

Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

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BETWEEN

**MAURICE ST-LAURENT**

Grievor

and

**TREASURY BOARD**  
**(Solicitor General - Correctional Service Canada)**

Employer

***Before:*** Muriel Korngold Wexler, Deputy Chairperson

***For the Grievor:*** Jocelyn Grenon, Counsel

***For the Employer:*** Agnès Lévesque, Counsel

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Heard at Sherbrooke, Quebec,  
June 25 and 26, 1997.

## PRELIMINARY DECISION

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Maurice St-Laurent was employed by Correctional Service Canada until November 4, 1995. On March 22, 1996, he presented a referral to adjudication form under section 92 of the *Public Service Staff Relations Act* (PSSRA) to which was appended a letter dated February 20, 1996, signed by John Edwards, Commissioner of Correctional Service Canada. The letter that accompanied the referral form is dated March 19, 1996 and indicates that Mr. St-Laurent “claims to have been unfairly and illegally dismissed because he was forced to retire . . .”. The employer objected to the referral on the grounds that Mr. St-Laurent had not presented a grievance and that even if the correspondence since October 20, 1995 could be interpreted as a grievance, it had not been filed within the prescribed time limit.

This decision deals with two preliminary questions: (1) Did Mr. St-Laurent present a grievance within the meaning of the PSSRA and (2) if so, was the grievance presented within the prescribed time limit?

This case was first scheduled to be heard on July 24 to 26, 1996 but these dates were not convenient for Jocelyn Grenon, counsel for Mr. St-Laurent. Consequently, the case was rescheduled to August 20 to 23, 1996. On August 16, 1996, Mr. Grenon asked that the hearing in question be postponed to a later date because of a death. The Board agreed to the postponement and the case was rescheduled a third time to December 10 to 13, 1996. However, on October 28, 1996, Mr. Grenon requested a fourth rescheduling which was refused by the Board.

On December 10, 1996, the parties appeared as agreed to be heard. Mr. Grenon however informed the adjudicator that he was unable to proceed because some of the witnesses were refusing to cross a picket line outside the hotel where the hearing was to be held and that, moreover, his briefcase containing the documents relating to the case had disappeared. The adjudicator granted the postponement because of the non-availability of some of the witnesses and Mr. Grenon's inability to adequately represent his client because of the disappearance of his briefcase.

The case was therefore relisted to June 25 to 27, 1997. On June 20, 1997, Mr. Grenon informed the Board that the parties had agreed to argue the two

preliminary questions with which this preliminary decision deals. Therefore, the case relating to the two preliminary questions was heard on June 25 and 26, 1997.

### Facts

The parties called Lise Bouthillier, Françoise Nittolo, Gilles Lacasse and the grievor, Maurice St-Laurent, to testify. They also filed 25 exhibits.

Maurice St-Laurent had been employed with Correctional Service Canada at Cowansville Institution since November 3, 1965. From 1965 to 1969, he worked as a correctional officer (CX-COF-1). From 1969 to 1974, he was a cook (GS-FOS-6). From 1974 to 1989, Mr. St-Laurent worked as the Assistant Chief of Food Services (GS-FOS-7). In 1989, he was promoted to Chief of Food Services (GS-FOS-9-C3-C2), the position he held until August 1, 1994 when he was assigned to the position of driver-stock handler (GS-STS-4-0, A1) while retaining the salary and benefits to which he was entitled as Chief of Food Services (\$47,800). In 1994-1995, Mr. St-Laurent's annual salary as CS-FOS-9-C3-C2 was \$47,834.96, while the annual salary of a GS-STS-4-0, A1 (driver-stock handler) was \$29,197.69 (Exhibit 25).

Mr. St-Laurent was on sick leave from May until the beginning of November 1993. When he returned to work in November 1993, he met with Gilles Lacasse, Assistant Warden, Programs and Services at Cowansville Institution. According to Mr. St-Laurent, the employer asked him to take a medical examination to be given by Health and Welfare Canada. Françoise Nittolo, Regional Manager, Pay and Benefits sent him a letter explaining to him that he might be eligible for a disability pension. Mr. St-Laurent had apparently also asked if it was possible to find him a position elsewhere in the institution because he found his duties as Chief of Food Services stressful. Consequently, at the meeting with Mr. Lacasse, they talked about the "situation in the kitchen". Mr. Lacasse apparently told him that "there was a need for new blood and that there would be a reassignment of staff". Mr. St-Laurent added that he interpreted Mr. Lacasse's words to mean that he wanted a new person in charge of the kitchen. Mr. St-Laurent found the meeting with Mr. Lacasse very upsetting for the following reasons. A competition had been held in May 1993 to fill three Chief of Food Services positions in the Quebec Region. It was open to all employees of Correctional Service Canada with the aim of filling three chief positions

at the Cowansville, Drummondville and Montée St-François institutions (Exhibit 22). In addition, Mr. St-Laurent had received a letter asking him to undergo a medical examination at Health and Welfare Canada and Ms. Nittolo had informed him by letter of the possibility of being eligible for a disability pension. During his testimony, Mr. St-Laurent also mentioned a letter dated May 2, 1994 in which Mr. Lacasse had stated that there was no need for a performance evaluation because Mr. St-Laurent would be retiring in a few months (Exhibit 13). Mr. St-Laurent testified that these four reasons caused him such stress that he decided to retire in November 1995. In November 1993, Mr. St-Laurent had also agreed to release his medical file to his employer (Exhibit 23).

A few days after the meeting with Mr. Lacasse, Mr. St-Laurent met with Jean-Paul Lupien, Warden of Cowansville Institution at the time. Mr. St-Laurent asked him if it was possible to find him another job. Mr. St-Laurent stated that he had requested the meeting with Mr. Lupien because Mr. Lacasse had told him he wanted a “new person in charge of the kitchen”. He therefore asked him to “move him to another department and to give him time to recover from his stress”. While Mr. St-Laurent had been absent, he had been replaced by Marc Morin and Lloyd Gauthier. (Both were classified as GS-FOS-7 in the kitchen under Mr. St-Laurent's immediate supervision.) Mr. Lupien told him that he had nothing to offer him at the time and to go back to his position as Chief of Food Services, which he did.

In April or May 1994, Mr. Lupien came to see Mr. St-Laurent to ask if he was still interested in a job outside the kitchen. He offered him the position of driver-stock handler provided that Mr. St-Laurent put in writing that he would retire in the near future. Mr. St-Laurent insisted that his wages and benefits as Chief of Food Services under the collective agreement be guaranteed and that he would receive them while he performed the duties of driver-stock handler. Mr. Lupien agreed and Mr. St-Laurent had to make the request in writing. Consequently, Mr. St-Laurent drafted the letter asking for an assignment to the position of driver-stock handler and announcing his retirement as of November 4, 1995. Mr. St-Laurent's wife typed the letter and it was sent to Mr. Lupien. The letter in question is dated June 15, 1994 and reads as follows (Exhibit 1):

[TRANSLATION]

*I hereby wish to inform you that I will be leaving the Correctional Service permanently on November 4, 1995.*

*I would like to complete my service in the Institution's store as a stock handler and driver.*

*I also request that I retain my salary and working conditions in full until the end of my career on November 4, 1995, that the position I currently hold in the kitchen remain in my name and that I be given a secondment position. I am available to take on this new position as of August 1, 1994. Thank you for your interest in my situation. If these conditions are satisfactory, please sign below.*

\_\_\_\_\_ (signed)

*Jean-Paul Lupien*

1994-6-20

\_\_\_\_\_ (signed)

*Maurice St-Laurent*

1994-6-21

*Approved*

It was Mr. St-Laurent who chose the date of November 4, 1995 because “it gave him 30 years of service”. Mr. St-Laurent stated that there was no law or directive which required him to write such a letter of agreement and that to his knowledge, no one else at Cowansville Institution had signed such an agreement.

When Mr. Lupien received the letter from Mr. St-Laurent, his secretary called him to say that Mr. Lupien had expected a 12-month assignment not a 15-month assignment. However, on June 20, 1994, Mr. Lupien agreed to the 15-month salary protection period and a termination of employment date of November 4, 1995. On August 1, 1994, Mr. St-Laurent assumed the position of driver-stock handler and Jean-Paul Maurice became the Chief of Food Services.

On March 10, 1995, Mr. St-Laurent had a work-related accident. He fell off a truck at Cowansville Institution. However, he did not take any leave and continued to work. On July 28, 1995, he consulted “a specialist” who advise him to stop work. Mr. St-Laurent followed this advice and on August 20, 1995, the Commission de la santé et de la sécurité au travail (CSST) awarded him benefits, which he was still receiving at the time of this hearing since the CSST had not yet made a final decision on his injury.

In November 1994, Lise Bouthillier became the warden of Cowansville Institution. On October 20, 1995, Mr. St-Laurent sent her a letter stating that he was postponing his termination of employment date but he did not give any reasons or a specific date. This letter, dated October 20, 1995, reads as follows (Exhibit 2):

[TRANSLATION]

*I hereby inform you that my departure date, scheduled for November 4, 1995, is postponed for reasons with which you are familiar.*

Mr. St-Laurent never met with Ms. Bouthillier nor discussed with her his intention to postpone his departure date. He never told her personally the “reasons” for delaying his retirement. During his testimony, Mr. St-Laurent stated that this letter constituted the grievance that is the subject of the referral to adjudication before me. Mr. St-Laurent added that the reason in question was “the work-related accident because he did not have the final decision date and the CSST had accepted the fall from the truck as a work-related accident”. Mr. St-Laurent believed that Ms. Bouthillier should have known his situation because Cowansville Institution had his personnel file.

On November 3, 1995, Ms. Bouthillier replied to him stating that, following his request to modify the June 1994 agreement (Exhibit 1), the employer had reviewed the agreement and, as of November 4, 1995, would no longer be able to guarantee him his assignment to the position of driver-stock handler. In addition, Mr. Lacasse would contact him to discuss the situation (Exhibit 3).

On December 5, 1995, Ms. Bouthillier sent Mr. St-Laurent her response to the request to postpone his retirement date (Exhibit 4):

[TRANSLATION]

*Further to our recent exchange of correspondence, I have reviewed with the Assistant Warden, Programs and Services the reasons for your request to postpone your retirement date.*

*Despite the fact that the file on your work-related accident has been opened, it appears that the agreement reached with the former warden, Jean-Paul Lupien, was respected and you have continued to be paid your GS-FOS-9 salary. This*

*commitment by the institution's warden was conditional on you setting your retirement date in advance and in writing. In your letter of June 15, 1994, you effectively set November 4, 1995 as your retirement date.*

*Since your application for retirement was made more than a year in advance and accepted by the warden on June 20, 1994, we cannot now agree to postpone the date of your retirement to some date other than November 4.*

*Accordingly, Françoise Nittolo, Regional Chief, Pay and Benefits will be contacting you as soon as possible to initiate the usual procedures in anticipation of your retirement.*

*If you require further information, do not hesitate to contact Ms. Nittolo.*

Mr. St-Laurent met with Mr. Lacasse as suggested in Ms. Bouthillier's letter of November 3, 1995 (Exhibit 3). Mr. Lacasse asked him the reason for his request and Mr. St-Laurent told him "that he wanted recognition that he was suffering from a work-related accident and to postpone his retirement". Mr. Lacasse explained that he had no choice but to respect the agreement of June 1994 (Exhibit 1) because "if Mr. St-Laurent were to return for a period of five years, it would not work".

On December 11, 1995, Mr. St-Laurent sought assistance from Jean-Claude Perron, Deputy Commissioner, Correctional Service Canada, in delaying his retirement date (Exhibit 5):

[TRANSLATION]

*The purpose of this letter is to request your assistance in resolving a difficult situation in which I find myself. Here are the facts which explain what is happening.*

*I have been on leave for a work-related injury since July 29, 1995 (see accident file at the regional office). Under an agreement with Jean-Paul Lupien, I was suppose to retire on November 4, 1995, which I would have done if the circumstances had not been as they are, that is, if I had not been injured on the job. I have done everything that was asked of me, including meeting with the necessary physicians, and I am doing everything the specialists recommend.*

*I met with Gilles Lacasse, AWFEP, who is my immediate superior. I also wrote (copy attached) to Lise Bouthillier to request that my retirement be delayed until the matter of this accident has been definitively settled. Based on*

*Ms. Bouthillier's reply, I realize that, after thirty years of loyal service, my request for a short postponement of my retirement has been refused. I did not think it was too much to ask. I am seeking your assistance in resolving this matter as quickly as possible. I am prepared to meet with you if you think it would be useful. Thank you in advance for your help.*

On January 9, 1996, Mr. Perron replied to Mr. St-Laurent's letter of December 11, 1995 (Exhibit 6):

[TRANSLATION]

*This letter is further to your letter of December 11, 1995 in which you advised me of your request to postpone your retirement.*

*On June 15, 1994, you agreed to retire on November 4, 1995 and asked for another assignment as well as to retain your salary and benefits until the end of your career on November 4, 1995. This agreement was accepted by local management and all of the conditions have been met.*

*Within the federal Public Service, retirement is not a unilateral voluntary decision that can be changed whenever the employee wishes, but rather a bilateral decision that cannot be modified without the agreement of the employee and the employer. You have already been informed by local management at the Cowansville penitentiary that the date for your termination of employment was to remain as November 4, 1995.*

*Consequently, the date of your retirement remains unchanged. As Lise Bouthillier mentioned in her correspondence to you on December 5, 1995, the Regional Chief, Pay and Benefits will contact you shortly to begin the necessary action to confirm your retirement.*

*Yours truly,*

Since he was not satisfied with the negative reply from Mr. Perron, Mr. St-Laurent contacted John Edwards, the then Commissioner of Correctional Service Canada. On January 17, 1996, he wrote to Mr. Edwards as follows (Exhibit 7):

[TRANSLATION]

*RE: Harassment complaint, abuse of power and discrimination relating to my "dismissal".*



*I am bringing this complaint to you because I have contacted all the appropriate levels, including Cowansville Institution, Quebec, the Montreal regional office, and the Deputy Commissioner and no one will listen to me.*

*The facts:*

*I have been a government employee at Cowansville since 1965 and my position as Chief of Food Services as an FOS9 means that I am a “manager”.*

*In 1993, after a lengthy absence from work, I asked for an assignment somewhere outside the kitchen for a period of time for health reasons. I was told there was nothing available, but a few months later I was asked if I still wanted another position.*

*The condition was that I had to sign a letter of agreement with an official date for my departure or retirement. Since there was no other solution and because I needed work, I agreed to sign in the hope that my health, which was not good at the time, would improve.*

*I was offered a position as a driver-stock handler and I assumed this position in August 1994 with the scheduled date for my retirement as November 4, 1995 according to the letter that I had to sign. I suffered a work-related accident in the meantime on March 10, 1995 and medical specialists insisted that I stop work on July 29, 1995. I am currently receiving treatment.*

*Definition: Item 5 which applies in my case.*

*Policy statement, Item 6: every employee of the Service shall be treated fairly in the workplace, in an environment free from “harassment” and other forms of “discrimination”. It is my opinion that I have been the victim of discrimination and harassment.*

*Example:*

*I was forced to sign a letter or I would have been without resources facing a difficult situation; meanwhile many employees move from position to position for a variety of reasons without having to sign a letter specifying a departure date.*

*The competition for an FOS9 to replace me took place during my absence on sick leave. The candidate who wanted to replace me harassed me constantly and often contacted the*

*A/W of the section to ask when he would be taking over my job.*

*Item 7:*

*I cannot pursue my personal goals when my superiors are forcing me to resign.*

*Item 13:*

*I am seeking the assistance of resource persons to help me resolve my problem.*

#### POINTS AT ISSUE

- (a) Problem: there are 2 FOS9 in the same position on the institution's organization chart, one with 5 years of service and myself with 30 years of service.*
- (b) Failure to respect the decision of the CSST.*
- (c) Failure to comply with the Canada Labour Code.*
- (d) Harassment by the employer that I was overpaid; loss of the document.*
- (e) Pressure placed on a colleague.*
- (f) Employer's physician determines that I should return to work when 3 specialists say the opposite; harassment.*
- (g) Impugning of my reputation by stating that I am receiving funds from both my insurance and the CSST.*

*...*

*. . . the employee is entitled, the staff relations officer may issue an written order against the employer who has not paid them, or in certain circumstances, against the directors of the corporation;*

*- garnishment:*

*- the employer shall not discipline an employee on the ground that garnishment proceedings may be taken with respect to the employee:*

*TUQOJAAO2OT Garnishment of wages:*

*- salary deductions:*

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- *the employer may not make any deductions from the employee's salary, or any amount owing to the employee, unless said deduction is made pursuant to federal or provincial legislation.*
  - *sick leave:*
    - *the employer may not discharge, lay off, suspend, demote or discipline an employee who has worked continuously for the employer for at least 3 consecutive months, because of absence due to illness or injury, provided that said absence does not exceed 12 weeks and, at the employer's written request, the employee provides the employer with a medical certificate certifying that he was incapable of working during the period in question;*
    - *seniority, pension, health and disability benefits continue to accumulate during the period of leave, provided that the employee pays, within a reasonable time, the contributions that he would normally have paid;*
    - *for its part, the employer is not required to pay the employee's salary during this period, but it must continue to pay plan contributions in respect of benefits in at least the same proportion as if the employee were not absent;*
  - *protection of injured employees:*
    - *no employer shall discharge, suspend, lay off, demote or discipline an employee because of absence from work due to a work-related illness or injury;*
    - *during such an absence, the employee is entitled to wage replacement, payable at an equivalent rate to that provided for under the applicable workers' compensation legislation in the employee's province of permanent residence;*
  - *bereavement leave:*
    - *every employee is entitled to, in the event of the death of a member of his immediate family, bereavement leave on any of his normal working days during the three days immediately following the day of the death;*
    - *if the employee has completed three consecutive months of continuous employment by an employer, he is entitled to such leave with pay.*
  - *unjust dismissal:*
    - *if an employee considers that he has been unfairly dismissed, an employee who is not part of management and*
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*who is not subject to a collective agreement, who has completed at least 12 consecutive months of continuous employment by an employer may, within 90 days of his dismissal, make a complaint in writing of unjust dismissal to the department . . .*

*I request that this complaint be received without prejudice and that I be represented at all levels.*

*That items A, B, C, D and E of Directive 255 of the Commissioner's Directives be respected.*

*I request a reply as soon as possible.*

***(Note: This document has been reproduced as filed.)***

I have reproduced this letter in its entirety and as it was filed in evidence because it is the only document filed that is entitled "complaint" and in which Mr. St-Laurent mentions the words "unfair dismissal".

On February 20, 1996, Mr. Edwards replied as follows (Exhibit 8):

[TRANSLATION]

*This is further to your letter of January 17, 1996 in which you state that you believe that you have been the victim of harassment and discrimination by your employer.*

*You believe that management exercised its right to manage in a discriminatory manner with respect to the date of your retirement while exerting pressure on you to force you to leave Correctional Service Canada. I have reviewed the content of your complaint carefully, as well as the documents submitted by officials of the Quebec Region and I note that, beginning in November 1992 and on several subsequent occasions, you expressed a desire to retire provided that you received a lump sum payment. In this regard, officials of the Pay and Benefits section sent you approximately seven pension assessments in response to your requests. As has already been explained to you, it was not possible to declare you surplus because the position of Chief of Food Services at Cowansville Institution is obviously essential to the organization.*

*On June 19, 1995, you made a request to the warden of your institution in respect of an exchange process so that you could depart immediately with the incentives provided for under the Early Departure Incentive (EDI) and the Early Retirement Incentive Program (ERIP). On July 20, 1995, the*

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*Director of Human Resources received your application and explained the terms of the surplus employee exchange program to you. After checking with members of the Employment Secretariat (interdepartmental committee), no employee was found to replace you.*

*Consequently, on June 15, 1994, you entered into an agreement with the then warden, Jean-Paul Lupien, the terms of which can be summarized as follows: "To perform the duties of an driver-stock handler (GS STS 4) while retaining your salary as Chief of Food Services (GS FOS 9) until your retirement on November 4, 1995." You assumed your duties as a driver-stock handler on August 1, 1994. This agreement was accepted and signed by both parties. I view this agreement as a very favourable arrangement since it responded to your request for another position in the organization because of your medical situation. I believe that management was responsive and receptive to your expectations since you were awarded salary protection of \$18,637.27 per year. I believe that the employer acted in good faith in this case and fully respected the agreement entered into.*

*In light of the operational requirements of the institution, your wishes with respect to your retirement date and your commitment to leave the Public Service on November 4, 1995, the department staffed the position of Chief of Food Services after the agreement of June 1994 was signed. It did not in any way take advantage of your sick leave to fill this position without your knowledge. Moreover, in light of certain administrative time lines, it was entirely reasonable to take appropriate measures to staff this position.*

*On October 20, 1995, you informed the warden of your institution that you wished to delay your retirement date because of the relapse on August 21, 1995 of a work-related injury you had suffered. Rest assured that we have no intention of discharging you because of your work-related injury but rather to respect the original agreement that you agreed to and wanted. In her letter of December 5, 1995, Ms. Bouthillier gave you the reasons for this decision.*

*Let me assure you that all of the claims you made concerning your pay and benefits have already been dealt with appropriately by the Pay and Benefits Division at the Regional Office. Accordingly, I believe that the exchange of correspondence and the meetings with the Chief of Pay and Benefits are quite clear and fully satisfactory.*

*In light of the above, it is my finding that the employer has not made any changes to the initial agreement that*

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*would warrant any significant modification. I therefore conclude that your resignation took effect on the agreed date, that is, November 4, 1995.*

*I hope that my comments have helped clarify the situation.*

*Yours truly,*

It was following this letter of February 20, 1996 (Exhibit 8) from Mr. Edwards that Mr. St-Laurent referred his “grievance” of October 20, 1995 to adjudication on March 22, 1996.

Mr. St-Laurent stated that he won the competition for the position of Chief of Food Services in 1989. In this capacity he was responsible for all aspects of the kitchen, including the budget and human resources. He supervised five cooks (GS-FOS-6), two assistants (GS-FOS-7) and 40 to 50 inmates. Mr. St-Laurent worked 40 hours a week but the kitchen operated 82 hours a week. As Chief of Food Services, Mr. St-Laurent was the first level in the grievance procedure for employees under his authority (Exhibit 9). On August 29, 1989, Mr. St-Laurent acknowledged receipt of the notice dated August 15, 1989 to this effect (Exhibit 10). It also appears that Mr. St-Laurent took a three and a half hour course on personnel grievances on September 26, 1989 (Exhibit 11). However, during his testimony, Mr. St-Laurent could not remember if he had or had not taken this course because “he had taken a great many courses”. He added that no grievances had been filed between 1989 and 1994 by the employees under his supervision.

Mr. St-Laurent had asked about taking his retirement several times before June 15, 1994. On January 26, 1993, he asked to take a retirement preparation course (Exhibit 12). He became interested in retiring when Paul Martin, the Minister of Finance, announced the federal government's intention to eliminate 45,000 Public Service jobs.

It is also interesting to note that Mr. St-Laurent contacted the CSST in 1989 to complain about workplace stress in the kitchen and his claim was accepted.

On November 13, 1992, Mr. St-Laurent informed Mr. Lupien that he planned to retire in April 1993. However, he wanted to take advantage of a “supplementary departure incentive” (Exhibit 16). Mr. St-Laurent reiterated his request in May 1994

and received information on this possibility (Exhibit 17). On June 19, 1995, Mr. St-Laurent signed a form letter prepared by the Public Service Alliance of Canada informing the employer that he was prepared to leave the Public Service under the terms and conditions of the surplus employee exchange program and provided he was eligible for incentives, that is, the Early Departure Incentive (EDI) or the Early Retirement Incentive Program (ERIP). He also asked to be considered for an exchange with an employee affected by workforce adjustment (Exhibit 14).

On June 22, 1995, Mr. St-Laurent sent another letter to Ms. Bouthillier (Exhibit 15):

[TRANSLATION]

*Mr. Martin, the Minister of Finance, has announced cuts to the Public Service of 45,000 jobs.*

*I am a member of the Public Service in the Department of Justice, Solicitor General. I am currently working at the Cowansville federal penitentiary. I am classified as an FOS9. Since my position was filled by a GSFOS9 competition in August 1994 by another person, I consider myself to be surplus given that there are two people in the same position at the same salary.*

*I wish to make my contribution by offering my voluntary resignation under the work force adjustment policy. To this end, I am requesting that I be granted the departure incentives announced in the departure incentive offer. I have 29 years of service and am 53 years of age. The reason I am making this offer is to give a younger employee with less seniority a chance to keep his job with the Public Service.*

On June 30, 1995, Ms. Bouthillier informed Mr. St-Laurent that his request had been forwarded to the Chief, Personnel and Administration (Exhibit 20). On July 25, 1995, Ms. Bouthillier reminded Mr. St-Laurent that there was a written and signed agreement which stated that he would retire from the Public Service on November 4, 1995 (Exhibit 18). Nevertheless, on October 24, 1995, Mr. St-Laurent reiterated his request for a departure incentive. This time he wrote to Philippe Vignès, Director of Staff Relations (Exhibit 19):

[TRANSLATION]

*I wish to reiterate my request for a departure incentive.*

*I have held a GSSTS4 position as a driver-stock handler at Cowansville Institution on an acting basis for the past 15 months. I have 30 years of service and am 54 years old. There are presently two vacant positions that will have to be filled by employees from other departments where cutbacks have occurred. Since I have not received any offer from management at Cowansville Institution and they appear to have ignored my request, I am referring my case to a higher level.*

*I am well aware that others have received incentives through an interdepartmental exchange. I am requesting that my situation be reviewed in greater detail and that I be provided with a more satisfactory response.*

*Thank you for your attention to this request. I am available should you require any additional information.*

Therefore, beginning in November 1992, Mr. St-Laurent had repeatedly indicated his desire to leave the Public Service, except that, at certain times and in 1995 in particular, he wanted a departure incentive in exchange for leaving. However, in June 1994, he entered into an agreement (Exhibit 1) with Mr. Lupien to accept an assignment as a driver-stock handler, with the salary and benefits he enjoyed as Chief of Food Services, in exchange for his departure from the Public Service on November 4, 1995.

Since 1992, Mr. St-Laurent had been inquiring about his right to a pension and the amount to which he would be entitled on retirement. In 1992, he received a calculation of his pension benefits if he retired on January 1, 1993. On September 11, 1992, the calculation was done for a departure date of January 1, 1993. In 1993, a calculation was requested for a termination date of February 15, 1993. Then, on November 16, 1993, a third calculation was made and information provided relating to his taking voluntary retirement or a retirement for disability. On April 19, 1994, a fourth calculation was given to him with June 30, 1994 as the departure date. Lastly, on May 18, 1995, Mr. St-Laurent receive the results of the approximate calculation of pension allowances and benefits to which he would be entitled if he left his job on November 4, 1995. (All of these calculations were filed together as Exhibit 21.)

Mr. St-Laurent acknowledged that the duties of driver-stock handler were less onerous than those of Chief of Food Services. As a driver-stock handler, he delivered



packages and the mail, received goods, etc. When he accepted the position, he did not receive any training, he had no one under his supervision and he worked alone. Mr. St-Laurent explained that he accepted this assignment in order to give himself a chance to settle back in. Moreover, he did not see any choice but to accept.

Mr. St-Laurent also explained that, as of December 19, 1996, the *SunLife* insurance company had refused him certain benefits because he was no longer employed in the Public Service. He added that if he had not had the work-related accident in March 1995 and the opinion of the specialist in July 1995, he would not have requested to push back his retirement date.

Mr. St-Laurent did not appeal the appointment of Jean-Paul Maurice to the position of Chief of Food Services because it was not up to him to do so because he had not taken part in the competition. Mr. St-Laurent did not think that he had the right to appeal under the *Public Service Employment Act*. He did not do anything about the agreement with Mr. Lupien between June 15, 1994 and October 1995 (Exhibits 1 and 2).

Lise Bouthillier has been employed with the Public Service since 1977 and has been a warden since 1993. She was Warden of Cowansville Institution from November 1994 to May 9, 1997. When she accepted the position, she familiarized herself with her employees, which was how she learned of Mr. St-Laurent's case. He came daily to the building in which she worked. She saw him regularly and they greeted each other when they passed. When she received Mr. St-Laurent's letter of October 20, 1995 (Exhibit 2), she understood that he wanted to postpone the date of his retirement. However, she did not know to what he was referring. Mr. St-Laurent had never shared with her the "reasons with which you are familiar".

Jean-Marc Beauregard was the first level of the grievance procedure for Mr. St-Laurent in his position as driver-stock handler; Mr. Lacasse would have been for the position of Chief of Food Services, with Ms. Bouthillier as the second level. Ms. Bouthillier did not consider Mr. St-Laurent's letter of October 20, 1995 (Exhibit 2) to be a grievance.

Ms. Bouthillier might have reconsidered Mr. St-Laurent's date of termination of employment if he had given her financial or personal reasons. But he never gave any

clear and precise reasons. He simply told Mr. Lacasse that he wanted to delay the date because he felt he had been penalized because of his accident in 1995. Ms. Bouthillier checked into this statement and was informed that the accident had had no impact on Mr. St-Laurent's pension or benefits. Since Mr. St-Laurent had not been penalized, the employer decided not to postpone the date of his retirement.

Ms. Bouthillier stated that there was no mention of his being dismissed in the letters Mr. St-Laurent sent to her; he did mention a departure incentive. However, Correctional Service Canada was not an affected department in terms of the cuts announced by the government although there was the possibility of exchanging positions with employees in an affected department. Only the Regional Deputy Commissioner had the authority to authorize the EDI or ERIP. These programs offered two types of early retirement incentives within the context of the workforce adjustment policy. In addition, when a correctional officer ceases to hold a position as a correctional officer (CX) for one or more years, he must requalify as a CX and retake the training. Mr. St-Laurent stopped performing the duties of a CX in 1969. He never asked Ms. Bouthillier to be returned to his position as Chief of Food Services. Moreover, he appeared to be happy in the position as driver-stock handler.

Ms. Bouthillier further stated that employees had received an information package about the EDI and ERIP programs. They had then indicated their interest in participating in the programs. Ms. Bouthillier mentioned that some thirty employees asked to be considered. She had understood that Mr. St-Laurent wanted to postpone his retirement date but she did not know the reasons for his request. According to Mr. Lacasse, Mr. St-Laurent had given as his reason the fact that he would be penalized but, in fact, that was not the case.

Ms. Bouthillier stated that the June 1994 agreement (Exhibit 1) was the first of its kind she had seen. She had no reason to question the agreement and she had no reason to ask why Mr. St-Laurent drafted and signed it. She was also aware that employees received so-called SAPP assignments, which is a program for employees whose positions have been abolished. They are registered in SAPP while waiting to retire or the end of their employment and they know the definitive date of their departure from the Public Service.

In response to questions from Mr. Grenon, Ms. Bouthillier mentioned the case of Fernand Beaulieu who had asked to retire while at the same time reserving the right to change his mind. There was a handwritten note to this effect in his file. In these circumstances, the employer gave him the benefit of the doubt and his retirement was cancelled or delayed at his request. The case of Régis Charles was also mentioned; he accepted a SAPP assignment and is still employed at Cowansville Institution since his retirement date has not yet arrived. Another example was that of Mr. St-Pierre, a correctional officer who received a lump sum payment because he had a letter guaranteeing him salary protection.

Ms. Bouthillier explained that those cases were different from Mr. St-Laurent's case. Mr. St-Laurent had not reserved, in writing or orally, the right not to retire as indicated in the June 1994 agreement (Exhibit 1). Mr. St-Laurent had signed a contract. Ms. Bouthillier did add, however, that the agreement might have been reviewed had Mr. St-Laurent suffered any prejudice or been penalized as a result of the agreement. The 1995 accident did not affect in any way the benefits to which Mr. St-Laurent was entitled upon his retirement. If he had wanted to, he could have met with Ms. Bouthillier to discuss the matter but he did not do so.

Ms. Bouthillier stated that the position of Chief of Food Services that Mr. St-Laurent held prior to August 1, 1994 was still on the organization chart of Cowansville Institution (Exhibit 24) because it had not been eliminated.

Gilles Lacasse has worked for the employer since 1974 and has been at Cowansville Institution since 1980. In the summer of 1993, he became Assistant Warden, Program and Services, and Mr. St-Laurent's immediate supervisor. Mr. Lacasse stated that, beginning in 1992, Mr. St-Laurent had made it known that he was interested in retiring. Mr. St-Laurent's position in the kitchen was that of Chief; an essential position. In April 1993, Mr. St-Laurent received confirmation from his employer that he was suppose to retire that year. Consequently the employer was in the position of having to fill the position of Chief of Food Services and that is why the competition was held in May 1993 (Exhibit 22). Marc Morin and Lloyd Gauthier replaced Mr. St-Laurent whenever he was on leave. An eligibility list for the position of Chief of Food Services was drawn up from the competition; Mr. Morin did not qualify and Jean-Paul Maurice placed first for the position at Cowansville Institution. This

created a problem for the employer because Mr. Morin, who was the key person in the kitchen whenever Mr. St-Laurent was away, had not qualified for the position and Mr. St-Laurent, owing to stress, had indicated that he could no longer work in the kitchen.

Mr. St-Laurent went to see Mr. Lacasse when he returned to work in November 1993 and told him that he still felt that he was sick but that he did not have any more sick leave credits. Mr. St-Laurent told him that he would leave immediately if he received a departure incentive or a disability allowance. Mr. Lacasse therefore questioned whether he could put him back in the kitchen under these circumstances. He told Mr. St-Laurent that he would see what he could do and suggested that Mr. St-Laurent do the same. Mr. St-Laurent was open to the idea of working somewhere other than in the kitchen. Mr. Lacasse therefore called Mr. Lupien to suggest that Mr. St-Laurent be offered a position in the store for medical reasons and Mr. Lupien agreed (Exhibit 23) on the condition that the assignment would be for a short period of time and that Mr. St-Laurent would take his retirement since he was asking for salary protection. As an administrator, Mr. Lacasse was faced with two problems: Mr. St-Laurent who claimed that he was ill and did not want to remain in the kitchen and Mr. Morin, who had failed the competition. And yet 500 inmates still had to be fed. Mr. Lacasse concluded, in good faith, that Mr. St-Laurent wanted to retire in the near future. Accordingly he took action to ensure there would be a replacement for this essential position. Mr. St-Laurent had told him that he would use his sick leave and then retire. He was constantly asking for pension benefit calculations. Very few employees (four or five) in his sector asked for pension calculations and other information relating to retirement. Consequently, Mr. St-Laurent's requests for calculations were taken seriously.

When Mr. St-Laurent entered into the June 1994 agreement (Exhibit 1), Mr. Lacasse filled the position of Chief of Food Services. Since the employer could not have two people in the same position, Mr. Lupien insisted that Mr. St-Laurent specify a retirement date. According to Mr. Lacasse, Mr. Lupien was very hesitant when Mr. St-Laurent requested in writing that his retirement date be November 4, 1995 (15 months). Mr. Lacasse explained that the problem was the 15 months of salary protection. When Mr. St-Laurent was in the position of driver-stock handler, he seemed content and he told Mr. Lacasse that he was very happy with his new duties.

Moreover, Mr. Lacasse did not receive any reaction from Mr. St-Laurent when Mr. Maurice was appointed to the position of Chief of Food Services.

Following the October 20, 1995 request (Exhibit 2) to push back the retirement date, Mr. Lacasse met with Mr. St-Laurent within the two weeks following November 3, 1995 to find out the reasons for his request. Mr. St-Laurent told him it was because of his accident, which brought the agreement into question. However, he did not elaborate on this; he did not explain how it penalized him. Mr. Lacasse asked him about it but he did not receive any answer. He therefore consulted with Staff Relations who told him that the accident did not affect Mr. St-Laurent's pension in any way. Mr. Lacasse concluded that Mr. St-Laurent had an agreement with the employer and that he had benefited from that agreement. He had received salary protection for 15 months and then, at the end of the agreement, he wanted to change the terms. Mr. Lacasse stated that other employees in similar situations had agreed to change positions because of stress or some other situation without salary protection. Mr. St-Laurent wanted to retire. He had sent numerous letters requesting calculations and information on his retirement under various programs. Mr. St-Laurent's case had nothing to do with workforce adjustment. He was assigned to another position because he said that he was under stress. Accordingly, the possibility of a SAPP assignment did not arise. A SAPP assignment is offered when an employee is approaching retirement and his position is declared surplus or at risk, which was not the case with Mr. St-Laurent since his was an essential position and the employer could not eliminate it. For that reason, Mr. St-Laurent was not entitled to a cash-out. Mr. Lacasse stated that Mr. St-Laurent, whom he had known since 1980, was a union steward for the kitchen employees from 1980 to 1989.

Mr. Lacasse explained that it is necessary to undergo a medical examination to be eligible for disability benefits and that is why the employer asked Mr. St-Laurent to release his medical file (Exhibit 23). It was Mr. St-Laurent who spoke of retiring for incapacity and that is also why the employer tried to place him in a position while awaiting his retirement. A secondment agreement or letter of understanding is common practice and it is the employee who drafts such agreements. They may or may not include salary protection. Mr. Lupien was surprised and shocked when he saw Mr. St-Laurent's request (agreement) which included 15 months of salary protection. According to Mr. Lacasse, most salary protection agreements are granted because

there has been downsizing that has affected the employee. He mentioned the cases of Denis Paradis and Robert Boulet.

Françoise Nittolo testified that she has been employed with Correctional Service Canada since 1984 and has 28 years of service in the Public Service. She is the Regional Manager, Pay and Benefits and looks after approximately 3,600 permanent employees in the Quebec Region. She identified Mr. St-Laurent's pension benefit calculations that were filed in evidence (Exhibit 21). These documents were prepared at Mr. St-Laurent's request as they are whenever an employee makes such a request and is planning to retire within 12 months. Generally speaking such requests are made only once or twice toward the end of an employee's career. Since Mr. St-Laurent's retirement, Ms. Nittolo has spoken with him about his pension and disability insurance. Employees of Correctional Service Canada who are at least 45 years of age may also ask to attend a pre-retirement course and calculations of their benefits are automatically made at such times.

### Arguments

Agnès Lévesque, counsel for the employer, argued as follows. She began by reviewing the evidence. An agreement was entered into in June 1994 (Exhibit 1) under which Mr. St-Laurent would retire on November 4, 1995 and his salary would be protected during the 15-month interim period. This salary protection amounted to \$18,000. It was Mr. St-Laurent who drafted the June 15, 1994 letter and Mr. Lupien was surprised by the 15-month period. He had expected a 12-month period. If Mr. St-Laurent felt that he was forced to sign the agreement, then he should have filed a grievance at the time. In any event, it was Mr. St-Laurent who set November 4, 1995 as the date. Mr. St-Laurent stated that the letter of October 20, 1995 (Exhibit 2) constituted his grievance. Mr. St-Laurent did not ask to meet with Ms. Bouthillier to discuss his request to postpone the date of his retirement and he never provided any specific reasons for his request.

On December 11, 1995 (Exhibit 5), Mr. St-Laurent appeared to say that it was the work-related injury and his relapse on July 28, 1995 that were the reasons for his request. According to Ms. Lévesque, even if the letter of December 11, 1995 was deemed to be the grievance in question, it was not submitted within the time limit.

Moreover, neither the letter of October 20, 1995 (Exhibit 2), nor that of December 11, 1995 (Exhibit 5) mention dismissal.

On October 24, 1995 (Exhibit 19), Mr. St-Laurent asked for a departure incentive and again, there was no mention of dismissal. The October 24, 1995 letter followed that of October 20, 1995 by four days. Thus Mr. St-Laurent was exploring every avenue. In June 1994, he wanted salary protection and his retirement. In July 1995, he was not concerned about his retirement and then on July 28, 1995, he had his “relapse”. It was not until October 20, 1995 that he decided to postpone the date of his retirement but he did not give any indication of the nature of the “prejudice” or “losses” to which he alluded. In any event, this “prejudice” or these “losses” were not caused by the employer. Mr. St-Laurent was trying to cover all bases. On June 19 and 22, 1995 (Exhibits 14 and 15), he asked for a departure incentive. This request had been made several times since 1992. The first time that the word “dismissal” appears is on January 17, 1996 (Exhibit 7) and again, it is a very vague reference. Mr. St-Laurent had previously been a union steward; he was familiar with the grievance procedure. He should have presented a grievance in proper and due form and within the time limits; if he found the situation confusing, he could have sought advice. Instead he wrote to Mr. Perron on December 11, 1995 (Exhibit 5) and to Mr. Edwards on January 17, 1996 (Exhibit 7). In the latter document, he complains of harassment, discrimination, garnishment, etc. Moreover, he did not speak of dismissal during his testimony.

Ms. Lévesque concluded from this that Mr. St-Laurent had not presented a grievance; he had simply tried to change the employer's mind. Suddenly, on October 20, 1995, he asked to push back the date of his retirement when he had seemed happy with the June 1994 agreement (Exhibit 1). In support of her argument, Ms. Lévesque cited the decisions of *Béliveau* (Board file 166-2-11937); *O'Neill* (Board file 166-2-3109; and *Blackman* (Board files 166-2-27134 and 27139).

Ms. Lévesque added that I do not have to determine a grievance because Mr. St-Laurent did not present one and he did not follow the grievance procedure. Even the letter (complaint) of January 17, 1996 (Exhibit 7) cannot be considered as a grievance because Mr. St-Laurent did not refer to it in his referral to adjudication or during his testimony at the hearing. Further, this letter is dated one year after the

announcement of his departure from the Public Service. Consequently this “grievance” was presented after the time limit. Accordingly, I do not have jurisdiction to rule on this “grievance of dismissal”.

Jocelyn Grenon argued as follows. The existence of a grievance form does not create any obligation with respect to the form of the grievance. It is the content of the document that is important and that determines if it is a grievance. Consequently the form is not important. Mr. Grenon pointed out that Ms. Bouthillier did not pay any attention to the correspondence from Mr. St-Laurent. The June 1994 (Exhibit 1) agreement could have been changed, but Ms. Bouthillier did not conduct a thorough inquiry with respect to Mr. St-Laurent's October 20, 1995 request (Exhibit 2). Mr. St-Laurent stated that his October 20, 1995 letter constituted a grievance. The employer knew and understood what it was about. Ms. Bouthillier and Mr. Lacasse knew that Mr. St-Laurent was retiring on November 4, 1995. The letter of October 20, 1995 asked that the date be delayed. Mr. Grenon admitted that “this action on October 20, 1995, at the first level of the grievance procedure”, was vague and lacked substance.

Mr. St-Laurent then continued his efforts. He wrote to Jean-Claude Perron on December 11, 1995 (Exhibit 5), which constituted the second level of the grievance procedure. Mr. St-Laurent then went to the third level on January 17, 1996 when he alleged, for the first time, that he was dismissed. Mr. Grenon argued that, even if the letters of October 20, 1995 and December 11, 1995 (Exhibits 2 and 5) are not grievances, the letter of January 17, 1996 (Exhibit 7) definitely is.

As to timeliness, Mr. Grenon explained that the time limits set forth in the PSSRB Regulations and Rules of Procedure are not prescriptive. A time limit in itself does not bring into question the jurisdiction of the adjudicator to deal with this termination of employment. What is important is to consider the prejudice caused to the employee if his complaint is not heard by an adjudicator under the PSSRA. Further, it is important to determine whether, in this instance, the employer experienced or would experience any prejudice if the adjudicator decided it was within his jurisdiction to deal with the dispute. Mr. Grenon explained that, in this case, there is no evidence of the employer having been prejudiced and everyone's memories are still fresh. There is no difficulty in obtaining or collecting the relevant documents.



Therefore the adjudicator must weigh the prejudice caused to the employer against that caused to Mr. St-Laurent if the grievance is not heard. It must also be determined whether the time limit is reasonable. The PSSRB Regulations and Rules of Procedure specify time limits for the presentation and forwarding of grievances to the various levels of the grievance procedure. However, these time limits are not mandatory because the parties and the Board can extend them. Accordingly the purpose of these time limits is not to refuse an employee access to adjudication on the basis of a technicality or on form.

Mr. Grenon reviewed the evidence. He pointed out that the agreement had been entered into in June 1994 and that Ms. Bouthillier had stated that such agreements are not immutable. Then, in July 1995, Mr. St-Laurent suffered a relapse of an injury, which changed his situation. Mr. St-Laurent stated that he experienced a financial loss. There was a difference from a financial point of view and Ms. Bouthillier did not take that into account. According to Mr. Grenon, Ms. Bouthillier was extremely negligent in this regard. Mr. St-Laurent should not have to suffer the consequences of Ms. Bouthillier's lack of interest.

Mr. Grenon argued that the grievance began with the October 20, 1995 letter (Exhibit 2). On December 5, 1995 (Exhibit 4), Ms. Bouthillier refused the request to postpone the retirement date and Mr. St-Laurent went through all of the levels (Mr. Perron and Mr. Edwards (Exhibits 5 and 7)). Mr. Grenon added that Mr. St-Laurent did not need to submit his grievance to a specific person. He admitted that if the letter of January 17, 1996 (Exhibit 7) constitutes a grievance, then it was not presented within the time limits since it was submitted more than 25 days after December 5, 1995 (Exhibit 4), the date of the reply refusing Mr. St-Laurent's request. But here again there has been no prejudice to the employer as a result of the delay and the employer has not been caught by surprise. The employer was able to conduct its investigation and present its evidence. Moreover, the delay was the result of the July 28, 1995 relapse. According to Mr. Grenon, Mr. St-Laurent was not the only one responsible for the delay, given his illness.

For these reasons it is absolutely necessary to take into consideration the prejudice caused to Mr. St-Laurent by the employer's refusal, while the latter suffered no prejudice. Moreover, even though Mr. St-Laurent was a union steward, he was

familiar with the grievance procedure from the standpoint of an employee and he may not have thought that the procedure was the same in his case. The fact that the “grievance” lacks substance and the correspondence is vague are not reasons to refuse to hear the case. The *Blackman* decision (*supra*) is not relevant because in Mr. St-Laurent's case, the employer was not taken by surprise.

Mr. Lévesque responded that Ms. Bouthillier made relevant and reasonable inquiries given the circumstances of Mr. St-Laurent's request to postpone his retirement. She asked Mr. St-Laurent to meet with Mr. Lacasse. Mr. St-Laurent was vague as to the reasons for his request and the losses he could allegedly suffered. He never explained the difference between retiring on November 4, 1995 and a disability pension. Moreover, in the case of Mr. Beaulieu, the latter had reserved his right to change his mind about retiring.

The PSSRB Regulations and Rules of Procedure specify time limits and they must be respected. The employer cannot be expected to retain documents indefinitely. The time limits cannot be changed unless the parties reach an agreement to this effect, or unless application is made to the Board and the latter authorizes an extension.

Mr. Lévesque pointed out that Mr. St-Laurent often spoke of retiring and the employer needed to make arrangements to replace him. The employer experienced prejudice because it still does not know what redress Mr. St-Laurent is requesting. Does he want to return to the kitchen or to his position as a driver? Further, Ms. Nittolo testified that Mr. St-Laurent did not suffer any penalty by retiring on November 4, 1995. He is also receiving CSST benefits. Mr. St-Laurent had access to all of the information he required. Moreover, even after two days of hearings, Mr. St-Laurent's grievance is no clearer.

### Reasons

The word “grievance” is defined in section 2(1) of the PSSRA.

*“grievance” means a complaint in writing presented in accordance with this Act by an employee on his own behalf or on behalf of the employee and one or more other employees, except that*

(a) for the purposes of any of the provisions of this Act respecting grievances, a reference to “employee” includes a person who would be an employee but for the fact that the person is a person described in paragraph (f) or (j) of the definition “employee”, and

(b) for the purposes of any of the provisions of this Act respecting grievances with respect to termination of employment pursuant to paragraph 11(2)(f) or (g) of the Financial Administration Act or disciplinary action resulting in suspension, a reference to an “employee” includes a former employee or a person who would be a former employee but for the fact that at the time of termination of employment or suspension of that person the person was a person described in paragraph (f) or (j) of the definition “employee”.

Subsections 91.(1) and 92.(1) and (3) of the PSSRA provide as follows:

**91.(1) Where any employee feels aggrieved**

(a) by the interpretation or application, in respect of the employee, of

- (i) a provision of a statute, or of a regulation, by-law, direction or other instrument made or issued by the employer, dealing with terms and conditions of employment, or
- (ii) a provision of a collective agreement or an arbitral award, or

(b) as a result of any occurrence or matter affecting the terms and conditions of employment of the employee, other than a provision described in subparagraph (a)(i) or (ii),

in respect of which no administrative procedure for redress is provided in or under an Act of Parliament, the employee is entitled, subject to subsection (2), to present the grievance at each of the levels, up to and including the final level, in the grievance process provided for by this Act.

**92.(1) Where an employee has presented a grievance, up to and including the final level in the grievance process, with respect to**

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

*(b) in the case of an employee in a department or other portion of the public service of Canada specified in Part I of Schedule I or designated pursuant to subsection (4),*

*(i) disciplinary action resulting in suspension or a financial penalty, or*

*(ii) termination of employment or demotion pursuant to paragraph 11(2)(f) or (g) of the Financial Administration Act, or*

*(c) in the case of an employee not described in paragraph (b), disciplinary action resulting in termination of employment, suspension or a financial penalty,*

*and the grievance has not been dealt with to the satisfaction of the employee, the employee may, subject to subsection (2), refer the grievance to adjudication.*

*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.*

Subsections 2.(2), 70.(1), 71.(1), (3) and (5) and 76.(1) of the PSSRB Regulations and Rules of Procedure, 1993 stipulate that:

*2.(2) Where a period of time is specified in these Regulations as a number of days, the period shall be computed as being the number of days specified, exclusive of Saturdays and holidays.*

*70.(1) An employer shall prepare a grievance form that sets out the following information to be given to an aggrieved employee:*

*(a) the name and address of the aggrieved employee and any additional information, other than the employee's Social Insurance Number, necessary to identify the aggrieved employee;*

*(b) a concise statement of the nature of each act or omission complained of, including a reference to the provision of a statute or of a regulation, by-law, direction or other instrument made or issued by the employer and dealing with the terms and conditions of employment, or to the provision of a collective agreement or arbitral award alleged to have been*

*violated or misinterpreted, that will identify the nature of the alleged violation or misinterpretation;*

*(c) the date on which each act or omission or other matter giving rise to the grievance occurred; and*

*(d) the corrective action requested by the aggrieved employee.*

*71.(1) An employee described in paragraph 92(1)(b) of the Act may present a grievance to the employee's immediate supervisor or the local officer-in-charge in the form referred to in section 70,*

*(a) where the grievance does not relate to classification, a demotion or the termination of employment pursuant to paragraph 11(2)(f) or (g) of the Financial Administration Act, at the first level of the grievance process; and*

*(b) where the grievance relates to classification, a demotion or the termination of employment pursuant to paragraph 11(2)(f) or (g) of the Financial Administration Act, at the final level of the grievance process.*

*71.(3) An employee shall present a grievance no later than on the twenty-fifth day after the day on which the employee first had knowledge of any act, omission or other matter giving rise to the grievance or the employee was notified of the act, omission or other matter, whichever is the earlier.*

*71.(5) A grievance of an employee is not invalid by reason only that it is not presented in the form approved by the Board under section 70.*

*76.(1) An employee may refer a grievance to adjudication under section 92 of the Act by filing with the Secretary in duplicate a notice in Form 14 of the schedule, together with a copy of the grievance that the employee submitted to the employee's immediate supervisor or the local officer-in-charge pursuant to paragraph 71(1)(a) or (b) or paragraph 71(2)(a) or (b), no later than on the thirtieth day after the earlier of*

*(a) the day on which the employee received a reply at the final level of the grievance process, and*

*(b) the last day on which the authorized representative of the employer was required, pursuant to the*

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*provisions of a collective agreement or arbitral award or pursuant to section 74, to reply to the grievance at the final level of the grievance process.*

Mr. Grenon argued that Mr. St-Laurent presented a grievance on October 20, 1995 (Exhibit 2) or on January 17, 1996 (Exhibit 7) objecting to his dismissal. I must therefore thoroughly examine the correspondence between Mr. St-Laurent and his employer to determine whether Mr. St-Laurent actually presented a grievance and, if so, whether he presented it within the prescribed time limits. Further, if the grievance was not presented within the time limits, the question is whether I should extend the 25-day time limit specified in the PSSRA Regulations and Rules of Procedure to enable him to refer it to adjudication and to be heard.

The PSSRB Regulations and Rules of Procedure clearly stipulate that a grievance must be presented within 25 days (working) “after the day on which the employee first had knowledge of any act, omission or other matter giving rise to the grievance or the employee was notified of the act, omission or other matter, whichever is the earlier” (subsection 71.(3)).

On June 21, 1994, Mr. St-Laurent entered into an agreement with his employer (Mr. Lupien) under which he agreed to retire on November 4, 1995 (Exhibit 1). Therefore Mr. St-Laurent knew in 1994 that he would retire on November 4, 1995. Then, on July 28, 1995, he fell “ill”. Mr. St-Laurent testified that he consulted a specialist on that date who advised him to stop work because of a work-related injury. This injury entitled him to benefits from the CSST. Consequently he learned that he was suffering from a work-related injury on July 28, 1995 and he stopped work for that reason. On October 20, 1995 (Exhibit 2), Mr. St-Laurent simply informed Ms. Bouthillier that he was postponing the date of his retirement because of his “illness” of July 28, 1995 and that the employer should know the reasons for his request because they (the employer) had his personnel file. Mr. Grenon argued that I should consider the letter of October 20, 1995 as the grievance beginning the grievance process and the referral to adjudication. I have examined this letter and I find that it is not a grievance. It is simply a notice of the postponement of the date of retirement and there is no mention of dismissal. There is no statement of facts and no mention of the act giving rise to the grievance. Further, even if I considered the

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October 20, 1995 letter to be a grievance, it would have been untimely. The agreement was entered into on June 20 and 21, 1994 and the “relapse” occurred on July 28, 1995.

We then have Ms. Bouthillier's response to the October 20, 1995 letter. The response refusing the request is dated December 5, 1995 (Exhibit 4). This negative response could be the act giving rise to a grievance. If that was so, then a grievance could have been presented within 25 days, that is, on or before January 12, 1996. On December 11, 1995, Mr. St-Laurent asked Mr. Perron (Exhibit 5) for assistance. This letter begins “. . . to request your assistance in resolving a difficult situation in which I find myself . . .”. There is no mention of dismissal and Mr. St-Laurent refers to the refusal to postpone his retirement. He also mentions the July 28, 1995 accident. I will come back to this letter later in this decision.

The document entitled “complaint” (Exhibit 7), dated January 17, 1996, resembles a “grievance” except that it is vague and imprecise. This “complaint” is made in response to the negative reply from Mr. Perron of January 9, 1996 (Exhibit 6). I have examined the January 17, 1996 “complaint” carefully and find it to be ambiguous; Mr. St-Laurent does not appear to ask for his reinstatement and does not specify any position, but nevertheless refers to Directive 255 of the Commissioner's Directives with which the employer is undoubtedly familiar. These directives are issued by the employer and Mr. St-Laurent claims that paragraphs A, B, C, D and E of Directive 225 have not been respected. Consequently, this complaint could be considered to be a grievance.

As to the question of the time limit for the presentation of the grievance, I note the following facts. His “illness” occurred on July 28, 1995 and his retirement on November 4, 1995. On October 20, 1995 (Exhibit 2), he informed Ms. Bouthillier that he was postponing his retirement. This “notice” is not a request but “an announcement of a *fait accompli*”. On December 5, 1995, Ms. Bouthillier reminded him that he had entered into an agreement and she held to the original retirement date. On December 11, 1995, Mr. St-Laurent made an initial “request for assistance to the employer” (Mr. Perron) (Exhibit 5). On January 9, 1996, Mr. Perron refused to change the date of his retirement and on January 17, 1996, Mr. St-Laurent filed the complaint (Exhibit 7). On December 5, 1995, Mr. St-Laurent learned that the employer was refusing to postpone the date of his retirement. He had his “relapse” on July 28, 1995.

Mr. St-Laurent testified that this relapse was the reason that he wanted to postpone his retirement. According to him, the accident or relapse on July 28, 1995 changed the “situation” and led him to reconsider the June 1994 (Exhibit 1) agreement. Mr. St-Laurent did not, however, expand on this subject. However, it was not until October 20, 1995 that he announced to his employer that he wanted to push back his retirement and the language of this letter was vague and ambiguous. On December 5, 1995, Ms. Bouthillier responded to this “notice” by refusing to postpone the date of his retirement. Mr. St-Laurent should have presented his grievance within 25 working days of that date, that is, by January 12, 1996. His “complaint” of January 17, 1996 (Exhibit 7) is untimely.

Mr. St-Laurent did not give any explanation for this delay. He testified that the letter of October 20, 1995 (Exhibit 2) is the grievance. It was Mr. Grenon who suggested that the January 17, 1996 complaint should be considered the grievance. However, I cannot ignore Mr. St-Laurent's testimony in which he clearly stated that the letter to Ms. Bouthillier of October 20, 1995 is the grievance in question. Mr. St-Laurent never mentioned that the “complaint” of January 17, 1996 constituted the grievance and he gave no reason to explain the delay between December 5, 1995 and the complaint of January 17, 1996. Mr. Grenon initially argued that Mr. St-Laurent presented his grievance to the first or second level on October 20, 1995. On January 11, 1996, he sent it to the third level (Mr. Perron) and on January 17, 1996, he sent it to the final level (Mr. Edwards). Mr. St-Laurent mentioned this in the first paragraph of his “complaint” when he wrote: “I have contacted all the appropriate levels.” In August 1989, Mr. St-Laurent was designated as the first level of the grievance procedure for employees in Food Services (kitchen) (Exhibits 9 and 10). It would also appear that Mr. St-Laurent attended a course on personnel grievances for three and a half hours on September 26, 1989 and was the union steward or representative from 1980 to 1989. Accordingly, Mr. St-Laurent should have been familiar with the word “level” and the grievance process.

It is also interesting to note that, based on the evidence, at no time prior to January 17, 1996 did Mr. St-Laurent speak of a “dismissal”. On June 19, 1995, Mr. St-Laurent signed a request expressing his readiness to leave the Public Service under the terms and conditions of the EDI and the ERIP programs. Mr. St-Laurent testified that this letter was prepared by the Public Service Alliance of Canada; it was a



form letter (Exhibit 14). On June 22, 1995 and again on October 24, 1995, Mr. St-Laurent reiterated his request for a cash-out under the EDI or ERIP programs (Exhibits 15 and 19). The October 24, 1995 request (Exhibit 19) sent to Mr. Vignès is only four days after the October 20, 1995 letter (Exhibit 2) that I am being asked to accept as the grievance. In the October 24, 1995 letter, Mr. St-Laurent clearly writes that he wants to reiterate his request for a departure incentive and because he has not received any response to his earlier requests on this matter, he has to “refer his case to a higher level”.

Consequently his “complaint” of January 17, 1996 was not presented within the time limit. Mr. St-Laurent retired on November 4, 1995, a date that he himself chose, and on December 5, 1995, he was clearly informed that the employer was refusing to postpone that date. It was not until January 17, 1996 that he submitted a “complaint” in which he mentioned the word “dismissal”. Mr. St-Laurent did not offer any explanation for the delay and no evidence was filed to justify an application for extension of the time limit for the presentation of the grievance under section 63 of the PSSRB Regulations and Rules of Procedure. This section stipulates:

*63. Notwithstanding anything in this Part, the times prescribed by this Part or provided for in a grievance procedure contained in a collective agreement or in an arbitral award for the doing of any act, the presentation of a grievance at any level or the providing or filing of any notice, reply or document may be extended, either before or after the expiration of those times*

*(a) by agreement between the parties; or*

*(b) by the Board, on the application of an employer, an employee or a bargaining agent, on such terms and conditions as the Board considers advisable.*

The Board and its adjudicators have ruled on applications for extensions under section 63. In *Rattew* (Board file 149-2-107), Deputy Chairperson P. Chodos ruled as follows at pages 14 and 15:

*The language of section 83 in effect provides that the Board may relieve a party of the effects of its failure to meet specified time limits where the Board concludes it is proper and just to do so. Similar provisions are found in other labour relations legislation in the context of rights arbitration for example, section 45(6) of the Ontario Labour Relations Act*

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*R.S.O. 1990, c. L. 2 228, and sections 98(e) and (f) of the British Columbia Industrial Relations Act R.S.B.C. 1979, c. 212. There is therefore a considerable body of jurisprudence respecting the application of these provisions in a labour relations context. In general, the purpose and intent of section 83 and similar provisions is not to render nugatory the time-limits provided by the parties in a collective agreement or in the Regulations. Rather, it is to allow the exercise of a redress provided in legislation or in a collective agreement, notwithstanding the expiry of time-limits where to do otherwise would cause an injustice. In making that determination, the extent of the delay and the reasons for it must weigh heavily in the balance, as well as the relative prejudice to the parties. In this respect, the Board would note the recent arbitral award, *Re Corporation of City of Thunder Bay and Canadian Union of Public Employees, Local 87* (1992), 20 L.A.C. (4th) 361 (Charney). In this award the arbitration board was asked to exercise its discretion under the Ontario Labour Relations Act to relieve the bargaining agent from the effects of failing to meet the time limits provided in the relevant collective agreement for filing a grievance. In this case, the grievor was seeking to be reinstated in his employment on the grounds that he had been discriminated against because of his physical disabilities. Although the arbitration board found that the company's ability to defend its actions had not been prejudiced, nevertheless the board refused to exercise its discretion because of the length of the delay, approximately eleven months. It should be noted that the arbitration board came to this conclusion notwithstanding that the excessive delay was largely the responsibility of the union which represented the grievor.*

In *Stubbe* (Board file 149-2-114), the Vice-Chairperson L.M. Tenace dealt with a similar case. Mr. Stubbe was discharged on December 11, 1991 and did not present his grievance until March 16, 1992 (three months later). At page 12, Mr. Tenace pointed out that:

*The onus was on the applicant to convince this Board that it should exercise its discretion in his favour to extend the time limits to permit him to file a grievance. In my opinion, he has failed to meet that burden. I am not convinced that he had any intention of grieving his discharge until immediately prior to submitting the instant application. All of his actions, in my view, tend to confirm this. I also find that the applicant's testimony about his attempt to seek legal advice lacks credibility.*

Mr. Stubbe was also a union steward like Mr. St-Laurent.

Mr. Tenace added at page 13:

*The issue of prejudice to either party is but one of the factors that must be weighed by this Board in determining whether it will exercise its discretion to extend the time limits to permit the applicant to file a grievance. The applicant had a responsibility to exercise due diligence. In my view, the evidence showed that he did not. Effectively, he sat on his rights. No convincing argument was presented to demonstrate that the applicant intended to contest his discharge. On the contrary, his actions were consistent with those of a person who simply intended to accept his dismissal. [ . . . ] The fact that he may have changed his mind some three months later is not, in my opinion, sufficient reason for this Board to grant his application. . . .*

In conclusion, the only document bearing a resemblance to a grievance to which Mr. Grenon and Mr. St-Laurent refer is the January 17, 1996 “complaint” (Exhibit 7) and it is vague and ambiguous. Further, this complaint was not presented within the time limit and Mr. St-Laurent gave no explanation for the delay. I must weigh the prejudice to the employer against that which Mr. St-Laurent might experience if his “complaint” is not heard under the PSSRA.

In June 1994 (Exhibit 1), Mr. St-Laurent entered into an agreement. It was he who drafted the June 15, 1994 letter (Exhibit 1) and who decided to retire on November 4, 1995. The employer accepted this offer on June 20, 1994 (Exhibit 1) and in return Mr. St-Laurent was assigned to the position of driver-stock handler with salary protection (\$18,000). The driver-stock handler position was at a salary level much lower than that of Chief of Food Services. That in itself is to the employer's credit. If I consider the January 17, 1996 complaint as the grievance being referred to adjudication, then Mr. St-Laurent did not complain before January 17, 1996 and he did not indicate that there was a problem regarding the retirement date before October 20, 1995. It is Mr. St-Laurent who was negligent and it is my opinion that his case would not warrant an extension of the time limit under section 63 of the PSSRB Regulations and Rules of Procedure.

Let me now return to the letter sent to Mr. Perron on December 11, 1995 (Exhibit 5). To begin with, I note that this letter does not mention a dismissal but

rather a request to postpone his retirement date because of a work-related injury. On January 9, 1996, Mr. Perron replied that “. . . retirement is not a unilateral voluntary decision that can be changed whenever the employee wishes . . .” and the date of retirement remained unchanged (Exhibit 6).

I note that, during his argument, Mr. Grenon insisted that the letter of October 20, 1995 (Exhibit 2) constituted the grievance and if that was not the case, then it was the complaint dated January 17, 1996 (Exhibit 7) that I must consider as a grievance in proper and due form. Mr. Grenon referred to the December 11, 1995 letter as the forwarding of the grievance to the second level of the grievance procedure. However, I cannot ignore the evidence and the fact that the December 11, 1995 letter was presented to the employer and to a quite high level. Mr. Perron was the Deputy Commissioner of Correctional Service Canada. Further, Ms. Lévesque argued that, even if the letter of December 11, 1995 was deemed to be the grievance in question, it had not been presented within the time limit.

The December 11, 1995 letter can be deemed to be a grievance under section 91 of the PSSRA and section 70(1) of the PSSRB Regulations and Rules of Procedure, 1993. In this letter, Mr. St-Laurent gave his name and all of the information necessary to identify himself. The employer knew who it was dealing with. He also described his situation and the fact that he was asking for the date of his retirement to be postponed. Consequently, the letter of December 11, 1995 is a grievance and it was presented within the time limit. On October 20, 1995, Mr. St-Laurent asked that his retirement be postponed and it was not until December 5, 1995 that Ms. Bouthillier responded to this request by refusing it (Exhibit 4). Thus, the presentation of the grievance on December 11, 1995 was duly made within the time limits provided under section 71(3) of the PSSRB Regulations and Rules of Procedure, 1993, that is, within 25 working days of the refusal dated December 5, 1995.

For these reasons, the letter of December 11, 1995 is a grievance. Mr. St-Laurent claims that he was dismissed and he presented a grievance objecting to that “dismissal”. The parties agreed that I should first decide the two preliminary questions: (1) Did Mr. St-Laurent present a grievance within the meaning of the PSSRA and (2) if so, was the grievance presented within the prescribed time limit? I conclude that the reply to both questions is in the affirmative.

In light of my affirmative decision on these two preliminary questions at issue, it is now necessary to decide whether this grievance can be adjudicated under section 92 of the PSSRA. The parties chose not to deal with this important issue at the hearing held on June 25 and 26, 1997. For that reason, this case is to be rescheduled for hearing. The parties will be duly informed of the date of the continuation of this case.

**Muriel Korngold Wexler**  
**Deputy Chairperson**

OTTAWA, September 5, 1997

Certified true translation

Serge Lareau