

Files: 166-2-26927
166-2-26928
166-2-27383



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

MARIO RINALDI

Grievor

and

**TREASURY BOARD
(Canadian Space Agency)**

Employer

Before: Marguerite-Marie Galipeau, Deputy Chairperson

For the Grievor: Marc Lapointe, Counsel

For the Employer: Raymond Piché, Counsel

Heard at Montréal, Quebec
on April 1 and 2, 1996;
June 25, 26 and 27; September 18 and 19; October 14, 15, 16 and 17, 1997;
January 26, 27, 28 and 29; February 9, 10, 11 and 12; March 25, 26 and 27;
May 11, 12, 13 and 14; and June 23, 24, 25 and 26, 1998.

The grievor, Mario Rinaldi, was employed by the Canadian Space Agency ("the Space Agency") at Saint-Hubert, Quebec. At the time in question he held the position of Vice-President, Corporate Services (EX-03).

Mario Rinaldi referred three grievances to adjudication. In the first grievance (Board file 166-2-26927, Exhibits A-123 and A-124), dated November 6, 1995, he alleged that the employer had taken disciplinary action against him by reprimanding him in writing (Exhibit A-18), removing him from his position, and finally abolishing his position of Vice-President, Corporate Services (Exhibits A-1, A-31 and A-129). He asked to be reinstated in his position or in another similar position. He also claimed damages.

After being told on September 6, 1995 that his position had been abolished Mario Rinaldi was informed by a letter dated November 2, 1995 (Exhibit A-6) that he would be surplus to requirements as of November 8, 1995. Consequently, in the second grievance (Board file 166-2-26928, Exhibit A-125), dated February 20, 1995, he complained of the fact that his employer had terminated his employment. As corrective action he again asked to be reinstated in his position or in a comparable position. He also claimed damages again and asked that the employer alleviate the damage done to his reputation.

In his third grievance (Board file 166-2-27383, Exhibit A-127), dated May 21, 1996, Mario Rinaldi charged that the employer had terminated his employment when he was on sick leave and repeated his request to be reinstated in his position or a similar position, claimed damages and asked that the employer correct the injury done to his reputation. This grievance was referred to adjudication on July 4, 1996. It occurred after the lay-off took place on May 8, 1996.

The three files were joined as they deal with a series of interrelated events. The evidence for each grievance was submitted at a single hearing which took 30 days.

At the start of the hearing counsel for the employer raised certain preliminary objections, including an objection to the jurisdiction of an adjudicator to resolve the issue. The details regarding these objections are set out in my preliminary decision (Board files 166-2-26927 and 26928) dated April 9, 1996. That decision, rendered orally at the hearing on April 9, 1996, reads as follows:

Decision

If you establish that the termination of the employment was not a genuine layoff but rather a decision made in bad faith, a ruse, a disciplinary dismissal in disguise, then I would be willing to say that subsection 92(3) of the Public Relations Staff Relations Act does not prevent me from having jurisdiction. I would therefore be willing to hear your witnesses.

The employer applied for judicial review of this decision by the Federal Court of Canada, Trial Division.

On February 25, 1997, Marc Noël J. of the Federal Court of Canada dismissed the employer's application (decision T-761-96). The parties accordingly appeared before the undersigned again and proceeded with the submission of their evidence on either side. Eleven witnesses were heard in a hearing that lasted 30 days. Mario Rinaldi testified for about 13 days.

Some witnesses testified in English (W.M. Evans), others in French, and one (Mario Rinaldi) in both languages. The parties stated that they had no preference as to the language in which my decision was written. Consequently, as most of the hearing took place in French, I have written the decision in French.

Before undertaking to summarize the evidence, and as an aid to understanding, the broad outlines of this case may be indicated as follows.

In May 1995, when the Space Agency was being reorganized, Mario Rinaldi, Vice-President, Corporate Services, complained to the President W.M. Evans of certain actions regarding himself by his immediate superior, Alain Desfossés, Executive Vice-President of the Space Agency. A few days later, W.M. Evans formally reprimanded Mario Rinaldi (Exhibit A-18) because he considered that during a discussion the latter had questioned his own ability to solve the problems raised by Mario Rinaldi and had made intimidating statements to him. Additionally, W.M. Evans considered that Mario Rinaldi had not tried to resolve the dispute between himself and Alain Desfossés, as W.M. Evans had asked him to do. In the same letter of reprimand (Exhibit A-18), he relieved Mario Rinaldi of his duties and assigned him to special duties pending the outcome of an investigation into the allegations made by the latter against Alain Desfossés. He also summoned the employees of Corporate Services and told them that Mario Rinaldi, the Vice-President, Corporate Services, no longer held that

position and an investigation was under way. Additionally, in the days following the findings of the investigation W.M. Evans proceeded with reorganization of the Space Agency. Three positions of vice-president and that of director general were abolished. Only one vice-president received a temporary assignment of two months, Mario Rinaldi: the other two vice-presidents were offered "Flex" assignments ("assignment depending on flexibility") for a two-year period. Mario Rinaldi considered that the abolition of his position was a disguised disciplinary termination of employment.

The facts which in Mario Rinaldi's view led to what he described as a termination in September 1995 chiefly occurred in the space of a few days in May 1995. Both Mario Rinaldi and W.M. Evans, the President of the Space Agency, gave their versions of the facts.

According to Mario Rinaldi, he lost his job because of the events that took place in May. According to the President of the Space Agency, there was no connection between these events and the abolition of Mario Rinaldi's position in September 1995.

The following is a summary of the events surrounding the abolition of Mario Rinaldi's position as related by W.M. Evans, called by Mario Rinaldi as the first witness.

Version of Space Agency President, William MacDonald (Mac) Evans

W.M. Evans is an engineer. He has also been President of the Space Agency since November 1994. Before becoming President he held the position of Vice-President, Operations, with the Space Agency from 1989 to 1992. He was responsible for programs involving the space station, Radarsat and astronauts. From 1992 to 1994, W.M. Evans became President of the Precarn company. Then, at the request of the Minister of Industry, he went back, this time to the Minister's office, to prepare a long-term space plan. Once this stage had been completed, he returned to the Space Agency as President in November 1994. At the same time, Alain Desfossés was appointed Executive Vice-President of the Space Agency.

On January 5, 1995, the Space Agency claimed (Exhibit A-10) the sum of \$557.82 as an overpayment from a former Space Agency employee, Diana Durnford. This sum included an overpayment of \$181.97 on her last paycheque (that is, two days' salary) and an overpayment of \$375.85 as annual leave to which she was not entitled.

Diana Durnford left the Space Agency in fall 1993 to work in the office of Hon. Manley, the Minister in charge of Industry Canada, and she was one of the Space Agency President's contacts with the Minister of Industry, who had responsibility for the Space Agency. A few days after learning of the claim, Diana Durnford telephoned the Space Agency President to indicate her dissatisfaction and her belief that she did not owe the Space Agency anything. The Space Agency President, W.M. Evans, asked the Executive Vice-President, Alain Desfossés, to look into the matter.

About three months later, on April 4, 1995, nothing had yet been resolved (Exhibit A-11). Discussions had taken place between the Executive Vice-President, Alain Desfossés, and the Vice-President, Corporate Services, Mario Rinaldi, about the overpayment claimed from Diana Durnford. It was an employee reporting to Mario Rinaldi who had claimed the overpayment from Diana Durnford. Alain Desfossés considered that Diana Durnford did not owe the Space Agency any money, while Mario Rinaldi believed the contrary.

Some time before May 10, 1995 another meeting was held on this matter in the office of W.M. Evans, the Space Agency President. W.M. Evans, Alain Desfossés and Mario Rinaldi were present. At the end of the meeting W.M. Evans thought the matter had been settled. He also did not recall what had been said at the meeting. A subsequent investigation (Exhibit A-12 - August 1995) concluded (Exhibit A-12, p. 24) that Diana Durnford was not entitled to the salary she had been overpaid.

On May 10, 1995 Mario Rinaldi went to the office of W.M. Evans, the Space Agency President. He had with him a memorandum (Exhibit A-13) in which he objected to the fact that the Executive Vice-President, Alain Desfossés, had asked him to prepare documents which did not reflect actual events, to sign those documents and to backdate them. At the same time, he stated that it was unacceptable for him to be asked to falsify or to produce fraudulent documents. These allegations were connected with the overpayment claimed from Diana Durnford (Exhibit A-10) by the Space Agency.

W.M. Evans read the memorandum (Exhibit A-13) and, after discussing it with Mario Rinaldi, returned it to him. W.M. Evans felt that, in all fairness, Mario Rinaldi must first clearly explain his concern to Alain Desfossés about the latter's pressure to resolve the question of the overpayment claimed from Diana Durnford. W.M. Evans accordingly suggested that Mario Rinaldi discuss the situation with Alain Desfossés

before formally submitting his complaint to him (to W.M. Evans - Exhibit A-13). Mario Rinaldi left W.M. Evans taking the memorandum (Exhibit A-13) with him. There was also some discussion at the meeting between W.M. Evans and Mario Rinaldi of three other matters (awarding of contracts, security and audit) mentioned in three other memoranda (Exhibit A-14) written by Mario Rinaldi. Mario Rinaldi said that Alain Desfossés had placed him in untenable positions.

W.M. Evans made notes (Exhibit A-15) on the meeting of May 10, 1995 and confirmed what was contained in his notes. He wrote that he told Mario Rinaldi that in view of the seriousness of the allegations, if he formally filed his complaint (Exhibit A-13) there would be an investigation, and the result would be a situation of "open warfare" between Mario Rinaldi and Alain Desfossés.

He also wrote (Exhibit A-15) that Mario Rinaldi had threatened to "drag others down with him" if he ever lost his position or suffered financially. He noted that he had not reacted to this threat.

W.M. Evans did not recall whether he asked Alain Desfossés if Mario Rinaldi's allegations were true. He also testified that Alain Desfossés denied asking Mario Rinaldi to falsify a document. W.M. Evans added that, in view of Mario Rinaldi's allegations, his major concern was to maintain the "solidarity" of his team.

On May 11, 1995 Mario Rinaldi officially filed his complaint (Exhibit A-13) with the Space Agency President against the actions of Alain Desfossés toward him and the fact that, in his view, Alain Desfossés was asking him to falsify documents. It was not until Monday May 15, 1995 that the Space Agency President learned from Mario Rinaldi that the complaint had been filed in writing.

In the interval, on May 12, 1995, the Space Agency President, W.M. Evans, accompanied by the Space Agency legal counsel, Robert Lefebvre, and the Executive Vice-President, Alain Desfossés, met with representatives of the Phillips agency to obtain advice on the best way of handling Mario Rinaldi's allegations. The meeting lasted an hour and a half or two hours. W.M. Evans had no recollection of the advice he received. In his notes (Exhibit A-15) he wrote:

[...]

Mr. Desfosses (sic), Mr. Lefebvre and I met with members of the Phillips organization to talk about the type of support we could provide Mr. Rinaldi and to seek advice on how to handle the situation as humanely as possible while at the same time allowing the work of the Agency to continue.

[...]

On Monday, May 15, 1995 it was Mario Rinaldi who told W.M. Evans that the complaint (Exhibit A-13) had been filed in writing. He also told W.M. Evans that he (Mario Rinaldi) would be meeting with representatives of the Auditor General. W.M. Evans had the impression that Mario Rinaldi intended to complain to the Auditor General about events occurring at the Space Agency, including the allegations which he had made about Alain Desfossés. Mario Rinaldi provided no details about what he intended to discuss with the Auditor General's representatives. W.M. Evans was concerned by the possibility that Mario Rinaldi would lay out his problems to the Auditor General before he, as President of the Space Agency, had an opportunity to deal with the complaint just filed by Mario Rinaldi. Following this conversation, W.M. Evans decided that he should conduct an investigation into the allegations made by Mario Rinaldi (Exhibits A-13 and A-14).

On May 16, 1995 W.M. Evans telephoned a deputy director in the office of the Auditor General to tell him that Mario Rinaldi would be contacting a representative of the Auditor General. He was told that Mario Rinaldi had already spoken to someone named Francine Bissonnette in the office of the Auditor General.

As, according to W.M. Evans, Mario Rinaldi had complained in a telephone conversation of May 15, 1995 of harassment and abuse of power by Alain Desfossés, on May 16, 1995 W.M. Evans telephoned Ruth Hubbard, President of the Public Service Commission, and Margaret Amoroso, Executive Director of the Executive Programs Branch of the Public Service Commission. He told Ruth Hubbard that Mario Rinaldi was complaining of harassment and abuse of power by a senior manager at the Space Agency. Ruth Hubbard told him that, in light of the Treasury Board policy on harassment, he should [TRANSLATION] "separate" Mario Rinaldi and Alain Desfossés. She suggested Mario Rinaldi talk to a Public Service Commission consultant, Andrew Molino, a psychologist and management consultant, whose advice she thought might be useful to Mario Rinaldi.

On the same day, on a visit to Ottawa, W.M. Evans met Andrew Molino and asked him to go with him to Montréal to meet with Mario Rinaldi. They made the trip from Ottawa to Montréal together. On the way, W.M. Evans gave Andrew Molino his version of the events. He did not recall what he told him.

On May 17, 1995 W.M. Evans decided to relieve Mario Rinaldi of his duties. According to W.M. Evans, Mario Rinaldi had made barely veiled threats to him in conversation.

When W.M. Evans told Mario Rinaldi that he was relieved of his duties, Andrew Molino was in an adjoining room and was ready to meet with Mario Rinaldi. Once the meeting between Mario Rinaldi and W.M. Evans was over, Andrew Molino was introduced to Mario Rinaldi. This meeting will be described below.

W.M. Evans testified that he was disappointed that Mario Rinaldi was proposing to meet with representatives of the Auditor General. Additionally, he had concluded that Mario Rinaldi was looking for work outside the Space Agency and that he was disappointed he had not qualified in a recent competition. W.M. Evans had doubts about Mario Rinaldi's mental condition and his judgment. With these points in mind, and based on the advice he had received, he thought it would be helpful if Mario Rinaldi met with Andrew Molino once he had been told he was relieved of his duties.

The Space Agency's legal counsel attended the meeting of May 17, 1995 between W.M. Evans and Mario Rinaldi and wrote notes on their conversation. The latter indicate, in particular at paragraphs 40, 55, 62, 69, 71, 80, 86, 117, 123 and 131 (Exhibit A-17), W.M. Evans' wish to remove Mario Rinaldi from the Space Agency for a time, and in paragraphs 41, 56, 63, 67, 70, 72 and 87, Mario Rinaldi's opposition to being removed. W.M. Evans stated that he believed that day that it would be helpful both to the Space Agency and to Mario Rinaldi for the latter to be removed from the Agency during the investigation of his allegations, but he finally opted for another solution, assigning Mario Rinaldi to a special project for the duration of the investigation.

On May 18, 1995, W.M. Evans handed Mario Rinaldi a letter of reprimand (Exhibit A-18). It reads as follows:

This will confirm our meeting of this day in my office and the decisions that I have taken.

The various statements that you have made to me over the last few days, including questioning my ability to deal properly with your allegations contained in your letter dated May 9, 1995, and sent on May 11, and intimidating statements made towards unidentified party/parties, as well as your failure to comply with my directive to clarify matters with Mr. Desfossés concerning your allegations, are and were inappropriate and demonstrate a serious lack of judgment on the part of a Senior Official such as yourself.

Such conduct cannot be tolerated and, as a result, this letter shall serve as a written reprimand and will be placed in your personal file.

In response to both your behaviour as described above, and further to your allegations stated to me of abuse of authority and harassment towards yourself on the part of your immediate supervisor, I have decided to assign you, as of this day, to certain projects that I will give you and with respect to which you will be reporting directly to me. I would appreciate if you could meet with me tomorrow to discuss your work assignments.

I trust that I will be able to count on your full cooperation.

Before giving Mario Rinaldi the letter of reprimand W.M. Evans consulted the Space Agency's legal counsel, Robert Lefebvre, the Executive Vice-President, Alain Desfossés, and a lawyer from the Treasury Board.

W.M. Evans told Mario Rinaldi he was being assigned to special projects. He asked him to move out of his office, leave his files in it and move onto another floor.

W.M. Evans testified that he chose to move Mario Rinaldi rather than Alain Desfossés in order to [TRANSLATION] "separate Mario Rinaldi and Alain Desfossés". He added that his intention was to avoid giving the impression he was not supporting Alain Desfossés, that the current reorganization was not working and that he believed Mario Rinaldi's allegations. Further, it would have been impossible to move Alain Desfossés since the other vice-presidents, technical specialists, could not easily have replaced him.

On the same day Alain Desfossés took over Mario Rinaldi's responsibilities, including those of senior financial officer.

Also on the same day, W.M. Evans met with the Executive Committee of the Space Agency and told it that Mario Rinaldi had been relieved of his duties. He also informed Mario Rinaldi's employees in person and by e-mail that Alain Desfossés was their new superior and that auditors would shortly be undertaking an audit. He asked them not to discuss work with Mario Rinaldi and told them Mario Rinaldi would be working on a special project.

On May 18, 1995 W.M. Evans also sent a second e-mail message (Exhibit A-20) to employees to correct the impression he might have given that there was some connection [TRANSLATION] "between Mr. Rinaldi's new responsibilities and my statements regarding outside auditors". W.M. Evans testified that he had incorrectly described as "forensic" the investigation that was to take place and that his intention was to inform the employees there would be an investigation and that he regretted the use of the word "forensic".

On May 19, 1995 W.M. Evans assigned a special project to Mario Rinaldi, a project which ultimately did not materialize. It was intended that Mario Rinaldi should handle repercussions from the closing of the Saint-Hubert base. Alain Desfossés was responsible for developing this special project and had suggested that Mario Rinaldi be given the project.

According to W.M. Evans, Mario Rinaldi spoke to him the same day about a retraction and withdrawing the statements (namely that Alain Desfossés had suggested he commit fraudulent acts) contained in his memorandum of May 9, 1995 (Exhibit A-13).

In a conversation with W.M. Evans on May 22, 1995 Mario Rinaldi denied having mentioned the possibility of a retraction.

On May 25, 1995, W.M. Evans met Mario Rinaldi in the presence of a witness, Marie-Claude Landry, the secretary to the legal counsel, Robert Lefebvre. The latter took notes which W.M. Evans rewrote (Exhibits A-22 and A-23) in order, he said, to make them intelligible in English. Although he had promised Mario Rinaldi to give him a copy of them, the latter had to file an application under the *Access to Information Act* to get them (Exhibits A-22, A-27, E-2, E-3 and E-4).

On June 1, 1995 W.M. Evans asked Jean-Maurice Cantin, a former vice-chairperson of the Public Service Staff Relations Board, to investigate Mario Rinaldi's allegations. W.M. Evans did not recall whether he testified before Jean-Maurice Cantin.

On August 23, 1995 Jean-Maurice Cantin submitted his report. He concluded *inter alia* that:

[...]

Based on the information which I now have, my conclusion is that Ms. Durnford was not and is not entitled to claim unpaid overtime.

Was Ms. Durnford entitled, as the respondent suggests, to a special remuneration to compensate for her "exceptional work"? Was the respondent justified in asking the complainant to find a "solution" and "options to pay the compensation"?

There is no doubt that, for one reason or another, the respondent wanted Ms. Durnford to be relieved of the obligation to reimburse, in whole or in part, the overpayment.

The evidence is that the respondent had many conversations with the complainant regarding Ms. Durnford's overpayment. It is clear that as time was passing, he was insisting more and more. Other employees became involved and each one was "ill at ease" with the solutions which were contemplated. A possible solution, as stated above, would have been to prepare a document which could have been back-dated and signed by an authorized person. The respondent is denying that he suggested that a document be back-dated. He states that he favoured retroactive compensatory leave.

The respondent is not denying some of the conversations attributed to him. He simply states that he cannot recall.

I am unable with the information on hand to conclude that the respondent suggested or approved that a document be back-dated. Rightly or wrongly, he seems to have been genuinely convinced that Ms. Durnford was entitled to a compensation. What is nevertheless difficult to understand is why he still insisted for a "solution" after being advised that the claim against Ms. Durnford was justified. I cannot conclude that this means that he wanted a falsification of documents. All he wanted, as I see it, was a "device" which would facilitate the payment of a compensation. In my opinion, the respondent showed poor judgment and he

should not have insisted anymore that a payment be made when it was established that there was no entitlement to unpaid overtime.

I fully understand, I should say, the complainant's and the other employees' feelings when they were asked to find a "solution". I also understand their frustration, uneasiness and reluctance in participating to the payment of a compensation to Ms. Durnford.

I do not understand that as far as the complainant is concerned, he did not consider going directly to the President to convey to him his thoughts if he felt that the respondent was applying undue pressure. He should have done so if he was concerned that he was being asked to do something that was in his mind reprehensible.

[...]

W.M. Evans learned from reading Jean-Maurice Cantin's report (Exhibit A-12, paragraph 13), dated August 23, 1995, that Alain Desfossés had asked Mario Rinaldi to send Diana Durnford a cheque and make apologies to her.

On September 6, 1995 Mario Rinaldi and his colleagues, also vice-presidents, were told that their positions had been abolished. Mario Rinaldi's three colleagues received "Flex" assignments lasting two years. Mario Rinaldi received a "Flex" assignment lasting two months.

At this point no other positions had been abolished as part of the Space Agency's reorganization. Other important changes did not take place until December 1996, when certain positions in the professional category were reclassified and Louis Fortier's position was abolished.

Ultimately, it was on November 8, 1995 (Exhibit A-129) that it was confirmed that Mario Rinaldi was a surplus employee. He ceased reporting to work from November 8, 1995 to May 8, 1996. He stayed at home but continued to be paid. On May 8, 1996 his pay ceased.

The following is a summary of W.M. Evans' testimony regarding the reorganization of the Space Agency since he was appointed President in November 1994.

W.M. Evans testified that in appointing him to the position of Space Agency President, Mr. Manley wanted W.M. Evans to supervise the implementation, within

budgetary limitations, of Phase 2 of the long-term space plan and that the Space Agency reorganization should be compatible with the reduction of its budget, reduced from \$400 to \$200 million per annum.

Accordingly, in the days following his appointment as President and that of Alain Desfossés as Executive Vice-President, W.M. Evans in December 1994 created an Executive Secretariat. On December 22, 1994 W.M. Evans announced a reorganization to employees (Exhibit A-8) including the establishment of an Executive Secretariat under the direction of the Executive Vice-President, Alain Desfossés. As of that date Mario Rinaldi, Vice-President, Corporate Services, would be reporting to the Executive Vice-President, Alain Desfossés, instead of reporting to the President directly. The Communications Service and Legal Services would also report to the Executive Vice-President. When W.M. Evans told Mario Rinaldi that he would no longer be reporting to the President of the Space Agency but to the Executive Vice-President, Alain Desfossés, Mario Rinaldi indicated that he was disappointed.

The reorganization resulted in part from the reduction of the Space Agency's budget and in part from the need to review its organization, as since its inception it had been an assortment of groups and programs from various departments. The reorganization also resulted from the need to better upgrade the communication, finance and administration services and to destratify the hierarchical structure.

In January 1995, as part of the reorganization, the President began a process of consulting employees.

In January 1995 the drafting of a mission statement was undertaken (Exhibit E-11). On May 5, 1995 W.M. Evans sent the Executive Committee (to which Mario Rinaldi belonged) by e-mail (Exhibit E-12) a document dealing with the objectives and principles which he felt should underlie the reorganization.

On May 10, 1995 W.M. Evans made an appointment with Mario Rinaldi to get his views on the reorganization. This was the fatal day on which Mario Rinaldi complained about the actions of Alain Desfossés, the Executive Vice-President. Even before the President had broached the subject of the reorganization Mario Rinaldi made allegations regarding Alain Desfossés, so that the President had no opportunity to discuss the subject of the reorganization. In June 1995 W.M. Evans postponed submission of the reorganization to the Treasury Board (Exhibits E-14, E-15 and E-16)

so as to incorporate in his presentation certain additional ideas suggested by the Mission and Principles Committee.

On August 16, 1995 the Mission and Principles Committee filed its recommendations, including the reduction of hierarchical levels.

Late in August 1995, following receipt of the Cantin report (Exhibit A-12), W.M. Evans finally on August 29, 1995 submitted the new structure of the Space Agency (Exhibit E-17) to the Treasury Board.

In September 1995, as mentioned above, the positions of the three vice-presidents were abolished. That of the director general was abolished some time later as well as that of the director of communications. Temporary assignments of two years were offered to Mario Rinaldi's colleagues (Exhibit A-31), while an assignment of two months was offered to him (Exhibits A-2 and A-31). According to W.M. Evans Mario Rinaldi's colleagues received a longer temporary assignment than Mario Rinaldi because of their technical expertise.

On November 2, 1995 Mario Rinaldi was told (Exhibit A-6) that he had been declared surplus as of November 8, 1995, until May 7, 1996, the date on which he would be laid off.

Phase 2 of the reorganization of the Space Agency, namely its implementation, would take another year and be completed in November 1996 (Exhibits E-19 and E-20).

W.M. Evans noted that the position of Vice-President, Corporate Services, held by Mario Rinaldi before he was declared surplus was supposed to continue for three years. In support of this statement he filed a memorandum from the Treasury Board dated June 10, 1993 (Exhibit E-1). According to W.M. Evans, once the move of the Space Agency to St-Hubert had been completed there was no longer any reason for Mario Rinaldi's position, and moreover it was a superfluous level of management. The Treasury Board memorandum (Exhibit E-1) confirmed that supervision of the move of the Space Agency to St-Hubert was a factor in classifying the position of Vice-President, Corporate Services at level EX-03. It further confirmed that at the time the position was classified it was expected that the awarding of the EX-03 classification would only be supported by the Treasury Board for a period of three years.

Before proceeding with the reorganization W.M. Evans waited for Jean-Marie Cantin's report (Exhibit A-12), dated August 23, 1995, as, he testified, if Mario Rinaldi's allegations about Alain Desfossés had been confirmed by Jean-Marie Cantin's investigation he would have put someone else in Alain Desfossés' position.

W.M. Evans denied abolishing Mario Rinaldi's position in order to get rid of him. He stated that he intended to de-stratify the hierarchical structure of the Space Agency long before the events of May 1995, related above. Additionally, W.M. Evans felt that Mario Rinaldi had not been happy since he had to report to the Executive Vice-President Alain Desfossés, and Mario Rinaldi had asked the President to help him find a job elsewhere. As the President had announced his intention to cut back the Space Agency's hierarchical structure several months before May 10, 1995, he felt that Mario Rinaldi was afraid his position would disappear, this was the state of mind in which he went to the meeting of May 10, 1995 and this was what explained his threat to "drag others down with him" if he ever lost his position. W.M. Evans noted that, following the abolition of Mario Rinaldi's position, he gave him a "Flex" assignment lasting two months and that these two months were added to the six months in which Mario Rinaldi was a surplus employee. He noted that Mr. Rinaldi had not worked from November 8, 1995 to May 8, 1996, that he stayed at home and that the employer continued paying him his salary during that period.

Testimony of Dr. Lionel Béliveau

Dr. Béliveau is a psychiatrist. Counsel for the employer admitted that he was an expert witness.

Dr. Béliveau assessed Mario Rinaldi's state of health on May 21, 1997. He concluded that Mario Rinaldi had been unable to perform the duties of Vice-President (Corporate Services) since the day (May 18, 1995) on which he received the letter of reprimand (Exhibit A-18). In his submission, since that occurrence Mario Rinaldi had been suffering from an adjustment disorder. He tended to become stressed out and easily became anxious. He would be unable to resume his duties if W.M. Evans was still on the job when Mario Rinaldi eventually returned to work. Mario Rinaldi was suffering from a temporary pathology due to the reprimand he had received and the events that followed: among other things, having to move out of his office, being relieved of his

duties and being told to cease talking to his own employees. There was no major depression.

Testimony of Andrew Molino

Andrew Molino is a psychologist and a management consultant. He is self-employed.

On May 16, 1995, at the request of the Public Service Commission, he agreed to go to Montréal with W.M. Evans so as to meet with Mario Rinaldi. On the way to Montréal W.M. Evans told him that he intended to relieve Mario Rinaldi of his duties and give him new duties. He was also considering placing Mario Rinaldi on paid leave or suspending him with pay. His intentions were not clear. He did not tell Andrew Molino that shortly before Mario Rinaldi had complained of the actions of the Executive Vice-President, had referred to fraudulent behaviour and had suggested that he would be meeting with the Auditor General.

On May 17, 1995, after W.M. Evans spoke to Mario Rinaldi, Andrew Molino was introduced to Mario Rinaldi and offered to listen to him if Mario Rinaldi felt the need to talk. Their meeting lasted between 15 and 30 minutes. Mario Rinaldi was not interested in discussing his situation with Andrew Molino.

Testimony of Mario Rinaldi

Mario Rinaldi is 46 years old. He began his Public Service career in 1974. He has an impressive record, marked by promotions. He had held eight positions (Exhibit A-42) in various departments before going to the Space Agency. The Space Agency was created in 1989. He was appointed Director General in 1990 (Exhibits A-44, A-45 and A-46). In recommending this appointment (Exhibit A-44) the then President of the Space Agency, Larkin Kerwin, was fulsome in his praise. In particular, he referred to Mario Rinaldi's judgment (Exhibit A-44).

It was Mario Rinaldi who created the infrastructure of the Space Agency and oversaw its move to Saint-Hubert and the construction of its new premises. His contribution was noted by the Space Agency President (Exhibit A-48). His work was rated as [TRANSLATION] "superior" (Exhibit A-47) by the Space Agency President, Larkin Kerwin, and he was also rated "superior" (Exhibit A-49) by Larkin Kerwin's successor, Roland Doré. Like his predecessor, Roland Doré considered that

Mario Rinaldi, who now held the position of Vice-President, Corporate Services, showed exceptional judgment and assessed his performance as "superior". The following year, Roland Doré described Mario Rinaldi (Exhibit A-50) as [TRANSLATION] "one of the pillars of the Agency". Once again, he characterized his judgment as [TRANSLATION] "exceptional" and found his performance "superior". It should be noted, as we will return to the point later, that he gave Mario Rinaldi the objective for the next appraisal period of setting up internal evaluation and audit programs before July 1995.

In 1993, under Roland Doré's presidency, the organization of the Space Agency was reviewed. The position of Vice-President, Corporate Services, was confirmed (Exhibits E-1 and A-51) and the EX-03 classification was continued. Mario Rinaldi was the incumbent of the position.

Between January 20 and June 20, 1994 Mario Rinaldi (Exhibit A-52) replaced the President Roland Doré five times during his absence.

In late summer 1994 Roland Doré left the Space Agency. He was temporarily replaced by the Vice-President Karl Doetsch until the arrival of the new President of the Space Agency, W.M. Evans, on November 21, 1994.

The evening before he took over the position, W.M. Evans telephoned Mario Rinaldi to tell him he was the new President and that Alain Desfossés would be the Executive Vice-President. He mentioned he was aware of Alain Desfossés' problems at the Space Agency under the presidency of Roland Doré and the fact that he had at that time been relieved of his duties by Roland Doré.

For about a month Mario Rinaldi reported to the President, W.M. Evans. Then, on December 22, 1994 W.M. Evans announced that the Vice-President, Corporate Services, Mario Rinaldi, would be reporting to the Executive Vice-President, Alain Desfossés.

In January 1995 there was a conflict between Mario Rinaldi and the Executive Vice-President, Alain Desfossés. According to Mario Rinaldi, it occurred as follows.

An employee of Mario Rinaldi, a clerk (CR-04) named Julie Perreault, in the Pay and Benefits Section, on January 5, 1995 claimed (Exhibit A-10) from a former Space Agency employee, Diana Durnford, the sum of \$557.82, which was overpaid to her when she left the Space Agency.

Diana Durnford had been working in the office of the Minister of Industry, John Manley, since December 1993. He was the Minister responsible for the Space Agency.

This claim was a routine matter and Mario Rinaldi was not even aware of it. Julie Perreault reported to Ginette Robichaud, Chief, Staff Relations and Compensation, who reported to Arlène Marchand, Human Resources Director, and she finally reported to Mario Rinaldi.

A few days after January 5, 1995 Alain Desfossés, Executive Vice-President, told Mario Rinaldi that the Space Agency President, W.M. Evans, had received a telephone call from Diana Durnford. She was not pleased by the claim which had been made to her. Mario Rinaldi told Alain Desfossés he was not aware of the matter and that he would ask his employees about it. Alain Desfossés gave him a copy of the claim (Exhibit A-10) sent to Diana Durnford by Julie Perreault and a copy of a "T-4" (for tax purposes) in Diana Durnford's name. He told him [TRANSLATION] "That is not how to treat an employee".

Mario Rinaldi asked the Human Resources Director, Arlène Marchand, about the facts surrounding the claim (Exhibit A-10). Arlène Marchand in turn investigated the facts and later reported to Mario Rinaldi that the clerk Julie Perreault had not made a mistake and that Diana Durnford did owe the Space Agency this money. Mario Rinaldi reported this conclusion to Alain Desfossés. The latter was not satisfied with this reply and told Mario Rinaldi to check the facts again.

Mario Rinaldi did this and asked Arlène Marchand to check the facts again. She in turn did so and, after checking with her subordinate Ginette Robichaud (Exhibit A-53), confirmed the amount owed by Diana Durnford.

Mario Rinaldi showed this confirmation to Alain Desfossés. The latter was still not satisfied and said [TRANSLATION] "We must do something: she [Diana Durnford] worked very hard for the Agency while she was in the Minister's office". (Mario Rinaldi noted that in the past Diana Durnford was part of Alain Desfossés' group of employees.) Accordingly, Alain Desfossés insisted and asked Mario Rinaldi to again see if he could do something.

Mario Rinaldi spoke to Arlène Marchand and Ginette Robichaud again. After another investigation, all three agreed that Diana Durnford owed the money. Ginette Robichaud, Chief, Staff Relations and Compensation, gave Mario Rinaldi an explanation in writing (Exhibit A-54) of the amount owed by Diana Durnford.

On April 9, 1995 Mario Rinaldi attended a meeting of the Space Agency Executive Committee in Ottawa. When he saw him, Alain Desfossés at once raised the question of the claim made to Diana Durnford. Mario Rinaldi replied that everything was in order. Alain Desfossés replied [TRANSLATION] "You have to tell Mac [W.M. Evans] that, as he is pushing me on it". At the end of the meeting Alain Desfossés returned to the point and told Mario Rinaldi [TRANSLATION] "I want to talk to you about Diana. We have to find imaginative solutions". Mario Rinaldi responded with a hand gesture which, he said, meant [TRANSLATION] "Here is the file, you are the Executive Vice-President, you deal with it".

After April 9, on Tuesday, April 11, 1995, Alain Desfossés went to Mario Rinaldi's office and again mentioned the claim made to Diana Durnford. Mario Rinaldi told him that, since there was no mistake, nothing could be done. Alain Desfossés responded that he would talk to Diana Durnford and he took away Diana Durnford's file.

The next day Alain Desfossés came back to see Mario Rinaldi in his office and told him Diana Durnford had agreed to pay \$180 and that he, Alain Desfossés, had decided that the Space Agency would absorb the rest of the amount owed. He then went on: [TRANSLATION] "You are going to prepare the necessary documents and sign them on whatever date you like while you were Acting President in Roland Doré's absence". With these words, he left Diana Durnford's file with Mario Rinaldi and departed.

Mario Rinaldi was stunned.

He went through Diana Durnford's file. He found an e-mail message (Exhibit A-11) from W.M. Evans to Alain Desfossés in which Mr. Evans said the matter had been "handled quite insensitively" by employees in the "personnel" section in the way they claimed the money from Diana Durnford. Nevertheless, according to Mario Rinaldi, the letter sent to Diana Durnford (Exhibit A-10) was the usual letter sent in such circumstances.

On April 21, 1995, when he was talking with the Space Agency President's assistant, Mario Rinaldi was again accosted by Alain Desfossés. The latter said the following: [TRANSLATION] "So, has the Diana matter been dealt with? Listen, you have to prepare the documents and backdate them as Acting President". Mario Rinaldi refused and said: [TRANSLATION] "In any case, the periods in question dated from when there was a Vice-President, Policy Coordination". This Vice-President was Alain Desfossés. By this answer, Mario Rinaldi was trying to suggest to Alain Desfossés that he had all the authority required to sign the backdated documents, if that was what he wanted, since Diana Durnford was his employee during the periods covered by the claim.

Mario Rinaldi resolved not to sign the backdated documents and not to submit such documents for Alain Desfossés' signature, as he said this would make him the latter's accomplice. Ultimately, neither he nor his employees prepared such documents.

Mario Rinaldi noted that he was the senior financial officer, that his own employees were aware of the claim made to Diana Durnford since it came from their department, and that they had discussed it. Arlène Marchand was aware of the pressures brought to bear on Mario Rinaldi. Mario Rinaldi indicated that if he had agreed to prepare documents to accommodate Diana Durnford and Alain Desfossés Mario Rinaldi's employees would have known, since the documents would go through them. In short, Mario Rinaldi among other things was afraid of the perception his own employees would have of him.

On May 3, 1995 Mario Rinaldi went to a meeting presided over by Alain Desfossés. In front of Diane Lalonde, his assistant, Alain Desfossés said to Mario Rinaldi [TRANSLATION] "Has the Diana matter been dealt with or not?" Mario Rinaldi replied [TRANSLATION] "One way of dealing with the matter would be to send the file to Industry Canada and they could handle it".

As it was clear that Alain Desfossés did not accept Mario Rinaldi's replies, the latter decided to broach the matter with the Space Agency President W.M. Evans.

On May 9, 1995 he wrote him the following (Exhibit A-13):

*Memorandum to: Mr. W.M. Evans
President of the Canadian Space Agency*

It is with regret that I must inform you of a delicate and sensitive matter of which you may be aware. A matter which is very disturbing and of great concern to me. It involves an overpayment made to a Canadian Space Agency former employee.

I am attaching the correspondence from my Human Resources Directorate, Pay and Benefits Specialist, to the former employee which explains the overpayment and the required corrective action. This correspondence was given to me by CSA's Executive Vice-President.

The issue is that I have been asked by the Executive Vice-President to prepare documents which would not reflect actual events, to sign these documents and back date them to a period when I was Acting President for Mr. Doré.

The Executive Vice-President further stated this position on Friday, April 21, 1995, in the presence of your Executive Assistant.

In performing my functions as Vice-President, Corporate Services, I consider it totally inappropriate to comply with such requests which are wrong and which can lead to very embarrassing situations for all concerned. In fact, it is unacceptable that I am asked to falsify or produce fraudulent documents. I believe that no employee should ever be subject to this. I leave Justice Canada to advise you on the potential legal implications of complying with such requests.

This infringes on my professional integrity, ethics and credibility with my employees.

I hope that timely and appropriate action is taken to create a healthy and productive working environment.

Again, I regret that I had to arrive at this position but I had never experienced nor been placed in such a situation before. I apologize for any inconvenience which this may cause.

A meeting between W.M. Evans and Mario Rinaldi to discuss the reorganization of the Space Agency was scheduled for May 10, 1995.

At the very outset of that meeting Mario Rinaldi told W.M. Evans that, before discussing the reorganization, he would like the latter to read a memorandum (Exhibit A-13, reproduced above) which he had written for Mr. Evans. He gave him the memorandum of May 9, 1995 (Exhibit A-13). W.M. Evans read it quickly and said "What do you want?" Rinaldi: "Nothing. I have an issue. I need advice on how to deal with this". W.M. Evans: "I don't know what to tell you". Rinaldi: "Do I send a copy to

Desfossés?" W.M. Evans: "I can't advise you on this . . . Diana thinks she runs the Agency". W.M. Evans then added "You should leave the Agency . . . that is how it works. Alain [Desfossés] and me we both left, and came back as president and vice-president". He added, more than once, "This is warfare: you are engaging in open warfare".

When W.M. Evans told Mario Rinaldi he should leave the Space Agency, the latter answered that his name appeared on a list for a position classified at the EX-04 level, and although he had not been selected for the position it was good news as it showed that his candidacy was being considered in other circles.

As W.M. Evans repeated the words "open warfare", Mario Rinaldi was increasingly uncomfortable. He really did not know what to do.

At some point, W.M. Evans told him [TRANSLATION] "Think this through". He wanted to keep the memorandum (Exhibit A-13) in which Mario Rinaldi explained the situation. Mario Rinaldi told him that if he kept it it would have to be treated as being officially filed. W.M. Evans then gave it back to him. Mario Rinaldi said that he wanted to clear up the matter.

When he left W.M. Evans Mario Rinaldi was unhappy. He felt threatened by W.M. Evans' remarks referring to "open warfare" and suggesting that he "leave the Agency". Finally, he decided to send W.M. Evans the memorandum (Exhibit A-13) in which he set out the pressures placed on him by Alain Desfossés. He wrote [TRANSLATION] "Personal and Confidential" on the envelope addressed to W.M. Evans and added a short note (Exhibit A-55): "Sincerely hope we will work together to resolve this most unfortunate situation". He did not send a copy of the memorandum (Exhibit A-13) to Alain Desfossés.

On the day that Mario Rinaldi wrote the memorandum (Exhibit A-13) setting out in detail the pressures he alleged Alain Desfossés had placed on him, he wrote three other memoranda (Exhibit A-14) on three other matters which he also intended to raise at his meeting with W.M. Evans on May 10, 1995. However, in view of W.M. Evans' reaction to the first memorandum (Exhibit A-13), he did not mention these other three matters at the meeting of May 10, 1995. Instead, in the next few days he sent the other three memoranda by e-mail.

Their content and the replies are as follows:

May 9, 1995

Memorandum to: Mr. M.W.(sic) Evans

SUBJECT: Contract Administration

Recently, I have been informed of certain issues regarding contract administration which may be of concern to you.

I am requesting a meeting with you to discuss these issues.

Mario Rinaldi
Vice-President
Corporate Services

c.c. Mr. A.-F. Desfossés
Mr. R. Simpson

(Exhibit A-14, tab 7)

May 11, 1995

Memorandum to Mr. Mario Rinaldi

SUBJECT: Contract Administration

This is in response to your May 9, 1995 memorandum to the President.

Should you have any concerns over certain issues regarding contract administration in the CSA, and given our reporting relationship, I would welcome an opportunity to share whatever concerns you might have prior to raising these issues with the President. My secretary will make as much time in my agenda as you will need with me for this purpose. Given the nature of the issue, I believe it would be in the best interest of the Agency to invite our Legal Counsel at this meeting.

Alain-F. Desfossés
Executive Vice-President

c.c. W.M. Evans

(Exhibit E-5, tab 7)

May 9, 1995

Memorandum to Mr. Alain-F. Desfossés

SUBJECT: Audit and Evaluation

Further to my presentation of the Corporate Services Briefing Book on Major Issues, November 1994, I raised with you my intention to proceed with implementing fully these functions in the CSA.

You, at that time, directed me not to proceed until Mr. Evans had decided whether Corporate Services should undertake these functions; although, the Audit and Evaluation functions fall under the responsibility of the Vice-President, Corporate Services. However, you indicated that it would be reasonable to expect that they will remain with Corporate Services.

The Audit and Evaluation functions are important and should be implemented. You and the President may wish to wait until the completion of the Program Evaluation Framework to fully establish the Evaluation function, but the Audit function can be established without delay. in fact, a CSA Audit and Evaluation plan is available.

Please advise.

Mario Rinaldi
Vice-President
Corporate Services

c.c. Mr. M.W. Evans (sic)

(Exhibit A-14, tab 8)

May 11, 1995

Memorandum to Mr. Mario Rinaldi

SUBJECT: Audit and Evaluation

Your recollection as to the reasons why a final decision has not yet been made on the locus of the very important Evaluation and Audit function within the CSA is correct.

As you know, the "Executive Secretariat" was created in December 1994 and one of its first tasks was to initiate the development of an Overall Evaluation Framework, as requested by Cabinet since May 1994.

A concrete outcome of this work, which is now well underway with the full involvement of the Sectors, will be an "Evaluation Plan" that will guide the operations of the eventual "Evaluation and Audit Unit".

In making these decisions, it was assumed that the operational approach taken by the CSA since its creation to perform its "audit function" was satisfactory and would remain in place until after the Agency-wide reorganization, now planned for the end of June. Please advise me as soon as possible if the immediate creation of the "Audit function" within Corporate Services is critical and cannot await the reorganization.

My secretary will be pleased to find whatever time on my agenda you will deem required for this purpose. The A/Executive Secretary, Mr. Michel Giroux should be present at this meeting.

Alain-F. Desfossés
Executive Vice-President

c.c. W.M. Evans

(Exhibit E-7, tab 8)

May 9, 1995

Memorandum to: Mr. M.W. Evans (sic)
Mr. Alain-F. Desfossés

SUBJECT: Security of Federal Buildings

This is further to your memorandum dated April 27, 1995 regarding "Increased Security Measures at the Agency".

Firstly, let me state that I was surprised receiving such a memorandum. Especially because I attach significant importance to the safety, security and well-being of our employees and their visitors. Because of this, I thought it was important for me to present, under very trying conditions, PCO's message to you.

Secondly, in relation to Security at the CSA, I am requesting clarification regarding the role of the Vice-President, Corporate Services and the role of the Security Task Force.

It was by accident that I had learned that Mr. Louis Fortier had prepared Terms of Reference for the Security Task Force. On two occasions, I asked CSA's Executive Vice-President why I was not involved or consulted on the security issue(s). On both occasions my request was ignored. In addition, you may recall that when Mr. L. Fortier tabled the draft Terms of Reference for the Security Task Force at the February 1, 1995, Executive Committee meeting, I expressed my views. No one attempted to clarify the issue for me.

I stress the importance of good communication. This is the basis for working in harmony and creating an effective and productive working environment.

Mario Rinaldi
Vice-President
Corporate Services

(Exhibit A-14, tab 9)

May 15, 1995

Memorandum to Mr. Mario Rinaldi

SUBJECT: Security of Federal Buildings

I reply to your May 9, 1995 memorandum addressed to the President and myself.

The substance and timing of your April memo made it necessary for us to reply in writing. What is at stake beneath this whole issue is the relative equilibrium that must be found between two prevailing schools of thought at the Agency: those wanting more stringent security measures versus those employees who feel that existing security measures already impede the collective productivity of the CSA. An equilibrium has to be found and this is why we created the employee-led "Task Force".

This having been said, the process and rationale having led to the creation of the "Security Task Force" was very well explained to all employees at our December 21, 1994 meeting. The suggested Terms of Reference prepared by Louis Fortier based on bilateral meetings he had with our Vice-Presidents, including yourself I am told, were tabled before the members of the Executive Committee at its meeting on February 1st. I therefore, find it difficult to understand why you are still unclear as to the purpose being served by this Committee vis-à-vis your role as Vice-President, Corporate Services. In addition, the Head of Security and the A/Director, Administration, both reporting to you, sit on this Committee and they are in a unique position not only to keep you fully apprised on all developments but also to using the Committee as a testing ground for all proposed "security measures".

As far as I can ascertain, no visible action has yet been taken to the suggestion we made in our reply that members of the Executive Committee be invited to ask their employees for increased vigilance over suspect packages or activities. Could you please ensure this happens if you have not already done so.

In light of the above, I am sure you will agree that we fully share your views about the need for "good communication" within the whole of the Agency.

Alain-F. Desfossés
Executive Vice-President

c.c. W.M. Evans

(Exhibit E-6, tab 9)

The following in broad outline are the other matters which Mario Rinaldi would have liked to raise with W.M. Evans at their meeting on May 10, 1995.

First, Mario Rinaldi would have liked to discuss the atmosphere that had developed and in which he felt that pressure was being brought on him to sign documents, such as the Hollichord contract. Then, according to Mario Rinaldi one of his employees, the contracts manager Richard Simpson, had been subjected to the same pressures, specifically in connection with the Stoneboat contract, and had confided in Mario Rinaldi, who had promised to discuss the matter with W.M. Evans.

The Hollichord contract (Exhibits A-67 to A-73) was a contract for obtaining advice on certain matters relating to the management of Corporate Services, especially signing authority. It was this contract which Mario Rinaldi had refused to sign. He refused to sign the internal requisition for services (Exhibit A-71) as Hollichord had done work even before Mario Rinaldi was asked to sign the documents relating to the contract. Moreover, it stipulated that a former Industry Canada employee (Mike Eustace), who had been retired for less than a year, would participate in performing the contract and Mario Rinaldi was of the opinion that his participation was governed by specific rules. Finally, Mario Rinaldi questioned the need to do the work.

On February 6, 1995, at a meeting attended by Mario Rinaldi, Mike Eustace (the former employee who was working for Hollichord), Alain Desfossés and Nicholas Ralph, the president of Hollichord, the latter waved two train tickets (Exhibit A-73) in the air to pacify Mario Rinaldi and claimed that Mike Eustace's name did not even appear on the train tickets.

Following this meeting Alain Desfossés several times insisted that Mario Rinaldi sign the contract. Eventually, the "problems" surrounding conclusion of the contract appear to have been resolved as Alain Desfossés approved the contract (Exhibit A-72).

Mario Rinaldi noted that, when he was questioned by the investigator Jean-Maurice Cantin about the Hollichord contract, and other contracts, he had no

access to the files relating to those contracts or to his own files about the contracts, and he told Jean-Maurice Cantin this several times. He repeated that he had not discussed contract administration at the meeting of May 10, 1995 with W.M. Evans.

As regards the audit (Exhibit A-14), he was scheduled to discuss this with W.M. Evans on May 16, 1995 but W.M. Evans cancelled the meeting at the last minute. He wanted to discuss the matter with W.M. Evans as he had been given (Exhibit A-50) the objective of setting up internal evaluation and audit programs at the Space Agency by July 1995.

The purpose of his memorandum on security (Exhibit A-14) was to clarify Mario Rinaldi's role in security following the receipt of a memorandum from W.M. Evans and Alain Desfossés on April 27, 1995 (Exhibit A-14).

In short, according to Mario Rinaldi on May 10, 1995 W.M. Evans and he did not discuss the matters mentioned in his three memoranda (Exhibit A-14) to which I have just referred.

W.M. Evans prepared notes (Exhibit A-15) on his meeting of May 10, 1995 with Mario Rinaldi and on the telephone conversation they had on May 15, 1995. W.M. Evans also testified about his notes. Mario Rinaldi's comments about them are as follows.

Contrary to what W.M. Evans wrote, Mario Rinaldi denied that W.M. Evans had told him to speak to Alain Desfossés and discuss his allegations. He had not spoken of "open warfare" between Alain Desfossés and Mario Rinaldi, simply of "open warfare". According to Mario Rinaldi, W.M. Evans never told him he would call in outside experts. Mario Rinaldi denied having said he was not happy with his relationship with Alain Desfossés or that he was depressed. He denied making threats of any kind. Further, he never said that Alain Desfossés was placing him in [TRANSLATION] "intolerable" situations. He denied having said that the distribution of the business plan infringed security rules. Actually, he discussed this matter on May 15, 1995 and at that time said what was written in a memorandum (Exhibit A-59) which he read to W.M. Evans on the telephone. Additionally, they never discussed a contract with a former public servant, either on May 10 or 15, 1995, and he thought that if W.M. Evans put that in his notes it was probably because he had spoken to Alain Desfossés about it after reading Mario Rinaldi's memorandum (Exhibit A-14) headed "Contracts Administration". He also admitted that the subject of computers had been mentioned.

After the meeting of May 10, 1995 the next contact between W.M. Evans and Mario Rinaldi was on May 15, 1995. It was Mario Rinaldi who, on receiving two e-mail messages (Exhibits A-56 and A-38), decided to telephone W.M. Evans.

First, Mario Rinaldi told W.M. Evans that he thought Alain Desfossés' answers (Exhibits E-5 and E-7) about contract administration (Exhibit A-14) and the audit function (Exhibit A-14) were strange. He added that he was upset by the comments of W.M. Evans on May 10, 1995 that henceforth there was "open warfare". Later in the conversation, W.M. Evans said he intended to ask Vice-President Lindberg to look into the overpayment made to Diana Durnford. That was when Mario Rinaldi asked W.M. Evans if he had any objection to the Auditor General coming to the Space Agency, and he added that he in fact had a meeting the next day with representatives of the Auditor General. W.M. Evans answered that this concerned him. Mario Rinaldi replied [TRANSLATION] "Very well".

The purpose of the meeting with the Auditor General, according to Mario Rinaldi, was to discuss the report (Exhibit A-57) by the Auditor General on the Space Agency, as Mario Rinaldi had put it on the agenda (Exhibit A-39) of the Space Agency's Executive Committee, which was to hold a meeting on May 17, 1995. He also intended to discuss the overpayment to Diana Durnford. However, in view of W.M. Evans' objection he decided to cancel the meeting on May 16, 1995 with Francine Bissonnette, Principal in the Auditor General's office in Montréal.

On May 16, 1995 Mario Rinaldi received a message (Exhibit A-58) from Alain Desfossés. The latter wanted to look at the Diana Durnford file again as he had just been told by W.M. Evans of the existence of certain allegations regarding handling of the file. He also cancelled a meeting he was to have with Mario Rinaldi that day (Exhibit A-89).

This takes us to May 17, 1995. On May 16, 1995 W.M. Evans arranged a meeting with Mario Rinaldi for May 17, 1995.

The following is what was said at that meeting, according to Mario Rinaldi.

At the meeting two security guards were placed at the door of the room where the meeting was held. At the outset W.M. Evans began by saying [TRANSLATION] "What bothers me about our meeting on the reorganization is that, because your position was

abolished, you said you'd drag me and Alain down with you". Mario Rinaldi replied: [TRANSLATION] "Mac, we have never had a meeting on reorganization and I never said that". W.M. Evans then went on to the letter (Exhibit A-14) on the overpayment to Diana Durnford and containing Mario Rinaldi's allegations that Alain Desfossés had tried to make him issue forged documents. He then criticized Mario Rinaldi for going to the Auditor General. Many things were said. At one point, W.M. Evans told Mario Rinaldi he should stay away from the Space Agency and should apply for "management leave" on the ground that he was suffering from stress. He, W.M. Evans, would approve the leave application. He added that if Mario Rinaldi did not make this application he would suspend him. Mario Rinaldi said that it was not right to treat him in this way and that he had done nothing wrong. Mario Rinaldi asked W.M. Evans whether it was all a "cover-up". W.M. Evans did not answer.

The conversation lasted for nearly two and a half hours. The Space Agency's legal counsel, Robert Lefebvre, was present.

W.M. Evans criticized Mario Rinaldi several times for contacting the Auditor General. He repeated several times that he no longer trusted Mario Rinaldi. He said [TRANSLATION] "I can no longer keep you in this position as I can no longer trust you".

At one point, Robert Lefebvre left the room for 10 or 15 minutes. During this time Mario Rinaldi asked W.M. Evans [TRANSLATION] "Why are you doing this?" The latter answered [TRANSLATION] "Because I have to do it", and he added that a counsellor (Andrew Molino) from the Public Service Commission was available to help him (Mario Rinaldi) decide whether he would take "management leave" or be suspended with pay.

At the end of the meeting the consultant, Andrew Molino, entered the room. Mario Rinaldi was surprised.

In his testimony Mario Rinaldi reviewed the notes made by the lawyer Robert Lefebvre (Exhibit A-17) and stated that in general they confirmed what he had just said about the meeting.

At about 11:30 a.m. on May 18, 1995 Mario Rinaldi was invited to a meeting with W.M. Evans. The legal counsel for the Space Agency, Robert Lefebvre, was again

present. Seeing that Robert Lefebvre was there, Mario Rinaldi objected that he should have been informed as he would also have been accompanied by his lawyer.

W.M. Evans moved on to the purpose of the meeting. He read to Mario Rinaldi the letter of reprimand (Exhibit A-18) addressed to him, told him he would have to move out of his office before 5:00 p.m. and that he would henceforth have an office on the third floor. He added he would have to leave all his files behind him and bring back to work any he might have at home. He also told him he should not discuss the matter with his employees (Mario Rinaldi's employees). In answer to a question from Mario Rinaldi W.M. Evans told him he was no longer a member of the Executive Committee. He added that he (W.M. Evans) had spoken to several people about this matter.

As his office was located on the second floor, Mario Rinaldi had to take his personal belongings to the third floor, right beside the offices of W.M. Evans and Alain Desfossés. Not only was no physical distance created between him and Alain Desfossés, as the President of the Public Service, Ruth Hubbard, had suggested to W.M. Evans, but on the contrary they were moved closer together.

In the late afternoon of May 18, 1995, some of Mario Rinaldi's employees told him they had been earlier called to a meeting with W.M. Evans, Robert Lefebvre and Alain Desfossés. At the meeting they were told that Mario Rinaldi had been relieved of his duties, that a "forensic" inquiry would be held and that they should not talk to Mario Rinaldi about anything connected with work. Within a short time, it was being rumoured that Mario Rinaldi had committed fraud.

Mario Rinaldi noted that W.M. Evans did not tell him for how long he was relieved of his duties.

On May 19, 1995, at W.M. Evans' request Mario Rinaldi met with him again. This time they were alone. The President of the Space Agency told Mario Rinaldi of the special project (Exhibit A-21) he intended to assign to him, since Mario Rinaldi had been relieved of his usual duties. The conversation then got on to the recent events. Mario Rinaldi pointed out to W.M. Evans that there were security guards at the door at the meeting of May 17, 1995, during which he had been reprimanded and relieved of his duties. He told him he was being treated as a criminal. W.M. Evans replied "I know". "Why?", Mario Rinaldi asked. "I do not know", W.M. Evans replied, then mentioned that

a journalist had telephoned him. Mario Rinaldi then asked him to return him to his duties. W.M. Evans replied "I cannot . . . because of my image". He added "I have to give him [Alain Desfossés] something to do". Mario Rinaldi told him that what he [W.M. Evans] had done to him (a reference to the letter of reprimand and the fact of being relieved of his duties) was neither right nor justified and it was disciplinary action. He added that he could have continued performing his duties and, as a change, reported to W.M. Evans instead of to Alain Desfossés. W.M. Evans then told him he would help him get out of this unfortunate situation and he added "no one will hire you because of the position you are in". W.M. Evans also told Mario Rinaldi to do nothing until they had settled the matter. At the end of the meeting Mario Rinaldi put his hands on W.M. Evans' shoulders and told him "Mac, we'll work it out".

Despite counsel for the employer's objection, I allowed the notes (Exhibit A-63) written by Mario Rinaldi on this event to be admitted in evidence. They were written at the time in question. Further, I accepted W.M. Evans' notes (Exhibit A-15) on the events as of May 10, 1995. Counsel for the employer did not object to the filing of W.M. Evans' notes (which, unusually for this kind of case, were first entered by counsel for Mario Rinaldi).

Also on May 19, 1995, Mario Rinaldi received a visit in the evening at his home from Richard Simpson, Manager, Contract Administration. He told him that the Executive Vice-President, Alain Desfossés, and the legal counsel, Robert Lefebvre, had questioned him about Mario Rinaldi's memorandum (Exhibit A-14) on contract administration. A few days later, Richard Simpson wrote (Exhibits E-8, A-66, A-78 and A-79) Alain Desfossés and Robert Lefebvre about this examination.

On May 22, 1995 W.M. Evans telephoned Mario Rinaldi and told him that, if he withdrew his complaint (Exhibit A-13) and apologized to Alain Desfossés, he, the Space Agency President, would withdraw his letter of reprimand addressed to Mario Rinaldi.

According to Mario Rinaldi, during the conversation both W.M. Evans and Mario Rinaldi referred to the possibility of some arrangement by which Mario Rinaldi would work for six years on a special project and would then retire.

On May 25, 1995 W.M. Evans went to Mario Rinaldi's new office accompanied by Marie-Claude Landry, Robert Lefebvre's secretary. Marie-Claude Landry took notes during the conversation. W.M. Evans gave Mario Rinaldi details of the special project he

was assigning to the latter. He then added "Alain has done his thing but Robert has not finished his yet". Mario Rinaldi replied [TRANSLATION] "No comment", because he said he did not understand the meaning of this remark. W.M. Evans asked him several times to do nothing. Mario Rinaldi added that his lawyer would contact W.M. Evans. At the very end, Mario Rinaldi asked W.M. Evans to give him the notes taken by Marie-Claude Landry. W.M. Evans promised he would give them to him. However, Mario Rinaldi had to fight to get them (Exhibits A-22, A-23, A-27, A-80, A-91, A-92, A-93, A-94 and A-95) and to get the report (Exhibit A-12) by the investigator Jean-Maurice Cantin. He also never got the handwritten copy of Marie-Claude Landry's notes: what he got was the version revised by W.M. Evans (Exhibit A-22). Mario Rinaldi noted that Hon. John Manley had stated in the House of Commons that the notes had not been destroyed. Mario Rinaldi stated that, contrary to what W.M. Evans alleged, he never suggested that he withdraw his complaint (Exhibit A-13) dealing with the requests made to him by Alain Desfossés to backdate documents relating to Diana Durnford, and he pointed out that Marie-Claude Landry's notes (Exhibit A-22), as reworked by W.M. Evans, made no mention of any offer to this effect. He described as a "complete fallacy" the statement that he had suggested he would withdraw his complaint (Exhibit A-13). He said it was W.M. Evans who suggested that he withdraw it.

On May 30, 1995 W.M. Evans summoned Mario Rinaldi to his office. Once again Robert Lefebvre was present. W.M. Evans told Mario Rinaldi that an investigation would be conducted by an impartial third party (it would be Jean-Maurice Cantin, former vice-chairperson of the Public Service Staff Relations Board) and he wanted Mario Rinaldi to cooperate. Mario Rinaldi was surprised as he said he thought W.M. Evans and he would be able to agree on a solution. It was not until he received the letter from W.M. Evans (Exhibit A-76) dated June 5, 1995 that he realized the scope of the investigation. By that letter (Exhibit A-76), W.M. Evans told him that he had decided to have an investigation made into the allegations raised by Mario Rinaldi regarding Alain Desfossés.

Mario Rinaldi was surprised as he had not filed an official complaint of harassment and had not requested an investigation. He noted with astonishment that the content of the three memoranda (Exhibit A-14) dated May 9, 1994 dealing with contract administration, audit and security had been described by W.M. Evans as [TRANSLATION] "allegations" and that he had made them the basis for the investigation along with other allegations listed by W.M. Evans and allegedly made to

him by Mario Rinaldi. Mario Rinaldi noted that at no time had he mentioned the policy on harassment in the workplace (Exhibit E-23) nor had he intended to file a complaint pursuant to that policy (Exhibit E-23) on the matters listed by W.M. Evans. Mario Rinaldi was disturbed by the content of the letter (Exhibit A-76) as he found on reading it that W.M. Evans was attributing to him certain allegations which he claimed he did not make.

Additionally, the report ("the Cantin report" - Exhibit A-12) resulting from the investigation requested by W.M. Evans was not given to him until October 25, 1995, after his colleagues and he had learned on September 6, 1995 that their positions had been abolished.

Before being able to acquire a copy of the Cantin report (Exhibit A-12), Mario Rinaldi had to make several requests.

On August 17, 1995 Mario Rinaldi requested (Exhibit A-23) a copy of the Cantin report (and the notes made by Robert Lefebvre and Marie-Claude Landry). The same day W.M. Evans replied to him by e-mail (Exhibit A-80) that on July 25, 1995, in the presence of the attorney Raymond Piché, he had met with the investigator Jean-Maurice Cantin for the latter to make a verbal report to him on the investigation, and that on August 14, 1995 Jean-Maurice Cantin had submitted a draft of his report to the attorney Robert Lefebvre and he (W.M. Evans) had received a copy of it on August 16, 1995. W.M. Evans submitted Mario Rinaldi's request for the notes made by Robert Lefebvre and Marie-Claude Landry at various meetings to the attorney Robert Lefebvre. Finally, W.M. Evans assured Mario Rinaldi that he would contact him once the investigation was completed and that he intended to treat him and Alain Desfossés fairly.

Mario Rinaldi questioned this procedure. He was surprised that the attorney Raymond Piché (who is the employer's attorney at this hearing) and W.M. Evans had met with the investigator Jean-Maurice Cantin and that these individuals had reviewed the draft of the report by the investigator Jean-Maurice Cantin.

On August 21, 1995 Mario Rinaldi asked W.M. Evans (Exhibits A-91 and A-92) to give him a draft of the Cantin report and repeated his request for the notes made by Marie-Claude Landry and Robert Lefebvre. On August 25, 1995 W.M. Evans replied (Exhibit A-94) that the two copies of the draft mentioned above had since been

returned to Jean-Maurice Cantin. Mario Rinaldi tried again the same day and asked for the documents (Exhibit A-95) by an application filed pursuant to the *Access to Information Act*.

It was not until October 25, 1995 that Mario Rinaldi received an expurgated version of the Cantin report (Exhibit A-111).

In order to obtain the Cantin report, in addition to his application to the Space Agency (Exhibit A-95) pursuant to the *Access to Information Act*, Mario Rinaldi on September 25, 1995 filed a similar application (Exhibit A-96) with the Department of Justice (Exhibits A-96, A-97 and A-98).

On September 21, 1995 W.M. Evans replied to Mario Rinaldi (Exhibit A-22) regarding his application to the Space Agency under the *Access to Information Act*. Mario Rinaldi filed a complaint with the Information Commissioner of Canada and received a favourable reply from the latter (Exhibit A-26) dated March 13, 1996. The Information Commissioner stated that in his opinion the President of the Space Agency should have given Mario Rinaldi a copy of the draft Cantin report, especially as he knew that Mario Rinaldi wanted a copy of it.

Mario Rinaldi had doubts regarding the impartiality of the procedure followed by the investigator Cantin as he found on reading the reply from Mr. Grace, the Information Commissioner (Exhibit A-26), that it was the investigator's practice to supply his clients with a draft of his report. Mario Rinaldi did not understand why the investigator Cantin had not also sent him a draft of his report so he could make his comments on it. He asked Mr. Grace for clarification (Exhibit A-99), but the latter only sent him a partial reply (Exhibit A-100), omitting to explain the facts on which he relied in concluding that the changes made to his report by the investigator Cantin (Exhibit A-26), following submission of the draft to W.M. Evans, were minor.

Mario Rinaldi was even more concerned about the procedure followed by the investigator Cantin when he learned from W.M. Evans (Exhibit A-80) that the investigator Cantin had met with W.M. Evans in person at lunch to report to him on his investigation (Exhibits A-80 and A-101).

After reading the request for the services of the investigator Cantin (Exhibit A-103) and the contract (Exhibit A-104) awarded to him, the amendment to this

contract (Exhibit A-105) and a further amendment to the same contract (Exhibits A-106 and A-107), Mario Rinaldi wondered how Mr. Grace could conclude that [TRANSLATION] "minor changes" had been made to the draft of the Cantin report when those changes had resulted in increasing the cost of the contract by some \$1,926, which in Mario Rinaldi's opinion precluded the possibility of "minor" changes.

Mario Rinaldi noted that on August 21, 1995 he clearly indicated to W.M. Evans (Exhibit A-91) that he wanted a copy of the draft Cantin report and that according to Mr. Grace's report (Exhibit A-26, page 2) it was the following day, August 22, 1995, that a meeting was held between W.M. Evans and the investigator Cantin. This date seems likely since the very next day the Space Agency proceeded to review the investigator's contract (Exhibits A-106 and A-107). Additionally, it appeared from an e-mail (Exhibit A-93) from W.M. Evans that on August 22, 1995 he knew that Mario Rinaldi wanted access to the draft Cantin report.

On September 1, 1995 Mario Rinaldi received not the Cantin report (as we know, it was not until October 25, 1995 that he received an expurgated version), but rather the conclusions of the Cantin report. They were sent to him by W.M. Evans (Exhibit A-108). This was a shock to Mario Rinaldi as, he explained, first, he had filed no harassment complaint, and second, he did not intend to make a complaint regarding the several allegations attributed to him by W.M. Evans. Moreover, he had to explain himself to the investigator Cantin regarding these supposed allegations without having access to the files relating to the supposed allegations. Finally, he could not see the draft of the Cantin report, and lastly, he was sent the investigator's conclusions without being given the evidence supporting them. For him to have access to that evidence, W.M. Evans required him (Exhibit A-108) to give a written undertaking that he would not disclose the content of the report to anyone, except in the course of a judicial or quasi-judicial inquiry.

Mario Rinaldi refused to sign such an undertaking. As the investigator Cantin had refused to give Mario Rinaldi's lawyers a copy of his report, Mario Rinaldi resolved to make an application under the *Access to Information Act* mentioned above, and this led to his obtaining the expurgated version of the report (Exhibits A-109, A-110 and A-111) on October 25, 1995.

On September 6, 1995, when he only had the conclusions of the Cantin report made in August 1995, Mario Rinaldi was asked to come to W.M. Evans' office. The

meeting was attended by W.M. Evans, Mario Rinaldi and a Treasury Board representative, Jim Crandlemire. Mario Rinaldi was told that his position had been abolished and he was offered a "Flex" assignment for two months, after which he would be laid off as a result of the abolition of his duties. Mario Rinaldi refused to sign the "Flex" assignment form (Exhibit A-2). He was not told that his co-workers had been offered "Flex" assignments for two years (Exhibits A-33 and A-34). The first time he learned of this was at the instant hearing, just as the first time he saw the complete version of the Cantin report (Exhibit A-12) was during this hearing. Mario Rinaldi noted that there was no term on the assignments (Exhibits A-33 and A-34) given to his co-workers. At the time of this part of Mario Rinaldi's testimony, October 17, 1997, the two co-workers in question (Doetsch and Lindberg) were still working for the Space Agency.

No mention was made at the meeting of September 6, 1995 of other employment opportunities at the Space Agency for Mario Rinaldi.

On September 11, 1995 W.M. Evans asked Mario Rinaldi (Exhibits A-112 and A-113) whether he had decided to sign the "Flex" assignment form. On September 15, 1995 Mario Rinaldi told W.M. Evans that he had placed the matter in the hands of his attorneys. On September 20, 1995 W.M. Evans told Mario Rinaldi (Exhibit A-114) that if he did not accept the "Flex" assignment by September 29, 1995 at the latest the offer would expire and his position would be abolished. On September 29, 1995 Mario Rinaldi called in sick (Exhibit A-117). He was no longer sleeping, he had lost 30 pounds and he had pains in his arm (this sick leave lasted for 10 days).

That same day counsel for Mario Rinaldi contacted counsel for the employer (Exhibit A-5). Counsel initiated discussions with a view to a settlement. The date on which Mario Rinaldi would become a surplus employee, November 8, 1995, remained unchanged.

On October 5, 1995 Mario Rinaldi received a letter from W.M. Evans (Exhibit A-118) thanking him for his contribution to the reorganization of the Space Agency, inviting him to make suggestions and asking for his support in the next stage of the reorganization. Mario Rinaldi was surprised to read these comments as he had not participated on any committees or in any of the reorganization activities. He had also received almost no mail since May 19, 1995 (Exhibit A-119) and was not kept informed of the development of the reorganization project. Additionally, since

W.M. Evans had relieved him of his duties he no longer attended meetings of the Executive Committee. Further, he no longer went to meetings of the various external committees (such as the Quebec Committee of Senior Officials, the Interdepartmental Committee on Financial Systems and the European Committee on Finance and Administration). His employees had also been instructed to cease speaking to him about work. Mario Rinaldi met with some of them from time to time in the restaurant. In fact, according to Mario Rinaldi his employees feared reprisals if they were seen with him, and they told him so.

The discussions regarding a settlement broke down. Accordingly, on November 2, 1995 Mario Rinaldi was told (Exhibit A-6), at a meeting in W.M. Evans' office in the presence of Jim Crandlemire, that his position had become surplus and unless another position was found in the interval he would be laid off on May 7, 1996. At the same time W.M. Evans told him that he should move out of his office (the one he had occupied since he was relieved of his duties in May 1995).

After receiving the consent of W.M. Evans and Jim Crandlemire, Mario Rinaldi recorded this conversation. During the conversation W.M. Evans told Mario Rinaldi he had made arrangements with another department to give him a new office. Mario Rinaldi protested. He felt humiliated and made his feelings known in a letter to W.M. Evans (Exhibit A-120) written the next day, November 3, 1995. He wrote W.M. Evans that he regarded his actions as "disciplinary", besides being humiliating and degrading. When he came to this point in his testimony, Mario Rinaldi wept. (Moreover, I had to suspend the hearing several times during the 30 days that it lasted in order to allow Mario Rinaldi, who broke down several times, to recover himself.) On the same day he wrote the Clerk of the Privy Council, Jocelyne Bourgon (Exhibit A-121). In his letter he asked that the actions of the President of the Space Agency be stopped, at least until a solution acceptable to the parties was found. The Privy Council Office did not acknowledge receipt of his letter and the Clerk of the Privy Council did not answer his letter.

On November 6, 1995 Mario Rinaldi wrote W.M. Evans (Exhibit A-122) telling him he would answer his letters of June 5 and September 1, 1995 (Exhibits A-76 and A-108) once he had the information requested under the *Access to Information Act*. Before answering W.M. Evans' letter (Exhibit A-108) telling him of the conclusions reached by

the investigator Cantin he wanted to have access to the full report by the investigator Cantin, including the testimony taken by him.

On November 8, 1995 Mario Rinaldi received confirmation (Exhibit A-129) that his position had been declared surplus as of November 8, 1995 and that, unless a new position was found, he would be laid off on May 7, 1996.

On November 14, 1995 W.M. Evans wrote him (Exhibit A-130) and offered him a choice of three places where he could occupy an office during the period that he was a surplus employee. He also asked him for a copy of the recording of the conversation of November 2, 1995. Mario Rinaldi never sent it to him.

On November 30, 1995 Mario Rinaldi's counsel wrote the President of the Space Agency (Exhibit A-132) telling him that his client was prepared to accept assistance in locating work. He also mentioned the humiliation suffered by Mario Rinaldi as a result of his dismissal.

Subsequently, again according to Mario Rinaldi, he received no assistance in finding another position. He stayed at home and received his salary until May 8, 1996.

On April 4, 1996 W.M. Evans again told Mario Rinaldi (Exhibit A-133) that he would be laid off as of May 8, 1996. Mario Rinaldi considered that, as he had been ill (Exhibit A-134) in February 1996 and in October 1995, the six-month period of surplus status should have been extended to reflect these periods of illness. His salary ceased on May 7, 1996. On May 2, 1996 Mario Rinaldi wrote W.M. Evans (Exhibit A-135) that he regarded himself as on sick leave from that date. His intention, he testified, was to use up his sick leave credits and thus postpone the date on which he was laid off.

Mario Rinaldi described the damages claimed by him as follows.

First, he said he had suffered damage as a result of the loss of his salary, salary increases and job openings. He incurred medical and dental expenses, legal costs, expenses relating to life insurance, job search expenses and, finally, various expenses associated with increased use of his home.

Then, he had suffered damage to his reputation caused by W.M. Evans, who made the matter public on May 8, 1995 (Exhibit A-20) by calling the employees together in the presence of the Executive Vice-President, Alain Desfossés, and the legal counsel,

Robert Lefebvre, to tell them that Mario Rinaldi would no longer be in his position and that a "forensic" investigation by two outside investigators would take place. He also asked employees not to discuss work with Mario Rinaldi. This procedure caused so many rumours to circulate among employees that W.M. Evans had to send out an e-mail (Exhibit A-20) clarifying his statements. The President's e-mail was sent to all users, that is about 350 full-time employees and 225 contract employees. Mario Rinaldi thought there may have been about 70 to 80 of his own employees at the meeting with the employees.

Although the Space Agency President told employees on May 18, 1995 that outside auditors would conduct an investigation, there was none.

Mario Rinaldi felt that further evidence of the injury to his reputation was the fact that while he was primarily responsible for the Employment Equity Program (Exhibit A-50, page 3), he did not attend the public ceremony on June 12, 1995 for the awarding of the 1994 Employment Equity Prize to the Space Agency (Exhibits A-138 and A-139). Nonetheless both W.M. Evans and the members of the Executive Committee, to which Mario Rinaldi belonged before being relieved of his duties on May 18, 1995, attended the award ceremony.

As he had been excluded from the Executive Committee, Mario Rinaldi did not know how W.M. Evans explained his exclusion and the fact that he had been relieved of his duties to the members of the Committee. All he knew was that on May 18, 1995 Garry Lindberg, another vice-president and colleague of Mario Rinaldi, and also a member of the Committee, sent him a note (Exhibit A-62) telling him that the Executive Committee had heard "ten words from Mac", that was all. Garry Lindberg added he hoped to remain Mario Rinaldi's friend and colleague. The minutes of the Executive Committee (Exhibit A-170) said nothing about Mario Rinaldi's departure.

Mario Rinaldi testified that not only had his reputation been damaged, but in addition he personally felt he was under investigation in view of the statements made by W.M. Evans on May 18, 1995 before Mario Rinaldi's employees, to the effect that external auditors would be conducting a "forensic audit". He noted that no mention was made to the employees of the actions of the Executive Vice-President, Alain Desfossés, except that henceforth the employees would be reporting to Alain Desfossés.

Mario Rinaldi felt that not only had his reputation been damaged with his employees and the Space Agency, it had also been damaged in the Public Service as a whole.

W.M. Evans testified that he told Ruth Hubbard, President of the Public Service Commission, about this matter on May 16, 1995. Further, following a harassment complaint (Exhibits A-164 and A-165) filed against W.M. Evans by Mario Rinaldi, Raymond Piché (who is also counsel for the employer in the instant case) sent a reply to the regional head of the Investigations Branch of the Public Service Commission, Jean-Pierre Giroux (Exhibit A-61: chronology of events, paragraphs 23 and 24), in which he acknowledged that W.M. Evans had contacted Ruth Hubbard and Margaret Amoroso of the Public Service Commission. He further alleged that Mario Rinaldi had made threats and could not stand up to stress. According to Mario Rinaldi, the reply suggested that he lacked loyalty. These statements, according to Mario Rinaldi, were harmful and capable of destroying his reputation.

Mario Rinaldi noted in this regard the importance to employees holding level EX-03 positions of having a good reputation with the Public Service Commission. He mentioned the importance of being well regarded in the network comprising employees holding positions classified at the EX-03 level and aspiring to positions classified at the EX-04 level. Though the Public Service Commission did not have the last word in appointing a candidate, it played a key part in the process leading to the appointment to an EX-04 level position. It was the Commission which prepared the list of candidates. That list reflected among other things the names of possible candidates supplied by the deputy ministers of various agencies. Accordingly, in May 1995 Mario Rinaldi's name was circulated as a possible candidate for a position classified at the EX-04 level. As W.M. Evans had telephoned Ruth Hubbard, President of the Public Service Commission, and given her his own version of events, Mario Rinaldi felt his reputation had been thereby damaged.

That is why on September 17, 1996 Mario Rinaldi decided to write Ruth Hubbard (Exhibit A-140) to ask her to what extent she had participated in the [TRANSLATION] "disciplinary action" taken against him in May 1995. She replied that she had not been involved in what he characterized as "disciplinary action" (the term "disciplinary action" comes from the employer's reply to a complaint filed by Mario Rinaldi with the Public Service Commission - see Exhibit A-61: chronology of events, paragraph 23:

"disciplinary action"). She also assured him that as President of the Public Service Commission she would not be directly or indirectly involved with the complaint filed with the Public Service Commission by Mario Rinaldi.

Mario Rinaldi also wrote the Clerk of the Privy Council, Jocelyne Bourgon, since it was she who, according to Mario Rinaldi, should be regarded as the hierarchical superior of W.M. Evans, against whom he was filing his complaint. There was also no progress in dealing with his situation, as the employer had challenged the initial decision (Board files 166-2-26927 and 26928) by the undersigned (Marguerite-Marie Galipeau) in the Federal Court. Finally, he did not know where to turn. He therefore made up his mind to approach the Clerk of the Privy Council, Jocelyne Bourgon.

Through the *Access to Information Act* Mario Rinaldi obtained a copy from the Space Agency (Exhibit A-141) of a message faxed on November 21, 1995 to legal counsel for the Space Agency, Robert Lefebvre, apparently by Joan McCoy, Chief, Compensation and Human Resources Policies, at the Treasury Board. The message mentioned the letter sent by Mario Rinaldi to Jocelyne Bourgon, Clerk of the Privy Council (Exhibit A-141). She indicated that Mario Rinaldi's letter would be discussed by Richard Paton, Acting Deputy Minister at the Treasury Board, with Jocelyne Bourgon. The message suggested that the Space Agency President, W.M. Evans, contact Richard Paton to discuss "what was said between them". On reading this document Mario Rinaldi wondered about the integrity of the procedure and why these individuals had not contacted him to get his version. He was troubled by the fact that neither Ms. Bourgon nor Mr. Manley (Exhibit A-115), who in his view were in some measure the supervisors of the Space Agency President, W.M. Evans, had not answered his letters.

The fax (Exhibit A-141) convinced him his reputation had been damaged. He noted that the Treasury Board had a part to play in appointing the managers of Corporate Services in various agencies, and as an indication of this Jim Crandlemire, Director of the "Executive Employees and Excluded Groups Division", Treasury Board, attended the meetings of September 6 and November 2, 1995 (Exhibit A-130). Another message (Exhibit A-142) sent by Robert Lefebvre to Joan McCoy, of the Treasury Board, in his view was another indication of the close relationship existing between the Treasury Board and the Space Agency.

Mario Rinaldi thought his reputation had been damaged by the entire matter and that it hindered his search for employment within the Public Service. Since November 8, 1995 he had had two interviews. He applied for the position of Director General, Appeals and Investigations (Exhibit A-143) at the Public Service Commission. He did not get the position. The resourcing strategy proposal (Exhibit A-143) indicated that Ruth Hubbard was a member of the board (that is, the selection board). Mario Rinaldi also applied unsuccessfully for the position of Assistant Deputy Minister, Corporate Services, at the Department of Veterans Affairs (Exhibits A-144 and A-145). He noted that Ruth Hubbard and two members took the decision to approve the recommendation to appoint Brian Ferguson to the position (EX-04). He felt that the actions taken by W.M. Evans could have damaged his reputation and that was how he explained certain comments by the selection board about him (Exhibit A-145). He noted he was only asked to attend two interviews and felt that there were four other positions (Exhibits A-145 and A-146) for which he would have been a natural candidate. He noted that between September 25, 1996 (Exhibit A-146) and March 19, 1997 (Exhibit A-148) his candidacy has not been approved for any position whatever.

The entire matter caused him psychological and physical damage, and in this connection he referred to the testimony of his psychiatrist, Dr. Béliveau, whose report (Exhibit A-25) was filed.

At this stage of Mario Rinaldi's testimony his counsel announced his intention of introducing evidence on the investigation conducted by the investigator Jean-Pierre Giroux of the Public Service Commission following the harassment complaint (Exhibit A-164) filed by Mario Rinaldi against the Space Agency President, W.M. Evans, on December 5, 1995. Counsel for the employer objected to this evidence.

Counsel for Mario Rinaldi argued that the evidence regarding this investigation was relevant as there was not in fact a genuine investigation. In his submission, if there had been a proper investigation it was not Mario Rinaldi who would have lost his job. In his submission the investigation conducted by the Public Service Commission investigator disclosed an appearance of bias and this was a factor which should be taken into account in assessing the facts and the terms of Mario Rinaldi's reinstatement. According to counsel for Mario Rinaldi the Board should take into account the fact that W.M. Evans contravened the harassment policy (Exhibit E-23) in the various actions he took regarding Mario Rinaldi. The eventual reinstatement of

Mario Rinaldi should thus reflect the fact that it was better for Mario Rinaldi not to work near W.M. Evans and the relief imposed on the employer should accordingly require, if necessary, to find Mario Rinaldi a similar position elsewhere in the Public Service. Counsel for Mario Rinaldi added that, since the Public Service Commission investigation was improperly conducted, it followed that the Minister or Ministers awaiting the result of the investigation could not have been correctly informed. Thus, counsel noted, the investigator had not met with Mario Rinaldi and his factual report (Exhibit E-22) for all practical purposes reproduced the comments of the employer (Exhibit A-61). It was not known whether he met personally with W.M. Evans. He appeared to have met with only one witness, Francine Bissonnette of the Office of the Auditor General. Mario Rinaldi challenged (Exhibit A-66) the conclusions of the Public Service Commission investigator (Exhibit E-22). Additionally, for financial reasons, despite the damage to his reputation which the erroneous conclusions of this investigation may have caused, Mario Rinaldi has not gone to the Federal Court. He thus relied upon the undersigned to determine whether he had been the subject of a proper investigation.

Counsel for the employer, for his part, mentioned the following points. Counsel admitted that an adjudicator has jurisdiction to quash the employer's decision on the ground that it is a disguised disciplinary dismissal. At the same time, he doubted that an adjudicator could direct the employer to transfer the employee to a position in the Public Service other than the one held by him. His or her powers were probably limited to suggesting - to recommending - that the employee be placed in a position other than [*Tourigny* (Commission file 166-2-16434)] the one held by him at the time of his departure.

Counsel for the employer added that application of the harassment policy presented a problem in view of the high level of the people in question, especially in view of the fact that the harassment complaint (Exhibit A-164) was directed against the deputy head (within the meaning of the harassment policy, Exhibit E-23) himself, namely the President of the Space Agency, W.M. Evans. First, counsel for the employer admitted that Mario Rinaldi was entitled to an atmosphere free of harassment. He also admitted that the President, W.M. Evans, and the Executive Vice-President, Alain Desfossés, had to observe the harassment policy (Exhibit E-23) or be subject to disciplinary penalties.

Counsel for the employer went on to argue that it is the deputy head of a department or agency who is responsible for applying the harassment policy (Exhibit E-23) and taking the appropriate disciplinary action against an employee who has committed harassment. Here as the complaint was made against the head of the Space Agency, counsel for the employer could not see how, as he was himself a party to the complaint, W.M. Evans could ultimately, if the Public Service Commission had concluded that there was harassment, have been able to impose disciplinary action on himself. Moreover, the same problem would have arisen if Mario Rinaldi had filed a grievance complaining of harassment by the President, as it was the President who was responsible for responding to the grievance. Further, both the President of the Space Agency and the Executive Vice-President are appointed by Order in Council. It would thus probably be up to the Privy Council to take action against them if necessary. It was questionable whether, in such circumstances, despite the Order in Council (Exhibit E-24) giving it the duty of investigating any complaint filed by Public Service employees, the Public Service Commission had jurisdiction to undertake an investigation. Having said that, the Space Agency and its President raised no objections to the jurisdiction of the Public Service Commission when it undertook the investigation and they agreed to present a defence to the investigation undertaken by its investigator.

Counsel for the employer further noted that the investigation undertaken by the Public Service Commission investigator was a "paper hearing", not based on witnesses. The Minister of Industry received the investigator's report (Exhibit E-22). Both the Privy Council and the Treasury Board awaited this report. If Mario Rinaldi was not satisfied with the way the investigation was proceeding or its conclusions, he should have applied to the Federal Court. A Public Service Staff Relations Board adjudicator cannot exercise judicial review over an investigation conducted by a Public Service Commission investigator.

Following these submissions, I indicated to counsel for Mario Rinaldi I would not allow him to repeat before me all the stages of the investigation conducted by the Public Service Commission. I also indicated that I did not feel bound by the conclusions of the Public Service Commission investigator, since the evidence presented to a Public Service Staff Relations Board adjudicator is not for the same purpose, is not necessarily submitted by the same parties and is not necessarily the same as that presented to the Public Service Commission. I further allowed the employer to file the investigation

report (Exhibit E-22) of the Public Service Commission investigator and Mario Rinaldi to file (Exhibits A-164 to A-168) Mario Rinaldi's request for an investigation, his submissions and his challenge to the investigation report.

I now turn to the summary of Mario Rinaldi's testimony on the reorganization of the Space Agency.

Mario Rinaldi stated that the abolition of his duties was a complete surprise. According to him, there had been nothing to indicate that this would happen. In April 1995 a 15 percent reduction in the Space Agency budget was scheduled (Exhibit A-41). Mario Rinaldi gave his employees a summary on March 9, 1995 (Exhibit A-149) of the reductions in Space Agency programs and its infrastructure (the Corporate Services financing went from \$95.4 million to \$85.6 million) and there were to be no salary cuts in 1995-1996 (Exhibit A-149, page 3: E & E Reductions, and page 4). It was even expected that the full-time equivalents (Exhibit E-13) would increase from 1995-1996 to 1996-1997. What was expected was that cuts would be made not in salaries but in expenses related to other sectors, such as contracts and overtime. In short, expenses would be reduced by changing the way in which things were done. Mario Rinaldi noted that the money needed to pay his salary was available. As an indication of this, the Space Agency in June 1995 concluded a contract (Exhibit A-152) with the Hierogram company to do work which Mario Rinaldi could have done, when he was [TRANSLATION] "on the shelf" doing nothing, on the pretext that he was handling a "special project" which did not materialize. Additionally, Mario Rinaldi considered that his job could have been continued by assigning him other duties, by asking him even to take a position classified at a lower level than the one he held. He noted that it was even his employer's policy (Exhibit A-154) to make every reasonable effort to offer other employment in the Public Service to members of the executive group and other senior excluded levels whose positions were made redundant by the abolition of a function.

The documents (Exhibits A-156 and A-157) from the Treasury Board indicate the importance attached to the function of comptroller by the Comptroller General and the Secretary of the Treasury Board. They indicate that it is considered desirable for the senior financial officer of a department (here, Mario Rinaldi) to exercise a comptroller's function and observe high ethical standards. In line with this, the senior financial officer must ensure that public funds are used judiciously (Exhibit A-156).

Mario Rinaldi further noted that the position of Director of Communications held by Louis Fortier was not abolished and still exists.

He also pointed out that, before his own position was declared redundant, only one other position had been abolished following the arrival of the President of the Space Agency and the Executive Vice-President, Alain Desfossés, and that was Paul Johnston's position (Exhibits A-158, A-159, A-160, A-161 and A-162). According to Mario Rinaldi, this position was abolished to accommodate Paul Johnston, who as early as 1989 had indicated (Exhibit A-158) his wish not to move to St-Hubert, Quebec. The position held by Paul Johnston was abolished on December 14, 1994 (Exhibit A-160). In the meantime, Paul Johnston had worked for the Precarn company, whose president at the time was W.M. Evans. Two months before the abolition of Paul Johnston's position on December 14, 1994 (Exhibit A-160), Paul Johnston was told on October 20, 1994 (Exhibit A-159) that as his assignment at the Precarn company was ending on December 13, 1994 he should report to St-Hubert to take up his duties. Paul Johnston went to meet with Mario Rinaldi to ask him what he had to do to ensure that his position was abolished. W.M. Evans, who was then President of Precarn and was himself opposed to the setting up of the Space Agency in St-Hubert and did not want to move, telephoned Mario Rinaldi to ask him what he could do to ensure that Paul Johnston's position was abolished. Mario Rinaldi told him that the Space Agency President, Roland Doré, and his Executive Vice-President, Laurent Bergeron, had decided not to abolish the position. Despite this, as soon as W.M. Evans and Alain Desfossés returned to the Space Agency, this time as President and Executive Vice-President, one of their first concerns was to abolish Paul Johnston's position. They told Mario Rinaldi that one way to justify abolishing the position would be to say that it would cost too much to relocate Paul Johnston in St-Hubert. In any case, less than a month after their arrival they took the decision to abolish Paul Johnston's position and Mario Rinaldi had to comply with that decision. A financial settlement was reached between Paul Johnston and the Space Agency (Exhibit A-160), as a result of which he ceased to be an employee of the Space Agency and stayed with Precarn.

According to Mario Rinaldi, there was no indication that his own position would be abolished. On the contrary, even the recommendations in January 1995 of the management company Hollichord, whose services were retained by W.M. Evans and Alain Desfossés, (Exhibit A-67, page 282) suggested that the position of Vice-President, Corporate Services, was necessary since that company recommended that the

delegations made to the position be increased. Moreover, there was no indication in May 1995 (Exhibit E-12) that his position would be abolished. What is more, Mario Rinaldi did not understand the explanations given in his testimony by W.M. Evans, to the effect that he was waiting for the Cantin report before abolishing Mario Rinaldi's position in order to see the conclusions of Jean-Maurice Cantin regarding the allegations made about Alain Desfossés by Mario Rinaldi.

Mario Rinaldi noted that he had not taken part in the activities involving the reorganization and that at no time had anyone suggested to him that he would not be part of the new organization. He thought that if W.M. Evans knew in May 1995 he would not be part of the new organization he should have given him notice of the fact at that time (Exhibit A-163, paragraph 2.1.4). (At that stage, counsel for the employer interjected that Exhibits A-1, A-6 and A-35 established that the notice for abolition of his position was given to him at the correct time.)

In cross-examination Mario Rinaldi testified as follows.

Contrary to what might be thought from reading his curriculum vitae, he does not have an M.Sc. What he did was complete the course work for obtaining that degree. He came to the Space Agency following the abolition of his position as Director General, Management Services and Liaison Tourism Canada, in the Department of Regional [Industrial] Expansion. When the Space Agency was created there was an Executive Vice-President, Laurent Bergeron, and two Vice-Presidents, W.M. Evans and Garry Lindberg. Mario Rinaldi reported to Garry Lindberg. There were conflicts between on the one hand the President, Roland Doré, and the Executive Vice-President, Laurent Bergeron, and on the other W.M. Evans. Mario Rinaldi tried to get them to [TRANSLATION] "work together". W.M. Evans did not want to move to Montréal. Mario Rinaldi got along well with Messrs. Doré, Bergeron and Evans. He admitted that W.M. Evans had useful knowledge which was [TRANSLATION] "important" to the Space Agency. He thought that he was [TRANSLATION] "one of the founders of the Agency". Alain Desfossés joined the Space Agency for the first time in 1993. Towards the close of the first period spent at the Space Agency by Alain Desfossés the Space Agency President, Roland Doré, did not get along very well with Alain Desfossés. Finally, Alain Desfossés was relieved of his duties on May 31, 1994 (Exhibit A-37) and went back to the Department of Industry. Six months later he was appointed Executive Vice-

President of the Space Agency. At that time Mario Rinaldi himself had had [TRANSLATION] "run-ins" with Alain Desfossés.

For example, Mario Rinaldi refused to sign some contracts Alain Desfossés wanted to conclude. Mario Rinaldi's employees sometimes refused to sign these contracts because they said they did not meet certain standards. Mario Rinaldi therefore had to discuss them with Alain Desfossés. Mario Rinaldi denied that the "run-ins" which he had with Alain Desfossés were responsible for Alain Desfossés leaving the Space Agency. When Alain Desfossés went back to the Space Agency six months later, this time as Executive Vice-President, Mario Rinaldi accepted the situation. He did not expect to have any conflict with Alain Desfossés.

As Vice-President, Corporate Services, and senior financial officer, it was part of Mario Rinaldi's duties from time to time to refuse to sign certain documents put before him and to question what he was sometimes asked to do. The senior financial officers were "outposts" of the Treasury Board (Exhibit A-156). More than once he had to tell Laurent Bergeron, Garry Lindberg and Alain Desfossés he was refusing to sign certain documents.

He noted that the President and Executive Vice-President had full powers to sign what he, Mario Rinaldi, decided not to sign. He said that was their prerogative.

Mario Rinaldi was appointed Acting President (Exhibit A-52) by the President Roland Doré for short periods on five occasions. The Space Agency counsel, Robert Lefebvre, was aware of these short appointments and never expressed any reservations regarding their legality. Mario Rinaldi did not recall having discussed the legality of these appointments with Robert Lefebvre.

Mario Rinaldi described the circumstances surrounding the Hollichord matter as follows.

Shortly after his return to the Space Agency as Executive Vice-President, Alain Desfossés decided to review the financial delegations of authority in the Corporate Services Division, which reported to Mario Rinaldi. Mario Rinaldi made recommendations to him but Alain Desfossés stated that he wanted a second opinion. Mario Rinaldi did not think this was necessary, but bowed to Alain Desfossés' wishes. At Alain Desfossés' request he met with the representatives of the Hollichord company

in Ottawa together with Alain Desfossés, who according to what he told Mario Rinaldi wanted Mario Rinaldi's opinion on the company. An initial meeting was held on January 23, 1995. To his surprise, Mario Rinaldi found that Hollichord had already begun doing work (Exhibits A-67 and A-68) although the service contract with Hollichord (Exhibits A-71 and A-72) had not yet been signed. Mario Rinaldi wondered what he was doing at the meeting, since Alain Desfossés appeared to have already taken the decision to retain Hollichord's services. Mario Rinaldi had reservations as he found that one of the persons performing the contract was Mike Eustace, a former public servant and Director of Administration for Industry Canada, who had recently retired. Certain rules govern the conclusion of contracts with former public servants. Mario Rinaldi thought that any contract concluded would have to mention that the public servant had been retired for less than a year.

In this connection, at the meeting of January 23, 1995 Hollichord's President, Nicholas Ralph, told Alain Desfossés [TRANSLATION] "Don't worry, Alain, Eustace's name doesn't even appear on the train tickets" (Exhibit A-73).

When Alain Desfossés asked Mario Rinaldi to sign the contract, Mario Rinaldi refused. Alain Desfossés discussed the terms of the contract with one of Mario Rinaldi's employees, Richard Simpson, and they ultimately altered the terms of the contract to accommodate the concerns of Mario Rinaldi and Richard Simpson. Accordingly, the amount of the per diem was adjusted (Exhibit E-25) to reflect the fact that Mike Eustace was receiving a pension. In the end it was Alain Desfossés who signed the contract (Exhibit A-72). The person who requested Hollichord's services (Exhibit A-71) was the President of the Space Agency, W.M. Evans. Mario Rinaldi did not know why the President was the one making the request.

Mario Rinaldi noted that the investigator Jean-Maurice Cantin supported him (Exhibit A-12, page 27) and stated that he was correct to refuse to sign the contract unless the status of the former public servant Eustace was clarified and the terms established for concluding contracts observed.

Further, Mario Rinaldi maintained he did not talk to W.M. Evans about the Hollichord matter on May 10, 1995 and was very surprised to see that W.M. Evans had decided to order an investigation (Exhibit A-76) into "[the awarding of] a contract to a former public servant". He thought it must have been Alain Desfossés who mentioned the Hollichord matter to Robert Lefebvre and W.M. Evans on May 10, 1995. Although

Mario Rinaldi had reservations about this contract, his intention on May 10, 1995 was not to make allegations that would lead to an investigation. Moreover, Mario Rinaldi told the investigator Jean-Maurice Cantin that he had made no allegations about this. He also repeated to him more than once that he needed to consult the relevant files in order to testify. Jean-Maurice Cantin told him he would talk to Robert Lefebvre about the fact that he had no access to the files.

Mario Rinaldi stated that at the key meeting of May 10, 1995 he wanted to discuss with W.M. Evans the climate, the [TRANSLATION] "philosophy", underlying his relations and those of the employees in his division with the Executive Vice-President, Alain Desfossés. One of his employees, Richard Simpson, was complaining to Mario Rinaldi that he was being pressured to sign contracts about which he had reservations. Thus, Richard Simpson mentioned the Stoneboat and Steen contracts. Mario Rinaldi told him he would tell W.M. Evans of his concern about these pressures. This is why he prepared the memorandum headed "Contract Administration" (Exhibit A-14). Mario Rinaldi noted that it was not usual for pressure to sign documents to be applied by people who, if they wanted signatures, had full authorities to sign themselves, such as W.M. Evans and Alain Desfossés.

As well as the memorandum on contract administration (Exhibit A-14), Mario Rinaldi wanted to discuss the audit function (Exhibit A-14). The idea of assigning this function to Mario Rinaldi originated under the former President, Roland Doré. Additionally, Mario Rinaldi's most recent performance appraisal (Exhibit A-50) made it one of his objectives that he create an audit and evaluation program.

Mario Rinaldi did not think there would be a conflict of interest if his division inherited the audit function and he pointed out that many administrative units exercise internal control over their affairs.

When Alain Desfossés and W.M. Evans were appointed to their new duties in fall 1994, Mario Rinaldi submitted to them a plan dealing with this matter and indicated he was prepared to proceed to implement an audit program. Alain Desfossés said he was willing to assign him this responsibility, but added he had not yet arrived at a decision. Two or three months later it was the President, W.M. Evans, who said [TRANSLATION] "We must set up the audit program". As nothing had been decided on May 9, 1995 Mario Rinaldi decided to write a memorandum about it (Exhibit A-14). It joined the other memoranda he was planning to give W.M. Evans on May 10, 1995. It appears from

a memorandum (Exhibit A-169) written to the President W.M. Evans that Alain Desfossés, W.M. Evans and Robert Lefebvre, the legal counsel, knew on May 11, 1995 of the matters mentioned by Mario Rinaldi in his memoranda of May 9, 1995 (Exhibit A-14). On May 11, 1995 (Exhibits A-14 and E-7), Alain Desfossés invited Mario Rinaldi to discuss the audit program with him, but a few days later, on May 16, he cancelled the meeting he was to have about this with Mario Rinaldi.

In his telephone conversation with the President, W.M. Evans, on May 15, 1995 Mario Rinaldi asked the President's advice on the matters covered in his memoranda (Exhibits A-13 and A-14).

When the hearing resumed on February 9, 1998 counsel for the employer returned in cross-examination to the Hollichord contract. Mario Rinaldi had the files before him so he could testify and said he was satisfied, in the sense that he thought he had seen all the documents relating to the Hollichord matter (Exhibits E-25, E-26 and A-67 to A-73). He added the following to his earlier testimony on this point.

First, Mario Rinaldi did not want to sign on January 30, 1995 the internal request for the services of Hollichord (Exhibit E-26). He did not feel that as Vice-President, Corporate Services, he needed the services of this company, and he also was not familiar with Hollichord. He denied he was irritated by the fact that Alain Desfossés wanted to have the powers delegated to his division reviewed. Additionally, as it was Alain Desfossés who wanted to acquire the services of Hollichord, Mario Rinaldi felt it was up to Alain Desfossés to make the request for them (Exhibit E-26), which he personally thought was stated in language that was too broad.

He found from reading a letter from the Hollichord president to Alain Desfossés (Exhibit E-25, page 49) that Mike Eustace, a recently retired public servant, had had a conversation on December 20, 1994 with the Executive Vice-President, Alain Desfossés, regarding the services and advice that Hollichord could give the Space Agency about Corporate Services and signing authorities.

Mario Rinaldi noted that on January 31, 1995 the Hollichord president withdrew the company's proposal (Exhibit A-68) to provide these services and the same day he submitted a new proposal (Exhibit A-69), in which the name of the retired public servant, Mike Eustace, no longer appeared.

Mario Rinaldi noted that a few days earlier, on January 23, 1995, he had attended a meeting at which Mike Eustace had delivered work which he had done for the Space Agency (Exhibit A-67). Mario Rinaldi also noted that it was unusual for a person to do work before a contract was signed, without the consultant's pay and the work to be done being specified. (Earlier I related how on February 6 he attended a meeting with Hollichord at which the Hollichord president, Nicholas Ralph, had according to Mario Rinaldi waved train tickets about, saying that Mike Eustace's name did not appear on the tickets - Exhibit A-73.)

Mario Rinaldi thought that Hollichord had withdrawn Mike Eustace's name from his new proposal (Exhibit A-69) to conceal the fact that a former public servant was participating in performance of the contract and so claim the full amount for the services rendered. At the time this happened, it was of great concern to him. Ultimately it was the President, W.M. Evans, who signed the requisition for services (Exhibit A-71). It was Alain Desfossés who signed the articles of the contract and the amount of the contract was adjusted by a reduction (Exhibit E-25, page 6, "Abatement") to reflect the fact that a recently retired public servant would be providing the services covered by the contract (Exhibit E-25, page 29).

The supplementary conditions of the contract (Exhibit E-25, page 29) reflected these conditions relating to the participation of a former public servant in the contract.

Mario Rinaldi was not involved in all the discussions associated with this contract. Several of these took place between Lyse Garyluck, Richard Simpson and Alain Desfossés. The final result of these discussions was the insertion of a clause (Exhibit E-25, page 29) reflecting the amount to be paid if a former public servant participated in the performance of the contract.

Mario Rinaldi wrote the memorandum (Exhibit A-14) to W.M. Evans titled "Contract Administration" because on May 5 and 8, 1995 Richard Simpson had complained to Mario Rinaldi of the various pressures brought to bear on him, mentioning among other things the Steen and Stoneboat contracts. Richard Simpson (who did not testify) was very angry and allegedly told Mario Rinaldi [TRANSLATION] "I can't take it any more, I want to quit". This is when Mario Rinaldi decided to write the memorandum of May 9, 1995 (Exhibit A-14), by which he sought to inform the President of the difficult situation with regard to these matters.

The Stoneboat contract (Exhibit E-27) was another matter brought to Mario Rinaldi's attention by Richard Simpson, the contract administration manager. In a conversation on May 8, 1995 Richard Simpson told Mario Rinaldi that he had been told that the husband of the Clerk of the Privy Council, Jocelyne Bourgon, was involved with the matter. Mario Rinaldi told him that Mr. McAngus was not Jocelyne Bourgon's husband. According to Mario Rinaldi, Mr. McAngus was the husband of Jocelyne Bourgon's personal secretary. Richard Simpson was also concerned that a former public servant was involved with the matter. He also considered that Mr. McAngus did not have the qualifications required to participate in the contract. There were notes (Exhibit E-27, pages 7 to 10) recording Richard Simpson's concerns. In the end the contract was not concluded. Mario Rinaldi did not take notes of his conversation with Richard Simpson on May 8, 1995 as he intended to meet with W.M. Evans in Richard Simpson's presence so the latter could explain his concerns to the President.

Another matter was troubling Richard Simpson: the Steen contract. On May 5, 1995 Richard Simpson told Mario Rinaldi that the attorney Robert Lefebvre had asked him how to go about paying one Steen for preparing a proposal which the latter had drafted to obtain a contract that ultimately was not awarded. Richard Simpson found that it [TRANSLATION] "made no sense" to want to pay expenses incurred by a company for preparing its bid. Mario Rinaldi noted that Richard Simpson had concerns about the Steen and Stoneboat contracts and that he himself was concerned about the Hollichord matter.

In cross-examination Mario Rinaldi also testified about informatics, another matter he intended to raise at the meeting with W.M. Evans. He described the background as follows.

On May 15, 1995, in his conversation with W.M. Evans, he brought to the latter's attention the fact that a decision had been taken on informatics by Alain Desfossés and Mario Rinaldi's staff, without Alain Desfossés taking the trouble to inform Mario Rinaldi. This was a "sore point" with Mario Rinaldi.

Some months before the arrival at the Space Agency of W.M. Evans and Alain Desfossés, Mario Rinaldi had ordered a study of all sectors of Corporate Services and had been given a report in October or November 1994. Mario Rinaldi did not recall the substance of the recommendations on data processing contained in the report.

Mario Rinaldi realized that services in this area had to be improved. Some employees had complained that service was slow and that improvements were not being made quickly enough; others wanted certain software to be purchased. That being said, not all employees were dissatisfied nor was there, in his opinion, generalized dissatisfaction.

After Alain Desfossés arrived at the Space Agency the matter was left in suspense for some time. Alain Desfossés and Mario Rinaldi had two or three meetings with the employees in informatics. Then in March or April, at a meeting attended by Peter Nador, Director of Information Management, a subordinate of Mario Rinaldi, and Alain Desfossés, a decision was taken in Mario Rinaldi's absence to award a contract to specialists in informatics.

Mario Rinaldi thought it would have been better to look at the way in which employees were doing their work before hiring specialists in informatics. It seemed that W.M. Evans had received suggestions through the suggestion box which led him to want to do something about data processing and security. At no time did he tell Mario Rinaldi that there had been [TRANSLATION] "complaints" on data processing. Finally, on May 7, 1995 a contract was concluded with the firm C.G.I.

Also in cross-examination, Mario Rinaldi testified briefly about "security", the matter about which he had written his third memorandum (Exhibit A-14). In a word, some users of the security system found it too burdensome. Mario Rinaldi was responsible for security at the Space Agency. A task force was created to look into the matter. Mario Rinaldi was not part of it, unlike the Director of Administration, Jean-Pierre Ruel, whose testimony is related below.

(At this stage of his testimony, and following a question by counsel for the employer, Mario Rinaldi broke down and was visibly shaken and exhausted. I will not relate the details of this emotional outburst which occurred after several days in the witness box. In summary, Mario Rinaldi expressed in very emotional terms how much he had been hurt by everything which had happened to him since May 1995 and the fear he had had of reprisals at his meeting with W.M. Evans on May 10, 1995, at which he had tried to explain his concerns about the pressures applied to him in the matter of Diana Durnford's overpayment. In a word, according to his testimony, Mario Rinaldi had lived in a state of pain and fear since the unfortunate events that occurred beginning in May 1995.)

Mario Rinaldi also testified in cross-examination about the incident of the overpayment to Diana Durnford. He essentially repeated what he had already said in examination-in-chief.

Accordingly, I will not repeat that part of his testimony, except to say that once again he repeated that Alain Desfossés twice asked him to prepare a document backdated to the time when he, Mario Rinaldi, had acted as President and authorize the payment to Diana Durnford, so that she would no longer owe the money claimed from her. Both times Mario Rinaldi refused. On the second occasion, Alain Desfossés made his request before a witness, Hugues Gilbert, W.M. Evans' Executive Assistant. Mario Rinaldi repeated that Alain Desfossés' requests were highly improper and that if he had agreed to them, his signature would have been placed on a 1993 document (he had acted as President at that time) and the document would have appeared on the desks of his employees, who knew that Diana Durnford owed the money. He would have been the person responsible for the action.

In early May 1995 he decided to complain about this situation, after Richard Simpson had told him of the pressures brought to bear on him in the Steen and Stoneboat contracts. When he did so on May 10, 1995 he was stunned by the reaction of W.M. Evans, who immediately began talking about "open warfare" and suggested he leave the Space Agency. Observing W.M. Evans' expression and hearing the tone of his voice, he was even physically afraid. Further, when he thought about what had happened at that meeting he realized that subsequent events (being relieved of his duties, the letter of reprimand, losing his office and so on) had confirmed his fears.

Mario Rinaldi said the following in cross-examination about the reorganization.

In Roland Doré's time a study conducted by Samson, Bélair, Touche, Ross recommended that Corporate Services continue to exist. After the Space Agency's move to St-Hubert, it was again decided to keep Corporate Services.

After his appointment as President W.M. Evans spoke several times about reorganizing the Space Agency, especially to the Executive Committee. In December 1994 W.M. Evans announced the creation of an "Executive Secretariat". Mario Rinaldi was not part of it. In February and May 1995 W.M. Evans spoke about the principles that should underlie the reorganization.

One of W.M. Evans' first decisions was to abolish Paul Johnston's position. Mario Rinaldi had been involved in that matter. Paul Johnston obtained a promotion following a competition to fill a position (EX-01) in St-Hubert. As soon as he obtained the promotion, he arranged not to come to St-Hubert but to work at the Precarn company. W.M. Evans, who was also seconded to the Precarn company, telephoned Roland Doré to intercede for Paul Johnston and asked him to abolish Paul Johnston's position at the Space Agency. Roland Doré refused. However, he agreed to extend Paul Johnston's interchange assignment at the Precarn company for a year. December 13 or 14, 1994 was to be the date of Paul Johnston's return to the Space Agency.

Michel Giroux, Director of International Relations, wrote Paul Johnston (Exhibit A-159). The latter did not want to return to the Space Agency. Mario Rinaldi felt he should come to St-Hubert and take up his duties. However, W.M. Evans and Alain Desfossés took the decision to abolish his position.

Another decision made by W.M. Evans on his arrival at the Space Agency was to decide that, instead of reporting to the President, Mario Rinaldi would report to the Executive Vice-President, Alain Desfossés. Mario Rinaldi stated that it was not the first time this had happened to him. In the past he had reported to the Executive Vice-President, Laurent Bergeron, for a number of years (July 1989 to mid-1993).

Between December 1994 and May 1995 Mario Rinaldi heard no comment to the effect that there were too many vice-presidents at the Space Agency and heard very few people say they were dissatisfied with the services rendered by Corporate Services.

In his opinion, he had good relations with his subordinates. He defined himself as [TRANSLATION] "demanding", and sometimes [TRANSLATION] "hard". However, many people came to him for advice.

He mentioned that at the time Larkin Kerwin and Laurent Bergeron were respectively President and Executive Vice-President of the Space Agency, W.M. Evans had difficulty getting along with them.

It was a friend and attorney who suggested to him that he talk to W.M. Evans on May 10, 1995 about the fact that he was being pressured by Alain Desfossés. He also suggested to him that if he ever decided to write W.M. Evans a memorandum about this

matter he should send a copy of it to Alain Desfossés. Mario Rinaldi later asked W.M. Evans whether he should send the memorandum (Exhibit A-13) to Alain Desfossés. The reply was that W.M. Evans could not advise him. On May 15, 1995 W.M. Evans told him "You and Alain sort it out". He was quite sure that W.M. Evans had not told him this on May 10, 1995.

Mario Rinaldi thought that W.M. Evans might have taken a different approach on May 10, 1995. He could have called Alain Desfossés into Mario Rinaldi's presence and asked him whether it was true he was pressuring Mario Rinaldi.

He considered that W.M. Evans had made threats to him and tried to intimidate him on May 10, 1995 ("open warfare") and he felt this was not how a president (W.M. Evans) should treat a senior financial officer (Mario Rinaldi).

The reason he asked the President on May 15, 1995 whether he would agree to the Auditor General coming to the Space Agency was as a reply to W.M. Evans, who told him he would be asking Garry Lindberg, one of the other two vice-presidents, to investigate Mario Rinaldi's allegations.

The idea of making use of the Auditor General came to him in part because the Auditor General was in his mind. The Auditor General's report had been published between May 10 and 15, 1995 and, with Alain Desfossés' agreement, it was on the Executive Committee's agenda at its meeting of May 1.

Mario Rinaldi denied ever offering to withdraw his complaint (Exhibit A-13). As he recalled, it was W.M. Evans who suggested withdrawing his letter of reprimand if Mario Rinaldi would withdraw the complaint (Exhibit A-13) in which he had alleged that Alain Desfossés urged him to falsify documents. He denied threatening at any time to "bring down people" with him.

Mario Rinaldi noted that on September 6, 1995, when the President told him his position had been abolished, he had had the Cantin report's conclusions for six days, but without having the report itself.

In re-examination Mario Rinaldi stated that in the past W.M. Evans had asked him to prepare a file on the Executive Vice-President Bergeron. Mario Rinaldi had refused.

On another occasion, W.M. Evans telephoned him about use of his vehicle. He did not want to be issued a T-4. Mario Rinaldi explained that he had no choice and he had to follow Revenue Canada's directives. W.M. Evans replied [TRANSLATION] "Okay, I will claim travel expenses", to which Mario Rinaldi responded [TRANSLATION] "If you are entitled, that's OK. Otherwise, it cannot work". This conversation took place before Luc Despars, Mr. Bergeron's chauffeur.

On another occasion, the Auditor General received an anonymous complaint that an individual at the Space Agency was making an excessive number of long-distance calls to the United States. As a result of this letter, an employee of Mario Rinaldi sent an e-mail to employees asking them not to make personal telephone calls. W.M. Evans was not pleased. He telephoned Mario Rinaldi to ask him to withdraw this message. Mario Rinaldi did not comply with his request. A week later, when he was in his office, W.M. Evans told him "I'm OK. I'm a GIC".

Finally, Mario Rinaldi testified that he had good relations with Ms. Robichaud and Ms. Marchand.

Testimony of Jean-Pierre Ruel

The second witness called by Mario Rinaldi was Jean-Pierre Ruel. His testimony may be summarized as follows.

Jean-Pierre Ruel is a member of the Ordre des architectes. He is currently Regional Manager, Technical Services at the Correctional Service. From 1990 to 1996 he was seconded to the Space Agency and was responsible for the Space Centre construction project at St-Hubert. From 1992 onwards he also had responsibility for occupational health and safety, management of facilities, management of telecommunications and maintenance at the Space Centre. Jean-Pierre Ruel reported to Mario Rinaldi until the day the latter lost his job, namely May 18, 1995, and he then reported to Alain Desfossés.

He described as follows how he learned Mario Rinaldi had been relieved of his duties.

On May 18, 1995, half an hour before noon, he received an e-mail inviting employees to meet with the President of the Space Agency.

Most of Mario Rinaldi's employees, between 30 and 40 people, attended the meeting. The President, W.M. Evans, the Executive Vice-President, Alain Desfossés, and the legal counsel, Robert Lefebvre, were present.

W.M. Evans stated that Mario Rinaldi no longer occupied his position, that employees should report to Alain Desfossés, that there would be a "forensic" investigation and that employees should no longer have any business relationship with Mario Rinaldi, but could continue to have social relations if they so desired. He did not indicate any reason for Mario Rinaldi being relieved of his duties. He added that Mario Rinaldi would have special projects.

At the time the meeting was taking place another message was sent to other Space Agency employees telling them that Mario Rinaldi was no longer responsible for Corporate Services and that its employees would now be reporting to Alain Desfossés.

After the meeting rumours were rife. Jean-Pierre Ruel attributed these rumours to the following causes: the announcement of the meeting half an hour before it took place gave the event a sense of urgency; the fact that it started at noon; the fact that W.M. Evans said in the same breath that Mario Rinaldi no longer occupied his position and that there would be a "forensic" investigation; and the fact that W.M. Evans said that special projects would be assigned to Mario Rinaldi but did not indicate their nature or length.

When the employees met at the cafeteria rumours were spreading. Employees asked Jean-Pierre Ruel if there had been fraud. Jean-Pierre Ruel replied that so far as he knew there had not been any, that he had all the signing authorities and Mario Rinaldi had signed nothing. To counter the rumours Jean-Pierre Ruel called a meeting of employees in his division and told them that no charges had been laid at the meeting with the President, to his knowledge there had been no fraud in connection with the St-Hubert project and Mario Rinaldi still had his trust and would continue to have it until there was evidence to the contrary.

Early in the afternoon Alain Desfossés summoned the Corporate Services directors to tell them that things should go on as usual. He asked for employees' reactions to the announcement made by the President. He was told that rumours were circulating and that this situation should be corrected. Alain Desfossés took a note of this and late in the afternoon a message from the President to the employees told them

that there was no direct connection between Mario Rinaldi and the "forensic" investigation. Unfortunately, the word "direct" suggested to employees that there might be an "indirect" connection, and so the rumours continued.

Jean-Pierre Ruel noted that at the meeting of May 18, 1995 the President did not explain the reason why people should have no further business relations with Mario Rinaldi. He also did not explain the presence of the legal counsel Robert Lefebvre.

In the late afternoon of May 18, 1995 Jean-Pierre Ruel went to Mario Rinaldi's office. He found him completely dismayed, speechless, devastated.

After May 18, 1995 Jean-Pierre Ruel saw Mario Rinaldi again a few times, sometimes with other people, in the restaurant. Employees were afraid they would suffer reprisals if they were seen with Mario Rinaldi. Accordingly, they saw him again almost clandestinely.

Jean-Pierre Ruel did not understand the reason for relieving Mario Rinaldi of his duties. He questioned whether this decision was ethical. Other employees shared this concern. Some of them raised questions of ethics, which they had brought to Mario Rinaldi's attention in the past and which were related to matters on which they were working. They felt caught between two fires: on the one hand W.M. Evans, Alain Desfossés and Robert Lefebvre, and on the other Mario Rinaldi. It seemed difficult for these employees to ask the first three for advice, as they were part of the dispute.

Certain employees contacted the Office of the Auditor General. They decided that in the circumstances it might be the best one to advise them. However, some were frightened, even going so far as to fear wiretapping. They decided to ask for a confidential meeting with the Auditor General's representatives.

Some days after the announcement that Mario Rinaldi had been relieved of his duties, five of them went to the meeting. Each person had questions they wanted to ask the Auditor General.

Jean-Pierre Ruel himself raised three points with the Auditor General's representative(s): the way in which it was announced that Mario Rinaldi had been relieved of his duties; the distribution of a classified document; and the creation and activity of a task force on security. (When he testified before the investigator Cantin he

gave him three documents (Exhibits A-172, A-173 and A-174) dealing with each of these points.)

Jean-Pierre Ruel described his concerns and the reasons why he thought he should raise them with the Auditor General's representatives as follows.

First, the [TRANSLATION] "distribution of a classified document" (Exhibit A-173): in this regard Jean-Pierre Ruel objected to the fact that the Space Agency President had distributed the Space Agency business plan to people who had not received the "Secret" security clearance and who did not have the "need to know" within the meaning of the applicable directives.

The Space Agency had prepared a business plan for submission to the Treasury Board. W.M. Evans told employees of this at a meeting. One employee asked for a copy of it. This document was a confidential document of the Queen's Privy Council. Jean-Pierre Ruel told Mr. Lachapelle, Director of Finance, that the business plan should not be distributed. Two days after the meeting the document was distributed with a note (Exhibit A-173, document 3) from someone in senior management (namely W.M. Evans and Alain Desfossés' management trainee) reading "please . . . stamp . . . with the word DRAFT". According to Jean-Pierre Ruel, this direction was contrary to the Treasury Board directives. In addition to preparing a document on this matter (Exhibit A-173), Jean-Pierre Ruel attached an exhibit (Exhibit A-173, document 1) showing that employees had received training to increase their awareness of document classification. Mario Rinaldi made sure (Exhibit A-173, document 2) that members of the Executive Committee were aware of the processing and classification of designated information and property, and on April 19, 1995 had even asked for their comments on a draft Space Agency policy (Exhibit A-173, document 2) on the classification and designation of information and property.

According to Jean-Pierre Ruel, distributing the business plan to employees and inviting them to write [TRANSLATION] "draft" on a confidential document of the Queen's Privy Council was contrary to the applicable directives. It was a document which was in the process of being sent to Treasury Board and had already been approved by the Minister. (Further, Jean-Pierre Ruel saw the frontispiece signed by the Minister responsible for the Space Agency, who submitted the business plan.) Moreover, the Space Agency President had indicated to employees that the business plan (Exhibit E-13) had been approved by the Minister and had been given to the

Treasury Board. Jean-Pierre Ruel wanted the Auditor General's advice and wanted the latter to tell him if he had been mistaken in concluding that the document should have been classified.

For his part, he felt that to come within the rules it would be necessary to obtain the Privy Council's permission to distribute the business plan. He found troubling the fact that the document had been sent by e-mail and that some 300 Space Agency employees had access to it, in addition to people working in the Florida laboratory which belonged to the Space Agency and was connected to the network. Most of these people only had an "enhanced reliability" security classification, which was not sufficient to have access to the plan. Not only did the Treasury Board manual require a "Secret" security classification, but in addition, in order to have access to a confidential Privy Council document the reader of that document had to have the "need to know in the course of his duties". It is clear from the Treasury Board guidelines (Exhibit A-175, note 2(a)) that even a draft is a confidential document. It is also clear that not all those individuals had the "need to know" within the meaning of the directives.

The second point (Exhibit A-174) on which Jean-Pierre Ruel wanted to obtain the Auditor General's advice was security at the Space Agency. First, Jean-Pierre Ruel explained that security operations were based on identified risks and threats.

A study carried out by the R.C.M.P. before the construction of the Space Agency specified that the main risks in protecting information used by the Space Agency in its day-to-day activities might come from within. Those risks and threats could vary from time to time. The R.C.M.P. identified the risks and threats and helped the Space Agency develop a security plan and define the necessary security systems. The R.C.M.P. recommended that the building be compartmentalized and equipped with a computerized access system so that the appropriate security level could be applied to each sector.

Some time after his arrival at the Space Agency the President, W.M. Evans, installed a box in which employees could anonymously deposit suggestions. A committee was formed to consider the suggestions. Apparently, several people complained about the security system on the ground that it was too restrictive.

Jean-Pierre Ruel was concerned by the creation of this committee and its instructions to consider suggestions coming from no one knew where, suggestions

made anonymously, when the study of risks and threats by the R.C.M.P. indicated that the threat was primarily from within.

Jean-Pierre Ruel's fears rested on the possibility that a suggestion might come from someone to whom the system [TRANSLATION] "was less favourable". Moreover, at the Space Agency President's request the committee was made up of volunteers, not experts. For these reasons Jean-Pierre Ruel himself volunteered. Strangely, it was the Director of Communications who was given the job of writing the instructions for the security task force (17 people) and who was also asked to start the group's work going.

At one of the first meetings of the task force Jean-Pierre Ruel wanted to table the conclusions of the R.C.M.P.'s study of risks and threats. The security officer, Mr. Pelletier, pointed out that all members of the task force did not have the necessary clearance to read the document. The necessary security inquiries had to be made and then the task force could resume its work.

Once the task force had read the study of risks and threats most of the members accepted the security concept suggested by the study and the security level implemented at the Space Agency.

The group's president, Mike McLean, reported the group's conclusions to senior management. The latter felt that the status quo was not acceptable and that the security level should be lowered: in particular, there should be fewer access control points. Despite this, the security system was not being operated at the maximum, or indeed the minimum. An anonymous suggestion was used as the basis for reducing the security level.

In response, the task force suggested a new study of risks and threats, as the R.C.M.P. study had been made before the Space Agency moved, and that control be reduced between the Space Agency and the cafeteria.

From an ethical standpoint, as the study of risks and threats was not up to date, in Jean-Pierre Ruel's opinion the decision to reduce was taken without proper information.

The Space Agency Security Office subsequently received a memorandum from the Privy Council referring to the Oklahoma City incident and stating that security would have to be increased in federal buildings in view of the increased risk.

Jean-Pierre Ruel informed Mario Rinaldi, who sent a letter of recommendation to the President, suggesting that control be increased at the main entrance (Exhibit E-6). At that time it was easy to avoid the scrutiny of the receptionist.

In reply to Mario Rinaldi's memorandum senior management asked him to consult the task force (Exhibit E-6). That is what Mario Rinaldi and Jean-Pierre Ruel did. The president of the task force, Mike McLean, wrote a memorandum stating that in his opinion the purpose of the Privy Council memorandum was only to be on the safe side and, as he saw it, the risk was almost non-existent. As an argument, the president of the task force referred to the decision by the Department of National Defence not to increase security in its buildings. The other members of the task force gave their support to Mario Rinaldi's recommendation, indicating that in their opinion this matter was beyond their jurisdiction and they had no reason to question the competence of the people responsible for security (Exhibit A-90).

Before making this recommendation an R.C.M.P. representative met with the task force. He said that where terrorism was concerned the Space Agency in St-Hubert should be regarded as a significant potential target because through its activities the Space Agency was often mentioned in the media, it occupied a prestige building and that building was isolated.

In spite of this, senior management decided that there was no need to increase security and access control points.

The Executive Vice-President, Alain Desfossés, later told Jean-Pierre Ruel he had decided to assign a study of risks and threats to a subordinate of Jean-Pierre Ruel, Denys Pelletier, the Health and Safety Officer, and Denys Pelletier would report to him directly. He asked Jean-Pierre Ruel not to have anything to do with this study, explaining he wanted to see what Denys Pelletier was capable of doing. When Jean-Pierre Ruel left the Space Agency in July 1996, the study had not yet been completed.

The entire question of security was raised with the Auditor General by Jean-Pierre Ruel, as he felt that there was an ethical problem involved. He thought it was wrong that management preferred to implement anonymous suggestions rather than use an established security system.

For his part, Jean-Pierre Ruel shared the view expressed by Mario Rinaldi in a memorandum (Exhibit E-6) drafted by Jean-Pierre Ruel, which he said was never sent to W.M. Evans and Alain Desfossés.

Jean-Pierre Ruel testified that the five employees went to see the Auditor General without talking to Mario Rinaldi and that at no time did Mario Rinaldi indicate a wish to meet with the Auditor General's representatives. The other four employees who went to see the Auditor General with Jean-Pierre Ruel were Richard Simpson (Manager, Contract Administration), Jacques Lachapelle (Director, Finance), Ginette Robichaud (Chief, Staff Relations and Compensation) and Arlène Marchand (Director, Human Resources).

Counsel for the employer pointed out that he had not asked Jean-Pierre Ruel to identify the people who went with him to see the Auditor General. Counsel for Mario Rinaldi stated that he had not asked Jean-Pierre Ruel to identify these individuals at Jean-Pierre Ruel's request, but he felt it would be proper for me to ask him to answer the question, thus removing Jean-Pierre Ruel's right of choice on the point. I asked Jean-Pierre Ruel to identify these individuals as it seemed to be a relevant aspect of assessing the credibility of Jean-Pierre Ruel and that of Mario Rinaldi, who had both testified that [TRANSLATION] "employees" had feared reprisals against them. It seemed to be all the more relevant as counsel for the employer had indicated he might be summoning some of them as witnesses. According to Jean-Pierre Ruel, these four individuals had ethical concerns relating to certain matters and they wanted to know what the Auditor General thought of them. They felt they could not discuss these matters with senior management. For example, Richard Simpson had questions about the attitude of W.M. Evans and Alain Desfossés regarding certain contracts. These individuals could not understand why Mario Rinaldi had been relieved of his duties and they feared that, if they raised the questions Mario Rinaldi had raised with senior management, they would suffer the same consequences.

Jean-Pierre Ruel was especially fearful in this regard as he had expressed reservations about the security task force. Arlène Marchand and Ginette Robichaud wanted to speak about a certain matter affecting the Human Resources Division. Jacques Lachapelle wanted to discuss distribution of the business plan. All were aware of the last Auditor General's report which had found a [TRANSLATION] "lowering of ethical standards in the Public Service". Additionally, Jean-Pierre Ruel defended himself

and his colleagues from the charge of intending to injure senior management, as he said the evidence was that they requested a confidential interview.

At the close of the interview the Auditor General's representatives (including one Francine Bissonnette) told the five Space Agency employees that the Auditor General's Office would be following the matter closely, but if it took action they would not be informed of it.

Finally, Jean-Pierre Ruel noted that Mario Rinaldi had made a great contribution to the success of the Space Agency, as for example on one occasion he was able to save the Space Agency an expenditure of \$1.4 million. Jean-Pierre Ruel had excellent relations with Mario Rinaldi during the six years in which they worked together. He considered Mario Rinaldi was an exceptional supervisor. In his opinion, Mario Rinaldi's reputation in the Space Agency was excellent until the announcement by the President on May 18, 1995 that Mario Rinaldi had been relieved of his duties, after which certain individuals had claimed to find a lot of fault with him.

Testimony of Alain Desfossés

His testimony may be summarized as follows.

Alain Desfossés is a senior adviser to the Deputy Minister of Industry. He is Executive Director of the Task Force on the Year 2000.

He received a degree in Economics from the University of Montréal in 1970 and worked for the Canada Transport Commission from 1970 to 1975. He subsequently spent a short time in Montréal, participating in the creation of a non-profit organization ("Cost Pro") sponsored by the Department of Transport. In 1976-1977 he was Director (PM-07) of Operations Policy at the Department of Revenue, Customs and Excise. From 1978 to 1981 he held the following positions: Analyst (Privy Council Office), then Secretary of the Cabinet Committee on Governmental Operations, and finally Secretary of the Société générale de financement du Québec and Executive Assistant to its President. In 1985, for about a year and a half he worked at the Department of Regional Economic Development. He returned to the Privy Council and participated in the review of federal programs, in particular on communication and culture. He also headed a task force on the environment. From 1986 to 1990 he was Director General, Strategic Planning, at the Department of Communications. In 1990 he

became Secretary of the C.R.T.C. for nine months and then held the position of Executive Director for the "Spicer" Commission. In 1991 he was Executive Director of "Canada 125", a non-profit organization created to celebrate the 125th anniversary of Confederation. He then became Assistant Deputy Minister at the Department of Communications. Nine months later, in 1993, the Department of Communications was abolished. He became a resource person (EX-04) for the Deputy Minister of Industry and participated in rationalizing the regional activities of four departments (including those of the Department of Communications), part of whose activities was merged and incorporated into the Department of Industry.

At that time a committee of deputy ministers assessed the assistant deputy ministers and reduced their number. It was the period when the Public Service was being reorganized. Several assistant deputy ministers and other senior public servants lost their jobs. The deputy ministerial committee decided to keep Alain Desfossés. The Deputy Minister of Industry (Harry Swain) told the Space Agency President, Roland Doré, that Alain Desfossés would be joining the Space Agency to help it improve its relations with the federal governmental apparatus. Alain Desfossés was seconded to the Space Agency from October 1993 to June 1994. He held the position of Vice-President (EX-04), coordination of policy and governmental relations, for those nine months.

It was a difficult period for the Space Agency. It had an ambitious space plan. The new government wanted to cut back on expenditure. The political and bureaucratic leadership felt that the space plan was too ambitious. The senior management of the Space Agency offered no option that could be used to replace this plan. Alain Desfossés had to facilitate the adoption of the space plan in this atmosphere.

Industry Canada decided to take the plan under its control and hired a former Space Agency Vice-President, W.M. Evans (who later became President of the Space Agency) as adviser to help it devise a plan more consistent with its objectives.

The reaction to the decision was traumatic. The President, Roland Doré, left the Space Agency soon afterwards. He eliminated Alain Desfossés' position. The Executive Vice-President, Laurent Bergeron, retired. One of the other vice-presidents, Karl Doetsch, took over as Acting President.

During his first period of time at the Space Agency, Alain Desfossés found that the Space Agency was a group of programs (Radarsat, manned flight and so on) which functioned independently of each other. It was unable to set any objectives that transcended its component parts. Alain Desfossés prepared a study paper (Exhibit E-29) for the President. His analysis led him to conclude it would be advisable for the Space Agency to adopt a mission statement. Alain Desfossés also recommended that the Space Agency be decompartmentalized and destratified. He felt the hierarchical levels between employees and senior management should be reduced in order to make employees more responsible and accountable for their decisions. Mario Rinaldi was among the people consulted by Alain Desfossés before arriving at his recommendations, contained in a document (Exhibit E-29) which he gave the President in confidential form. The day after the document was delivered, Alain Desfossés was told his position had been abolished (Exhibit A-37).

At the time he was let go, Alain Desfossés was on secondment from Industry Canada to the Space Agency. Before arriving at the Space Agency he chose not to accept a permanent position with the Agency as he could not obtain from Mario Rinaldi certain clarifications he felt were essential before deciding to accept a permanent position. He described the relations he had with Mario Rinaldi as [TRANSLATION] "cordial".

The interpersonal relations between the Space Agency vice-presidents also left something to be desired. Roland Doré tried to [TRANSLATION] "patch them up" at a closed retreat.

Alain Desfossés complained that, in the nine months he spent at the Space Agency, meetings of the Executive Committee dealt with administrative and routine matters coming from Corporate Services, headed by Mario Rinaldi (such as contract management), whereas the meeting should have dealt with Space Agency programs. He also found that Mario Rinaldi was chronically unable to take decisions.

Alain Desfossés said he was fired (Exhibit A-37) by Roland Doré because the latter was convinced Alain Desfossés had participated in the departmental decision on the new space plan, although this plan had been developed by W.M. Evans in consultation with Roland Doré and the Space Agency vice-presidents.

When Alain Desfossés was fired by Roland Doré he informed the office of the Minister of Industry. He spoke about his situation to Diana Durnford (the person who was the cause of the memorandum written by Mario Rinaldi - Exhibit A-13), who was responsible for the Space Agency in the Minister's office and who participated in drafting the space plan. He also spoke about it to W.M. Evans, who since late December 1993 or early 1994 had been primarily responsible for assisting the Minister with development of the space plan. He also spoke about it to the Deputy Minister of Industry, Harry Swain, and mentioned to him that he had sent a study paper (Exhibit E-29) to the Space Agency President, Roland Doré, before being relieved of his duties. Alain Desfossés rejoined Industry Canada 24 days after he was fired by Roland Doré, the Space Agency President.

Alain Desfossés made the acquaintance of W.M. Evans when the latter came to give the Minister assistance in early 1994. Before Diana Durnford worked in the Minister's office, she had been an employee at the Space Agency. Alain Desfossés made her acquaintance when he came to the Space Agency in October 1993. She was an analyst (CO-02) and was part of the team that drafted the space plan. She was one of the subordinates of André Faucher, Director, Policy, whose hierarchical superior was Alain Desfossés. When Diana Durnford left the Space Agency in December 1993 she became one of the Space Agency's contacts in the office of the Minister of Industry.

From May to November 21, 1994 Alain Desfossés went back to Industry Canada and worked for the Deputy Minister of Industry. During that period, namely in September 1994, he was invited to an interview to fill the position of Executive Vice-President of the Space Agency. Among those present at the interview, in addition to the Assistant Deputy Minister of Industry and a representative of the Public Service Commission, were Diana Durnford and W.M. Evans.

On November 21, 1994 Alain Desfossés was appointed Executive Vice-President of the Space Agency. He returned to the Space Agency at the same time as W.M. Evans, who was appointed President.

On arrival the President, W.M. Evans, initiated an e-mail system and invited employees to send him their suggestions. He promised them confidentiality. He then began a reorganization in stages. First, he created an Executive Secretariat. On December 22, 1994 he announced that Legal Services, Communications and Corporate Services (the latter headed by Mario Rinaldi) would report to the Executive Vice-

President, Alain Desfossés. He also told employees that he intended to improve informatics services. Finally, he expressed his intention to review the existing security system.

W.M. Evans asked Alain Desfossés to look into these matters. These subjects were the responsibility of Corporate Services and thus of Mario Rinaldi.

Before taking up his duties, Alain Desfossés met with Mario Rinaldi. At a lunch he told Mario Rinaldi about the reforms which he felt would be useful. He explained his philosophy, which involved making employees responsible, making them accountable for their decisions, and thus relaxing certain controls, in keeping with a new management philosophy in the Public Service.

Mario Rinaldi was almost in tears. He said [TRANSLATION] "Alain, I am discouraged. I won't go back to the Agency". Alain Desfossés replied [TRANSLATION] "Look, Mario, it will be fun to do these reforms together". Mario Rinaldi answered [TRANSLATION] "I feel like that, because you have not asked me to stay". Alain Desfossés insisted he wanted Mario Rinaldi to stay in his position.

At the lunch Alain Desfossés noted Mario Rinaldi felt there was not much requiring change at the Space Agency.

According to Alain Desfossés, at that time W.M. Evans even contemplated the possibility of offering Mario Rinaldi another position as part of the creation of the Executive Secretariat.

On another topic, a contract was awarded to the Hollichord company in the following way.

In mid-December 1994, that is a few weeks before the President, W.M. Evans, and Executive Vice-President, Alain Desfossés, took up their positions, Mario Rinaldi told W.M. Evans he had asked the Minister for a confirmation of the delegation of authorities. W.M. Evans asked Alain Desfossés what he thought about it. Alain Desfossés examined the delegation grid suggested by Mario Rinaldi. In his opinion, it was fundamental to the culture changes Alain Desfossés and President W.M. Evans were proposing to introduce. In these circumstances, Alain Desfossés felt it was not urgent to deal with this matter, since future changes would have to be incorporated.

However, he asked Mario Rinaldi to make a study of the matter in the most efficiently run departments, in accordance with the new "empowerment" management. Mario Rinaldi answered that his staff was busy and did not have the required skills.

Alain Desfossés decided to make use of the services of a consultant. He sent the delegation grid to Mike Eustace, a former public servant at Industry Canada, who was working for the Hollichord company. He asked him to prepare a proposal. A meeting was held attended by the Hollichord president, Nicholas Ralph, Mike Eustace, Alain Desfossés and Mario Rinaldi. At the close of the meeting, Mario Rinaldi indicated that he was not in agreement with the project. Alain Desfossés decided to let the Hollichord company go ahead with its analysis. He asked Mario Rinaldi to initiate the contractual process. Mario Rinaldi replied he did not have the money. Alain Desfossés told him he would take the money from his own budget. (In hindsight, Alain Desfossés thought Mario Rinaldi simply did not want to be part of the project.)

In the meantime the Hollichord president, Nicholas Ralph, told Alain Desfossés that Corporate Services, headed by Mario Rinaldi, had told him Mike Eustace was not entitled to work on the contract as he was a former public servant who had retired less than 12 months earlier. Alain Desfossés sought advice from a Treasury Board analyst named Tom Scott, who was responsible for the Space Agency at the Treasury Board. This individual reassured him, telling him Mike Eustace could participate in performance of the contract as he was not a former employee of the Space Agency, but of another department. Alain Desfossés told the Hollichord representatives to go ahead with their work. Other meetings were held with Hollichord at which Mario Rinaldi was present. However, signature of the Hollichord contract continued to be delayed. Alain Desfossés' Executive Assistant, Ms. Lalonde, told him one of Mario Rinaldi's employees, Richard Simpson, had reservations about the contract. Alain Desfossés discussed it with him. Finally, Richard Simpson agreed there would be no further problem if the contract contained a clause providing for a reduction to reflect the fact that Mike Eustace was receiving a pension. Ultimately Richard Simpson's view prevailed. Alain Desfossés stressed that he was just as anxious as Mario Rinaldi and Richard Simpson not to do anything illegal. Finally, it was Alain Desfossés himself who signed the contract. He would have preferred Mario Rinaldi to sign it so the latter would [TRANSLATION] "feel comfortable with the results", but he refused to sign.

According to Alain Desfossés, it was not unusual for work to be done by a company before a contract was signed. In this case, he felt the contract could have been concluded earlier if Mario Rinaldi had agreed to sign the relevant documents from the outset. Ultimately, Alain Desfossés concluded that Mario Rinaldi was not interested in having the contract awarded. Finally, Alain Desfossés decided not to submit the delegation grid suggested by Hollichord to the Executive Committee as in the reorganization certain positions could be expected to disappear (a delegation of authority is assigned to a position, not to an individual). Additionally, the President's thinking on the reorganization was evolving. As a result, Alain Desfossés decided to soft-pedal the matter and [TRANSLATION] "not bother the Minister for nothing".

In hindsight, Alain Desfossés understood that Mario Rinaldi had difficulty with the fact that Hollichord was asked to do work on a matter on which he had worked himself and for which he had submitted a grid of signing authorities to the President.

At the same time, he concluded that the reason Mario Rinaldi did not see any need to have the study done by Hollichord was that he questioned the basis of the changes desired by the President and Executive Vice-President. He preferred the status quo. That being so, according to Alain Desfossés Mario Rinaldi should have asked himself whether he would not be happier elsewhere. According to Alain Desfossés, there would never be any change if it was necessary to satisfy the wishes of all subordinates who thought everything was going well.

Alain Desfossés testified as follows regarding informatics.

There was a structural problem. People had indicated their dissatisfaction. Remedying this dissatisfaction had become a priority for the President. Alain Desfossés talked to Mario Rinaldi about it. In Mario Rinaldi's view, new technology should be acquired or the problem was with Peter Nador, his employee and the person responsible for technology.

Alain Desfossés decided to hold a meeting on December 22, 1994 with Mario Rinaldi's seven or eight employees who worked in data processing. Mario Rinaldi was present. He was furious. Alain Desfossés thought it was because he did not like the idea of this meeting with his employees. From the start of the meeting Alain Desfossés made it clear he did not want to talk about management. Instead he wanted to give each person an opportunity to express his or her frustrations. He wanted work to be

done by the group, in which everyone was equal. He asked employees for a written report on how they saw the problem. Early in February 1995 Peter Nador gave the report to him and to Mario Rinaldi.

Before acting on the report Alain Desfossés tried without success to meet with Mario Rinaldi. Each person's travel and commitments got in the way. Alain Desfossés finally chose a date to hold a meeting that suited his own schedule. Mario Rinaldi was asked to attend. He was not present and gave as his reason the fact he was on leave to look after his children during the March break.

Several decisions were taken at the meeting, including keeping the services of C.G.I. and the addition of three other resource persons. Alain Desfossés did not recall whether Mario Rinaldi had spoken to him about the status of C.G.I. work or whether he had been involved in the solution of the problem.

W.M. Evans later told Alain Desfossés Mario Rinaldi had objected to the fact he held a meeting at a date when he was not available.

Alain Desfossés said it had not been his intention to exclude Mario Rinaldi from problems relating to data processing. However, he decided to act on the basis of the employees' report. He regretted Mario Rinaldi had not been present on the day of the meeting and noted that in his own case he had already cancelled meetings with Ministers to be available for the President.

Alain Desfossés testified as follows regarding security at the Space Agency.

The President and he wanted to encourage communication between employees and with themselves. It was with this in mind that he asked the Director of Communications, L. Fortier, to prepare the terms of reference of an advisory committee on security that would review the problems. What was important was that employees should have an opportunity to express their points of view and that they should be taken into account. Alain Desfossés thought Mario Rinaldi did not agree with this approach.

Alain Desfossés found that Mario Rinaldi's memorandum (Exhibit E-6) written following the Privy Council memorandum (Exhibit E-6) issued after the Oklahoma City incident lacked [TRANSLATION] "elegance" and went contrary to the openness which the President and he were trying to create at the Space Agency. Learning of the

measures taken at Tunney's Pasture, Alain Desfossés recommended that the President not take additional security measures, except for asking people to be more alert regarding suspect packages.

Alain Desfossés testified as follows regarding the Stoneboat matter.

He suggested they involve a person named McAngus, the husband of Roseline McAngus, Administrative Assistant to the Clerk of the Privy Council, Jocelyne Bourgon. What was involved was giving advice to the Government of Thailand on the creation of a space agency. Alain Desfossés noted that he suggested, but did not insist on, Mr. McAngus' name. In the end, because they were not satisfied with his work, it was decided to terminate the relationship between the Space Agency and Mr. McAngus and the Space Agency, with the latter's approval, did not have to pay his fees.

Alain Desfossés testified as follows regarding the distribution of the business plan (a matter about which Jean-Pierre Ruel testified).

He wanted employees to be aware of the business plan before the general public were. Once again he consulted Tom Scott, an analyst who was responsible for the Space Agency at the Treasury Board, and the latter said in his opinion it was a public information document and could be distributed to employees.

Testifying about the evolution of his relationship with Mario Rinaldi (it extended from December 1994 to May 1995), Alain Desfossés said it was some time in late April or early May that he realized Mario Rinaldi was not [TRANSLATION] "comfortable". Alain Desfossés felt he was [TRANSLATION] "frustrated". At some point, on two occasions (once in late April or early May and another occasion prior to that), Mario Rinaldi told him [TRANSLATION] "I do not agree with what is happening and if I go down, I will take others down with me". Alain Desfossés did not recall the context in which these words were spoken.

When in early May 1995 Alain Desfossés read Mario Rinaldi's memoranda (Exhibit A-14), and in particular the one (Exhibit A-13) alleging he had asked Mario Rinaldi to forge documents, he told himself that he [TRANSLATION] "had been had".

Alain Desfossés noted that on arrival he acted with openness in implementing the process that would lead to the adoption of a mission statement. A committee of experts developed a methodology and described the process that would be followed; consultants from the Canadian Centre for Management Development and other consultants contributed to this process, and finally, over 75% of the employees took part.

What interested Alain Desfossés was that eventually the new organization of the Space Agency would reflect the new approach to management throughout the Public Service, designed essentially to reduce hierarchical levels.

As part of the reorganization W.M. Evans wanted to meet with vice-presidents in May 1995 to discuss their careers. Alain Desfossés knew that at that time W.M. Evans was thinking of offering Mario Rinaldi a position in the Executive Secretariat.

Alain Desfossés did not recall the date the mission statement was adopted. He knew that it was after July 1995, as the report preceding the mission statement was submitted in that month. (He later testified that the report was dated August 16.)

The reorganization resulted in the President assuming direct responsibility for human resources. Financial Services were incorporated in the Executive Secretariat. Audit was part of another division. Data processing became the responsibility of the Executive Vice-President.

Mario Rinaldi apparently wished to keep responsibility for audit. W.M. Evans and Alain Desfossés wanted this function to be [TRANSLATION] "self-sufficient" and report to the President or Executive Vice-President, but through a committee of evaluation to ensure openness in the process surrounding this function.

On several occasions prior to May 9, 1995 (indicated in Exhibit E-7), Alain Desfossés told Mario Rinaldi it would be premature to act on the question of audit. He wanted the matter to be examined as part of the reorganization. To do this, he asked the Executive Secretariat to develop an evaluation plan. Alain Desfossés had also hired a consulting firm to assist the Executive Secretariat, and in early May 1995 the firm's representatives were in the process of consulting with various sectors at the Space Agency to develop an evaluation plan.

Alain Desfossés told Mario Rinaldi more than once that so far as he was concerned he felt the [TRANSLATION] "evaluation and audit" function should be located outside Corporate Services.

In this situation, Alain Desfossés could not understand the memorandum (Exhibit A-14) sent to him by Mario Rinaldi on May 9, 1995. He thought that this memorandum, taken together with the other three (Exhibits A-13 and A-14), was an overall attempt by Mario Rinaldi to undermine his credibility at a time when Mario Rinaldi was to meet with the President (on May 10, 1995) at the President's request to discuss the objectives of the reorganization and his own career objectives. Alain Desfossés thought Mario Rinaldi was afraid of losing his position and wanted to make it impossible for the President to allocate certain responsibilities (including audit) to Alain Desfossés, in view of the allegations being made against him.

He accordingly wondered why Mario Rinaldi was suddenly insisting on dealing with the question of evaluation and audit when he had had plenty of time to implement this function in 1990 to 1994, that is under the leadership of the former presidents.

Alain Desfossés noted that a reorganization is structural, not of a personal nature. Once it had been decided on, the existing staff had to be met with and, if necessary, assisted to relocate elsewhere.

Alain Desfossés stated that during the process of developing the mission statement, certain employees had expressed their frustrations with Corporate Services, headed by Mario Rinaldi. Alain Desfossés himself found that Mario Rinaldi was slow to make decisions. He thought Mario Rinaldi might have found Alain Desfossés' arrival at the Space Agency difficult as, unlike Mario Rinaldi, he had a rapid method of management and his purpose was to speed up the implementation of the necessary changes.

When W.M. Evans' predecessors, namely Messrs. Kerwin and Doré, were in charge Mario Rinaldi's functions were different, as those two presidents had to rely on Mario Rinaldi on various matters, since neither of them had worked in the Public Service. With the arrival of W.M. Evans and Alain Desfossés, who both had experience in the Public Service, Mario Rinaldi's position changed. Both W.M. Evans and

Alain Desfossés were in a position to ask questions about the advice given to them by Mario Rinaldi.

Mario Rinaldi's reaction to the new approach W.M. Evans and Alain Desfossés wanted to take to various questions within Mario Rinaldi's jurisdiction was that everything was going well.

Alain Desfossés testified as follows regarding the incident of the overpayment claimed from Diana Durnford.

In early January 1995 W.M. Evans told him that Diana Durnford (a former Space Agency employee working in the office of the Minister of Industry) had telephoned him for clarification about an overpayment which the Space Agency had, she said, demanded from her [TRANSLATION] "in a high-handed manner".

Alain Desfossés asked Mario Rinaldi to look into the matter. He spoke to him about it again once or twice, as he had still had no response from him.

In late March Mario Rinaldi gave him a document dated March 2, 1995 (Exhibit A-53). Alain Desfossés felt Mario Rinaldi had spent too much time replying to him. He was surprised that Mario Rinaldi had not telephoned Diana Durnford to discuss the matter with her as he knew her well, since she was a former Space Agency employee.

Alain Desfossés quickly reviewed the nature of the claim (Exhibit A-53) made to Diana Durnford. He thought there was no question of paying her twice because of a clerical error and that part of the claim seemed justified. However, he had a [TRANSLATION] "favourable prejudice" toward Diana Durnford regarding the two days of annual leave for which she had been paid and for which she did not have the necessary credits. She had made an exceptional contribution before leaving the Space Agency and, at Alain Desfossés' request, had completed work he wanted her to give him before leaving the Space Agency, when the Minister was insisting she should begin work with him. Alain Desfossés did not know whether she completed this work in the evenings or on her vacation. What mattered to him was that she had [TRANSLATION] "delivered the goods", and in all conscience he felt she had earned these two days of leave.

He also felt it was important for the Space Agency to continue to have [TRANSLATION] "high-level communication" with the Minister's office and that the relationship between an agency and the Minister's office was a [TRANSLATION] "sensitive" relationship.

As he felt sure there was nothing wrong with the Space Agency waiving its claim for the two days of leave paid to Diana Durnford, he asked Mario Rinaldi to see whether there was some procedure whereby she could have these two days of annual leave.

Some time after April 4, 1995 Mario Rinaldi gave him a document (Exhibit A-54) containing an explanation of the two days of leave overpaid to Diana Durnford and a possible solution for giving them to her. Mario Rinaldi told Alain Desfossés [TRANSLATION] "The claim we made to Diana Durnford is fair and supported by the information we have on file".

Alain Desfossés reviewed the memorandum (Exhibit A-54). In the margin he said he wrote [TRANSLATION] "The Auditor General and the taxpayer would have difficulty understanding how she was paid twice for something. At the same time, as regards the two days of leave she made an exceptional contribution", and Alain Desfossés wanted this to be recognized.

In mid-April Alain Desfossés explained to W.M. Evans, with Mario Rinaldi present, the nature of Diana Durnford's claim, what he wanted to do about it and the fact that Mario Rinaldi's Corporate Services had told him (Exhibit A-54) that there was a procedure for doing it. He had in mind the solutions suggested in the memorandum of April 4, 1994 (Exhibit A-54). The President gave him his agreement. Alain Desfossés testified that he had not considered the details of this procedure and all he remembered were the words [TRANSLATION] "possible solution" and [TRANSLATION] "compensatory" written in the memorandum (Exhibit A-54) given to him by Mario Rinaldi.

As he left W.M. Evans' office Alain Desfossés asked Mario Rinaldi [TRANSLATION] "Will you telephone Diana Durnford to tell her of the decision or do you want me to call her?". [TRANSLATION] "I prefer that you call her", Mario Rinaldi replied. Alain Desfossés agreed and added [TRANSLATION] "You will take the administrative action?". Mario Rinaldi acquiesced.

Alain Desfossés telephoned Diana Durnford at once and told her that she would be given the two days of annual leave.

Alain Desfossés insisted that the above-mentioned meeting in mid-April did in fact take place in Mario Rinaldi's presence. He also recalled that the question of accounting for the cost of the automobile used by the President was also mentioned at this meeting.

(Following Mario Rinaldi's allegations Alain Desfossés wanted to review his file on Diana Durnford, which he had left with Mario Rinaldi. As he went through it he found that his copy of the memorandum of April 4, 1994, Exhibit A-54, in which he had put a handwritten note, had disappeared.)

Following the meeting in mid-April, Alain Desfossés asked Mario Rinaldi where the matter stood. He answered [TRANSLATION] "The personnel employees would find it hard to understand why we were thus paying people who earned the most at the Agency". Alain Desfossés told him at that time [TRANSLATION] "I am sorry, the decision is made and has to be implemented".

Some days later Alain Desfossés brought up the matter again and asked Mario Rinaldi whether the work was done. The latter replied [TRANSLATION] "You know, Alain, it sometimes happens that documents get lost". Alain Desfossés (who wanted Mario Rinaldi to check the overtime worked by Diana Durnford so she could be given all in time, in accordance with the "possible solution" suggested by Mario Rinaldi's employee - Exhibit A-54) then asked Mario Rinaldi to check with A. Faucher, Diana Durnford's former supervisor, about the overtime worked by her. Mario Rinaldi replied that he would do this.

Alain Desfossés denied ever asking Mario Rinaldi to backdate a document to the time when the latter was Acting President. When Mario Rinaldi asked him [TRANSLATION] "Are you ready to sign the document?", he answered [TRANSLATION] "I could do it, but A. Faucher was her supervisor. He could do it or you could, as you were Acting President". When he said this Alain Desfossés had in mind a document Diana Durnford allegedly produced in April 1995 and which she had submitted in accordance with the solution suggested in the memorandum of April 4, 1994 (Exhibit A-54). The reason he referred to the fact that Mario Rinaldi had been Acting President was that Diana Durnford was one of Mario Rinaldi's subordinates at that

time. Alain Desfossés also said [TRANSLATION] "If you want me to sign it, I will sign it". Alain Desfossés explained that when this conversation took place he had no specific document in mind, he had not read the applicable collective agreement; he was actually reacting to the solution suggested by Mario Rinaldi's Corporate Services (Exhibit A-54) in which he recalled the words [TRANSLATION] "possible solution" and "compensatory".

He had the impression that, although Corporate Services had suggested a solution (Exhibit A-54), Mario Rinaldi did not know how to implement it.

The reason he asked Mario Rinaldi to sign the document which Diana Durnford would eventually submit was that he was [TRANSLATION] "fed up" with signing documents, such as the Hollichord contract, which Mario Rinaldi should have signed in the ordinary course of things.

Alain Desfossés emphasized that he had never had any dishonest solution in mind and, although he realized Mario Rinaldi did not agree with paying Diana Durnford for her two days of leave, he was convinced up to the very end, that is until the President told him in May 1995 of the allegations made against him by Mario Rinaldi, that Mario Rinaldi was implementing the solution suggested by his own employee.

On May 10, 1995 the President, W.M. Evans, told Alain Desfossés that Mario Rinaldi had made allegations against him that same day, and he told him what they were. Alain Desfossés was already aware at that point of Mario Rinaldi's three memoranda (Exhibit A-14) dated May 9, 1995 and dealing with contract administration, audit and security. Alain Desfossés wanted to see the memorandum (Exhibit A-13). W.M. Evans told him Mario Rinaldi had kept it. A few days later he learned of the memorandum in which Mario Rinaldi alleged that Alain Desfossés had asked him to falsify documents. He was very angry. This memorandum (Exhibit A-13) accompanied the three aforementioned memoranda (Exhibit A-14).

He thought Mario Rinaldi was [TRANSLATION] "nitpicking". He felt certain it was a scheme, that Mario Rinaldi wanted the President to take these memoranda into account in carrying out the reorganization. He was all the more convinced of this as Mario Rinaldi had told him in the past [TRANSLATION] "If I go down, I will take others down with me".

From that time on Alain Desfossés [TRANSLATION] "did not regard Mario Rinaldi as a friend". He thought, first, that Mario Rinaldi had not provided the Space Agency with the [TRANSLATION] "technical quality" which senior management was entitled to expect, and second, that underlying this reality, Mario Rinaldi did not support the changes the President and Executive Vice-President wished to carry out.

Once he learned of Mario Rinaldi's allegations, Alain Desfossés consulted a lawyer. While he was in the latter's office Alain Desfossés received a telephone call from the President, W.M. Evans. He told him he had had a meeting with Mario Rinaldi. According to W.M. Evans, it was possible Mario Rinaldi would decide not to file his allegations against Alain Desfossés. He asked Alain Desfossés if, should the circumstances arise, he would accept a retraction from Mario Rinaldi.

Alain Desfossés replied that someone else at the Space Agency might be aware of Mario Rinaldi's allegations. Consequently, he would accept nothing less than a letter of apology. He suggested that his lawyer draft a letter of apology (Exhibits A-84, A-85, A-86 and A-87) which Mario Rinaldi could sign. This was because he wished to give a favourable reply to the suggestion by the President, who said that it was in the best interests of the Space Agency that Alain Desfossés decided not to sue Mario Rinaldi.

Alain Desfossés was included by the President W.M. Evans in certain consultations which the latter conducted in order to resolve the situation. He was present at the meeting with the representatives of the Phillips agency.

This meeting lasted two or three hours. Alain Desfossés did not recall whether the Space Agency legal counsel, Robert Lefebvre, was present. He did not recall the advice given by the Phillips agency representatives. He explained this lapse of memory by his state of mind since he learned of the allegations by Mario Rinaldi. [TRANSLATION] "I would have liked Mario Rinaldi to be on the moon; I no longer saw him as part of my team. I was not seeing clearly. I felt very angry, and I had a deep-seated feeling of injustice and betrayal when I read the memorandum (Exhibit A-13) containing the allegations of fraud against me. I was no longer the best person to advise the President".

According to Alain Desfossés, Mario Rinaldi's allegations had repercussions on his career. First, he considered Mario Rinaldi was an individual who was refusing to accept major change at the Space Agency and was questioning the values of senior

officials, including his own. Following Mario Rinaldi's allegations, Alain Desfossés had to go through the investigation by Jean-Maurice Cantin. He thought he had been caught in a trap for personal and not professional reasons.

After Mario Rinaldi left, Alain Desfossés remained at the Space Agency until June 1997 to complete the reorganization. However, he left before the expiry of his term (five years), as the events surrounding the Rinaldi affair had depressed him. On June 14, 1997 he returned to Industry Canada with a "Flex" assignment.

Before leaving the Space Agency, and after Mario Rinaldi's departure, Alain Desfossés suffered the repercussions of the Rinaldi affair.

Employees had suspicions about him. Some were issued summonses to appear. They wondered what was behind all of this. It did not increase confidence in him. In view of Mario Rinaldi's allegations and the doubts existing about Alain Desfossés in the minds of certain employees, Alain Desfossés accepted the duties assigned to him by the President as part of the reorganization, excluding that of audit.

The fact that he took over certain duties which had formerly belonged to Mario Rinaldi enabled him to get a better understanding of the employees. From his conversations with Peter Nador and Jacques Lachapelle, he gathered that they had been afraid of Mario Rinaldi. Arlène Marchand was upset by the fact that Mario Rinaldi preferred to work with her subordinate, Ms. Robichaud. At the same time, Jean-Pierre Ruel and Richard Simpson were firm supporters of Mario Rinaldi.

Alain Desfossés could not explain how Mario Rinaldi obtained only a two-month "Flex" assignment when his position was abolished, whereas the other two vice-presidents whose positions were abolished were given two-year "Flex" assignments, as it was the President who made the decision and, according to Alain Desfossés, he was the one who should explain it. At the same time, as Corporate Services had been broken up he understood that Mario Rinaldi's position had been abolished. In his opinion, as the law creates a position of executive vice-president, it is not absolutely necessary to have a position of vice-president to act as intermediary between the Executive Vice-President and the directors, unless the Executive Vice-President comes from the private sector (and so presumably is not familiar with the workings of the Public Service).

Alain Desfossés expected to retire in May 1998.

In cross-examination Alain Desfossés repeated several assertions already made in the examination, and I will not repeat them.

At the same time, the following points deserve mention.

On occasions he had asked Mario Rinaldi to act as Executive Vice-President. In this regard, he alternated between Mario Rinaldi and Robert Giroux.

He admitted that his opinion of Mario Rinaldi was likely to be biased as a result of the allegations the latter had made against him.

He thought Mario Rinaldi had done extremely careful work in the Paul Johnston matter. He could not give an overall assessment of Mario Rinaldi's performance since the latter had only worked for him from December 1994 to May 1995, and as he pointed out a year is necessary to assess an employee's performance.

The President was responsible for reorganizing the Space Agency but had made Alain Desfossés responsible for the philosophy. It was Alain Desfossés who had the idea of creating an Executive Secretariat.

Alain Desfossés did not go into the details of the incident of the Diana Durnford overpayment with the President, as the President had instructed the investigator Jean-Maurice Cantin to deal with the entire matter.

At the President's request it was he, Alain Desfossés, who suggested the Phillips agency as consultants. The President was specialized in space programs, not in the management of situations like that reported by Mario Rinaldi. Alain Desfossés had already used the Phillips agency. He accordingly made an initial contact with one of its representatives, the former Deputy Minister Raymond Cyr.

He did not recall what was said at the meeting, except that at lunch at the Phillips agency the President explained the situation as he saw it. Alain Desfossés was feeling upset and simply repeated several times that he no longer wanted to work with Mario Rinaldi. He did not even recall who represented the Phillips agency. He explained this omission by the fact that he was upset and was only thinking about his feelings. The most he remembered was that the word [TRANSLATION] "harassment" had been

used and that they were talking about what should be done in response to harassment allegations. He admitted that because of his state of mind he was a poor adviser for the President and he understood that the latter had later consulted other people. The President did not share his thoughts on the matter with him.

Alain Desfossés recalled attending a meeting with a specialist, Andrew Molino, recommended by the Public Service Commission. He recalled repeating to him several times that he no longer wanted to work with Mario Rinaldi. He also recalled that the President asked Andrew Molino how Mario Rinaldi's actions should be interpreted, how to act with him at meetings, what his reaction might be if he told him he had to do other work temporarily. Andrew Molino replied that he should take decisions with which [TRANSLATION] "he was most at peace".

Alain Desfossés attended the meeting of May 18, 1995 to which the President W.M. Evans had summoned employees.

He thought he had had a short meeting with the President a few minutes before the meeting, to help the latter organize his thinking. At the meeting with the employees, when the President announced that a "forensic" investigation would be held, Alain Desfossés winced. Once the meeting was over, he hastened to tell the President that he had made a mistake by speaking of a "forensic" investigation. There had never been any question of a "forensic" investigation. The President regretted his lapse. Alain Desfossés attributed the mistake to the fact that the President was primarily a scientist, specifically an engineer. At the same time, Alain Desfossés knew that employees would be asked to have no further working relations with Mario Rinaldi. He could not explain why this request was made to them.

When the hearing resumed on May 11, 1998, in Alain Desfossés' cross-examination, he added the following further clarification.

He showed the President and legal counsel for the Space Agency the drafts of his replies to Mario Rinaldi's three memoranda dated May 9, 1995 (Exhibit A-14).

The Space Agency President told him he had suggested that Mario Rinaldi meet with him (Alain Desfossés) to discuss the said memoranda. He did not tell Alain Desfossés to do likewise and to go and meet with Mario Rinaldi. Mario Rinaldi did not try to meet with him to discuss the substance of the three memoranda.

Alain Desfossés corroborated the account given of the day of May 10 to W.M. Evans in his personal notes (Exhibit A-15, page 2).

Alain Desfossés testified that, after reviewing Mario Rinaldi's memoranda (Exhibit A-14), he met with Richard Simpson, Manager, Contract Administration, on May 19, 1995 in the presence of the legal counsel, Robert Lefebvre, and tried to clarify Richard Simpson's concerns about the Hollichord and Stoneboat contracts. He asked him whether in his opinion he had done anything illegal. Richard Simpson replied that he had not.

On the question of the overpayment to Diana Durnford, Alain Desfossés repeated that he was not concerned with the procedure by which Diana Durnford was to be given two days of compensatory leave. He relied in this regard on Mario Rinaldi's Corporate Services. (According to his statement to the investigator Jean-Maurice Cantin (Exhibit A-183), Diana Durnford did overtime in the two weeks preceding her departure, but she could not specify how much or whether she had made out an application to claim the corresponding salary.) He himself had no misgivings about given her these two days, as in his opinion the work done by Diana Durnford [TRANSLATION] "under pressure" and at his request in the days before she left deserved it. He was absolutely certain that Mario Rinaldi had not expressed any objection to implementing the solution suggested by his employees. At the meeting with W.M. Evans, attended by Mario Rinaldi, all three had agreed that Diana Durnford should be given two days' salary. However, they had not discussed the procedure.

About the events surrounding the Hollichord matter (Exhibits A-71, A-72 and A-73), Alain Desfossés did not recall seeing Nicholas Ralph waving two train tickets and saying that Mike Eustace's name did not appear on any of them.

Mario Rinaldi told Alain Desfossés on two occasions [TRANSLATION] "I have friends in high places. I know a lot about the history of the Agency and I will not go down alone".

Testimony by Josée Bergeron

Josée Bergeron became a Space Agency employee in 1994. From April 1995 to January 1996 she coordinated employee participation in the mission statement. Three hundred employees were consulted. Sixteen discussion groups gave their views in May

and June 1995. Certain employees (Exhibit E-34, page 4) stated that they were afraid of Mario Rinaldi. Josée Bergeron was herself a witness of a meeting between August 1993 and August 1994 during which Mario Rinaldi humiliated two of his subordinates, the directors Peter Nador and Arlène Marchand.

Testimony of Suzanne Pinet

Suzanne Pinet was seconded from the Canadian International Development Agency (CIDA) to the Space Agency in October 1995. She became transition manager (Exhibit E-36) in the process of reorganizing the Space Agency. Suzanne Pinet participated in preparing accounts of functions in the Space Agency. Using tables (Exhibit E-35), she described the various stages. Two vice-presidents, Doetsch and Lindberg, received "Flex" assignments and remained at the Space Agency while the new functions were being developed. Alain Desfossés was made responsible for reviewing the job of Corporate Services and designing the corporate management function: Mario Rinaldi did not take part in this exercise.

Suzanne Pinet gave advice on organization, not on the people who should be retained in their positions.

The positions classified at the EX-03, EX-04 and EX-05 levels were abolished. Nine EX classified positions were abolished. Thirteen people lost their jobs following the reorganization, including three vice-presidents.

The President abolished one level of the hierarchy and in so doing doubled the number of people reporting directly to him. All directors henceforth reported to him except directors who, previously reporting to Mario Rinaldi, were to report to Alain Desfossés, as the President had asked him to take charge of the support functions.

The "integrated management" function was created. Suzanne Pinet did not know Mario Rinaldi's curriculum vitae and so could not say whether he could have held a position classified at the EX-01 level in the integrated management.

When Suzanne Pinet came to the Space Agency in October 1995, Mario Rinaldi was no longer there.

Testimony of Bernard Corriveau

Bernard Corriveau worked at the Space Agency, in the Informatics Section. He was responsible for technical support. After August 1993 it became increasingly difficult to provide effective technical support as the number of employees had increased from 300-350.

It became necessary to do overtime. The directors Nador and Marion said that overtime hours were not permitted except for emergencies.

In January 1995 Mario Rinaldi summoned employees to tell them that he had never prohibited overtime. Bernard Corriveau felt that Mario Rinaldi had made the two directors responsible to him look like liars.

Bernard Corriveau also testified that, when computers were purchased for Mario Rinaldi and his secretary, his administrative assistant, an empty office and the auditors, someone (Lyse Garyluck) asked Bernard Corriveau to put the dates January 26 and 27, 1995 on the documents relating to the purchase of the computers as, on those dates, Mario Rinaldi had been Acting President (Exhibits E-38 and E-39). Lyse Garyluck told Bernard Corriveau that this was what Mario Rinaldi wanted. Bernard Corriveau retorted that this was not done. Bernard Corriveau asked someone named Marion for advice (somewhat later he said Peter Nador), and was told, speaking of Mario Rinaldi, [TRANSLATION] "He is Vice-President. Give him what he wants". If the documents had been prepared in the proper way the signature of the President Roland Doré would have been necessary, as he had returned to work at the time Bernard Corriveau signed them, on February 2, 1994. Mario Rinaldi was later careful to tell Bernard Corriveau that what he had asked him to do was not illegal and that he simply did not want to bother the President with a detail.

Testimony of Jean-Guy Desrosiers

Jean-Guy Desrosiers held the position of Chief Auditor (AS-06) at Consulting and Audit Canada. He had been an auditor for 23 years and is a chartered accountant. Since December 1995 Consulting and Audit Canada had been asked to do various auditing jobs for the Space Agency. In the past Mario Rinaldi had requested his services. More recently, in connection with the instant hearing, the Space Agency asked Jean-Guy Desrosiers to audit certain matters, such as the Hollichord file, in connection

with which Mario Rinaldi was objecting to certain actions by Alain Desfossés. The result was as follows.

Jean-Guy Desrosiers proceeded to review the Hollichord file (Exhibit E-40). He concluded that, under the applicable directive (Exhibit E-46), there was no need when the contract was signed to make a reduction of the amount to reflect the presence in the contract of a former public servant, as the contract was concluded with the Hollichord company and not with Mike Eustace, the former public servant hired by Hollichord. He noted that Jean-Maurice Cantin, the investigator, in his report did not indicate the policy clause on which he relied in saying that there should have been a reduction, and Jean-Guy Desrosiers did not agree with Jean-Maurice Cantin's conclusion.

At the same time, in his contract analysis Jean-Guy Desrosiers found a number of cases (Exhibit E-41) in which a contract had been concluded by Mario Rinaldi after the work covered by the contract had been done or without any internal request for services being completed by Mario Rinaldi. In another case, the contract had been broken down in order to avoid the tender process.

Jean-Guy Desrosiers also filed a series of documents (Exhibit E-42) establishing that Mario Rinaldi had incurred expenses totalling \$138,697 during the periods in which he was Acting President.

Jean-Guy Desrosiers analysed the documents relating to relocation expenses claimed by Mario Rinaldi and paid by the Space Agency for his relocation to Montréal (Exhibits E-43 and E-44). He concluded that the Space Agency had overpaid the sum of \$1,035, as Mario Rinaldi had claimed reimbursement for a four-month stay (June 1 to September 30, 1991) in an apartment hotel when the relocation policy specified that this type of accommodation could be occupied for a maximum of three months.

He also found that Mario Rinaldi had been reimbursed \$1,600 in monthly rental for a permanent residence as of October 1, 1991 when he was only entitled to \$500 a month as living expenses. He had also been reimbursed for electricity, laundry and meal expenses when those expenses were only reimbursed to people occupying commercial accommodation. He concluded that the Space Agency had overpaid the employee the sum of \$3,370.

Jean-Guy Desrosiers concluded (Exhibit E-44) that the Space Agency had overpaid Mario Rinaldi \$2,163 for the storage of furniture and personal effects and that Mario Rinaldi should have paid the cost of storing his furniture beyond the 120-day period allowed by the relocation policy.

Jean-Guy Desrosiers also concluded that from December 1 to 13, 1991 Mario Rinaldi claimed double meal allowance as a person in travel status (six days: Ottawa; France; Italy) and as an employee in temporary accommodation, and that the Space Agency had overpaid him \$172.91 (Exhibit E-45).

At the same time, Jean-Guy Desrosiers found (Exhibit E-46) that Laurent Bergeron, the Executive Vice-President who authorized Mario Rinaldi's claims, had claimed and received (authorized by Mario Rinaldi) the full daily allowance for meals (for the same trip to Italy and France with Mario Rinaldi) while on December 11 the supper was paid for and claimed by Mario Rinaldi.

Jean-Guy Desrosiers filed a list (Exhibit E-47) of hotels where Mario Rinaldi had stayed from time to time and concluded that, although the hotels were available to members of the executive group, these stays might be regarded as excessive and not consistent with the values shared by Public Service management, such as frugality and prudence.

In cross-examination Jean-Guy Desrosiers stated that, in the case of the contract that was broken down (Exhibit E-41, third contract, J.V. Ouellette), he did not know whether there had been political pressure surrounding the conclusion of the contract. (There was no evidence that there was any pressure. Mario Rinaldi did not testify in rebuttal and I therefore conclude that there was no evidence of pressure.)

Testimony of Jacques Lachapelle

The following is a summary of Jacques Lachapelle's testimony.

He has been Director, Administration (EX-01) at the Space Agency since December 1996. Formerly, since April 1990, he had been Director, Finance at the Space Agency. His superior was Mario Rinaldi who, over the years, went from Director General of Corporate Services to Vice-President, Corporate Services. Jacques Lachapelle's colleagues were Arlène Marchand (Director, Human Resources),

Peter Nador (Director, Data Processing Management) and Jean-Pierre Ruel (Director, St-Hubert Project).

Over the years there were three management teams: that of Larkin Kerwin (President) and Laurent Bergeron (Executive Vice-President), that of Roland Doré (President) and Laurent Bergeron (Executive Vice-President) and that of W.M. Evans (President) and Alain Desfossés (Executive Vice-President). The first team worked in secret. Programs were closed. When Roland Doré became President, he tried to create greater openness. However, it was not until W.M. Evans arrived that the Space Agency management operated quite openly. The mission statement gave a fresh impetus to the Space Agency and the appointment of a "technician" at the head of the Space Agency (as opposed to a purely "political" appointment) contributed greatly to this openness.

Mario Rinaldi strove to meet the demands of the first two "teams", and so appeared to have been well regarded by his superiors. At the same time, he did not get on so well with the "third team", namely W.M. Evans and Alain Desfossés, and when these two individuals were appointed displayed his disappointment. I will return to this below.

Over the years Jacques Lachapelle was a witness of Mario Rinaldi's management style, which he described as [TRANSLATION] "management by fear". Employees were [TRANSLATION] "conditioned". Mario Rinaldi led people to doubt themselves. He sent out contradictory signals. One day he insisted on the date of a financial report being written on the left and the next he wanted the date on the right. He was always having a fit. He shouted.

One Friday (which the directors dubbed "Black Friday"), he summoned the management committee and said [TRANSLATION] "You are going to stay here until you tell me how you intend to work".

The directors did not ask Mario Rinaldi why they had been summoned as they had ceased asking Mario Rinaldi questions for years. They felt it was better so, as asking questions might be dangerous: they might have to go through another fit of hysterics with him. Over the years prior to this meeting, Mario Rinaldi frequently raised his voice and made barely veiled threats, such as [TRANSLATION] "I'm going to make whatever changes are necessary". He used the words [TRANSLATION] "incompetence" and [TRANSLATION] "intellectual laziness"; he used a loud voice. The directors

gradually realized from what he said that there was danger of their being thrown out. Accordingly, they no longer asked him any questions.

On "Black Friday", therefore, they did not ask Mario Rinaldi any questions. They let him have his tantrum. They stayed in the room after he left. They speculated about his mental health as, in their opinion, this was not normal behaviour. (In the past, each director had had to witness similar hysterics individually.) (In 1991 Jacques Lachapelle even went so far as to talk to one of his friends, who was a psychologist, about Mario Rinaldi's outbursts. The latter told him that it was [TRANSLATION] "management by fear accompanied by contradictory signals". He suggested Jacques Lachapelle have a witness when he had to talk to Mario Rinaldi.) In short, the directors stayed in the room where Mario Rinaldi had left them for an hour and a half. They agreed to write a type of [TRANSLATION] "confession", along the lines of [TRANSLATION] "I promise not to do it again", as children sometimes used to have to do. The wording read somewhat as follows [TRANSLATION] "We are going to have more regular exchanges with you so as to keep you aware of what is happening in our areas". Mario Rinaldi came back into the room, he read the short text, said [TRANSLATION] "Good" and left the room. The directors did likewise.

After that nothing changed: the management style remained the same and the claustrophobic atmosphere continued. Mario Rinaldi forbade directors to communicate with the Executive Committee.

People were significantly affected by this "management style". Arlène Marchand, Director, Human Resources, was absent on sick leave for six months. She finally retired. She confided in Jacques Lachapelle. She told him that in her opinion it was Mario Rinaldi who had made her ill, by repeating that he had no confidence in her. In response Arlène Marchand tried to [TRANSLATION] "perform" still better. Through her duties as Director, Human Resources, she often had to talk to the managers. Mario Rinaldi frowned on this and criticized her for not being loyal to him.

Mario Rinaldi made similar criticisms to Jacques Lachapelle. Thus, he accused him of insubordination for implementing the budgetary planning process without first getting his permission. Jacques Lachapelle did this because in previous years, due to a lack of planning by Mario Rinaldi, the budgetary process had been delayed with the result that employees had to work twice as hard in the weeks preceding the sending of

the report to the Treasury Board, became exhausted and finally were absent on sick leave.

Jacques Lachapelle experienced Mario Rinaldi's intimidating management style from the start of his work at the Space Agency. When he completed his one-year probation, Mario Rinaldi asked him to write him (that is, Mario Rinaldi) a letter in which Jacques Lachapelle stated that [TRANSLATION] "he agreed that his probation would be extended by a year". Jacques Lachapelle wrote the said letter and gave it to Mario Rinaldi. Mario Rinaldi put the letter in an envelope in front of Jacques Lachapelle, sealed it and told Jacques Lachapelle that [TRANSLATION] "he had to protect himself". Mario Rinaldi kept the letter in his possession. He did not acknowledge receiving it and the letter was not placed in Jacques Lachapelle's file. However, he told Jacques Lachapelle his probation had been extended by a year. Over the years Mario Rinaldi gave Jacques Lachapelle no performance appraisals. Jacques Lachapelle understood that, if he felt the need, Mario Rinaldi would use the letter and that the letter could be interpreted as an admission of incompetence by him. By giving Jacques Lachapelle no performance appraisals Mario Rinaldi deprived him of the opportunity of taking the appraisal to higher levels in the event that it was unsatisfactory.

Jacques Lachapelle witnessed the treatment given to Peter Nador, Director, Information Management, by Mario Rinaldi. The latter told off Peter Nador in front of the management committee ([TRANSLATION] "lashed out at him") and made threats to him: [TRANSLATION] "I am not going to allow this continue! If I have to make changes, I will do it". The problems resulted from the fact that Peter Nador did not have enough employees to meet his customers' requirements. During Mario Rinaldi's outbursts, Peter Nador said nothing. The members of the management committee disagreed with the treatment given to Peter Nador, but remained silent. Peter Nador developed a disinterested attitude: he became listless, dejected, crushed. Jacques Lachapelle admitted he was afraid himself. According to him, Mario Rinaldi was two people: charming and manipulative (with his superiors) and detestable (with his subordinates).

Jacques Lachapelle also recalled another meeting in 1992 at which the management committee had to witness an outburst by Mario Rinaldi, who criticized the committee for not understanding anything, for not supporting him, for not giving him the work he asked for. The directors did not understand this reaction as they had

done the work, that is, prepared the budget, as Mario Rinaldi had asked them and according to the instructions he had put on the board. They stayed at work until 3:00 a.m. trying to produce a document that would meet with his approval. The problem, Jacques Lachapelle said, arose from the fact Mario Rinaldi did not give any directions, guidelines, did not make any statements about the policy content of the work. He was not a man of action. He gave no precise directions. The various directives that exist in government work are open to interpretation, and so Mario Rinaldi would have had to take decisions. Files piled up in his office, he did not make decisions, he waited to see how things would go. His office was nicknamed "the black hole". All he could say was that the work he was given was not what he wanted.

There was a terrible atmosphere of tension. The group of directors felt overwhelmed. No one would have dared tell Mario Rinaldi that his tone of voice and outbursts were unacceptable. It was management by tyranny. Jacques Lachapelle vividly recalled Mario Rinaldi's outbursts to the management committee and his lengthy monologues. Mario Rinaldi sometimes began meetings by clicking his heels and giving the Hitler salute. Jacques Lachapelle had never seen that in his entire career.

An employee - Michelle Tremblay, FI-02 - complained to the President Mr. Kerwin about Mario Rinaldi and said that there were not enough employees. Jacques Lachapelle thought it was for this reason that Mario Rinaldi did not want her to get a position which was being filled. Mario Rinaldi made a specific request to this effect and said it clearly at the selection board of which Jacques Lachapelle was a member. Accordingly, in order to eliminate Michelle Tremblay the requirements were raised in the competition, people holding FI-02 positions were eliminated and only those holding positions classified at the FI-03 level were considered. It was an injustice and Jacques Lachapelle knew it. He agreed to be a party to it, he said, as he was working in fear.

Mario Rinaldi made regular outbursts to him. If Jacques Lachapelle asked him to clarify his requests, Mario Rinaldi accused him of incompetence. He criticized the language used by Jacques Lachapelle in drafting the President's delegation of authorities to Mario Rinaldi when the latter had to be Acting President. Over time, Jacques Lachapelle adopted the practice of having another employee with him when he dealt with Mario Rinaldi.

The arrival of the new team, that is, President W.M. Evans and Executive Vice-President Alain Desfossés, changed a lot of things. According to Jacques Lachapelle, the Space Agency became an efficient place.

At the same time, he could see Mario Rinaldi was very disappointed at the appointment of W.M. Evans and Alain Desfossés. It was clear on the same day that Mario Rinaldi announced the arrival of W.M. Evans and Alain Desfossés to the management team.

Soon after that, Jacques Lachapelle went to Mario Rinaldi's office to give him a document. On that occasion Mario Rinaldi said, mysteriously, [TRANSLATION] "What matters is not to get thrown out, it's to get your job back". He often made mysterious remarks and added that he [TRANSLATION] "never made jokes".

Whereas Mario Rinaldi made a great effort to protect [TRANSLATION] "the old team" (Doré-Bergeron), he became aggressive with the [TRANSLATION] "new team" (Evans-Desfossés). Accordingly, he asked the directors to report to him [TRANSLATION] "anything that might appear to be contrary to procedure". Members of the management committee were not surprised by this request as they knew that he loathed the new team. Mario Rinaldi wanted the directors to report to him anything that seemed to be improper. The result was that Arlène Marchand reported to Mario Rinaldi the case of an employee who had taken more vacation than she was entitled to; Richard Simpson brought a contract to his attention; and Jean-Pierre Ruel mentioned to him a problem involving the health and safety committee.

At a meeting of the management committee Mario Rinaldi announced that he had written three memoranda to the President, W.M. Evans, about these matters and a fourth memorandum about which he gave no particulars. He said that he was having problems, he was being prevented from managing. In Jacques Lachapelle's opinion, this was not true. First, the problems reported to Mario Rinaldi at his request by the directors were minor ones. Then, the truth was that Mario Rinaldi was not happy at the arrival of W.M. Evans and Alain Desfossés. Whereas he had been used to being [TRANSLATION] "No. 2" at the Space Agency and reporting directly to the President, now he had to report to Alain Desfossés, the Executive Vice-President, who now had responsibility for Corporate Services. Also, Alain Desfossés dealt directly with the directors, which never happened in the past.

According to Jacques Lachapelle, Alain Desfossés was a frank, open and honest person. He felt it was a pity that Alain Desfossés' secondment to the Space Agency had been terminated by Roland Doré in 1994. He thought that the then President had terminated his secondment because Alain Desfossés had taken another employee with him to Japan, without first obtaining Roland Doré's consent. At the meeting of the management committee, Mario Rinaldi said it was unacceptable for Alain Desfossés to be accompanied by the employee and that he had spoken to the President, Roland Doré, about it. The President terminated Alain Desfossés' secondment that same week (as we know, he returned to the Space Agency in 1994, this time as Executive Vice-President).

Jacques Lachapelle also testified that he was one of those (the others were Richard Simpson, Jean-Pierre Ruel, Arlène Marchand and Ginette Robichaud) who went to see the Auditor General in June 1995 after Mario Rinaldi had been relieved of his duties.

Jacques Lachapelle was invited to go and see the Auditor General by Richard Simpson an hour and a half before the scheduled time of the meeting. The latter told him he had organized a meeting with the Auditor General to talk about the situation of Mario Rinaldi (who had been relieved of his duties), and the fact that the latter might not have been properly treated.

There were three representatives of the Auditor General at the meeting. Arlène Marchand mentioned that she was uncomfortable about the fact that an employee had taken two days' leave without entitlement. Richard Simpson mentioned the Stoneboat contract. Jacques Lachapelle said that no [TRANSLATION] "financial misdemeanour" had been committed by W.M. Evans and Alain Desfossés. Jean-Pierre Ruel spoke of his concerns about security. Someone mentioned the distribution of the business plan.

A year later, Jacques Lachapelle by chance ran into Jean-Pierre Morin, who was one of the three people representing the Auditor General. He told Jacques Lachapelle that he had been very surprised that the directors came to the Auditor General's office about such minor matters.

Jacques Lachapelle agreed with this assessment. The reason he was willing to go and see the Auditor General was that he felt there was a kind of plot and he wanted to

be an observer. Arlène Marchand also wanted to be an observer. Jacques Lachapelle did not tell Jean-Pierre Ruel that he disagreed with the action. He wanted to know what would be said at the meeting. The day after the visit to the Auditor General, he told Alain Desfossés about the visit. He explained that his loyalty was to the Space Agency. He also felt loyalty towards Arlène Marchand and Pierre Nador. Following the meeting he promptly told Arlène Marchand that he had told Alain Desfossés about their action. Peter Nador did not go to see the Auditor General. Jacques Lachapelle felt that Jean-Pierre Ruel and Richard Simpson had been manipulated. He considered that this was underhand manipulation by someone who wanted to destroy his bosses.

On the distribution of the business plan, Jacques Lachapelle noted that Jean-Pierre Ruel was not an expert on the matter and it did not fall within his jurisdiction, but within that of the committee reporting to the President. For his part, he checked with the Treasury Board more than once. The analyst Tom Scott first told him that this was a confidential document, then he changed his opinion and said that it was not a confidential document and could be distributed as it did not have to be submitted to the Treasury Board for approval, contrary to what was required of other departments. That explains the fact that he had first told Mario Rinaldi it was a confidential document. (He did this in writing on May 15, 1995, Exhibit A-186, at Mario Rinaldi's request, but his first conversation with Tom Scott may have taken place two weeks earlier.) He did not mention the matter to Mario Rinaldi after that as Alain Desfossés was looking after distribution of the business plan and had also contacted the Treasury Board about it.

Jacques Lachapelle stated that so far as he was concerned on May 15, 1995 he thought that the business plan was a confidential document. At the same time, he knew that on May 12, 1995 neither Alain Desfossés nor the task force, as the result of their investigations, thought it was a confidential document.

To this day, Jacques Lachapelle is still convinced that the purpose of the meeting with the Auditor General was to create a momentum in Mario Rinaldi's favour by making accusations against the President W.M. Evans and the Executive Vice-President Alain Desfossés.

He concluded his testimony by noting that, since the arrival of the [TRANSLATION] "new team" (Messrs. Evans and Desfossés), there has been openness at the Space Agency and employees have even had access to an ombudsman.

That concluded the employer's evidence. Mario Rinaldi did not submit any evidence in rebuttal.

Counsel for Mario Rinaldi also obtained counsel for the employer's consent on certain points. Counsel for the employer noted that these were admissions, but they were carefully circumscribed and limited to exactly what they said. Accordingly, the following facts were admitted by consent.

Counsel for the employer admitted that, if Mario Rinaldi returned to the witness box, he would deny making threats to Alain Desfossés; having a meeting with W.M. Evans and Alain Desfossés and concluding an agreement at that meeting about the claim made to Diana Durnford; asking Lyse Garyluck to ask Bernard Corriveau to backdate a document; speaking to Bernard Corriveau about this event, and consequently telling him [TRANSLATION] "What I have asked you is not illegal". He would also deny maintaining relations with employees based on fear and manipulation and would deny making gestures similar to the Hitler salute. He would further say that he could not remember the meeting described as "Black Friday" or holding a meeting in the atmosphere described.

Counsel for the parties indicated to me that they both wished me to first make my decision on the question of jurisdiction and the existence of a disguised disciplinary dismissal, and if necessary, that the question of damages should be dealt with later, either by agreement between the parties or, ultimately and if necessary, by myself.

Arguments

For the grievor

The arguments of counsel for Mario Rinaldi may be summarized as follows.

Mario Rinaldi's three grievances were admissible and it follows from the judgment in *Rinaldi* (Federal Court, case No. T-761-96) that an adjudicator has jurisdiction to determine whether there is some ground other than the abolition of duties behind the abolition of a position and the lay-off of an employee.

Precedents provide objective criteria which can be applied to determine whether there has been a disguised disciplinary dismissal.

A disguised disciplinary dismissal is by nature camouflaged. One indication is a bone of contention, a specific issue in dispute between the employer and employee. The employer has charges of a disciplinary nature to make against the employee. Such charges are sometimes justified. At other times they are groundless. The charges accompany the lay-off. There is also a definite animosity between the parties or an inability to communicate. The employer tends to solve the problem on some basis other than a disciplinary one. Sometimes, the disguised dismissal takes the form of a budget reduction without a reduction of staff. Frequently, the charge against the employee is not sufficient to dismiss him and that is why the employer uses some other means of getting rid of the employee. Occasionally the evidence indicates that the employer did not follow the career transition rules or did not observe the lay-off policy. The following cases are instructive in this regard: *Spinks and Threader* (Board files 166-2-15249 and 166-2-15264); *Lavigne* (Board files 166-2-16452 to 16454; 166-2-16623 to 16624 and 166-2-16650); *Dell, Philipchuk and Sweeny* (Board files 166-2-25124 to 25126; and 166-2-25189 to 25191); *Jadwani* (Board files 166-2-23622 to 23623 and 166-2-24104); *Steen* (Board file 166-10-4186); *Mallett* (Board files 166-2-15344 and 166-2-15623); *Laird* (Board file 166-2-19981); *Matthews* (166-20-27336); and *Lo* (Board file 166-2-27825).

In the instant case the following facts suggest that there was a camouflaged disciplinary dismissal.

Mario Rinaldi's career is studded with promotions (Exhibits A-42 and A-43) and he has received excellent performance appraisals (Exhibits A-47 and A-48).

Before W.M. Evans returned to the Space Agency as President relations between W.M. Evans and Mario Rinaldi were normal working relations. These relations, though not relations of friendship, worked well. However, the relations between the former President Roland Doré and Alain Desfossés were not harmonious. Alain Desfossés had to leave the Space Agency at first. The current President, W.M. Evans, claimed he did not know why Alain Desfossés left at first. Alain Desfossés' testimony on this point appeared to contradict him. Accordingly, one has to decide which person is credible.

This entire matter resulted from two key events: the memorandum of May 9, 1995 (Exhibit A-13), in which Mario Rinaldi alleged that Alain Desfossés tried to induce him to falsify documents, and the interpretation of this by W.M. Evans, President of the

Space Agency, according to which Mario Rinaldi intended to object to the Auditor General.

Prior to May 10, 1995 it could be said that working relations between the Executive Vice-President, Alain Desfossés, and Mario Rinaldi were normal working relations, that is, characterized by certain tensions due to differing opinions on various aspects of the work.

It was the Durnford matter (involving the memorandum of May 9, 1995, Exhibit A-13, written to the President, in which Mario Rinaldi alleged that Alain Desfossés wanted him to have certain documents prepared) and the matter of the Auditor General (that is, Mario Rinaldi mentioning the possibility of taking his complaints to the Auditor General) that would change the course of events.

On the Durnford matter, it should be noted that this resulted from a significant problem of communication. The money claimed from Diana Durnford by the Space Agency was owed: any overtime owed to her had definitely been claimed and Diana Durnford had made no further claim. In fact, she ultimately repaid the money claimed from her by the Space Agency. The evidence was that the Space Agency President, W.M. Evans, had decided that Diana Durnford's debt would be erased. He may not have been wrong to want to erase this debt. His mistake was not to tell Mario Rinaldi clearly that the debt was to be erased.

In early April 1995 things began to go sour. Each person appears to have taken a position and then stuck with it. Alain Desfossés' version was not clear (Exhibit A-181). Although Alain Desfossés was in good faith, the language he chose to use lent itself to the interpretation given to it by Mario Rinaldi, that he was being asked to forge documents. If there was an agreement between W.M. Evans, Alain Desfossés and Mario Rinaldi on the way the matter should be dealt with, the least that can be said is that W.M. Evans' notes (Exhibit A-15) make no reference to it. The distinction made by Alain Desfossés between [TRANSLATION] "retroactive" and "backdating" is tenuous. In any case, Alain Desfossés or André Faucher would have had to certify that the overtime was actually done. That was not Mario Rinaldi's function. If Mario Rinaldi made a mistake, it was in not saying clearly to Alain Desfossés [TRANSLATION] "My perception of what you are asking me to do is that you are asking me to forge a document: I cannot do this and the reason is . . .". Mario Rinaldi was in good faith in his perception of what he was being asked to do and, even if we conclude he did not make an effort to

cooperate, we must still recognize that "technically" he was right. It should also be borne in mind that his memorandum to the President on this matter (Exhibit A-13) was confidential. It should also be recalled that, after he had given in his memorandum, it was Alain Desfossés who cancelled the meeting he was to have with Mario Rinaldi.

We cannot conclude that W.M. Evans was in bad faith when he asked Mario Rinaldi to try and work out the problem by speaking to Alain Desfossés. However, his behaviour before the start of the investigation, which he assigned to Jean-Maurice Cantin, demonstrates a prejudice in favour of Alain Desfossés. He sought a solution to the problem presented by Mario Rinaldi's allegations (Exhibits A-13 and A-14) through discussions with Alain Desfossés and the legal counsel, Robert Lefebvre. Seeking advice from the Phillips agency did not constitute bad faith, but the presence of Alain Desfossés at the meeting and the fact that neither the President W.M. Evans nor the Executive Vice-President Alain Desfossés remembered the names of the Phillips agency representatives and the advice received are indications of bad faith. They're evidence of bias. Thus, we see (Exhibit A-169) that Alain Desfossés made suggestions to the President on the content of the replies that might be made to Mario Rinaldi's memoranda (Exhibit A-14).

Mario Rinaldi's suggestion on May 15, 1995 about going to the Auditor General must be assessed in light of the following facts. First, he was in contact with the Auditor General on other matters; it was thus natural that the idea would occur to him as a solution. Then, it should be borne in mind that he was afraid, as the President had told him that if he filed his complaint (Exhibit A-13) in which he alleged that Alain Desfossés had urged him to forge a document, he would be starting "open warfare".

W.M. Evans cannot be blamed for undertaking an investigation ("the Cantin investigation"), but it is conceivable that if the meeting arranged between Alain Desfossés and Mario Rinaldi had taken place it could have cleared up the matter.

The fact that Mario Rinaldi referred to the Auditor General was the motive behind the employer's decisions from that time on and it is clear that they wanted Mario Rinaldi to leave the Space Agency. The notes (Exhibit A-17) taken by the legal counsel Robert Lefebvre at the meeting on May 17, 1995 between the President W.M. Evans and Mario Rinaldi clearly indicated the President's desire that Mario Rinaldi should leave the Space Agency.

Relieving Mario Rinaldi of his duties and assigning him to a special project is not a decision covered by the scope of the harassment policy. Rather, it is a punitive action similar to a suspension. First, it is apparent from Robert Lefebvre's notes (Exhibit A-17, tab 20) that the President was thinking of suspending Mario Rinaldi. It should also be borne in mind that Mario Rinaldi had filed no harassment complaint and that the memorandum of May 9, 1995 (Exhibit A-13), in which he alleged that Alain Desfossés had asked him to forge documents, was not a harassment complaint.

It is clear that Mario Rinaldi had still not filed a harassment complaint against Alain Desfossés as in his own notes (Exhibit A-15) the President mentions that Mario Rinaldi told him there was a basis for filing a harassment complaint against Alain Desfossés.

Additionally, the presence of the career transition consultant Andrew Molino on the day Mario Rinaldi was relieved of his duties is another indication that the intent was to get rid of Mario Rinaldi and that his days were numbered.

Mario Rinaldi was relieved of his duties, he had to put his personal effects into boxes, leave his office, move into an office beside that of Alain Desfossés and terminate his official activities outside the Space Agency. These facts do not come within the scope of the harassment policy. Further, at the meeting convened to explain to Mario Rinaldi's employees why their supervisor had left, the President suggested that there would be a "forensic" investigation, although there was none and there was no intention of having one; and finally, employees were asked to cease speaking to Mario Rinaldi about professional matters and were told that they now reported to Alain Desfossés.

These facts necessarily imply that the President was in bad faith and that his purpose was to damage Mario Rinaldi's reputation.

In his testimony the President admitted he had no intention of undertaking a "forensic" investigation and that he had no basis for doing so. Even Alain Desfossés was surprised to hear the President announce this kind of investigation at the meeting with the employees. The conclusion that this indicated bad faith and malice on the part of the President is inescapable. Even the correction (Exhibit A-20) which he made to his remarks was inadequate, as he should clearly have said that there would not be either a "forensic" investigation or an investigation conducted by external investigators. The

correction (Exhibit A-20) left open the possibility that their services would be called on. These actions must be attributed not to W.M. Evans' inexperience as a manager, but to bad faith.

It also appeared that the idea of holding an investigation derived not from implementation of the harassment policy but from a request to this effect (Exhibit A-83) by Alain Desfossés on May 24, 1995, when he learned of the allegations made against him by Mario Rinaldi.

On the other hand, the fact that Mario Rinaldi did not intend to instigate an investigation must be considered. It was the President, W.M. Evans, who decided that there would be one and it was he who determined its scope (Exhibit A-76) and assigned it to Jean-Maurice Cantin.

The three memoranda dated May 9, 1995 (Exhibit A-14, tabs 7, 8 and 9) referred to situations which were of concern to Mario Rinaldi, but which he did not imagine would lead to the holding of an investigation.

The Cantin investigation was not conducted fairly. Mario Rinaldi did not have access to his files at the time he testified. He had to ask for them. Furthermore, before submitting his report the investigator met with the President of the Space Agency and the employer's counsel, Raymond Piché (Exhibits A-23, A-80, A-91, A-94, A-75 and A-26). They even lunched together. If this is not evidence of bad faith, at the very least it does not give an impression of honesty and fairness. Both the President, W.M. Evans, and Jean-Maurice Cantin were responsible for this lapse. They should have given Mario Rinaldi an opportunity to be present at their meeting and he should have been sent the draft of the Cantin report, just as it was sent to the President for him to go over it. The Cantin report contained factual inaccuracies which Mario Rinaldi might have wanted to mention. Moreover, the changes made to his report by Jean-Maurice Cantin following his meeting with the President were significant, if we consider the amount of money he requested for making the changes.

Additionally, in order to get a final copy of the Cantin report Mario Rinaldi had to make an application under the *Access to Information Act* (Exhibit A-109); and it was not until the instant hearing, pursuant to an order by the undersigned adjudicator, that he was given a complete copy.

The conclusions of the Giroux report (Exhibit E-22) also clearly cannot be accepted. That report concluded the investigation by Jean-Pierre Giroux of the Public Service Commission Investigations Branch, pursuant to a complaint by Mario Rinaldi (Exhibit A-164) alleging abuse of authority over him by the Space Agency President. Mario Rinaldi considered that the investigator Giroux had not conducted a proper investigation and had simply endorsed the employer's views. Unfortunately, the undersigned adjudicator did not permit Mario Rinaldi to present evidence of the defects in that investigation.

In assessing the testimony a decision has to be made between the credibility of Jacques Lachapelle and that of Jean-Pierre Ruel. These two witnesses had very different views of Mario Rinaldi.

Jacques Lachapelle's loyalty to his co-workers may be questioned. His description of Mario Rinaldi's excesses toward his employees ("Black Friday") does not square with the fact that some employees went to see the Auditor General. In his testimony Mario Rinaldi admitted he could be hard. However, it would seem Jacques Lachapelle exaggerated in his description of Mario Rinaldi's behaviour.

The employer alleged that Mario Rinaldi lost his employment for [TRANSLATION] "economic reasons" (Exhibit A-191) having to do with the work force adjustment. It argued (and it also made this argument to the investigator Giroux, Exhibit A-61) that the Space Agency had to be reorganized on account of government decisions to reduce the Agency's budget.

Nonetheless, there are some points which raise questions. Thus, according to the summary (Exhibit A-149) of Space Agency program reductions, no reduction in salaries was scheduled for 1995-1996. According to the business plan (Exhibit E-13) the "full-time equivalents" were to go from 351 to 353. Only managers 50 and over would be offered the opportunity of early retirement (Exhibit E-12, page 3). Mario Rinaldi was only 44 years old. Then there was the fact that Mario Rinaldi was not consulted about the reorganization. Additionally, he was the only Vice-President to receive a two-month "Flex" assignment, the others receiving a "Flex" assignment of two years (Exhibits E-14, page 27, and E-18, and Exhibits A-32, A-33, A-34 and A-2). The Executive Employees Transition Policy (Exhibit A-154) was not applied, in that all reasonable efforts were not made to offer Mario Rinaldi another job in the Public Service and he was not given adequate notice that his position would be abolished (Exhibit A-63).

The other vice-presidents were over 50 and the employer accommodated them by giving them two-year assignments (and Vice-President Doetsch received an extension of his assignment). There was all the more reason for Mario Rinaldi to have been accommodated. (Since then Vice-President Doetsch and Director General McNally have found jobs outside the Public Service. Vice-President Lindberg is still unemployed. These three vice-presidents left the Space Agency on April 5, 1997, October 30, 1997 and May 2, 1998.) Mario Rinaldi should also have been given a two-year assignment following the abolition of his position.

In addition to the first two grievances, in which Mario Rinaldi is seeking reinstatement in the Public Service, he is claiming in his third grievance the periods when Mario Rinaldi was on sick leave (Exhibits A-117, A-134, A-135 and A-137) following the announcement that his position had been abolished.

For the employer

The following is a summary of counsel for the employer's oral arguments.

The Space Agency was created from disparate components. The Governor in Council appointed people from outside the Public Service to the leadership of the Space Agency. Mario Rinaldi was seconded to the Space Agency, and the circumstances in which this occurred are not known. At the outset he was the only person who was familiar with the Public Service. Consequently, Presidents Kerwin and Doré gave him a lot of latitude. He was the one who controlled budgets, staff, finance, data processing and administration. Both presidents placed great trust in him.

Over the years Mario Rinaldi created an empire, a private preserve. He was a charming person who did everything to please his superiors. W.M. Evans, the current President, was at the time a career public servant, a scientist, and he had disagreements with President Doré. He left the Space Agency to join a private company working in the space field. Mario Rinaldi was not W.M. Evans' warmest supporter when the latter was Vice-President.

Before becoming Executive Vice-President of the Space Agency, Alain Desfossés was also an employee of the Space Agency. Alain Desfossés is an idea man. He was asked to take a look at what was happening at the Space Agency. He did not get on very well with the existing team. He left in a hurry and Mario Rinaldi played a part in his

departure. Once W.M. Evans and Alain Desfossés were gone, Mario Rinaldi had a clear field to do what he liked.

A new Minister arrived. He had a better opinion of W.M. Evans and Alain Desfossés. In November 1994 the government placed W.M. Evans and Alain Desfossés at the head of the Space Agency.

Mario Rinaldi did not look kindly on the arrival of these two individuals, who had been on bad terms with the old team, whereas he was on good terms with it. Mario Rinaldi undoubtedly thought that his day would soon be over.

W.M. Evans and Alain Desfossés came to the Space Agency with new ideas and a mandate to transform the Agency, especially in terms of the government's policy orientation on space programs.

W.M. Evans persuaded the government to play a major but more limited role in space matters on the international scene. By a major effort he was able to persuade other countries to continue working with Canada despite its more limited space budget.

W.M. Evans and Alain Desfossés returned through the front door. They had no ill feeling toward Mario Rinaldi. They also did not have to worry about Mario Rinaldi as they were now the bosses.

On their arrival they made decisions. An Executive Secretariat was created. This was the first signal sent to Mario Rinaldi: he moved from the second to the third level and an Executive Vice-President was inserted between him and the President. He thus suffered a significant reduction in his prestige.

From the outset it was felt that Alain Desfossés wanted to control management. He did not allow anyone to tell him what to do, including Mario Rinaldi. For the first time in his career at the Space Agency Mario Rinaldi had to account for his actions and he did not agree with the direction Alain Desfossés wanted to take. Disagreements arose. Alain Desfossés appeared to want to move quickly. In passing, it may be noted that W.M. Evans and Alain Desfossés held temporary positions, while Mario Rinaldi held a permanent position. In fact, throughout his career Alain Desfossés received short-term assignments and had to set up projects quickly. The speed at which he worked was influenced by the length of his assignment. Alain Desfossés wanted to

move quickly: Mario Rinaldi did not want to. Alain Desfossés went over Mario Rinaldi's head. Mario Rinaldi was upset by this. He was not accustomed to such behaviour. He was accustomed to the old team being at his beck and call.

To begin with, a reorganization was announced. It is worth recalling at this point that the position held by Mario Rinaldi (EX-03) was originally created for the coordination of the Space Agency's move to Montréal. Mario Rinaldi must thus have been aware that when the relocation of the Space Agency was over there was less need to retain his position. From 1990 to 1994 Mario Rinaldi delivered the goods. After that there was only the day-to-day management of the Space Agency. Part of the reason for the existence of the position held by Mario Rinaldi (EX-03) no longer existed.

When the reorganization was announced Mario Rinaldi knew programs would have to be significantly cut back. He knew that people were challenging the effectiveness of the vertical structure of the Space Agency, resulting from the addition of programs. At the outset Mario Rinaldi knew that he did not have the unconditional support of management, that the reorganization might call in question the existence of his position. He was in a small group of 300 people consisting primarily of scientists, technicians, engineers and researchers. There were very few career administrators at the Space Agency. Mario Rinaldi was the only one. The other people holding EX-03, EX-04 and EX-05 positions were scientists or had technological expertise, such as the Director General J. McNally.

There was only one administrator besides Alain Desfossés, and that was Mario Rinaldi. Alain Desfossés was not a day-to-day administrator, he was an idea man. It was he who thought out the development of the Space Agency and how it should be done. Alain Desfossés had no reason to have any animosity towards Mario Rinaldi. However, he required Mario Rinaldi to explain himself.

What happened at the beginning? Mario Rinaldi asked his management committee to report to him any incident or information against Alain Desfossés. The result was that incidents were reported: the Durnford matter and the security matter were brought to his attention. He himself criticized certain actions taken by Alain Desfossés in the Hollichord matter. Then, there was the data processing question.

Why did Mario Rinaldi want the slightest offence to be reported to him? - so he could build a file against Alain Desfossés. It would appear that this was because

Mario Rinaldi was ill at ease. He had fears. He very likely said to himself that there could not be two vice-presidents responsible for the administration of only 300 people. He must have asked himself questions. He was uneasy and that is why he began building a file.

In the meantime W.M. Evans was setting up his projects. He created a suggestion box. He began work on a mission statement. He told the vice-presidents more officially that he wanted to meet with them to get their views on the new organization. He wrote a document laying down the guidelines for the reorganization and began the major task of collecting information. He arranged a meeting with Mario Rinaldi on May 10, 1995. Mario Rinaldi learned of it on May 5, 1995 (Exhibit E-12).

What happened after May 5, 1995? Mario Rinaldi began thinking about the information he had. On May 9 he prepared four memoranda dealing with contract administration, audit, security and the Durnford matter. He sent the first three memoranda by internal mail. He kept in his pocket the fourth memorandum dealing with the Durnford matter, and on May 10 he went to the office of the President, W.M. Evans, and instead of talking about the reorganization took out the fourth memorandum, the one in which he alleged that Alain Desfossés had urged him to forge documents. He made vague allegations and at the same time a serious allegation, that of inducing someone to commit a fraudulent act. He said that his integrity, ethical values and credibility were at issue.

Mario Rinaldi maintained that in writing this memorandum he wanted to obtain advice from the President W.M. Evans. The truth is that Mario Rinaldi was informing the President of the existence of his complaint and wanted the President to tell him whether he should give it to him. The real question Mario Rinaldi was asking the President was [TRANSLATION] "Do you want me to give you the letter?" This tactic by Mario Rinaldi had the effect of trapping the President. The latter was caught in a snare. Mario Rinaldi wanted to create a situation of conflict rather than to deal with the problem. The memorandum (Exhibit A-13) alleging that Alain Desfossés was inciting him to commit a fraudulent act was defamatory and fraught with consequences. W.M. Evans said [TRANSLATION] "If you give me the letter I will have to make an investigation and this will upset Desfossés". That is what he meant when he spoke of "open warfare". What W.M. Evans told Mario Rinaldi was clear: it was obvious that when he learned the contents of the letter Alain Desfossés would hit the ceiling and that

hostilities between Alain Desfossés and Mario Rinaldi would begin. It is clear that W.M. Evans was not talking about "open warfare" between himself and Mario Rinaldi, but between Mario Rinaldi and Alain Desfossés. It is also clear that Mario Rinaldi did not weigh the significance of his actions and that he took a risk. It is equally clear that the President could not have said to Mario Rinaldi [TRANSLATION] "Do not give me the memorandum". If he had done that he would have been putting a sword of Damocles above his head. Mario Rinaldi could later have said [TRANSLATION] "I wanted to give him the memorandum but he did not want to take it", and so W.M. Evans could have been accused of complicity in fraud.

W.M. Evans got out of the situation cleverly. He placed responsibility for the entire matter back on the shoulders of Mario Rinaldi by telling him [TRANSLATION] "You go and talk to Alain Desfossés about it". On Wednesday May 10, W.M. Evans had the impression that Mario Rinaldi would go and talk to Alain Desfossés and he left for Ottawa.

What did Mario Rinaldi do when he left W.M. Evans' office on May 10? Did he go and see Alain Desfossés? Did he honestly try to deal with the matter? No. He did not think about finding a solution to the problem. Instead his approach was to create a problem that he could later use. He did not intend to find a solution. He wanted to use the problem later. In fact, the next morning, May 11, unknown to the President he formally filed the memorandum (Exhibit A-13). He gave up the idea of resolving the matter and put his complaint [TRANSLATION] "into the system".

Mario Rinaldi told the hearing that the Auditor General's report (Exhibit A-39, block 2) was on the agenda of the Executive Committee. He maintained that the idea of talking to the Auditor General came to him because the Auditor General's report was on the agenda of the Executive Committee. He also told the hearing he decided to call the Auditor General to discuss his report. It was a strange thing to do. He made a vague, general allegation that he wanted to explain to the Auditor General that ethical problems existed at the Space Agency and that his own concerns coincided with those of the Auditor General.

On May 15 he telephoned a representative of the Auditor General (Ms. Bissonnette). It thus appears that Mario Rinaldi never intended to discuss the Durnford problem with Alain Desfossés. He wanted to pass the problem back to

W.M. Evans. That was his true intention. He was anxious to create a situation that would work in his favour. He wanted to bring pressure to bear on W.M. Evans.

On May 15, 1995, in his telephone conversation with W.M. Evans, Mario Rinaldi told him that he had already filed his complaint (Exhibit A-13) the Thursday before and in the same breath added that he did not think W.M. Evans would be dealing with the matter properly and ethically, and he also announced to the President that he had a meeting the following day with the Auditor General. It was during this conversation that Mario Rinaldi made further allegations and W.M. Evans learned that Mario Rinaldi was complaining of harassment by Alain Desfossés. At the end of the conversation W.M. Evans had the impression that Mario Rinaldi would cancel the meeting with the Auditor General. The situation clearly deteriorated from that time on. W.M. Evans was not pleased that Mario Rinaldi had decided not to meet with Alain Desfossés, and also that he had told him he had no confidence in the President being able to resolve the matter. He accordingly gave him a letter of reprimand (Exhibit A-18).

Alain Desfossés, for his part, was furious. Anyone would have been furious. Clearly trust no longer existed and the situation became intolerable. An attempt was made to settle the matter: Alain Desfossé's lawyers prepared draft letters which might be proposals for a settlement. Mario Rinaldi testified that he never considered withdrawing his complaint against Alain Desfossés. Clearly what he said cannot be relied on. His testimony was confused and accompanied by mental reservations. Even what he wrote was vague. Mario Rinaldi made serious allegations, but was surprised that an investigation was made into them. He made allegations of harassment and then claimed he had not filed a harassment complaint. W.M. Evans and Alain Desfossés at one point thought the matter was going to be settled amicably and Mario Rinaldi replied that he did not want an amicable settlement and that those two individuals understood nothing.

Why did Mario Rinaldi not want this matter to be settled amicably? It was because he wanted to shift the problem back to the President. He feared his position was in danger and had a plan to protect it. He created a situation he could use to his advantage. He told himself that if anyone touched a hair of his head he would say it was because he had made allegations: so much so, in fact, that he did not want an investigation into his own allegations. He had created a problem that he did not want anyone to explore. It was a Machiavellian manoeuvre and in bad faith. He created a

situation to protect himself, but he made a serious error of judgment: he never imagined that the President would take the decision to have his allegations investigated. He never thought it would go that far. All he wanted to do was to place a sword of Damocles over the President's head. It was clear that, once W.M. Evans had in his hands a memorandum alleging that the Executive Vice-President of the Space Agency was involved in reprehensible, illicit and improper acts, he was not going to do nothing. W.M. Evans had no choice: he had to ask for an investigation. He could not conduct the investigation himself. Consequently, he hired Jean-Maurice Cantin.

Here we must go back to make certain comments on the meeting of the President W.M. Evans and the Executive Vice-President Alain Desfossés with the representatives of the Phillips agency on May 12, 1995.

The President wanted to obtain the advice of an impartial third party. At that stage Mario Rinaldi's allegations against Alain Desfossés were verbal. It was not until May 15 that the President learned from Mario Rinaldi himself that the written version (Exhibit A-13) had been formally filed. Neither W.M. Evans nor Alain Desfossés recalled the advice received from the Phillips agency representatives. It must have been general in nature. Let us look at the matter in context. On May 10, 1995 W.M. Evans suggested that Mario Rinaldi talk to Alain Desfossés. That same day he told Alain Desfossés of the charges Mario Rinaldi had made against him. On May 10 and 11, 1995 he felt he had a management problem involving one of his senior employees, either Mario Rinaldi or Alain Desfossés. He did not know which. He understood that Alain Desfossés also wanted to find a solution. The allegations were certainly serious against Alain Desfossés, who denied having done anything wrong. For the moment, W.M. Evans preferred to believe Alain Desfossés' denials. There was no sufficient reason at that stage for the President to qualify the confidence he placed in the Executive Vice-President. He had just received vague verbal allegations, unsupported by any documentation, of the same type as the vague and general allegations made by Mario Rinaldi in his testimony. It is thus understandable that in the first few days of this affair the President took Alain Desfossés with him to his meeting with the Phillips agency. We have to go back in time in order to understand the President's intentions. We cannot conclude on this basis alone that he was in bad faith or that this action was taken in order to deceive anyone.

At the same time, Mario Rinaldi's action indicated a lack of judgment caused by the fear of losing his job. On May 10, 1995 he knew that the President wanted to talk to him about the reorganization. He did not give him a chance to do so. Instead he announced the existence of his four memoranda (Exhibits A-13 and A-14), in which he made allegations against Alain Desfossés. Subsequently, instead of trying to explain the situation and speaking to Alain Desfossés as suggested by the President, he formally filed the memoranda and referred to the possibility of bringing the Auditor General into the matter! What was at issue? - were the stakes large? No, they were two days' leave which had possibly been overpaid to the former employee Diana Durnford. These facts raise certain questions about Mario Rinaldi's motivation.

After looking at the facts we cannot help concluding that Mario Rinaldi took "open-ended" action, started a scandal and then was surprised that he had damaged people's reputations.

In the Hollichord matter, when he failed to persuade Alain Desfossés that the work assigned to the Hollichord company was not necessary, he tried to challenge the process by which the contract was concluded. The truth was that he did not want a third party from outside the Space Agency to examine the delegations of power inside the Agency as this might cause him to lose his powers.

As he did not succeed in stopping Alain Desfossés from looking into this matter, he questioned the latter's integrity. Did he act in good faith in objecting to the fact that Alain Desfossés allowed the Hollichord company to start work before the contract was properly concluded? How can this be said to be in good faith when he and Richard Simpson (Exhibits E-41 and E-53) had done the same thing in other contracts?

Mario Rinaldi also suggested that there had been an impropriety because a former public servant who was retired was involved in performance of the contract. At the time it was the rule of privity of contract that applied and as the contract had not been concluded with the former public servant, but with the Hollichord company, there was no bar to conclusion of the contract, nor was there any obligation to reduce its amount. It was only later that a policy (Exhibit E-50) was made changing this situation.

What is surprising in this regard is the attitude adopted by Mario Rinaldi. If he sincerely felt that a problem existed with interpretation of the old policy, why did he not take the trouble of discussing it with Alain Desfossés, why did he not go to the

Space Agency's Legal Services and request an opinion on the matter? If he had been in good faith he would have taken steps to find a solution to the problem he had just discovered instead of immediately taking the matter to the President. It is his good faith which is at issue, as it also is in the Steen and Stoneboat contracts.

On the question of security at the Space Agency, it is clear that Jean-Pierre Ruel was not pleased that Alain Desfossés had not entrusted him with the matter and had instead assigned it to a committee. Mario Rinaldi also was not pleased with being asked by Alain Desfossés to have his opinion verified by the committee. He was offended that formerly no one had contradicted his views and now the new Executive Vice-President, Alain Desfossés, was not accepting them without question. He took the same approach to the matter of the distribution of the business plan to employees. It can be seen that in both cases Alain Desfossés had requested opinions from outside the Space Agency before coming to a decision.

It can also be seen that Mario Rinaldi generally disapproved of what Alain Desfossés was doing and tried to accumulate charges against him.

The decision to "separate" Mario Rinaldi and Alain Desfossés while the investigation was under way is defensible. Mario Rinaldi was complaining of harassment and under the Harassment Policy (Exhibit E-23) it was not necessary for the President to have received a written complaint from him before having to act. Mario Rinaldi's serious allegations against Alain Desfossés had the effect of poisoning the working atmosphere. Clearly they no longer trusted each other and were not in a position to work together peacefully in the higher interests of the Space Agency.

If W.M. Evans had chosen to keep Mario Rinaldi in his position while the investigation was under way, while asking him to report to him instead of to Alain Desfossés, Mario Rinaldi would have got what he had been trying to achieve for several months, namely cutting out Alain Desfossés and returning to the second level, as had been the case before W.M. Evans and Alain Desfossés became President and Executive Vice-President. The President was right to apply the presumption of innocence to Alain Desfossés and to assign Mario Rinaldi to a special project during the investigation. Even if one were to conclude that this decision was wrong, that does not mean it was a decision made in bad faith. In the circumstances the President decided that it was the person who was making the allegations who should bear responsibility for them during the time of the investigation and should be temporarily relieved of his

duties. It must be borne in mind that, in challenging Alain Desfossés' integrity, Mario Rinaldi was questioning his honour. He was suggesting that Alain Desfossés had acted reprehensibly and was challenging his reputation, a reputation which the latter had taken 30 years to build up. Since it was Mario Rinaldi who was making allegations against his boss, it was he who should be removed during the investigation.

At the same time, we have to understand the position of the investigator Jean-Maurice Cantin. He was a third party hired on a contractual basis whom the President was asking for an opinion, once he had completed his function of investigation. He was an investigator working for the employer and the employer was entitled to meet with him during the investigation to know what point it had reached.

While the investigator Jean-Maurice Cantin was conducting his investigation the President went ahead with the reorganization. He decided to abolish the positions of the vice-presidents. He then assigned Mario Rinaldi's colleagues to special areas based on their specialized knowledge (J. McNally and the orbiting of Radarsat, G. Lindberg and the implementation of the reorganization transition, K. Doetsch and the preparation of the brief on space plan 3). Several factors explain the fact that he did not assign other duties to Mario Rinaldi: the Space Agency administration was in the hands of Alain Desfossés; the specialized work was done by the experts on the job; the President no longer trusted Mario Rinaldi; there was no other position available that could be given to Mario Rinaldi.

The President could not terminate the reorganization of the Space Agency because Mario Rinaldi had made a slanderous allegation. An employee could not be permitted to "immunize" himself against abolition of his position by making a complaint in the months before it happened.

The evidence showed that a real reorganization had been started well before the events of May 1995. The President had announced his intention to reduce the hierarchical levels. It is conceivable that Mario Rinaldi thought his position was in danger and mounted an attack to save it. He even said [TRANSLATION] "what matters is not to get thrown out, it is to get your job back". We must avoid falling into his trap and preventing the effects of a reorganization made in good faith.

The facts amply demonstrate that Mario Rinaldi deliberately sowed discord in order to use it, as he foresaw that the President would probably abolish his position.

He made a slanderous allegation hoping that the President would be blamed for mishandling the matter.

The employer took the decision to abolish Mario Rinaldi's position pursuant to s. 29 of the *Public Service Employment Act* and then laid off the employee. There was no evidence that the position and duties were not abolished. The decision to abolish the position was based on the needs of the enterprise. The fact that, at the same time as the reorganization, events were occurring which could be the subject of disciplinary action does not invalidate the reorganization and the administrative decisions made in the course of that reorganization.

If the adjudicator hearing this matter decides that there was a disciplinary dismissal, then it must follow that the employee should not be reinstated as he was the one who caused the relationship of trust to be destroyed.

The first two grievances must be dismissed for lack of jurisdiction and the third grievance must be dismissed as the sick leave credits are not convertible into cash.

The following decisions were cited: *Canada (Treasury Board) v. Rinaldi*, [1997] F.C.J. No. 225 (QUICKLAW); *Coulombe v. Canada*, [1984] F.C.J. No. 304 (QUICKLAW); *Farber v. Royal Trust Cy.*, [1997] 1 S.C.R. 846; *Flieger v. New Brunswick*, [1993] 2 S.C.R. 651; *Labrèche* (Board files 166-2-19920 and 166-2-19986); *Johanne Lafrance et al. and Commercial Photo Service Inc.*, [1980] 1 S.C.R. 536; *Canada (Attorney General) v. Penner*, [1989] 3 F.C. 429; *Puccini v. Canada (Department of Agriculture et al.)*, [1993] 3 F.C. 557; and *Sheikholeslami v. Atomic Energy of Canada Ltd.*, [1998] F.C.J. No. 250 (QUICKLAW).

REASONS FOR DECISION

The three grievances are dismissed for the following reasons.

In this case the grievor, Mario Rinaldi, had the burden of establishing that I have jurisdiction to decide his grievances. I consider that he has not discharged this burden of proof. Under paragraph 92(1)(b) of the *Public Service Staff Relations Act*, my jurisdiction is limited to "disciplinary action resulting in suspension or a financial penalty, or termination of employment or demotion pursuant to paragraph 11(2)(f) or (g) of the *Financial Administration Act*". Additionally, this jurisdiction is limited by subsection 92(3):

Nothing in subsection (1) shall be construed or applied as permitting the referral to adjudication of a grievance with respect to any termination of employment under the Public Service Employment Act.

My assessment of the evidence leads me to conclude that the facts supporting Mario Rinaldi's grievances do not fall within the limits of this jurisdiction and that the termination of Mario Rinaldi's employment resulted from the abolition of his position.

This is why.

The question before me is whether the termination of Mario Rinaldi's employment was a disguised disciplinary action. Mario Rinaldi's argument is that he was the target of a disguised disciplinary dismissal. It appears from the verbal and documentary evidence (Exhibits E-11, E-12, E-13, E-14, E-15, E-16, E-17, E-18, E-19, E-20, E-33, E-34, E-35, E-36, E-37 and E-38) that since 1995 the structure and operation of the Space Agency have been given a complete review. On arrival at the Space Agency, and several months before Mario Rinaldi's disputes with the Agency, the President initiated the reorganization process. The reorganization went through various stages, described by the President, and by the transition manager Suzanne Pinet. I have no reason to doubt the authenticity of this reorganization as described by these two witnesses, and in particular by Suzanne Pinet, who is a disinterested witness in the instant case.

The result is that ultimately 13 people lost their jobs. The positions of the three Space Agency vice-presidents and that of the director general have been abolished (that is, Mario Rinaldi and his three colleagues, Gary Lindberg and Karl Doetsch, vice-presidents, and Joseph McNally, Director General).

The latter were told simultaneously that their positions had been abolished. The abolition of these positions resulted from the President's intention to reduce the number of hierarchical levels at the Space Agency. The operation of the Space Agency was also rethought in terms of core functions, executive functions and corporate functions (Exhibits E-36 and E-19). The evidence on the reorganization persuades me that, whoever held the position of Vice-President, Corporate Services, that position would have been abolished as the President had determined that the vice-presidential level would be eliminated at the Space Agency.

Following his decision to abolish Mario Rinaldi's position and those of his three colleagues, the President gave the three vice-presidents a temporary assignment (a

"Flex" assignment). Mario Rinaldi's colleagues received a temporary assignment of two years (Exhibits A-32, A-33 and A-34), while Mario Rinaldi was offered a temporary assignment of two months (Exhibit A-1), following which he was declared surplus as his position had been abolished.

Although the evidence on the reorganization by itself supports the conclusion that the abolition of Mario Rinaldi's position resulted from the reorganization, I asked myself why, after abolishing their positions, the employer had decided to give Mario Rinaldi a temporary assignment much shorter than that offered to his colleagues. Was this bad faith on the employer's part?

In order to answer that question I considered the lengthy circumstantial evidence of the situation existing between Mario Rinaldi and the Space Agency before the positions of Vice-President were abolished in September 1995.

To begin with, Mario Rinaldi did not have his colleagues' technical expertise. Additionally, in his machinations since the arrival of the new President, W.M. Evans, and the new Executive Vice-President, Alain Desfossés, he had made gestures susceptible to bring about the loss of the President's confidence in him, and so when his position was abolished it was difficult for the President to give him a temporary assignment which would necessarily have required him to contribute to organizational changes which he had resisted since the arrival of the President and Executive Vice-President. The evidence filed by Mario Rinaldi also did not indicate what duties he could have been given after his position was abolished. The President's decision not to offer Mario Rinaldi a longer temporary assignment seems to have been based on considerations of sound administration which reflected Mario Rinaldi's lack of technical expertise, the dismantling of his duties, the absence of other duties which could have been given to him and Mario Rinaldi's behaviour in the months preceding the abolition of his position.

At the time the President in September 1995 proceeded to abolish the positions of Mario Rinaldi and his colleagues a special situation had existed at the Space Agency since May 1995, and it had developed concomitant with the President's reorganization activities.

A few months earlier, in May 1995, Mario Rinaldi had alleged that the Executive Vice-President, Alain Desfossés, had urged him to forge documents and he had

complained of the latter's actions in certain matters (Exhibits A-13 and A-14). A few days later he had received a letter of reprimand (Exhibit A-18) for certain statements he had made to the President. To clarify Mario Rinaldi's allegations against Alain Desfossés the President had decided to conduct an investigation, and for this purpose had called on the services of an external investigator, Jean-Maurice Cantin. Mario Rinaldi had been relieved of his duties during the investigation and had been assigned a special project. At the time the President abolished the positions of the vice-presidents, around September 6, 1995, he had had the report of the investigator, Jean-Maurice Cantin (Exhibit A-12), in his hands for several days. In that report the investigator concluded that most of the allegations made by Mario Rinaldi were without foundation.

That briefly is the situation existing at the Space Agency between the President and one of its vice-presidents, namely Mario Rinaldi, at the time the President proceeded to abolish the positions of Mario Rinaldi and his three colleagues in September 1995.

Does this mean that the President was disguising Mario Rinaldi's disciplinary dismissal by abolishing his position and only giving him a short temporary assignment? The evidence does not allow me to draw that conclusion. As I have already said, Mario Rinaldi was not the only one whose position was abolished, he suffered the same fate as his colleagues, the decision was made as part of a general administrative reorganization and it was designed to increase the Space Agency's effectiveness and take into account the reduction in its budget. The evidence does not allow me to conclude that the decision to abolish Mario Rinaldi's position was disciplinary, arbitrary, unreasonable, discriminatory or prompted by a desire to be personally rid of Mario Rinaldi. If that were so, how do we explain the fact that the positions of Mario Rinaldi's colleagues were also abolished at the same time? In light of the evidence on the reorganization, I conclude that Mario Rinaldi's problems with the Space Agency were unrelated to the decision to abolish his position.

The fact that, as is the case here, an employee has received a letter of reprimand and been relieved of his duties, and then been assigned a special project in the months preceding the abolition of his position, does not constitute absolute protection against the abolition of his position nor an irrebutable presumption that the abolition of his position was actually a disguised disciplinary dismissal.

In the instant case, Mario Rinaldi's suspicions about the President's motives in abolishing his position do not outweigh the evidence regarding the scope of the reorganization, and that evidence leads me to conclude that this was a genuine abolition of a position made in good faith.

As to the decision to give Mario Rinaldi a shorter temporary assignment (two months) than that given to his colleagues (two years), I feel that it was within the President's discretion to reorganize the work in accordance with his priorities for the purposes of the reorganization once the positions of the three vice-presidents had been abolished.

First, the evidence does not allow me to conclude that it was possible, in order to carry out the reorganization, or for any other purpose, for the President to give Mario Rinaldi a temporary assignment after his position had been abolished.

Then, it should be borne in mind that it was up to Mario Rinaldi to establish the existence of bad faith. The facts entered in evidence by either side lead me to conclude, on a balance of probabilities, not that there was bad faith by the employer but that Mario Rinaldi lost the President's confidence and did not have the necessary attitude, equanimity or objectivity to perform a temporary assignment once his position had been abolished, assuming such an assignment had been possible, for this assignment would have entailed the dismantlement of his own duties and the creation of a new structure, as was the case for the "Flex" assignments of the other vice-presidents.

I come to this conclusion for the following reasons.

First, it appears from the evidence that Mario Rinaldi was not pleased by the appointment of W.M. Evans and Alain Desfossés to head the Space Agency. In this regard I rely on the uncontradicted testimony of Jacques Lachapelle and the systematic opposition presented by Mario Rinaldi to Alain Desfossés' requests. In particular, I find it significant that, when the new President and Executive Vice-President arrived, Mario Rinaldi asked his directors to report to him anything that might be a violation of procedures by the President and Executive Vice-President. Even before W.M. Evans and Alain Desfossés had an opportunity to prove themselves, Mario Rinaldi was already sowing doubt about their integrity.

Then, it appears from the evidence that Mario Rinaldi saw no need to reorganize the Space Agency and had no intention of assisting as part of the reorganization with the review of Corporate Services, which were under his control. In this connection I rely, among other evidence, on the uncontradicted testimony of Alain Desfossés, according to which on his arrival at the Space Agency, at a lunch with Mario Rinaldi, the latter clearly told him he thought there was not much need for change at the Space Agency. I also take into account the fact that Mario Rinaldi objected to the Hollichord company being consulted on the delegation of powers within the Space Agency. The attitude he adopted in that case leads me to think that what he really feared was the reduction of his own powers.

Third, it appears from the evidence that on the arrival of W.M. Evans and Alain Desfossés Mario Rinaldi adopted an attitude of passive hostility towards his superiors, which took the form of a lack of cooperation with Alain Desfossés, then somewhat unspecific allegations against him, and finally allegations that Alain Desfossés had urged him to forge documents.

To explain this, it is necessary for me to look again at the evidence.

In his testimony Mario Rinaldi strove to persuade me that he acted with integrity and with no malicious intent towards anyone in giving the President the four memoranda (Exhibits A-13 and A-14) which persuaded the President to initiate an investigation. In the same breath he repeated several times that, although he had submitted these memoranda, he did not wish to complain of harassment and did not want an investigation. Throughout his testimony Mario Rinaldi adopted two contradictory positions: on the one hand, he suggested that Alain Desfossés had urged him to forge documents and had used questionable management practices and that the President was not receptive to his complaints, and on the other hand, he insisted that he did not want there to be an investigation. On the one hand, Mario Rinaldi was criticizing the President and Executive Vice-President and making insinuations against them, and on the other he was insisting that he had never wanted an investigation. How are we to explain the fact that Mario Rinaldi adopted these contradictory positions?

The evidence I heard on the circumstances surrounding each memorandum undermines Mario Rinaldi's credibility and leads me to think that the reason

Mario Rinaldi did not want an investigation was that he knew that his allegations were likely to be found to be groundless in any eventual investigation.

It is significant that the person who made the allegations (Mario Rinaldi) did not want an investigation while the person against whom the allegations were made (the Executive Vice-President Alain Desfossés) was demanding one (Exhibit A-83). Some might say that Mario Rinaldi wanted to make allegations but not to have to pay the price for doing so, namely, proving them during an investigation.

What about the four memoranda (Exhibits A-13 and A-14)?

First, the evidence does not allow me to conclude that Alain Desfossés urged Mario Rinaldi to forge a document (Exhibit A-13). Alain Desfossés' explanations seem plausible to me and no witnesses, including the President's assistant who according to Mario Rinaldi heard what Alain Desfossés said, came to corroborate Mario Rinaldi's allegations.

As to the evidence on the memorandum (Exhibit A-14) dealing with Mario Rinaldi's concerns about contract administration, I found the following.

First, Richard Simpson did not testify to explain his concerns, if he had any, and so there is no evidence of any impropriety in the Steen and Stoneboat contracts. Even Mario Rinaldi in his testimony could not establish any cause for complaint against Alain Desfossés in respect of these two contracts.

On the Hollichord contract (Exhibit E-25), Mario Rinaldi did not establish that any illegality or impropriety was committed in the granting and conclusion of the contract. He discussed at length before me the fact that the Hollichord company began doing work even before the relevant documents were signed. It appears from the testimony of the auditor Jean-Guy Desrosiers and the uncontradicted documentary evidence (Exhibit E-42) that Mario Rinaldi himself concluded contracts on the Space Agency's behalf after work had started. In view of these facts, I question the authenticity of the concerns indicated by Mario Rinaldi in his testimony.

Moreover, under the directive applicable at the time (Exhibit E-46), regarding the presence of a retired public servant in the Hollichord matter, it does not appear there was any need to make a reduction in the amount of the contract (testimony of Jean-Guy Desrosiers). Even admitting that this point was not clear and might be open

to interpretation, I do not understand Mario Rinaldi's insistence in his testimony that, without naming the person concerned specifically, an impropriety had been knowingly committed by the individuals concerned with the contract (Messrs. Eustace, Ralph and Desfossés). The explanations given by Mario Rinaldi of his concerns in the Hollichord matter (Exhibit E-25) were sometimes confused and vague and sometimes tended to cast doubt on the honesty of the individuals involved with the contract (Messrs. Eustace, Ralph and Desfossés). Ultimately Mario Rinaldi could not present evidence of any illegality or of a practice different from his own. Finally, I came to the conclusion that he decided not to cooperate with Alain Desfossés on this contract, and if necessary to complain to the President because, first, he did not agree with the appointment of Alain Desfossés (Jacques Lachapelle's testimony), and second, the conclusions of the study made by the Hollichord company were liable, as part of this contract, to have repercussions on the management of Corporate Services, for which Mario Rinaldi was responsible. The fact that Mario Rinaldi did not discuss his concerns with Alain Desfossés before approaching the President confirms me in this belief.

The evidence regarding the other two memoranda, namely those dealing with audit and security (Exhibit A-14), raises questions as to Mario Rinaldi's motivation and what he was trying to do.

First, the evidence about the audit function is one more indication that Mario Rinaldi did not support the reorganization objectives of the President and Executive Vice-President. How otherwise are we to explain his insistence that he wanted [TRANSLATION] "to implement the audit function without delay", when the President was in the process of reviewing all Space Agency programs from top to bottom? Mario Rinaldi's explanation, that he insisted because the creation of an audit program was one of the objectives in his most recent performance appraisal (Exhibit A-50), seems to me a feeble one and, if true, [to show] a lack of judgment. This performance appraisal was made in the time of the President Roland Doré. It is to say the least surprising that a manager at Mario Rinaldi's level had not adjusted his priorities to take into account the fact that since his last performance appraisal a new president had arrived, a major reorganization of the Space Agency was under way, and thus the priorities of vice-presidents, including his own, were likely to change.

As to the evidence on the memorandum dealing with security in the Space Agency (Exhibit A-14), it simply shows not that security was inadequate at the Space

Agency but rather that Mario Rinaldi felt he should have been consulted by Alain Desfossés, that communication between them was lacking and that neither the President nor the Executive Vice-President shared his opinion (Exhibit E-6) on the existing security measures at the Space Agency.

In addition to the subjects discussed in the memoranda (Exhibits A-13 and A-14), Mario Rinaldi also complained to the President in a telephone conversation subsequent to the submission of the four memoranda of the fact that Alain Desfossés had broken the regulations on security by having the Space Agency's new business plan distributed to employees. It appears from the evidence that Alain Desfossés and Mario Rinaldi had been given different opinions on this matter, that the point was not clear and that one might legitimately take either view.

Data processing was another point raised by Mario Rinaldi in his conversation with the President. It appears from the evidence that in his opinion Alain Desfossés was interfering with his responsibilities and that he did not share Alain Desfossés' view as to the best way of dealing with problems relating to data processing.

In short, I find on the oral and documentary evidence that Mario Rinaldi had complaints to make against the Executive Vice-President Alain Desfossés which concerned nearly all aspects of his work: contract administration (Hollichord, Stoneboat and Steen), finance (the Diana Durnford affair), audit, security and data processing. It seems clear that he was in disagreement with Alain Desfossés in nearly all respects; and yet, at the time he approached the President (on May 10 and 15, 1995), Alain Desfossés had only been his superior for about six months (November 1994).

After hearing Mario Rinaldi testify for several days about his recriminations regarding Alain Desfossés, and seeing the lack of substance to the charges he made against the latter, I come to the conclusion that ever since Alain Desfossés' arrival Mario Rinaldi had been ill disposed towards his superior and, if not acting in bad faith, he was at least lacking in good will. Far from supporting the Executive Vice-President in his management duties, he seems to have made an effort from the time the latter arrived to try to pick a quarrel with him and deny him his cooperation.

In view of the number of charges he made against Alain Desfossés, and in view of the findings of the investigator Jean-Maurice Cantin that the majority of his allegations were groundless, I think there were reasonable grounds to conclude that the

relationship of trust which should have existed between one of the three vice-presidents (Mario Rinaldi) and the Executive Vice-President (Alain Desfossés) was irretrievably damaged, that in addition Mario Rinaldi did not support the objectives of the reorganization, and that accordingly once it had been decided that the vice-presidents' positions should be abolished it was not in the Space Agency's best interests to give Mario Rinaldi a longer temporary assignment as part of the reorganization.

To this I would add that Mario Rinaldi's behaviour toward the President himself certainly had an impact on the President's trust of Mario Rinaldi.

First, I believe the President W.M. Evans when he said (Exhibit A-15) that on May 10, 1995, at the meeting at which Mario Rinaldi told him of his charges against Alain Desfossés, Mario Rinaldi suggested that the President himself might have a vendetta against him and that he, Mario Rinaldi, would "drag others down with him" if he "lost his status or suffered financially". The reason I believe the President is that other witnesses (Alain Desfossés and Jacques Lachapelle) reported similar statements by Mario Rinaldi and their statements corroborated those made by the President W.M. Evans. In particular, Jacques Lachapelle mentioned the behaviour of Mario Rinaldi towards his subordinates. He also mentioned the intimidation and threats he had himself received from Mario Rinaldi over the years. Mario Rinaldi did not testify in rebuttal on this point and so did not contradict Jacques Lachapelle's testimony. His general denial through his counsel did not suffice to rebut the specific allegations of Jacques Lachapelle.

I also believe the President W.M. Evans when he said that Mario Rinaldi told him he "was not comfortable with the way the issue in his memorandum would be handled" and that "he [did not] believe that this issue would be handled most ethically by me" (Exhibit A-15).

In view of these facts, I feel that by making barely veiled threats and expressing his lack of confidence in the President's ability to deal with the matter "ethically", Mario Rinaldi could hardly expect that the President would in turn continue to have confidence in him. When Mario Rinaldi also suggested that he would tell the Auditor General of his concerns, I think he could hardly have expressed his lack of confidence in the President more clearly.

For a public servant concerned about questions of ethics to resolve, finally and after exhausting internal remedies, to seek an opinion from the Auditor General is one thing, but for a public servant to threaten recourse to the Auditor General on a question of the granting of two days of annual leave, when he has only just told the President about it five days earlier, and before the latter has even had the time to make an investigation, is something else. In the instant case there was no urgent need to bring in the Auditor General, since the President had only just learned of the problem.

That is why I think that the mention of the Auditor General was more than clumsiness on Mario Rinaldi's part, and more than an error of judgment. I concur in the opinion of counsel for the employer that it was a barely veiled threat, a sword of Damocles he was placing above the President's head to urge the latter to support him in his recriminations against Alain Desfossés. By doing this he alienated the President's trust and the latter reacted by sending him a letter of reprimand (Exhibit A-18) for his statements. In the circumstances, this letter of reprimand seems to me to be justified.

I now come to the period following the allegations made by Mario Rinaldi. The reason I dwell on these is that counsel for Mario Rinaldi invited me to conclude that certain actions committed by the President during this period were indications of his bad faith.

The President was faced with a serious dilemma: a vice-president, Mario Rinaldi, was alleging that the Executive Vice-President, Alain Desfossés, had urged him to forge documents, and was making other allegations.

The decisions which W.M. Evans took to deal with the problem seem to me to have a legitimate basis. As he had concluded from his conversations with Mario Rinaldi and from Mario Rinaldi's memoranda (Exhibits E-13 and E-14) that the latter was complaining of harassment by the Executive Vice-President, Alain Desfossés, the President separated his two assistants for the period of the investigation, relieving Mario Rinaldi of his duties and giving him a special project. Mario Rinaldi no longer reported to Alain Desfossés. This decision was strongly resented by Mario Rinaldi, but I think that in order to keep the two protagonists apart the President had few options. He had an agency in the midst of a reorganization to run and only had one Executive Vice-President. He therefore chose to leave him in place, assuming he was innocent, while the validity of Mario Rinaldi's allegations was determined. I feel that this was a reasonable administrative decision in view of the special circumstances in which it was

made and the advice the President received. In managing the crisis occasioned by Mario Rinaldi's allegations the President, W.M. Evans, made decisions which might seem questionable. It is true he could have asked Mario Rinaldi to report to him during the time of the investigation instead of relieving him of his duties, giving him a special project and installing him in another office. He could also have avoided asking Mario Rinaldi no longer to talk about work with his employees. He did not do so. The decisions made by the President had advantages and disadvantages for those who were directly concerned (the President W.M. Evans, the Executive Vice-President Alain Desfossés and the Vice-President, Corporate Services, Mario Rinaldi). Those decisions could be seen in retrospect as bias in favour of the Executive Vice-President, Alain Desfossés. However, it might also be thought that these were difficult decisions designed to reduce the contacts between Mario Rinaldi and Alain Desfossés, leave the field free for the investigator to conduct the investigation and allow the Executive Vice-President, Alain Desfossés, to go ahead with his work until the investigator had drawn conclusions on the allegations made against him.

Despite the disadvantages they reveal, these decisions seem to me to be defensible. At least, they do not seem to me to be signs of bad faith. More importantly, the effect of these decisions is not to invalidate the scope of the reorganization and the authenticity of the administrative factors responsible for the abolition of the positions of vice-president, including Mario Rinaldi's position.

It is certainly unfortunate that in the announcement he made to employees the President used the word "forensic" to describe the investigation that was to take place, but this lapse on his part does not in any way detract from the reasonableness of his decision to relieve Mario Rinaldi of his duties for the length of the investigation and assign him to a special project.

It is clear that W.M. Evans had to solve the problem by himself. Ordinarily he would have turned to Corporate Services to get advice and attempt to resolve a problem of this kind: but in the circumstances he could hardly do this since the Vice-President of Corporate Services was himself one of the people involved.

As a result he looked outside the Space Agency for advice and in my opinion his reaction was the right one, that is, having recourse to an impartial third party who would conduct an investigation (Exhibit A-76).

Having said that, in his management of this matter and before turning to the impartial third party the President sought advice from various people outside the Space Agency, including representatives of the Phillips agency.

In my opinion, it would have been better for W.M. Evans not to have been accompanied by Alain Desfossés at his meeting with the Phillips agency representatives, since Mario Rinaldi's allegations had been made against the latter. However, I think this preliminary action had no consequences, as to clarify the matter the President finally opted to hire an impartial third party, whom he instructed to carry out an investigation. Having said that, it might have been better for him not to meet with the investigator (Exhibit A-80) and not to know the contents of the draft of his report before the latter submitted his final report, as that meeting was capable of creating doubts about the propriety of the procedure adopted by the President and the investigator's impartiality. At the same time, there is no evidence that this meeting had any influence on the investigator's findings or that the President and the investigator were in bad faith.

Mario Rinaldi's counsel invited me to conclude from the notes (Exhibit A-17) taken by the Space Agency legal counsel, Robert Lefebvre, on May 17, 1995 at a meeting between Mario Rinaldi and the President W.M. Evans that as of May 17, 1995 the President was acting in bad faith and had taken the decision to get rid of Mario Rinaldi.

My conclusion about these notes (Exhibit A-17) is as follows.

Though he was actually present in the room throughout the hearing the author of these notes (Exhibit A-17), Robert Lefebvre, was not called as a witness by Mario Rinaldi, who had the burden of proof. The notes are not a verbatim account of the meeting and are open to various interpretations. My interpretation of them is that the President's confidence in Mario Rinaldi was shaken (note 33), that he was thinking of removing Mario Rinaldi from the Space Agency for a time, either by suspension with pay or by granting paid management leave (notes 40, 55, 62, 69, 71, 86, 109 and 117). I also find that he felt (note 66) that he needed time himself to reflect on this entire matter and he thought it would be helpful for Mario Rinaldi to be at arm's length and to get away from the Space Agency (note 131).

Having said that, I take note of the fact that, in the end, the President neither suspended Mario Rinaldi with pay nor required him to take leave. Instead, he assigned

him a special project and asked the investigator Jean-Maurice Cantin to inquire into Mario Rinaldi's allegations about Alain Desfossés, which seems to me to be an attempt by him to obtain an objective opinion on the matter.

I have no doubt that Mario Rinaldi suffered from being relieved of his duties for the period of the investigation. It seems equally clear that the Executive Vice-President, Alain Desfossés, also suffered as a result of Mario Rinaldi's allegations against him. Rumours were rampant on either side. Whatever they may have suffered, I do not think it can be attributed to the President. The entire matter began the day Mario Rinaldi decided to make serious allegations against the Executive Vice-President, Alain Desfossés, officially to the President (Exhibits A-13 and A-14). I think Mario Rinaldi should have made sure that he had solid proof in support of his allegations and should have expected that the President would take them seriously and that he, Mario Rinaldi would lose control of the situation. In any case, that is what happened. The President took his allegations seriously and initiated an entire investigation process, which ended with the filing of Jean-Maurice Cantin's investigation report in late summer 1995.

In view of the findings of the Cantin report (Exhibit A-12) in August 1995, and in view of his own conversations with Mario Rinaldi in May 1995, during which the latter had expressed both his objections to and his lack of confidence in the Executive Vice-President and the President, I think the President could legitimately conclude that he could no longer rely on Mario Rinaldi.

Consequently, once Mario Rinaldi's position and that of his three colleagues had been abolished, an abolition undertaken in good faith and in response to the reorganization needs of the Space Agency, the President was entitled to conclude that it was not in the Space Agency's best interests to assign other duties to Mario Rinaldi. What is more, the evidence does not support the conclusion that other duties could have been assigned to him in the form of a longer temporary assignment for he did not have technical expertise as was the case for his colleagues.

A distinction should be made between the two concepts "bad faith" and "loss of confidence". I think in the instant case that although he was acting in good faith the Space Agency President lost confidence in one of his three vice-presidents and that this loss of confidence, based on reasonable grounds and taken together with the demands of the reorganization, was another objective and relevant factor which could

legitimately be taken into account in arriving at his decision, following the abolition of Mario Rinaldi's position and that of his colleagues, not to give him a temporary assignment as long as that given to his colleagues.

For all these reasons, I feel that the abolition of Mario Rinaldi's position and his subsequent lay-off did not constitute disguised disciplinary action and are two administrative decisions made in good faith as part of the reorganization of the Space Agency and pursuant to the *Public Service Employment Act*. I further consider that the decision, following the abolition of his position, to give Mario Rinaldi a temporary assignment of two months did not constitute disguised disciplinary action but was an administrative decision made in good faith.

Consequently, the employer's decisions which were the subject of the three grievances are beyond my jurisdiction and I have no authority to order the employer to reinstate Mario Rinaldi in his employment or to offer him another position in the Public Service or pay him damages.

For these reasons, the grievances are dismissed.

**Marguerite-Marie Galipeau,
Deputy Chairperson**

OTTAWA, October 5, 1998

Certified true translation

Serge Lareau