

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

FLOYD JOSS

Grievor

and

TREASURY BOARD
(Agriculture and Agri-Food Canada)

Employer

Before: J. Barry Turner, Board Member

For the Grievor: Himself

For the Employer: Ronald Snyder, Counsel

Heard at Lethbridge, Alberta,
November 13 and 14, 1997.

DECISION

Dr. Floyd Joss, a VM-02, Food Production and Inspection Branch (FPIB) Veterinarian, Agriculture Canada, Lethbridge, Alberta, is grieving a ten-day suspension without pay. His grievance reads:

I grieve the disciplinary letter dated Dec. 27th, 1995 and signed by Dr. Stemshorn. The letter is unfair and unreasonable and does not take into account, related events of harassment by the department, against me.

The letter of suspension dated December 27, 1995 signed by Barry Stemshorn, Director General, reads:

This is further to my letter of November 28, 1995 with respect to the decisions rendered by the Public Service Commission, concluding that your actions in regards to both Messrs. Simmons and Barlow were in breach of the Treasury Board policy on harassment in the workplace.

This is of the most serious consequence, particularly for someone charged with supervisory and/or managerial responsibilities. I am therefore charged with determining appropriate remedial action to ensure that this type of behaviour does not occur again. To this end, in accordance with the authority delegated to me, I am hereby suspending you without pay for a period of ten (10) working days commencing January 22, 1996 to February 2, 1996 inclusive. During this period, you are not to appear on client property. Should you wish to communicate with the Department, you may do so through Mr. Outhwaite or Dr. Marjerrison, when he is acting on Mr. Outhwaite's behalf.

I must caution you that in the event of further misbehaviour on your part, more severe disciplinary action, up to and including discharge, will be taken.

I am also directing that you attend one of the Harassment Awareness sessions currently being conducted within the Region, if you have not done so within the past three months.

A copy of this letter will be placed on your personal file.

If you consider this action to be unwarranted, you are entitled to present a grievance in accordance with Section 91 of the Public Service Staff Relations Act.

Dr. Joss is requesting the following corrective action:

- 1. The letter be removed from all files and be returned to me for destruction.*

2. *All associated costs to me be repaid.*
3. *All paid benefits denied me be credited to me.*
4. *That I be made whole.*

I am being asked to decide if the employer's action was justified. The hearing lasted one and one-half days with three witnesses testifying and forty-seven exhibits submitted into evidence.

Dr. Joss requested the exclusion of witnesses, including Mr. Pierre Séguin, Director, Labour Relations for the FPIB. Mr. Snyder objected since Mr. Séguin was not in any way involved in the matter before me. Mr. Séguin became Director long after the suspension. I allowed Mr. Séguin to remain but excluded all other witnesses.

Summary of Evidence

At the outset, I was advised that adjudicator Simpson heard a related matter in Lethbridge regarding grievor Joss on April 15, 1997. I was presented with a copy of her decision *Joss* (Board file 166-2-26841) as background. Mr. Snyder referred to page 6, paragraph 2 of this decision that reads in part:

Mr. Vince Barlow, Human Resources Advisor, Agriculture Canada, explained the nature of the four meat plants in the Lethbridge area: "Burns" and "Lilydale" for red meat; "Tabor", a turkey plant; and "Fort McLeod" for horse slaughtering. Dr. Joss was a VM-02 at the Burns Plant who performed the basic duties of his job description but in addition had been given the task of being an "allocations officer" which meant that he performed the daily tasks of assigning the meat inspectors (PPI's) to the plants. Dr. Joss had a number of meat inspectors reporting to him and he in turn reported to Dr. Sturm. Dr. Joss was made an allocations officer in 1991 and continued to perform this function until he was reassigned to the Lilydale Plant to separate him from one of the employees, Basil Simmons, a meat inspector, who had until then reported to Dr. Joss. ...

A summary of the allegations of harassment by Messrs. Simmons and Barlow are outlined in the Public Service Commission (PSC) investigator's reports, Exhibits A-1 and A-2. A description of Mr. Simmons' harassment allegations from Exhibit A-1 reads on pages 1 and 2 as follows:

1. *In 1994, Mr. Simmons alleged that he had been harassed in the workplace by Dr. Joss. A departmental investigation was undertaken and it was determined that harassment had occurred. Dr. Joss grieved that finding and ultimately took it to adjudication.*

Before the case was heard, Dr. Joss and the department entered a memorandum of agreement. Mr. Simmons was specifically referred to in the memorandum. Dr. Joss later brought the memorandum into his workplace. The memorandum was also transmitted by telecopier and posted at the plant where Mr. Simmons is employed.

When this came to Mr. Simmons attention, he wrote the following letter to Dr. L. Anderson, Director General, Agriculture and Agri-Food Canada, Food Production and Inspection Branch, Alberta Region (now retired):

Please find attached a copy of a letter that was posted in the Inspectors Office at Est. 92B, Lilydale CO-OP ag Lethbridge, Ab. on June 2, 1995 by Dr. F. Joss. Subsequently a copy of this letter was also posted in the Inspectors Office at Est. 1A, Burns Meats in Lethbridge.

Again I feel that this action taken by Dr. Joss constitutes further harassment towards me.

I respectfully request that the employer take appropriate action to rectify this ongoing behaviour by Dr. Joss which is continuing to cause undue stress to myself and my family.

2. *In another incident, in September 1993, Mr. Simmons asked his family physician to prepare a letter for Dr. Joss which detailed his attendances upon Mr. Simmons. Dr. Joss subsequently made an appointment with the physician and sought details concerning whether Mr. Simmons had seen the physician on a certain date. Dr. Joss later contacted the College of Physicians and Surgeons to intervene and require the physician to provide a written response to his enquiry. This too was considered by Mr. Simmons to be an act of harassment.*
3. *Mr. Simmons also alleged that he had been harassed by Dr. Joss taking steps to question other employees about him. This was detailed in a letter from his lawyer as:*

Two employees at Lakeside Packers in Brooks were questioned by Dr. Joss regarding their recollection as to any time they had worked with Mr. Simmons when he

may have “abused the system” by taking unauthorized time off.

A description of Mr. Barlow's harassment allegations from Exhibit A-2 reads on pages 1 and 2 as follows:

- 1. Mr. Barlow alleged that on May 30, 1995, Dr. Joss attended upon the Human Resources office in Calgary. He wished to serve Mr. Barlow with a subpoena to attend a hearing of the Public Service Staff Relations Board (“the PSSRB hearing”) on June 1, 1995. He did not have an appointment to see Mr. Barlow and when he was advised that Mr. Barlow was not in, he stated the opinion that even that if he had made an appointment, Mr. Barlow would have taken steps to avoid service of the subpoena.*
- 2. Dr. Joss was alleged to have sullied Mr. Barlow's reputation by describing him and his actions in inflammatory terms to senior personnel.*
- 3. Included in Mr. Barlow's complaint was a reference to a recent exchange of correspondence between Rosemary Turner, Director, Human Resources Branch, Alberta Region, and Dr. Joss. Ms. Turner's letter follows:*

I am advised that you visited my office on May 30th, 1995 and during your attempt to obtain information for which you are not entitled, you made derogatory remarks about Mr. Barlow and attempted to intimidate my staff.

This is to advise your behaviour was unacceptable and intolerable. In future, you are to make any necessary contacts with this office through your supervisor. In the unlikely event that it is necessary to contact this office, you are to contact me directly. Under no circumstances are you to contact my staff unless it is to make an appointment with me.

Dr. Joss responded and included the following passage in his letter:

In your second paragraph you comment on whom I may contact with regard to the concerns which I may have regarding your department. Please know that I will communicate with appropriate individuals and authorities in these matters and will not be limited by your letter or wishes.

Mr. Snyder also presented Exhibits E-4 to E-19, E-25, and E-26 from the *Joss* decision (*supra*) with brief comments on some of them. Dr. Joss agreed they were proper exhibits, but did not necessarily agree with Mr. Snyder's comments concerning them. These exhibits basically deal with grievances and grievance replies by Dr. Joss; a series of alleged harassment situations involving Dr. Joss, Mr. B. Simmons, and Mr. V. Barlow; a five-day suspension of Dr. Joss that was grieved and subsequently reduced to a letter of reprimand on 1 June 1995 through a settlement Memorandum of Understanding (M.O.U.) (Exhibit E-17) that the grievor admitted making public at the Lilydale Plant where he was working at the time. The M.O.U. contained remarks derogatory towards Mr. Simmons.

The release of the M.O.U. resulted in a harassment complaint by Mr. B. Simmons against Dr. Joss (Exhibit E-18) that led to the grievor's suspension with pay pending investigation on June 8, 1995 (Exhibit E-19). Dr. Joss grieved this suspension that was partially upheld by adjudicator Simpson in the *Joss* decision (*supra*) dated September 22, 1997.

On June 26, 1995 Dr. Joss was ordered by Mr. W. Outhwaite, Director Operations, FPIB (Exhibit E-26) to remain separate from Mr. Simmons pending a harassment investigation by the Public Service Commission (PSC) (Exhibit E-25).

Mr. Snyder said he will prove allegations that Dr. Joss has harassed Mr. B. Simmons and Mr. V. Barlow as outlined in the letter of suspension.

1. Joanne Archibald, a lawyer with the Public Service Commission (PSC), investigated the harassment complaints by Mr. V. Barlow in her report Exhibit A-2, and by Mr. B. Simmons, report Exhibit A-1. She has been doing similar investigations since 1991, and referred to the Treasury Board harassment policy that provides the following definition:

Harassment means any improper behaviour by a person employed in the Public Service that is directed at and is offensive to any employee of the Public Service and which the person knew or ought reasonably to have known would be unwelcome. It comprises objectionable conduct, comment or display made on either a one-time or continuous basis that demeans, belittles, or causes personal humiliation or embarrassment to an employee.

Her conclusion in Exhibit A-1 reads:

It is the conclusion of this investigation that the complaint that Mr. Simmons was harassed by Dr. Joss in contravention of the Treasury Board policy on harassment in the workplace is founded. As detailed above, the actions of Dr. Joss in introducing the memorandum of agreement into the workplace and contacting Dr. Simpson both directly and indirectly were improper acts of harassing effect within the meaning of the harassment policy.

Her conclusion in Exhibit A-2 reads:

It is the conclusion of this investigation that in the limited areas noted, the complaint of Mr. Barlow is founded. The harassment policy was breached by Dr. Joss's comment in the Calgary Human Resources office on May 30, 1995 and by his remark in his letter of June 14, 1995 to Dr. Anderson.

Ms. Archibald identified the formal harassment complaints dated July 4, 1995 by Mr. Barlow as Exhibit A-3, and a letter dated June 14, 1995 from Dr. Joss to Dr. Anderson, Director General, Calgary Regional Office, (Exhibit A-4) regarding a letter of reprimand Dr. Anderson sent to the grievor on June 1, 1995 after the M.O.U. (Exhibit E-17) was signed. The M.O.U. substituted the grievor's five-day suspension with a letter of reprimand.

Ms. Archibald testified that neither side could have anticipated the M.O.U. getting into the public domain, even though it did not have a non-publication clause included in it.

During cross-examination by Dr. Joss, Ms. Archibald recalled she first met the grievor over the telephone in February 1994 when she conducted an appeal board investigation regarding an appointment the grievor was seeking (Exhibit G-1). Mr. Snyder objected stating this issue is a staffing matter and not related to the harassment issues before me. I agreed. I also noted that since the grievor was representing himself, I would allow him some extra latitude.

The witness identified a memorandum she wrote to file dated 9 June 1995 (Exhibit G-3) regarding a conversation she had with Dr. Anderson about how the M.O.U. was posted by Dr. Joss in his plant and faxed by someone to the plant where

Mr. Simmons worked. This action by Dr. Joss ultimately led to Mr. Simmons' harassment complaint.

Ms. Archibald could not recall Rosemary Turner, Director, Human Resources Branch, Agriculture and Agri-Food Canada, Calgary telling her anything about Dr. Joss as per Ms. Turner's letter on June 1, 1995 to the grievor (Exhibit G-4), other than a discussion of his grievance. Nor could she recall seeing Dr. Joss' response (Exhibit G-5) to Ms. Turner's June 1, 1995 letter. The witness identified her memorandum to file dated June 27, 1995 (Exhibit G-6) after getting an overview of the grievor's situation in June 1995 regarding the posted M.O.U.

Ms. Archibald identified her preliminary case reports dated October 12, 1995 regarding Mr. B. Simmons' allegations (Exhibit G-7), and Mr. V. Barlow's allegations (Exhibit G-8), that were sent to the parties for comments before final reports with conclusions. The grievor's response dated October 22, 1995 to the preliminary Simmons report was identified as Exhibit G-9.

The witness said that she felt the M.O.U. spoke for itself and that Dr. Joss' action regarding its release also spoke for itself. Ms. Archibald could not recall asking Lindsay Jeanes, counsel for the Treasury Board who signed the M.O.U., if Mr. Simmons had seen it in draft form. She added Ms. Jeanes was surprised the M.O.U. did not have a non-publication clause in it since they normally have one. Ms. Archibald testified that she wrote in her final report on the Simmons' complaints on page 4, number 4 that "... Mr. Simmons indicated that he had never seen the memorandum (Exhibit E-17) before it was executed. ..." because this is what witnesses told her had happened. During her attempts to find out why the M.O.U. did not have a non-publication clause, Ms. Archibald said Mr. Barlow told her Mr. Simmons had not been involved in the text of the M.O.U. She confirmed this in her memorandum to file dated 3 November 1995 (Exhibit G-11) that reads in part:

...

The purpose in contacting her [Ms. Jeanes] was principally to determine what specific knowledge Basil Simmons had of the express terms of the Memorandum. Both Mr. Simmons and the department have indicated that he had none. He had an awareness that the matter was being settled.

Given the number of sources of this view and the fact that Dr. Joss can only speak to what he saw from a distance and thought must be happening, there is no basis to prefer his view.

Ms. Archibald identified another memorandum to file dated 13 December 1995 (Exhibit G-12) written after she contacted Ms. Jeanes the same day, that reads in part with respect to the grievor's lawyer at the time, Mr. Keebler:

...

On the first point: immediately prior to the PSSRB hearing, she [Ms. Jeanes] was presented with a handwritten proposal containing the terms of the memorandum of agreement. Mr. Keebler proposed that they jointly advise the adjudicator that the matters were settled. Ms. Jeanes stated that she and Mr. Keebler discussed confidentiality and agreed that the settlement would be confidential. She stated that Peter Keebler knew that. In his view, the information could not be permitted to get around. The preamble was created, per Keebler, to entice Dr. Joss to sign. Otherwise, he was adamant about going through the hearing.

...

Ms. Jeanes recalled that Mr. Simmons saw the handwritten document and that she told him that it would be kept confidential. He never saw the typewritten document.

Mr. Snyder objected since Dr. Joss had information, from Ms. Jeanes regarding what she recalled at the time of settlement in June 1995, that Dr. Joss should produce. It was produced as Exhibit G-14 (undated and unsigned) and concludes with point number 8 that reads:

8. *I [Lindsay Jeanes] do not know whether or not Mr. Simmons ever saw the signed typed document but the typed document was essentially the same as the handwritten document that he was shown at the Courthouse.*

Ms. Archibald identified an undated letter from Mr. A. Rhys, Regional Chief, Appeals and Investigation Branch, PSC, sent to Dr. Joss (Exhibit G-13) that reads in part with respect to the M.O.U.:

...

I do not see any reason why the case reports would need to be revised to reflect this new information. It has no impact on the analyses and conclusions. Even if Mr. Simmons clearly understood that there was no confidentiality clause in the agreement, this does not justify showing such a document to Mr. Simmons' colleagues in the workplace. Ms. Archibald explained the reasons quite clearly in paragraph 22, page 8 of the Simmons report.

The witness said that whether Mr. Simmons had or had not seen the draft or the final M.O.U., it would not have made any difference since Dr. Joss' action to bring it to the office and make it public was wrong, especially in light of Mr. Keebler's agreement to keep it confidential.

Regarding the Simmons' visit to see Dr. Simpson (Exhibits E-14 and A-1), Ms. Archibald concluded that Dr. Joss was not really concerned about the condition of Mr. Simmons' health, but whether or not he had actually seen Dr. Simpson during the period in question and was therefore harassing Mr. Simmons. The witness added: *"You were not going to believe anyone unless their answers were one hundred percent of what you wanted them to say. You had a dogged pursuit of Mr. Simmons over an eighteen month period. Your actions were unbelievable, especially when you misrepresented yourself to the Alberta College of Physicians and Surgeons and you had no basis to conduct yourself the way you did."*

She identified a generic case summary of the Joss situation (Exhibit G-15) that is sent to investigators across the country that she said had no bearing on her decision.

2. Dr. Barry Stemshorn, DVM, Regional Director General, FPIB, Alberta Region since October 1995, decided after he received the final investigation reports (Exhibits A-1 and A-2), that discipline was needed. He imposed the ten-day suspension on Dr. Joss (Exhibit A-5). He considered: the context of the harassment complaints in light of harassment awareness programs that management staff had taken including Dr. Joss; the history of the case in light of a credible third party investigation by the PSC and an earlier five-day suspension reduced to a written reprimand; the nature of the offences regarding Mr. Simmons who is a member of a visible minority and a lowest level inspector; the posting of the M.O.U. as an unwelcome event; the invasion of Mr. Simmons' privacy by Dr. Joss' contact with the

Alberta College of Physicians and Surgeons as well as Dr. Joss' lack of respect regarding Mr. Barlow; and the fact that Dr. Joss has senior responsibilities. Dr. Stemshorn considered demoting or relocating Dr. Joss to a laboratory where, according to Dr. Stemshorn, Dr. Joss would have been unwelcomed. He decided after consultation with staff relations and Treasury Board, to impose a ten-day suspension and to give the grievor further harassment awareness training. This was the first time he had issued a suspension to anyone.

Dr. Stemshorn informed Mr. Simmons and Mr. Barlow on December 29, 1995, based on advice from Mr. Rhys, Regional Chief, Prairies and Northwest Territories Region, Appeals and Investigation Branch, PSC, the PSC found that their harassment complaints were justified (Exhibits A-6 and A-7).

During cross-examination, Dr. Stemshorn said the first time he heard about the grievor's problems was in Ms. Archibald's reports and that he discussed these problems with the grievor when he imposed the ten-day suspension.

When asked if he (Dr. Joss) was a problem employee, Dr. Stemshorn responded: "You are having definite problems". The witness identified a memorandum dated March 14, 1996 from Dr. Joss to James Marjerrison, Operations Manager, FPIB, Lethbridge, about a meeting they had on March 13 during the first level of his grievance (Exhibit G-16). The memorandum (Exhibit G-16) was not responded to until December 1996.

Dr. Stemshorn reminded the grievor about the Employee Assistance Program in December 1995 (Exhibit G-17).

3. Dr. Floyd Joss took the stand in his own defence, and proceeded to explain some of the background to his situation, most of which is explained in adjudicator Simpson's *Joss* decision (supra) or was irrelevant as I suggested to him. Regarding the M.O.U. (Exhibit E-17), Dr. Joss explained that since there were a lot of inspectors who wanted to know what had happened at his hearing on June 1, 1995, and since he had no discussions with anyone concerning the confidentiality of the M.O.U., Dr. Joss placed a copy of it on a table at work. Someone took a copy of it to the Burns plant where Mr. Simmons worked. The next day Dr. Joss was suspended with pay for nine days that became the subject of the *Joss* decision (supra).

Regarding his meeting with Dr. Simpson, the grievor said he wanted to know why Mr. Simmons had been on sick leave for September 8, 1993. Dr. Simpson was hostile towards him but checked his records for this date but had no recorded visit for Mr. Simmons, probably because he saw him at the hospital and not in his office. When Dr. Joss asked for something in writing and Dr. Simpson refused, Dr. Joss wrote the Alberta College of Physicians and Surgeons (Exhibit G-22). He received their response (Exhibit G-20) saying the College had asked Dr. Simpson to provide the information Dr. Joss had requested.

Dr. Joss testified that he wanted to confirm Mr. Simmons' medical visit, not to see his medical record, because he believes Mr. Simmons, who he considers "is a chronic liar", had not seen Dr. Simpson during the day in question.

Dr. Joss complained Mr. Outhwaite was not available to testify at this hearing. I reminded the grievor that he was given two opportunities to postpone the hearing dates as recently as November 10, 1997 in a letter from the PSSRB. He declined at that time to ask for a postponement.

The grievor's explanation regarding who saw the M.O.U. on June 1, 1995, is that he agreed to a draft with his lawyer Mr. Keebler, who then brought the draft into the courthouse hallway where it was seen by Mr. Barlow, Mr. Simmons and Lindsay Jeanes who signed it. The hearing then ended. Dr. Joss claimed that the M.O.U. was a public document.

During cross-examination, Dr. Joss did not know if his lawyer, Mr. Keebler, was concerned about the confidentiality of the M.O.U. When asked to refer to Exhibit G-12 that indicates Ms. Jeanes and Mr. Keebler agreed the settlement (Exhibit E-17) would remain confidential, Dr. Joss responded: "That was up to him". The grievor said if he just told his colleagues at work the matter had been settled, this would have been "a silly response because we're like a family working together all day". He said his letter of reprimand did not make it into the workplace because he has been too shy to show anything since June 1995.

Dr. Joss entered three versions of the M.O.U. (Exhibit G-21).

Argument for the Employer

Mr. Snyder did not intend to review all the evidence before me, but he argued the time, the effort, and the energy consumed over the years regarding Dr. Joss has been excessive, and that no one really knows the entire history of all his complaints over the years. The department has spent more time on Dr. Joss than on all other veterinarians combined in the Region. He argued no matter what anyone did for Dr. Joss, it was never enough, and that if he did not get the answer he wanted, he would become abusive as is shown in the tone of his letters.

He argued that even if I reduce the suspension by one day, Dr. Joss will claim complete victory. Mr. Snyder argued Dr. Stemshorn explained the sense of hopelessness regarding the grievor since he could not relocate him anywhere because the grievor's reputation preceded him. Mr. Snyder concluded the grievor has no sense of appreciation for the boundaries of decency in the workplace, particularly with respect to Mr. Simmons' doctor and confidentiality, and Mr. Barlow's reputation. He concluded the harassment training taken by the grievor has had no impact on him to date, and that the discipline imposed by Dr. Stemshorn was meant to be corrective not punitive.

Mr. Snyder reminded me that the grievor thinks he is the victim, even though Dr. Joss admitted his wrongdoings to Ms. Archibald, and has not learned from his mistakes.

Counsel referred me to the *Joss* decision (supra) in particular page 12, paragraph 2 that indicates Mr. Simmons and Dr. Joss were in "separate work locations", but harassment continued by the release the M.O.U. The employer has a duty to keep the workplace free of harassment. He also argued that paragraph three on page 12 of the *Joss* decision (supra), that is the discussion on the intent of the grievor when he posted the M.O.U., was not an issue before adjudicator Simpson and that the M.O.U. was not a public document. He therefore asked me to dismiss the grievance.

Mr. Snyder referred me to *McMorrow* (Board file 166-2-23967).

Argument for the Grievor

Dr. Joss argued that when Mr. Barlow did an investigation relating to him, Mr. Barlow was biased, but Ms. Archibald appeared to try to be fair. However the overall situation regarding his alleged harassment became “a mockery of justice”. He added that after Ms. Archibald reviewed some documents and spoke to him “she was spitting angry”. Dr. Joss argued the investigation became an abuse of the process and was contrary to the 1960 Canadian Bill of Rights, section 2(e) that reads:

2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

...

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

He concluded at the time that he was deprived of a fair hearing. In response to my question, Dr. Joss said he felt he had received a full and fair hearing before me.

He argued the nine-day suspension with pay was more humiliating than this ten-day suspension without pay, since he was expecting some penalty at the time and used the ten days to work on his basement.

Dr. Joss agreed that over a dozen years with the government he has made a lot of enemies, but he has been opposing an abusive system and has been struggling for freedom. He concluded by saying Dr. Stemshorn inherited a difficult situation in the fall of 1995 and that he (Dr. Joss) probably would have done the same as Dr. Stemshorn did. He said he has no animosity towards Dr. Stemshorn or Mr. Outhwaite. He apologized to both of them and hopes to never appear before the PSSRB again.

Decision

As the independent, experienced, and articulate PSC investigator Ms. Archibald concluded in her final reports Exhibits A-1 and A-2, and after reviewing all of the evidence, I too believe the harassment complaints are well founded. I also find the ten-day suspension appropriate in the circumstances.

As Ms. Archibald said, Dr. Joss had a “dogged pursuit of Mr. Simmons” to such an extent he wrote the Alberta College of Physicians and Surgeons to get it to request personal information be released by Dr. Simpson regarding an alleged visit by Mr. Simmons to see his doctor as far back as September 1993. Dr. Joss was not acting like a manager when he did this but like an investigator.

With respect to the most important indiscretion, that is the conscious release of the M.O.U., I cannot imagine any motive by the grievor other than harassment towards Mr. Simmons. If indeed they were all “family” as Dr. Joss tried to explain, then why would he harass a family member the way he did?

This brings me to the lack of a non-publication clause in the M.O.U. It is difficult to focus clearly on who said what to who, or who saw what in the hallway of the courthouse when the settlement was reached on June 1, 1995. Suffice to say as in the *McMorrow* decision (supra) on page 32 where Mr. McMorrow “knew or ought to have known that his behavior was improper”, Dr. Joss should have known or ought to have known that it was a confidential document signed in good faith between two lawyers settling a personal matter that directly concerned him. Granted, it is a serious oversight on the part of the signees that there was no non-publication clause, but it is a more serious lack of professional judgment by Dr. Joss that caused unnecessary, unwarranted grief for Mr. Simmons. As a senior manager, Dr. Joss ought to have known better. I believe this was harassment as defined by the Treasury Board policy.

Although most of the hearing focussed on events surrounding Mr. Simmons and Dr. Joss, there is also the formal harassment complaints (Exhibit A-3) by Mr. Barlow that contributed as well to the ten-day suspension of Dr. Joss. The two main issues that Mr. Barlow complained about were: derogatory remarks made about Mr. Barlow in front of Human Resources Branch staff in Calgary on May 30, 1995 referred to in Mr. Barlow’s complaint (Exhibit A-3) and communicated to the grievor by

letter from Ms. R. Turner on June 1, 1995 (Exhibit G-4); and the reference to a harassment hearing Mr. Barlow conducted as a “kangaroo court” in Dr. Joss’ letter sent to Dr. Anderson on June 14, 1995 (Exhibit A-4) and copied to the Minister of Agriculture, the Honourable Ralph Goodale.

I heard no contradictory testimony, nor received any substantial evidence, that could lead me to believe the alleged harassments of Mr. Barlow are anything but real. I am therefore in agreement with Ms. Archibald’s conclusion in her investigation report (Exhibit A-2, page 12) that Mr. Barlow’s complaints are also founded.

I note that Dr. Joss felt he had had a full and fair hearing before me and does not wish to appear again before this Board. I believe him, and I trust his apologies are sincere and will be long lasting ones. Only Dr. Joss can control this.

For these reasons therefore, the grievance is denied.

**J. Barry Turner,
Board Member.**

OTTAWA, January 13, 1998.