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**File:** 466-HC-280

**Citation:** 2001 PSSRB 37

Parliamentary Employment  
and Staff Relations Act



Before the Public Service  
Staff Relations Board

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BETWEEN

**LUC SÉGUIN**

Grievor

and

**HOUSE OF COMMONS**

Employer

***Before:*** [Guy Giguère, Deputy Chairperson](#)

***For the Grievor:*** [Antal Bakaity, Counsel](#)

***For the Employer:*** [Charles V. Hofley, Counsel](#)

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Heard at Ottawa, Ontario,  
February 3 and 4; May 15; September 7 and 8  
and November 27 and 28, 2000.

## DECISION

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[1] Luc Séguin was employed as a maintenance worker (OPG-02) in the House of Commons until his dismissal on December 31, 1998. Mr. Séguin was dismissed because of his aggressive behaviour at the staff Christmas party on December 18, 1998. The grounds for his termination are set out in a letter of the same date from Major-General M.G. Cloutier:

[Translation]

...

*You intimidated a female member of the personnel in order to have a kiss from her. When Philippe Lavergne intervened between the woman and you, you grabbed Mr. Lavergne and violently threw him against the wall.*

*During the Christmas party, you continually imitated karate moves by kicking in the air. One of these moves hit the hand of a person who was holding a beer bottle, which hit the floor and broke. Moreover, many of these moves were directed towards the supervisors, more specifically, Mike Moreau and Stéphane Pilon. Mr. Pilon was also hit at least on two occasions by your moves.*

*Certain witnesses said that you had the intention to physically hurt Mr. Pilon. You intimidated Mr. Pilon, forcing him to smoke a joint with you and Mr. Stephen Ward. The witnesses who were present at this incident have testified to the fact that you were aggressive and intimidating towards Mr. Pilon and that he seemed to be there against his will.*

...

[2] On January 12, 1999, Mr. Séguin grieved his termination, asking to be reinstated in his former position. On May 14, 1999, at the third and final level of the grievance process, the employer rejected Mr. Séguin's grievance, which was referred to adjudication. The hearing was originally scheduled to be heard on November 1 to 3, 1999 but a postponement was requested twice or the parties were unavailable to proceed before February 3, 2000.

[3] During the hearing, Mr. Hofley raised an objection to Mr. Bakaity's line of questioning of one of the grievor's witnesses, based on the *Browne v. Dunn* rule. As both counsel asked to file written arguments in that regard and requested a written decision, the hearing was adjourned and a decision was issued dealing with this

objection (*Séguin v. House of Commons*, 2000 PSSRB 78 (466-HC-280)). Mr. Hofley's objection was overruled and he was allowed to recall his witness, if he wished, but chose not to do so.

[4] There are two versions of events relating to the incidents which led to Mr. Séguin's discharge: one presented by the employer and the other by the grievor. The rest of the evidence is not in dispute and gives context to the events. Some witnesses testified in French, some in English and some in both official languages.

### Evidence

[5] Mr. Séguin worked for approximately three years in the Maintenance Service Support Unit (MSSU) and became an indeterminate employee on March 11, 1996. Before his termination, Mr. Séguin had never been disciplined and his performance evaluation reports were always satisfactory.

[6] Brenda Hayter, the Manager, Planning, Finance and Administration of the MSSU, explained at the hearing that the workers in the MSSU are assigned to set up the committee rooms of the House of Commons and assist in handling material and deliveries. She testified that the employees' social committee organizes a Christmas party every year; management supports it and provides the room free of charge. The employer does not consider it a private function and management attends the party. That room could be rented for a private function.

[7] In 1998, the Christmas party was held on December 18, starting at 1:00 p.m. The employees who were scheduled to work that afternoon were able to attend the party and were being paid as well. Ms. Hayter explained that employees were not required to attend the party and that they could leave whenever they wanted to. Parliament was not sitting at the time, as it was adjourned for the Christmas break.

[8] Mr. Séguin testified that, on December 18, 1998, he ate lunch at the Glue Pub and drank two beers. He arrived in Room 308 of the West Block Building, where the Christmas party was being held, at around 1:15 p.m. He greeted people, shook hands with the men and kissed on the cheeks the 12 to 15 women who were present at the party.

[9] Stéphane Pilon, Acting Assistant Supervisor of the MSSU, was already present when Mr. Séguin arrived. Mr. Pilon had arrived early as he worked the night shift. He knew that Mr. Séguin was an employee, although Mr. Séguin did not report to him.

### Kissing Incident

#### **I Employer's Version**

[10] At about 2:00 p.m., as Caroline Beaupré, a buyer for the MSSU, was entering the room with her coat on, Mr. Séguin approached her and asked for a kiss.

[11] Ms. Beaupré testified that she replied that she did not kiss employees but Mr. Séguin insisted, holding her arms. She felt trapped, as she was unable to break free of his grip. She looked around for help and Philippe Lavergne, the Supervisor of Maintenance and Cleaning, came to her help.

[12] Mr. Lavergne explained that he was a few feet away from the door when Ms. Beaupré entered Room 308. She entered the room and shook Mr. Lavergne's hand. Then Mr. Séguin approached her and asked for a kiss. When Ms. Beaupré refused, Mr. Séguin grabbed her by the jacket and repeated: [Translation] "I want a kiss." Mr. Lavergne decided to intervene and stepped in between the two. He grabbed Mr. Séguin by one hand and pulled him away. He told Mr. Séguin: [Translation] "She doesn't want a kiss. Leave her alone." Mr. Lavergne was talking loud and repeating [Translation] "Please leave her alone." Mr. Séguin then let Ms. Beaupré go.

[13] Mr. Pilon testified that he saw Mr. Séguin holding Ms. Beaupré by both arms, insisting that she give him a kiss. Ms. Beaupré was looking around for help. Mr. Pilon went over to help but froze on the spot and was afraid to do anything. He saw Mr. Lavergne walk over and heard Mr. Lavergne ask Mr. Séguin, "Didn't you hear her say no?", to which Mr. Séguin replied that Mr. Lavergne should mind his own business.

[14] Ms. Beaupré then left to remove her coat and put it on a coat rack outside Room 308. She testified that Mr. Séguin came back to ask her for a kiss, holding her again by the arms. She felt trapped and, since he would not let her go, she replied: [Translation] "Okay, just a kiss on the cheek." Mr. Séguin then calmed down and let her go.

[15] In cross-examination, Ms. Beaupré said that she felt no sexual overtone in Mr. Séguin's request for a kiss, but it made her feel uncomfortable.

## II Grievor's Version

[16] According to Mr. Séguin, this is not what happened. He testified that he went over to greet Ms. Beaupré, as he wanted to thank her for the new shoes that she had supplied as part of his uniform. He told her that he was going to wish her a Merry Christmas by giving her two kisses on the cheeks, to which she replied: [Translation] "Just one, Luc." In cross-examination, Mr. Séguin added that Ms. Beaupré was smiling when she said that. He also added that Ms. Beaupré told him that it was her policy not to kiss employees and that he did not insist. He regrets having approached Ms. Beaupré. If he had known that she felt uncomfortable, he would not have done what he did. He also stated in cross-examination that, instead of getting physical, Mr. Lavergne should have told him to stop. This altercation with Mr. Lavergne is described in detail further down under the heading "Fight with Supervisor - II Grievor's Version".

[17] Steven Ward, who worked at the time with Mr. Séguin in the MSSU, testified that he saw Ms. Beaupré arrive and observed Mr. Séguin shake her hand and kiss her on the cheek; while Ms. Beaupré and Mr. Séguin were talking, Mr. Lavergne stepped in between them.

[18] In cross-examination, Mr. Hofley confronted Mr. Ward with a statement which he made (Exhibit 2, tab L). Mr. Ward said that the statement was accurate and was not materially different from his testimony, as Ms. Beaupré just did not want to be kissed twice. In his statement, Mr. Ward had declared:

...

*On Dec. 18/98 at approx. 1.00 o'clock I noticed Luc Séguin standing at the front of Room 308. I knew that Luc was not in good shape. Shortly after that Carol Ann [sic] Beaupre walked in. Luc walked up and tried to kiss her, she wanted nothing to do with him. Phil Lavergne tried his best to fend off Luc but to no avail...*

...

[19] Mr. Ward testified that, later on at the party, Ms. Beaupré sat beside him and said that Mr. Séguin wanted to kiss her on both cheeks. She told Mr. Ward “You know, Steve, I’m not a kissing person”, to which he replied “I know that.” Mr. Ward added, in cross-examination, that Ms. Beaupré did not seem overly upset by this incident.

### Fight With Supervisor

#### **I Employer’s Version**

[20] Mr. Lavergne stated (Exhibit E-2, tab C) that he saw Ms. Beaupré leave Room 308 to hang up her coat. Mr. Séguin followed her into the corridor and persisted again in wanting to give her a kiss. Ms. Beaupré was scared and was shouting: [Translation] “Luc, leave me alone.”

[21] Mr. Lavergne testified that he then went towards Mr. Séguin and told him to leave Ms. Beaupré alone. He told him: [Translation] “Let her go. She doesn’t want to give you a kiss. Let her go.” Mr. Séguin then grabbed Mr. Lavergne by the shirt with one hand and, with the other, grabbed Mr. Lavergne’s private parts and pushed him, telling him: [Translation] “It will take someone bigger than you to stop me.” In cross-examination, Mr. Lavergne acknowledged that there was no mention in his statement of having been grabbed by his private parts (Exhibit E-2, tab C). He explained that he noticed afterwards that he was bruised in the groin area, but did not report it.

[22] Mr. Pilon testified that he saw Messrs. Lavergne and Séguin in the corridor outside the room and heard Mr. Lavergne say to Mr. Séguin [Translation] “If you don’t stop, I will get you expelled”, to which Mr. Séguin replied [Translation] “It will take a bigger man than you to get me out of here.” Mr. Pilon could not see Mr. Séguin clearly, but he believes that Mr. Séguin was holding Mr. Lavergne by his collar and that Mr. Séguin’s other hand was on Mr. Lavergne’s belt. Mr. Séguin then released Mr. Lavergne and went back into the room.

[23] Trevor Lockett, an employee of the MSSU and a shop steward for the Public Service Alliance of Canada (PSAC), was also a witness to the incident that occurred between Messrs. Séguin and Lavergne outside the room. Mr. Lockett declared in a statement that he made to the Security Services of the House of Commons (Exhibit E-2, tab I) that he noticed a commotion created by Messrs. Séguin and Lavergne at the front

entrance of Room 308. Mr. Lockett then went outside Room 308 to see what was happening. Mr. Séguin had Mr. Lavergne by the arms and Mr. Lavergne was trying to get away. Mr. Lockett testified at the hearing that Mr. Lavergne was red, was having a hard time and looked very angry. Mr. Séguin was clearly the aggressor.

[24] Mr. Lavergne then asked Mr. Lockett to go and see Mr. Séguin and calm him down. Mr. Lavergne then left the party, upset by these events. Mr. Lavergne testified that he did not advise security so as not to shut down the party. He was confident that Mr. Lockett would take care of the situation with Mr. Séguin.

[25] Mr. Lockett first tried to stop Mr. Séguin from returning to Room 308. Mr. Lockett was standing in the doorway, holding on to the doorframe blocking the entrance. He declared in his statement (Exhibit E-2, tab I), that Mr. Séguin made his way past him after telling him to move out of the way, as he was having fun. Mr. Lockett then went to see if Mr. Lavergne was hurt and went to talk to Mr. Séguin. He told Mr. Séguin that that kind of activity could get Mr. Séguin dismissed, to which Mr. Séguin replied: "Fuck him. I'm just having fun." Mr. Lockett replied that it might be fun for Mr. Séguin but not for others and he should relax and be good. They then started talking about a common acquaintance. Mr. Lockett remained at the party for about one-half hour after Mr. Lavergne had left. Noting that Mr. Séguin had settled down, Mr. Lockett then left the party.

[26] Mr. Pilon testified that he saw Mr. Lavergne go over to Mr. Lockett to ask the latter to do something about Mr. Séguin. Mr. Lockett did not seem successful in calming Mr. Séguin but Mr. Pilon could not hear what was said. Mr. Pilon overheard Mr. Lockett tell Mr. Lavergne that he was not in a position to stop Mr. Séguin. Mr. Séguin came to see Mr. Pilon afterwards in Room 308, put his hand on Mr. Pilon's shoulder and asked him [Translation] "Did you like what I did to your boss?", to which Mr. Pilon replied [Translation] "No." Mr. Pilon explained that he felt that Mr. Séguin should not be provoked.

## **II Grievor's Version**

[27] Mr. Séguin's version, however, is quite different. After kissing Ms. Beaupré on one cheek, to which she consented, Mr. Lavergne intervened. Mr. Séguin testified that Mr. Lavergne started pushing him and telling him that it was enough. Mr. Séguin then grabbed Mr. Lavergne by the belt and tie. They were, at the time, in Room 308 near the

entrance. They then backed out of Room 308. Once outside, Mr. Séguin let go of Mr. Lavergne and asked Mr. Lavergne if he wanted to punch him. In cross-examination, Mr. Séguin added that he never pushed Mr. Lavergne into the coat rack. Mr. Lockett told Mr. Séguin: [Translation] “Be careful or you might lose yours job”, to which Mr. Séguin replied: [Translation] “It’s Mr. Lavergne who attacked me first. I don’t see why I should lose my job.”

[28] David Sabourin, an employee of the MSSU, testified that he saw Mr. Lavergne accost Mr. Séguin, who reacted in self-defence. They had each other by the shirts. Mr. Lockett intervened and both Messrs. Lockett and Lavergne escorted Mr. Séguin out of the room. After arguing for about five to ten minutes, Mr. Séguin had calmed down and returned to Room 308.

[29] Yves Labrèche, a witness for the grievor, made an earlier statement (Exhibit E-2, tab J) regarding this incident. He had declared that Mr. Séguin told him, afterwards at the party, that he had grabbed Mr. Lavergne by the neck and pushed him into the coat rack located in front of Room 308. In cross-examination, Mr. Labrèche testified as to the truth of this statement.

### “Joint” Smoking Incident

#### **I Employer’s Version**

[30] Mr. Pilon observed Mr. Séguin play with an Aki ball with four other employees during the party. Mr. Séguin, who had removed his shoes, started pretending to hit people with karate kicks. He tapped Mr. Pilon’s back and Mr. Pilon told him to stop. About 15 minutes later, Mr. Séguin did a “knee bend”, tapping Mr. Pilon behind the knees. Mr. Pilon was unhurt and, as Mr. Pilon turned around, Mr. Séguin backed off and went back to his group.

[31] Mr. Pilon testified that later on in the afternoon he was outside Room 308, saying goodbye to a friend and waiting with him for the elevator. As the elevator was taking a while, his friend decided to take the stairs. After his friend’s departure, Mr. Pilon turned around and saw Mr. Séguin with two other MSSU employees: Messrs. Labrèche and Ward. The elevator doors opened and Mr. Séguin grabbed Mr. Pilon by the arm and told him: “You’re coming with us.” While not forcefully, Mr. Séguin then pushed Mr. Pilon into the elevator. Mr. Pilon asked Mr. Séguin where they were going



and he replied: "Outside for a smoke". Mr. Pilon then said that he had already had a cigarette and Mr. Séguin responded: "You're coming anyway." Mr. Pilon added that it was possible that there were other people in the elevator. As Mr. Pilon explained, he felt something was wrong when he was in the elevator; a million things crossed his mind, but he just went along with it. The group then exited the elevator and walked towards the Mackenzie entrance, which is on the West Side of the West Block Building, near the parking lot.

[32] In cross-examination, Mr. Pilon added that, before going outside, they passed by Room 166, where a security guard was reading. Mr. Pilon testified that he did not ask the guard to intervene or help in any way. They went outside; Mr. Séguin was in front of Mr. Pilon and Messrs. Ward and Labrèche were on either side of him. Mr. Pilon noticed that Mr. Séguin had a "joint" in his hand. Mr. Séguin lit up the "joint", took a puff and then handed it to Mr. Ward. Mr. Ward inhaled and then passed the "joint" to Mr. Pilon. Mr. Pilon told him "I don't do that", to which Mr. Ward replied "You're going to do it anyway." As Mr. Pilon was going to pass the "joint" to Mr. Labrèche without smoking it, Mr. Séguin said: "Smoke it." Mr. Pilon testified that he was afraid that Mr. Séguin would beat him up and that he felt threatened; therefore, he pretended to smoke the "joint". Mr. Séguin told Mr. Pilon that the latter "smoked like a girl". Mr. Ward then told Mr. Pilon: "You're fucked. You never should have done that. They now have you on camera in the Wellington Building."

[33] Mr. Pilon added that the "joint" had an odd smell, was not tobacco and, as Mr. Ward had said that "pot" was for kids, he believed that it was hashish. Mr. Pilon replied, in cross-examination, that Mr. Séguin had both fists clenched. Mr. Pilon testified that he was under the "impression that they were waiting for me not to smoke the 'joint' to hit me... I pretended to inhale it."

[34] Mr. Pilon then went back into Room 308. He later saw Mr. Labrèche, who told him that it was a good thing that Mr. Pilon had gone outside and smoked with them, otherwise Mr. Séguin would have beaten up Mr. Pilon. Later on, Mr. Pilon left the party.

## **II Grievor's Version**

[35] Mr. Séguin's version of the events again is quite different. Mr. Séguin testified that he was having fun at the party, dancing, playing Aki ball with friends, mimicking some movies, pretending to do some karate kicks and doing some knee bends. He

went to speak to Mr. Pilon, to congratulate him on his new position as Acting Assistant Supervisor. Then, as the afternoon was coming to an end, Mr. Séguin felt warm and decided to go outside to cool down. When he arrived at the elevator, there were five persons there, all employees of the House of Commons: Suzanne Demers, Messrs. Pilon, Labrèche and Ward and another person that he believes was Jean-Luc Paradis. When Mr. Séguin exited the elevator, he spoke to Mr. Paradis for about ten minutes near the elevator. He saw Messrs. Ward, Pilon and Labrèche go outside, but they did not tell Mr. Séguin what they were going to do. After speaking to Mr. Paradis, Mr. Séguin went outside. Messrs. Ward, Pilon and Labrèche were at the top of the stairs. Mr. Séguin testified that he could smell drugs and that Mr. Pilon approached him and gave him what was left of a “joint”. Mr. Séguin declared that he does not smoke drugs, so he threw out what was left of the “joint”.

[36] Mr. Séguin had several witnesses testify on his behalf concerning this incident. Mr. Paradis testified that he met Mr. Séguin on the first floor as Mr. Séguin was exiting the elevator with Messrs. Pilon and Labrèche and another person. Mr. Paradis spoke with Mr. Séguin about fishing for about five to ten minutes; they were in the corridor of the Mackenzie Tower near the security guard station. Mr. Paradis saw the others go outside, but had no idea why they were going.

[37] In cross-examination, Mr. Paradis testified that, when he drove away in his car, he saw Messrs. Pilon, Labrèche and Séguin and another person outside and did not notice anything special. Mr. Paradis said that earlier in February 2000, when he met with Mr. Hofley, he had told him that he did not talk with Mr. Séguin, but that was because he had forgotten about it. He explained that since his conversation with Mr. Hofley in February 2000, he had discussions with Messrs. Séguin and Labrèche. These discussions did not influence his testimony but helped him remember what had happened. He added, in redirect, that Mr. Labrèche reminded him that Mr. Paradis had talked with Mr. Séguin and he then remembered what they had talked about. [Translation] “Today I expected a question from Mr. Hofley. Back in February, I did not know what the meeting would be about and I had not had time to prepare.”

[38] Mr. Ward testified that Mr. Labrèche told him that he had rolled a “joint” and he was going outside to smoke it. As they were leaving Room 308, Mr. Ward mentioned it to Mr. Pilon who then joined them. They went down the stairs. Messrs. Labrèche, Pilon and Ward started smoking the “joint”. When Mr. Pilon smoked it, Mr. Ward told him

that he was a real idiot to have done so because Mr. Pilon wanted to move up ahead as a supervisor and was putting this in jeopardy by smoking a “joint” outside with them. Mr. Ward testified that Mr. Séguin joined them to smoke the “joint”. Mr. Ward gave Mr. Séguin the “joint” but there was not much left to smoke. Then Mr. Ward went back to the party and left at around 7:00 p.m.

[39] In cross-examination, Mr. Ward added that he knew that the “joint” was hashish, because he normally did not smoke that. Also in cross-examination, he added that he told Mr. Pilon that Mr. Pilon probably got caught on camera but did not laugh.

[40] Mr. Labrèche explained that nobody asked him to go outside to smoke a “joint”. Messrs. Ward and Séguin and himself looked at each other and they knew what they were going to do. As they were leaving Room 308, Mr. Pilon asked Mr. Labrèche where he was going and the latter replied that he was going outside with Messrs. Ward and Séguin. Mr. Pilon then asked him why and he replied that he was going out to smoke with them. Mr. Pilon joined them and they took the elevator with three other House of Commons employees: Maurice Tremblay; Suzanne Demers and another person. They went down to the first floor and, in the corridor, Mr. Séguin started talking with Mr. Paradis. Messrs. Ward, Pilon and Labrèche continued on their way and went outside. Mr. Ward lit up a “joint”, smoked it and then passed it on to Mr. Labrèche, who smoked it as well. Mr. Labrèche then passed it to Mr. Pilon, who smoked it. A minute or so after the “joint” had been lit, Mr. Séguin arrived. Mr. Ward then made a joke that Mr. Pilon had been caught on camera and Mr. Pilon did not seem to find that funny. Mr. Séguin did not talk to Mr. Pilon, but had his fists clenched.

[41] Mr. Bakaity asked Mr. Labrèche why he had made the statement in Exhibit E-2, tab K. Mr. Labrèche explained that he did not have a choice but to answer the questions, as he thought that his job was on the line. This was very stressful for him. He declared that both statements found in Exhibit E-2, tabs J and K, describe what happened. In cross-examination, he repeated that both statements were truthful.

[42] In the statement found in Exhibit E-2, tab K, Mr. Labrèche had declared that Mr. Séguin insisted that Mr. Pilon smoke the “joint” and he felt that if Mr. Pilon had not smoked it, Mr. Séguin would have hit Mr. Pilon. Mr. Labrèche believed that if he had not been there, Mr. Séguin would have been more violent. Mr. Labrèche had also declared that he had no knowledge that Mr. Pilon smoked “dope” and was surprised to

see him there. As for Mr. Ward, he was pushing Mr. Labrèche and when they went outside, Mr. Ward told Mr. Pilon that he got caught on camera and started laughing.

[43] In the other statement found in Exhibit E-2, tab J, Mr. Labrèche had declared that Mr. Ward had asked him to go and smoke a “joint” outside. [Translation] “I was going outside when Steve, Stéphane and Luc got there. Steve lit the joint, passed it to Luc who passed it to Stéphane, telling him to take it. Stéphane took it. When we all finished, we went back inside to go back to the party. At around 6:30 p.m., I met Stéphane in the hall of the washroom and I told him that somebody had something against him. He asked me who it was and I told him that it was Luc, and he told me that he was not surprised.” In cross-examination, Mr. Labrèche testified that Mr. Séguin insisted that Mr. Pilon smoke the “joint”. Mr. Labrèche also explained that Mr. Séguin is his brother-in-law, but they have not spoken to each other since Christmas 1999.

[44] In reply to Mr. Bakaity’s question, Mr. Labrèche testified that, when Mr. Séguin arrived, he passed him the “joint” and then Mr. Séguin passed it to Mr. Pilon, saying: “Take the joint.” Mr. Séguin was correct in his attitude towards Mr. Pilon at that time and Mr. Séguin would not have done anything to Mr. Pilon if he had refused to smoke the “joint”.

#### After the Party

[45] On Monday, December 21, 1998, Mr. Pilon advised Mr. Lavergne of the incident involving the “pot” smoking outside of the West Block Building. Mr. Lavergne told him that he should talk with Ms. Hayter about what had happened at the party. Mr. Pilon told Ms. Hayter what had happened, but told her that he was quite nervous about reporting these incidents. He was afraid that he would find himself in danger if Mr. Séguin found out about his reporting of the events. Mr. Pilon knew by then that there was no camera that caught him smoking a “joint”. Ms. Hayter explained to Mr. Pilon that she wanted a full report of the events, which can be found at Exhibit E-2, tab E. Mr. Pilon felt threatened by Mr. Séguin but did make a report, as it was his duty.

[46] Ms. Hayter testified that, after meeting with Mr. Pilon, she discussed the situation with Art St-Louis, the Director of Building Management, and then asked the Security Services of the House of Commons to launch an investigation.

[47] Roch Lapensée, of the Security Services of the House of Commons, was responsible for the investigation. He testified that, after questioning a few employees who were at the party, it was decided that all employees of MSSU present at the party would be interviewed. It was one of the biggest investigations undertaken by the Security Services because of the number of witnesses interviewed. Some of the employees were willing to provide statements and others were not. Mr. Lapensée's report was tabled as Exhibit E-2, tab 2, with the statements of the witnesses in appendix.

[48] Mr. Séguin testified that, on Monday morning, December 21, 1998, he went to work and met his supervisor, who asked him if he wanted to apologize to Mr. Lavergne. Mr. Séguin replied: [Translation] "Both of us should apologize." On December 23, 1998, Mr. Séguin was advised that he was suspended with pay during the investigation of the events that had occurred at the Christmas party on December 18. Mr. Ward later called and told him that he (Mr. Ward) had lost his job in the MSSU as he was being let go at the end of his contract on December 31, 1998. Mr. Ward added, in cross-examination, that he was told two days before his term ended that it would not be renewed. Mr. Ward said that he was not suspended after the investigation.

[49] Ms. Hayter testified that it is important for the employer that employees of the MSSU use discretion, have good judgement and be polite, as they come into regular contact with Members of Parliament, their staff, the media and the public. On December 30, 1998, she met with Mr. Séguin to confront him with the allegations of the incidents that occurred at the party on December 18, 1998. Mr. Séguin did not admit to any wrongdoing, while acknowledging the event that involved Ms. Beaupré, explaining that it was a misunderstanding.

[50] After the meeting, a decision was made, in which Mr. St-Louis was involved, and a letter was sent the following day, December 31, 1998, to Mr. Séguin. In this letter, signed by Major-General Cloutier, Mr. Séguin was advised that he was dismissed because of his aggressive behaviour during the staff Christmas party on December 18, 1998, and especially for the incidents that occurred at the party. Major-General Cloutier added in this letter:

[Translation]

...

*During a disciplinary meeting held on December 30, 1998, you did not offer reasonable explanations for your actions.*

*Your actions on December 18 cannot be considered acceptable to the House of Commons. The employer must ensure the safety of its employees and the violence that you have shown, together with the illegal acts you have committed, indicates [sic] that the trust between the House of Commons and you is definitely broken. I have tried to find mitigating factors, I have considered your years of service, together with the absence of any disciplinary record, however, given the gravity of your actions, I must terminate your employment at the House of Commons.*

...

[51] Afterwards, Mr. Séguin went to see his Member of Parliament, who told him that he might be able to help him if Mr. Séguin could get statements from witnesses recounting their earlier statements. Therefore, Mr. Séguin tried to get Ms. Beaupré's telephone number at home, but was told that it was against the employer's policy to provide the home telephone numbers of employees. Mr. Séguin asked if Ms. Beaupré could call him at his home. Mr. Séguin explained that he thought that it was all a misunderstanding and that if he could talk to her, she might change her statement.

[52] Ms. Beaupré testified that she was notified of Mr. Séguin's attempt at contacting her, but did not call Mr. Séguin back. She is not afraid of what happened, but now avoids going to the Christmas party, as she would not want similar incidents repeated.

[53] Mr. Pilon testified that the events and the reporting of them gave him a lot of anxiety. It has affected his relationship with others, as well as his personal relationship with his wife. Even today, he is extremely nervous and is afraid of Mr. Séguin. Mr. Pilon explained that, while Mr. Séguin was on the Hill, the latter had built a reputation of having been in the Army as a Commando, and that he was a daredevil trained in combat. Ms. Hayter had declared (Exhibit 2, tab 2, page. 2) that "Mr. Séguin intimidated people by telling them that he was in the Airborne Regiment and was trained to kill". Mr. Séguin explained at the hearing that he had just told his

fellow employees that he was in the Airborne Division of the Army; he was proud of this and employees would ask him questions about his years of service.

[54] Mr. Séguin testified that, after getting the letter of dismissal, he applied to receive employment insurance, which was initially denied, but, by a decision of a board of referees appointed pursuant to the *Employment Insurance Act* (Exhibit G 1, tab 4), the denial was reversed. Meanwhile, he was on welfare and had to sell his motor vehicle, his camper, etc. He did odd jobs (cleaning up, painting); he worked for Domus Construction for a week and was on-call for a maintenance company.

[55] In cross-examination, Mr. Séguin explained that he and Mr. Ward have been friends for 20 years. Mr. Ward had informed him that there were some employment opportunities at Minto Development Inc. (Minto) and that is how they came to be employed in the same company. Mr. Séguin now works with Minto, the same company where Mr. Ward is employed.

### Arguments

#### For the Employer

[56] Mr. Hofley submitted that Mr. Séguin's serious misconduct warranted serious discipline. The employer's evidence was clear and cogent and established that those incidents took place. Mr. Séguin's conduct and behaviour were beyond the acceptable norm. He was intimidating, harassing, humiliating and conducted himself as an adult bully. There is no place for that in the workplace, especially at the House of Commons. The employer has a duty to deter sexual harassment and protect its employees against violence in the workplace. Such conduct cannot be condoned.

[57] In terms of evidence, the employer has established that three events took place, which justify the termination of Mr. Séguin's employment. These are:

- (1) the sexual harassment of Ms. Beaupré with the consistent demand for a kiss;
- (2) the unprovoked and unwarranted assault against a supervisor (Mr. Lavergne); and

- (3) the use of threats and intimidation to put a supervisor (Mr. Pilon) in a compromising situation involving drugs.

[58] The employer's witnesses were forthright, consistent and unwavering in their testimony. Their testimony was consistent with the statements that they had made following the incidents, which is in marked contrast with Mr. Séguin's evidence. Mr. Hofley pleaded that each incident by itself would justify termination of employment.

[59] Mr. Hofley argued that Mr. Séguin's conduct was not while he was off duty, because it occurred during working hours and several of the employees present at the Christmas party were paid, as was Mr. Séguin. The room for the party was provided by the employer free of charge and it was on the employer's premises - Room 308 of the West Block Building of the House of Commons.

[60] If it is found that it was off-duty conduct, Mr. Hofley submitted that Mr. Séguin's conduct would meet the *Millhaven* test. Evidence has shown that Ms. Beaupré no longer goes to the Christmas party and Mr. Pilon fears Mr. Séguin's return. Mr. Séguin's conduct has also harmed the House of Commons' reputation. Sexual harassment, assaulting a supervisor and smoking drugs on the grounds of the House of Commons is certainly prejudicial to the employer's reputation. Mr. Séguin's behaviour is certainly incompatible with performing his duties satisfactorily, as he assaulted a supervisor and threatened another one.

[61] Mr. Hofley argued that there are no mitigating factors present in this case. Mr. Séguin is young and he can easily find a similar position in maintenance as he has found with Minto. His service with the House of Commons was for a short period of time only. There has been no apology, no remorse or acceptance of any responsibility by Mr. Séguin for his actions. Mr. Séguin does not appreciate the magnitude of his conduct. Mr. Séguin blamed everybody else for what happened. These incidents had a considerable negative impact on affected employees. Such conduct is not and would never be acceptable. There has been an irreparable breach in the bond of trust which cannot be repaired. Therefore, Mr. Séguin should be dismissed.

[62] In support of his arguments, Mr. Hofley relied on the following: *Re American Can of Canada Ltd. and Can Workers Federal Union, Locals 353, 354 and 535* (1977), 17 L.A.C. (2d) 24; *Re Canada Post Corp. and Canadian Union of Postal Workers* (1992),



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29 L.A.C. (4th) 318; *Re Canadian Broadcasting Corporation and Canadian Media Guild* (1998), 70 L.A.C. (4th) 44; *Re City of Lethbridge and Canadian Union of Public Employees, Local 70* (1990), 10 L.A.C. (4th) 150; *Re MacDonalds Consolidated Ltd. and Retail Wholesale Union, Local 580* (1990), 14 L.A.C. (4th) 379; *Re Great Atlantic & Pacific Co. of Canada Ltd. and Retail, Wholesale & Department Store Union, Local 414* (1992), 27 L.A.C. (4th) 165; *Re Madawaska Hardwood Flooring Inc. and I.W.A.-Canada, Local 1-1000* (1995), 51 L.A.C. (4th) 18; *Re Overwaitea Foods and Retail Clerks' Union, Local 1518* (1987), 28 L.A.C. (3d) 393; *Re Volvo Canada Ltd. and United Automobile Workers, Local 720* (1990), 12 L.A.C. (4th) 129 and *Re Outboard Marine Corp. of Canada Ltd. and United Steelworkers, Local 5009* (1973), 4 L.A.C. (2d) 82.

#### For the Grievor

[63] Mr. Bakaity submitted that the burden of proof is on the employer to make its case on a balance of probability. The degree of probability in this case must be higher because of the severity of the discipline, but also because of the reasons for dismissal. Allegations of sexual assault or harassment, physical assault on a supervisor and forcing another supervisor to consume drugs are all of a criminal or quasi-criminal nature. Clear and cogent evidence must be established consequently.

[64] In addition, Mr. Bakaity argued that the test found at page 283 of *Re Andres Wines (B.C.) Ltd. and Brewery, Winery & Distillery Workers, Local 300* (1996), 53 L.A.C. (4th) 247, must be used in the instant case. The onus remains on the employer throughout the proceedings. If the employer establishes a *prima facie* case of misconduct, then the onus shifts to the grievor to provide a plausible explanation. The grievor does not bear the burden of providing the explanation on a balance of probabilities. The grievor has only to offer “an explanation of incriminating facts that is believable in all of the circumstances”.

[65] Mr. Bakaity pleaded that Mr. Séguin has offered plausible explanations for the Christmas party incidents. They are, in fact, a series of small events blown out of proportion. Nothing was done at the party that justifies the termination of Mr. Séguin’s employment. There were a series of four incidents, as outlined in the employer’s letter of dismissal, which can be explained in the following manner:

- (1) there was no sexual assault; Ms. Beaupré felt uncomfortable but, as she testified, there was no sexual overtone in Mr. Séguin’s greeting;

- (2) Mr. Lavergne decided to intervene and grab Mr. Séguin's arm. Mr. Séguin reacted in a natural manner by grabbing Mr. Lavergne's belt buckle and tie; his reaction was immediate but not premeditated; Mr. Lavergne left without deeming it necessary to advise security;
- (3) the other incidents at the party were horseplay; and
- (4) Mr. Pilon said that he was forced to smoke drugs but there is no evidence of threat. If he felt threatened, why did he not ask Security to intervene or why did he not leave the party afterwards? The real reason for Mr. Pilon's complaint was that he feared losing his job the following Monday; he believed Mr. Ward's joke that Mr. Pilon had been caught on video smoking drugs.

[66] Mr. Bakaity argued that sufficient evidence was not submitted to establish that the bond of trust is permanently broken. The employer has suggested only general inference to this effect. Mr. Pilon is the only witness that testified that he fears Mr. Séguin, but that fear was not substantiated.

[67] Progressive discipline was never applied here. The role of discipline must be to be corrective and not punitive. The imposition of dismissal in the instant case far outweighs the nature of the actions. The alternative would have been a suspension with a sensitivity-training course, but the employer decided right away on "capital punishment" with a dismissal.

[68] Mr. Bakaity submitted that Mr. Séguin attended a party that was organized by employees. Even though management supported it, it was still a private function. That has also to be evaluated in appreciating Mr. Séguin's conduct at the party.

[69] The implications have been enormous for Mr. Séguin. He has lost a job at the House of Commons, of which he was proud. Afterwards, he had difficulty finding other employment.

[70] In support of his argument, Mr. Bakaity relied on the following: *AFG Industries Ltd. v. Aluminium, Brick and Glass Workers International Union, Local 295G*, [1999] O.L.A.A. No. 389 (Q.L.); *Re Board of School Trustees of School District No. 33 (Chilliwack) and Chilliwack Teachers' Association* (1990), 16 L.A.C. (4th) 94; *Re Coca-Cola Bottling Ltd. and United Food & Commercial Workers International Union, Local 390W* (1996),

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60 L.A.C. (4th) 1; *Continental Insurance Co. v. Dalton Cartage Co.*, [1982] 1 S.C.R. 164; *Roy v. Imperial Oil Ltd.*, [1995] C.L.A.D. No. 329 (Q.L.); *Ryan Forest Products v. Retail, Wholesale Canada, Canadian Service Division of the U.S.W.A. Local 468*, [1998] M.G.A.D. No. 57 (Q.L.); *Re United Automobile Workers, Local 112 and De Havilland Aircraft of Canada Ltd.* (1964), 15 L.A.C. 41; and *Re United Steelworkers of America and Aerocide Dispensers Ltd.* (1965), 15 L.A.C. 416.

### Rebuttal

[71] Mr. Hofley submitted that Mr. Bakaity's arguments appear persuasive, but a review of the evidence shows otherwise. Mr. Bakaity said that the kiss was simply a greeting at the Christmas party. He disregarded the evidence that Ms. Beaupré said "no", that Mr. Séguin imposed his arms on her and that she testified that she felt trapped. This downplayed the evidence given by Messrs. Lockett, Lavergne and Pilon and by Ms. Beaupré.

[72] Mr. Lavergne left the party because he was disgusted by Mr. Séguin's actions. If Mr. Lavergne had called Security, the party would have been shut down; it was a Christmas party and he felt that Mr. Lockett could deal with Mr. Séguin. The horseplaying simulated karate kicks and the Aki-ball playing were put in the context of the party and the employer decided to focus on the three events where Mr. Séguin crossed the line.

[73] As for the "dope"-smoking incident, Mr. Bakaity said that the only evidence that Mr. Pilon was threatened was Mr. Pilon's, but Mr. Labrèche did testify, as can be found in Exhibit E-2, tab K, that there would have been more violence if Mr. Labrèche had not been there. Mr. Pilon testified that he played along, bringing the "joint" to his lips. Messrs. Pilon and Labrèche both testified that Mr. Séguin had his fists clenched. Mr. Pilon returned to the party and stayed a while but that was because he felt secure around people. This evidence is persuasive and reasonable in the circumstances.

[74] Mr. Ward's joke that Mr. Pilon had been caught on camera was all part of this intimidation by Mr. Séguin. There was no camera. Mr. Pilon could have looked, but the following Monday, he went directly to management. Mr. Hofley argued that this shows that Mr. Pilon's fear was real, and the rest is conjecture by Mr. Bakaity.

[75] Mr. Hofley argued that the grievor's witnesses were not credible; they did not agree between themselves as to what had happened and they often contradicted each other. The employer has met its burden of proof. The actions could be viewed in a criminal context, but this is not the case; there was no criminal accusation here. Mr. Hofley recognized that the onus is greater on the employer because of the termination, and it has been met. The onus then reverts to the grievor to explain his actions. Mr. Hofley submitted that, if only a plausible explanation is necessary, as argued by Mr. Bakaity, we have not heard one.

[76] As for progressive discipline, it is not appropriate in all circumstances. Progressive discipline is not possible when an individual does not acknowledge his misconduct. Mr. Séguin has shown no contrition and offered no apology.

[77] Mr. Hofley concluded by saying the evidence was clear, the disciplinary penalty was appropriate and there are no mitigating factors.

#### Reasons for Decision

[78] In terms of evidence, Mr. Hofley has focused on three events: the kissing incident, the fight with a supervisor, and the "dope"-smoking incident. He argued that any one of those three incidents would justify the termination of Mr. Séguin's employment. As for horsing around during the party, which is a fourth incident related in the employer's letter of discharge, it was presented at the hearing as the context in which the first incident occurred. Mr. Hofley therefore recognized that this fourth incident was not cause for termination. I have, therefore, to review the evidence on the first three incidents, as the employer has conceded that this fourth incident does not justify termination.

[79] Both representatives agree that, while the civil burden of proof applies here, that burden increases with the severity of the discipline. Mr. Bakaity submitted that clear and cogent evidence must be established because of the criminal or quasi-criminal nature of the allegations. Mr. Hofley replied that, while Mr. Séguin's actions could be viewed in a criminal context, he was not charged here. But whatever the burden of proof was, it was met by the employer in the instant case.

[80] The preponderant arbitral jurisprudence<sup>1</sup> holds that the burden of proof in all cases of discipline is the civil burden of proof. The employer must prove its case on a balance of probabilities, but to a degree varying with the severity of the discipline and the misconduct. In the instant case, the employer deemed that the incidents were serious acts of misconduct that required the ultimate sanction of discharge. The alleged three instances of misconduct were serious enough that Mr. Hofley recognized that they could have been viewed in a criminal context. Therefore, the onus is on the employer to prove each alleged act of misconduct by clear and cogent evidence.

[81] Mr. Bakaity argued that the test in *Andres Wines* (*supra*) must be used here. I agree with that decision that the onus remains with the employer throughout the proceedings. Since the onus remains with the employer, it can be somewhat misleading to say, as in the *Andres Wines* decision, that the onus shifts when the employer presents *prima facie* evidence of the misconduct<sup>2</sup>. I prefer the explanation found in *Evidence and Procedure in Canadian Labour Arbitration*, by Grosky, Uprick and Brandt, Carswell, pages 9-7 and 9-8 (2000 - Rel. 3):

...

*...Instead, what has shifted is the tactical burden of producing evidence. This means that the employee now has a practical (as opposed to legal) burden of presenting some evidence to counterbalance the employer's evidence or else she may risk losing the case. The onus of proving just cause ... is always on the employer. It is possible, that the arbitrator may not believe the employer's evidence even though it is uncontradicted. However, that is a lot to hope for and the employee runs a grave risk of losing the case if she simply sits silent on the employer's evidence....*

...

[82] Accordingly, the legal burden does not shift back to the grievor and the onus remains on the employer to prove each alleged act of misconduct by clear and cogent evidence. There is no obligation for the grievor to provide an explanation. But when an explanation is provided, either it is found plausible or not plausible. If the employee's explanation is found plausible, then it follows that the employer did not prove the alleged misconduct with clear and cogent evidence.

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<sup>1</sup> See Brown and Beatty, *Canadian Labour Arbitration*, Third Edition, topic 7.2500.

<sup>2</sup> See *Ontario Equitable Life and Accident Insurance Co. v. Baker*, [1926] S.C.R. 297, at p. 300.

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### Kissing Incident

[83] Ms. Beaupré testified that, when greeting her, Mr. Séguin insisted on a kiss, holding both her arms. He stopped after Mr. Lavergne intervened and told Mr. Séguin that Ms. Beaupré did not want a kiss. Ms. Beaupré then stepped outside of Room 308 to remove her coat and Mr. Séguin followed her. She testified that he then came back to ask for a kiss, holding her again by the arms. Ms. Beaupré explained that she felt that there was no sexual overtone in Mr. Séguin's approach, but it made her uncomfortable and she panicked because he was holding her against her will. Her evidence is corroborated by Mr. Lavergne, who intervened to help Ms. Beaupré, and by Mr. Pilon, who saw the incident and overheard the conversation

[84] On the other hand, Mr. Séguin's explanation, given in direct examination, is that he told Ms. Beaupré that he was going to wish her a Merry Christmas by giving her two kisses on the cheeks, to which she replied: "Just one, Luc." This is not consistent with his testimony in cross-examination that Ms. Beaupré told him that it was her policy not to kiss employees and that he then did not insist.

[85] Mr. Ward, in direct examination, testified that he saw Ms. Beaupré arrive and Mr. Séguin shake her hand and kiss her on the cheek while they were still talking. But in cross-examination, he declared that his statement (Exhibit E-2, tab L) was accurate and not materially different from his testimony in direct examination. In this statement, he explained that Mr. Séguin walked up to Ms. Beaupré and tried to kiss her, but she wanted nothing to do with him; Mr. Lavergne tried his best to fend off Mr. Séguin, but to no avail.

[86] The employer's witnesses were forthright and consistent with their previous statements. In contrast, the evidence given by Mr. Séguin was contradictory and contradicted by his own witnesses. I do not find Mr. Séguin's explanation to be plausible. The employer has satisfied me with clear and cogent evidence that this incident took place.

### Fight With Supervisor

[87] According to Ms. Beaupré and Messrs. Lavergne and Pilon, there were two altercations: the first, in Room 308, where Mr. Lavergne intervened and put himself

between Ms. Beaupré and Mr. Séguin; the second, outside Room 308, when Ms. Beaupré removed her coat and Mr. Séguin came back to ask for a kiss.

[88] Mr. Lavergne testified that when he told Mr. Séguin to let go of Ms. Beaupré outside Room 308, Mr. Séguin grabbed him by his shirt collar and his private parts and pushed him. Mr. Pilon testified that he overheard the conversation between Messrs. Séguin and Lavergne, but could not see clearly what was happening. Mr. Pilon believes that Mr. Lavergne was being held by his collar and his belt. Mr. Lockett testified that he noticed a commotion at the entrance of Room 308 and saw Mr. Lavergne moving backwards with Mr. Séguin in front of him. In cross-examination, Mr. Lockett testified that when he stepped out of Room 308 to see what was happening, Mr. Lavergne was red and was having a hard time and that Mr. Séguin was clearly the aggressor.

[89] There is only one altercation in Mr. Séguin's explanation. It is Mr. Lavergne who first pushed him, telling him to stop. Mr. Séguin reacted in self-defence, grabbing Mr. Lavergne by the belt and tie and then they backed out of Room 308. Outside, Mr. Séguin let him go and Mr. Lavergne asked him if he was going to punch him.

[90] Mr. Sabourin testified to a different version of this incident. He saw Mr. Lavergne physically accost Mr. Séguin, who reacted in self-defence. Then he saw Mr. Lockett intervene and both Messrs. Lockett and Lavergne escort Mr. Séguin out of Room 308. Contrary to all other witnesses, the altercation occurred in Room 308 only.

[91] Mr. Labrèche, also a witness for the grievor, gave a different account of the events in line with the testimony of the employer's witnesses. According to Mr. Labrèche's statement (Exhibit E-2, tab J), Mr. Séguin came to see him after the incident to tell him that he had grabbed Mr. Lavergne by the neck and pushed him into the coat rack outside Room 308.

[92] Mr. Séguin's explanation is that there was only one altercation with Mr. Lavergne. But his testimony in direct examination and in cross-examination would not be contradictory if there were two separate altercations, as testified to by the employer's witnesses. His testimony, in cross-examination, that Ms. Beaupré told him that it was her policy not to kiss employees and that he did not insist would likely have happened during the first altercation. It would be consistent with the testimony of the employer's witnesses that Ms. Beaupré initially refused a kiss in Room 308 and that Mr. Séguin stopped insisting when Mr. Lavergne intervened. His response in direct

examination that, when he asked to wish Ms. Beaupré a Merry Christmas by giving her two kisses on the cheeks, she replied “Just one Luc”, would have happened in the second altercation outside Room 308. Mr. Séguin’s evidence is contradictory in itself and is not consistent with the evidence of his own witnesses. I do not find Mr. Séguin’s explanation to be plausible. The employer’s witnesses’ testimony was consistent, uncontradicted and I am satisfied that clear and cogent evidence was given that Mr. Séguin assaulted Mr. Lavergne outside Room 308.

#### “Joint” Smoking Incident

[93] In essence, Mr. Pilon’s testimony is that he witnessed the kissing incident, the fight with Mr. Lavergne and the horseplaying at the party. Mr. Pilon was the target of a few karate kicks and a knee bend; as well, Mr. Séguin boasted about his fight with Mr. Lavergne. When Mr. Séguin told Mr. Pilon “You’re coming with us outside”, he felt so threatened that he went along, not even daring to ask the security guard’s help.

[94] At first, Mr. Pilon refused to smoke the “joint” that was passed to him but when he saw Mr. Séguin with his fists clenched ordering him to “smoke it”, he had no choice but to smoke it. Mr. Pilon pretended to inhale and Mr. Ward said that Mr. Pilon had just been caught on camera. Mr. Pilon then returned to Room 308 and did not feel threatened anymore, as he had gone along with them doing what they wanted him to do. Later on, Mr. Labrèche came to Mr. Pilon and told him that he had done the right thing by going outside with them and smoking, otherwise Mr. Pilon would have been beaten up by Mr. Séguin.

[95] Mr. Séguin’s explanation is that, having played Aki ball and danced, he was warm and went outside to cool off. He happened to be in the elevator with Messrs. Pilon, Labrèche and Ward and two other persons. When he exited the elevator, he spoke with Mr. Paradis for about ten minutes. Then he went outside and was offered what was left of a “joint” by Mr. Pilon, but refused because he does not smoke drugs.

[96] Mr. Paradis testified that he spoke with Mr. Séguin near the elevator for five to ten minutes. But in cross-examination, Mr. Paradis explained that he had given a different version in February 2000, where he had stated that he did not talk with Mr. Séguin at all. He explained that it was only after speaking to Messrs. Séguin and Labrèche before his testimony that it came back to him that they had had this conversation. This explanation considerably weakens Mr. Paradis’ credibility.



[97] Mr. Ward testified that he and Messrs. Labrèche and Pilon went down the stairs, smoked the “joint” outside and, when Mr. Pilon smoked it, Mr. Ward said that Mr. Pilon had been caught on camera. When Mr. Séguin joined them, Mr. Ward gave Mr. Séguin the “joint” to smoke but there was not much left. Mr. Ward’s version of events is not consistent with the version of Messrs. Séguin, Paradis or Labrèche. Mr. Ward said that he and Messrs. Labrèche and Pilon went down the stairs, not the elevator, and that Mr. Séguin was not with them; therefore, he did not testify that Messrs. Paradis and Séguin had a conversation outside of the elevator; and he said that he passed Mr. Séguin the “joint” implying that Mr. Séguin smoked it.

[98] I am left with some doubt about Mr. Ward’s credibility for the following reasons. Messrs. Ward and Séguin have been friends for 20 years and they now both work together at Minto. Mr. Ward’s “joke” that Mr. Pilon had just been caught on camera was part of the bullying felt by Mr. Pilon during this “pot” incident.

[99] Mr. Labrèche testified that he and Messrs. Ward, Pilon and Séguin went down in the elevator. He declared that Mr. Séguin joined them a couple of minutes after the “joint” was lit. He testified that Mr. Séguin did not talk to Mr. Pilon but he had his fists clenched. When Mr. Bakaity questioned Mr. Labrèche about his earlier statements (Exhibit E-2, tabs J and K), Mr. Labrèche said they were the truth and reflected what had happened. Mr. Labrèche changed his earlier testimony and declared that when Mr. Séguin arrived, Mr. Séguin told Mr. Pilon to take the “joint”.

[100] In his statement found at Exhibit E-2 tab J, Mr. Labrèche declared that Mr. Séguin passed the “joint” to Mr. Pilon and told him to take it. Afterwards, when Mr. Labrèche saw Mr. Pilon, Mr. Labrèche told him that Mr. Séguin had a grudge against Mr. Pilon. In Exhibit E-2, tab L, Mr. Labrèche declared that Mr. Séguin did insist that Mr. Pilon smoke the “joint”. Mr. Labrèche’s testimony was contradictory and certainly not consistent with the version given by Messrs. Séguin and Ward. It does not support the version of the events presented by Mr. Séguin.

[101] Mr. Séguin called several witnesses, but they were not consistent with their previous statements or contradicted each other or Mr. Séguin’s version of events. Consequently, I do not believe that Mr. Séguin’s explanation is plausible in that place and in those conditions. It is my view that the employer presented clear and cogent evidence. I therefore find that the employer proved the allegation that Mr. Pilon was forced to smoke “dope”.

[102] An argument was made by Mr. Bakaity that the incidents happened while Mr. Séguin was off duty. Mr. Hofley submitted that, when Mr. Séguin attended the party, he was on duty as he was on his work shift and was being paid. Mr. Hofley also submitted the party was not a private function, as Room 308 was provided by the employer free of charge; therefore, Mr. Séguin was in the workplace.

[103] The general rule is that an employer cannot discipline an employee for his conduct while he is off duty and away from the workplace. An exception to this rule is when the conduct of the employee is such that it is wholly incompatible with a continuation of the employment relationship: *Mailing* (Board file 166-2-10158); *Re Madawaska Hardwood Flooring Inc. (supra)*; *Re Coast Capri Hotel and Hotel, Restaurant and Culinary Employees and Bartenders Union, Local 40* (2000) 87 L.A.C. (4th) 345; and *Re Great Atlantic & Pacific Co. of Canada Ltd. (supra)*.

[104] The first question that I have to answer is whether Mr. Séguin was on duty while attending the party. Ms. Hayter testified that there was no obligation for the employees to attend the party. If their work shift fell in the time period in which the party was held, they were free to attend the party and could leave whenever they wanted to. It follows, therefore, that the employer considered all employees to be off duty during the period the party was being held. Mr. Séguin was consequently off duty.

[105] The second question is whether he was at the workplace. Clearly, Room 308 is on the employer's premises. Arbitral jurisprudence in similar circumstances has concluded that a distinction must be made when the off-duty conduct occurred at the workplace. The employer has a legitimate concern over the off-duty conduct when it is on the employer's premises. The employer has an abiding interest in the safety, usage and condition of the workplace.

[106] I believe that, because of the circumstances and context in which the incidents occurred and with the special nature of the employer's operation<sup>3</sup>, the employer was justified in discharging Mr. Séguin. The party was held at the workplace in the House of Commons. The incidents occurred during a party, which is quite different than during work, but it was still at the workplace. The House of Commons is the democratic institution where our elected representatives gather to deal with the

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<sup>3</sup> See *Canadian Labour Arbitration (supra)*, at topic 7:310

Nation's affairs and adopt the laws of our country. It is, therefore, a unique place to be working at and the type of conduct and aggression that Mr. Séguin was involved in is unacceptable. Mr. Séguin, while off duty but at the workplace, had a duty to conduct himself in a manner that would not adversely affect the interests of the employer. This is especially true when the workplace is the House of Commons.

[107] That said, if these incidents had happened outside the workplace during a party, they would still be wholly incompatible with a continuation of employment. The incidents involved aggression by Mr. Séguin on two supervisors and one employee of the House of Commons. There is clearly a nexus or linkage between the three incidents and Mr. Séguin's employment in the House of Commons. Given the nature of the aggressions by Mr. Séguin, the employer has a substantiated and legitimate concern that Mr. Séguin's return to the workplace would damage its interests. The employer has a duty to provide to its employees a safe workplace and protect them against the type of conduct displayed by Mr. Séguin.

[108] The employer has established, through evidence, the testimony of Ms. Hayter and of three supervisors, that the bond of trust is broken and cannot be repaired.

[109] I have reviewed the mitigating factors raised by Mr. Bakaity, but find that they are insufficient to allow me to alter the termination of employment. There was no remorse and no admission of fault by Mr. Séguin. He was employed in the House of Commons for just a few years and even if he had a previous good record, the three incidents are too serious and violent. The termination of Mr. Séguin's employment was an appropriate disciplinary measure in view of the circumstances and because of the seriousness of the allegations, progressive discipline is not possible in this matter.

[110] Accordingly, Mr. Séguin's grievance is dismissed.

**Guy Giguère,  
Deputy Chairperson**

OTTAWA, April 24, 2001.