

Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

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BETWEEN

**HÉLÈNE BEAULIEU**

Grievor

and

**TREASURY BOARD  
(Justice Canada)**

Employer

*Before:* Yvon Tarte, Chairperson

*For the Grievor:* Ionnis Mavrikakis

*For the Employer:* Carole Bureau, Counsel

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Heard at Montreal, Quebec  
October 7 and 8, 1996

## DECISION

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On May 21, 1996, H el ene Beaulieu asked the Board to refer to adjudication the complaint which she had transmitted to her employer on October 18, 1994, which is reproduced below:

(Translation)

*Please find attached a document listing the events which have taken place during the past two years of which the consequence and culmination have been the dispatch of a letter to the Associate Superintendent, dated August 26, 1994, in which I remove myself from the handling of a file.*

*At the present time, following various meetings with Mr. Lewis, Mr. Mayrand, Associate Superintendent and Mr. Gauvreau, counsel, the proposed solution is a transfer to the Canadian Space Agency.*

*After working in bankruptcy from 1981 to 1987 I subsequently obtained my law degree at the University of Montreal. After I was called to the Bar I continued to work in the field of bankruptcy law and since September 1992 I have been working in the office of the Superintendent of Bankruptcies in the Discipline Secretariat. I have also started work on a master's degree in bankruptcy law and am currently preparing a thesis which is also on bankruptcy law.*

*You will understand that this is a highly specialized field (there are two of us lawyers doing this work in Canada) and all the persons involved (trustees, registrars, receivers, university professors specializing in the field, etc.) know one another.*

*I consider that the decision to second me to another sector is seriously prejudicial to me, given my many years of experience in the bankruptcy field.*

*The document of which I am enclosing a copy is therefore a formal complaint against my supervisor Mr. Marcel Gauvreau, Counsel in the Litigation Division of Industry Canada and seconded to the office of the Superintendent of Bankruptcies in Montreal, in the Discipline Secretariat.*

*This said, if you see a possibility of correcting this situation and of reaching an out-of-court settlement between the parties, I am willing to make the necessary effort.*

*In anticipation of your reply,*

*I am, Madam,*

*Yours very truly,*

NOTES

*Chronology of events:*

(a) *September 1992 - entered Consumer and Corporate Affairs as trainee under Mr. Marcel Gauvreau.*

*November 1992 - Called to the Quebec Bar.*

(b) *November 25, 1992 - LA-1:  
contract running from November 23,  
1992 to December 18, 1992;*

(c) *December 17, 1992 - LA-1:  
contract running from December 21,  
1992 to March 31, 1993;*

(d) *Contract extended for the period  
April 1, 1993 to September 31, 1993;*

(e) *November 24, 1993 - LA-1:  
contract extended from October 1,  
1993 to March 31, 1994;*

*January 14, 1994 -  
Transferred to Legal Services,  
Industry, Science and Technology  
Canada, in the Bankruptcy Branch in  
Montreal. This transfer took effect on  
December 14, 1993 and terminated  
March 31, 1994.*

(f) *March 10, 1994 - LA-1:  
contract covering the period from  
April 1, 1994 to March 31, 1995;*

*Problems:*

- 1. No salary during the Christmas period in 1992;*
- 2. Refusal to pay Bar Association dues (1992);*
- 3. Refusal to pay insurance - (According to Mr. Gauvreau, I was required to finance and pay the compulsory insurance (Bar Indemnity Fund) because I was a term employee;)*

4. *On a second occasion my name was struck off the staff list and once again I had to wait several weeks before I was paid.*
5. *Since I received salary for several weeks, due in December 1992 but paid in January 1993 (in my capacity as a counsel and not as a trainee), I was also be penalized under the Income Tax Act.*

*Mr. Jacques Letellier, Q.C., Director for the Montreal Region took certain steps which resulted in the Bar Association dues being paid and also provided me with information about the insurance (Indemnity Fund).*

*At the beginning of 1994 I asked L. Iljevec, our secretary in Hull, to forward to me the documents relating to transfers and advertisements of positions as soon as she saw them, since I had been receiving them since about September 1993 but always after the deadline for the competition.*

*Job description:*

- *Appointed as LA-1 early in the summer of 1993 when there was a suggestion of a transfer within the Litigation group in Consumer and Corporate Affairs/ Industry Canada;*
- *See also on this point the attached suggested job description .*

*Work:*

*(a) Justice:*

*From September 1992 to September 1993, approximately, I received no information from Justice Canada (regular or other correspondence) directly or through Mr. Marcel Gauvreau.*

*(b) Consumer and Corporate Affairs:*

*During the same period Mr. Gauvreau did not pass on any information to me or any document from the Superintendent's office.*

*I arranged with Louise B. Mahoney, Assistant District Superintendent, that I should be added to the list for receiving all documents from the Superintendent's office, at about the end of 1993.*

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*On several occasions I told Mr. Gauvreau, in the course of our rare conversations, that I had no information and was not advised of meetings, discussions or current projects.*

*In September 1993 the situation changed slightly because I was transferred to Legal Services in Hull and my name was added to the list of people who were to receive the correspondence files of the Litigation Division.*

*I was then able to read, **several weeks after the date of dispatch because the correspondence files are first read by all the lawyers in the Litigation Division working in Hull,** Mr. Gauvreau's correspondence in the various disciplinary files.*

*In the course of a telephone conversation with Mr. Mario Leblanc he congratulated me on the renewal of my contract for 1994-1995. Because of the lapse of time between the date of dispatch of a letter and the reception of the correspondence file in Montreal I had not read the correspondence on file requesting renewal of my contract.*

*I therefore went once again to Mr. Gauvreau's office to inform him of my dissatisfaction with the situation in which he was leaving me and to explain the facts to him. I told him that I wanted to see the correspondence originating in our Montreal office BEFORE it was sent to Hull, and that it was ridiculous that I did not know what was going on in our office (discipline) while the lawyers in Hull seemed to be better informed that I was on the subject. A file was opened in which all correspondence written by Mr. Gauvreau or myself was placed. This file too was passed to each of us by the secretary before being sent to Hull.*

*FILE "G"*

*In or around August 1993 the auditor's report was passed to me so that appropriate steps could be taken and a recommendation prepared for the signature of the Associate Superintendent. This was my very first file.*

*Precautionary steps were taken and I then proceeded to prepare a disciplinary report.*

*According to custom I was supposed to prepare a draft for discussion by Mr. Mayrand, the Associate Superintendent, the Assistant Superintendent, Audit, Mr. Luftglass, the Assistant District Superintendent and Mr. Gauvreau. The auditor was also sometimes invited to discuss the draft recommendation.*

While preparing the recommendation I did some research in the court records and requested photocopies of two files which I considered particularly important. The auditor then took offence, thinking that I was carrying out an audit of his work and stating that up to that time no one had audited the court files.

However, after I had received the court files and studied the documents produced by the trustee I passed on to him my observations, which were that the documents produced at the court by the trustee were not identical with those in the trustee's file (agreement for sale of assets) and therefore this procedure was not useless. Subsequently to this incident I obtained the full cooperation of the auditor and our relations were excellent up to August 23, 1994.

Meanwhile I had informed Mr. Gauvreau of the auditor's attitude. Mr. Gauvreau made no comment, positive or negative, on the way I had proceeded (obtaining court documents and checking the court records).

December 1993:

In December 1993, when the undersigned was registered as a full-time candidate for a master's degree at the University of Montreal, requested and received permission from Mr. Gauvreau to absent myself from the office (4 days) to prepare for my examinations in the law on security (new Civil Code) and in bankruptcy law (commercial bankruptcy).

Because of the urgency of dispatching the recommendation Mr. Gauvreau worked on the "presentation" of the draft which had been prepared.

As a result, the references to the Bankruptcy Act and the Bankruptcy and Insolvency Act were changed by him, to ensure uniformity of presentation, throughout the text (about 35 pages), so that it stated that the offence was based on Section "x of the Bankruptcy and Insolvency Act".

When I returned and saw these changes I said to Mr. Gauvreau that, as was proved by the text, numerous offences had been committed prior to the passage of the Bankruptcy and Insolvency Act and that therefore I could not accuse someone of committing a punishable act on the basis of a non-existent law. I mentioned to him that prior to the changes he had made each of the offences had noted on it the number of the section of the relevant act and that I had made a special effort to avoid any mistakes which might be brought up by the other party.

*Mr. Gauvreau seemed unsure about the point of law I was raising and asked me obtain information from Justice in Hull. I spoke to Mr. Leblanc if my memory serves me correctly. I also went to see Mr. Pierre Lecavalier (the former registrar) who works in the Montreal office in order to check my assertions.*

*Mr. Lecavalier supported my position and I revised the text of the recommendation so that it referred to the relevant sections of acts (number and act).*

*While this file was being worked on Mr. Gauvreau did not give me any guideline with respect to the preparation of draft disciplinary reports and did not discuss any points of law.*

*Some points of law or difficulties were raised by Mr. Mayrand during meetings or telephone conversations but Mr. Gauvreau never discussed the subject.*

*On March 25, 1994 the documents were sent to Trustee G.*

*On or about July 15, 1994 the recommendation (together with all the documents including the trustee's reply) was sent to the office of the Superintendent of Bankruptcies for consideration.*

.....

*August 23, 1994*

*Call from Mr. Mayrand: he wanted to plan a telephone conference with the auditor and myself. It was impossible to find the auditor and Mr. Mayrand told me:*

*-two auditors would come to the office the next morning and carry out a full assignment..*

*-Trustee F. would be present...*

*-there would be a meeting with Trustee F. and Trustee G., Mr. Leclerc and Mr. Mayrand on Tuesday, August 30 to discuss the results and the file*

*-Mr. Mayrand requested me to confirm with Mr. Leclerc and I raised two points with Mr. Leclerc:*

*(a) did we depend on the presence of the representative of Trustee F., that*

is, did we have to wait for the representative's arrival before the auditors could carry out their assignment?

(b) According to Mr. Leclerc one single person from the Superintendent's office would have to go to the office of Trustee G. to carry out the assignment. I pointed out to him that two persons would be going. Mr. Leclerc did not object...

Call to Mr. Mayrand's office, Ginette Trahan (acting for him) answered and because there was a lapse of time of ten to fifteen minutes I did not know that Mr. Mayrand had already left.

I told her about my telephone conversation with Mr. Leclerc and she said she would get in touch with him. As Mr. Mayrand had already contacted Mr. Leclerc directly, without me listening in and without any strategic planning of the conversation, and as I thought Mr. Mayrand was still in his office, I felt uneasy about suggesting that he should not do it..

The auditor and the receiver went to the premises on August 25 to carry out the assignment at 1 p.m.

August 25, 1994

Telephone conversation at the end of the afternoon with Ginette Trahan. The auditor and the receiver and examined only one file in the whole time they were there (one afternoon). A request had been made by Trustee F. that they should begin with all the "negative" files and carry out only that part of the assignment. Ginette Trahan also told me that Mr. Leclerc was there (in the trustee's office) with the auditor, the receiver, Trustee G. and Trustee F.

August 26, 1994

Call from Ginette Trahan.



*I warned Ginette Trahan, telling her, among other things,*

- that discussions cannot be conducted in this manner;*
- that the auditor had a precise assignment and could not have discussions with the other persons involved;*
- that it was contrary to the lawyers' code of ethics to proceed in this way;*
- that its was particularly "delicate" for us when we were acting in a disciplinary matter if we did not observe the elementary ethical rules;*

*Ginette Trahan then replied that they had always acted in this way with respect to the files and that it was "correct" to proceed in this way so as to learn what was the position of the other party.*

*August 26, 1994*

*Letter addressed to Mr. Mayrand with copies to Mr. Redling and Mr. Gauvreau.*

*Mr. Gauvreau was then in Ottawa where he was attending one or more meetings. (Mr. Gauvreau did not tell me what meetings he attended or inform me of the discussions at those meetings).*

*August 29, 1994*

*Call from Ginette Trahan - she asked me if I wanted the documents - she told me Marc Mayrand wanted to see me - I told her that I preferred to wait and talk to Marc Mayrand who was to come to Montreal the next day for the meeting scheduled at 2 p.m.*

*August 30, 1994*

*Marc Mayrand came to see Mr. Gauvreau in the morning at about 10 or 11 a.m. - I was sitting in my office - he did not greet me or say anything to me.*

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*After lunch I met Mr. Mayrand - coming out of the washroom - I told him I would like to see him. He answered that he would see me the same afternoon or later.*

*Mr. Gauvreau said to me, when passing by my office a few minutes later, that Mr. Mayrand would see me later, at the end of the afternoon, if he had the time, or in the following week. (Mr. Gauvreau and Mr. Mayrand went and had lunch together).*

*At about 4.30 p.m. Mr. Mayrand arrived at Mr. Gauvreau's office and had a discussion...*

*At about 5 p.m. Mr. Mayrand came into my office - a discussion followed - he asked me to give him an explanation and I informed him of my comments on the position that had been taken.*

*Mr. Mayrand said he was dissatisfied and disappointed with the procedures followed by the auditor and the receiver but also said that they might have returned to the office (of Trustee G.) to continue the work;*

*He set out his views for me (although I disagreed, with the conversation covering a number of points, I did not tell him right away that I did not share his opinion, especially with respect to the responsibility of the Superintendent).*

*He finished by saying, just when he was about to leave to get his train, that in his view*

*(1) I had acted in my personal interest;*

*(2) I wanted to get out of handling this file because it was a difficult one;*

*(3) I had let him down (the Superintendent),*

*and he left, as he was late for his train...*

*I was deeply upset by Mr. Mayrand's words, especially because I had not been able to get anything precise about the allegations he had just made to me, because he left my office at the same moment, picked up his case in Mr. Gauvreau's office and went to catch his train - he had to leave because he was late...*

*I was dismayed to find my superior coldly raising doubts about my professional integrity without offering me any argument in support of such an assertion.*

*I could not sleep at all that night. Mr. Mayrand's look and the words he flung out at the very last minute of our conversation which had lasted over an hour haunted me all night and in the days that followed.*

*Faced with this situation*

*(a) I prepared the letter dated August 30, 1994;*

*b) the next day I called Mr. Mayrand's office requesting a meeting at the earliest possible moment. His secretary told me he was away and would be back on September 7... She would however pass on my request.*

*(c) I also spoke to Mr. Gauvreau, telling him that I had not "appreciated" certain things that Mr. Mayrand had said about me during my conversation with him the previous day, I had not slept and would be away for the day.*

***On or about September 1, 1994 - Mr. Gauvreau's office***

*I invited him to give me some explanation of the words Marc Mayrand had said to me and more particularly I asked him to give me some explanation about the personal*

"benefits" or "interests" I was supposed to have obtained by taking this position. I maintained that he could undoubtedly give me some explanation because he had talked with Mr. Mayrand and I assumed he was aware of what Mr. Mayrand had said to me.

Mr. Gauvreau said he was unable to explain the advantages or benefits which I was supposed to have obtained and that if I wanted an answer I would have to speak to Mr. Marc Mayrand.

On Friday, September 9 Mr. Mayrand called me at the end of the afternoon to fix a meeting for Monday, September 12 at 11 a.m. in Ottawa. I told him I would like Mr. Gauvreau to be present and also Larry Lachance (auditor) and Ginette Trahan (Acting Associate Superintendent). In his view it did not seem necessary for L. Lachance to make the trip, Mr. Gauvreau, so he said, was busy, he suggested however that it might be possible to proceed by way of a telephone conference. I told him that I thought it would be preferable for us to meet face to face.

Meanwhile:

Conversation with Mr. Gauvreau - he said to me that my work could be done by anybody (Mr. Cantin or any other receiver).

I responded that I did not share his point of view because there was a condition which was essential to the existence of my contract, that was the fact that I was a member in good standing of a Canadian Bar Association. Consequently, I had been appointed as a lawyer and my primary duty was to work as a lawyer, and therefore I had undertaken to exercise my professional responsibility.

#### **Meeting in Ottawa on September 12, 1994.**

Mr. Mayrand received my explanations - still did not accept my explanations and, in the course of our discussion, made the following points:

- the auditor's report was adequate...

- he apologized for saying that I had acted for my personal benefit, but maintained instead that it was a matter of personal interest.

As he had to go to another meeting Mr. Mayrand concluded by saying, as he showed me out, that I was not able to work in a group and that he was going to think about

*the matter and give me his comments. I asked him to convey them to me in writing.*

***Meeting in Mr. D. Lewis's office - Ottawa, September 19, 1994***

*Present: Doug Lewis  
Pierre Legault  
Marcel Gauvreau  
Hélène Beaulieu*

*In the presence of myself and Mr. Lewis Mr. Gauvreau stated that the meeting of September 22, 1994 had been cancelled because Mr. G. Redling and Mr. Marc Mayrand did not wish to see me again. He also stated that the draft I had presented to Mr. Georges Redling and Mr. Marc Mayrand on August 18 was not in accordance with what they had asked for, that the Superintendent was not at all interested in or happy about the draft concerning the possibility of a complaint being filed by persons outside the office of the Superintendent.*

*I then emphasized to Mr. Gauvreau that I myself had made this comment right at the beginning of the meeting because, after exchanging a few words with Mr. Massue-Monat, I had some doubt about the form in which the draft was presented.*

*As for the second part of his statement regarding the Superintendent's position I was astounded to hear these comments from Mr. Gauvreau, and I did not offer to respond.....*

*Mr. Lewis intervened, pointing out to Mr. Gauvreau that, as my superior, he should have informed me of the Superintendent's comments right away and not several weeks later. Mr. Gauvreau then responded that at the meeting in question I had been given clear guidelines....*

*I was completely astounded by the position taken by my superior (and colleague) who, in my view, was using my own comments and attributing them to Mr. Redling and Mr. Marc Mayrand, which would lead an independent listener to believe that the work I had in fact handed in was not in accordance with what had been asked for.*

*In addition, this draft had been prepared for discussion: various alternatives were mentioned in it. In actual fact the Superintendent had dwelt on one point, namely the filing of a complaint by a person other than the Superintendent. He did not appear to be convinced that it was*

necessary to grant such a right. A discussion on the training of receivers etc. had followed and no decision had been taken on this particular point. (Mr. Redling had even added after this discussion that I would be responsible for the training of receivers!).

Mr. Gauvreau abused his authority by distorting and using what had been said at that meeting to humiliate me in front of Mr. Lewis and present a negative image of me which was apparently the way the Superintendent and the Associate Superintendent (G. Redling and Marc Mayrand) saw me.

In actual fact, during that meeting, no negative observation had ever been directed to me by these people regarding the presentation of the draft or its content: in my view all that had taken place was a frank discussion on different options set out on paper.

Later on, during a meeting with Marc Mayrand in his office on October 12, 1994, he stated in front of Mr. Lewis that he had never made any comments except for those made during that meeting. According to Mr. Mayrand the only comments which had been made were those made at that meeting and they dealt only with the different options referred to and with the possibility of pushing the study somewhat further (Federal court option - first instance, etc.)

#### **Meeting with Mr. Von Finckenstein and Mr. D. Lewis - October 1994 - Ottawa**

According to what was told to Mr. Von Finckenstein by Mr. Lewis the Superintendent had obtained comments from the auditors to the effect that the relations of the undersigned with the auditors "were not right". In addition, the Associate Superintendent was expressing disapproval of what had been said in the above-mentioned letter of August 26, 1994. He was reportedly, at the time, "completely at lost" [SIC - TR] with regard to the position taken by the undersigned.

Mr. Von Finckenstein emphasized at this meeting that the client (Superintendent) was no longer willing to cover the cost of my services.

I then told Mr. Von Finckenstein that Mr. Mayrand had not granted the request that I had made to him at our meeting in his office on September 12, 1994. Various negative or critical comments had been directed to me by persons who had become involved, that is, Mr. Lewis and Mr. Gauvreau (including the remarks made by Mr. Gauvreau at the meeting of September 19, 1994 in the presence of

*Mr. Lewis, and various comments I had received during subsequent conversations with Mr. Lewis).*

*In addition, I had mentioned to Mr. Von Finckenstein that, at the meeting of September 19, 1994, following our conversation, Mr. Lewis had proposed contacting Mr. Mayrand so that I would be able to make my apologies to him and seemed to believe that what was at issue was, as he put it, a "mistake" which could be corrected. It appeared that Mr. Mayrand had so far refused to meet me.*

*Mr. Von Finckenstein then asked Mr. Lewis to communicate with Mr. Mayrand so that I could meet him in the presence of Mr. Lewis.*

***Meeting of the undersigned with Mr. Marc Mayrand in the Superintendent's office, in the presence of Mr. Lewis, on October 12, 1994.***

*Mr. Mayrand repeated several times, at Mr. Lewis's request, that the only factor seen as pertinent or taken into consideration in his decision was the position adopted in the letter of August 26, 1994 and the letter of August 30.*

*I asked him*

*- if he knew that Mr. Gauvreau had not spoken to me at all since September 19, 1994...*

*- if he had asked Mr. Gauvreau to instruct Ms. Mahoney not to follow up on the various memoranda which I had written to her for the purpose of obtaining the documents required to complete the evidence in a file... and I handed him the memorandum written to Mr. Gauvreau on October 7.*

*- I also told him that Mr. Gauvreau had said in Mr. Lewis's presence that the document produced on August 19 was not in accordance with what the Superintendent had asked for and I told him that I would have appreciated it if they (the Superintendent and himself) had informed me of their comments at the meeting in question. Mr. Mayrand said he had not made any comment except for what he had said at that meeting.*

*- As for the allegation that I did not have good relations with the auditors Mr. Mayrand turned the question back to me. I informed him, among other things, that so far as I knew and in my view only one of the three auditors with whom I had worked was*

*dissatisfied, namely the one who had gone to the office of Trustee "G", and that he had not spoken to me again since the dispatch of the letter of August 26, 1994.*

*In addition, I emphasized that, except for the incident I had told him about at our meeting of September 12, this auditor had regularly had coffee with me BEFORE August 23, 1994.*

*However, I added that the auditor in question was responding to my greetings but, in my view, was avoiding any conversation.*

*Mr. Mayrand had used insulting and upsetting language, going so far as to question my integrity, at the meeting of August 30, 1994, and saying:*

- (a) that I had acted for my personal advantage and not for that of the Department;*
- (b) that I wanted to get out of handling this file because it was difficult;*
- (c) that I had let him down;*

*and that this was the reverse of the frank, calm discussion we could have had.*

*In addition, for nearly a week he did not speak to me again, until September 9, 1994 when an arrangement was made for a meeting in Ottawa.*

*At this meeting it came out that the whole six months' work was useless, because the initial report of the auditor was, according to him, adequate. He had apologized for his choice of words but had reiterated that I had acted in my personal interest, without specifying what advantages I was obtaining.*

*In addition, he had finished by saying that, in his view, I could not work in a group.*

*I reiterated here that no information had been given to me initially in the file:*

- no meeting, formal or informal, with Mr. Gauvreau;*
- no guidelines to work from;*
- no direction;*
- file handed to the person concerned (myself) without instructions or direction;*
- no legal discussion with Mr. Gauvreau;*



except that at meetings or over the telephone Mr. Mayrand would tell me to add or remove a particular topic in the file.

On August 30, 1994, Mr. Mayrand had come to Montreal to discuss the file with Mr. Leclerc, Trustee F. and Trustee G. and at the time he had boasted that he was a manager, having had, I suppose, several years of experience as a lawyer and working in the government, and that he was, moreover, my superior; he did not even take the trouble to come and see me before the meeting in question to discuss my letter, ignoring me completely, when it would have been common sense, in my view, and especially if he really was "completely at lost" [SIC - TR], to have a frank discussion - we were not enemies but an employee and an employer.

Since October 12, when it was understood I would receive a letter from him about what he intended to do, nothing had so far happened, except what he had said to Mr. Lewis and my presence too, after Mr. Von Finckenstein had insisted that he should meet us.

Mr. Marcel Gauvreau

At the outset he was pleasant when he appointed me, but contrary to what I had expected there was never any

- guideline
- discussion
- orientation.

During my training period and afterwards I had had to fight, among other things:

- to get my salary, my dues to the Quebec Bar Association, the reimbursement of sums paid personally to the Bar Indemnity Fund;
- to get access to essential tools (book on The Bankruptcy and Insolvency Act);
- to get a voice mailbox, because after the move to Place Ville Marie (sometime in February, I believe), any call placed when I was not in my office could get lost. Mr. Gauvreau thought it proper that Ms. Codsí (our secretary) and himself should have voice mail service but, he said, it was not necessary for me to have this service because my contract would terminate in September 1993;

- to get access to legal information from the Superintendent's office;

*Mr. Gauvreau, on or about September 8, 1994, had used language to me which was insulting, humiliating, downgrading and unworthy of a supervisor responsible for overseeing the work of a subordinate (and therefore required to allow the subordinate - LA-IA - to acquire the experience and training needed for reaching a higher level - right), asserting that anyone without a (law) degree could do my work.*

*Mr. Gauvreau had assigned me to review the disciplinary process but parallel studies were being made in Ottawa, which I did not know, and I did not even know what policy was being sought, and Mr. Gauvreau worked in the committees without informing me of the decisions sought after or the lines of action chosen.*

*Mr. Gauvreau, at the meeting of September 19, 1994 with Mr. Lewis, had made remarks to the effect that the draft disciplinary process presented to the Superintendent and the Associate Superintendent at a meeting of August 18 was not in accordance with what they had requested and that my remarks on or annotations to the project were not what they were looking for. If that was so why did he not state what was required? Why was the Superintendent's position not communicated to me before this meeting?*

*Alternatively, when it was time for frank discussion of the suggestions made in the draft, Mr. Mayrand had abused his authority by distorting and making use of what was said at this meeting in order to humiliate me in front of Mr. Lewis and to present to my superior (Justice) a negative image which according to him the Superintendent and the Associate Superintendent had of the work I had done for them.*

*Mr. Gauvreau had never given me clear directives or provided me with advice or support as any superior should do.*

*Since I had come into the Department in September 1992 I had received no evaluation of the work I had done.*

*Mr. Gauvreau, on several occasions, at my insistence, had been reminded by me that he was supposed to communicate to me the directives of the Superintendent, to no avail.*

*Mr. Gauvreau, by his inertia, had played a part, and by his silence had continued to play a part, in creating an unhealthy working atmosphere.*

*Mr. Gauvreau, instead of telling me what the Associate Superintendent (Mr. Mayrand) was thinking, had stated, only at the meeting of September 19 with Mr. Lewis, that the Assistant Superintendent [break in the sentence construction - TR] facts which the Associate Superintendent reportedly held against me, when he could have had, and I had asked Mr. Mayrand for this without success, a meeting of the three of us where things could have been explained (Mr. Mayrand, Mr. Gauvreau and myself).*

*Since this meeting on September 19 Mr. Gauvreau had ignored me completely, to the point of not speaking to me any more.*

*I was obliged to conclude that I had been sacrificed by Mr. Gauvreau, who had not at any time accepted his responsibilities*

- as a head*
- as a trainer*
- as a manager*
- as a lawyer, for discussion of legal points with me*

*but had left me to work, without ever intervening, or guiding or orienting me.*

In accordance with the policy of the Department of Justice on harassment in the workplace the Department held an inquiry into this matter. On March 8, 1996 Mr. George Thomson, Deputy Minister of Justice, advised the grievor that, according to the departmental inquiry, her allegations in this file were unfounded.

#### The Conflict of Interest Issue

At the outset of the hearing Mr. Mavrikakis raised the issue of conflict of interest in relation to Ms. Carole Bureau of the Department of Justice. The Grievor's representative stated that Ms. Bureau was involved as applicant in a case similar to that presented in file 166-2-27316 dealing with a salary issue and the enforcement of certain legislation governing compensation for government employees. In support of his thesis the Grievor's representative referred me to the following texts and decisions: *Code of Ethics for Legal Counsel* (R.S.Q. 1981, c. B-1, T. 1), *Guide sur les conflits d'intérêts* (Service de recherche et de législation, Barreau du Québec), *MacDonald*

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*Estate v. Martin*, [1990] S.C.R. 1235, 2527-7195 *Québec Inc. v. 161442 Canada Inc.* (S.C., District of Montréal n°: 500-05-000372-894), *Donald D. Thomson et al. v. Smith Mechanical Inc. et al.*, [1985] S.C. 782, *APV Pavailles Inc. v. Alain Bonischot and John A. Swift* (Court of Appeal, Montreal Office, no. 500-09-000999-912) and *Claude Pageau v. Dame Blanche Vanasse Aubry* (S.C., District of Montreal, no. 500-14-002503-910).

Mr. Mavrikakis therefore requested, *inter alia*, that Ms. Bureau be declared unqualified to represent the Department of Justice in this case, and that new counsel be appointed within the prescribed deadlines.

In reply to the questions raised by the Grievor's representative, the Department representative stated that the possibility of a conflict of interest could be raised with respect to file 166-2-27316 only as regards the salary issue, and that in any event, should the case be heard on its merits, she and Mr. Piché were prepared to withdraw.

#### Decision on the Conflict of Interest Issue

Given the fact that the Employer's representatives had undertaken to withdraw from file 166-2-27316 if the case were heard on its merits, I ruled that Ms. Bureau and Mr. Piché could submit their preliminary objection to jurisdiction with respect to Ms. Beaulieu's six referrals: i.e., Board files 166-2-27313 to 27316, 27289 and 27335. By limiting their intervention to questions of jurisdiction, counsel for the Department of Justice would not be in a conflict of interest situation, either real or apparent.

#### Preliminary Objection

On July 26 Ms. Bureau presented a jurisdictional objection, the text of which follows:

(Translation)

*I wish to inform you that the employer objects to the Public Service Staff Relations Board appointing an adjudicator under paragraph 95(2)(c) of the Public Service Staff Relations Act (the Act) to hear the referred grievance on the following grounds:*

*Ms. Hélène Beaulieu never filed a grievance under the Act against Mr. Marcel Gauvreau, but filed instead a complaint of harassment which has been handled in accordance with the Department's procedures on harassment*

*in the workplace. This procedure resulted in a final report by Mr. Guy Baron, the conclusions of which have been endorsed by the Deputy Minister of Justice. Ms. Hélène Beaulieu states that the response at the last level was given without taking account of the questions she put to the examiner.*

*Alternatively, even if the Board were to take the view that the said complaint of harassment did constitute a grievance the employer objects to the appointment of an adjudicator under paragraph 95(2)(c) of the Act because she filled a position as a legal advisor to the Department of Justice and therefore was not covered by any collective agreement.*

*Under paragraph 92(1)(a) of the Act Ms. Hélène Beaulieu cannot refer this grievance to adjudication because it does not concern the interpretation or application to her of a provision of a collective agreement or an arbitral award.*

*Secondly, Ms. Beaulieu's grievance, entitled "Complaint against a colleague and 'superior'", refers to the refusal of her supervisor to respond to certain of her questions as appears from the letters of May 21, 1996 and October 18, 1994, tabled by the complainant in support of the present referral to adjudication, the reply to which questions from the last level was communicated to her on March 8, 1996.*

*As this grievance refers neither to a suspension nor to a financial penalty nor to disciplinary action resulting in her dismissal or suspension or in a financial penalty Ms. Beaulieu cannot invoke paragraph (b) of Section 92 of the Act to have her grievance referred to adjudication.*

*In addition, the employer objects to the Board granting an extension of time because, on the one hand, the complainant has not put forward serious questions to refer to adjudication and those raised by the grievance cannot be referred to adjudication and, on the other hand, she has not demonstrated that she had, at any time, the intention to contest the decision to reject her grievance.*

*This motion to dismiss is made to ensure the proper administration of justice, because there is no point in encumbering the role of the Board with matters respecting which an adjudicator clearly has no jurisdiction.*

*We would be willing, on behalf of the employer, to present oral argument if the Board deems it appropriate to hold a hearing on this matter.*

*In view of the foregoing we believe that it would be inappropriate for the Board to fix a date immediately for the*

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*hearing of the matter referred to above in the period October 7-11, 1996.*

*In anticipation of your ruling, We remain, Yours very truly.*

At the hearing on the grievance which was held on October 7, 1996, Ms. Bureau repeated her preliminary objection, referring me to the cases of *O'Hagan* (Board files 166-2-26490 through 26493) and *Malone* (Board file 166-2-26758) in support of her argument.

In response to the objections stated by Ms. Bureau on July 26, 1996 Mr. Mavrikakis put forward the arguments which follow in a letter dated August 16, 1996, dealing with the various grievances referred to adjudication by Ms. Beaulieu, the text of which is reproduced below.

*SUBJECT: Reference to Adjudication  
(166-2-27289, 27313 to 316, 127335,  
Hélène Beaulieu -  
Justice Canada*

*Dear Assistant Secretary,*

*I acknowledge receipt of the letters of Mrs. Carole Bureau, representing the Department in this matter, and I fail to understand the first three paragraphs that are repeated verbatim on the first page of each of the six letters.*

*On 11 June 1996, a grievance was brought before your Board by Mrs. Hélène Beaulieu. On 28 June, you informed the parties that a hearing on these matters would be held from 9 to 13 September 1996. Subsequently, we requested another date in the month of October, a request which the counsel for the employer, at that time Mr. Roger Lafrenière, accepted. Subsequently another solicitor was assigned for reasons familiar to you, and it was only on 26 July that the employer decided to object to the Board's hearing the grievances and complaints of Mrs. Hélène Beaulieu.*

*I wish to point out that in no case did the first counsel present this argument, and it was only 45 days after submission of the grievance that the employer, for reasons that remain obscure and that rely on rules enacted by the employer itself, objected to having the Board deal with Madame Beaulieu's case.*

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*On this point, notwithstanding the Sections referred by Mrs. Bureau in her letter, and more particularly in the first three paragraphs of page one, we would remind the employer of the attachments and studies that the employer itself submitted concerning the policy on harassment in the workplace. I refer here to the Treasury Board document of 3 January 1995, signed by Mr. R.J. Giroux, which states on page 2:*

*“Please put this revised policy into immediate effect”.*

*And on page 13, in the “Grievance” paragraph:*

*“If an employee decides to submit a grievance....*

*and on the following page the sentence*

*“Pursuant to an agreement between the Treasury Board Secretariat and the Public Service Commission, the latter will hear complaints of harassment.”*

*And in another document from the Department of Justice dealing with harassment in the workplace, harassment is defined in paragraph 2 of page 3, and page 4 states:*

*“harassment also relates to any abuse of power that involves the improper exercise of authority or power deriving from a position with a view to compromising the employment....”*

*And on page 15 and following of the guidelines, the Department of Justice defines the role of the Public Service Commission, in particular referring to:*

*a complaint to the Investigations Directorate of the Public Service (harassment unrelated to a reason included in the Canadian Human Rights Act).*

*which is the case at present, since it relates to an abuse of authority, among other things.*

*The Treasury Board, in its September 1994 study on harassment in the workplace, devoted long Sections to harassment in the workplace and in particular to the question of abuse.*

*I also refer to the grievances document, and more particularly to paragraph 9.2.1 General Provisions of Volume 1 Chapter 13, Volume 7, chapter 5, chapter 6 and*

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chapter 13, and to the Public Service Staff Relations Act (PSSRA, Sec. 91-101, Regulations and Rules of Procedure of the Public Service Staff Relations Board, Sec. 69-90), where paragraph "a" states:

*"A grievance is a written complaint that an employee may submit concerning terms and conditions of employment".*

The Assistant Deputy Minister, Jean-Claude Demers, considering as he himself states that harassment in the workplace is a very serious matter, issued a policy in a memorandum dated 27 January 1995, which refers on pages 13 and 14 to "grievance":

*"Pursuant to an agreement between the Treasury Board Secretariat and the Public Service Commission, the latter will investigate complaints of harassment ..."*

which show, among other things, that the Assistant Deputy Minister has adopted the same policy as the Treasury Board.

And in the Directive of the Deputy Minister of Justice, Mr. George Thomson, number 189SM of 16 February 1996, we find:

*"I am very pleased to announce the new policy of the Department of Justice with respect to dispute settlement. This policy represents a further stage in the Department's commitment to provide high-quality legal services."*

And in the "Goals" paragraph, the Deputy Minister adds:

*"Consistent with government policy, the Department encourages the use of the various mechanisms for dispute settlement, in all appropriate circumstances.*

and further on:

*"Recourse to dispute settlement mechanisms is an affirmation of two principles in the Department's mission statement: "To assist the Minister in the task of ensuring that Canada remains a just and law-abiding society".*

The Department issues laws, and publishes manuals on harassment, but when it comes to enforcing them, it seeks to escape its responsibilities, by failing to recognize that its



objections were submitted late, and ignoring all the fine statements and speeches that it has made on the subject.

**PSSRB: 166-2-27289**

- (a) Mrs. Bureau states that Mrs. Beaulieu was employed **“in a managerial or confidential capacity”**. There is no definition to my knowledge of “confidential capacity”, since all employees at all levels of Departments occupy, I should assume, a position of trust, even the Minister’s floor sweeper.

Nevertheless, we must refer here to the Treasury Board’s definition of LA-1, Chap. 3-1, where LA-1 is dealt with in the description of salary levels on page C-1:

**LA-1**

“Legal advisers at this salary level perform legal work under general supervision”.

A reading of this paragraph does not suggest a Management position. Furthermore, in the description of Mrs. Beaulieu’s tasks, we read:

“Under the supervision of a more experienced legal adviser, to perform legal work of a kind such as to acquire the training and experience necessary to obtain employment at a higher level.”

As can be seen, there is nothing in her tasks that would allow Mrs. Bureau to connect Mrs. Beaulieu’s job to Section 2 of the Act.

- (b) With reference to Mr. Marcel Gauvreau, and the notes are available to demonstrate this, Mrs. Bureau herself states in paragraph 2 of her letter:

“The response at the last level must have been made without taking account of the questions that she had asked the investigator.”

The case speaks for itself: a peremptory plea has been entered, despite her numerous appeals, as demonstrated in the record submitted to the deputy minister. In the face of repeated questions, the investigator, Mr. Baron, stated that he could no longer

*remember, he did not have his notes, and he was not in a position to reply to Mrs. Beaulieu's questions...*

*As to the fourth paragraph of Mrs. Bureau's letter, which states that the grievance does not relate to a suspension or financial penalty nor to any disciplinary action, it is appropriate to refer to complaint 166-2-27313 which is the result of this first grievance lodged by Mrs. Beaulieu against Mr. Marcel Gauvreau.*

**PSSRB: 166-2-27335**

*Mrs. Bureau states in paragraph 2*

*"These proceedings are not yet terminated; the report from the department's official counsel has not been completed".*

*The department's counsel forgets that Mr. Grosleau of the Staff Relations Branch has been trying in vain, since last December, to arrange a meeting with Mr. Mayrand, who seems to be very busy. In our letter of 4 June 1996, we indicated to Mr. Grosleau that more than ample time had passed, and that we were referring the whole affair to the Board.*

*The other reasons invoked are the same as those cited at the beginning of this letter. Consequently, there is no need for us to comment further.*

**PSSRB: 166-2-27314**

*The departmental counsel forgets that if it had not been for the complaints of abuse of authority and breach of ethics against Mr. Pépin, there would never have been a letter of dismissal, as mentioned in complaint no. 166-2-27313.*

*As to the rest, we would refer you again to the comments set out above.*

**PSSRB: 166-2-27315**

*I think the employer's counsel must be taking Mrs. Beaulieu's letters in another context when she says her supervisor gave a "divergent opinion".*

*This is not the point at issue. Mrs. Beaulieu's letter speaks for itself, saying in substance that it was a legal opinion that Mrs. Beaulieu had given, and that it had been approved by "her supervisor" in consultation with him, and that, for reasons that are not clear, he had changed his mind a few days later and issued*

another one, without Mrs. Beaulieu's knowledge, indeed without consulting her or telling her of its contents.

As to the rest, we would refer you again to the comments set out above.

**PSSRB: 166-2-27313**

The departmental counsel mentions that Mrs. Beaulieu ceased to be an employee upon expiration of the period for which she was appointed.

There are three points here that have either been left out or ignored:

- (1) "The supervisor" did not have the required authority to declare her dismissed;
- (2) The contract between FORD-Q and the Department of Justice, in paragraph 1 of the Agreement, provides that six months before expiry of said contract, FORD-Q must advise the Department of Justice of any change. Now, there is nothing on the file to show that any changes had been requested by FORD-Q.
- (3) In the matter that concerns us, FORD-Q had the duty, initially, to advise the Department of Justice six months before any changes to the Agreement between the Departments. Subsequently, the Department of Justice was supposed to review the situation of its staff, according to the order of employment seniority of legal advisers for the years 1993, 1994, and 1995, and then to reclassify Mrs. Beaulieu.

Mrs. Bureau, in her letter of 25 July to the Canadian Human Rights Commission regarding the questions raised by Mr. Jean-Guy Boissonneault, answers as follows on page 2, para. 4:

*"With reference to the non-renewal of other employees of the Department for the years 1993, 1994 and 1995, the Department is now in the process of compiling this information, and I shall provide you with the appropriate comments as soon as they are available."*

This stands in contradiction to the letter of 26 July which she wrote to you, since she still does not have this information.

**PSSRB: 166-2-27316**

*With all due respect, we strongly deny the employer's contentions, and the contents of the employer's letter of 26 July. We maintain that, when it comes to interpretation or application of a Treasury Board directive to Mrs. Beaulieu, the Board has the power to deal with the case, since Mrs. Beaulieu has suffered financial injury. It is not a question here of a higher salary than that provided for in her employment contract, but rather of suspending the system of performance pay for the applicant, under which the applicant is entitled to receive performance increases consistent with the performance ratings she has earned in her work.*

*Let us not forget that the same counsel is pleading in another Federal Court case against the Department, for the same reasons, where she is invoking totally different arguments that would be just as acceptable in the present, similar case. This leads us to wonder about the good faith of the employer...*

*For all these reasons, we believe that the objections contained in the letters sent by the employer's counsel are ill-founded and should be rejected, and that the dates of 7 to 11 October should be retained as those on which the parties may appear before the Board and submit their arguments to adjudication.*

*I thank you in advance for your consideration of this matter. We are at your disposal to give an oral presentation of the responses outlined above, as you deem fit.*

*In the meantime, I remain, yours sincerely etc...*

**Reasons for the decision on the preliminary objection**

The jurisdiction of an adjudicator within the context of the *Public Service Staff Relations Act* derives from Section 92 of the text of that Act:

*Adjudication of Grievances**Reference to Adjudication*

*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; or*

*(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 (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 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.*

*(2) Where a grievance that may be presented by an employee to adjudication is a grievance described in paragraph (1)(a), the employee is not entitled to refer the grievance to adjudication unless the bargaining agent for the bargaining unit, to which the collective agreement or arbitral award referred to in that paragraph applies, signifies in the prescribed manner its approval of the reference of the grievance to adjudication and its willingness to represent the employee in the adjudication proceedings.*

*(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.*

*(4) The Governor in Council may, by order, designate for the purposes of paragraph (1)(b), any portion of the public service of Canada specified in Part II of Schedule I.*

For the purposes of this file it is my opinion that Ms. Beaulieu's complaint may be considered as a grievance under the provisions of Section 92 of the *Public Service Staff Relations Act*. That said, Ms. Beaulieu's grievance concerns the actions of a colleague at work. It is not therefore a grievance against disciplinary action which might be the subject of a reference under the provisions of paragraphs 92(1)(b) and (c) of the Act. Moreover, the fact that Ms. Beaulieu is not a member of a union deprives her of any possibility of referring to adjudication a grievance concerning the interpretation or application of a collective agreement or an arbitral award under paragraph 92(1)(a). Paragraph 92(2) does require that a public servant be subject to a

collective agreement and supported by his bargaining agent in referring to adjudication a grievance concerning the interpretation of a collective agreement or an arbitral award.

I therefore have to conclude that I do not have the jurisdiction to hear Ms. Beaulieu's grievance. I therefore do not have to rule upon the question of time limits raised by Ms. Bureau or to decide on the relevance of Section 91 of the Act in this matter.

**Yvon Tarte,  
Chairperson.**

OTTAWA, January 10, 1997.

Certified true translation

Serge Lareau