

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

MARY BROWNRIGG

Grievor

and

**TREASURY BOARD
(Statistics Canada)**

Employer

Before: J. Barry Turner, Board Member

For the Grievor: Herself

For the Employer: Roger Lafrenière, Counsel

Heard at Hamilton, Ontario,
April 30 and May 1, 1997

DECISION

Mary Brownrigg is grieving the termination of her term appointment at the PM-02 level as a Census Area Manager (CAM), Statistics Canada, Census (Ontario Region), Hamilton-Niagara section. She accepted this appointment on August 11, 1995 (Exhibit E-2) and was to have been on probation for the duration of a nine month term.

The letter of termination (Exhibit E-7) signed by Wilf Bozzato, A/Director, Ontario Region, Statistics Canada, dated December 13, 1995 reads:

Further to your discussion with David Beeching on December 11, 1995, this is to confirm that your term employment with Statistics Canada is ended. A Record of Employment is enclosed.

Please be advised that all of the maps, manuals, training material, and supplies you were issued will have to be recovered, including your photo identification. You will be contacted to make arrangements for this material to be picked-up.

Any outstanding travel claims will be paid once we have recovered the materials mentioned above.

Thank you in advance, and best of luck in your future endeavours.

Her grievance dated December 19, 1995 reads:

I GRIEVE MANAGEMENT'S UNLAWFUL TERMINATION OF MY TERM APPOINTMENT WITH JUST CAUSE.

Ms. Brownrigg is requesting the following corrective action:

*REINSTATEMENT OF MY TERM APPOINTMENT WITHOUT LOSS OF SALARY AND/OR BENEFITS.
APOLOGY IN WRITING AND IN PERSON.
REMOVAL OF ALL RELATED DOCUMENTATION FROM ALL MY FILES.*

The hearing lasted two days with five witnesses testifying and twenty-six exhibits submitted into evidence.

On the surface, it would appear that a rejection on probation is not adjudicable under section 92 of the *Public Service Staff Relations Act*. However, Mr. Lafrenière argued that persons employed by Statistics Canada in the Programme Administration (PM) group on or after April 1, 1995 for the 1996 Census of Population, were subject to an exclusion order under the *Public Service Employment Act*, pursuant to P.C. 1995-466 dated March 21, 1995 (Exhibit E-1) thereby allowing Ms. Brownrigg's grievance to be adjudicable. Mr. Lafrenière referred to part of Exhibit E-1 that reads:

WHEREAS the Public Service Commission has decided, pursuant to subsection 41(1) of the Public Service Employment Act, to exclude from the operation of the Public Service Employment Act all persons appointed for a specified period on or after April 1, 1995 for the purpose of being employed by Statistics Canada in the Clerical and Regulatory, Programme Administration, Administrative Services, Information Services and General Services groups in connection with data collection and data processing for the 1996 Census of Population, during the period beginning on April 1, 1995 and ending on March 31, 1997;

He therefore requested that I hear the grievance on its merits. I agreed.

Mr. Lafrenière also argued that the standard that applies to the employer's decision to terminate the employment of probationary employees is outlined in Brown and Beatty, *Canadian Labour Arbitration*, 4th edition, chapter 7:5020, page 7-210 (Exhibit E-3) and reads in part:

... Rather, these arbitrators would require the employer to prove that the basis on which, the standards against which, and the resulting conclusion upon which, it relied to terminate a probationary employee as unsuitable were reasonable and proper. In the words of one arbitrator in establishing that its decision to terminate a probationer was not arbitrary, discriminatory, or in bad faith, the employer

... must verify that the employee had been given a fair opportunity to demonstrate whether or not ... [she] ... possesses the appropriate qualifications and suitability for permanent employment and that the employer had made a fair assessment of [her] qualifications and suitability for permanent employment.

On this view, the focus of the arbitral review is to ensure that the process by which the probationer was evaluated was not arbitrary, discriminatory or in bad faith, and one Ontario

court has held that there is a general duty of fairness even with respect to probationers.

Counsel requested the exclusion of witnesses. After explaining to the grievor what Mr. Lafrenière was asking for, coupled with a general explanation of how we were going to proceed, I granted his request.

Summary of Evidence

1. Lois Brown, the Census District Manager (CDM) in 1995/1996 in the Kitchener office of Statistics Canada, has been involved in census work since 1976. She is therefore very familiar with CAM responsibilities. Burlington and part of the Hamilton-Wentworth area assigned to the grievor were within her district. She became the grievor's immediate supervisor.

Ms. Brown met with the grievor near the end of July, 1995 as a follow-up to an interview her supervisor, Mr. Beeching, had had with Ms. Brownrigg for a CAM position (Work Description, Exhibit E-4). In July, Ms. Brown needed a phone number and an address for the grievor, but she did not receive this information until September 1995.

The witness identified a CAM Stage I Training Plan (Exhibit E-5) that was used for CAM training from November 14, 1995 until Friday, November 24, 1995, in Toronto for the 70 to 80 CAM's from across Ontario. She provided most of the training.

She added that the CAM's were being trained to do their job, part of which involved familiarization with the area they were assigned to. Most CAM's stayed together in the same hotel. Ms. Brownrigg received permission to stay at her mother's home about fifteen minutes by car from the training location.

Ms. Brown said that she first became concerned about the grievor during training when Ms. Brownrigg focused too much on small irrelevant details at the expense of looking at the larger picture as a CAM should do. She stated that a CAM would have to interview and hire around 12 Census Commissioners (CC) for his or her area, who in turn would each hire 15 to 20 Census Representatives (CR). In the end, a CAM could have 250 to 300 people reporting to him or her. Ms. Brown said the census

is very intense work that staff must be on top of at all times, with the need sometimes to make decisions quickly. While in training during a role-play exercise of interviewing a potential CC, during which the CAM's took notes since they would have to interview around 24 persons to get 12 satisfactory ones, a potential CC listed other activities that she was also involved in such as her cottage, bingo, bridge, and that she would hire friends and neighbours if selected. Ms. Brownrigg indicated that she would consider this person as a candidate for CC, whereas Ms. Brown said these were reasons not to consider her. Ms. Brown questioned the hiring judgment of the grievor as a result of the role-play exercise.

Ms. Brown expressed concerns about the grievor's mapping ability and identified a Statistics Canada map for Hamilton-Wentworth (Exhibit E-6) that was within the grievor's assigned work area. She added that using these maps for area familiarization is a very important aspect of the CAM job since this assures no surprises when the census forms are dropped off by the CC's, and also makes the CAM's aware of any problem areas for the CC's. She stated that by working from the maps the CAM's can identify obscure boundaries, areas of growth, where roads end, identify difficult areas to work, and eliminate overlap with the CAM next door. Ms. Brown testified that the grievor was the only one in the training session who was having problems with her boundaries and seemed confused about her areas. Ms. Brown concluded that, since Ms. Brownrigg had difficulty reading a map, this would adversely affect CC's and CR's in the Hamilton-Wentworth area particularly down the line.

Ms. Brown said she spoke with the grievor one day after training to express some of her concerns about the jump from being a CC as the grievor had been in 1991 to a CAM, and indicated that a CAM had to look at the big picture and not get bogged down in little details as Ms. Brownrigg tended to do.

Ms. Brown said that, after the training ended on November 24, 1995, the grievor took some supplies with her such as maps, brochures for CC testing, manuals. The CAM's also had a home study to perform and were expected to begin studying the areas they were unfamiliar with. She said Ms. Brownrigg knew the Burlington area very well but not the Hamilton-Wentworth portion. The CC's had to be selected and hired by the end of February 1996. Grand & Toy, the chosen office supplier, was to

send the Ontario CAM's their supplies within a week after the end of their training on November 24, 1995. Ms. Brownrigg's supplies did not arrive when expected and she accused Ms. Brown of preventing them from arriving. The witness denied she had done such a thing, and added that no other CAM's called her about late supplies. One of Ms. Brown's co-workers, Cathy McCarthy, was responsible for sending out the supplies and told Ms. Brown that there was a supply problem in relation to Ms. Brownrigg. Ms. Brown indicated that the grievor should not have contacted Ms. McCarthy directly about her supplies since the "chain of command" is through Ms. Brown if a CAM has a problem.

Ms. Brown testified that she and Mr. D. Beeching, Census Regional Manager, met in Toronto with the grievor on Wednesday, November 29, 1995 to discuss Ms. Brown's two main concerns: the grievor's mapping problems and area familiarization and her interviewing skills. By November 29, the grievor had started work on CC selection, had done the home study, was looking for office space but had not yet done the Hamilton-Wentworth area familiarization. Ms. Brown instructed the grievor on November 29 to do the area familiarization and no other jobs for the time being.

Witness Brown said that by November 29, 1995 she felt the CAM role was beyond the grievor's capabilities and suggested she take on a CC role; Ms. Brownrigg said she would think about this while doing the area familiarization. They spoke on Sunday, December 3 at which time the grievor said all was going well. They spoke again on December 4 when Ms. Brown gave the grievor four days to complete the Hamilton-Wentworth area familiarization, especially the need to look for obscure boundaries. Ms. Brown said that she got little feedback on this and that the handwriting on the Statistics Canada map of Hamilton-Wentworth (Exhibit E-6) was hers. Ms. Brown testified she reviewed the area in six hours. Because she felt Ms. Brownrigg was resisting doing the area familiarization, they met on Friday, December 8 to review what the grievor had done to date. Ms. Brown said up to that point the grievor had missed the obscure boundaries, did not know what kind of agriculture was in the area, had spent too much time in a campground, and had no detailed notes in her CAM record book as the CAM directives require. She concluded that the grievor was "thinking like a CC not a CAM so I offered to help her but she never asked for help". Ms. Brown said that the grievor went to other census district

people such as Joyce Davidson, out of the chain of command again, and questioned everything Ms. Brown had asked her to do.

Ms. Brown, Mr. Beeching and the grievor met again on Monday, December 11. The grievor said she contacted Ms. Davidson. Ms. Brown felt that the grievor was still questioning Ms. Brown's authority and was not doing what she had been asked to do. The witness said that the CC position was discussed again and that it would not begin until March, 1996.

Ms. Brown concluded by saying that the grievor was not meeting the requirements of the position and that the longer Ms. Brown waited to replace her, the more difficult it would become for the census requirements.

During cross-examination by the grievor, Ms. Brown said that after the grievor's employment was terminated she did not willingly return her supplies. Ms. Brown told the grievor that she (Ms. Brown) had the option of asking the R.C.M.P. to collect them. Ms. Brown added that the reason she met with the grievor in July of 1995, was because her hiring was subject to Ms. Brown's approval after Mr. Beeching had already interviewed her. With reference to Exhibit E-5, page 10, the familiarization field exercise during the training period, when asked what field exercise had actually been performed, Ms. Brown responded that they did high-rise apartments, some townhouses and looked at some road changes near where the training was taking place. It was not possible to do an agricultural area.

When asked why she did not test other CAM's for their area of familiarization or mapping skills, the witness responded that she was not concerned about the other CAM's mapping skills. Ms. Brown did not categorize her phone conversation regarding the area of familiarization as harassing the grievor, but she had serious concerns about the grievor's mapping skills. Ms. Brown indicated that, when she originally met in July 1995 with the grievor, who said at the time she felt very comfortable doing the Burlington area, Ms. Brown altered the boundaries for the Hamilton-Wentworth area and split some of that responsibility with surrounding CAM's and sent this information to Statistics Canada. It would have been very difficult to alter boundaries to suit a particular CAM after this information had been received by Statistics Canada. Ms. Brown also testified that the grievor had

participated in the training and team building exercises but she had great difficulty accepting Ms. Brown's authority and this would not have led to a good working relationship in a census circumstance. Ms. Brown added that during the training, the grievor questioned how the collectives would be handled, for example a campground. She was advised that these would be explained in detail at the end of the training program. Ms. Brown reiterated that she was not happy with the outcome of the grievor's role-play during the training exercise with respect to interviewing a potential Census Commissioner.

When asked by the grievor if Ms. Brown recalled being advised by her on the phone on November 29 that her supplies had not yet been received, Ms. Brown responded: "You could have advised me that your supplies were delayed." With regard to the November 29 meeting in Toronto with Mr. Beeching, the grievor admitted that she had been told to go and do the area familiarization of Hamilton-Wentworth. She stated that she understood that she had until February 9th to do all her area familiarizations. Ms. Brown indicated that the grievor told her on the telephone one Sunday evening that she was quite familiar with the Hamilton-Wentworth area. Ms. Brown added that, if a CAM expressed concern to her regarding the need for extra help, she would gladly have given it to anyone. The grievor never told her that she had a problem with Hamilton-Wentworth.

Ms. Brown said that not getting the supplies during the week that they were supposed to have been delivered was not critical to the overall exercise at that point in the census program.

When asked by the grievor if she had been told on Monday, November 27 by Ms. Brown what the meeting on November 29 with Mr. Beeching was going to be about, Ms. Brown said that she had told the grievor that she had some concerns as she had previously told her after one training day. Ms. Brown agreed that on November 29 the grievor had done all of her home study program, but that she wanted her to concentrate on area familiarization. She did not know when the supplies actually arrived at the grievor's home, but she again underlined that this was not that important then.

Ms. Brown stated that during their last meeting on Monday, December 11 with Mr. Beeching, the grievor still did not recognize Ms. Brown's authority and that when she was offered the CC position the grievor said she would consider this but still felt that she could do a CAM job. Ms. Brown added that the grievor twice rejected the possibility of doing a CC position.

When asked by the grievor why she did not have a training partner, the witness responded that she wanted to have someone with a lot of experience work with the grievor because she felt that she had poor interviewing techniques as shown in the role-play. (It was never made clear to me why the grievor did not have a partner during the training program.)

When asked why the grievor was not shown how to work the fax machine, Ms. Brown indicated that she thought a technician was going to show all the CAM's how to use these machines but she was not sure which machine the grievor was going to get. Ms. Brown reiterated that there was an attempt to better train the grievor but that she did not accept Ms. Brown as an authority; in fact, she did the opposite to what they had agreed to on December 8 regarding following the proper line of authority.

During re-examination by counsel for the employer, Ms. Brown said that the census material that was to be recovered from the grievor was received within a few days after her termination. She also added that she had not been inconsistent with the various directives she had given regarding the order of work that was to be done by the grievor.

At this point, the grievor through Mr. Lafrenière, entered Exhibit E-10, a chronological summary of events that happened to the grievor between Monday, November 20 and Monday, December 11. Ms. Brownrigg noted on Exhibit E-10, page 2, for Tuesday, November 28, that there had been a meeting with Mr. Beeching between all three Census District Managers (CDM's) during which Ms. Brown expressed her concerns regarding the grievor. The grievor felt this was somewhat suspicious since on Monday the 27th of November Ms. Brown had asked her to meet with Mr. Beeching on Wednesday, November 29.

2. Cathy McCarthy, in November/December, 1995, was the Administrative Manager for the 1996 Census, Toronto office. She was responsible for

accommodations for all of the workers in Ontario, for sending out fax machines, telephones, supplies, etc. Ms. McCarthy testified that she received a phone call on December 4 from the grievor wondering where her office supplies were. She identified her handwritten note dated December 5, 1995 (Exhibit E-11) explaining to Mr. Beeching the nature of the grievor's phone call. She said that about five CAM's in Ms. Brown's area and some in remote areas also had problems receiving their supplies, but this was being looked after by a clerk who worked with Ms. McCarthy. The Grand & Toy company were to have sent supplies directly to the various CAM's in Ontario. She added that the grievor's name had not been removed from that mailing list, nor did anyone tell her to remove it. Ms. McCarthy tried to explain on December 4 on the phone to the grievor that the mailing of supplies was in the hands of a third party. Ms. McCarthy said she was curious at the time to know how Ms. Brownrigg got her phone number. She also testified that this was the first direct contact she had had with the grievor even though Ms. McCarthy had made a presentation during the training period in Toronto. When asked if Mr. Brownrigg had ever called her the witness responded: "No, never."

During cross-examination, Ms. McCarthy indicated that the staff sheet with her phone number on it (Exhibit E-18) that the grievor used to reach her was supposed to be for internal staff use only. The witness said that she was not aware that the grievor's husband had first called a Ron Gayadeen concerning the lack of supplies. She added that the grievor was very upset on the telephone when she spoke with Ms. McCarthy and that Ms. McCarthy could not stop her from speaking. Ms. McCarthy added that the supplies arrived soon after their conversation on December 4th. She was not responsible for the shipping of fax machines.

3. David Beeching was the Regional Census Manager, Southern and Western Ontario Regions, Statistics Canada in 1995. He said that three CDM's reported to him and that ultimately, when the census was in full swing, approximately 6,000 people would be under his supervision. Mr. Beeching indicated that he had interviewed the grievor in July of 1995 for a CAM position and identified the grievor's résumé as Exhibit E-9. He felt she was satisfactory. The next time he saw the grievor was during the training period in November, 1995. He testified that during the training Lois Brown had expressed some concerns about the grievor and her training progress. He added that the grievor had approached individuals other than her immediate

supervisor during the training period; she was advised that she should refer any questions to Ms. Brown. Mr. Beeching added: "Ms. Brown is the most experienced field supervisor in Ontario; in fact she may be the most experienced census field person in Canada".

Mr. Beeching added that Lois Brown gave him some feedback regarding the grievor's role-play exercise and the problems that Ms. Brown was observing regarding the mapping and training sessions with the grievor.

Witness Beeching identified Exhibit E-10, the chronological summary of events relating to Mary Brownrigg, and testified that the reference on page 2, Tuesday, November 28 is the day that he chose to get something in writing regarding the concerns Lois Brown had for the grievor's overall competence. He added that he decided on November 27 to have a meeting with the grievor on November 29 to resolve a potential problem in order that he could keep harmony within his census group. He said that the points that were made to him on Tuesday, November 28 by Lois Brown were summarized by him in Exhibit E-10. Mr. Beeching identified a memorandum he had written for himself (Exhibit E-12) as being the various points that he wished to discuss with the grievor on Wednesday, November 29. He said all of these points in his note were raised on November 29 and that Ms. Brownrigg brought with her a typed summary of the activities that she had done since her training ended on November 24 and gave this to Mr. Beeching at their meeting (Exhibit E-13). He did not request this from the grievor. She volunteered to summarize what she had been doing in the last few days. Mr. Beeching said their meeting lasted about 45 minutes; it was reasonably pleasant but there was some tension, some resentment, and reluctance to attend the meeting in the first place by the grievor. He added however that it was quite reasonable for Ms. Brown to insist that the area familiarization be done by the grievor. Mr. Beeching added that: "Area familiarization was a priority for the 1996 census." He identified Exhibit E-14, a summary produced by the grievor of their meeting. He had not asked for this but it was a fairly accurate summary of what had taken place. What Mr. Beeching did want was a report from the grievor regarding her familiarization progress. He added that she had indeed attempted to check over the Hamilton-Wentworth area but he felt that the task had not been performed adequately. He added that the Hamilton-Wentworth area was approximately 1/12th of the total area that the grievor was to become familiar with. Mr. Beeching also testified

that he had asked Cathy McCarthy to write him a summary of her discussion with the grievor regarding the supplies from December 4 (Exhibit E-11).

Mr. Beeching said he scheduled a meeting in the office of Lois Brown in Kitchener with the grievor for December 11 but in the interim he had been advised that the grievor had contacted a Joyce Davidson from another district to ask her some questions. When he found this out from Lois Brown, Mr. Beeching consulted senior management regarding releasing the grievor because "it just wasn't going to work". During the meeting on December 11 Mr. Beeching indicated that it seemed Ms. Brownrigg was in fact undermining Lois Brown by contacting Joyce Davidson. He said that, when he asked Ms. Brownrigg during this meeting if she in fact had contacted another CDM, Joyce Davidson, her reaction was one of surprise, hesitation, stuttering. She did not deny doing this but she effectively did not give an answer either. At the time, Mr. Beeching believed she had contacted Joyce Davidson. He then informed the grievor that unless she took a CC position she would be released. He said she indicated that she did not want that position and would fight for her CAM job.

Mr. Beeching identified another summary of activities that the grievor had pursued between November 28 and December 7 (Exhibit E-15). He had not specifically requested this. Mr. Beeching also identified a letter that the grievor had sent to the Hon. John Manley, Minister of Industry, in Ottawa, as well as a letter to her Member of Parliament, Mr. Julian Reed, M.P. for Halton (Exhibit E-16). Mr. Beeching identified his own summary of the meeting that he held with Lois Brown and Mary Brownrigg on November 29 as Exhibit E-17. He stated that he felt it was obvious at the time in December that he would have to remove Ms. Brownrigg as a CAM. He did not relish doing this. He added that she did not possess all of the qualifications for the CAM job and that he gave her as much room as he could afford to at the time to correct the problem.

During cross-examination, Mr. Beeching agreed that the grievor had had ten days of formal training followed by three days of home study and three meetings between himself, Lois Brown and Ms. Brownrigg. He also remembered that the last time he spoke with the grievor on the telephone regarding the recovery of the census material she told him she had been treated unfairly. Mr. Beeching was aware that

Lois Brown had told him that the R.C.M.P. might have to be called to recover the census material.

Regarding the lateness of the grievor's supplies, Mr. Beeching said that they would have arrived in due course. When asked if Lois Brown had given the grievor any extra training, Mr. Beeching said that she had given her some extra time; Ms. Brown had reviewed maps with the grievor and on occasion she had called her but failed to reach her. Mr. Beeching agreed that at the November 29 meeting he had said that at that time he was not considering termination of the grievor's employment. He added that there were 12 districts in the grievor's area of responsibility and that Lois Brown had selected an area that needed to be checked and reported on by Ms. Brownrigg. Mr. Beeching added that there were no PM positions available in the regional office at the time of the problems with the grievor. He reiterated that both on November 29 and December 11 the grievor was offered a CC position and that he advised her on December 11 that if she did not take such a position she would be terminated.

During re-examination Mr. Beeching emphasized that even though home study was being done after the training, other work was to have progressed as well. Mr. Lafrenière asked Mr. Beeching if it was an exceptional circumstance for Lois Brown to have done some familiarization in the Hamilton-Wentworth district to which he responded: "The Mary Brownrigg case was an exceptional situation."

I asked Mr. Beeching how important area familiarization was, to which he responded, it was one of the top two priorities since the 1991 census had failed in this area. He added that the other top priority was hiring and training. When I asked him, because of the fact that Lois Brown had familiarized herself with part of one of the grievor's districts, if this was a test for the grievor, Mr. Beeching indicated that it was not a test, that this work needed to be done and this was part of the natural progression that had to be checked on in the case of Ms. Brownrigg. Mr. Beeching identified a list of phone numbers for the Ontario region that included Cathy McCarthy's phone number (Exhibit E-18) and suggested this was where the grievor probably found Ms. McCarthy's phone number.

4. Peter Brownrigg, the grievor's husband is the Regional Sales Manager for Boehringer Ingelheim based in Burlington, Ontario; he indicated that in his job for the last 22 years he has helped physicians set up in various office locations and that he therefore became quite knowledgeable about maps and postal codes. Mr. Brownrigg testified that he thought Lois Brown could have given much better coaching to Ms. Brownrigg on the mapping problems. He added that this is not how industry does its training, that the process was most unusual for his wife and that no one could learn from anyone else without proper coaching and mentoring. Mr. Brownrigg identified Exhibit G-1, a note he had sent in March, 1996 to a Francine Cabana from the National Component of the Public Service Alliance of Canada in Ottawa, that clearly indicates he spoke to Cathy McCarthy at one point in December, 1995 to inquire regarding the whereabouts of the supplies that should have been sent to his wife's home.

Mr. Lafrenière objected to the entry of this exhibit and this testimony since, when Ms. McCarthy testified earlier, she was not given a chance to respond to this. He added that this evidence should have been presented to Ms. McCarthy in cross-examination by the grievor. I noted Mr. Lafrenière's objection and I also advised the grievor that she should have presented this evidence to Ms. McCarthy. Ms. Brownrigg was somewhat troubled by this because she was not really experienced at the process of adjudication.

Mr. Brownrigg testified with respect to his call to Cathy McCarthy that she in fact had called back to his home as a follow-up to his message. He concluded therefore that she must have heard from someone in their home in Burlington requesting information on supplies and that someone was him. He said his wife did not even know who Cathy McCarthy was at the time. With reference to the last sentence on Exhibit G-1 that reads: "*Cathy also stated that Mary Brownrigg's name had been crossed out from the shipping list during training and comments written besides her name were now covered over with white out*", Ms. Brownrigg stated that she did not ask Cathy McCarthy if this was true or not when she was on the stand for a reason; the reason was that witness McCarthy had already written a letter denying that this was true. This letter was admitted on consent as Exhibit G-3. When asked if Cathy McCarthy had told him that the grievor's name had in fact been whited out, Mr. Brownrigg said yes, this had happened. He added that other CAM's had supplies

problems as well. Mr. Brownrigg said Ms. McCarthy had been helpful and that the supplies then arrived.

The grievor asked her husband if he had ever seen Mr. Beeching after she was terminated, to which he responded, yes, and that Mr. Beeching had been most agreeable and pleasant when he met him one day in Toronto.

Mr. Lafrenière objected again since this question should have been posed by the grievor to Mr. Beeching when he was on the stand. In the event that Mr. Lafrenière decided to recall Mr. Beeching as a witness, Mr. Beeching left the room at this point in the proceedings.

Mr. Brownrigg identified a memorandum he wrote after his meeting in January, 1996 with Mr. Beeching (Exhibit G-2). He testified that he took notes during and after their meeting, and that he went in completely prepared for this meeting.

Mr. Lafrenière interjected again and asked if these handwritten notes were available for the hearing. Mr. Brownrigg said that they were no longer available.

Mr. Brownrigg added that his wife had been working day and night since she came back from training, and that he had never seen her like this before. She in fact took medication and they argued sometimes for the first time in their 25 year marriage about the long hours that she had been keeping as a recently trained CAM. Mr. Brownrigg added that over 20 years he had constructed a number of interview processes and that he also worked on weekends.

During cross-examination, Mr. Brownrigg testified that he prepared the notes on his meeting with Mr. Beeching (Exhibit G-2) in March, 1996. When asked if he took notes during their meeting he said no, only after he left the meeting. He had thrown out his own original notes. He also agreed that he had told his wife that she should start to document everything that was taking place regarding her case. Mr. Brownrigg agreed that Exhibit G-2 was his version of his meeting with Mr. Beeching which he prepared for the bargaining agent. He said he was not upset when he made these notes and that they were very clear in his mind. Their meeting lasted about ten minutes. When asked by Mr. Lafrenière if he had raised the reference in Exhibit G-2 to a personality clash between his wife and Lois Brown as a concern with Mr. Beeching,

he responded: "No." He said during their meeting, Mr. Beeching was complimentary towards Ms. Brown.

Mr. Brownrigg was of the opinion that his wife was subject to a constructive firing and that he had based his decision on what his wife had been telling him. He underlined again that he had spoken to Cathy McCarthy after he had phoned a number of persons on the staff phone list (Exhibit E-18), and that Cathy McCarthy is the one who got back to him. He admitted that it might have been possible that he had spoken to a Cathy Mackinnon, instead of Cathy McCarthy, whose name also appears on the list as the Logistics Manager, Warehouse. He added that whomever he spoke to, it must have been the right person because she knew about Grand and Toy as the supplier for census material and where someone could go in Burlington to get some of these needed supplies. Mr. Brownrigg added that Ms. Brown appeared not to like his wife and that she did not help her properly in her training.

When asked if he had said to Mr. Beeching during his meeting how poorly his wife had been treated, Mr. Brownrigg could not recall if he had said that. When asked if he had said what is done is done, he could not recall that either. When asked if he inquired of Mr. Beeching how he could have let this happen, he could not recall this either. Mr. Brownrigg could also not recall if Mr. Beeching had said that he was sorry that things did not work out. Mr. Brownrigg could also not recall if he said to Mr. Beeching that census work is a short term experience but he did recall Mr. Beeching saying that Lois Brown had very good experience in census work. Mr. Brownrigg added that Exhibit G-2, the notes of his meeting with Mr. Beeching, was written to the best of his ability regarding the five issues that he brought up with him at the time. Mr. Brownrigg could also not recall if he told Mr. Beeching that Ms. Brown had it in for his wife from the start. He could not recall if he had said this was a severe decision to take before Christmas. Mr. Brownrigg also denied that he had asked Mr. Beeching what the likelihood would be for his wife to work in another area as a CAM, and he also denied asking Mr. Beeching if she could get a CC position. The witness could not recall if Mr. Beeching had told him that his wife had twice been offered a CC position. Mr. Brownrigg also testified that he had attended a grievance procedure meeting with Marlene Levine, Director General, Regional Operations Branch, Statistics Canada, on behalf of his spouse. He denied saying at that meeting that it was not very smart for Mr. Beeching to let someone take notes during a meeting.

During re-examination when asked if Mr. Brownrigg had ever been told by his wife that Mr. Beeching had offered her a CC job and that she had declined, he responded: "No."

5. Mary Brownrigg identified as Exhibit G-4, a grievance response from Marlene Levine of May 17, 1996. She also identified Exhibit G-5, a note written by herself in response to Marlene Levine's letter.

The grievor admitted that she knew she was in trouble in her job and that she had to do more than she was asked to do to prove that she could do it. She said the personality conflict with Lois Brown was the real problem.

With reference to Exhibit G-5, number 5 that reads: "*Mary was never formally offered alternative employment either verbally or in writing.*", the grievor admitted that Wednesday, November 29 was the first time that she in fact had been offered a CC position. She added however that the reference in Ms. Levine's letter (Exhibit G-4), that she had declined a CC position was not true. She said that she was going to think about it. She added that during the December 11 meeting with Ms. Brown and Mr. Beeching, she brought up the possibility of a CC position and that both supervisors said nothing. Mr. Lafrenière noted on Exhibit E-14, the grievor's summary of her November 29 meeting, page 2, paragraph 4, also refers to the fact that she was asked to consider the job as a CC.

Ms. Brownrigg was aware that she was accepting a short term assignment; she felt she did all that she could in her training and with her manual and felt that she had to prove herself to Lois Brown at all times. She said she would start some work; then she would be told to stop and do area familiarization which she felt was not that difficult to do.

She added that during the role-play exercise she had interviewed a potential employee who said she had an interest in maintaining her bingo life, cottage life, and bridge life but that she was prepared to give up the bridge, that she would not go to her cottage on weekends. This is why the grievor considered her as a potential candidate for a CC position.

She also indicated that in real terms there was a political referral list that CAM's were to exhaust first before they could start to fill in with others and that some CAM's already had their boundaries all clearly designated for them. Ms. Brownrigg stated that the field exercise they did during training was not really a good one and was more for a CC position.

The map that she had to work with was huge and was very hard to work with. She had tried to get more map information at Waterdown but she knew she had to go out and see the areas for herself. She indicated that she went to a collective three times, a nudist camp, and she had difficulty getting information about the place. She agreed she missed some areas when she did her area familiarization but she would check them with some adjacent CAM's as a solution. She said she was: "in a panic state and was trying to keep a job I wanted". She got "hung up on a part of the test from Ms. Brown and Mr. Beeching regarding area familiarization of Hamilton-Wentworth". She had in fact pointed out some things on the map that Ms. Brown had not caught when she did the same area familiarization. She testified that she had to do this area familiarization in just a few days whereas other CAM's had two months to do theirs.

She obtained free training space at the Burlington City Hall, and requested letterhead from Ms. Brown but never got it. She felt all of this mess could have been rectified at any time. Lois Brown did not give her one minute of extra training and the grievor truly just wanted to be left alone. On Sunday, December 10, she was a bit lost so she called Joyce Davidson who was an adjacent Census District Manager. Ms. Davidson was very nice to her.

Ms. Brownrigg said that Mr. Beeching was supporting Lois Brown but there was no one else in the hearing supporting her who had ever worked with her. She said Ms. Brown does not treat people properly and does not know her job properly. The grievor was advised that if she pursued her grievance there might be a "black mark" on her record but she still wanted to tell her side of the story. She added that the whole process had been unfortunate, that it had been time consuming, had cost a lot of money, had been very upsetting and humiliating for her, and that Lois Brown never taught her how to do her job better. Ms. Brownrigg entered Exhibit G-6, a December 9, 1995 letter addressed to Mr. Beeching that she never sent him. She indicated that she

was sorry for this whole thing and that perhaps she could have handled it differently but she never totally declined a CC position.

During cross-examination, the grievor admitted that at the November 29 meeting she had been advised by Mr. Beeching and Ms. Brown that they were concerned about her area familiarization. She said she knew she was on the hot seat but that Ms. Brown never told her what the meeting was really for on November 29. Ms. Brownrigg agreed that she had prepared Exhibit E-13, a summary of her activities since Friday, November 24, before the meeting on November 29.

Even though all of her supplies had not yet arrived, the grievor admitted she was given permission to buy some locally in Burlington from Grand & Toy. When asked if she could have done her job at the time with the supplies that she had, she responded: "Absolutely." Ms. Brownrigg agreed that it was inappropriate for her to have gone directly to Cathy McCarthy, or as she recalled, her husband called Cathy McCarthy. She was simply trying to solve a supply problem.

Ms. Brownrigg also agreed that her supervisor had full authority to direct her work and that she could ask her to do certain things in the interest of efficiency. The grievor agreed that in theory this was true but in practice that was not how it worked. She agreed she had a personality conflict with Lois Brown but stated that she herself was not the problem. Ms. Brownrigg added she felt that she was not what Ms. Brown had expected from their very first meeting. She and Mr. Beeching did not have a personality problem.

The grievor stated that she could not have effectively reviewed the Hamilton-Wentworth rural area as quickly as Ms. Brown had asked her to. She felt that she had until February 9, 1996 which was the deadline which other CAM's had been given to review their areas. With reference to Exhibit G-4, the Levine letter, the grievor said that she was only informally asked if she would consider a CC position. She never accepted it. She denied that at her last meeting with Mr. Beeching on December 11, either he or Lois Brown made her another offer of a CC position. She reiterated that she brought up this possibility but that Mr. Beeching and Ms. Brown said nothing. The witness also testified she was not rude to Cathy McCarthy but may have been short with her.

When asked by Mr. Lafrenière what she meant by being in “a panic state”, the grievor said she was not overwhelmed by her job but felt her job was in jeopardy. She agreed, however, she did not ask for extra training because she did not want Lois Brown to harass her any more. When asked regarding her phone call to Joyce Davidson on Sunday, December 10 if she was in fact challenging the authority of her immediate supervisor, Ms. Brown, the witness said: “Yes, this is true.”

When asked to clarify if her union representative had asked for compensation and not reinstatement at the May 7, 1996 meeting with Marlene Levine (Exhibit G-4) the grievor said: “Yes, this could be true, and it would make sense for her to ask for that since the census position at that point was almost finished.”

At this point in the proceedings both parties agreed that I should focus only on the requested remedy dealing with the loss of salary and benefits as per the Levine meeting and subsequent letter (Exhibit G-4). I am therefore to ignore the request for reinstatement.

Mr. Lafrenière recalled David Beeching to discuss his meeting with Mr. Brownrigg. Mr. Beeching testified he believed they met around mid-December 1995 for about 25 minutes after the date that the grievor was terminated. He took handwritten notes immediately after their meeting ended (Exhibit E-19). With reference to Exhibit E-19, pages 5 and 6, the witness testified that Mr. Brownrigg had in fact asked if there was any likelihood that his wife could work on the census in another area as a CAM. Mr. Beeching also testified that Mr. Brownrigg asked if it would be possible for his wife to be given a census commissioner (CC) position as well. Mr. Beeching explained to Mr. Brownrigg at the time that he had offered a CC position to the grievor at their meeting on Wednesday, November 29 in Toronto, and secondly during their meeting on December 11 in Kitchener before she was released. Mr. Beeching noted in Exhibit E-19 (page 6) that Mr. Brownrigg seemed surprised at this and mumbled that he was not aware of this. When asked if Mr. Brownrigg had taken notes during their meeting Mr. Beeching responded: “No.”

During cross-examination, Mr. Beeching indicated that the potential CC job level for Ms. Brownrigg was never discussed with her.

Upon consent, Mr. Lafrenière entered as Exhibit G-7 some type-written notes by Mr. Beeching regarding the December 11, 1995 meeting between himself, the grievor and Lois Brown. They do not make reference to a CC position.

Argument for the Employer

Mr. Lafrenière argued that the standard applicable to the employer's decision to terminate the employment of a probationary employee as defined in *Canadian Labour Arbitration* by Brown and Beatty (Exhibit E-3) is whether or not the employer was arbitrary, discriminatory, or acted in bad faith towards the grievor. He argued that the issue of credibility in this matter is also extremely important. Mr. Lafrenière argued that Mr. Brownrigg's testimony was at best hesitant and at worst misleading, since he was reluctant to admit many facts by responding: "I don't recall." He reminded me that initially Mr. Brownrigg said he took notes during his meeting with Mr. Beeching and then changed his mind and said he wrote them afterward. He also reminded me that Mr. Brownrigg told his wife to take notes regarding her various meetings but yet his notes were not available today, especially in light of the fact that he was going to contradict Mr. Beeching.

Counsel also referred to Mr. Beeching's notes (Exhibit E-19, page 6) that indicate the CC option was given to the grievor on November 29 in Toronto and December 11 in Kitchener. He reminded me that Ms. Brown confirmed this. He argued that I must also suspect the fact that the grievor testified she was never given the CC option on December 11 and that in her own testimony with respect to Exhibit G-5, number 5, the grievor backed off saying that she had never formally been offered alternative employment. Regarding the allegation that the grievor was harassed by Ms. Brown, Mr. Lafrenière reminded me that the grievor needed direction, that she admitted she was in a "panic state" and did not have sufficient training. He reminded me that the grievor insisted that she be left alone, that she did not ask for help, but the employer had to ensure that her responsibilities and her work were on track. He argued Lois Brown's evidence was also not seriously contested by the grievor. Mr. Lafrenière argued regarding the area familiarization exercise whereby Ms. Brown, unbeknown to the grievor, did a review of portions of Hamilton-Wentworth, that this had to be done in order to evaluate the grievor's capabilities since she was ignoring area familiarization with the exception of the areas she knew very well in and around

Burlington. Mr. Lafrenière argued that Ms. Brown and Mr. Beeching had substantial meetings with the grievor to try to point out her shortcomings and to rectify what was seen by management as serious problems. He reminded me that on December 8 Ms. Brown asked the grievor to observe the chain of command and that Ms. Brown offered to help the grievor. Two days later on December 10 the grievor called an adjacent manager, Joyce Davidson, and this was again a flagrant flouting of the chain of command in the eyes of Ms. Brown.

With respect to Exhibit G-4, the Marlene Levine letter, Mr. Lafrenière argued that Ms. Brownrigg did not understand the basic concepts of what went on at the Levine meeting since the meeting concluded she no longer wished to be reinstated to her former position but was merely seeking financial compensation. Counsel argued this demonstrates that the grievor could not keep proper notes in coordinating the facts and was merely perverting the facts. He also concluded that Mr. Brownrigg was not a credible witness. He reminded me that witness McCarthy was a good witness and that she had no motivation to lie before me. Mr. Lafrenière argued that Mr. Brownrigg had in fact made some statements to Mr. Beeching (Exhibit E-19) and that when this was read to Mr. Brownrigg during the hearing he either denied them or could not recall them.

In conclusion Mr. Lafrenière argued that the employer had valid reasons to do what it had to do, that time was an important factor in the census project and that the task of a CAM was beyond the capabilities of Ms. Brownrigg. He said that she ignored the problem of area familiarization that was given a high priority for the 1996 census and that her conflicts with Ms. Brown were irreconcilable. Mr. Lafrenière asked me to deny the grievance.

Argument for the Grievor

Ms. Brownrigg said that she was prepared to do more than an adequate job as a CAM but that she lacked direction and was not given any extra training. For example, as she was never shown how to use the fax machine that she was going to be sent, she did not bother to pursue anyone on this matter. She emphasized that during their training in Toronto they never really did a proper field exercise. With reference to wanting to be left alone, she said that this was all taken out of context since she never

told Ms. Brown to leave her alone. She simply wanted the same treatment that other CAM's were getting. She reminded me that she was given a test to perform with respect to area familiarization of Hamilton-Wentworth and that other CAM's were not. She concluded therefore that there was no benchmark to compare her work to.

Ms. Brownrigg argued that there is a serious credibility problem regarding her being offered a CC position as alternate employment. She referred to Exhibit G-7, Mr. Beeching's notes after their December 11, 1995 meeting, that has no mention of a CC position being offered at that meeting. The grievor argued Ms. Brown had added to her workload and that she had done things no one had yet seen.

Regarding the role-play exercise, Ms. Brownrigg thought that reference to this was ridiculous because she knew what a CC did. She said that she was not given a chance to be better trained and, out of the ten working days after training, she had to take out time to do home study, to phone the political referral list of CC candidates, and to travel to Toronto for a meeting on November 29 and to Kitchener for another one on December 11. Overall, Ms. Brownrigg concluded that the entire situation was unfortunate, that she had not been given the proper direction from the very beginning since she and Ms. Brown never hit it off properly.

Decision

It is noted at the outset that, because of the exclusion order P.C. 1995-466 (Exhibit E-1) regarding persons appointed to work on the Census of Population for 1996, there was no argument from the employer regarding my jurisdiction to entertain this grievance which relates to a rejection on probation.

In a case such as this, most often it is very difficult for the grievor to represent himself/herself without the assistance of a bargaining agent or private counsel. Ms. Brownrigg did a reasonable and courageous job under the circumstances; however, I cannot allow her grievance for the following reasons.

The larger picture that I must contend with framed by Mr. Lafrenière in referring to *Canadian Labour Arbitration*, by Messrs. Brown and Beatty, page 7:210, is indeed whether or not the employer's evaluation of Ms. Brownrigg's suitability was arbitrary, discriminatory or in bad faith, and whether or not it was done within the

general duty of fairness under the circumstances of a census preparation period. It is not for me to second guess management's reasons to terminate the grievor's contract but to determine if this decision was taken under the criteria referred to above.

Once the grievor was selected as a CAM and trained in November 1995, the census area manager work clock began to tick quite quickly since there was an intense work load relating to preparation for the census day that took place on May 14, 1996. There is in effect not much room for error, for delays, or for hesitation by CAM's leading up to and including the census day.

Whether or not there was a personality conflict between the grievor and her supervisor, the fact remains that from the beginning of the training period, Ms. Brown had some concerns about the grievor's ability to make the leap from being a CC in 1991 to a CAM in 1995/1996 with overall responsibility for census districts. These two major concerns, primarily regarding interviewing skills and area familiarization, may have been ignited and fueled by smaller ones such as: Ms. Brown not being able to find out the grievor's phone number and address from July until September 1995; the fact that the grievor was not living with the other trainees even though she had been given permission to stay elsewhere; that she was asking what may have been irrelevant detailed questions during training, or that the grievor worried too much about her supplies not arriving on time and broke the chain of command to find out where her supplies were, especially since she admitted she could have done her job at that point in time without the full complement of Grand & Toy supplies.

Even though I have some concerns about Ms. Brown's decision to insist that the grievor perform area familiarization of the Hamilton-Wentworth area immediately, in light of the fact that other CAM's were given until February, 1996 to do area familiarization, I do not believe that this "test" as I referred to it, was done arbitrarily or in bad faith. As a supervisor, Ms. Brown was concerned that the grievor was not going to make it so to speak; therefore she asked Ms. Brownrigg to cease all other duties, to do the area familiarization, and gave her four days to do it. It was not done to Ms. Brown's satisfaction who had received high praise for her census management ability from Mr. Beeching. Her concern therefore mounted. A phone conversation and meetings were held between Ms. Brown and the grievor not only to review the grievor's work but to advise her that the chain of command should not be broken. By her own

admission, Ms. Brownrigg knew she was on the hot seat, and in fact went into what she called a “state of panic”, a condition that not only affected her performance but her home life as well.

After reviewing all the evidence, I do not believe it is valuable for me to pass judgment on who may have said what to whom and under what circumstances regarding the contradictory evidence I heard concerning the late receipt of supplies from Grand & Toy. Rather what I do believe is that Ms. Brownrigg was offered a CC position, confirmed in Mr. Beeching’s original handwritten notes of his meeting with Mr. Brownrigg (Exhibit E-19), that now with the benefit of hindsight and if she had stepped back and looked at the overall picture of where her CAM role was in December 1995, it would probably have been a better decision by Ms. Brownrigg to have agreed to the CC position, one that she had performed in 1991.

I agree with the grievor, whom I believe to be a very honourable person, that she did perform a number of useful functions in her role as a CAM, for example, obtaining free office space. However, the employer’s concerns about her shortcomings in the larger picture are what ended up being the determinative factors which led to the decision to terminate her employment as a CAM. I do not believe that this decision was taken in bad faith or was arbitrary. Furthermore, the employer acted fairly by offering the grievor a position as a CC.

For all these reasons, this grievance is denied.

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

OTTAWA, June 4, 1997.