testimony was that she defiantly held up the papers in a raised hand and that he took them from that raised hand. Her testimony was that her hand was not raised and that he rudely grabbed the papers from her hand. He looked through them, extracted several documents and returned the rest of the papers to her. Her transcript supports her version.

[530] I believe that the evidence, including the grievor’s transcript, shows that S/Sgt. Beach snatched or grabbed papers from her hand in the photocopying room on the morning of October 28, 2004 and that some of them belonged to him. Her transcript of the incident is only 11 sentences long, although her related commentary is lengthy. The transcript notes that she told S/Sgt. Beach that she had the papers first and that he was “really rude.” While it would have been more polite had he asked for the papers and not grabbed them from her hand, I find that her claim that he was physically aggressive toward her, thus causing her major stress, is an exaggeration. The short exchange ended with the grievor accusing S/Sgt. Beach of criminally harassing her and with him asking her if she knew what that meant.

[531] In summary, it is fair to say that both were stressed and frustrated. The evidence adduced clearly shows the grievor’s genuine frustration and anger at management for what she perceived was its failure to believe her and to act appropriately on her complaints. The evidence also clearly shows the frustration and emotional toll felt by management as a result of her contemptuous behaviour towards it, including her many emails. They were sent to a wide range of people, including senior RCMP management, union members and others, such as ethics, integrity and human rights officers. In them, she accused management generally, and Supt. Morris in particular, of not taking harassment and harassment complaints seriously. In addition, she attacked his integrity and impartiality in how he handled her complaints because of his friendships with Mr. Stephenson and Cst. Wolney, even though both Supt. Morris and Insp. Clark had told her that he knew them only in his role as North District Office commander. He had never socialized with them, other than exchanging routine courtesies when they met in the North District Office. This evidence was not contradicted. The emotional toll inflicted on Ms. Bailey was particularly evident during her testimony. The evidence does not support the grievor’s allegation that

management routinely failed to take her harassment complaints seriously, which she claimed was a major cause of her stress.

[532] I wish to address an argument made by counsel for the grievor. I agree that it is acceptable for an employee to criticize management, but I also agree with *MacLean* that the tone and tenor of the criticism is important. Some of the grievor's emails, which were clearly not union communications, such as her January 30, 2004 emails to a number of senior union and RCMP managers and her June 2004 complaint to the ethics and integrity advisor, contain highly accusatory, personal attacks on the integrity and impartiality of her managers. As I understood her argument, it was that any perception of events depends on the individual. And, for example, if she sincerely believed that Supt. Morris did not take harassment and harassment complaints seriously or that Mr. Stephenson and Cst. Wolney were friends and that Supt. Morris was not impartial because of that friendship, then her repeated accusations cannot be considered lying or deceitful conduct and should not be a determinative factor in weighing her credibility, even in the face of the established facts that Supt. Morris took harassment seriously or that the men were not friends. The same argument logically would apply to the grievor's accusations completely unsupported by any evidence that Supt. Morris had instructed S/Sgt. Beach to lean hard or extra hard on her and to nitpick and find fault with her. In my opinion, the sincerity of her beliefs does not prevent her unsupported accusations from being weighed when determining the reliability of her evidence and from being considered when weighing the reliability of the testimonies of her managers, who assessed her conduct based on her overt behaviour.

[533] Furthermore, while I accept that the grievor was under stress, I do not believe the stress evidence that she adduced as a mitigating factor outweighs the nature of her misconduct on October 28, 2004. In addition, based on the totality of the evidence adduced, I do not accept that the events of October 28 were simply a momentary flare-up and that they could be mitigated by the employer's failure to formally meet with her every two weeks from August to October, as provided for in the letter of expectation. I note that her position was that that letter was disciplinary and that it was completely undeserved. Plenty of interaction occurred during that period, including several meetings between S/Sgt. Beach and the grievor, at least one of which was held in August and attended by Ms. Stangrecki. On the evidence, I do not believe that the grievor would have seen any need to change her behaviour or her attitude

toward management had the parties met more often or more regularly.

[534] I also note that the grievor showed no remorse for her behaviour on the afternoon of October 28, 2004. That is an important factor in my determination that the penalty imposed was reasonable in the circumstances. She testified that she felt no remorse because she had done nothing wrong and that management should be remorseful. What I find important is that she has not demonstrated that she accepts any responsibility for her misconduct on October 28. In fact, as I understand her evidence, her position is that she was the victim of the event, and she blames Supt. Morris and S/Sgt. Beach completely for the incident on October 28.

[535] The grievor described what she believed about the October 28, 2004 incident in several emails she later wrote to Pacific Region Departmental Security Section “E” Division’s North District Security. She believed that the cause of the 10-day suspension was not her behaviour but management’s anger over her request on October 27, 2004 for a deployment on the grounds that S/Sgt. Beach was criminally harassing her (Exhibit 1, Tab 8-U, no. 46 on page 14, and Tab 8-N, at pages 1 and 3). She claimed that her comments about S/Sgt. Beach on her performance evaluation were professional and reasonable and that Supt. Morris and S/Sgt. Beach were at fault for even raising her performance assessment with her on October 28, 2004 because they really just abused their authority and tried to sabotage her. She claimed that the discussion that they wished to have with her on the afternoon of October 28, 2004 was really intended to assault her character, slander and harass her, and provoke her into quitting (Exhibit 1, Tab 8-N, at page 1).

[536] There is no evidence to support those serious allegations. On the contrary, the evidence clearly shows that Supt. Morris acted in good faith when he dealt with the grievor on October 28. He determined that her actions that afternoon constituted misconduct that could not be tolerated. After making that determination, he acted decisively on it.

[537] *Hunter Rose Co. Ltd.*, cited by the grievor, is distinguishable. The grievor was not discharged or threatened with discharge for her behaviour on October 28, 2004. Management did not act on a perception of her hostile and defiant attitude towards it but proved the version of events upon which it based the 10-day suspension.

[538] *Nanaimo Collating Inc.*, cited by the grievor, is also distinguishable. She was not

discharged. Furthermore, while I believe that a reasonable person reviewing the background evidence could fairly conclude that, like the grievor in *Nanaimo*, the grievor in this case was perceived as an irritant at the North District Office and as someone who demanded an inordinate amount of management's time and resources, it was not why she was disciplined on October 28, 2004. Her conduct on October 28 justified the discipline. Management dealt with her misconduct decisively and, in a progressive discipline approach, did not overreact.

[539] The employer chose to impose a 10-day suspension. Although that might be considered unreasonable in isolation, it is not so when viewed in the context of the difficult employment relationship and the grievor's well-documented resistance to even acknowledging any need to change her workplace behaviour.

[540] Viewing the grievor's conduct in its totality, the employer was not unreasonable in progressing from an oral reprimand to a 3-day suspension to a 10-day suspension, particularly in light of the letter of expectation and of the non-disciplinary steps that it had taken to try to change the grievor's unacceptable behaviour.

[541] Based on the evidence, I conclude that the 10-day disciplinary suspension was appropriate in all the circumstances.

[542] For all of the above reasons, I dismiss the grievance.

#### **IX. Summary of the evidence, Part 2: the remaining six grievances**

[543] This section summarizes the additional evidence adduced for the remaining six grievances. These grievances dispute the employer's decisions to suspend and then revoke the grievor's RCMP reliability status for cause, to indefinitely suspend her employment for cause as a result of the suspension and revocation of her RCMP reliability status, and to terminate her employment for cause and related process grievances. This part includes summaries of the testimonies of the security investigators, the grievor and the decision makers who often acted on the security reports. It is organized primarily around the testimonies of S/Sgt. Hildebrand, Sgt. Lennox, Mr. Briske and C/Supt. Lanthier.

**A. Testimony****1. S/Sgt. Beach**

[544] As noted, on November 14, 2003, an arrest warrant was executed by the Burnaby Detachment about an “E” Division’s North District file. Problems arose because the warrant entry had not been removed from the Central Police Information Centre system, as the grievor should have done. Thus, the individual’s arrest and holding were illegal, and potential civil liability problems arose for the employer (the problem file).

[545] S/Sgt. Beach testified that Cst. Wolney audited the outstanding files in the Central Police Information Centre system on November 3, 2003 and that he found deficiencies in nine operational files. When S/Sgt. Beach was notified on November 20, 2003, he gave the grievor the original continuation report form and attached it to the problem file (Exhibit 1, Tab 5-N at page 12). He also gave her a copy of the original continuation report form (Exhibit 1, Tab 5-N, at page 17), with a written note that she was to keep it under her ink blotter at her desk as a mentoring tool and as a direction to prevent future errors.

[546] According to Insp. Clark’s testimony, an RCMP member documents his or her investigation plan (e.g., to interview person “X”) and activities (e.g., interview of “X” completed on date “Y”) in a continuation report that is filed in the investigation file. It is a kind of play-by-play of an investigation and is a method of allowing supervisors to direct investigators.

[547] S/Sgt. Beach testified that, on November 20, 2003, he drafted a second continuation report form for the grievor’s use as a generic direction for entries in the Central Police Information Centre system and endorsed and unendorsed warrants and that he placed it in all nine operational files (including the problem file) identified by Cst. Wolney. He then gave the grievor all the files so that she could rectify all the errors and then have them filed. He testified that he also gave her a copy of the second continuation report form and that he placed a copy in her personnel file, which he kept in the office. He then advised S/Sgt. McCaig that the problem identified by Cst. Wolney had been addressed with the grievor, that she had been mentored, that she had a copy of what to do at her desk and that the matter was finished.

[548] On March 12, 2004, S/Sgt. Beach discovered that the second continuation report form had been removed from all nine files in the Central Police Information Centre system and from the grievor's personnel file. He testified that, when he questioned her as to whether she still had a copy of it at her desk, she said that she had shredded it. When he opened the problem file, he found only the original continuation report form. When he questioned her about the absence of the second continuation report form, she told him that he had given her only the original continuation report form that was still in the problem file. He testified that only he and the grievor had keys to the locked cabinet in which her personnel file was kept. He testified that he then asked her to return her key to the cabinet.

[549] On March 12, 2004, S/Sgt. Beach drafted a third continuation report form, containing generic directions (Exhibit 1, Tab 5-N, at page 15). He put it in the problem file to provide direction and address deficiencies that were in the second continuation report form. He gave a copy to the grievor as a guide. He noted that the third continuation report form was identifiable because, when he drafted it, he had made an error by reversing the titles "Unendorsed" and "Endorsed Warrants."

[550] On March 25, 2004, S/Sgt. Beach checked the nine operational files again and noted that the second continuation report forms were still missing. He also noticed that the original continuation report form was in the grievor's personnel file but that it was placed out of sequence. He completed a departmental security complaint form, dated March 25, 2004, for the file (Exhibit 26, Tab 16) and then spoke to Insp. Wheadon. A departmental security complaint form was completed by S/Sgt. Beach, activating a security review.

## **2. S/Sgt. Hildebrand**

[551] By memo dated April 8, 2004, Insp. Wheadon asked S/Sgt. Hildebrand to conduct an investigation into a possible security breach by the grievor, with respect to the alleged removal of continuation report forms from files in the Central Police Information Centre system and her personnel file. It was also suggested that he conduct off-line searches of her the RCMP GroupWise email system, Central Police Information Centre system and Police Information Retrieval System accesses (Exhibit 1, Tab 5-N, at page 46).

[552] S/Sgt. Hildebrand did not know either the grievor or S/Sgt. Beach before being

asked to conduct the investigation. He had a general knowledge of Supt. Morris and C/Supt. Clark, as the Quesnel Detachment was under the North District Office's jurisdiction, although he had been posted to Quesnel only in spring 2002, and he seldom went to Prince George. He testified that he did not know either of them well and that Supt. Morris was very standoffish during the investigation. However, he knew Insp. Wheadon well, as they were troop-mates in training.

[553] S/Sgt. Hildebrand had retired from the RCMP when he testified at the hearing. Therefore, he was Mr. Hildebrand. However, I will refer to him as S/Sgt. Hildebrand as he was ranked at the time of his investigation and as he is referred to in the documents under review.

[554] S/Sgt. Hildebrand testified as to his process used when conducting the investigation. He had conducted many major crime and drug investigations in his career, but he had never before conducted a security investigation on a public servant. First, he consulted with someone who had conducted one, S/Sgt. Glas, non-commissioned officer in charge, Pacific Region Departmental Security Section, the RCMP member who had initially received the departmental security complaint form about the alleged security breach. S/Sgt. Hildebrand then reviewed relevant manuals, such as the *Management of Recorded Information* policy and *Acceptable User Practices for RCMP Information Technology Manual*. He described the pre-interview statement he received from S/Sgt. Beach (Exhibit 1, Tab 5-N, at pages 13 and 14), although he was not sure whether he had received it from him in May or in September before interviewing him. He also described the individuals he interviewed, the materials he reviewed and the conclusions he made. He provided a transcript of the interviews, including with S/Sgt. Beach and the grievor on September 24 and with Ms. Bouchard on September 27, 2004 (misdated as November 27, 2004). Ms. Stangrecki, the grievor's representative, was present at her interview (Exhibit 1, Tab 5-N, at pages 18 to 29).

[555] S/Sgt. Hildebrand testified that, on July 7, 2004, when he first attempted to set up an interview with the grievor for July 10, when he was going to be in Prince George, giving her three days' notice, he received an email from her advising that three days' notice was not enough to arrange for a representative to be present and that she would not be available for two weeks. When he insisted that three days' notice was sufficient (management has to give only 24 hours' notice, and the grievor was entitled to union representation at the meeting; see Exhibit 1, Tab 5-N, at page 61) and that he wished to



interview her when he was in Prince George, she advised that she wanted another ongoing investigation completed first before meeting with him (I believe that, given the timing, she meant her harassment grievances against Mr. Stephenson and Cst. Wolney) and that she would probably go on sick leave for some time. He testified that he believed that she did not want to be interviewed and that she was stonewalling him. He did not visit the North District Office on July 10 as planned because he was informed on July 9 that she was away on sick leave. He was not able to interview her until September 24, 2004.

[556] On cross-examination, S/Sgt. Hildebrand acknowledged that the grievor made several written offers of assistance. However, he wanted to conduct the interview in person, which he felt she was trying to avoid.

[557] S/Sgt. Hildebrand issued an interim report on August 9, 2004 (Exhibit 1, Tab 5-N, at page 74) on his investigation as of that date because, he testified, many people had contacted him about his progress. In it, he tentatively concluded that, based on his information, on the balance of probabilities, it appeared that the grievor removed documentation from the files. He suspected that she did so to cover her performance inadequacies. He tentatively concluded that it was more likely a breach of RCMP policy than of security. He issued a final report on October 13, 2004 after his interviews with S/Sgt. Beach, the grievor and Ms. Bouchard were completed (Exhibit 1, Tab 5-N, at pages 1 to 10, plus appendices).

[558] S/Sgt. Hildebrand testified that the grievor had clearly faxed copies of continuation report forms out of the office to Ms. Bouchard of the Quesnel Detachment on March 26, 2004. Ms. Bouchard had stated that she had received three faxed pages from the grievor sometime in 2003, including a cover sheet, asking her to keep the papers for the grievor, and two pages that she thought were continuation report forms. In addition, the grievor had given him copies of the two continuation report forms that she kept after faxing copies to Ms. Bouchard (Exhibit 1, Tab 5-N, Appendix E, at pages 30 and 31, about the problem file, no. 2002-1263).

[559] The continuation report forms that the grievor produced (Exhibit 1, Tab 5-N, Appendix E, at pages 30 and 31) contained written directions from S/Sgt. Beach to her on how to make proper entries in the Central Police Information Centre system and on how to make corrections on existing entries in the Central Police Information Centre system. Ms. Bouchard told S/Sgt. Hildebrand that she did not know why the grievor

faxed those continuation report forms to her. She also volunteered that she had been blind copied on several of the grievor's lengthy emails. She gave copies of them to S/Sgt. Hildebrand.

[560] S/Sgt. Hildebrand testified that, in his interview of her on September 24, 2004, the grievor stated initially that she did not remove any continuation report forms or other paperwork from any files and that she never sent any papers from inside the office to anyone outside. She later told him that she did not remove papers from the files but that she did fax papers or continuation report forms to Ms. Bouchard at the Quesnel Detachment in case they were needed for S/Sgt. Hildebrand's investigation. She also stated that she had checked with C/Supt. Clark, who had advised her that it was permitted to send operational material to another RCMP office (Transcript, Exhibit 1, Tab 5-N, at pages 24 to 26).

[561] In the interview, the grievor told S/Sgt. Hildebrand that she wanted S/Sgt. Beach charged with criminal harassment, sabotage and public mischief for causing the unwarranted security investigation (Exhibit 1, Tab 5-N, at page 27).

[562] Later that afternoon, after the interview, the grievor requested that S/Sgt. Hildebrand meet with her again to clarify why she had faxed the materials to Ms. Bouchard for safekeeping for his investigation given that, as he had pointed out to her during the interview, at that time he had not yet been appointed as the investigator. She stated that she had faxed them for safekeeping so that someone in the union would have copies. Ms. Bouchard was the treasurer of the USGE at that time (Exhibit 1, Tab 5-N, at pages 25 and 29). In cross-examination, S/Sgt. Hildebrand stated that he saw it as the grievor changing her story to fit the facts.

[563] S/Sgt. Hildebrand testified that he interviewed Insp. Clark on that matter and that Insp. Clark told him that he could recall the grievor calling him only once requesting permission to forward documents with respect to a murder investigation to Prince George Detachment. Insp. Clark had said that it was permitted to share that information with another police office, but he had never authorized her to send continuation report forms out of the office. That was an entirely different matter. It did not make sense to him to send continuation report forms to another detachment.

[564] S/Sgt. Hildebrand testified as to his findings. He concluded that the grievor did not breach security but that she breached RCMP policy with respect to records

management. The report criticized her behaviour as follows: (Exhibit 1, Tab 5-N, at pages 7 and 8):

...

#### 6.0 Findings:

*Firstly I do not find BERGEY credible for the following [sic] reasons:*

- *When interviewed she changed her story to fit the facts. She stated she had not sent paper outside the office and later said she did.*
- *She said she sent the 1624's to Bouchard for safe keeping for my investigation and then changed her story when she realized this was prior to my involvement.*
- *She inferred Insp. Clark had authorized her to send the 1624's to Bouchard when in fact the authorization was for an unrelated matter.*

***Based on the balance of probabilities I believe PS Valerie Bergey breached RCMP policy by not properly filing reports on operational files . . . I further believe this was done on purpose.***

***Based on the balance of probabilities I believe PS Bergey has used regular working hours to conduct personal matters on ROSS.***

***I do not believe PS Valerie Bergey has breached security.***

#### 7.0 Summary

*BERGEY has signed form 330-47. Of note on this Security Screening & Briefing Form is that the employee agrees to follow government department policies.*

*BERGEY has received CPIC training subsequent to this investigation starting.*

*I have attached copies of lengthy e-mails that are not work related. One of these would have required in excess of one hour to compose (5 full pages single spaced). Furthermore these e-mails do not conform with acceptable user practices.*

...

[Emphasis in the original]

[565] S/Sgt. Hildebrand forwarded his final report on the investigation, with appendices, to Insp. Clark on October 13, 2004 (Exhibit 1, Tab 5-N). Insp. Clark had replaced Insp. Wheadon as the assistant district officer and had become responsible for the non-operational (personnel and finance) side of the operation.

[566] S/Sgt. Hildebrand testified that he was not aware that the grievor secretly taped his interview with her. His tape was transcribed by the Quesnel Detachment staff member who transcribed tapes from criminal matters. In cross-examination, S/Sgt. Hildebrand stated that he had not compared the transcript done by his office staff “line-by-line” with the grievor’s transcript (Exhibit 1, Tab 8).

[567] In cross-examination, S/Sgt. Hildebrand was asked if he was aware that the grievor thought that she did not fax materials out of the office because she faxed them to another detachment for his investigation. He repeated that he had not been appointed as an investigator until April 8, 2004, well after she faxed the continuation report forms.

[568] In cross-examination, when asked how the grievor could have given S/Sgt. Hildebrand copies of the continuation report forms if she had removed and shredded all of them from the files, as S/Sgt. Beach claimed, S/Sgt. Hildebrand stated that, if she made copies for herself and then shredded the originals, she would have had copies to fax to the Quesnel Detachment. When asked whether he asked the grievor during the interview if she had shredded the original continuation report forms, S/Sgt. Hildebrand reviewed the transcript, particularly noting line 119. He stated that he thought he had and that the grievor had said she never removed anything from the files. When asked if he did not believe her on that issue, S/Sgt. Hildebrand stated that he had not formed an opinion at that point in the interview but that, by the end, he did not accept her explanation.

[569] In cross-examination, S/Sgt. Hildebrand stated that he did not believe that he met again with S/Sgt. Beach after he completed the interviews on September 24, 2004 and received the transcripts, to clear up any confusion about which continuation report forms the grievor and S/Sgt. Beach referred to. He did not recall the exchange of emails with S/Sgt. Beach reproduced in the grievor’s Exhibit 26, Tabs 87 and 88, in which he requested on September 29, 2004 that S/Sgt. Beach check a file to clarify when modifications were made following the original continuation report form. S/Sgt. Beach did so and replied; his reply is undated. On that reply, S/Sgt. Hildebrand

said that he was interested in that data because it would indicate that continuation report forms were there to start with. However, he did not recall what conclusion he drew if any from the data S/Sgt. Beach provided. If he had formed a conclusion, it probably would have been in his report, which did not contain one.

[570] In cross-examination on his conclusion stated on page 10 of his report that, on the balance of probabilities, the grievor had breached the *Management of Recorded Information Policy* by not properly filing reports in operational files and that she did so on purpose, S/Sgt. Hildebrand stated that S/Sgt. Beach's directions would have been detrimental to her performance assessment. He stated that he could see no other credible reason for removing them. The grievor was the only person who would have had any reason to remove them. He testified that he did not believe her when she said she had not removed them from the files. He based his conclusion on the fact that she had a motive and that she changed her story as the interview progressed. She said initially that she had not sent any papers out of the office. Later, she admitted to him that she had faxed the continuation report forms out of the office to Ms. Bouchard in the Quesnel Detachment.

[571] In cross-examination, S/Sgt. Hildebrand testified that at least one of the files was still active at the time of his investigation because he had found some errors in it and had taken it to S/Sgt. Beach for corrections. However, he could not recall how many more of the nine files in question were operational at that time. He testified that he did not ask the grievor directly about his conclusion because his focus was on her alleged security breach, not a performance issue and a policy breach.

[572] On reply, S/Sgt. Hildebrand clarified that his finding stated in section 6.0 of his report that the grievor lacked credibility was based on his three listed reasons (Exhibit 1, Tab 5-N, at pages 9 and 10). He clarified that his first reason, that she changed her story to fit the facts when she said she did not send any papers outside the office and later said that she did, was based on his interview with her. The question and answer that he referred to reads as follows:

...

156 KH: *So you took paper, then you did take paper outside the office by sending it to Dana BOUCHARD?*

...

158 VB: *No, I, I sent it by fax to another RCMP agency for her to hang on, for, in case I needed it for you.*

...

[573] On reply, S/Sgt. Hildebrand clarified that he did not go back to the grievor to clarify a number of items raised by counsel for the grievor in cross-examination because, as he had testified, his mandate was to investigate an alleged security breach, not a policy breach, and he did not think that the performance or policy breach issues being raised were relevant to his investigation.

### **3. C/Supt. Clark**

[574] By the hearing, C/Supt. Clark had succeeded Supt. Morris. He was Insp. Clark at the time of the Hildebrand investigation. He testified that Supt. Morris must have been away from the office when S/Sgt. Hildebrand's report was received and that, as the acting district commander, he needed advice on what to do next.

[575] C/Supt. Clark testified that a number of statements that the grievor made during her interview with S/Sgt. Hildebrand about her interactions with him were not true. He gave as an example her claim in the interview that, after she was accused, she gave him photocopies of the papers she had faxed to the Quesnel Detachment (Exhibit 1, Tab 5-N, at page 29). He testified that that was not true and that, furthermore, as a person in authority, he would not have discussed the investigation with her or taken any documents from her, as he would have been careful to not let an individual incriminate himself or herself in that way. He has no recollection of ever speaking to her about S/Sgt. Beach's departmental security complaint form of March 25, 2004 (Exhibit 26, Tab 16), which prompted the Hildebrand investigation.

[576] In cross-examination, C/Supt. Clark agreed that, while he did not recall meeting with the grievor then, it was possible that he did. However, he testified that he could definitely state that she did not give him any papers, contrary to her claim. C/Supt. Clark testified that, as noted in the report, S/Sgt. Hildebrand interviewed him about whether he had authorized the grievor to send documents out of the office. C/Supt. Clark stated that he had not authorized it, as she had claimed. She had not checked with him at any time before September 24, 2004 (the date of her interview with investigator S/Sgt. Hildebrand) about sending continuation report forms out of the office, which she had done to Ms. Bouchard on April 4, 2004.

[577] C/Supt. Clark testified that an incident occurred in May 2004 involving an active homicide investigation. The grievor had been asked to send the Traffic Services Unit file to the homicide detective in another detachment who was investigating a death. The grievor had refused. Insp. Clark was on the road at that time. When he was contacted, he was concerned because file information is commonly shared between detachments in an active homicide investigation, which is always urgent, and any delay sharing file information between detachments is very serious. He testified that the grievor would have known it was an active investigation because that would have been part of the request.

[578] C/Supt. Clark testified that he spoke to the grievor and that he thought it was odd when she told him that she had never experienced shared file information between detachments before. He was also surprised and found it bizarre that, after their discussion, she emailed him on May 18, 2004, requesting authorization in writing for sharing the requested file information. He responded on May 19, 2004 (Exhibit 124).

[579] In cross-examination, he testified that, while his authorization on May 19, 2004 was general, it was an email response to the grievor specific to the homicide investigator's request. It was not a general directive about sharing all operational file information between detachments. As for her actions, under investigation by S/Sgt. Hildebrand, it was an after-the-fact authorization because the grievor had faxed the continuation report forms out of the office in March or early April 2004, and the authorization was issued in mid-May 2004.

[580] C/Supt. Clark testified that he forwarded a copy of the Hildebrand Security Breach Report to Mr. Mitchell on November 4, 2004 (Exhibit 1, Tab 5-N) seeking a review and direction. Insp. Clark testified that he did so because all departmental security complaint form fall to Pacific Region Departmental Security Section, which would have had to investigate even had S/Sgt. Hildebrand or Insp. Wheadon concluded that the grievor did not commit a security breach. Theirs would not be the final decision on the security matter, as an individual's behaviour may raise security concerns even if it does not amount to a security breach.

[581] C/Supt. Clark testified that he also forwarded a copy of the Hildebrand Security Breach Report to Pacific Region Public Service Human Resources Office on November 5, 2004 (Exhibit 125), seeking advice on whether it was a discipline matter

within the public service. He testified that he felt and that he stated in his memo to Pacific Region Public Service Human Resources Office that the incidents were worthy of some form of discipline. At the hearing, he could not recall whether, at that time, it was because the grievor violated the records management policy or the credibility concerns that were raised about her, or both, but that he contemplated discipline against her.

[582] C/Supt. Clark testified that his main concerns about the Hildebrand Security Breach Report were its findings about the grievor's lack of credibility and integrity, demonstrated during her interview, and his own concerns that, based on his own knowledge, she claimed he had given her permission to send the continuation report forms out of the office, when he had not.

[583] In his covering memo on each forwarded report, C/Supt. Clark stated the following: "Of significant concern to me is the lack of credibility and integrity on the part of Valerie Bergey, encountered by the investigator during his investigation."

[584] C/Supt. Clark testified that he did not recall speaking to the grievor about the Hildebrand Security Breach Report at that time because he thought she was on sick leave. He recalled receiving advice from Pacific Region Public Service Human Resources Office that the incident could be a disciplinary matter in the future but not while she was on sick leave.

[585] C/Supt. Clark testified in cross-examination that he informed Supt. Morris on his return about receiving the Hildebrand Security Breach Report. However, Supt. Morris made no reply to him.

#### **4. The grievor**

[586] The grievor testified about S/Sgt. Hildebrand's report. She provided a transcript of the meeting with him, as she had secretly taped the interview (Exhibit 1, Tab 8-R). She did not note any discrepancies between her transcript and the one he provided.

[587] The grievor testified that she did not refuse to meet with S/Sgt. Hildebrand. Rather, she was entitled to have union representation of her choice at the meeting, and the union representative she wanted was unavailable for some time.

[588] The grievor testified that she did not take papers out of the office. She faxed



copies to Ms. Bouchard and kept copies for herself but did not remove them from the files.

[589] The grievor testified that she did not intentionally mislead S/Sgt. Hildebrand in her answer to his question of whether she had sent documents out of the office. She did not consider sending operational files to other detachments within the “E” Division’s North District as sending them outside the office. The Quesnel Detachment was within the “E” Division’s North District.

[590] The grievor testified that S/Sgt. Hildebrand had misunderstood her answer to his question and that it was up to him to contact her for clarification or to clear up any misunderstanding rather than to jump to his conclusion about her credibility. He never contacted her after the interview.

[591] The grievor testified that she faxed copies of the continuation report forms to Ms. Bouchard at the Quesnel Detachment for safekeeping. While S/Sgt. Hildebrand had not yet been appointed to carry out the investigation when she faxed them, the grievor had spoken to Insp. Clark, who had told her that he thought the investigator would likely be S/Sgt. Hildebrand.

[592] The grievor also testified that Insp. Clark had said, “anything for another RCMP agency is absolutely fine.”

### **B. The second printer incident and Cpl. Flewelling’s report**

[593] As noted in Part 1 of the summary of the evidence, a second printer incident occurred in the morning of October 29, 2004. The first printer incident occurred in the morning of October 28, 2004.

[594] S/Sgt. Beach’s version of events is that he had emailed Pacific Region Public Service Human Resources Office. He had sought advice on how to deal with the grievor’s behaviour, which he believed had become increasingly irrational since she received the letter of expectation. He emailed the letter to Pacific Region Public Service Human Resources Office and then printed a copy. He walked to the office printer to fetch it. As he arrived, he saw the grievor walking with all the papers from the printer in her hand. He asked her if some of the papers were his. She claimed that they were all hers and that he had to stop bullying her. He concluded that his email had not printed and returned to his desk to print it again. (The email is Exhibit 1, Tab 5-Q, at

pages 4 and 5, also at Tab 8-A8. S/Sgt. Beach's notes of the incidents are Exhibit 1, Tab 5-Q, at page 4).

[595] The grievor's version differs. She testified that S/Sgt. Beach had snatched all the papers out of her hand and that she had the tape to prove it. She testified that she had taken the email that she later showed to Cpl. Flewelling from the printer after it had been left there for three days, to humiliate and belittle her in front of her co-workers.

[596] As noted in Part 1 of the summary of the evidence, the grievor was served a 10-day suspension letter by Supt. Morris on November 4, 2004. After that, it was discovered that a mistake had been made in the 10-day period stated in the letter (as a result of the Remembrance Day holiday) and that it was necessary to serve her with an amended suspension letter. Supt. Morris requested that Cpl. Flewelling do it, which he did on November 8, 2004.

[597] On November 9, 2004, Cpl. Flewelling sent a written report to Supt. Morris, documenting that he had served the amended letter on the grievor and reporting what had transpired at the meeting (Exhibit 29, Tab C-32; also Exhibit 1, Tab 5-R, at pages 4 and 5). He reported that the grievor showed him two pieces of paper containing text in email format dated October 29, 2004 that she identified as being from S/Sgt. Beach's computer and addressed to Pacific Region Public Service Human Resources Office. In those emails, S/Sgt. Beach referred to the grievor and Supt. Morris. Cpl. Flewelling Letter of Suspension Reported that she told him that S/Sgt. Beach had intentionally left the documents lying on the office printer for three days so that everyone could see them, to embarrass her, so she had taken them. She told Cpl. Flewelling that the documents were full of lies and that it was a deliberate act to desecrate her. She told him that she planned to canvass the office staff to see who had read them and that she was going to sue or was contemplating suing the RCMP.

[598] Cpl. Flewelling testified that he believed his November 8 meeting was being taped because of how the grievor laid her purse on the table and pushed it toward him.

[599] S/Sgt. Beach testified that, upon reading Cpl. Flewelling's report, he believed that what the grievor had shown Cpl. Flewelling was the missing first printed copy of his October 29, 2004 email to Pacific Region Public Service Human Resources Office. He informed Supt. Morris of what had transpired. Supt. Morris testified that, when he later read Cpl. Flewelling's report and talked to S/Sgt. Beach about it, he determined

that, when the grievor returned from her 10-day suspension, he would impose another 10-day suspension for lying to her supervisor about the matter.

### **C. The grievor's surreptitious recordings**

#### **1. Supt. Morris's testimony**

[600] Supt. Morris never imposed the additional 10-day suspension on the grievor as he planned for the October 29 Flewelling Letter of Suspension Report lying incident because she did not return to the workplace in November after her disciplinary suspension, and he retired at the end of December 2004.

[601] Supt. Morris testified that he changed his mind about using discipline later in November 2004 when he learned from Pacific Region Public Service Human Resources Office that the grievor had been secretly taping office meetings for months, including the November 3, 2004 disciplinary hearing in his office. He testified that he did not consider the taping criminal, but he did consider it unethical and deceitful. He believed that discipline was no longer sufficient to deal with her behaviour.

[602] Supt. Morris testified that, later in November, he phoned the union president, Ms. Stangrecki, who had been at the November 3, 2004 meeting as the grievor's union representative, to clarify something. When she said she would get her notes of the meeting, he told her not to bother because he had been served with a transcript of the meeting. Ms. Stangrecki was shocked. In her testimony, Ms. Stangrecki confirmed his account.

[603] When Supt. Morris considered the grievor's behaviour in light of her history of lying, he testified that he became increasingly concerned that she was a security risk to the employer and to other employees. He thought her behaviour became more irrational since she was served with the letter of expectation, and he believed that discipline was insufficient to deal with the problem.

[604] On November 10, 2004, Supt. Morris wrote to C/Supt. Dingwall, C/Supt. Lanthier and Mr. Mitchell. He described interactions at the North District Office with the grievor over several years and asked for advice. He referred specifically to the October 29, 2004 printer incident and to Cpl. Flewelling's report. He mentioned that the security breach investigation into her removal of documentation from operational files had been completed and that the investigator had reported that she had lied to

him several times during the investigation (the Hildebrand Security Breach Report). He concluded that her behaviour had violated the RCMP's core values of honesty and integrity. In addition, she was continually disrespectful to others and refused to be held accountable. Her behaviour was most unprofessional. He advised that, when she returned from the 10-day suspension, he would advise her that she was no longer welcome in the North District Office (Exhibit 29, Tab C-35; a covering note is at Tab C-34).

[605] The Pacific Region Departmental Security Section replied, asking Supt. Morris to provide a more detailed report of incidents. He testified that that response frustrated him and that he then asked S/Sgt. Beach to document incidents that he was aware of. Supt. Morris then used S/Sgt. Beach's document, along with his own office records, files and personal experience with the grievor, to prepare an eight-page single-spaced detailed chronology of events that he sent on November 29, 2004 to the Pacific Region Departmental Security Section (Exhibit 1, Tab 5-B).

[606] Supt. Morris testified that he did not give S/Sgt. Beach any directions as to the form the report should take or what to include. S/Sgt. Beach produced a chronological report.

[607] Supt. Morris's November 29 memo provides a chronology of events from April 2001 to November 2004 in support of the concerns of his office over continuing the grievor's reliability status. His memo concludes with the following paragraph (Exhibit 1, Tab 5-B, at page 8):

*The incidents and situations described above are only a brief synopsis of the numerous encounters we have endured over the years with this employee. Her proven deceitful conduct has put this office in a position where we can no longer trust her to perform her duties in a reliable and trustworthy fashion. To do so would place our organization in serious liability. Your assistance and advice [sic] is very much appreciated.*

[608] Supt. Morris was asked in cross-examination why he had taken the chronology back as far as spring 2001, when the grievor joined the North District Office. He replied that the more recent incidents with her led him to reassess some of the earlier events, as he saw a pattern of deceitful behaviour on her part that he had not seen when dealing earlier with what seemed isolated incidents.

[609] Supt. Morris was asked in cross-examination to provide some examples of the security risk that he thought the grievor's behaviour raised to the North District Office and to other employees when he wrote his memos of November 10, 2004 to Pacific Region Public Service Human Resources Office and November 29, 2004 to the Pacific Region Departmental Security Section.

[610] Supt. Morris described the grievor's continual persecution of other North District Office employees, such as Mr. Stephenson and Cst. Wolney, even though her harassment claims had been investigated and found unsubstantiated. He described her persecution of Ms. Bailey, whose harassment complaint against the grievor had been substantiated. The grievor's persecution of some employees put other employees at risk. The grievor implicated other employees to support her allegations or depictions of events. However, when questioned, those employees told Supt. Morris that her claims were false. He described the October 29 printer incident, in which she stole her supervisor's email to the Pacific Region Public Service Human Resources Office, her lie to him when she denied taking it and her lie to others that her supervisor had purposely left the email for days on the printer for others to see. Supt. Morris found out about that incident only in Cpl. Flewelling's report, issued on November 9, 2004. He described the missing explicit guidance instructions that her supervisor had placed in operational files, which he strongly suspected she had removed. He described her claim that she made Queen's Jubilee Medals nominations in 2002, which went missing. When he checked out her changing story, he believed that she had lied and that she had never made any nominations, as she claimed. Her emails, which she blind copied to many, described events in a non-factual way. She sent them contrary to the RCMP computer information user policy, after she had been counselled many times about using her computer for personal, non-work matters. He described the numerous errors in Central Police Information Centre system entries the grievor made despite her experience making entries in the Central Police Information Centre system with few difficulties, her receiving much counselling from her supervisor and her taking a formal course on the Central Police Information Centre system entries. That led him to think that she made the errors intentionally, to discredit her supervisor. He concluded that those incidents and others demonstrated theft and other deceitful behaviour on her part and raised very serious concerns about her reliability.

[611] When asked in cross-examination if some of those incidents were performance issues and not security risks, Supt. Morris disagreed. He testified that he could no

longer rely on the grievor's honesty and integrity, which raised reliability issues for him.

## **2. The grievor's testimony**

[612] The grievor testified that she recorded office interactions because Supt. Morris, S/Sgt. Beach and Ms. Bailey were bullying and intimidating her and trying to drive her crazy. She testified that she was very glad that she recorded office conversations with them because the recordings proved that her testimony was the correct version of events.

[613] Ms. Elliot's written representations at the final-level grievance hearing in February 2006 state that the USGE does not support recording such discussions (Exhibit 147).

## **3. Related testimony**

[614] The grievor testified that she had no choice but to secretly tape office interactions because no one believed her complaints of harassment.

[615] The grievor's correspondence of January 15, 2004 to Cpl. Adair about her harassment complaint states that she had recordings of her meetings with Ms. Bailey that Ms. Bailey "is not going to be happy with" that speak to the inaccuracies of Ms. Bailey's observations about the grievor's behaviour and her attitude (Exhibit 94).

[616] Cpl. Adair testified that he knew nothing about the grievor's claim that she had no choice but to secretly record workplace interactions. He had responded to the many calls and emails that she sent him both before and after the formal investigation of her complaints.

[617] In her lengthy submission to the Pacific Region Departmental Security Section, dated January 27, 2005, the grievor states that she has a recording of the entire conversation of Supt. Morris presenting her with the letter of expectation. She also states that she has a recording of her meeting with S/Sgt. Beach on September 24, 2004. She notes that she is providing a transcript of that meeting, as well as other transcripts (Exhibit 1, Tab 8-U, at page 13).

[618] C/Supt. Clark testified that he suspected the grievor was recording meetings

with him and that, on at least two occasions, he asked her if she was recording. She always denied it.

[619] As for the grievor's transcript of a meeting with Insp. Clark on October 4, 2004 (Exhibit 1, Tab 8-B) and her editorial note at the top of it, which states that it is about the letter that Supt. Morris wrote to Pacific Region Public Service Human Resources Office on June 29, 2004, C/Supt. Clark testified that he had asked her why she had asked him about a meeting that had taken place seven months earlier (on January 30, 2004). She told him that it was for her complaint, because she had asked for a review. She never told him any details as to which complaint she was referring or to what it was about. He noted that, during the meeting, she repeatedly asked him about his perception of her behaviour at the January 30, 2004 meeting and that she tried to get him to comment on the appropriateness of Supt. Morris's behaviour.

[620] Cpl. Flewelling also testified that, when he met with the grievor on November 8, 2004 to serve her with the amended letter of suspension, she pushed her purse towards him in a way that caused him to assume that she was taping the conversation.

[621] Ms. Stangrecki testified that she had not been aware that the grievor was secretly taping meetings, a number of which she had attended with the grievor as chief shop steward and as her union representative, and that she was shocked when she learned of it.

[622] Ms. Elliot's written representations at the final-level grievance hearing in February 2006 state that the USGE does not support recording such discussions (Exhibit 147).

#### **D. Sgt. Lennox's interim report**

##### **1. Background**

[623] As noted in Part 1 of the summary of the evidence, on June 4, 2004, the grievor made a complaint against her direct supervisor, S/Sgt. Beach, for releasing protected information to Supt. Morris on February 24 or 25, 2004, when there was no need for it. The complaint was in relation to the harassment grievance that she had filed on February 24, 2004 against Supt. Morris for his failure to maintain a harassment-free workplace. As it was necessary to skip the normal first step of having Supt. Morris sign

the grievance, the grievor and her union representative, Ms. Stangrecki, met with S/Sgt. Beach and requested that he sign the grievance before it could be forwarded to Pacific Region Public Service Human Resources Office.

[624] C/Supt. Clark testified that the grievor came to him in June with the departmental security complaint form and discussed it with him. He advised her that he did not think it was a security breach by S/Sgt. Beach. She then asked him for an address in Ottawa where she could send her complaint.

## **2. Testimony**

### **a. Sgt. Lennox**

[625] Sgt. Lennox was retired from the RCMP when he testified at the hearing. Therefore, he was Mr. Lennox when he testified. However, I will refer to him as Sgt. Lennox as he was at the time of the investigation and as he is referred to in the documents under review.

[626] As noted briefly in Part 1 of the summary of the evidence, on October 21, 2004, Sgt. Lennox received a request from then Insp. and Assistant District Officer Clark to conduct an administrative review of an alleged security breach at the North District Office. He testified that he thought he was chosen because he was the only one not connected to the North District Office via reporting lines. His office was located in the North District Office, but he did not report to Supt. Morris. His direct line of reporting was to Insp. Ard in Vancouver.

[627] Sgt. Lennox did not receive a formal mandate letter. He received what he considered was an operational file, which was a file folder or jacket containing the initial departmental security complaint form and a copy of the grievor's departmental security complaint form complaint, dated June 4, 2004 (Exhibit 1, Tab 5-V, Appendix A). In essence, he understood that her complaint was that S/Sgt. Beach, after signing her grievance alleging that Supt. Morris had failed to provide a harassment-free environment, provided Supt. Morris with a copy of it, contrary to her instructions, before forwarding it to Pacific Region Public Service Human Resources Office.

[628] Sgt. Lennox informed Insp. Clark at the time of the request that, due to operational requirements, he could not carry out the administrative review immediately. On October 29, 2004, Sgt. Lennox spoke to the grievor, whom he knew,



and told her the same thing. He mentioned that he would begin investigating around November 8, 2004. She informed him that she might not be in the office at that time but that he could contact her at home.

[629] Sgt. Lennox described his process for internal investigations involving RCMP members when he was a detachment commander. However, he had never before investigated a security breach involving a public servant. His initial step was to review the RCMP web information, including an administrative section (“Admin X.I.K”), and the departmental security handbook.

[630] Sgt. Lennox sought to interview the grievor on November 8, but she was unavailable, as she was serving the 10-day suspension. He called her several times on November 9. She informed him she would not be in the office until November 23, 2004 and that she was to have no contact with the RCMP during that time. She was in the office on November 23. However, when Sgt. Lennox contacted her, she said that she was unavailable for an interview that day due to a medical appointment for her daughter. When he contacted her office on November 24, he was advised that she was off work indefinitely. He then left several messages on her home phone voice mailbox on November 28 and 29 requesting that she call him on his direct line. He received no return call.

[631] While Sgt. Lennox preferred to interview the complainant first, because of the passage of time and the grievor’s indefinite unavailability, he decided to at least interview S/Sgt. Beach and the union representative, Ms. Stangrecki, who had been at the February 24, 2004 meeting with the grievor. On November 30, 2004, he took a taped statement from S/Sgt. Beach, which is attached to his report as Appendix B (Exhibit 1, Tab 5-V, at pages 6 to 9). On December 1, 2004, he took a taped statement from Ms. Stangrecki, which is attached to his report as Appendix D (Exhibit 1, Tab 5-V, at pages 11 to 16).

[632] When he had not heard back from the grievor by December 2, 2004, Sgt. Lennox contacted the Pacific Region Departmental Security Section for advice. Mr. Mitchell replied and advised him that he could not make any findings until he had interviewed the grievor, so Sgt. Lennox had to file an interim report.

[633] Sgt. Lennox was also advised not to continue to try to contact the grievor at her residence. He did not ask Mr. Mitchell the reason because he respected Mr. Mitchell and

considered that he had received a strong direction to cease trying to contact the grievor. He ceased his attempts. He testified that he thought that Mr. Mitchell did not want to appear to be harassing her.

[634] Sgt. Lennox remained unable to complete his investigation due to the grievor's unavailability for an interview. His interim report of December 2, 2004 to Insp. Clark is Exhibit 1, Tab 5-V. He spoke to the summaries contained in his report of the versions of events described by S/Sgt. Beach and Ms. Stangrecki in their taped interviews with him.

[635] Sgt. Lennox testified that he took no further steps. When he retired from the RCMP in April 2005, he handed over the file to the North District Office. It was identified as still being under investigation. He did not know whether the file was still under investigation at the time of the hearing.

**b. The grievor**

[636] The grievor testified that she did not stonewall Sgt. Lennox and that she was not reluctant to meet with him when he began his investigation. However, she wanted a union representative of her choice present at the interview, but that union representative was not available for some time.

**c. Related testimony**

[637] C/Supt. Clark was asked in cross-examination whether he was aware of further steps being taken in Sgt. Lennox's investigation. He testified that Mr. Mitchell of the Pacific Region Departmental Security Section had informed him by email on April 21, 2005 that the grievor's allegation was unfounded and that he was to ensure that S/Sgt. Beach was advised of it.

[638] In cross-examination, S/Sgt. Beach testified that he recalled being part of the investigation but that he did not see Sgt. Lennox's report until the hearing.

**E. Mr. Briske's evidence and report**

[639] As noted, on November 29, 2004, Supt. Morris sent an eight-page single-spaced memo to the Pacific Region Departmental Security Section, detailing a chronology of events between 2001 and November 2004 in support of his concerns over continuing

the grievor's RCMP reliability status (Exhibit 1, Tab 5-B). His stated opinion, also testified to during the hearing, was that the incidents and situations described in the memo, while only a brief synopsis of the many encounters with her over the years, demonstrated that her proven deceitful conduct had put the North District Office in a position in which she could no longer be trusted to perform her duties in a reliable and trustworthy fashion. He believed that her behaviour raised a serious liability to the organization, and he sought assistance and advice in dealing with the situation.

[640] Mr. Briske was a retired RCMP member with investigation experience into major crimes. Following his retirement, he worked on several contracts with the RCMP. On January 6, 2005, he began working as a risk management analyst with the Pacific Region Departmental Security Section. He reported to Mr. Mitchell, a temporary civilian employee who, at that time, was the acting non-commissioned officer in charge of the Pacific Region Departmental Security Section.

[641] On January 6, 2005, Mr. Briske was given a number of files, including the grievor's, in which management at several detachments had brought matters to the attention of the Pacific Region Departmental Security Section. He testified that he had the same mandate for all the files. He was to review the documentation provided, carry out an analysis and make recommendations. The procedure he followed was to review the federal government and RCMP policies (Exhibit 1, Tabs 1 to 3). He had discussions with his counterpart in the Departmental Security Branch in Ottawa, Mr. Bourgeois, and with Mr. Mitchell. He testified that he did not have discussions with other individuals while conducting his analysis and writing his report but that Insp. Clark followed up with him about how things were going.

[642] Mr. Briske identified Exhibit 1, Tab 5 as the 11-page report that resulted from his analysis and recommendations, entitled "The 'E' Division Departmental Security Section, Pacific Region Report" ("the Briske File Review Report"). He noted that the handwritten margin notes were not his. He testified that, while he and Mr. Mitchell co-signed the report, the investigation, analysis and conclusions were his. Attachments "A" to "V" constitute the whole of the documentation that he reviewed, but he did not receive it all at one time. His report, along with the attachments, was sent on February 12, 2005 to the Departmental Security Branch director general in Ottawa. He testified that at that time it was C/Supt. Lanthier. He testified that the Pacific Region Departmental Security Section took no follow up action but that he understood that

the Departmental Security Branch in Ottawa had followed up, although he did not know any specifics.

[643] Mr. Briske testified that he did not know the grievor, Supt. Morris, S/Sgt. Beach or S/Sgt. Hildebrand at the time of his review and that he did not meet them during his review. He testified that he has never spoken to Supt. Morris or S/Sgt. Beach. He did not recall anyone from Pacific Region Public Service Human Resources Office ever inquiring about the status of his investigation. In cross-examination, he also testified that he had one call with Ms. Bailey, who helped Insp. Clark assemble the documentation that Mr. Briske had requested (Exhibit 34, Tab 45).

[644] Mr. Briske testified that his function is not to perform field investigations or to interview the employee involved. By the time files reach him, several field investigations have already been carried out and reports have been written by senior RCMP and other investigators. During those investigations, the employee under risk management review, such as the grievor, has an opportunity to tell his or her side of the story. His function is to review the file documentation and to analyze the security risk, based on that documentation. He considers the investigation reports as the truth.

[645] Mr. Briske testified that he accepted the information in the reports prepared by the senior RCMP investigators, such as Supt. Morris's November 29, 2004 memorandum (Exhibit 1, Tab 5-B) and Cpl. Flewelling's notes (Exhibit 1, Tab 5-R), as well as the security breach investigation reports of S/Sgt. Hildebrand (Exhibit 1, Tab 5-N) and Sgt. Lennox (Exhibit 1, Tab 5-V). He also reviewed and relied upon all the documentation attached to his report, which included emails, a 1-page summary by S/Sgt. Beach (Exhibit 1, Tabs 5-Q and 5-T), emails sent by the grievor to several individuals, and 17 pages of her typewritten notes (Exhibit 1, Tabs 5-D to 5-I).

[646] Mr. Briske reviewed the RCMP *Personnel Security Policy* (Exhibit 1, Tab 3) noting in particular that section I.1 of the policy, *Initial Reliability Check*, states as follows (Exhibit 1, Tab 3, at page 5): "1. The honesty, trustworthiness, discretion, propriety, and other consistent qualities of character that may be required by an employee or other person in performing the duties of the position are to be considered when assessing reliability."

[647] Mr. Briske testified that the terms or general concepts listed in section I.1 are not defined in the policy. For guidelines, he used the generally understood meaning of

the words “honesty” and “trustworthiness.” For the meanings of “integrity,” “discretion” and “propriety,” he used the definitions in the office dictionary (Exhibit 33).

[648] Mr. Briske went through his report. He reviewed the 21 incidents that he had summarized in his analysis and reviewed the reasoning process he had used to reach his conclusions from each incident as to the grievor’s lack of honesty, trustworthiness, integrity, propriety and discretion.

[649] Mr. Briske reviewed his overall recommendation and his rationale, which appear on page 10 of his report. They read as follows:

...

***Recommendation:***

*In consideration of the cumulative evidence supporting BERGEY’s lack of integrity, honesty and propriety, the core values required by persons working within the RCMP, the revocation of RCMP Reliability Status is herewith recommended.*

***Rationale:***

*On reviewing the various incidents outlined in this submission it is abundantly evident that BERGEY has on numerous occasions lied, she has verbally attacked her supervisors and made allegations against fellow employees, one of which has resulted in a substantiated harassment claim with her being the respondent. She has been formally disciplined; she has been spoken to about her behaviour and in spite of this punitive action, continues with her campaign of lies, defamations and insubordination. Through her own actions and behaviour she has destroyed her integrity, honesty and propriety and she cannot be relied upon to work in a policing environment where core values require everyone to be honest and truthful. Her activities have resulted in many valuable police resource hours being squandered investigating incidents that have had no corroboration. A person who cannot be trusted to carry out their tasks honestly and with reliability should not possess a [sic] RCMP Reliability Status.*

...

[650] Mr. Briske identified Exhibit 32, the grievor’s missing email of March 19, 2003 to C/Supt. Dingwall about the Queen’s Jubilee Medals, and the four nominees whom she

said she had nominated.

[651] When asked why he had not launched a separate investigation at the time of his risk analysis if he understood that the grievor was feeling harassed in the workplace, Mr. Briske testified that, as noted at point 5 on page 3 of his report, he felt that her harassment concerns had been adequately addressed. Supt. Morris had investigated her complaints about Mr. Stephenson and Cst. Wolney and had expressed concerns about her health as a possible reason for her irrational behaviour (Exhibit 1, Tab 5-J, Supt. Morris's June 30, 2004 memo to Pacific Region Public Service Human Resources Office).

[652] Mr. Briske also had a copy of Cpl. Adair's email of February 5, 2004 to the grievor and C/Supt. Dingwall, responding to her January 30, 2004 email. In that email, Cpl. Adair disputed her repeated allegation that Supt. Morris did not take harassment in the workplace or complaints of harassment seriously. Cpl. Adair outlined how Supt. Morris had contacted him, in his role as harassment advisor, about the grievor's allegations, along with the mandatory meeting held for all department heads and public servants that was held in the North District Office and the very positive feedback that Cpl. Adair had received during his investigation. He also wrote that Supt. Morris had been very receptive and that he had shown a willingness to act on his recommendations. He outlined the steps he had taken to set up a team of outsiders to investigate all aspects of the grievor's allegations about the North District Office. He took full responsibility for the delay locating a team of experienced investigators from outside the "E" Division's North District.

[653] Mr. Briske testified that, in the end, after he reviewed all the documents, he determined that the grievor's harassment complaints had been adequately addressed by several avenues of redress and that none was substantiated. Her decision to seek monetary compensation when her complaints had been found unsubstantiated spoke to her lack of integrity.

[654] In cross-examination, Mr. Briske was questioned about point 14 of his report, in which he found the grievor's report of being requested to assist an outlying detachment with Traffic Services Management Information Tool entries as an example of her using devious and deceitful means to embarrass her supervisor. She had reported that she had been contacted by the MacKenzie Detachment to assist, but it reported that she had initiated contact near the end of August 2004 and had requested

that it forward the information to her for entry. He reviewed the documents in Exhibit 1, Tab 5-S.

[655] Mr. Briske agreed in cross-examination that it is possible that two requests were made for Traffic Services Management Information Tool entries assistance, the first for 1996 to 2003 Traffic Services Management Information Tool data, and the second for January to August 2004. He agreed that the grievor might have been correct in her statement that she had been requested in March 2004 to assist the MacKenzie Detachment with entering the 1996 to 2003 accident reports data. However, that did not change his conclusion that she contacted the MacKenzie Detachment on September 15, 2004 and requested the January to August 2004 Traffic Services Management Information Tool forms, contrary to what she had claimed (Exhibit 1, Tab 5-S, at page 3) and that she was being untruthful. He referred to Supt. Morris's report, to paragraphs 5 and 6 on page 6, where he describes the sequence of events that he believed were designed, after the letter of expectation, to discredit her supervisor, S/Sgt. Beach. Supt. Morris stated that, on September 9, 2004, a package of material addressed to the grievor and containing material that had to be entered in the Traffic Services Management Information Tool was given to S/Sgt. Beach with a note from the grievor, stating that "these should go through McCaig - not sure why it came to me." The sequence of events bothered him.

[656] In cross-examination, Mr. Briske was asked about the reference in his conclusion to "in consideration of the cumulative evidence" whether, had there been just one incident, the odds of him recommending revoking the grievor's RCMP reliability status would have decreased. Mr. Briske testified that they probably would have. When asked if the incidents built on each other, he testified that they did, to a point. He was also concerned with their frequency and their increase over a short period.

[657] In cross-examination, Mr. Briske acknowledged that he assumed that, because the source documents he reviewed were prepared by senior RCMP members, they would be accurate and complete. He acknowledged that such investigations often deal with conflicting versions of events and hear more than one side of a story. He relies on the senior RCMP members' assessment of the reliabilities of the individuals involved and believes that it would not be appropriate for him in his review to reinvestigate incidents. In this case, he relied on Supt. Morris's November 29, 2004 report and his conclusion that the grievor lied on a number of occasions. He acknowledged in

cross-examination that he assumed that C/Supt. Clark's notes (Exhibit 1, Tab 5-J) were accurate and complete, and he accepted the findings of the Hildebrand Security Breach Report. He acknowledged that he would have found the March Traffic Services Management Information Tool communication relevant had it been in his documentation. He acknowledged that he did not interview the grievor and that she was not asked to participate directly in his decision-making process. He stated that the time for her to input directly in the process was during the RCMP reliability status review by C/Supt. Lanthier's office.

[658] When asked in cross-examination about the Queen's Jubilee Medals and whether he had considered that she had made an honest mistake, based on the grievor's email to Sgt. Maj. Stewart of March 27, 2003 (Exhibit 1, Tab 5-E, at page 1), Mr. Briske replied that he probably did as he considered many things during the investigation. One was the different versions of events she had given Supt. Morris when he investigated her allegation of missing nominations.

[659] In cross-examination, Mr. Briske stated that the relevance of the grievor's email to Mr. Dingwall of March 19, 2003 (Exhibit 32), listing the four individuals she states that she nominated for the Queen's Jubilee Medals, was that the nominations had to be submitted well before the joint union-management meeting held on January 22, 2003. The grievor does not state when she made her nominations in 2002.

[660] In cross-examination of Mr. Briske's conclusion that the grievor's harassment complaints had already been adequately addressed when she sought monetary compensation during a September 2003 conversation with S/Sgt. Beach, Mr. Briske stated that no complaints were outstanding that he knew of at the end of September 2003. When he was shown a memo dated November 20, 2003 from the grievor to S/Sgt. Beach (Exhibit 23) complaining about harassment from Mr. Stephenson, he said he had not seen it before.

[661] When asked in cross-examination if he considered whether the grievor's problem with entries in the Central Police Information Centre system was a performance issue rather than intentional and a security problem as Supt. Morris claimed, Mr. Briske stated that those incidents must be considered globally when assessing her conduct. He referred to his report, at points 17 and 19 on page 8, and noted that she had taken training on the Central Police Information Centre system in August 2004 and that the frequency of her mistakes brings up the question of whether



they were intentional, being made to discredit supervisors and bring liability upon the RCMP. When asked again if her errors in entering data in the Central Police Information Centre system could have been a performance and not a security issue, Mr. Briske stated that, if a person is unable to perform a task, it could be a reliability issue, because the person cannot be relied upon to do it.

[662] In cross-examination, Mr. Briske was shown a document that he acknowledged was a continuation report that he had written on March 16, 2005 (Exhibit 34, Tab 48). In it, he states that Mr. Bourgeois would submit the matter again to C/Supt. Lanthier and that “LANTHIER will review the material and either suspend, or request than an interview with BERGEY be conducted.” He stated that he received that information from Mr. Bourgeois.

[663] Counsel for the grievor referred Mr. Briske to exhibits about the grievor’s letter of February 9, 2005 that had been sent to the Pacific Region Departmental Security Section needing to be directed instead to the departmental security officer (C/Supt. Lanthier) before he made a decision on the revocation of the grievor’s RCMP reliability status and on the drafting of a letter by Mr. Briske, under Mr. Mitchell’s signature, to be sent to the grievor informing her of this (Exhibit 34, Tabs 53, 55, 56, 57 and 58). When shown the grievor’s letter of February 9, 2005 (Exhibit 1, Tab 8-A9), addressed to Pacific Region Departmental Security Section and alleging that Supt. Morris’s November 29, 2004 memo was “. . . a very mean spirited, malicious letter of lies and fabrications”), Mr. Briske said that he had not seen the letter, as his report was written and forwarded on February 12, 2005. It was sent on that date to C/Supt. Lanthier, the Departmental Security Branch director general in Ottawa. Mr. Briske testified that he did not prepare the draft revocation of RCMP reliability status letter under C/Supt. Lanthier’s signature that appears as Exhibit 34, Tab 60.

## **F. The RCMP reliability status suspension and revocation decisions**

### **1. C/Supt. Lanthier’s testimony**

#### **a. The RCMP reliability status suspension**

[664] C/Supt. Lanthier retired in 2007. In 2005, he was the Departmental Security Branch director general in Ottawa. His rank was chief superintendent. He was referred to as the RCMP’s Departmental Security Officer. At that time, the RCMP was organized

into four regions, one of which was the Pacific Region in which the grievor worked. As the Departmental Security Officer, C/Supt. Lanthier had responsibility for ensuring all security aspects of the RCMP throughout Canada, including personnel, physical facilities, communications, information technology and administration and responsibility for applying the Treasury Board *Government Security Policy* (Exhibit 1, Tab 1) and the RCMP *Personnel Security Policy* (Exhibit 1, Tab 3), which is based on the Treasury Board *Government Security Policy* (Exhibit 1, Tab 1) but contains additional security checks.

[665] C/Supt. Lanthier testified that the Treasury Board *Personnel Security Standard* (Exhibit 1, Tab 2) is a subset of the Treasury Board *Government Security Policy* (Exhibit 1, Tab 1) and is used to help guide those departments that do not develop their own standards, as has the RCMP.

[666] The Departmental Security Branch is headquartered in Ottawa. Each region has a Departmental Security Section. In 2005, Mr. Mitchell was the acting non-commissioned officer in charge of the Pacific Region Departmental Security Section. C/Supt. Lanthier explained the purpose of the Treasury Board *Government Security Policy* (Exhibit 1, Tab 1) and the responsibilities of departments and referred in particular to its section 10.9, which reads in part as follows:

### **10.9 Security Screening**

*The Government of Canada must ensure that individuals with access to government information and assets are reliable and trustworthy. For national security, it must also ensure the individual's loyalty to Canada in order to protect itself from foreign intelligence gathering and terrorism. Special care must be taken to ensure the continued reliability and loyalty of individuals, and prevent malicious activity and unauthorized disclosure of classified and protected information by a disaffected individual in a position of trust.*

*Departments must ensure that, prior to the commencement of duties, individuals who require:*

...

*(b) Access to classified information and assets have a valid reliability status, undergo a security assessment and are granted a security clearance at the appropriate level. . . .*

...

*Departments must also:*

...

*(d) Ensure managers remain vigilant, once a reliability status or security clearance is granted, and act on any new information that could put into question an individual's reliability or loyalty.*

*(e) Update reliability status and security clearances regularly.*

*(f) For cause, review, revoke, suspend or downgrade a reliability status or a security clearance.*

...

[667] C/Supt. Lanthier also referred to the RCMP *Personnel Security Policy* (Exhibit 1, Tab 3) and explained that, under it, every employee and every volunteer performing duties for the RCMP must have a valid RCMP reliability status or security clearance at the level appropriate for their occupied position (section D.2). The RCMP reliability status, which replaced the enhanced reliability status, is the minimum security clearance. It is a condition of employment in any capacity, and it must be maintained throughout the entire employment period (section F. 3. a.). He explained that a federal government employee moving to employment with the RCMP would be subject to a more in-depth background check and screening for an RCMP reliability status than is required for general federal government employment. Such an employee must sign a document authorizing those checks. The non-commissioned officer in charge of a regional departmental security is authorized to grant a security clearance (section D.5).

[668] In 2005, when C/Supt. Lanthier was the Departmental Security Officer, there were approximately 25 000 employees. Another 25 000 were subject to background checks for either an RCMP reliability status or a higher security clearance. He testified that the Departmental Security Officer delegates the signing authority for granting an RCMP reliability status to one person in each region with staff handling different security matters, such as personnel, facilities and information technology.

[669] When an RCMP reliability status is granted, it is not for an indefinite time. C/Supt. Lanthier referred to the RCMP *Personnel Security Policy* (Exhibit 1, Tab 3) (section D.8), which provides that an RCMP reliability status may be denied, revoked or suspended at any time for cause only by the officer in charge of the Departmental Security Branch. He explained that, as the Departmental Security Branch director

general, he was the officer in charge within the meaning of the RCMP *Personnel Security Policy* (Exhibit 1, Tab 3) and the only one authorized to deny, revoke or suspend an RCMP reliability status.

[670] C/Supt. Lanthier testified that, as the officer in charge of the Departmental Security Branch, his decisions were only about security issues and that he had no authority to impose discipline. He stressed that the security and the disciplinary processes are separate and independent, although sometimes an employee's behaviour or an event can raise both security and human resources concerns. He explained that any decision he makes to suspend or revoke an RCMP reliability status is communicated by his office to the RCMP Human Resources Department (as well as to the employee) because one of the conditions of employment with the RCMP is an RCMP reliability status. However, the Human Resources Department's actions are separate from those of the Departmental Security Branch.

[671] C/Supt. Lanthier explained that, when assessing someone's reliability, the factors considered are his or her honesty, trustworthiness, reliability and integrity. He referred to section I.1 of the RCMP *Personnel Security Policy* (Exhibit 1, Tab 3), which provides as follows:

***I. INITIAL RELIABILITY CHECK***

*I. 1. The honesty, trustworthiness, discretion, propriety, and other consistent qualities of character that may be required by an employee or other person in performing the duties of the position are to be considered when assessing reliability.*

...

[672] C/Supt. Lanthier testified that those factors are important because employees deal with personnel and other sensitive information on a daily basis, and they must be discreet and conduct themselves professionally.

[673] C/Supt. Lanthier noted that, while integrity is not listed directly in section I.1 of the RCMP *Personnel Security Policy* (Exhibit 1, Tab 3), it is listed in the *1.5 RCMP Reliability Status* document (Exhibit 1, Tab 3, at pages 14 to 17), which he described as a procedural document. He explained that the document sets out the RCMP's way of doing things, as compared to other departments. The cited provision of the document reads as follows at page 14:

...

### **1. General**

*1.1 An RCMP reliability status is based on an individual's honesty, trustworthiness, reliability and integrity.*

...

[674] C/Supt. Lanthier was questioned on his working definitions of the general concepts of honesty, trustworthiness, reliability and integrity. He agreed that whether a particular incident demonstrated those qualities might sometimes be a matter of perception.

[675] C/Supt. Lanthier explained that an RCMP reliability status does not have an indefinite lifetime and is periodically reviewed. An RCMP reliability status may be terminated for cause if a security incident or event raises a question of reliability.

[676] C/Supt. Lanthier explained the general decision-making process followed when an employee's RCMP reliability status is questioned for cause. He described it as a rigorous security escalating process. He stressed that, as the decision maker, he would need to be satisfied that sufficient security issues are present of trustworthiness, honesty, reliability or integrity before making a decision. He stated that he understands the consequences of suspending or revoking an individual's RCMP reliability status.

[677] The general decision-making process for security issues is as follows. When the Departmental Security Branch, or a regional Departmental Security Section, is informed of a potential security risk, the regional Departmental Security Section investigates and analyzes all relevant material to determine if there are grounds to support a security revision before any report goes to the Departmental Security Officer in Ottawa. At the end of the investigation, the regional officer who conducted it makes a recommendation about the employee's status. The report is then reviewed by the non-commissioned officer in charge of the regional Departmental Security Section who has the responsibility to make the recommendation decision, and then the report is signed and forwarded to the Departmental Security Officer in Ottawa. Upon receiving the recommendation from the regional office, C/Supt. Lanthier reviews the file, with the assistance of a security analyst in the Departmental Security Branch Personnel Security Section, and then makes the final decision. He does not meet with or discuss

the file with the employee involved, and his decision is based on a review of the documents contained in the file. The Departmental Security Branch is a policy centre. The regional officer carries out the field investigation.

[678] At the end of the investigation, if the regional officer makes a recommendation about the employee's security status, the file is referred to C/Supt. Lanthier, who carries out a preliminary review of the file, which involves reading the regional officer's report line by line. As his role is to deal with RCMP security matters, not general management and human resources issues, when he reads the report, he makes a preliminary judgment on the type of issue involved. He marks matters with an "[A]" or an "[M]" that, on first impression, are administrative or related to an employee's performance and uses "[S]" for a security issue and sometimes "[SM]" for matters that raise both concerns. He generally does not go through all the documentation attached to the regional report. The report is then sent to the security analyst in the Personnel Security Branch for a detailed review, including of all accompanying documentation.

[679] When the analysis is completed, the report is reviewed and approved by the security analyst's superior before being forwarded to the Departmental Security Officer for a decision. C/Supt. Lanthier then discusses the report with the analyst, makes the decision and puts a note on the report as to the security action to take. The analyst then drafts the appropriate letter, which is sent to the regional office to be served on the employee.

[680] C/Supt. Lanthier then testified as to the specific decision-making process that he followed before deciding to suspend the grievor's RCMP reliability status. On February 12, 2005, he received a recommendation to revoke her RCMP reliability status from the Pacific Region Departmental Security Section. The report he received was co-signed by Mr. Mitchell and Mr. Briske. C/Supt. Lanthier testified that Mr. Briske was a retired RCMP major crime investigator who had been hired to carry out the security risk analysis. The Briske File Review Report came to him for decision, with all the attachments, which were Appendices A to V (Exhibit 1, Tab 5). He relied on those documents when making his decision.

[681] The memo that Mr. Mitchell sent to him contained the following:

...

***Recommendation:***

*In consideration of the cumulative evidence supporting BERGEY's lack of integrity, honesty and propriety, the core values required by persons working within the RCMP, the revocation of RCMP Reliability Status is herewith recommended.*

**Rationale:**

*On reviewing the various incidents outlined in this submission it is abundantly evident that BERGEY has on numerous occasions lied, she has verbally attacked her supervisors and made allegations against fellow employees, one of which has resulted in a substantiated harassment claim with her being the respondent. She has been formally disciplined; she has been spoken to about her behaviour and in spite of this punitive action, continues with her campaign of lies, defamation and insubordination. Through her own actions and behaviour she has destroyed her integrity, honest and propriety and she cannot be relied upon to work in a policing environment where core values require everyone to be honest and truthful. Her activities have resulted in many valuable police resource hours being squandered investigating incidents that have had no corroboration. A person who cannot be trusted to carry out their tasks honestly and with reliability should not possess a [sic] RCMP Reliability Status.*

...

[682] C/Supt. Lanthier testified that he carried out a preliminary review of the Briske File Review Report. He noted in its margins his first impressions of which of the 21 detailed incidents seemed to raise a security issue. He marked six of them with an "S" (Exhibit 1, Tab 5). In those six incidents, he was concerned about the grievor's honesty and integrity that involved lying, misrepresenting the involvement of others or changing her version of events when facts were established contrary to her initial story. He did not read all the attached documentation (Appendices "A" to "V"), but he reviewed enough of them to ensure a comfort level in referring the report to Mr. Bourgeois, the Departmental Security Branch security analyst, for review.

[683] C/Supt. Lanthier testified that he did not know the grievor, S/Sgt. Beach or Mr. Briske but that he knew Mr. Mitchell. He knew that Supt. Morris was the North District Office commanding officer. He testified that, during his review of the file, he did not speak to the grievor, Supt. Morris, Mr. Briske, S/Sgt. Beach or S/Sgt. Hildebrand.

[684] C/Supt. Lanthier, following his preliminary review, referred the Briske File Review Report with his notations and all the attachments to Mr. Bourgeois for a

detailed review. C/Supt. Lanthier testified that Mr. Bourgeois was a retired officer with extensive security experience whom he had personally appointed on the basis of his experience dealing with Mr. Bourgeois in terrorist security matters and because of his experience in being able to differentiate between security and management or performance issues.

[685] Mr. Bourgeois completed his review and submitted his analysis to his superior, Mr. O'Donnell. After Mr. O'Donnell reviewed and approved the analysis, it was referred to C/Supt. Lanthier on February 21, 2005 for decision (Exhibit 1, Tab 6).

[686] After receiving and discussing Mr. Bourgeois' report with him, C/Supt. Lanthier's opinion was that the grievor had provided untruthful and deceitful information to Ms. Bailey, Supt. Morris, S/Sgt. Hildebrand and S/Sgt. Beach about five incidents. He concluded that her reliability, honesty and trustworthiness were questionable and that her RCMP reliability status should be suspended but that further review was necessary before he could make a final decision.

[687] Counsel for the grievor agreed that the documents attached to the Briske File Review Report (Exhibit 1, Tab 5) and to Mr. Bourgeois' report (Exhibit 1, Tab 6) were admissible as showing the sequence of events that C/Supt. Lanthier followed in reaching his decision. However, he objected to their admissibility as to the truth of their conclusions.

[688] C/Supt. Lanthier noted his decision on the bottom of Mr. Bourgeois' analysis. His office then prepared the suspension letter of March 22, 2005 (Exhibit 1, Tab 7). The letter informed the grievor that the Pacific Region Departmental Security Section had recommended the revocation of her RCMP reliability status. It explained the rationale for C/Supt. Lanthier's decision to suspend her RCMP reliability status as a consequence of her providing untruthful and deceitful information to her managers and investigators for five listed events. It informed her of her right to provide written representations within 14 days before a decision would be made on whether her RCMP reliability status would be reinstated or revoked for cause.

[689] The March 22, 2005 letter reads as follows (Exhibit 1, Tab 7):

...



*I am writing to inform you that I have received a recommendation from the NCO i/c of the Departmental Security Section for the Pacific Region to revoke your RCMP Reliability Status as a consequence of the untruthful and deceitful information you provided to P/S Bailey, Supt. Morris, S/Sgt. Hildebrand and Sgt. Beach regarding:*

- a) the harassment awareness training and your nominations for the Queens Golden Jubilee Medal;*
- b) your allegation that public service employees were victims of harassment along with the details surrounding your own complaint of harassment;*
- c) changing your story to fit the facts during an investigation into missing continuation reports from operational files;*
- d) the instructions received from the central file clerk on CPIC files; and,*
- e) the documents you obtained from a printer.*

*Your RCMP Reliability Status is based upon your reliability, trustworthiness and honesty. In view of the circumstances, I **suspend** your RCMP Reliability Status effective the date of this letter and you are prohibited any unescorted access to RCMP facilities.*

*I will be conducting a further review of the circumstances to determine whether your RCMP Reliability status may remain valid or whether it should be revoked for cause. You have fourteen days after the receipt of this letter to provide me with your written representations prior to my making a final decision.*

...

[Emphasis in the original]

#### **b. The RCMP reliability status revocation**

[690] On April 6, 2005, the grievor made a lengthy submission to C/Supt. Lanthier (Exhibit 1, Tab 8), consisting of an eight-page letter with multiple attachments, labelled Annexes A-1 to A-14, B through N, O and O-1, P1 to P6, and Q through U. The attachments included sick leave information, performance reports for 1997 to 2004, memos and notes from management, and transcripts of her recordings of office interactions over a three-month period.

[691] In her submission letter, the grievor made a number of general assertions. She

stated that she had been completely truthful, honest, trustworthy and reliable. She alleged that C/Supt. Lanthier, in suspending her RCMP reliability status, had been manipulated, undermined and played by Supt. Morris and that only Supt. Morris and S/Sgt. Beach had displayed a lack of integrity and honesty. She claimed that management's actions were disguised discipline because it was angry that she recorded a superintendent and a sergeant blatantly lying, bullying and harassing her. She stated that Supt. Morris's November 29, 2004 memo to the Pacific Region Departmental Security Section was full of lies and a fabrication and that, in preparing it, he had acted upon an email that he had had S/Sgt. Beach fabricate.

[692] The grievor wrote about having proof that she did not do the alleged act. She talked about the pain and humiliation she had suffered and the many places she had looked for help for the abuse of authority and harassment she had suffered. She stated that she had to record conversations in the workplace and that doing so caused her pain "... comparable to the pain of the deaths of the police officers in Alberta in March" (Exhibit 1, Tab 8, at page 2) but that her recordings proved that she was harassed.

[693] In her representations in her reply of April 6, 2005 to C/Supt. Lanthier, the grievor alleged that Supt. Morris and S/Sgt. Beach had conspired to commit fraud, that they had intimidated, threatened, harassed and sabotaged her in the workplace and fabricated evidence to discredit her, and that, if the RCMP is against organized crime, then it should get rid of the organized crime within itself and get rid of Supt. Morris and S/Sgt. Beach. She stated that she did not breach security and that "[a]ll these actions are negligence." She stated that "a lot of people are overreacting" to her recording office conversations and that they forget that Supt. Morris and S/Sgt. Beach were "... dirty cops blackening the name of the organization."

[694] The grievor stated that C/Supt. Lanthier had picked out five items. She had physical proof that she told the truth for those five items. She commented on each one. She addressed C/Supt. Lanthier's assertion that she provided inaccurate information to a number of listed individuals by stating about three of the occasions identified that there had been no such discussion or she had not had such discussion with all the listed individuals.

[695] As for the first item, the QGJC Medal nominations, the grievor stated that she had not discussed the nominations with Ms. Bailey, S/Sgt. Hildebrand or S/Sgt. Beach

and that she enclosed a copy of her nominations in Exhibit 1, Tab 8-E (that tab contains four undated nomination forms and an undated covering memo that is not addressed to anyone). With respect to the harassment training, she stated that she discussed it only with Ms. Bailey and not with the other individuals listed, and that, as far as she knew, the initial training had an end date, and her information was accurate.

[696] As for the second item, the grievor's claim that public servants were victims of harassment, she stated that she discussed it only with Supt. Morris and not with the other individuals listed, that her information was true, and that she was one of the public servants who had been harassed.

[697] About the third item, changing her story to fit the facts during an investigation into missing continuation reports from operational files, the grievor stated that she had been truthful in the investigation and to S/Sgt. Hildebrand and that she did not change her story to fit the facts. She stated that she enclosed a transcript of her interview with S/Sgt. Hildebrand (Exhibit 1, Tab 8-R) and that nothing of what was suggested had transpired in the interview. She asserted that there had been no declaration that she had breached security "... because there never was any missing correspondence from any files ..." and that it was a situation that Supt. Morris and S/Sgt. Beach had fabricated.

[698] As for the fourth item, the instructions received from the central file clerk on files in the Central Police Information Centre system, the grievor asserted that it was another fabrication by Supt. Morris. She stated that she had never received any instructions from the central file clerk on files in the Central Police Information Centre system and that she never said that she had. She also stated that she had never discussed anything to do with files in the Central Police Information Centre system with anyone but her supervisor (S/Sgt. Beach) and with the investigator (S/Sgt. Hildebrand).

[699] For the last item, documents taken from a printer, the grievor replied that, around noon on October 28, 2004, S/Sgt. Beach took from her hand all the papers she had picked up at the printer. She enclosed a transcript of the October 28 printer incident to prove it (Exhibit 1, Tab 8-K). She stated that it meant that the copy she found several days later at the printer had to have been another copy that S/Sgt. Beach printed and intentionally left at the printer to intimidate, threaten and belittle her in front of her fellow employees, so she took it.

[700] The grievor referred to transcripts that she enclosed of her afternoon meeting on October 28 with Supt. Morris and S/Sgt. Beach (Exhibit 1, Tab 8-D) and of her September 28, 2004 morning meeting with S/Sgt. Beach (Exhibit 1, Tab 8-A) that show that those individuals had lied in their reports about her behaviour at those meetings. She also referred to a package of materials she attached (Exhibit 1, Tabs 8-A to 8-O) that she had prepared for her second-level grievance hearing with the deputy commissioner in Vancouver that she thought were relevant to C/Supt. Lanthier's March 22, 2005 revocation letter. She stated that counted approximately 50 paragraphs of lies in Supt. Morris's memorandum of November 29, 2004 and that she had "... much physical evidence to prove the allegations are lies."

[701] C/Supt. Lanthier testified that, before making the final decision, he reviewed the file and read most of the grievor's lengthy letter, but he did not review all her many attachments. C/Supt. Lanthier was of the opinion that, in her reply, the grievor did not address the security concerns about her honesty and trustworthiness that he had specifically raised in his March 22, 2005 letter. He referred her reply to Mr. Bourgeois for review. After the review was completed, he and Mr. Bourgeois discussed her submission and the entire file before C/Supt. Lanthier concluded that he had lost confidence in her ability to work securely for the RCMP. He made the final decision to revoke her RCMP reliability status.

[702] On July 27, 2005, C/Supt. Lanthier wrote to the grievor and informed her that her RSS was revoked for cause. He referred to his letter of March 22, 2005 about suspending her RCMP reliability status. His reasons were very similar, but he had split one concern that he had mentioned in his March letter into two separate items in the July letter.

[703] The revocation letter of July 27, 2005 reads as follows (Exhibit 1, Tab 4):

...

*I have examined your submission of April 6, 2005 concerning the suspension of your RCMP Reliability Status.*

*In my capacity as the RCMP Departmental Security Officer, I reviewed the recommendation from the NCO i/c Departmental Security Section for the Pacific Region and found sufficient cause to suspend your RCMP Reliability Status effective March 22, 2005. I notified you of the redress mechanisms in place and provided you with the opportunity*

*to submit your arguments prior to my making a final decision on whether your RCMP Reliability Status may remain valid or whether it should be revoked for cause.*

*I note that you have raised an number of managerial issues that do not fall within my purview however, I will address only the issues that are relevant to your RCMP Reliability Status.*

*I found no evidence to support your email message sent to Bonnie Bailey on January 30, 2003 in relation to the completion of the harassment training awareness wherein you state, "We are supposed to be finished by March 31 2003".*

*You announced during a meeting held in Vancouver on January 22, 2003 that you nominated several public service employees for the Queens Golden Jubilee Medal and that you had submitted the nominations to Bonnie Bailey. I note that the copies of the nominations you sent me are not signed or dated by the nominees. Subsequent enquiries have established that you submitted the nominations after the joint labour/management meeting in Vancouver.*

*The Harassment/Human Rights Advisor has received positive feedback regarding Mr. Morris' response to harassment complaints and his attitude toward Harassment in the workplace. A meeting held on October 3, 2003 with the unit heads and public service employees did not identify any harassment issues in the north district. Your own complaint of harassment has been fully investigated and all of your allegations have been deemed to be either unfounded or unsubstantiated. A subsequent review of your complaint upheld these findings.*

*Initially, you told S/Sgt. Hildebrand that you had not sent any correspondence outside your office. You later recanted your statement and advised that you had indeed sent continuation reports to PSE Bourchard for safe keeping. I note you sent the continuation reports to PSE Bouchard before S/Sgt. Hildebrand had even been appointed to conduct the investigation.*

*You had been entering traffic related entries on CPIC correctly for several years yet, for some unknown reason, it became necessary for your supervisor to take corrective action and provide you with additional training in this regard. In spite of the guidance and the extra training, you continued to enter inaccurate file numbers on CPIC.*

*Sgt. Beach printed an email message for his records. You removed the email message along with outer printed material from a printer and told Sgt. Beach that all of the*

*printed material taken from the printer was yours. You later presented Cpl. Flewelling with a copy of Sgt. Beach's email message.*

*I find that your behaviour in these instances was an attempt to further your own agenda and, as such, this reflects negatively on your honesty, trustworthiness, integrity and reliability. You have been untruthful and deceitful with the information you provided to different people on several different occasions. It has been established to my satisfaction that you can no longer be relied upon not to abuse the trust accorded to you. In light of my findings, I conclude there is sufficient cause to **revoke** your RCMP Reliability Status effective the date of this letter.*

*You have the right to file a complaint to the Canadian Human Rights Commission, the Public Service Commission's Investigations Directorate or the Federal Court, Trial Division.*

...

[Emphasis in the original]

[Sic throughout]

[704] In cross-examination, C/Supt. Lanthier acknowledged that he did not provide the grievor with a copy of the Briske File Review Report when he gave her 14 days to make her submission in reply to the RCMP reliability status suspension letter. Mr. Briske had listed 21 incidents. C/Supt. Lanthier had identified only five of them as raising security issues for him. He questioned why he should provide the grievor with the Briske File Review Report when he wanted responses from her that only related to the security concerns that he had detailed in his letter. He did not want submissions from her on issues he considered performance and management concerns.

[705] In cross-examination, C/Supt. Lanthier testified that he believed that he had complied with the requirement of the RCMP *Personnel Security Policy* (Exhibit 1, Tab 3) to provide the grievor with an opportunity to respond to adverse information by giving her that opportunity for the five security concerns that he had detailed in his letter of March 22, 2005. Furthermore, he believed from the magnitude of her submission that he had provided her with sufficient information in that letter to reply to him and that she understood what he was looking for.

[706] In cross-examination, C/Supt. Lanthier agreed that the job of his security analyst is to determine whether there is sufficient information in the whole file (report

and attached documentation) to support a security review and some kind of action by the Departmental Security Officer. He stated that his margin notations are for himself and that the events described in the report, beside which he had written an “[A]” or a “[M]” to reflect his first impression on reading it, would be reviewed as part of that analysis.

[707] In cross-examination, C/Supt. Lanthier acknowledged that, in her submission on April 6, 2005, the grievor raised issues that were important to her. But he stressed that, in his view, many of those issues were performance or management issues, not security issues, and therefore not of concern to him. He had specifically so noted in his RCMP reliability status revocation letter of July 27, 2005.

[708] When asked in cross-examination why it took him so long to respond to the grievor’s April 6, 2005 submission, C/Supt. Lanthier testified that it was due to the heavy workload in his office.

[709] When asked in cross-examination whether, in the last paragraph in his July 27, 2005 letter, he listed all the avenues of redress or review open to the grievor, C/Supt. Lanthier testified that he did not know of any other avenues. He disagreed with counsel for the grievor’s suggestion that he had violated the *1.5 RCMP Reliability Status* document of the *RCMP Personnel Security Policy* (Exhibit 1, Tab 3), on review and redress, by referring in his letter to the rights of redress for all categories of individuals listed under section 7.1.3 of the *RCMP Personnel Security Policy* (Exhibit 1, Tab 3) but not to the grievor’s additional right as a public servant under section 7.2 to also access sections 91 and 92 of the *PSSRA*. He acknowledged that he apparently had not acted in accordance with the *RCMP Personnel Security Policy* (Exhibit 1, Tab 3) by omitting to note that section.

[710] In cross-examination, C/Supt. Lanthier testified that he had considered the consequences to the grievor of revoking her RCMP reliability status as well as the security risks to the RCMP from the events described. He agreed that he had some discretion in dealing with incidents that involved both management and security issues, but he insisted he was required to exercise due diligence in examining every security issue brought to his attention as the Departmental Security Officer.

[711] When asked in cross-examination whether he had considered reassigning the grievor to a lower-level position, C/Supt. Lanthier stated first that all RCMP positions

require an RCMP reliability status and second that his jurisdiction is security concerns. It would have been left to Pacific Region Public Service Human Resources Office to consider other possible employment options for her.

[712] In reply, C/Supt. Lanthier testified that the Central Police Information Centre system does not contain secret security information but that access to it is restricted because of the police information it contains. When asked if the Central Police Information Centre system access of someone at the RCMP reliability status level could be restricted on a practical level, he testified that he did not know but that he did not think it was possible to segregate the information in the Central Police Information Centre system. He also testified that an employee must have an RCMP reliability status to have access to RCMP property; otherwise, the individual would need escorting while on the property.

[713] During his reply evidence, C/Supt. Lanthier also clarified that, when he made his decision to revoke the grievor's RCMP reliability status, he was aware from the file that there were management and personnel issues between her and her direct supervisor, S/Sgt. Beach, and Supt. Morris. He did not consider them in his analysis of the security risk to the RCMP organization presented by the incidents he had outlined. He acknowledged that a number of credibility issues were raised. In his review when reaching his decision to revoke her RCMP reliability status, he relied on what was written in official reports by people he could trust.

[714] C/Supt. Lanthier also testified that he did not review the grievor's file, which contains her original enhanced reliability status grant. That file would have been kept at the regional office, not in Ottawa, and he saw no need to review it to decide the security issues that were before him in 2005.

[715] C/Supt. Lanthier also testified in reply that, when he made his July 27, 2005 RCMP reliability status revocation decision, he did not have an option to use either security or a human resources approach. His jurisdiction is security and his only recourse is to look strictly at security. When HR is notified later by his office of his decision on an employee's RCMP reliability status, it has to take any appropriate action. He also clarified that he had reviewed the July 27, 2005 letter when it was presented to him for his signature to satisfy himself that it was prepared in accordance with his instructions before he signed it.



## **2. Mr. O'Donnell's testimony**

[716] Mr. O'Donnell was Sgt. O'Donnell during the relevant period of 2004 and 2005. He was Manager, Personnel Security Section, for the Departmental Security Branch in Ottawa, and he reported directly to C/Supt. Lanthier. A major part of his job was to oversee the interaction between the national Departmental Security Branch Office in Ottawa and the four regional Departmental Security Section offices, of which the Pacific Region was the largest, and to provide advice as required. The non-commissioned officers in charge of the regional offices had no direct reporting relationship with him, but he had a working relationship with them.

[717] Mr. O'Donnell testified that, for example, the national office might be contacted by a regional Departmental Security Section about a possible security breach in the region. He would provide guidance and advice on the start of a security investigation. At the same time, that would keep the national office aware of what was going on. At the relevant time, his staff was composed of one full-time investigator (Mr. Bourgeois) and one part-time investigator solely devoted to security investigations as well as two positions involved with legislation about information security.

[718] Mr. O'Donnell's recollection was that the security investigation that led to the revocation of the grievor's RCMP reliability status was mostly done by the Pacific Region Departmental Security Section by Mr. Briske and by Supt. Morris from the Prince George Detachment, with advice and dialogue with the national Departmental Security Branch. He noted that he had been in a serious car accident in 2003 and that he had suffered a concussion, which affects his memory.

[719] Mr. O'Donnell testified about the general process followed when a regional security report such as the Briske File Review Report comes into the national office. The report is addressed to C/Supt. Lanthier, who reads it before sending it to Mr. O'Donnell's office for information and, through him, to Mr. Bourgeois for action. In addition, anything forwarded to C/Supt. Lanthier by Mr. O'Donnell's staff goes through Mr. O'Donnell for review first, as he is responsible for ensuring the right course of action. That includes Mr. Bourgeois' February 21, 2005 memo of a security risk analysis addressed to C/Supt. Lanthier (Exhibit 6), which Mr. O'Donnell reviewed before forwarding it to C/Supt. Lanthier.

[720] Mr. O'Donnell testified that Mr. Bourgeois was a very experienced and

competent investigator. He believed that they had many ongoing discussions throughout Mr. Bourgeois' investigation of the grievor's file.

[721] Mr. O'Donnell reviewed the email exchange between his office and the Pacific Region Departmental Security Section before the receipt of the Briske File Review Report at the national Departmental Security Branch in February 2005. The exhibits showed that he had received an email from C/Supt. Lanthier on November 22, 2004, notifying him that a request (which he thought was a reference to Supt. Morris's memorandum to the officer in charge Human Resources for "E" Division's North District of November 10, 2012; Exhibit 29, Tab C-35) had just come in that "... looks like a combination of managerial and security" and that C/Supt. Lanthier suggested that "... we wait to hear from Pacific DSS before taking any action" (Exhibit 3, duplicated at Exhibit 29, Tab C-38). Mr. O'Donnell replied shortly after that as follows:

...

*I agree. We shouldn't take away someone's reliability status unless there are legitimate grounds to do so. The results of the internal investigation should provide that, if we believe all that has been written to date, which I have no reason to doubt in any manner.*

...

[722] The next day, November 23, 2004, Mr. Mitchell emailed Mr. O'Donnell, stating that he had met with Supt. Morris on November 14 and that he and a named corporal would review the package and provide their input by early the next week. He stated that "[w]hen I met with Mike I suggested the possibility of recommending the Suspension of her Reliability Status due to the continuing issues of deceitfulness. The Human Resource component has not been a solution so far" (Exhibit 3, at page 2).

[723] Mr. O'Donnell replied on November 24, 2004 as follows (Exhibit 3):

...

*To initiate the process may I suggest we begin with a security interview to set the stage for any further action. If we deem it necessary for security reasons to suspend her status, we must have solid information so that the DSO can feel safe in his sign off of any request.*

*I am sure from all written to date that there is justification for this step and the results of this step could prove vital in any further action such as revocation or dismissal.*

...

[724] Mr. Donnell received a reply from Mr. Mitchell the next day, acknowledging his suggestion and informing him that Mr. Mitchell had advised Supt. Morris that he would need "... to expand/document all of the chronology of issues into a more comprehensive rationale." He stated that the Pacific Region Departmental Security Section would not take any further action until it had received the more comprehensive package from Supt. Morris and had received Sgt. Lennox's investigation report of the grievor's allegation of a security breach by S/Sgt. Beach (Exhibit 3).

[725] Mr. O'Donnell testified he did not recall what internal investigation he referred to in Exhibit 3, but he agreed in cross-examination that it was probably Supt. Morris's memorandum of November 19, 2004 (Exhibit 29, Tab C-35). That memo is about the grievor and is addressed to C/Supt. Lanthier, C/Supt. Dingwall and the officer in charge of the Pacific Region Departmental Security Section, which was Mr. Mitchell. Mr. O'Donnell testified that by "legitimate grounds" he meant that the grounds stated in Supt. Morris's memorandum were unfounded at that time. While he had no reason to doubt the truth of that memo, there was nothing concrete before him to establish legitimate grounds for a security investigation as opposed to everything being a performance issue. He thought that a number of incidents mentioned in Supt. Morris's memorandum, such as the removal of documents from files and from a printer, would be relevant to an assessment of the grievor's honesty, integrity, trustworthiness and deceitfulness, but that going into each incident would be wrong unless they could be connected. In addition, more than Supt. Morris's side of the story had to be presented, such as evidence from other individuals involved.

[726] Mr. O'Donnell testified that, normally, an isolated incident does not result in a revocation of a security clearance unless it was a serious breach. Empirical evidence is built over time that would lead a reasonable person to conclude that a security review is the course of action to take. In his email reply to Mr. Mitchell, he said that solid information is needed before a security clearance can be revoked. He thought that a security interview was a way to get the empirical evidence needed although they are not mandatory. He testified that a security interview guide exists that, while generic, provides detailed questions on matters such as personal history, work-related issues,

criminal behaviour and the susceptibility of immediate family members to improper pressures.

[727] When asked in examination-in-chief if he knew whether a security interview was conducted, Mr. O'Donnell stated that he could not say emphatically that one was, but he thought that Mr. Briske at some stage conducted one with the grievor. When told in cross-examination that Mr. Briske never interviewed her, he said that he was mistaken, and apologized.

[728] When asked in examination-in-chief about an email of December 17, 2004 from Mr. Mitchell to Supt. Morris (Exhibit 4) in which Mr. Mitchell states his opinion that he has enough information to recommend revoking the grievor's RCMP reliability status, Mr. O'Donnell testified that the information sent to the Departmental Security Officer included Supt. Morris's memorandum of November 29, 2004 and the Briske File Review Report with all its attachments shown in Exhibit 1, Tab 5, Appendices A to V. However, the Departmental Security Officer wanted more corroboration other than from just Supt. Morris. On December 21, 2004, Mr. O'Donnell emailed Mr. Mitchell and Supt. Morris, requesting clarification about "... proof of ability and proof of choice to incorrectly enter ..." data in the Central Police Information Centre system and "... specific instances of deceit which can be substantiated by others," even though it might seem repetitive to them (Exhibit 5, page 2).

[729] In cross-examination, Mr. O'Donnell was questioned about Exhibit 5, which begins with an email to him from Supt. Morris of December 17, 2004, stating that he received a transcript of the grievor's secret recording of the disciplinary meeting on November 3, 2004 and that, in his view, such behaviour, while not criminal, was unethical. The emails end with one from Mr. O'Donnell dated January 6 or 8, 2005 [the exhibit line is blurry] in which he informs Supt. Morris and Mr. Mitchell that the Departmental Security Branch office would entertain a formal request for suspending her RCMP reliability status.

[730] In cross-examination about the email exchanges in Exhibit 5, Mr. O'Donnell was asked what had changed his mind between his emails of December 21, 2004 and of January 6 or 8, 2005, in which he stated that he and C/Supt. Lanthier had discussed the case in general terms, had thought that there were sufficient grounds to proceed with a suspension for cause and had thought that a formal request could be submitted to the Departmental Security Officer. Mr. O'Donnell testified that C/Supt. Lanthier had

more experience with security breaches than he did and that he and C/Supt. Lanthier, after reviewing the full documentation they had already received, mutually concluded that they had enough evidence to proceed and that a security interview was not needed. He testified that, in addition, he had received from Mr. Mitchell on December 17, 2004 the three-page transcript of the grievor's recording of the November 3, 2004 disciplinary hearing in Supt. Morris's office (Exhibit 29, Tab C-41).

[731] Also in cross-examination on Exhibit 5, Mr. O'Donnell testified that the key step in the RCMP reliability status revocation process is the suspension and that he had never seen a rebuttal sufficient to lift a suspension.

[732] Mr. O'Donnell also testified that, in March 2005, at the request of C/Supt. Lanthier, he conducted a full review of the security files (Exhibits 147 and 148 and Exhibit 34, Tab 83) in the Pacific Region Departmental Security Section. The review was done in response to a request from Pacific Region Public Service Human Resources Office.

[733] On February 21, 2006, the USGE made representations on behalf of the grievor at the final-level grievance hearing about the termination of her employment (Exhibit 147). On February 27, 2006, Andre Letourneau, Director, Labour Relations and Human Rights, had forwarded a copy of the USGE's written representations, along with 10 pages of the grievor's notes that were attached to it, to C/Supt. Lanthier, requesting his comments. He sent them so that he could finalize the human resources brief to Commr. Zaccardelli so that the Commissioner could make a final-level decision (Exhibit 147).

[734] Mr. O'Donnell testified that he understood that the union was arguing that there had been bad faith in the security review process because it was used to terminate the employee and was disguised discipline. His instructions were to review the case file to ensure what had been done was complete, and that the decisions made were "in fact based on fact." In addition to reviewing the materials in Ottawa, he physically reviewed every page of the file held in the Pacific Region Departmental Security Section office, which included Mr. Briske's notes and interviews of those involved with the file and correspondence between the grievor and the Pacific Region Departmental Security Section. He also spoke to Mr. Briske. He never saw any transcripts in the file and he did not recall seeing the grievor's April 6, 2005 submission with attachments (Exhibit 1, Tab 8) in the file.

[735] Mr. O'Donnell sent a reply memo to Mr. Letourneau on April 11, 2006 (Exhibit 148). He testified that an RCMP reliability status can be revoked under the Treasury Board *Government Security Policy* (Exhibit 1, Tab 1) when an individual does not meet departmental requirements to maintain it. A revocation does not require finding a security breach or a security violation. He testified that he found nothing in his full file review to convince him that the grievor was terminated for reasons not related to her reliability. He thought that the evidence clearly showed that she deliberately lied or misled senior managers in response to allegations made against her. He concluded that the security actions taken were appropriately based on the evidence that had been before those who took them.

[736] In cross-examination, Mr. O'Donnell denied counsel for the grievor's suggestion that one reason he had been asked to carry out the full file review were suggestions that the RCMP had acted improperly. His understanding was that it was undertaken because of the grievor's appeal in March 2006 and the need to ensure that the security actions that had been taken were appropriately based on the information that the Departmental Security Branch had in front of it. Mr. O'Donnell testified that C/Supt. Lanthier was not involved in drafting his memo to Mr. Letourneau (Exhibit 148) but that he would have reviewed and approved it before it was forwarded.

[737] Mr. O'Donnell also agreed in cross-examination that he had never had a conversation with Supt. Morris as to whether he intended to use the security process to displace the discipline process, to get rid of the grievor. He testified that he had no reason to believe that and that his focus was on whether their information supported their security concerns and their actions.

## **G. The employment suspension decisions**

[738] C/Supt. Lanthier testified that the RCMP's security and disciplinary processes are separate and independent but that any decision he makes to suspend or revoke an RCMP reliability status is communicated by his office to the RCMP Human Resources Department, as well as to the employee involved, because one of the conditions of RCMP employment is an RCMP reliability status.

### **1. C/Supt. Clark's testimony**

[739] C/Supt. Clark testified that he had had little experience with public

service employment and collective agreements when he was appointed to replace Supt. Morris in January 2005. After his appointment, he was in frequent contact with Pacific Region Public Service Human Resources Office for advice.

[740] C/Supt. Clark testified that he was not involved in the decision to suspend the grievor's RCMP reliability status. However, that decision, made by C/Supt. Lanthier on March 22, 2005, was an important consideration in C/Supt. Clark's decision of March 24, 2005 to suspend her indefinitely from employment, because of her suspended RCMP reliability status. Pacific Region Public Service Human Resources Office electronically forwarded a copy of C/Supt. Lanthier's letter of March 22, 2005 and an indefinite suspension letter to C/Supt. Clark. The letter was prepared over his signature and was dated March 24, 2005, to be signed and served on the grievor, which he did. His letter notified her that, as a result of the Departmental Security Officer's decision to revoke her RCMP reliability status pending a further review, she was suspended without pay effective March 22, 2005, as she no longer met a condition of employment and therefore was unable to perform the duties of her position. The letter also noted her right to grieve the suspension decision in accordance with the grievance procedures in sections 91 and 92 of the *PSSRA* (Exhibit 136).

[741] On cross-examination, C/Supt. Clark testified that he was surprised to receive word from Pacific Region Public Service Human Resources Office that C/Supt. Lanthier had suspended the grievor's RCMP reliability status effective March 22, 2005. He had not been contacted by C/Supt. Lanthier about his findings. The grievor was on sick leave. C/Supt. Clark had met with her and Ms. Stangrecki on March 16, 2005 at the direction of Pacific Region Public Service Human Resources Office, to arrange for a date on which the grievor would return to work. She and C/Supt. Clark had agreed on an April 5, 2005 return date. He understood from Pacific Region Public Service Human Resources Office that it thought that no security action would be taken until she returned to work in April. He was also surprised that the options were so limited under the collective agreement for public servants. He noted that, when an RCMP member is suspended pending review, it is usually with pay.

[742] On cross-examination, C/Supt. Clark testified that the grievor had sent him an email in February 18, 2005 in which she formally requested "Leave With Pay due to Exceptional Circumstances" for six months or until the situation was resolved. She offered to come in and play her recordings of the November 3, 2004 disciplinary

hearing and the October 28, 2004 incident so that he could "... decide if any other reasonable person would not have gotten sick over it." She said the circumstances would justify her paid leave request (Exhibit 134). C/Supt. Clark declined to listen to the recordings as he could not grant her exceptional leave with pay request. He testified that he was the conduit of her leave request to Pacific Region Public Service Human Resources Office, which in turn forwarded it to Human Resources in Ottawa for a decision. On April 8, 2005, Mr. Letourneau informed the grievor that he could not entertain her leave request as long as she was on suspension without pay (Exhibit 135). C/Supt. Clark testified that his decision not to listen to the tapes had nothing to do with C/Supt. Lanthier's decision to suspend her RCMP reliability status a month later.

[743] With respect to the Briske File Review Report, C/Supt. Clark testified that he was aware that a security investigation was underway, and he might have conversed with Mr. Mitchell and Mr. Briske about it, but he did not remember being interviewed. He recalled being interviewed about a number of incidents described in the report and forwarding information to the Pacific Region Departmental Security Section, as requested.

[744] C/Supt. Clark inquired of Mr. Mitchell by email on several occasions, such as his emails of July 28, 2005 (Exhibit 7), as to the progress of the Departmental Security Officer's review, but he testified that he never received a reply. He never knew what Mr. Mitchell did with his email.

[745] On August 4, 2005, C/Supt. Clark wrote the grievor, informing her that, as a result of the revocation of her RCMP reliability status for cause by C/Supt. Lanthier on July 27, 2005, she no longer met a condition of employment and was unable to perform the duties of her position. She was informed that her suspension without pay would continue until she was further advised as to her employment status with the employer.

[746] C/Supt. Clark was informed by Deputy Commissioner Busson in December 2005 that the grievor had filed 10 grievances between February 16, 2004 and September 27, 2006 and that all of them had been sent to the final level of the departmental grievance procedure. On December 5, 2005, Commr. Zaccardelli wrote the grievor, informing her that he had denied all the grievances and that he had refused her requested corrective actions (Exhibit 141, pages 3 to 6).



[747] Deputy Commissioner Busson phoned C/Supt. Clark on December 16, 2005 to notify him that the grievances had been denied. As he was away from the office when they spoke, she proceeded to work with Pacific Region Public Service Human Resources Office on his behalf to recommend to Commr. Zaccardelli that the grievor's employment be terminated for cause because her RCMP reliability status had been revoked and her grievances about that suspension and revocation had been denied. Thus, she no longer met one of the conditions of her employment (Exhibit 141).

[748] On January 3, 2006, Commr. Zaccardelli sent a letter to the grievor informing her that, as she no longer met one of the conditions required for employment in the RCMP, he had decided to terminate her employment for cause, pursuant to paragraph 12(1)(e) of the *FAA*, effective the date of the letter (Exhibit 143).

[749] C/Supt. Clark acknowledged in cross-examination that the termination of the grievor's employment was really initiated by Pacific Region Public Service Human Resources Office, but he stated that there was no other option. Terminating her employment was the logical conclusion because, without an RCMP reliability status, a person cannot work for the RCMP and cannot even access RCMP property without being escorted.

## **X. The remaining six grievances**

[750] As noted earlier, the grievor filed a number of grievances challenging the employer's decisions to suspend her RCMP reliability status, pending a further security review, and to suspend her indefinitely without pay because her RCMP reliability status had been suspended; to revoke her RCMP reliability status and to continue her indefinite suspension without pay until her employment status with the RCMP could be determined because of that revocation; and to terminate her employment with the RCMP.

### **A. Summary of the arguments**

#### **1. For the employer**

[751] As noted, the employer contended that I do not have jurisdiction over the grievances. An adjudicator's jurisdiction under the *PSLRA* is strictly limited to matters falling within the parameters of section 209.

[752] The employer noted that the grievances challenging its decisions to suspend and revoke the grievor's RCMP reliability status, to suspend her from employment because her RCMP reliability status was suspended and later to suspend her indefinitely because her RCMP reliability status was revoked, and to terminate her employment because she no longer had the required RCMP reliability status were referred to adjudication under paragraph 209(1)(b) and subparagraph 209(1)(c)(i) of the *PSLRA*.

[753] The employer argued that, for me to take jurisdiction under paragraph 209(1)(b) of the *PSLRA*, the grievor must prove first that there was disciplinary action and second that that disciplinary action resulted in a termination, demotion, suspension or financial penalty.

[754] The employer argued that its decisions were administrative, not disciplinary, so they lacked the disciplinary action required for the grievances to be adjudicable under paragraph 209(1)(b) of the *PSLRA*. In addition, four of the decisions, namely, the suspension and revocation of RCMP reliability status decisions and the two suspension from employment decisions, were also not adjudicable under subparagraph 209(1)(c)(i), which deals only with "demotion or termination" decisions made under the *FAA*. Therefore, the grievances should be dismissed for lack of jurisdiction. The last grievance, concerning the termination of the grievor's employment, is adjudicable under subparagraph 209(1)(c)(i), but the adjudicator's jurisdiction extends only to determining whether there was cause for the termination, as specified in subsection 12(3) of the *FAA*. As a condition of any employee's employment with the RCMP is an RCMP reliability status, the employer had cause to terminate the grievor because she no longer met that condition, and I should dismiss the grievance.

[755] Counsel for the employer submitted that I do not have jurisdiction to consider the merits of the employer's decisions to suspend and to revoke the grievor's RCMP reliability status since they were administrative in nature. Alternatively, counsel for the employer submitted that, if I decide to examine the merits of its revocation, suspension and termination decisions, my jurisdiction is limited to determining whether procedural fairness was violated or whether any of those decisions were tainted by bad faith. The employer referred me to *Braun v. Deputy Head (Royal Canadian Mounted Police)*, 2010 PSLRB 63, at para 138 and 139, as authority for the principle that, to the extent that an adjudicator's jurisdiction extends to a review of a

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Departmental Security Officer's revocation decisions, it is narrowly confined to issues of bad faith and procedural fairness.

[756] In support of its argument that granting and revoking an RCMP reliability status is within the employer's sole discretion and thus is administrative, the employer referred me to *Kampman v. Treasury Board (Solicitor General - Correctional Service Canada)*, PSSRB File Nos. 166-02-21656 and 21771 (19920110) (an application for judicial review to the Federal Court of Canada to set aside the Board's decision was dismissed in Court File No. A-84-92). The adjudicator in that decision noted that, since the granting and revoking of a security clearance is a matter which lies within the sole discretion of the employer, it is administrative in nature and the adjudicator only has jurisdiction to examine the matter if the discretion, meaning the administrative action, was exercised in bad faith. The employer stressed that the burden of proof is on the grievor to show that the suspension and revocation decisions were disguised discipline, which she did not do.

[757] The employer introduced three cases, which it then briefly described, to set the background for its preliminary objection to jurisdiction. They are *Gill v. Treasury Board (Department of Human Resources and Skills Development)*, 2009 PSLRB 19, *Hillis v. Treasury Board (Department of Human Resources Development)*, 2004 PSSRB 151, and *Myers v. Canada (Attorney General)*, 2007 FC 947. It submitted that *Hillis* and *Gill* show that revoking a security clearance is an administrative decision and that no adjudicator has jurisdiction to substantially review it beyond determining whether it was disguised discipline. For a substantial review, *Myers* shows that the remedy is an application for judicial review in the Federal Court. The employer suggested that *Gill* also establishes that an adjudicator under the *PSLRA* has only limited discretion to examine the procedural fairness aspects of an administrative decision. The employer later added *Spencer v. Deputy Head (Department of the Environment)*, 2007 PSLRB 123, as establishing that the grievances had to have been filed under section 209 for me to have jurisdiction over them.

[758] With respect to the principles or tests that an adjudicator should use to determine whether an employer's action was administrative or disciplinary, the employer referred me to two cases decided by the Federal Court, namely, *Canada (Attorney General) v. Basra*, 2008 FC 606, and *Canada (Attorney General) v. Frazee*,

2007 FC 1176. The key factor is the decision maker's intention when making the decision.

[759] Counsel for the employer submitted that C/Supt. Lanthier explained the purpose of the Treasury Board *Government Security Policy* (Exhibit 1, Tab 1) and the responsibility that rests with departments to ensure that they apply it and that they address security concerns. The employer also referred to the RCMP *Personnel Security Policy* (Exhibit 1, Tab 3) and argued that C/Supt. Lanthier made the suspension and revocation decisions and that he acted in accordance with his responsibility under both policies.

[760] The employer argued that it had established that C/Supt. Lanthier's decisions first to suspend the grievor's RCMP reliability status pending further review and then to revoke it for cause were administrative decisions motivated not by an intent to discipline her but by real security concerns that C/Supt. Lanthier had about her honesty and trustworthiness.

[761] The employer contended that the evidence established that the decision-making process followed when making security or RCMP reliability status revocations decisions is separate and distinct from the disciplinary decision-making process. C/Supt. Lanthier's evidence shows that he took care to ensure that his security and RCMP reliability status decisions were based on security concerns and not on performance or managerial issues. On reviewing the Briske File Review Report for the Pacific Region Departmental Security Section, he selected only 5 of the 21 incidents it described as raising security concerns for him. Those five were listed in the suspension letter. His revocation letter to the grievor specifically noted that she had raised a number of managerial issues in her written representations sent to him in reply to the suspension letter, that they did not fall within his purview and that he would address only those issues relevant to her RCMP reliability status.

[762] The employer reviewed C/Supt. Lanthier's testimony as to why he decided that only 5 of the 21 incidents listed in the Briske File Review Report raised security concerns for him and as to how those 5 incidents became 6 grounds in his revocation letter because he split one into two. C/Supt. Lanthier's opinion was that the other 16 incidents raised performance or managerial issues that did not interest him, as his mandate was security.

[763] Counsel for the employer also disputed the grievor's characterization of the incidents listed in the revocation letter as mere cases of "misunderstandings" or "honest mistakes" on her part.

[764] Counsel for the employer then walked me through each of the six incidents described by C/Supt. Lanthier, addressing the evidence that had been presented as to why, according to C/Supt. Lanthier's testimony, the grievor's behaviour in those incidents raised reliability and trustworthiness concerns for him.

[765] As for the grievor's allegations of bad faith in the employer's suspension and revocation decisions, the employer submitted that the evidence did not establish that Supt. Morris or S/Sgt. Beach wanted to discipline her by referring their reliability concerns about her to the Pacific Region Departmental Security Section. Even if it did, C/Supt. Lanthier, not Supt. Morris, made the decisions to suspend and revoke her RCMP reliability status for cause. There is no evidence that C/Supt. Lanthier was motivated by an intent to correct her bad behaviour by disciplining her. One cannot impute or transfer a disciplinary intent from Supt. Morris to C/Supt. Lanthier. And C/Supt. Lanthier was an experienced Departmental Security Officer who would not be duped or manipulated by Supt. Morris, as the grievor alleged, into improperly using the security review process. Counsel for the employer also noted that there was no evidence of any contact between C/Supt. Lanthier and either Supt. Morris or Mr. Briske during C/Supt. Lanthier's security review and when he concluded that he had lost confidence in the grievor's trustworthiness.

[766] Counsel for the employer submitted that it could be that C/Supt. Lanthier's reliability concerns arose from the grievor's misconduct in the identified incidents. However, that would not render his concerns any less real or legitimate and would not turn his concerns and his suspension and revocation decisions into disciplinary action. An individual's honesty, integrity and trustworthiness are evidenced by his or her behaviour. In addition, an individual's behaviour can give rise to discipline, human resources, and security or reliability concerns. There is nothing improper in an employer, as it did in this case, pursuing all three avenues when dealing with an employee's unacceptable behaviour.

[767] Suspending the grievor's RCMP reliability status was an interim decision, based on the information that C/Supt. Lanthier had at that time, which warranted further investigation before a final decision could be made. The final revocation decision was

based on his concerns about her reliability after he reviewed all the information before him, which included her lengthy written submissions. After that review, he lost confidence in her reliability and honesty. Based on that opinion, he revoked her RCMP reliability status. The employer submitted that the grievor did not establish that C/Supt. Lanthier had an intention to impose discipline on her or to correct her bad behaviour by punishing her, in making either the suspension or the revocation decision.

[768] The employer refuted the grievor's allegation that its suspension and revocation decisions were made in bad faith on the motivation that Supt. Morris had an axe to grind with the grievor or that he improperly initiated the security review process instead of using the discipline or human resources process to deal with her misconduct. Counsel for the employer noted that the evidence established that the employer used all three methods to deal with the grievor's behaviour at the relevant time and that there is nothing improper in that, as the same behaviour can give rise to all three concerns.

[769] The employer also contended that C/Supt. Lanthier was the decision maker for the decisions to suspend and revoke the grievor's RCMP reliability status and that there was no evidence that he acted in bad faith in reaching his conclusion that he had real concerns about her honesty, trustworthiness and reliability. He was an experienced Departmental Security Officer. He was objective and neutral in reaching his decisions. The grievor has not established that Supt. Morris duped or manipulated him into using security to get rid of her because discipline and human resources options were not working in the attempt to end her employment.

[770] The employer reviewed C/Supt. Lanthier's decision-making process in reaching his conclusion that he believed that the grievor's behaviour reflected negatively on her honesty, trustworthiness and reliability and that she could no longer be relied upon not to abuse the trust accorded to her. The employer emphasized that, in making his decision, C/Supt. Lanthier had before him all the documentation contained in Exhibit 1, which included Supt. Morris's November 29, 2004 memo; the Briske File Review Report from the Pacific Region Departmental Security Section; the Hildebrand Security Breach Report; Sgt. Lennox's report; the harassment complaint successfully filed against the grievor by Ms. Bailey; many performance logs; two lengthy, detailed submissions made by the grievor, one to the Pacific Region Departmental Security Section (dated

January 27, 2005) and the other to C/Supt. Lanthier on April 6, 2005 in reply to the suspension of her RCMP reliability status; and many transcripts she had made of her recordings of a number of office interactions.

[771] The employer refuted the grievor's allegation that C/Supt. Lanthier breached procedural fairness in the decision-making process he followed to revoke her RCMP reliability status. The employer contended that she was provided with the opportunity to make written representations on C/Supt. Lanthier's security concerns before he made that decision. The employer replied to her specific allegations that the process was unfair because she was given only 14 days to respond, which was insufficient, that she was not provided with a copy of the Briske File Review Report before responding, that the descriptions of the incidents provided in the suspension letter were too brief or vague to enable her to know the full case against her, and that she did not have a security interview with either Mr. Briske or C/Supt. Lanthier before a decision was made to revoke her RCMP reliability status.

[772] The employer submitted that 14 days to respond was the period provided by section 5.2 of the RCMP Reliability Status policy and that, furthermore, based on the grievor's lengthy reply, it was sufficient.

[773] The employer referred me to *Gill* and distinguished some of its facts from this case. Those facts led the adjudicator in that case to conclude that there was a breach of procedural fairness in the termination that followed the revocation of the grievor's RCMP reliability status. The employer also submitted that, even were I to find procedural fairness issues in C/Supt. Lanthier's decision-making process, the matters at issue have been fully aired at the hearing, and the grievor brought forward no additional information that was not before him when he made his decision. Therefore, based on the principle in *Tipple*, the adjudication hearing cured any procedural defects that might have been present.

[774] The employer also referred me to two cases dealing with grievors who had engaged in surreptitious recording in the workplace, namely, *North Bay General Hospital v. Canadian Union of Public Employees, Local 139* (2002), 110 L.A.C. (4th) 142, and *British Columbia Hydro and Power Authority v. International Brotherhood of Electrical Workers, Local 258* (2002), 113 L.A.C. (4th) 337. Counsel for the employer argued that those cases establish that the grievor's method of surreptitious recording in the North District Office is disciplinable and that how she engaged in it was

deceitful and adds to her untrustworthiness. She brought the recordings to the Departmental Security Officer's attention as part of her written representations.

[775] Counsel for the employer submitted that there are credibility issues between the grievor's version of events and the versions provided by the employer's witnesses, particularly about the six incidents of the grievor's behaviour that C/Supt. Lanthier described as raising security concerns for him. The employer referred me to Brown and Beatty as to how I might weigh the evidence and assess credibility with conflicting evidence. Counsel for the employer referred specifically to *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.), referred to in Brown and Beatty, as well as *Renaud v. Treasury Board (Solicitor General Canada - Correctional Service)*, PSSRB File Nos. 166-02-30897 and 30898 (20020416), *Trenholm v. Staff of the Non-Public Funds, Canadian Forces*, 2006 PSLRB 66, and *Hickling v. Canadian Food Inspection Agency*, 2007 PSLRB 67.

[776] The employer asked that the grievances be dismissed for lack of jurisdiction.

## **2. For the grievor**

[777] Counsel for the grievor presented six days of oral argument and provided in supplement two lengthy written submissions. He also submitted three books of authorities, although he did not refer to all the cases contained in them in his argument.

[778] Counsel for the grievor first addressed the employer's preliminary jurisdictional objection. He submitted that I had jurisdiction to hear the grievances and to review the employer's revocation, suspension and termination decisions for bad faith, procedural unfairness and reasonableness. He further asserted that the employer had to establish the reasonableness of the decisions before the grievor would have the burden of establishing that they were disguised discipline.

[779] Counsel for the grievor noted that a grievor may grieve a termination under either paragraph 209(1)(b) or subparagraph 209(1)(c)(i) of the *PSLRA* and that both statutory provisions were invoked in the termination grievance before me. The revocation of an RCMP reliability status may be disciplinary or non-disciplinary, and subparagraph 209(1)(c)(i) clearly covers non-disciplinary termination grievances.

[780] Counsel for the grievor referred to the Federal Court of Appeal decision in



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*Kampman v. Canada (Treasury Board)*, [1996] 2 F.C. 798 (C.A.), in which that court confirmed that non-disciplinary matters, such as terminations of employment for incapacity or incompetence under section 31 of the former *Public Service Employment Act*, R.S.C. 1985, c. 33 (*PSEA*), could be reviewed by employment tribunals. He also referred to the Federal Court decision in *Singh v. Canada (Attorney General)*, 2001 FCT 577, as holding that an adjudicator has jurisdiction to hear grievances concerning terminations of employment for reasons other than breaches of discipline or misconduct that, he argued, would include revocation of security status reasons. Counsel also referred to *Zhang v. Treasury Board (Privy Council Office)*, 2005 PSLRB 173, in which the Board took jurisdiction and examined the merits of the case, involving a termination resulting from a revocation of security status.

[781] After completing the grievor's jurisdictional arguments, her counsel presented her submissions. He first presented an overall picture of the North District Office to set the context of the grievances before addressing the grounds cited, and the process followed, by C/Supt. Lanthier when he made the suspension and revocation decisions. As I understood counsel's main points, it was that the North District Office was characterized by the following features:

- Tension, deep conflict and personality clashes, regardless of who started a problem.
- Management had a fervent willingness to find the grievor lacking in credibility.
- Management engaged in a pattern of prejudging, discrediting and unfairly disciplining the grievor.
- Management routinely dismissed the grievor's harassment complaints without properly investigating them.
- Management closely monitored the grievor, not to assist her but to build a case against her; in so doing, it subjected her to a level of scrutiny that amounted to personal harassment.
- The grievor was under extreme stress due to management's improper actions.

[782] Counsel for the grievor then related those features to assert the following as establishing bad faith and disguised discipline in the employer's revocation decisions:

- The difficulties in the North District Office were management's responsibility, and it never properly dealt with them.
- Supt. Morris and S/Sgt. Beach had an axe to grind with the grievor and wanted to get her out of the North District Office by terminating her employment using whatever means they could.
- Supt. Morris fabricated a number of events to unfairly discipline the grievor. The fact that a grievor requires a lot of attention, and is viewed by management as a problem employee or as an irritant in the workplace, does not justify allegations of insubordination.
- Supt. Morris, S/Sgt. Beach and Ms. Bailey each had an attitude problem toward the grievor, prejudging her complaints and never giving her the benefit of the doubt.
- Supt. Morris improperly initiated the security review process because, had he been a good manager, acting in good faith, and had he had legitimate concerns about the grievor's behaviour, he would have used a human resources option to assist her as early as August 2004, rather than giving her the letter of expectation and starting discipline; and, in November 2004, had he acted in good faith, he would have used a human resources option or discipline rather than the security review process to deal with her behaviour.
- Supt. Morris improperly initiated the security review process by fabricating or exaggerating a number of events in his November 29, 2004 memo to the Departmental Security Officer to get rid of the grievor when he was unable to successfully use discipline or a human resources option to terminate her employment. His true motivation was to get rid of her, not to protect RCMP interests or other employees.
- Supt. Morris's improper actions tainted the entire revocation process and establish the employer's bad faith.
- Mr. Briske, who carried out the Pacific Region Departmental Security Section's security investigation, and C/Supt. Lanthier, who carried out the review at the Departmental Security Branch, were duped or manipulated into conducting a security review when there was no need for one.

- The fact that Mr. Briske saw his role at the Pacific Region Departmental Security Section as reviewing and assessing the file to see whether it supported revoking the grievor's RCMP reliability status shows that he did not objectively review it.
- The fact that Mr. Briske described 21 incidents of the grievor's behaviour in support of his recommendation that her RCMP reliability status be revoked and that C/Supt. Lanthier whittled down those 21 incidents to only 5 shows management's bad faith in initiating the security review process to get rid of her. At the end of the day, all 21 were performance and managerial issues and should have been handled by a human resources option or, at worst, by discipline.
- The fact that the employer compiled Exhibit 1, a huge binder of materials on the grievor, for C/Supt. Lanthier's review, is evidence that its true motivation was to get rid of her and demonstrates its bad faith.

[783] Counsel for the grievor submitted that, in many of the instances before me, two versions of events were presented and that I should heavily weigh the grievor's submissions when assessing the credibility of the testimonies of the employer's witnesses describing those events against the versions presented through her testimony.

[784] Counsel for the grievor submitted that, even if the employer's version of events is true, none of the incidents that it relied on to revoke the grievor's RCMP reliability status raised security or reliability concerns. At most, they raised discipline issues.

[785] Counsel for the grievor argued that, when assessing the grievor's credibility, I should carefully examine the evidence. He stated that I would see that what were asserted as her lies and deceitful conduct were instead misunderstandings or honest mistakes. Counsel asserted that, even if they were lies, the employer has not shown that they raised security issues for it. She certainly should not have lost her employment because of them.

[786] Counsel for the grievor also submitted that serious breaches of procedural fairness occurred in the employer's process of reaching its decision to revoke the grievor's RCMP reliability status. He referred in particular to the fact that the employer's RCMP reliability status suspension letter described the incidents of concern

in too vague a manner for her to prepare a proper defence to the case that she had to meet, that she was not given a copy of the Briske File Review Report before she prepared her reply, so she did not know the full case that she had to meet, that she was given only 14 days to reply to the suspension letter, that neither Mr. Briske nor C/Supt. Lanthier were neutral and objective when reviewing the file, and that neither of them held a security interview with her so that she could tell them her side of the story. Counsel also submitted that both Mr. Briske and C/Supt. Lanthier failed to conduct proper investigations before making their revocation recommendation and revocation decisions respectively and that they prejudged the grievor based on Supt. Morris's false November 29, 2004 memo.

[787] Counsel for the grievor then walked me through many exhibits in support of the grievor's submissions that her RCMP reliability status was revoked and her employment ultimately terminated because of that revocation not because of any real security or reliability concerns of the employer but rather because of its bad faith and disguised disciplinary action in using the security review process to get rid of her.

### **3. Employer's rebuttal**

[788] The employer disagreed with the grievor's position that, despite the existing Federal Court and Board jurisprudence, an adjudicator under the *PSLRA* has jurisdiction to review the employer's suspension and revocation decisions for reasonableness. Counsel for the employer referred to the cases she had presented earlier, *Myers*, *Hillis*, *Gill* and *Braun*, as confirming that revoking an RCMP reliability status is an administrative decision over which the Board's jurisdiction is narrowly confined to reviewing it for bad faith and procedural unfairness. If she wished to challenge the merits of the employer's decisions in question, the appropriate recourse was judicial review before the Federal Court.

[789] The employer responded to each of the grievor's 10 points in her written argument.

[790] The employer disputed the claims of the grievor's counsel that none of the incidents relied upon by C/Supt. Lanthier when revoking her RCMP reliability status raised real security or reliability concerns, which established the employer's bad faith. It emphasized that C/Supt. Lanthier made the RCMP reliability status suspension and revocation decisions and that no evidence supports a conclusion that he had an axe to

grind with the grievor or that his decisions and his security concerns were shams. Furthermore, even if, as she alleged but did not establish by her evidence, Supt. Morris had an axe to grind with her, there is no evidence that he duped or manipulated C/Supt. Lanthier into improperly using the security review process to terminate her. The evidence established that the Departmental Security Officer took care both in the security review process and in the suspension and revocation decisions to separate managerial and performance issues from security issues.

[791] Counsel for the employer argued that the investigations and decision making were objective, neutral and thorough. The employer distinguished the case of *Lo v. Treasury Board (Treasury Board Secretariat)*, PSSRB File No. 166-02-27825 (19980514), cited by the grievor, arguing that the employer in that case did not conduct an independent investigation into the grievor's complaints as opposed to the employer's actions in this case. The Hildebrand investigation and report were thorough. Unlike in *Lo*, there was no evidence before me that C/Supt. Lanthier's use of the security review process was a sham to cover disciplinary intention.

[792] The employer further submitted that the grievor did not prove her allegation that Supt. Morris improperly substituted the security review process for the disciplinary process when dealing with her behaviour. Even had it done so, that alleged disciplinary intention cannot be imputed to C/Supt. Lanthier, who made the revocation decisions.

[793] The employer also refuted the statements by counsel for the grievor that management had fabricated stories against the grievor, without specifying which stories, and that management conspired to get rid of her.

[794] The employer submitted that the credibility of the parties was at issue on the different versions offered by the grievor and the employer's witnesses and referred me to several decisions to help me assess credibility.

[795] The employer contended that the grievor's testimony on a number of events was inconsistent with her documented position set out in her emails and that she had seriously misrepresented the evidence, both documentary and in her oral testimony.

[796] The employer argued that the grievor's transcripts of her clandestine recordings of office conversations did not prove her version of events. Instead, her behaviour,

while not criminal, still showed her untrustworthiness.

[797] In summary, the employer insisted that the grievor had failed to establish that C/Supt. Lanthier's suspension and revocation decisions were not based on security concerns but rather were aimed at imposing discipline on her. She had failed to establish that the decisions were made in bad faith or with procedural unfairness. The decisions were administrative, not disciplinary. Therefore, I should dismiss the grievances for lack of jurisdiction.

#### **B. Request for supplementary submissions**

[798] On May 7, 2013, counsel for the grievor requested the opportunity to provide a supplemental submission on the application of the decision issued on January 31, 2012 in *Nasrallah v. Deputy Head (Department of Human Resources and Skills Development)*, 2012 PSLRB 12. On May 9, counsel for the employer opposed the grievor's request and asked that it be denied in light of the lengthy hearing process, including the exchange of final submissions, that had occurred and the need not to prolong this matter further. Counsel for the employer noted that there were other relevant decisions that had been issued since the final submissions on these grievances were closed, such as the April 11, 2011 decision in *Shaver v. Deputy Head (Department of Human Resources and Skills Development)*, 2011 PSLRB 43, that then would require submissions.

[799] After considering counsel's comments, and reviewing the lengthy final submissions already filed by the parties following a very lengthy hearing, and considering that my draft decision was in the process of being finalized, I denied the grievor's request to file further submissions on the applicability of the Nasrallah decision to the grievances before me. This decision was conveyed to the parties by letter from the Board Registry dated May 21, 2013.

#### **XI. Reasons**

[800] Six grievances remain before me that raise three broad issues. First are the decisions to suspend and later revoke the grievor's RCMP reliability status. Second is the employer's decision to indefinitely suspend her without pay, retroactive to the first day of her RCMP reliability status suspension. Third is the termination of her employment because she no longer met a condition of employment because of her

RCMP reliability status revocation.

[801] If the employer's decisions to suspend and later to revoke the grievor's RCMP reliability status are determined non-disciplinary, then her challenges about the lack of union representation at the meetings where the employer served her notice of the suspension and revocation, as being in violation of the discipline provisions of the collective agreement, are not sustainable. Nothing in the collective agreement prevents the employer from giving an employee non-disciplinary communications without a union representative present.

[802] The basic facts of these six grievances can be summarized as follows:

- On November 4, 2004, Insp. Clark forwarded the Hildebrand Security Breach Report on the investigation into an alleged security breach by the grievor to the Pacific Region Departmental Security Section for a follow-up and to Pacific Region Public Service Human Resources Office for discipline advice, because of comments in the report about her credibility during the investigation.
- On November 10, 2004, Supt. Morris wrote to the officer in charge, Human Resources Management, Pacific Region, to the attention of Pacific Region Public Service Human Resources Office, describing the grievor again acting in a deceitful manner and lying to her supervisor. He described the October 29, 2004 printer incident and Cpl. Flewelling's report about the missing email, as well as S/Sgt. Hildebrand's ongoing investigation into whether she had breached security by removing documentation outlining guidance directions given to her by her supervisor from operational files. He concluded that, when her suspension ended on November 23, 2004, he would advise her that she was no longer welcome in the North District Office.
- On November 19, 2004, Supt. Morris wrote a two-page email addressed to the Departmental Security Branch in Ottawa, the Pacific Region Departmental Security Section and Pacific Region Public Service Human Resources Office after the latter informed him that the grievor had been surreptitiously recording conversations in the North District Office. In the email, he described several workplace incidents that he believed demonstrated that she completely lacked integrity and honesty and that she could not be relied upon to perform her duties in a trustworthy fashion. He requested advice about her security status.

- In an exchange of emails after November 19, 2004, Supt. Morris was informed that there was insufficient evidence to initiate a security review of the grievor's RCMP reliability status with the information he had provided in his email. He was told of a need for more than his evidence of events.
- Supt. Morris instructed the grievor's direct supervisor, S/Sgt. Beach, to prepare a detailed report on his interactions with her. Supt. Morris gave him no instructions on the form he was to use for the report or the contents to include beyond the general instruction.
- On November 29, 2004, Supt. Morris, using S/Sgt. Beach's report and his own office files and experiences with the grievor, sent an eight-page detailed email to the Pacific Region Departmental Security Section in which he provided a chronology of events in support of his concerns over continuing her RCMP reliability status. It covered the period from the early months of 2001, when she first began working at the North District Office until November 22, 2004, after the 10-day disciplinary suspension ended, when she went on sick leave. Supt. Morris ended his email by asking for advice after he stated that her proven deceitful conduct put the North District Office in a position in which she could no longer be trusted to perform her duties in a reliable and trustworthy fashion. Allowing her to continue would place the organization in a situation of serious liability.
- After the receipt of Supt. Morris's memorandum of November 29, 2004 at the Pacific Region Departmental Security Section, and after numerous emails were exchanged, Mr. Briske investigated the file. After the Briske File Review Report was reviewed by his superior, Mr. Mitchell, it was forwarded to the Departmental Security Branch in Ottawa on February 12, 2005 with a recommendation that the grievor's RCMP reliability status be revoked.
- On January 27, 2005, the grievor prepared a detailed response to Supt. Morris's November 29, 2004 email that she addressed to the Pacific Region Departmental Security Section. However, she did not send it immediately.
- On February 9, 2005, the grievor made a detailed submission to Pacific Region Departmental Security Section, but it was received after Mr. Briske's report was sent to the Departmental Security Branch in Ottawa on February 12, 2005.



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- On March 22, 2005, the grievor was informed by letter from the Departmental Security Officer C/Supt. Lanthier that her RCMP reliability status had been suspended pending further review to determine whether it should be revoked for cause. The letter set out five incidents or grounds and provided her with 14 days to present written representations to the Departmental Security Officer before a final decision would be made on whether to revoke her RCMP reliability status for cause.
  - On March 24, 2005, the grievor was informed by letter from C/Supt. Clark that she was suspended from employment indefinitely without pay, effective March 22, 2005, as she no longer met a condition of employment due to the loss of her RCMP reliability status.
  - On April 6, 2005, the grievor made extensive written representations to the Departmental Security Officer in reply to the suspension of her RCMP reliability status.
  - On July 27, 2005, C/Supt. Lanthier informed the grievor by letter that he had examined her reply of April 6, 2005, that she had raised a number of managerial issues that did not fall within his purview and that he would address only issues relevant to her RCMP reliability status. He set out six incidents in which her behaviour was of concern to him and concluded that it had been established to his satisfaction that she could no longer be relied upon not to abuse the trust accorded to her and that, in light of his findings, there was sufficient cause to revoke her RCMP reliability status effective July 27, 2005.
  - On August 4, 2005, the grievor was informed by letter from C/Supt. Clark that her indefinite suspension without pay would continue until a decision could be made about her employment as she no longer met a condition of employment to perform her duties.
  - The grievor filed (on different dates) six grievances under paragraph 209(1)(b) and subparagraph 209(1)(c)(i) of the *PSLRA* challenging the revocation and suspension decisions and two grievances challenging the denial of union representation at the employer's service of the suspension and revocation decision letters and related documentation under paragraph 209(1)(b) and article 17 (discipline) of the collective agreement. She alleged that the

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employer's revocation and suspension decisions were disguised discipline rendered without just cause and in bad faith.

- On December 8, 2005, the grievor was informed by letter from Commr. Zaccardelli that all her grievances had been denied at the final level of the grievance process.
- On January 6, 2006, the grievor's employment was terminated because, without her RCMP reliability status, she no longer met a condition of employment.
- On September 27, 2006, the grievor grieved the termination of her employment under paragraph 209(1)(b) and subparagraph 209(1)(c)(i) of the *PSLRA*.

[803] At the outset of the hearing, counsel for the employer raised a preliminary objection about my jurisdiction as an adjudicator under the *PSLRA* to hear the six grievances. After hearing representations from both parties, I deferred my decision after concluding that I needed to hear evidence about the merits of the case before rendering a decision on the objection. Therefore, this decision deals with both the jurisdictional issue and the merits of the grievances over which I have jurisdiction.

[804] The first question that I must answer is whether I have jurisdiction as an adjudicator appointed under the *PSLRA* to hear these grievances.

**A. Jurisdiction over an RCMP reliability status revocation**

[805] The employer submitted that I do not have jurisdiction to consider the grievor's challenges to the employer's decisions to suspend and revoke her RCMP reliability status and its ensuing suspension and termination from employment decisions, based on her no longer meeting a condition of her employment due to that revocation. She submitted that I have jurisdiction because first, the true characterization of those decisions is that they were disciplinary, not administrative, and second, even if they were administrative, I have jurisdiction to review them for bad faith, breaches of procedural fairness and reasonableness in the exercise of the employer's administrative discretion.

[806] The jurisdiction of adjudicators appointed by the Board is strictly defined and limited by the *PSLRA*. While employees are provided with a broad entitlement to file grievances under section 208, the list of matters that can be referred to adjudication is

far more limited. To be adjudicable, a grievance must fit within the parameters of section 209, which specifies the types of grievances that can be referred to adjudication.

[807] As noted, these grievances were referred to adjudication under paragraph 209(1)(b) and subparagraph 209(1)(c)(i) of the *PSLRA*.

[808] Section 209 of the *PSLRA* provides in part 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 . . . .*

*. . .*

[809] Paragraphs 12(1)(d) and (e) of the *FAA* provide as follows:

*12. (1) Subject to paragraphs 11.1(1)(f) and (g), every deputy head in the core public administration may, with respect to the portion for which he or she is deputy head,*

*. . .*

*(d) provide for the termination of employment, . . . of persons employed in the public service whose performance, in the opinion of the deputy head, is unsatisfactory;*

*(e) provide for the termination of employment, . . . of persons employed in the public service for reasons other than breaches of discipline or misconduct . . . .*

[810] Subsection 12(3) of the *FAA* reads as follows:

*12. (3) Disciplinary action against, or the termination of employment or the demotion of, any person under paragraph (1)(c), (d) or (e) . . . may only be for cause.*

[811] Therefore, for me to have jurisdiction over the grievances about the revocation of the grievor's RCMP reliability status and her indefinite suspension from employment because of that revocation, the employer's revocation and suspension decisions must be determined to be "a disciplinary action resulting in" one of the outcomes listed under paragraph 209(1)(b) of the *PSLRA* or a "demotion or termination" under paragraph 209(1)(c). If the grievances involve matters that affected the grievor's terms of employment but do not fall within the parameters of section 209, then her recourse for challenging the employer's decision is not the adjudication process but rather alternative forums, such as a judicial review application before the Federal Court.

[812] A reading of paragraph 209(1)(b) and subparagraph 209(1)(c)(i) of the *PSLRA* tells me that the employer's decisions to revoke the grievor's RCMP reliability status and to suspend her employment are adjudicable only under paragraph 209(1)(b) as they did not involve a demotion or termination of employment, which is clearly required under subparagraph 209(1)(c)(i). Her termination grievance is adjudicable under subsection 209(1) as it involves a termination of employment. It is referable to adjudication whether the termination was for a disciplinary or a non-disciplinary reason. Furthermore, it had to have been done for cause, as specified in subsection 12(3) of the *FAA*.

[813] Both parties referred me to several decisions by courts and tribunals that considered the issue of whether the revocation of an employee's security clearance falls within the jurisdiction of an arbitrator or adjudicator.

[814] Both parties acknowledged that the judicial and arbitral jurisprudence has recognized that adjudicators have very limited jurisdiction when it comes to reviewing the employer's actions in suspending and revoking an employee's security clearance. The case law traditionally suggests that such decisions are administrative and that the Board lacks jurisdiction over them unless there is evidence to establish on a balance of probabilities that such a decision was disguised discipline rather than administrative or that it was tainted by bad faith or procedural unfairness to a point that it cannot be

remedied at a *de novo* (new) hearing before an adjudicator.

[815] That jurisdictional approach was well stated by the adjudicators in *Braun* and in *Leblanc v. Treasury Board (Solicitor General - Correctional Service)*, PSSRB File No. 166-02-25267 (19940615), which was referred to in *Braun*.

[816] At paragraph 135, the adjudicator in *Braun* stated as follows:

*[135] It is generally accepted that a suspension without pay pending investigation and the suspension or revocation of a reliability status are not a priori deemed disciplinary actions. However, that general assumption does not exclude the concept of disguised discipline. . . .*

[817] The adjudicator in *Leblanc* stated as follows at page 3:

. . .

*I have examined all the evidence and the relevant decisions cited to me. The granting and revocation of enhanced reliability security clearance is the exclusive right of the employer and, as such, is an administrative measure. Revocation of security clearance is not therefore covered by section 92 of the Public Service Staff Relations Act. Having said this, I might have jurisdiction to hear the case only if the employer had exercised its discretion in bad faith . . . .*

. . .

[818] The adjudicator in *Braun* had to decide whether the employer's decisions to suspend the grievor in that case without pay and then to revoke his security clearance were administrative or amounted to disguised discipline. She stated as follows at paragraphs 139 and 140:

*[139] It is important to note that my role is not to decide whether I agree with the decisions or whether they were reasonable. I do not sit in appeal or in judicial review of those decisions. I am dealing with an objection to my jurisdiction. The same situation prevailed in Frazee, where the Federal Court, commenting on the case law, expressed the following:*

. . .

[21] The case authorities indicate that the issue is not whether an employer's action is ill-conceived or badly executed, but, rather, whether it

amounts to a form of discipline involving suspension. . . .

. . .

*[140] I can take jurisdiction over the grievances only if the evidence supports a conclusion of disguised discipline. In addition, as the Federal Court stated in Frazee, "... an employee's feelings about being unfairly treated do not convert administrative action into discipline. . . ."*

[819] I note that the case before me involves the revocation of the grievor's RCMP reliability status, which was closely followed by a suspension from employment without pay and ultimately her termination because of the loss of her RCMP reliability status. In contrast, *Braun* involved a grievor who was suspended with pay pending an investigation into his alleged misconduct. He then had his security status suspended and later revoked. However, I do not think that that difference in the sequencing of events is important to the point being made that decisions to revoke an employee's security clearance are administrative, subject to the evidence showing that they were disguised discipline.

[820] In *Hillis*, referred to by the employer, the adjudicator had to determine whether the decision to terminate the grievor's employment following the revocation of her security clearance was in fact disguised discipline. The adjudicator concluded as follows at paragraph 149:

*[149] I have found no bad faith on the part of the employer leading me to conclude that the termination was a disguised disciplinary measure or that it was intended as such. I have also concluded that the process by which the employer reached this decision was fair despite its flaws, which have been appropriately remedied by this adjudication process. I would have no authority, or reason in any case, to reinstate the grievor's reliability status.*

[821] I also note that, in *Gill*, at para 152, cited by the employer, the determination that the administrative nature of the decision to revoke the security clearance does not change even if no discipline is alleged. In that case, the adjudicator, while finding that the grievor's procedural rights had been breached, set out the jurisdiction parameters as follows:

*[152] I conclude that terminating the grievor's employment was an administrative action and that it was done for non-disciplinary reasons. To retain jurisdiction, I would have*

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*to be convinced that the employer acted in bad faith or breached the grievor's right to procedural fairness.*

[822] Counsel for the grievor submitted that an adjudicator has jurisdiction to review the merits of an employer's security clearance revocation decisions, even if they were administrative, to determine whether they were reasonable. He submitted further that the burden was on the employer to establish that the revocation decision was reasonable and that only were I to decide that its actions were reasonable would the grievor have the burden of establishing that its actions were disguised discipline, were not bona fide or were not made with procedural fairness. I was not presented with any Board or Federal Court decisions that have recognized such broad jurisdiction in an adjudicator appointed under the *PSLRA*.

[823] Counsel for the grievor acknowledged that the weight of the court and arbitral jurisprudence suggests that the employer's action must be shown to be disciplinary for me to have jurisdiction over the employer's suspension and revocation of RCMP reliability status decisions. However, the grievor submitted that a careful review of legislative history shows that the limitation on my jurisdiction to review those decisions on the merits was rooted in section 31 of the former *PSEA*, and that that "line-setting" section was repealed in 1993. Counsel argued that the case law of the Board and the Federal Court is inapplicable either because it relies upon the statutory jurisdiction of adjudicators under the *PSSRA*, from before 1992 or because it does not appreciate the expansive effect on an adjudicator's jurisdiction of the 1992 amendments to the *FAA* about non-disciplinary dismissals. Counsel submitted that, today, because of those legislative changes, it is incumbent on the employer to establish that its revocation decisions were reasonable before the grievor has to show that they were disguised discipline.

[824] I carefully reviewed counsel for the grievor's arguments. I am not persuaded that the Federal Court judges and Board adjudicators who decided those decisions for years, including since 1992, misinterpreted the statutory jurisdiction of an adjudicator appointed under the *PSLRA*. My view is that, for the RCMP reliability status revocation and suspension from employment grievances before me to be adjudicable, I must determine that the employer's decisions were disciplinary action within the meaning of paragraph 209(1)(b) and that they were not tainted by bad faith or procedural unfairness in the exercise of its administrative discretion. It is not my role to assess the reasonableness of the RCMP reliability status revocation decision.

[825] Furthermore, once the employer establishes that its suspension and revocation of RCMP reliability status decisions, and the suspension from employment decisions that flowed from the loss of that RCMP reliability status, were administrative, the burden then shifts to the grievor to establish that they were disciplinary.

[826] Before examining the jurisprudence on how an adjudicator is to determine whether an employer's action is administrative or is in fact disguised discipline, I need to consider another preliminary challenge to the Board's jurisdiction.

**B. Jurisdiction over a termination due to a lost RCMP reliability status**

[827] As noted, a grievance against an employee's termination falls within an adjudicator's jurisdiction under subsection 209(1) of the *PSLRA*. A termination has to be done for cause, as specified in subsection 12(3) of the *FAA*. Therefore, the statutory jurisdiction of an adjudicator for termination of employment grievances is broader under the *PSLRA*.

[828] The issue I have to decide is whether the grievor's termination was for cause, as required by subsection 12(3) of the *FAA*.

[829] There was no dispute that the RCMP reliability status is a condition of employment for working with the employer, according to the provisions of the *RCMP Policy*, that the RCMP reliability status, which replaced the enhanced reliability status sometime during the period under review, is the minimal level of security clearance, and that it must be maintained throughout an employee's entire period of employment.

[830] Counsel for the employer argued that, since a valid RCMP reliability status is a condition of employment for all positions in the RCMP, the cause for the termination in this case is that, following the revocation of her RCMP reliability status, the grievor no longer met a condition of employment. Counsel for the grievor argued that there was no cause since the employer's decisions to revoke her RCMP reliability status and later to terminate her employment were tainted by bad faith, lacked procedural fairness and were unreasonable and as such should be set aside.

[831] My view is that the grievor, by no longer holding an RCMP reliability status, no longer met a condition of employment. Thus, the employer had cause to terminate her employment under subsection 12(3) of the *FAA* unless she can establish that its



determination that she no longer met that condition of her employment was tainted by bad faith or by procedural unfairness in the process that led to the decision to revoke her RCMP reliability status.

### C. Disciplinary action

[832] As noted, to decide the jurisdictional issue, I must determine whether the suspension and revocation decisions were disciplinary action within the meaning of section 209 of the *PSLRA*. Many Federal Court and Board decisions have considered what constitutes a “disciplinary action,” along with the distinction between a “disciplinary action” and an “administrative action” in the employment context.

[833] I was referred to many cases dealing with existing jurisprudence on these issues. The most useful were *Basra*, and *Fraze*, to which both parties referred me. They are decisions of the Federal Court and are binding upon me. The parties agreed on the principles set out in those cases but disagreed on their application to the disputed facts in this case when determining whether the grievor had been subjected to discipline when her RCMP reliability status was suspended and later revoked.

[834] One principle articulated in *Fraze* is that how the employer chooses to characterize its decision cannot be a determinative factor, as the concept of disguised discipline is a well-known and necessary controlling consideration that allows an adjudicator to look behind the employer’s stated motivation to determine its actual intention. That decision also noted that the problem of disguised discipline can also be addressed by examining the effects of the employer’s actions on the employee. As stated at paragraph 24, “. . . [w]here the impact of the employer’s decision is significantly disproportionate to the administrative rationale being served, the decision may be viewed as disciplinary . . . .”

[835] Another principle clearly established in the case law is that not every employer action that adversely affects an employee amounts to discipline. Paragraph 19 of *Fraze* and paragraph 17 of *Basra* agree that a useful summary of the arbitral and judicial decisions on the question of whether employer conduct constitutes discipline is found as follows in *Brown and Beatty*, at para. 7:4210:

. . .

*In deciding whether an employee has been disciplined or not, arbitrators look at both the purpose and effect of the employer's action. The essential characteristic of disciplinary action is an intention to correct bad behaviour on an employee's part by punishing the employee in some way. An employer's assurance that it did not intend its action to be disciplinary often, but not always, settles the question.*

*Where an employee's behaviour is not culpable and/or the employer's purpose is not to punish, whatever action is taken will generally be characterized as non-disciplinary. On the basis of this definition, arbitrators have ruled that suspensions that required an employee to remain off work on account of his or her health, or pending the resolution of criminal charges, were not disciplinary sanctions. . . .*

. . .

[836] *Frazer* states that it is not surprising that one of the primary factors in determining whether an employee has been disciplined concerns the intention of the employer, as follows, at paragraph 22: “. . . The question to be asked is whether the employer intended to impose discipline and whether its impugned decision was likely to be relied upon in the imposition of future discipline . . . .” At paragraph 21, it states that the issue is not whether an employer's action was ill-conceived or badly executed but rather whether it amounted to a form of discipline and that an employee's feelings about being unfairly treated do not convert administrative action into discipline.

[837] A third principle that was not in dispute was that it is the grievor's responsibility to establish that, on a balance of probabilities, the employer's suspension and revocation decisions were wrong in the sense that the employer disguised disciplinary action when making them or that they were tainted by bad faith or unfair procedures.

[838] I must now apply the principles set out in the case law to this case, beginning with the question of whether the true characterization of the employer's decisions to suspend and revoke the grievor's RCMP reliability status were administrative or whether there was a disciplinary component. The employer could not use the security review process to simply avoid adjudication for disciplining an employee. If there is no valid concern with an employee's RCMP reliability status, then revoking it would be improper.

[839] Whether the employer's actions were administrative or disciplinary is a factual

issue. I must look at both the purpose and effect of its actions to determine their true characterization. The grievor bore the burden of establishing that the suspension and revocation decisions were disguised discipline.

[840] Applying those principles, the employer argued that the suspension and revocation decisions were administrative because C/Supt. Lanthier made them and because they were based on his security concerns, which arose from the grievor's behaviour. In making them, he did not intend to impose discipline on her or to punish her to correct her behaviour. Applying the same principles, the grievor argued that those decisions were disciplinary as Supt. Morris and S/Sgt. Beach had an axe to grind with her. The employer intended that the decisions would bring about the termination of her employment, something that Supt. Morris desired but had been unable to accomplish using discipline or a human resources option. I will expand on the arguments and the facts that support the arguments.

[841] It was not disputed that, when the suspension and revocation decisions were made, C/Supt. Lanthier was the officer in charge of the Departmental Security Branch. And, as such, he was the only person under the RCMP *Personnel Security Policy* (Exhibit 1, Tab 3) who could suspend or revoke an RCMP reliability status for cause. His testimony was clear that in fact he had made the decisions at issue to suspend and revoke the grievor's RCMP reliability status for cause.

[842] C/Supt. Lanthier's testimony was straightforward. He had over 30 years of service with the RCMP, he was an experienced Departmental Security Officer, and he had made the suspension and revocation decisions based on the extensive evidence before him after reviewing the materials and using the assistance of the experienced security risk analyst on his staff at the Departmental Security Branch in Ottawa. His testimony was that he did not know the grievor, Mr. Briske, S/Sgt. Beach or S/Sgt. Hildebrand, that he knew Supt. Morris only by his position, and that he had no contact with any of them during his decision-making process. His evidence was not contradicted.

[843] C/Supt. Lanthier testified that his jurisdiction is only RCMP security. He has to be satisfied that there are sufficient security issues of trust, honesty, reliability and integrity before he makes a decision to suspend or revoke an RCMP reliability status for cause because he understands the consequences of making such a decision. He has no authority to impose discipline. The revocation decision-making process he uses at

the Departmental Security Branch is designed to screen out discipline and human resources issues over which he has no jurisdiction or interest.

[844] C/Supt. Lanthier testified that, after reviewing the file and discussing it with the security risk analyst on his staff who reviewed it in detail, he was satisfied that the situation warranted suspending the grievor's RCMP reliability status for cause but that further investigation was needed before he could make a final decision. His opinion at that time, as stated in the suspension letter of March 22, 2005, was that the grievor had provided untruthful and deceitful information to Ms. Bailey, Supt. Morris, S/Sgt. Hildebrand and S/Sgt. Beach about five incidents, which raised concerns for him about her reliability, trustworthiness and honesty. He provided her with 14 days to make written submissions.

[845] C/Supt. Lanthier testified that, when he decided in July 2005 to revoke the grievor's RCMP reliability status for cause, he had before him all the extensive documentation contained in the binder marked as Exhibit 1. The materials included three lengthy submissions that the grievor had made to explain her side of events. Two of them had been addressed to the Pacific Region Departmental Security Section, dated January 27, 2005 and February 9, 2005 respectively. She included them in her April 2005 reply to C/Supt. Lanthier that she sent in response to the March 22, 2005 suspension letter. In her reply, she attached many other documents, including transcripts that she had made from her surreptitious office recordings.

[846] C/Supt. Lanthier's opinion was that, in her reply, the grievor did not address the security concerns he had raised in the suspension letter. He considered many of the points she raised in her reply general managerial and performance issues that were not his concern. He stated as much in the revocation letter that he wrote later. His opinion was that her behaviour in the six incidents that he set out in the revocation letter reflected negatively on her honesty, trustworthiness and integrity. The six incidents were the five incidents he had set out in the suspension letter with one incident divided into two.

[847] I find that the employer met its evidentiary burden to establish that the suspension and revocation decisions were administrative. The burden shifts to the grievor to prove that, on a balance of probabilities, those decisions were disguised discipline or so tainted with bad faith or breaches of procedural fairness that they cannot be remedied by this adjudication process.

[848] Counsel for the grievor stated that he was not alleging that C/Supt. Lanthier was devious in making his suspension and revocation decisions or that he intended to punish the grievor or correct her behaviour by them. The argument advanced was that Supt. Morris was devious in improperly initiating the security review process and that he had duped, manipulated or played C/Supt. Lanthier into improperly using his authority to revoke the grievor's RCMP reliability status for cause.

[849] As I understood the arguments made by counsel for the grievor, I have jurisdiction to review C/Supt. Lanthier's decision to revoke the grievor's RCMP reliability status for cause because of the following:

- Bad faith is a form of disciplinary action.
- Supt. Morris acted improperly when he initiated the security review process by fabricating or exaggerating events in his memo to the Pacific Region Departmental Security Section of November 29, 2004.
- Supt. Morris's improper initiation of the security review process was motivated not by an intent to punish the grievor or correct her behaviour but by a desire to rid the North District Office of her by using the security review because he had been unable to accomplish that goal using a human resources option or discipline.
- Supt. Morris's bad faith so tainted the employer's RCMP reliability status revocation process that it provided grounds for me to hear and uphold the grievances.

[850] Counsel for the grievor provided no authorities to support that novel approach to establishing the required disciplinary action for jurisdiction to apply under paragraph 209(1)(b) of the *PSLRA*.

[851] Alternatively, counsel for the grievor also argued that the six incidents relied upon by C/Supt. Lanthier were trivial and that they raised no real security concerns. Counsel submitted that the grievor's behaviour in question raised human resources issues or, at most, discipline issues.

[852] With respect to the latter argument, if, as counsel for the grievor stated, he was not accusing C/Supt. Lanthier of being devious, then it is difficult to see any argument

for a bad faith exercise of discretion on his part. I interpreted counsel's alternative argument to mean that the grievor alleged that the Departmental Security Officer, by testifying that he relied on her behaviour in those six incidents to conclude that he had lost confidence in her honesty and trustworthiness, was being naive or incompetent, as opposed to acting in bad faith, when he assessed her reliability using those incidents or after being tricked into using them. Even if it were true, I do not see how it would give me jurisdiction to review C/Supt. Lanthier's RCMP reliability status decisions on the basis of bad faith being a form of disciplinary action. However, in the event that I am incorrect in my reasoning, I will examine the grievor's bad faith arguments in some depth.

#### **D. Bad faith**

##### **1. General**

[853] The grievor made many allegations during the hearing that appeared to overlap and intertwine and involve different subjects and concerns than are strictly raised in the grievances before me that challenge the employer's revocation and suspension decisions on the grounds of disguised discipline and that they were imposed without just cause and in bad faith. Her counsel appeared not to allege that the grievor had been disciplined in any way, disguised or otherwise, by the suspension and revocation decisions. Rather, he appeared to submit that she had not been treated in a fair and equitable manner during her employment with the RCMP generally as well as specifically during the security review process.

[854] It is my responsibility to ensure that this decision focuses only on the allegations and submissions that pertain to the grievances filed under paragraph 209(1)(b) of the *PSLRA* of which I am seized. I can take jurisdiction over the grievances only if the evidence supports a conclusion of disguised discipline. As quoted earlier in *Braun*, the Federal Court stated in *Frazer* that "... an employee's feelings about being unfairly treated do not convert administrative action into discipline . . . ."

[855] I will consider first counsel for the grievor's submission that bad faith can constitute the disciplinary action needed to provide me with jurisdiction under paragraph 209(1)(b) of the *PSLRA*.

[856] As I see it, the issue is whether the employer acted with a bona fide security-related reason for revoking the grievor's RCMP reliability status for cause. The issue of bad faith arises to the extent that proof of bad faith conduct may justify a conclusion that there was no bona fide security-related reason for the revocation decision and that that decision masks something else, like an intent to discipline or other ulterior motive, which reveals that its essential character involves a subject that can properly be referred to adjudication under the *PSLRA*.

[857] I believe that bad faith is not a stand-alone ground of jurisdiction under paragraph 209(1)(b) of the *PSLRA* and that the search for bad faith in the employer's decision making is a search for evidence of motives that betray the real subject matter of the grievances, which must be defined by the *PSLRA* as adjudicable. I agree with the approach taken by the adjudicator in *Braun*, in which she dealt with a grievance filed under paragraph 209(1)(b). She stated as follows at paragraph 141:

*[141] In addition to his contention that the decisions were disciplinary in nature, the grievor alleged that the employer acted in bad faith and that there were serious breaches of procedural fairness. Given that the only issue to be determined is whether the decisions were disciplinary in nature, I am of the view that the allegations of bad faith and lack of procedural fairness cannot stand alone but could be considered as indicators of the employer's alleged disciplinary intention.*

[858] I now need to examine whether the decisions to suspend and revoke the grievor's RCMP reliability status were contrived or made in bad faith to determine whether they disguised discipline that is within my jurisdiction. I will first examine the actions of C/Supt. Lanthier and then the bad faith allegations made against Supt. Morris.

## **2. C/Supt. Lanthier**

[859] As noted, on one hand, counsel for the grievor specifically stated that he was not alleging any deviousness by the Departmental Security Officer when he made his suspension and revocation decisions. However, on the other hand, counsel submitted that some of the incidents that the Departmental Security Officer listed were merely misunderstandings or honest mistakes between the grievor and others, not lies or deceitful conduct on her part. Furthermore, he submitted that, even if I found the employer's version of events more credible than hers, and I determined that she had

lied about her behaviour in several of the incidents, nevertheless, all six of them, even if they occurred as described, should not have been considered by the Departmental Security Officer as they were trivial and did not raise real security concerns. At best, they raised discipline issues for the employer and should not have cost the grievor her employment. I will address the different arguments alleging bad faith in the exercise of the Departmental Security Officer's administrative discretion.

[860] As noted, I do not have jurisdiction to review the merits of C/Supt. Lanthier's suspension and revocation decisions for reasonableness. However, I will review the six incidents he testified that he relied upon to determine whether they were so trivial, as claimed by the grievor, as to establish improper motivation and disguised disciplinary action on his part.

[861] The six incidents that the Departmental Security Officer said that he relied on when forming his opinion that the grievor's behaviour reflected negatively on her honesty, trustworthiness, integrity and reliability and when he concluded she could no longer be trusted not to abuse the trust accorded to her were as follows:

...

*I found no evidence to support your email message sent to Bonnie Bailey on January 30, 2003 in relation to the completion of the harassment training awareness wherein you state, "We are supposed to be finished by March 31 2003".*

*You announced during a meeting held in Vancouver on January 22, 2003 that you nominated several public service employees for the Queens Golden Jubilee Medal and that you had submitted the nominations to Bonnie Bailey. I note that the copies of the nominations you sent me are not signed or dated by the nominees. Subsequent enquiries have established that you submitted the nominations after the joint labour/management meeting in Vancouver.*

*The Harassment/Human Rights Advisor has received positive feedback regarding Mr. Morris' response to harassment complaints and his attitude toward Harassment in the workplace. A meeting held on October 3, 2003 with the unit heads and public service employees did not identify any harassment issues in the north district. Your own complaint of harassment has been fully investigated and all of your allegations have been deemed to be either unfounded or unsubstantiated. A subsequent review of your complaint upheld these findings.*



*Initially, you told S/Sgt. Hildebrand that you had not sent any correspondence outside your office. You later recanted your statement and advised that you had indeed sent continuation reports to PSE Bouchard for safe keeping. I note you sent the continuation reports to PSE Bouchard before S/Sgt. Hildebrand had even been appointed to conduct the investigation.*

*You had been entering traffic related entries on CPIC correctly for several years yet, for some unknown reason, it became necessary for your supervisor to take corrective action and provide you with additional training in this regard. In spite of the guidance and the extra training, you continued to enter inaccurate file numbers on CPIC.*

*Sgt. Beach printed an email message for his records. You removed the email message along with outer printed material from a printer and told Sgt. Beach that all of the printed material taken from the printer was yours. You later presented Cpl. Flewelling with a copy of Sgt. Beach's email message.*

...

[862] It is clear from the grievor's submissions that some of those six incidents involve disputed facts. Both counsel submitted that credibility issues were raised, particularly with respect to conflicting testimony between Supt. Morris and the grievor. Each party stated that the other's testimony should be treated with considerable caution, for a number of reasons.

[863] I do not believe that I have to resolve all the factual differences raised in this case, but I do have to decide enough of them to be able to determine whether C/Supt. Lanthier acted in good faith or whether he constructed, or was duped by Supt. Morris into constructing, the security-related rationale to disguise motives that had nothing to do with the grievor's reliability for RCMP employment. Furthermore, as noted in my reasons for upholding the 10-day suspension, I believe that credibility is better measured through a careful examination of the evidence provided by the witnesses rather than through general accusations of parties having an axe to grind, when determining whose version of the incidents I should believe. Unfortunately, by examining the conflicting evidence on each incident and determining credibility, I come dangerously close to reviewing the reasonableness of the Departmental Security Officer's decisions.

[864] I will now review the incidents relied upon by C/Supt. Lanthier in forming his opinion that there was cause to revoke the grievor's RCMP reliability status. I will start

with an examination of several incidents for which the testimonies of the grievor and Supt. Morris do not conflict.

[865] With respect to incident in which the grievor sent documents outside the office, described in the revocation letter, both she and the employer introduced in evidence a transcript of S/Sgt. Hildebrand's September 24, 2004 interview of her, with her union representative present. Neither party pointed to any discrepancies between the two transcripts.

[866] The purpose of the interview was to investigate an alleged security breach by the grievor at the North District Office. S/Sgt. Beach had initiated the review by completing a departmental security complaint form in March 2004 that was referred through his superior, Insp. Wheadon, and that resulted in S/Sgt. Hildebrand being appointed to investigate. The alleged security breach was the removal of documents from operational files in the Central Police Information Centre system and from the grievor's personnel file at the North District Office.

[867] S/Sgt. Hildebrand testified. I found him very credible. He was from outside the North District Office and did not know the parties. He was an objective and experienced major crime investigator, including drug crimes. Even though he had never before investigated a security breach by a public servant, as opposed to an RCMP member, he concluded that, following his investigation, the grievor had not breached security. His conclusion supported her position. S/Sgt. Hildebrand concluded that she had breached RCMP policy with respect to handling operational files. However, as his focus was on security concerns, he did not pursue the managerial or discipline issues that could have flowed from her policy breach.

[868] While in his report S/Sgt. Hildebrand concluded that the grievor had not breached security, he criticized her behaviour during the inquiry and concluded that she was not credible. He stated three reasons for his conclusion, as follows:

- When interviewed, she changed her story to fit the facts. She stated that she had not sent paper outside the office, and later, said that she had.
- She said she sent the continuation report forms to Ms. Bouchard for safekeeping for S/Sgt. Hildebrand's investigation and then changed her story when she realized that she did it before he became involved.

- She inferred that Insp. Clark had authorized her to send the continuation report forms to Ms. Bouchard when in fact the authorization was for something unrelated.

[869] When Insp. Clark received the report, he was concerned about S/Sgt. Hildebrand's conclusions on the grievor's credibility. He referred the report both to Pacific Region Public Service Human Resources Office for possible disciplinary action and to the Pacific Region Departmental Security Section for a security review because, he testified, an employee's behaviour can raise security concerns even if that behaviour does not constitute a security breach.

[870] The grievor's representation in her April 2005 reply to the Departmental Security Officer was that she had been "absolutely truthful" in the investigation and to S/Sgt. Hildebrand and that she had not changed her story. She also testified that she did not change her story and that she did not lie or intentionally mislead S/Sgt. Hildebrand. The following is her explanation.

[871] When the grievor was asked in the interview if she had removed any paper from any files, she replied that she had not. She repeated the denial when asked again. Her explanation at the hearing seemed to be that she had not removed documents from the office because the originals were still in the operational files. She had taken copies of them for herself and had faxed copies to Ms. Bouchard.

[872] The grievor was then asked in the interview if she had "taken" any paper from inside the office and given it to anyone outside the office. She replied as follows: "Never. I would never do that." When she was then asked if she took paper outside the office by "sending it" to Ms. Bouchard, she replied as follows: "No. I sent it by fax to another RCMP agency."

[873] The grievor testified that her denial was not a lie because she interpreted the word "office" in the question to mean "outside the "E" Division's North District," not outside the North District Office in Prince George, so faxing operational file materials from the North District Office to the Quesnel Detachment was not sending them "outside the office." She insisted that it was just a misunderstanding of her testimony and that it had been up to S/Sgt. Hildebrand to return to her for clarification instead of jumping to a conclusion about her credibility.

[874] I note that the evidence established that there are 35 detachments in the “E” Division’s North District at which staff are posted. The grievor’s interpretation of the word “office” would mean that sending operational file materials from the North District Office to any of those detachments would not be considered sending them out of the office. I find that explanation difficult to believe.

[875] The grievor also testified that she had sent the materials to Ms. Bouchard for safekeeping and that she had not changed her story. The transcript supports S/Sgt. Hildebrand’s testimony. She claimed in the interview that she sent the materials to Ms. Bouchard for safekeeping for S/Sgt. Hildebrand’s investigation. However, when questioned how that could have been the case when he had not yet been assigned to the inquiry in March when she faxed them, she said that she would have to check the dates. Fifteen minutes after the interview concluded, the grievor and her representative returned, requesting that they talk again. According to the transcript, she stated that she was not sure whether he would be assigned to carry out the investigation when she faxed the materials, but she sent them so that someone in the union would have them for whoever was appointed.

[876] At the hearing, the grievor provided a new explanation. She testified that Insp. Clark had told her that S/Sgt. Hildebrand would likely be appointed to carry out the investigation.

[877] The grievor also stated in the interview that she was allowed to fax materials (continuation report forms or ‘operational paperwork’) to another RCMP office. She stated that the “RCMP is allowed to have RCMP information at any time.” When the investigator asked her whether she was sure of that point, she replied, “Absolutely.” She added that she had checked with Insp. Clark and that “he said anything for another RCMP agency is absolutely fine.”

[878] Insp. Clark’s testimony was that the grievor’s statements were not true. I note that he was one of the few whom the grievor seemed to get along with and whom she seemed to trust as an objective and fair observer. He testified that she had not shown him the continuation report forms she had faxed, as she claimed, and that he had not authorized her to send the materials out of the office, as she claimed. He testified that RCMP operational files are not freely shared between RCMP offices.

[879] Insp. Clark testified that, in May, the grievor sought a written authorization

from him about a request that had been received from an investigator on a murder investigation. Time is crucial in a murder investigation, and everyone attempts to cooperate quickly. Insp. Clark testified that he thought at that time that her request was bizarre but that he provided her with the written authorization. However, it was for a specific file and not for the grievor's faxing, which had occurred over a month earlier. He testified that his May 2004 authorization note was not a general directive authorizing sharing operational files with other detachments. His testimony was unshaken in cross-examination.

[880] At the hearing, the grievor testified that Insp. Clark's May authorization note, while not specifically about her faxing actions in March 2004, was evidence of a generally accepted practice of sharing operational files with other RCMP offices.

[881] The grievor's testimony was not credible. It was not simply a misunderstanding of her interview statements. I have no difficulty concluding on the testimony and transcripts provided that she lied or that, at best, she intentionally misled S/Sgt. Hildebrand during the interview on several points and that he had solid grounds for concluding in his report that she had not been credible during the interview. I also believe that Insp. Clark's version of events was more credible than her version. I found her less than candid in her explanations. I believe that her seeking of an "after-the-fact" authorization from Insp. Clark at least a month after the incident displayed sneaky if not outright deceitful conduct.

[882] As for the printer incident that C/Supt. Lanthier listed as displaying conduct by the grievor that raised reliability concerns for him, the uncontradicted evidence is that S/Sgt. Beach had written a two-page email on October 29, 2004, addressed to Pacific Region Public Service Human Resources Office, expressing his concerns about the grievor's behaviour and seeking advice and that she removed it from the printer in the photocopy room and took it home with her. She later showed it to Cpl. Flewelling, who in turn informed Supt. Morris that she had a copy.

[883] The issue was whether the grievor had lied to her supervisor, S/Sgt. Beach, by denying to him that she had taken his email from the printer. There was not really any conflicting testimony on that issue, but a credibility issue was raised.

[884] S/Sgt. Beach's testimony was straightforward. When he went to the printer on the morning of October 29, 2004 to pick up the email addressed to Pacific Region

Public Service Human Resources Office that he had just printed, the grievor had all the documents from the printer in her hand. When he asked her if some were his, she said that they were all hers and that he had to stop bullying her. He thought that his print job had not gone through, and he returned to his office, sent another copy to print, retrieved it and put it in his file.

[885] The grievor's testimony was less forthright, although it was consistent with her representation to the Departmental Security Officer in her April 2005 reply. She claimed that S/Sgt. Beach had grabbed all the papers out of her hand on October 28, 2004. She had a transcript to prove it, so there was no way she could have picked up his email on the printer as he claimed because nothing was on the printer to pick up. She testified that she found S/Sgt. Beach's email to Pacific Region Public Service Human Resources Office on the printer, where he purposely had left it for three days to belittle and humiliate her with her co-workers, so she took it. In her earlier reply to the Departmental Security Officer, she said it had been lying on the printer for several days.

[886] I am more satisfied on a balance of probabilities that S/Sgt. Beach's account is essentially accurate. The grievor took his email from the printer and denied to him that she had done so. I reached that conclusion for several reasons.

[887] It was a sensitive email to Pacific Region Public Service Human Resources Office. S/Sgt. Beach composed it the morning after the serious altercation that he and Supt. Morris had with the grievor about her performance evaluation. S/Sgt. Beach did not want her to read it. No evidence was adduced or allegation made that he had ever left such a sensitive document lying around the office for days, and there was no testimony that any other staff member saw it sitting on the printer during the three-day period it allegedly sat there.

[888] Furthermore, the grievor was careful in her evidence on that point and attempted to avoid an outright denial that she had lied to her supervisor about taking his email from the printer on the morning of October 29, 2004. The grievor entirely avoided the issue by replying to the Departmental Security Officer and by testifying only about the earlier printer incident, on October 28, 2004.

[889] There were two printer incidents. The first occurred in the morning of October 28, 2004 and involved S/Sgt. Beach grabbing papers from the grievor's hands

that she had picked up from the printer. She provided a transcript of that interaction. The second printer incident occurred on October 29 and involved an email that he wrote to Pacific Region Public Service Human Resources Office just that morning. It described events related to the review of her performance evaluation that did not occur until the afternoon of October 28.

[890] The grievor's explanation for taking S/Sgt. Beach's email was that she picked it up after it had been intentionally left lying on the printer for three days. She did not address whether she denied picking up any documents at the printer on the morning of October 29, whether she agreed that she had picked up some documents that morning but that she did not tell S/Sgt. Beach that, as alleged, all the documents were hers when they were not, or whether she claimed that she picked up the documents and did not lie to him because everything she picked up was hers. And she provided no transcript for any interaction with him on October 29, 2004. I find her lack of forthrightness on that incident troubling.

[891] I also note that, in her testimony, the grievor took no responsibility for any wrongdoing in the incident relied upon by C/Supt. Lanthier. She justified her behaviour by saying that the email was all about her and that it was all fabrications, so she took it. When asked in cross-examination whether she had compromised her integrity by taking the email, she replied that she had not because it was slander and full of lies. Her position veered dangerously close to the proposition that, because the email was all about her, it was hers.

[892] The grievor also testified that she had shown it to Cpl. Flewelling because she trusted him. That comment, and the tone in which it was said, suggested that she was wrong to have trusted Cpl. Flewelling and that he was to be blamed in some way for her misfortune because he had reported to Supt. Morris that she had a copy of S/Sgt. Beach's private email. Rather, she should have recognized that the cause of her misfortune was her conduct of deliberately taking an email that did not belong to her.

[893] A third ground listed by C/Supt. Lanthier was the grievor's emails on January 30, 2003 and her conduct, in which she insisted that someone in Ottawa whom she did not name told her during the training course for workshop facilitators that she and Ms. Bailey attended that the harassment awareness training was to be completed by March 31, 2003. Ms. Bailey's testimony was that the grievor insisted that she had been given the end date by some unnamed person in Ottawa or that she had been told

that there was an end date during the joint union-management meeting in January 2003 in Vancouver. Ms. Bailey's testimony was that, after speaking with the grievor, she made enquiries, including phoning the Ottawa course contact person and Ms. Major-Hurt and that no one knew anything about an end date being set.

[894] The grievor's testimony was consistent with her reply to the Departmental Security Officer. She testified that her claim in January 2003 that there was a March 31, 2003 end date to the harassment awareness training was accurate and not a lie because what she meant in her emails at that time was that there was an end date to the initial training.

[895] The timing of the grievor's qualification of her claim that there was an end date to the harassment awareness training concerns me. The documentation in evidence about the incident shows that she never qualified her end date claim until she wrote Supt. Morris in April 2005 in her reply to the letter suspending her RCMP reliability status. In her testimony, she did not explain why she qualified her assertion of an end date in that way, and she did not explain what she meant by "initial" training. The introduction in 2005 of a new version of the end date claim that she made in early 2003, a version that presents the situation in a much more favourable light for her, leads me to suspect that she was ready to change her version of the events to serve her interests.

[896] With respect to the QGJC Medal nominations incident referred to by C/Supt. Lanthier, about the claims made by the grievor or her union president at the joint union-management meeting in Vancouver in January 2003, the grievor's representations in her reply to the Departmental Security Officer were to the effect that she could not have provided untruthful and deceitful information to Ms. Bailey, Supt. Morris, S/Sgt. Hildebrand and S/Sgt. Beach, as stated in the introductory paragraph in the suspension letter, because she had never discussed the nominations with any of them. She stated that Ms. Bailey did not want to talk about the nominations and never spoke about them at work. The grievor enclosed a copy of the four nominations she had made allegedly in early 2002.

[897] The grievor's testimony was more detailed. She testified that she has consistently maintained that she made the nominations around May 2002 and that she left them in an envelope in the internal mail room at the North District Office with a sticky note attached for Ms. Bailey to sign before forwarding them to the Vancouver



nomination and selection committee. The grievor acknowledged stating in her apology after the event that she had not followed the nominating procedure, which was to send the nominations straight to Vancouver, but she claimed that she apologized only because Supt. Morris bullied her into it.

[898] At the hearing, the grievor testified that she left the nomination forms for Ms. Bailey because there was a section on them for the supervisor or manager to sign. While Ms. Bailey supervised only two of the four individuals the grievor was nominating, the other individuals worked elsewhere in the “E” Division’s North District. The grievor also testified that she had apologized to some of her USGE members on the award day because none of the public servants she had nominated won an award.

[899] The grievor testified that the biographical information she sought in early March 2003 from public servants, such as Ms. Stangrecki, who were the same individuals she had nominated for the Queen’s Jubilee Medals in May 2002, was to nominate them in 2003 for a different award. That information was not the basis for her emails in mid-March to C/Supt. Dingwall and Sgt. Maj. Stewart, in which she provided them with the names and short biographies of the people she had allegedly nominated in May 2002 for the Queen’s Jubilee Medals.

[900] The grievor testified that she told Supt. Morris she made the nominations in May 2002 but that she was unable to find her copies of the nomination papers when he was investigating the claim after the January 30, 2003 meeting. She testified that her copies of the May 2002 nominations got mixed up in her files and that only when she prepared her reply to C/Supt. Lanthier in late March and early April 2005 did she come across her copies of the nomination forms. She included copies of them in her reply to the Departmental Security Officer.

[901] The grievor also testified that she had offered to show the nomination forms to Supt. Morris earlier but that he was not interested.

[902] Ms. Bailey’s testimony was that the Queen’s Jubilee Medals information was provided to everyone, that she received the same information as everyone else and that there was no need for the nominations to be left with her. The process was for the nominator to send the nominations directly to Vancouver. She also said that two of the grievor’s four alleged nominees did not even work in the North District Office.

[903] Supt. Morris testified that the grievor's allegations at the joint union-management meeting were serious. He investigated them carefully and concluded that she had never made the nominations in May 2002, as she claimed. He believed for a number of reasons that she was lying. She never raised the lost nomination papers issue with him or with Ms. Bailey in the period between May 2002, when she allegedly left the nomination papers for Ms. Bailey to sign, and the joint meeting in January 2003, when she made her accusations. The grievor kept changing her story as to where she had put her envelope of nominations, first on Ms. Bailey's desk, then later in the internal mail room. She could not produce copies of the nominations or tell him exactly when she had made them, and two of the four people that she claimed to have nominated did not even work in the North District Office, so there was absolutely no reason to involve Ms. Bailey. He testified that the grievor told him she had apologized to her nominees on the day of the award announcements because none of them won. However, when he checked with the two nominees who worked in the North District Office, they told him that they did not know anything about being nominated or about the grievor apologizing to them. He testified that, when challenged with those facts, rather than admitting her wrongdoing, the grievor perpetuated her lie.

[904] I draw no negative inference from the fact that the nomination forms the grievor attached to her reply to C/Supt. Lanthier were unsigned by the nominees because I think the evidence showed that they did not have to be notified. Ms. Bailey's testimony was that she was awarded one of the Queen's Jubilee Medals, and she knew nothing about being nominated until she was informed that she had won.

[905] I also note the conflicting testimony as to whether the nomination forms in 2002 were the same as those in the grievor's exhibit containing copies of them, which she claimed to have made in May 2002.

[906] I do not have a problem with the testimonies of Ms. Bailey and Supt. Morris on the nomination incident, but I do have concerns with the grievor's credibility. First, the documentary evidence from 2002 produced by both parties makes no reference to the grievor leaving the nomination forms for Ms. Bailey because they required a signature of a supervisor before being forwarded to Vancouver, even though the forms produced by the grievor for the first time in her reply to the Departmental Security Officer in April 2005 have a blacked-out middle section that could be for either the nominator or

a supervisor to sign before forwarding them. Second, the grievor gave Supt. Morris the names of the individuals she allegedly nominated when he was investigating her claims following the January 2003 meeting but not the short biographies of the nominees that she produced in mid-March in her emails to C/Supt. Dingwall and Sgt. Maj. Stewart. That leads me to conclude that she did not have that biographical information when the nominations were allegedly made and that she did not have it until she collected it in early March 2003. Third, the documentary evidence from 2002 and 2003 does not show that the grievor ever told Supt. Morris or C/Supt. Dingwall or Sgt. Maj. Stewart that she had made copies of her nominations but couldn't find them in her files as she later claimed was the case in her response to the Departmental Security Officer in April 2005.

[907] Fourth, it was not just in her "forced" apology that the grievor admitted that she had not followed the designated nomination process of sending the nominations directly to Vancouver in 2002. She made the same admission in at least one of her emails to union colleagues.

[908] Fifth, I think that Supt. Morris's testimony that the grievor lied earlier when she claimed that she had apologized to her nominees when they did not receive awards is in keeping with the evidence that he spoke to the two nominees who worked in the North District Office and that they disclaimed that she had done so. In her testimony, the grievor did not deny telling Supt. Morris that she had apologized to her nominees. Rather, she changed her story, claiming that she had apologized to several of her USGE members (as opposed to her nominees) at that time.

[909] Sixth, I have difficulty believing the grievor's testimony that she offered to show the nomination forms to Supt. Morris earlier and that he was not interested in seeing them. The evidence shows that he retired in December 2004, well before March and April 2005, when the grievor testified that she found her lost copies of the 2002 nomination papers.

[910] I also note that no evidence was adduced to support the embellishments and accusations the grievor made later in 2004 that Supt. Morris, according to one of her emails, or "certain people," meaning him and Ms. Bailey in another of her emails, wanted to control the nomination process and to have a veto over her nominations.

[911] On the evidence adduced, I think that it is more likely than not that the grievor

never made the nominations as she claimed in May 2002, that the nominations did not exist in February 2003 when Supt. Morris was investigating the grievor's allegations made at the January 30, 2003 meeting, that the biographical information she sought in early March 2003 was to produce the biographies for her nominees contained in her mid-March 2003 emails to C/Supt. Dingwall and Sgt. Maj. Stewart, and that Supt. Morris did not fabricate the incident in his November 29, 2004 memo that, in turn, C/Supt. Lanthier mentioned as one of the incidents of concern to him.

[912] I also note the grievor's testimony that I believe showed a lack of accountability for her behaviour and that was given with the objective of minimizing the consequences of her actions. She testified that she never named Ms. Bailey at the joint union-management meeting as the person who did not forward her nominations when the issue of her lost nominations papers was first raised. She said that it was "the office manager" and that it was Supt. Morris who provided Ms. Bailey's name. She also testified that Supt. Morris's interpretation that she accused Ms. Bailey at the meeting of either intentionally or negligently not forwarding the grievor's nominations was incorrect. She never accused Ms. Bailey of intentionally not forwarding the nominations. She testified that she was still collecting information at the time of the meeting.

[913] I do not think the grievor's explanation takes away from the seriousness of her accusations made at the joint union-management meeting. She identified the person allegedly at fault as the office manager, and there was only one officer manager in the North District Office at that time, so it was clear to whom she was referring. Furthermore, asserting that she did not accuse the office manager of intentionally not forwarding her nominations, leaving the accusation that the office manager could have negligently failed to forward them, is still a very serious allegation against Ms. Bailey.

[914] With respect to the harassment ground raised by the Departmental Security Officer in his revocation letter, the grievor's reply to the Departmental Security Officer asserts that her harassment claims were true and that she was one of the public servants harassed. She asserted that Supt. Morris and S/Sgt. Beach not only condoned her harassment but also participated in it, severely abusing their authority.

[915] I have already dealt with the harassment incident evidence in my decision on the 10-day suspension. I see no need to repeat or expand it except to note the following. Counsel for the grievor strenuously argued that the grievor's honest belief

or perception that harassment was rampant in the North District Office and that management did not take harassment or harassment claims seriously, that Supt. Morris was not impartial because of his friendship with the individuals the grievor claimed harassed her, or that he instructed S/Sgt. Beach to lean on her extra hard and to nitpick and find fault with her, means that she cannot be considered to have been lying or deceitful in her repeated public accusations made to many people about those points, even in the face of clear evidence that contradicts her beliefs.

[916] I believe that the sincerity of the grievor's beliefs does not diminish the reality that management, which dealt with her unfounded accusations, honestly and in good faith concluded, based on her behaviour, that she lied or deliberately misrepresented or embellished events to portray herself as the victim. In other words, the sincerity or honesty of her beliefs does not prevent her unsupported allegations from being weighed when determining the reliability of her evidence and from being considered when weighing the reliability of the testimonies of the employer's witnesses, who had to deal with her behaviour.

[917] With respect to the Central Police Information Centre system entries incident noted in the suspension letter, the grievor's reply to the Departmental Security Officer was that she had never claimed to have received instructions from the central file clerk on files in the Central Police Information Centre system and that Supt. Morris had fabricated that claim. In the revocation letter, the Central Police Information Centre system ground was expanded to describe her behaviour, in which she continued to enter inaccurate file numbers in the Central Police Information Centre system, despite entering them correctly for years and despite the guidance and extra training that were provided to her.

[918] In her testimony, the grievor stated that making entries in the Central Police Information Centre system was difficult, that she had been asking for a formal course for years and that she received one only in August 2004. She added that the guidance and manual that S/Sgt. Beach had provided her earlier was insufficient and incomplete, that it takes time, even after a formal course, for an employee to master a task, and that she did not intentionally or deliberately make errors to discredit her supervisor, as Supt. Morris believed.

[919] The Central Police Information Centre system is a national police tool. Each witness who spoke about it, including the grievor, stressed the importance of a high

level of accuracy in entry work in the Central Police Information Centre system because it is the basis for arresting and detaining private citizens. C/Supt. Clark called it the Holy Grail of police work. The grievor had performed entry work in the Central Police Information Centre system even before she transferred to the North District Office. She had received basically good performance evaluations until approximately spring 2004. She did not deny making the Central Police Information Centre system entry errors that S/Sgt. Beach reported. She did not deny that he gave her several instructional directives aimed at reducing her errors. Her complaint was that he nitpicked her work and gave her unnecessary directives and that Supt. Morris had instructed him to lean on her hard and to nitpick and find fault with her work. She made the same accusations in a number of her emails sent inside and outside the RCMP. There was no evidence adduced to support those accusations.

[920] Even if, as the grievor claimed, entries in the Central Police Information Centre system are difficult and she was not given enough formal training soon enough and that she did not intentionally make errors in Central Police Information Centre system entries, it was not unreasonable on the evidence for Supt. Morris to conclude that her increasing number of errors in entering data in the Central Police Information Centre system in fall 2004, despite former good work and increased guidance from her supervisor and a formal course in August 2004, were deliberate errors that she made to discredit her supervisor.

[921] I also note that, even if the grievor was truthful in her explanation of her errors in entering data in the Central Police Information Centre system, it does not mean that entering inaccurate file numbers in it was just a performance issue and that no reliability concerns were raised by her behaviour for C/Supt. Lanthier to consider in good faith. One documented incident resulted in the illegal arrest of a citizen due to an improper entry that she made. She testified that it was the result of not just her error but of a combination of errors by her and others. I note the testimony of Mr. Briske. When he was asked in cross-examination if the grievor's errors in entering data in the Central Police Information Centre system could have been a performance issue, not a security issue, he replied that, if a person cannot perform a task, it can be a reliability issue because the person cannot be relied upon to do it.

[922] I do not believe that I need go into in any more depth on the incidents cited as grounds by C/Supt. Lanthier for forming his opinion that he no longer had confidence

in the grievor's honesty and trustworthiness. As noted, my role is not to review the reasonableness of his conclusion that he had lost trust in her honesty and integrity but rather to determine whether his suspension and revocation decisions were tainted by bad faith in the sense of being a sham or a camouflage for getting rid of her via an improper use of his authority to revoke her RCMP reliability status for cause. I believe the evidence adduced at the hearing that I reviewed establishes that he had legitimate grounds, acting in good faith, for losing confidence in the grievor's honesty, trustworthiness, integrity and reliability. Had I reviewed his decision for reasonableness, I would also have found that his conclusion that her behaviour raised real concerns about her honesty, trustworthiness and reliability was reasonable on the evidence adduced.

[923] I now turn to several additional arguments made by counsel for the grievor. First, I do not accept the grievor's argument that, even had she lied about having made the QGJC Medal nominations and about having been told of an end date for the harassment awareness training workshop, those lies at most raise discipline issues, and therefore, it was bad faith on his part for C/Supt. Lanthier to rely on them when revoking her RCMP reliability status. Furthermore, I do not believe that the six incidents relied on by C/Supt. Lanthier were all trivial, as the grievor claimed, or that they should have at most resulted in disciplinary action against her. The Departmental Security Officer was entitled to consider the six incidents together when determining whether her conduct raised security concerns for him.

[924] Second, the fact that the employer did not discipline the grievor for some of the incidents in the 2001 to July 2004 period when they occurred and before her fitness-to-work assessment was completed does not make them trivial. Supt. Morris provided a credible explanation in his testimony for not taking disciplinary action earlier against her. First, he had concerns that the root of her behaviour might be medical, and it would have been wrong to discipline her if so. Second, only in mid-November 2004 did he begin to see a pattern of deceitful conduct on her part rather than isolated incidents of misconduct.

[925] Counsel for the parties raised two additional arguments about the objection to jurisdiction arguments and about a possible review of the employer's suspension and revocation decisions for reasonableness. As I do not have jurisdiction to review them for reasonableness, as stated, I will consider those arguments briefly in relation to the

issue of whether C/Supt. Lanthier acted in good faith in reaching his decisions to suspend and then revoke the grievor's RCMP reliability status for cause.

[926] C/Supt. Lanthier had two pieces of information before him when he made the revocation decision in July 2005 that were not before him when he suspended the grievor's RCMP reliability status. They were her April 6, 2005 reply to him, which included her two earlier submissions to the Pacific Region Departmental Security Section, dated January 27, 2005 and February 9, 2005 respectively, and the transcripts she forwarded with her reply that clearly demonstrated she had been secretly taping conversations in the North District Office for at least three months.

[927] The grievor's reply to C/Supt. Lanthier's suspension letter is most unusual in tone, tenor and content. I believe that her reply, especially when read in conjunction with her two submissions to the Pacific Region Departmental Security Section, would raise a reasonable concern in any recipient as to her well-being and judgement. I have some sympathy for counsel for the grievor's submission that if, as Supt. Morris testified, her behaviour seemed increasingly irrational after she was served with the letter of expectation, and if her problems were as obvious as the witnesses described, why was more not done through human resources options to help her? However, I think it reasonable to conclude a factor might have been her response to Supt. Morris's requirement that she undergo a fitness-to-work assessment in July 2004 before returning to work.

[928] That said, C/Supt. Lanthier was clear in his testimony that the actions of the employer's Human Resources Department are separate from those of the Departmental Security Branch. The decision-making process established by the Departmental Security Officer is deliberately designed to screen out performance and general management issues. C/Supt. Lanthier's jurisdiction and focus as the Departmental Security Officer were on the security risks presented to the RCMP by the grievor's behaviour, which were real, in his opinion. He also testified that, once the security review process is activated, he must use due diligence when investigating. Leaving the matter to the employer's Human Resource Department to deal with is not an option for him.

[929] With respect to the grievor's surreptitious recording of conversations in the North District Office over at least a three-month period and the cases cited by counsel for the employer, I agree that such behaviour may not be illegal but is certainly



unethical, sneaky and at times definitely deceitful, particularly in this case, since she denied it when Insp. Clark specifically asked her in a meeting if she was recording and she was recording at that time.

[930] In her reply to the Departmental Security Officer, the grievor submitted that many people were “overreacting” to her taping in the North District Office. She attributed it to management being angry because she had recorded a superintendent and a sergeant blatantly lying and bullying and harassing her.

[931] I agree with the arbitrator in *North Bay General Hospital*, who stated as follows at page 151:

...

*Thirdly, with respect to his taping of personal calls with colleagues and management, it is not illegal to do so. However, in our view, this conduct does strike at the trust which is so essential in the Ambulance Service. It is invasive to tape a telephone conversation when the other party does not know that his or her words are being recorded. While both Messrs. Black and Tignanelli testified about their very strong feeling that there is a “poisoned atmosphere” in the Service and that management has a lot to do with this atmosphere, this does not justify the taping of personal calls with colleagues and management. . . .*

...

[932] The grievor testified that she secretly recorded office conversations because she was being bullied and harassed in the workplace and no one believed her. She taped conversations to prove it. I do not believe that justifies her actions. Even if I did, it would not justify her behaviour of secretly recording her meeting with Insp. Clark on October 4, 2004. She seemed to like and trust Insp. Clark and never suggested that he bullied or harassed her. He testified that, had she asked him if she could tape their meetings, he would have had no objection. I found the clandestine recording of the meeting she requested with him on October 4, 2004 deceitful as she misled him in her answer to why she asked him about a meeting held eight months earlier. In addition, she tried to manipulate him into making negative comments on tape about what Supt. Morris said and did at that earlier meeting.

[933] While *North Bay General Hospital* dealt with whether unjust discipline was imposed on the grievor in that case for his behaviour, I think the surreptitious

recording would also be relevant to an assessment by the employer of the grievor's honesty, trustworthiness and integrity. While I place no weight on that argument with respect to C/Supt. Lanthier because he did not testify that her recording was a factor in making his decision to revoke her RCMP reliability status, I consider it relevant in assessing the bona fides of Supt. Morris's actions in initiating the review of her RCMP reliability status when he learned in mid-November 2004 that she had been surreptitiously taping in the North District Office.

[934] In summary, I have concluded that the evidence put forward by the grievor falls short of meeting the onus of establishing that C/Supt. Lanthier acted in bad faith or that his reasons in his suspension and revocation letters were a sham or a camouflage for disguised discipline or other ulterior motive. There is no question that the grievor removed documents from the North District Office on more than one occasion, while denying it, and that she lied to management on more than one occasion and was less than candid on others, rather than admit to any wrongdoing. Those are legitimate factors for the Departmental Security Officer to have considered when he formed his opinion that he could no longer trust her not to abuse her authority as an RCMP employee.

[935] The incidents described are not just human resources or discipline issues as claimed by the grievor. C/Supt. Lanthier had to assess her reliability from her behaviour. In my opinion, her behaviour in the incidents described gave him ample grounds for forming his subjective opinion in good faith that she could no longer be relied upon not to abuse the trust accorded to her and for exercising his discretion to revoke her RCMP reliability status.

[936] Before examining the breaches in procedural fairness alleged by the grievor, I wish to briefly consider her submissions that Supt. Morris acted in bad faith and that it was a form of disciplinary action that tainted the employer's entire RCMP reliability status revocation process.

### **3. Supt. Morris**

[937] The grievor alleged that Supt. Morris was improperly motivated in initiating the security review process and that it can be imputed in some way to C/Supt. Lanthier thereby tainting the exercise of his administrative discretion in that it influenced his opinion that he had lost confidence in the grievor's reliability. Alternatively, the

employer's security review process for revoking the grievor's RCMP reliability status was so tainted by Supt. Morris's bad faith that I have jurisdiction over the suspension and revocation grievances under paragraph 209(1)(b) of the *PSLRA*, and the bad faith cannot be remedied by this adjudication.

[938] Counsel for the grievor made several related bad faith submissions about Supt. Morris, which were that he had improperly initiated the security review process to rid the workplace of the grievor, that he had manipulated the Departmental Security Officer into improperly using his security review authority to revoke her RCMP reliability status by fabricating or exaggerating trivial incidents that did not raise any real security concerns, and that his November 29, 2004 memo cited many incidents, which caused Mr. Briske concerns about security, the Departmental Security Officer's reduction of which, first to five and then to six incidents, showed that Supt. Morris used the security review process review to deal with what were human resources or, at worst, disciplinary issues.

[939] Counsel for the grievor also submitted that the employer, by putting the extensive binder of materials together (Exhibit 1) for the Departmental Security Officer's review, showed its bad faith and that its real motive was to get rid of the grievor.

[940] The allegation that Supt. Morris improperly initiated a security review of the grievor's RCMP reliability status had two parts. One was an email exchange between several individuals. The other was his testimony on what he identified as the security risks raised by the grievor's conduct.

[941] Many emails exchanged from mid-November 2004 to January 8, 2005 were adduced in evidence. However, the primary email exchange identified as evidence of an ulterior motive occurred in late November. It shows that, after being informed by Pacific Region Public Service Human Resources Office that the grievor had been surreptitiously recording conversations in the North District Office, Supt. Morris sent a memo on November 19, 2004, seeking advice on how to deal with her behaviour. He sent it to three recipients, listed by their positions. They were the officers in charge of Human Resources, Pacific Region (C/Supt. Dingwall), the Pacific Region Departmental Security Section (Mr. Mitchell) and the Departmental Security Officer in Ottawa (C/Supt. Lanthier).

[942] When he received the email, C/Supt. Dingwall sent an email on November 21, copied to Supt. Morris and others, asking a staff member to discuss the options with Ms. Major-Hurt at Pacific Region Public Service Human Resources Office and the Pacific Region Departmental Security Section.

[943] C/Supt. Lanthier's November 22, 2004 email to his staff member, Mr. O'Donnell, states the following: "This request just came in. Looks like a combination of managerial and security. I suggest we wait to hear from Pacific DSS before taking any action." Mr. O'Donnell replied on the same day, stating the following:

...

*I agree. We shouldn't take away someone's reliability status unless there are legitimate grounds to do so. The results of the internal investigation should provide that, if we believe all that has been written to date, which I have no reason to doubt in any manner.*

...

[944] Mr. Mitchell sent an email on November 22, addressed to "Gentlemen," which included Mr. O'Donnell, who later replied. Mr. Mitchell stated that he met with Supt. Morris on November 14, who informed him of the events that Supt. Morris later described in his November 19 email. Mr. Mitchell stated that, at the meeting, he suggested "the possibility of recommending the suspension of [the grievor's] reliability status due to the continuing issues of deceitfulness. The human resource component has not been a solution so far." Mr. O'Donnell replied to Mr. Mitchell, stating that, to initiate the process, he suggested beginning with a security interview to set the stage for any further action.

[945] A security interview, if held, would have been carried out by the Pacific Region Departmental Security Section, which was under Mr. Mitchell's leadership. That Pacific Region Departmental Security Section did not carry out the suggested security review, but it was not mandatory for it to conduct one as part of its investigation.

[946] Mr. Mitchell acknowledged Mr. O'Donnell's suggestion by email of November 25 and stated that he read S/Sgt. Hildebrand's report but that it in itself did not support revoking the grievor's RCMP reliability status. However, if all the details of all the incidents could be connected, he was optimistic that that revocation would be supported. He also states that he was awaiting the investigation report of the grievor's

departmental security complaint form against S/Sgt. Beach (Sgt. Lennox's report) and that his office, the Pacific Region Departmental Security Section, would not take any further action until that report was issued.

[947] Counsel for the grievor argued that that email exchange and Supt. Morris's subsequent development of his memo of November 29, 2004, in which he chronologically described what he then saw, with hindsight, as a pattern of deceitful behaviour by the grievor rather than isolated incidents of misconduct, show that the initiation of the security review process was a sham or contrivance to get rid of the grievor when Supt. Morris was unable to do so through the human resources route.

[948] I do not interpret the emails in the same way as counsel for the grievor. I do not see any conspiracy to improperly use the security review process as suggested. To me, C/Supt. Lanthier's initial reply and Mr. O'Donnell's response support C/Supt. Lanthier's testimony that the first step in the revocation decision-making process was for the regional Departmental Security Section to complete its investigation and determine if legitimate security concerns should be brought to the Departmental Security Officer's attention or whether the issues raised by the North District Office Commander were in fact about performance and management.

[949] I agree with counsel for the employer that the same behaviour can raise security as well as discipline and human resources issues and that the employer was not required to use only one method to deal with the grievor's problematic behaviour. In this case, the evidence establishes that it used all three approaches.

[950] Supt. Morris testified that, in early November, he had determined that, based on the Flewelling Letter of Suspension Report of November 9, 2004, when the grievor returned to the workplace after her 10-day suspension, he intended to impose another 10-day suspension on her for her theft of S/Sgt. Beach's email to Pacific Region Public Service Human Resources Office of October 29, 2004 and for lying to her supervisor about it. His initial memo of November 10, 2004 was addressed, as noted, to Human Resources Management, Vancouver.

[951] However, when Supt. Morris learned from Pacific Region Public Service Human Resources Office that the grievor had been surreptitiously recording interactions in the North District Office, he determined that discipline was no longer sufficient to deal with the security risks he saw to the RCMP and to other employees from her behaviour.

He testified that he had never been involved in a security review in over 30 years with the RCMP. He was not sure how the process worked, so he sought advice from Pacific Region Public Service Human Resources Office, the Pacific Region Departmental Security Section and the Departmental Security Branch in Ottawa as shown by his memo of November 19, 2004.

[952] The evidence also shows that, in early November 2004, Insp. Clark used human resources options, discipline and a security review when he forwarded the Hildebrand Security Breach Report to Pacific Region Public Service Human Resources Office for possible disciplinary action against the grievor. At the same time, he referred the report to the Pacific Region Departmental Security Section because, as he testified, behaviour may raise security concerns, even if there is no security breach. Insp. Clark testified that he took that action on his own while he was the acting superintendent in the absence of Supt. Morris. When Supt. Morris returned and was informed of the referral, he made no comment on it.

[953] As for whether, in good faith, Supt. Morris saw real security risks in the grievor's behaviour when he initiated the security review process in November 2004, her counsel submitted that, on cross-examination, he was asked for concrete examples of the risk that she represented to the RCMP. His examples did not present any.

[954] Counsel for the grievor argued that, if the incidents related by Supt. Morris raised genuine risks, one would have expected management to have addressed them earlier and to have taken steps to secure or otherwise make the North District Office safe. The fact that the grievor had not even been disciplined for some of the incidents when they occurred demonstrated that they were not serious and that the RCMP never had any real concerns with her reliability. Counsel added that the fact that one example Supt. Morris provided, which was his concern about how her ongoing harassment of some employees put them at risk, means that he penalized her for complaining of harassment, which is illegal. Counsel also submitted that the October 29, 2004 printer incident, which weighed heavily in Supt. Morris's answer, had virtually nothing to do with reliability issues.

[955] I do not assess Supt. Morris's testimony about the risks he saw to the RCMP and North District Office employees when he wrote his November 29, 2004 memo to the Pacific Region Departmental Security Section in the manner portrayed by counsel for the grievor. In his memo, Supt. Morris outlined what he saw as examples of the

grievor's deceitful behaviour in the workplace over time, which, with hindsight, he saw as establishing a pattern of untrustworthy behaviour by her that he had earlier viewed as isolated incidents of misconduct. In addition, he provided a number of concrete examples, when asked in cross-examination. Many of the incidents he testified about were reflected in the six incidents later relied upon by C/Supt. Lanthier when reaching his decisions to suspend and revoke her RCMP reliability status.

[956] As noted, Supt. Morris testified that he did not discipline the grievor for her behaviour before he received her fitness-to-work assessment in mid-July 2004, although he would have disciplined other employees who engaged in such behaviour, because he was concerned that the root of her problem might be medical. He would not discipline an employee whose behaviour might be caused by medical problems or substance abuse before verifying it. In addition, once he received Dr. Prendergast's report that there was no medical reason for her unacceptable conduct, he moved to serve the letter of expectation on her as soon as she returned to work. He told her personally that her workplace misconduct would no longer be tolerated. The fact that he did not then discipline her for her pre-July 2004 misconduct does not mean that her earlier misbehaviour was not serious or that, when reviewed along with her later behaviour, such as the October 29, 2004 printer incident, it might not, in good faith, be seen as establishing a pattern of lying and deceitful behaviour that raised real security concerns about the RCMP's employees and property.

[957] I also do not assess Supt. Morris's testimony as illegally punishing the grievor for her ongoing harassment complaints against other employees. For example, her complaints against Mr. Stephenson and Cst. Wolney had been reviewed by a team of two independent investigators from outside the Pacific Region and were found unsubstantiated or unfounded. In addition, at her request, the Chagnon Harassment Report had been subject to an independent review in Ottawa that upheld the investigation process and the conclusions. Ms. Bailey's harassment complaint against the grievor was upheld after an investigation, and the grievor received a three-day suspension for her behaviour. Yet, she continued to assert in writing and at the hearing that Ms. Bailey had filed her harassment complaint as retaliation and as a means of interfering with the investigation of the grievor's complaints against Mr. Stephenson and Cst. Wolney. The sincerity of her beliefs that she had been harassed and that the investigations were inadequate did not mean that no legitimate risk to other employees' well-being was raised by her repeated unfounded accusations.

[958] I also note the grievor's oft-repeated and damaging public accusation that Ms. Bailey had obtained a copy of her disparaging email of October 1, 2003 by unethically going through the grievor's desk and that, therefore, Ms. Bailey deserved to read negative things about herself. The grievor was clearly informed by the Chagnon investigators and by Cpl. Adair, if not also by Supt. Morris, that someone she had blind copied had given a copy of her email to Supt. Morris, who in turn gave a copy to Ms. Bailey. In October 2004, in her communication with Cpl. Adair, the grievor still questioned whether she had blind copied anyone on her October 1, 2003 email.

[959] I will comment only briefly on the grievor's many accusations that Supt. Morris had lied and fabricated stories about her. Her statements to that effect in her reply to C/Supt. Lanthier are extreme and are unsupported by the evidence adduced at the hearing. Three small examples of her less-extreme allegations I think demonstrate how she failed to admit to any wrongdoing and attempted to discredit the evidence of Supt. Morris as being motivated by a personal vendetta, even though much of his evidence was accurate, as she admitted.

[960] The grievor testified and also wrote in an email that, at a meeting in Supt. Morris's office, she had called Mr. Stephenson a liar and an asshole, in two consecutive sentences, but that she had not called him a "lying asshole" as Supt. Morris wrongly claimed. She accused him of a fabrication when he said she called him a "terrorist leader." She testified that she said, and she later wrote in one of her emails, that he "led by fear, by intimidation and by terror." She alleged that he had falsely accused her of changing the curriculum in the mandatory, national RCMP harassment training course without prior authorization, which caused her to be replaced as a course co-facilitator. She testified that she had added three documents to the curriculum, on her own initiative, but that that had not changed the curriculum, as he had claimed.

[961] As for the grievor's argument that Supt. Morris would have taken other steps to make the North District Office safe had he really believed that her behaviour raised reliability concerns, I note that she never returned to the workplace following her 10-day suspension. Once he learned from Pacific Region Public Service Human Resources Office in mid-November when she was on suspension that she had been surreptitiously recording in the North District Office, he moved immediately for advice on having her RCMP reliability status reviewed.



[962] In summary, I have concluded that the grievor's evidence falls short of meeting the onus of establishing that the employer acted in bad faith or that the reasons it cited in its revocation letters were a sham or a camouflage of disguised discipline or of other ulterior motives. The incidents described are not just human resources or discipline issues, as she claimed. C/Supt. Lanthier and Supt. Morris were able to assess her reliability only from her behaviour. The evidence shows that the decisions that each made were motivated by serious concerns about her honesty, trustworthiness and reliability, arising from her behaviour.

[963] I do not believe that the evidence adduced established that Supt. Morris acted improperly by activating the security review process in November 2004 or that the employer acted in bad faith by assembling as complete a binder of relevant background material as it could for the Departmental Security Officer's review. However, even had I found that Supt. Morris had improperly initiated that process, I would not find on the evidence that C/Supt. Lanthier was so naive and inexperienced as to be duped, manipulated or played by Supt. Morris into making other than a bona fide decision based on his real security concerns, which arose from the grievor's conduct in the six incidents he relied upon. I also would not find that, had Supt. Morris improperly initiated the security review process, his actions would have so tainted the Departmental Security Officer's revocation decisions to an extent that could not be remedied by this adjudication.

[964] To conclude, the grievor bore the burden of establishing that, on a balance of probabilities, the employer's decisions to suspend and revoke her RCMP reliability status were shams, contrivances or camouflage designed to disguise motives that had nothing to do with her reliability for RCMP employment. She did not meet that onus of establishing bad faith in the employer's decision making.

[965] Having found that the employer's decisions to suspend and revoke the grievor's RCMP reliability status were not tainted with bad faith, I now turn to her arguments that there were serious breaches of procedural fairness in the employer's decision-making process and that, on that basis, I should allow the grievances.

#### **E. Procedural fairness**

[966] As noted, the case law clearly recognizes that adjudicators have at least limited jurisdiction to review an employer's decision to revoke an employee's security

clearance to determine if procedural unfairness was present in the context of that decision (see *Gill*). In addition, as noted at paragraph 141 of *Braun*, an allegation of a lack of procedural fairness cannot stand alone but can be considered as an indicator of the true characterization of an employer's revocation decision as disciplinary rather than administrative.

[967] Counsel for the grievor argued that the employer's revocation decision-making process was driven by unfairness. The following five breaches were alleged:

- neither Mr. Briske nor C/Supt. Lanthier held a security interview with the grievor;
- Mr. Briske and C/Supt. Lanthier conducted only a paper review, and each either prejudged the security issue or made a variety of assumptions about the information that Supt. Morris presented to him, which was not warranted;
- the grievor was not given a copy of the Briske File Review Report before replying;
- the incident descriptions in the RCMP reliability status suspension letter of March 22, 2005 were too vague for the grievor to respond to fairly; and
- the grievor was given only 14 days to reply.

[968] The duty of procedural fairness varies with the circumstances of a case. In this case, the grievor had to be informed of the full case she had to meet and had to be given a fair opportunity to present her side of the story before an unbiased decision maker.

[969] C/Supt. Lanthier was clear in his testimony that, as the Departmental Security Officer, he evaluated the risk arising from the grievor's behaviour and that he concluded that she had not been honest on a number of occasions and that she could no longer be relied upon not to abuse the trust accorded to her. He did not speak to Mr. Briske or to Supt. Morris during his decision making, and his evidence was not contradicted. Therefore, I will concentrate on the allegations of procedural unfairness about the Departmental Security Officer's two-stage decision making.

[970] On the evidence adduced, the grievor clearly did not have an opportunity to

make any submission on the issue of whether her RCMP reliability status should have been suspended before the Departmental Security Officer made his interim decision in March 2005 to suspend her reliability status pending further investigation.

[971] When her RCMP reliability status was suspended, the grievor had a copy of Supt. Morris's memorandum of November 29, 2004 to the Pacific Region Departmental Security Section, which raised concerns about maintaining her RCMP reliability status, so she knew that it was under review. She had prepared a detailed response to that memorandum, dated January 27, 2005. However, she was not given any opportunity by Mr. Briske to respond to Supt. Morris's findings, many of which contained facts that she disputed.

[972] I do not think that either Mr. Briske or the Departmental Security Officer was required to hold a personal security interview with the grievor to constitute fair procedure. A paper review can be sufficient in some circumstances if it includes an opportunity for a grievor to make a meaningful and thorough submission on the issues.

[973] With respect to Mr. Briske's investigation, I note, with agreement, the evidence of Mr. O'Donnell, who had suggested in an email to the Pacific Region Departmental Security Section that a security interview would have been a good place to start the investigation, even though it was not mandatory. Mr. Briske's testimony was that it was not his function to carry out a field investigation or to interview the employee involved because, by the time the file reached him for analysis, many field investigations and reports would have been carried out by senior RCMP and other investigators. During those investigations, the employee under review, such as the grievor, would have had an opportunity to tell his or her side of the story. Mr. Briske believed that, if the Departmental Security Officer later determined that he wanted an interview done with the grievor, the Departmental Security Branch would have informed him.

[974] On the evidence adduced, Mr. Briske took the reports of Supt. Morris, S/Sgt. Hildebrand, Cpl. Flewelling and others at face value and adopted the findings in his report that included 21 incidents and a recommendation to the Departmental Security Officer to revoke the grievor's RCMP reliability status because, he concluded, she could not be relied upon to perform her work honestly and with reliability. When he wrote his report, Mr. Briske did not have before him either of the two submissions that she wrote to the Pacific Region Departmental Security Section, because she

apparently had not forwarded her submission dated January 27, 2005 when she wrote it, and her submission dated February 9, 2005 did not reach the Pacific Region Departmental Security Section until after the Briske File Review Report was forwarded to the Departmental Security Officer on February 12, 2005. It meant that the Departmental Security Officer also did not have any of her submissions before him when he reviewed the file with his security risk analyst at the Departmental Security Branch in Ottawa and suspended her RCMP reliability status pending further investigation.

[975] I now turn to the issue of whether the grievor had a fair opportunity to know the case against her and to make a meaningful response before the Departmental Security Officer decided to revoke her RCMP reliability status for cause. I do not think that there was a serious challenge to the Departmental Security Officer's impartiality. Rather, the objection was that it was insufficient for him to have made his revocation decision without personally interviewing her.

[976] I reject the grievor's allegation that the Departmental Security Officer's revocation decision was unfair because he did not personally interview her before he made it. As noted, it was open to him to interview her, but he was not required to. He was entitled to make a decision based on the information before him in the file, provided that the grievor had had a fair opportunity to present her side of the story before he did so.

[977] When the Departmental Security Officer made his decision, he had before him all the material in Exhibit 1. It included the grievor's seven-page single-spaced reply to the Departmental Security Officer of April 6, 2005 and the two lengthy submissions she had prepared earlier for the Pacific Region Departmental Security Section that she included in her reply, along with transcripts of her office recordings, performance logs, sick leave information and other materials.

[978] The grievor argued that she had not been given a copy of the Briske File Review Report before making her reply and that the incident descriptions provided by the Departmental Security Officer in the RCMP reliability status suspension letter were too vague for her to fairly respond to.

[979] I do not find it unfair that the grievor was not provided with a copy of the Briske File Review Report. The Departmental Security Officer testified that he listed in

his suspension letter the five incidents, later divided into six, which raised security concerns for him and on which he was going to make his decision. He did not want the grievor to respond to the other incidents described in the Briske File Review Report that he believed raised general management and performance issues that were outside his jurisdiction and not of concern to him. No evidence was adduced that the Departmental Security Officer relied upon any of those other incidents in the Briske File Review Report in forming his opinion that he no longer had confidence in the grievor's honesty, trustworthiness, integrity and reliability.

[980] I agree that the descriptions provided of the five incidents that were of concern to the Departmental Security Officer were brief. But I do not think that, in the circumstances of this case, they were too vague for the grievor to know the case she had to meet. She had a copy of Supt. Morris's memorandum. Her reply to the Departmental Security Officer, in which she included her two detailed submissions to the Pacific Region Departmental Security Section, makes it clear she understood his concerns. Required of her at that time was a complete and consistent explanation of her behaviour in the five incidents. In my opinion, she chose as a tactical approach to attack her managers in her reply and not to respond specifically to the listed incidents in any depth.

[981] I agree with the Departmental Security Officer's assessment that, in her reply, the grievor did not address his concerns. He had stated that he had suspended her RCMP reliability status as a consequence of the untruthful and deceitful information she had provided to Ms. Bailey, Supt. Morris, S/Sgt. Hildebrand and C/Sgt. Beach for the five events. In her response, she basically chose to state that she never discussed or that she had had limited discussions about those events with all the named people, implying therefore that she could not have provided them with untruthful information, as alleged. Most of the representations in her reply are over-the-top attacks on the integrity and honesty of Supt. Morris and S/Sgt. Beach. She carefully avoids addressing the facts of the incidents while giving her side of management's alleged improper, even criminal, behaviour and abuses of authority.

[982] I also do not find that a 14-day reply period, as provided for in section 5.2 of the RCMP Reliability Status Policy, was unfair in the circumstances of this case. As noted, the grievor had received a copy of Supt. Morris's memorandum in December 2004, and she had prepared a paragraph-by-paragraph response to it, dated

January 27, 2005, which she was going to use at the final level of the grievance process. In addition, she had prepared her detailed submission to the Pacific Region Departmental Security Section dated February 9, 2005. The five incidents later relied upon by the Departmental Security Officer were part of those submissions.

[983] In conclusion, I note that the grievor bore the burden of establishing that the employer breached procedural fairness by deciding to revoke her RCMP reliability status. I find that the evidence of procedural deficiencies that she put forward falls short of meeting the onus of establishing that, on a balance of probabilities, the employer's suspension and revocation decisions were, in their true characterization, disciplinary or made in bad faith.

[984] I also find that whatever procedural deficiencies existed in the employer's revocation decision-making process were wholly cured by this adjudication process, which involved a 38-day *de novo* hearing, almost 7½ days of which were devoted to the grievor's testimony, 5 in chief examination (see *Tipple*).

#### **F. Decision on the RCMP reliability status suspension and revocation grievances**

[985] In conclusion, the grievor has not met her burden of establishing that, on the balance of probabilities, the employer's RCMP reliability status suspension and revocation decisions were disguised discipline or were so tainted with bad faith or procedural unfairness that they could not be cured by this *de novo* hearing.

[986] Having heard all the evidence and having reviewed the submissions and authorities, I conclude that the employer's objection to my jurisdiction must succeed. I am without jurisdiction to hear the grievances against its decisions to suspend and revoke the grievor's RCMP reliability status for cause. I must dismiss them.

#### **G. Decision on union representation grievances**

[987] Nothing in the collective agreement prevents the employer from giving an employee non-disciplinary communications without a union representative present.

[988] As I have determined that the employer's decisions to suspend and revoke the grievor's RCMP reliability status were administrative and not disciplinary, the discipline article of the collective agreement does not apply. Neither are the two grievances sustainable that challenged the employer's decision to not allow her union

representation at the meetings when it served her notice of the suspension and the revocation as violating the discipline provisions of the collective agreement. I dismiss those grievances.

#### **H. Decision on the suspension from employment grievances**

[989] The grievor challenged the employer's decisions of March 24, 2005 and August 4, 2005 to suspend her indefinitely from employment without pay because she no longer met a condition of employment as a result of the revocation of her RCMP reliability status.

[990] The grievor's challenge to the employer's March 24, 2005 suspension decision is combined in one grievance with her challenge to its decision of March 22, 2005 to suspend her RCMP reliability status. I have already dealt with the jurisdictional objection under section 209 of the *PSLRA* to that grievance.

[991] The grievor's challenge to the employer's decision to suspend her indefinitely without pay on August 4, 2005 was made separately from her challenge to its decision to revoke her RCMP reliability status on July 27, 2005. It is the fourth grievance, and it was referred to adjudication under paragraph 209(1)(b) and subparagraph 209(1)(c)(i) of the *PSLRA*.

[992] As the employer's decision to suspend the grievor did not involve a demotion or termination of her employment, subparagraph 209(1)(c)(i) of the *PSLRA* is not applicable. As noted, I can take jurisdiction over these grievances under paragraph 209(1)(b) only if the evidence supports a conclusion of disguised disciplinary action.

[993] Little time was spent in argument on the suspension from employment grievances as the focus of the hearing, and the written submissions, was on the adjudicator's jurisdiction to review the employer's suspension and revocation of RCMP reliability status decisions. I will deal briefly with that issue.

[994] Applying the principles set out earlier about what constitutes disciplinary action within paragraph 209(1)(b) of the *PSLRA*, the uncontradicted evidence of C/Supt. Clark, who served both suspension letters on the grievor, was that Pacific Region Public Service Human Resources Office, which had prepared the letters for his signature, advised him that there was no choice. An RCMP reliability status is the minimum

security clearance, and it is a condition of RCMP employment.

[995] C/Supt. Clark testified that he expected the grievor to return to work in April 2005 at the end of her sick leave and that he was surprised when C/Supt. Lanthier decided in March to suspend her RCMP reliability status before she had returned. He testified that, at first, he also was surprised on learning from Pacific Region Public Service Human Resources Office that there was no choice but to suspend her when she lost her RCMP reliability status and that so few options were available. However, on reflection, the decision to suspend her from employment because she had lost her RCMP reliability status made sense to him because, without an RCMP reliability status, an individual cannot access RCMP records and data and also cannot access RCMP property without being escorted at all times.

[996] No evidence was adduced and no allegation was made that C/Supt. Clark was motivated by any intention to discipline or punish the grievor by serving the indefinite suspension from employment letters of March 24, 2005 and August 4, 2005 on her or that he acted in bad faith or without procedural fairness by so doing.

[997] In summary, the evidence clearly establishes that the employer's suspension from employment decision of August 4, 2005 was administrative and was based solely on the fact that the grievor no longer met an essential condition of employment due to the loss of her RCMP reliability status. Therefore, I conclude that the grievances against that suspension cannot be adjudicated under section 209 of the *PSLRA*. I must dismiss them for lack of jurisdiction.

### **I. Decision on the termination grievance**

[998] I already stated my opinion that an adjudicator has jurisdiction to hear a termination of employment grievance under subsection 209(1) of the *PSLRA*, whether the termination was disciplinary or non-disciplinary, and that a termination of employment has to be for cause, as specified in subsection 12(3) of the *FAA*. I also stated my opinion that a grievor who loses an RCMP reliability status no longer meets a condition of employment. The employer had cause to terminate the grievor's employment under subsection 12(3) of the *FAA* unless she can establish that its determination that she no longer met a condition of her employment due to the loss of her RCMP reliability status was tainted by bad faith or by procedural unfairness.



[999] In my opinion, C/Supt. Lanthier, as the Departmental Security Officer, enjoyed some discretion when determining security requirements for the RCMP within the boundaries of good faith and procedural fairness.

[1000] *Hillis* also involved a termination following the revocation of a grievor's security clearance. The adjudicator in that case stated as follows at paragraphs 132 and 133:

*[132] The Federal Court of Appeal in Kampman (supra) has confirmed the decisional authority and prerogative in this matter on the part of the DSO. It has established standards of review for examination by the adjudicator. As such, in order to succeed in having this decision reviewed, the grievor had to demonstrate that the employer failed to comply with the rules of procedural fairness and reasonableness.*

*[133] As long as the Departmental Security Officer's actions are in keeping with the authority delegated to him by the Government Security Policy and Personnel Security Standard, he has the authority to rescind the grievor's reliability status. Given the information uncovered through the disciplinary investigation and subsequent events, a new determination had to be made as to whether the employee was still a reliable person to whom government assets could continue to be entrusted, including the very sensitive personal information provided by citizens. This determination was at the discretion of the DSO and the test to be met is the one found in those policies.*

[1001] With respect to the grievor's argument that the decision to terminate her employment due to the loss of her RCMP reliability status should be reviewed for reasonableness, I note with approval the cited comments in *Braun* at paragraph 139 that an adjudicator's role is not to determine whether an employer's decision to revoke an employee's security clearance is reasonable or whether I agree with it. I do not sit in appeal or in judicial review.

[1002] No evidence was adduced to convince me that the employer's decision to terminate the grievor's employment because she no longer met a condition of employment without her RCMP reliability status was unreasonable.

[1003] Having determined that an RCMP reliability status is the minimum security clearance required for employment with the employer, that its decision to terminate the grievor's employment because she no longer met a condition of employment without her RCMP reliability status was not tainted by bad faith and that any procedural flaws have been appropriately remedied by this adjudication, I conclude

that the employer had cause under subsection 12(3) of the *FAA* to terminate her employment on January 3, 2006. I dismiss the termination of employment grievance.

[1004] Given that I have dismissed the grievances, I do not need to retain jurisdiction to address the issue of the remedies for the grievor.

[1005] For all of the above reasons, I make the following order:

*(The Order appears on the next page)*

**XII. Order**

[1006] The grievance in PSLRB File No. 166-02-37094 is dismissed.

[1007] The objection to an adjudicator's jurisdiction to hear the grievances in PSLRB File Nos. 566-02-174, 175 and 1298 is upheld and I order those files closed.

[1008] The grievances in PSLRB File Nos. 566-02-173 and 176 are dismissed.

[1009] The grievance in PSLRB File No. 566-02-395 is dismissed.

July 19, 2013.

**Margaret E. Hughes,  
adjudicator**