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Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**CALLUM SCOTT**

Grievor

and

**CANADA CUSTOMS AND REVENUE AGENCY**

Employer

***Before:*** Guy Giguère, Deputy Chairperson

***For the Grievor:*** Philippe Trottier, Public Service Alliance of Canada

***For the Employer:*** Richard Fader , Counsel, assisted by René Houle

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Heard at Ottawa, Ontario,  
September 27 to 29, 2000 and  
January 29 to February 2, 2001.

## DECISION

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[1] On October 15, 1999, Callum Scott, a Collections Contact Officer (PM-1) at the Ottawa Tax Services Office (TSO), was dismissed from his employment. In the letter of dismissal, the employer explained that Mr. Scott had released confidential information and made untruthful and dishonest allegations against the employer which were printed and broadcast in September and October of 1999. Also on October 12, 1999, Mr. Scott had publicly displayed signs which contained these allegations on Parliament Hill and between October 12 and 14, 1999, in front of his workplace.

[2] On October 26, 1999, Mr. Scott grieved his termination for wrongful dismissal. The employer rejected his grievance at the final level of the grievance process on April 13, 2000; the grievance was referred to adjudication on May 19, 2000 and is the subject of this present decision.

### Evidence

[3] Mr. Scott explained that he started working for the employer in 1988 as a customs officer. In 1994, the employer requested that Mr. Scott remove a Remembrance Day poppy that he wore on his customs uniform as no decoration was to be added to the customs uniform. Mr. Scott opposed the employer's request, he demonstrated on Parliament Hill (Exhibit G-12) and discussed this issue with the media. Eventually the matter was resolved between Mr. Scott and the employer (Exhibit E-48) and as part of a confidential settlement, he was offered a position as a Collections Contact Officer in Ottawa TSO.

[4] Mr. Scott started to work at the Ottawa TSO in August of 1996. Harvey Beaulac, then Director of the Ottawa TSO, explained that, in the fall of 1996, Mr. Scott was notified that a taxpayer, for whose account Mr. Scott was responsible, had written a letter to the Minister. Mr. Scott chose to write back to the Minister, which was not the proper procedure. When he learned about Mr. Scott's letter, Mr. Beaulac asked the Assistant Director, Elmer Leblanc, to advise Mr. Scott of the lines of authority.

[5] On November 27, 1997, Mr. Scott wrote to Mr. Rob Wright, Deputy Minister, to ask to be returned to his former position as a customs inspector. Mrs. Hélène Beauchemin, Assistant Deputy Minister (ADM), Northern Ontario Regional Operation, answered Mr. Scott's letter on December 23, 1997 (Exhibit E-42). She informed him that, as of July 1, 1997, all PM-1 customs inspector positions had been reclassified to the PM-2 group and level. Therefore, Mr. Scott could not be returned to

his former PM-1 position as customs inspector unless he was successful in a competition for a PM-2 position either at the Ottawa TSO or as a customs inspector. She added that Mr. Scott was well thought of and considered a valued employee by management at the Ottawa TSO and his initiative and motivation were noticed (Exhibit E-42).

[6] Mr. Scott testified in cross-examination that, around May 1997, he started to receive e-mails containing jokes of an offensive nature similar to those found in Exhibit G-4, but he did not keep them as he regularly cleans his files. Mr. Fader asked Mr. Scott why he had started to keep the e-mails in October 1997. Mr. Scott answered: "Because Pat Brunet being my supervisor. I had heard things about him so I decided to keep close attention to the stuff I had been receiving. (...) I was not about to get Brunet; he had not done anything to me but I had heard things. (...) The way he carried himself more like a manager - no camaraderie."

[7] Mr. Scott explained that at the time, some jokes with offensive drawings were also left on his desk. Mr. Scott testified that he did nothing, but just kept the e-mails and drawings in his drawer. The e-mails always came from what he viewed as management, a team leader at the PM-2 level or a resource officer at the PM-3 level.

[8] An incident occurred at a team meeting on February 5, 1998, involving Mr. Scott and Mr. Patrice Brunet, his team leader. Mr. Brunet asked if anyone had problems with the team and Mr. Scott replied by asking about submitted write-offs, which were always rejected by the computer system. Mr. Scott conceded in his testimony that, during this incident, his tone with Mr. Brunet "might have been a bit sharp".

[9] Mr. Scott explained that, two or three days after the team meeting of February 5, 1998, Mr. Brunet spoke to him. Mr. Brunet advised Mr. Scott that he had complained to management about Mr. Scott's attitude and comments during the team meeting. Mr. Scott testified that he responded: "I'd like to ask you about the e-mails that you have been sending. I don't want to receive those e-mails and please stop. You could likely get yourself into trouble for this. I didn't like the tone of pictures or e-mails from Brian McFall as well, so stop sending them."

[10] After this conversation, Mr. Brunet went to see Mr. Leblanc, the Assistant Director. Mr. Leblanc informed Mr. Brunet that sending offensive material was inappropriate and that he should apologize to his team and that he should consider

this an oral reprimand. On February 9, 1998, Mr. Brunet sent out an e-mail (Exhibit E-29) to the recipients of the offensive jokes to apologize. Mr. Leblanc received a copy of this e-mail which reads as follows:

...

*It was brought up to my attention that some MS-MAILS that I sent out lately were not in the best of taste. I do apologize for any inconveniences that this may have caused and I will be more diligent in the future. In that same wavelength I would encourage people not to forward these messages as they are unprofessional and may be discriminatory.*

*If you have any questions or if you want to talk to me in regards to the above feel free to see me at your earliest convenience.*

*Pat Brunet  
A-Team Leader  
Revenue Collections*

[11] Mr. Beaulac testified that he was informed that apologies were made and he considered the matter closed. In cross-examination, Mr. Scott testified that he never received this e-mail apology and that neither Mr. McFall nor Mr. Brunet came to see him to apologize.

[12] On May 29, 1998, a memorandum was circulated in the Ottawa TSO to find volunteers for an event organized by *La Relève* (Exhibit G-9). Mr. Scott testified that he was told by the secretary to the Assistant Director that he could not go because he was not bilingual. He was quite upset, but after discussing this with the co-ordinator of the volunteers for the event, he was told he could go. Later, because of his participation in the event, Mr. Scott received a certificate signed by the Deputy Minister of Revenue Canada (Exhibit G-19).

[13] On June 23, 1998, mandatory harassment awareness sessions were held at the Ottawa TSO. Michel Lalande, a union representative of the Public Service Alliance of Canada, and Denis Maurice, a staff relations consultant, delivered these sessions. The joint union-management sessions were held to introduce the employees to the new harassment policy and guidelines. Mr. Scott testified that he did not want to go to the harassment awareness session as he had already seen the video and objected to this video where men were being compared to wolves running in a pack. Mr. Scott testified

that he found it offensive that Pat Brunet was at the meeting speaking on harassment. At one point, Mr. Scott left the meeting to get his file concerning the poppy incident. When later he returned to the session, Mr. Maurice was telling the employees that harassment would not be tolerated in the workplace and that they should come forward if they felt harassed. Mr. Scott said out loud “this is crap”, recounted his past experience with the poppy incident in 1994 to early 1996, closed his book and went back to his office. Mr. Scott explained that three or four employees came back to see him after the video as they agreed with his position.

[14] On June 25, 1998, Mr. Scott wrote a letter entitled “Staff unrelations” (Exhibit E-8) addressed to the Minister of Revenue, Herb Dhaliwall, as well as to several officials of Revenue Canada and the Public Service Alliance of Canada. In this letter, Mr. Scott expressed his indignation regarding the content of the harassment awareness session and the video. Mr. Scott was also critical of the Revenue Canada complaint process explaining that he had first hand experience with the poppy incident, where he was out of salary and management attacked his personal character and destroyed his career aspirations.

[15] Christine Harenclak, Acting Assistant Director of the Ottawa TSO, testified that Denis Maurice complained of Mr. Scott’s conduct at the harassment awareness session and that he sent her a copy of his notes about the events (Exhibit E-28). On June 25, 1998, she received her copy of the letter “Staff unrelations”. She met with Mr. Scott and his team leader, Scott Buchan, on June 30, 1998, to discuss the harassment session incident. They spoke of the lines of authority and why Mr. Scott had chosen to write the letter “Staff unrelations” to the Minister. They discussed the conversation Mr. Scott had with Mr. Leblanc about following the chain of command and why he should not write directly to the Minister. Mr. Scott’s response was that, when he was at Customs, the only way he would get an answer was by writing to the Minister. She asked Mr. Scott why he did not come to see her or his team leader. Mr. Scott gave no answer. They also talked about his attendance at the harassment awareness session and his refusal to attend a previous team building session at Rigaud. Mr. Scott explained that he did not need team building sessions and he thought that his behaviour at the harassment session was professional and that more people should do the same. Mrs. Harenclak testified that Mr. Scott told her that he would do it all over again. Mr. Scott testified that, at this meeting of June 30,

Mrs. Harenclak told him that nobody would answer his letter “Staff unrelations” and indeed he never did receive a response.

[16] Subsequent to this meeting, Mrs. Harenclak scheduled a disciplinary meeting for July 9, 1998; according to her note to file (Exhibit E-31), Mr. Scott had been notified two days in advance, on July 7, 1998. Mr. Scott testified that he never received notice of this disciplinary meeting and he learned about it when he arrived at work on July 9, 1998. He was not told the purpose of the meeting and was told that if he did not attend, he would be charged with insubordination. He tried finding a union representative but was unsuccessful and he asked a co-worker, Jeff Hersey, to accompany him to the meeting. When Mr. Scott arrived at the meeting, he said that he was attending under duress, as he could not obtain union representation. Mrs. Harenclak explained that disciplinary action had been taken and she handed a written reprimand (Exhibit G-1) to Mr. Scott for his behaviour at the harassment awareness session and sending his letter “staff unrelations” without prior consultation with his supervisor. Mrs. Harenclak asked Mr. Scott to sign this written reprimand. According to Mrs. Harenclak, Mr. Scott threw the letter in the air; she leaned to pick it up and called out his name. Messrs. Scott and Hersey were at the doorway leading out of the boardroom and leading to the elevator; she called out his name three times and then Mr. Scott returned to the boardroom and she handed him the letter. According to Mr. Scott, this is not what happened. Mr. Scott testified that he refused to sign the letter and Mrs. Harenclak stood up and lunged at him. She had to be restrained by Chris Clark, Human Resources Assistant Director, who was also in the room with Mrs. Harenclak. Mr. Scott took the letter and left the boardroom.

[17] On the same day, July 9, 1998, Mr. Scott filed a harassment in the workplace complaint against Mrs. Harenclak, Mr. Brunet and Mr. Brian McFall (Exhibit G-5). The harassment complaint was addressed to Mrs. Beauchemin as ADM. The complaint mentioned the June 23, 1998 harassment awareness session, the following meeting with Mrs. Harenclak and Mr. Buchan on June 30, 1998 and the disciplinary meeting with Mrs. Harenclak on July 9. Mr. Scott also explained how he was notified about the meeting on July 7, 1998 and the difficulty he encountered in finding union representation:

...

*On Tuesday, July 7<sup>th</sup> I was informed by Scott Buchan that there would be another meeting with Ms. Harenclak scheduled for Thursday, July 9<sup>th</sup> at 11:00 with the room to be announced.*

*Wednesday at 1:30 PM It was confirmed that the meeting would be held on the 10<sup>th</sup> floor board room. At that point Scott stated he would not be present and I asked if this was to be for disciplinary reasons. He stated he wasn't sure but I was told that I was entitled to union representation. At that point I scrambled to find a representative. At 2:00 PM I was informed by Mike MacDonald that PSAC could represent me. Upon contacting Art Slater, he agreed. At 3:30 PM after Art Slater made a call to his President, I was informed he could not be present at that meeting. A call was placed to Mike MacDonald at 3:35 PM. An urgent message was left to which there was no response. With the meeting scheduled for 11:00 AM and with no union representation, I was told that either I go to the meeting without or be charged with insubordination. At that point I had no alternative but to attend under extreme duress with a fellow team member.*

...

[18] Mr. Scott did not grieve the written reprimand. On July 27, 1999, Mrs. Beauchemin wrote to Mr. Scott (Exhibit G-10) in reply to his harassment complaint. She indicated in her letter that she had asked Messrs. Brunet, McFall and Mrs. Harenclak to respond to Mr. Scott's allegations. She indicated that mediation could be arranged. Along with her letter were enclosed the departmental policy and guidelines on harassment in the workplace. She concluded her letter by reminding Mr. Scott that any information and documentation relating to this complaint which would be provided to Mr. Scott, throughout the course of this process, would be considered confidential and should not be divulged to other parties.

[19] Mrs. Harenclak testified that on July 28 and 29 she received three complaints about Mr. Scott posting documents on his cubicle walls (Exhibits E-32 and E-33). Mrs. Harenclak went to Mr. Scott's cubicle and saw three documents posted. She then asked the acting director for the Ottawa TSO, Mike Quebec, to join her there. The documents consisted of Mr. Scott's letter "Staff unrelations" (Exhibit E-8), where Mr. Scott had written over it "Feel free to view". The second document was the written reprimand (Exhibit G-1) that Mrs. Harenclak had given to Mr. Scott on July 9 with a big X written over it in black. The third document was a copy of the harassment

complaint letter to Mrs. Beauchemin (Exhibit G-5) with a cover sheet over it, indicating “ten working days”. Mr. Quebec agreed with Mrs. Harenclak that the documents should be removed from the walls, as they were inappropriate; Mrs. Harenclak removed them and destroyed them.

[20] Mr. Scott testified that prior to his posting of the documents, he had phoned Mr. Easton, the union regional representative, to ask if he could post such documents on the union board. Mr. Easton’s response was that he would not advise him to put them up on the union board but Mr. Scott could do it within the confines of his cubicle. Mr. Scott was away on sick leave at the time when Mrs. Harenclak took down the documents from his cubicle walls. He was back at work on July 31, 1998 and Dan Therrien, Manager of Revenue Collections, told him that the documents that he had posted had been removed (Exhibit E-35) by Mrs. Harenclak, because they were inappropriate and offensive.

[21] On August 5, 1998, Mrs. Harenclak met with Mr. Scott and also present were Messrs. Hersey and Therrien. The purpose of the meeting was to discuss the posting of the documents and the complaints that followed from Mr. Brunet and Mr. McFall. On August 6, 1998, Mr. Scott filed an internal security incident report (Exhibit E-37) stating that Mrs. Harenclak had stolen his documents. Mr. Scott also called the Ottawa Carleton Police to report the stolen documents. Mr. Scott explained that he did not pursue the matter but just wanted to have his complaint recorded by the police. On August 7, Mr. Scott wrote to Mrs. Beauchemin asking her, in accordance with the harassment policy, to have Mrs. Harenclak removed from his work area (Exhibit E-44). On Friday, August 7, 1998, Mr. Scott was advised by his team leader to attend a disciplinary meeting on August 11, 1998. Mr. Quebec testified that, on August 10, 1998, he received a call from Fred Easton, who advised him that Mr. Scott would not attend the disciplinary meeting on August 11, 1998 as he was on sick leave. Mr. Quebec testified that Mr. Easton was furious that there was any insinuation that he had approved the posting of the documents on Mr. Scott’s cubicle walls. On August 11, 1998, Jeff Hersey delivered a written note from Mr. Scott to his team leader, to advise that he would be out of the office indefinitely and that a doctor’s certificate would be forthcoming (Exhibit E-38). His team leader tried to reach him by phone on August 11 and 12, 1998 and left messages, but Mr. Scott did not call back.



[22] On August 14, 1998, Mr. Quebec wrote to Mr. Scott, in view of his absence from the office since August 11, 1998, to advise him that he was suspended for two days (Exhibit G-2). Mr. Quebec explained that Mr. Scott's suspension was because Mr. Scott had posted on his cubicle walls confidential and sensitive information contrary to the departmental policy against harassment in the workplace. On August 28, 1998, Mrs. Beauchemin wrote to Mr. Scott that it was inappropriate and not feasible to remove Mrs. Harenclak from his workplace as he had requested, but that suitable interim accommodation would be provided for Mr. Scott.

[23] On September 25, 1998, Mrs. Beauchemin wrote to Mr. Scott (Exhibit E-47) to inform him of her conclusion concerning his harassment complaint. She explained that she found that his allegations against Messrs. Brunet and McFall had already been dealt with when management first became aware of the situation. She concurred with him that the e-mails were improper but found that Mr. Brunet had apologized to him and the team and that both Mr. Brunet and Mr. McFall recognized the seriousness of their action and were regretful. She added that further harassment awareness sessions would be amended to reflect the point raised by him. Mrs. Beauchemin found that the allegations against Mrs. Harenclak were unfounded because she had exercised managerial rights in a responsible manner. She also found that Mr. Scott had been provided with enough time to find union representation and the meeting was not contingent on having a representative present. Mrs. Beauchemin concluded by indicating that other redresses were available to Mr. Scott, if he did not agree with her decision.

[24] In November 1998, Mr. Scott heard from co-workers that management was going to clear his office. He went to pick up his things, but his pass card would not work any more and therefore a colleague had to let him in.

[25] On December 16, 1998, Mrs. Harenclak wrote to Mr. Scott to confirm that he had been on sick leave without pay since November 21, 1998. She informed Mr. Scott that he had the option of applying for disability benefits. She asked him to contact his manager, Dan Therrien, when he would be able to return to work. She concluded by reminding Mr. Scott that during his period of leave he had to maintain the confidentiality of information concerning taxpayers (Exhibit E-9).

[26] On March 1, 1999, Mr. Scott sent a letter to Mr. Beaulac, who had returned as Director of the Ottawa TSO (Exhibit G-23). Mr. Scott wrote that he had been wronged

by management in the poppy incident, also when his team leader distributed obscene e-mails and when he was reprimanded by Mrs. Harenclak. He asked to meet with Mr. Beaulac to explain the situation; otherwise he would send to each Senator, Cabinet Minister, Member of Parliament and the media, a package of documents he had prepared which would lead to more bad publicity for the Department (Exhibit G-23). In a letter sent on July 19, 1999 (Exhibit G-25), Mr. Scott asked for a meeting with Mr. Beaulac within 14 days; otherwise he would lodge a complaint with the Minister of National Revenue and he again threatened to distribute a package of documents. Mr. Scott testified that there was no response to these letters or several more that he sent.

[27] On July 29, 1999, Mr. Scott read on the front page of the *Ottawa Citizen* that six Revenue employees at the Heron Road Tax Centre were given two-day suspensions for using the Department's e-mail system to pass around distasteful jokes and other offensive material. Mr. Scott explained that this showed a double standard by the employer where PM-1's were being disciplined at the Heron Road Tax Centre, but in the situation that he had experienced, managers had sent obscene jokes through the e-mail system without being disciplined. In cross-examination, Mr. Scott conceded that the July 29, 1999, article (Exhibit G-3) mentioned only that there were six Revenue Canada employees who had been disciplined, without indicating that they were classified at the PM-1 level and therefore they could have been employees at the PM-2 and PM-3 level.

[28] Mr. Beaulac testified that in 1998, all employees who were found to have sent improper material by e-mail were given an oral reprimand. The employer was facing a new problem (improper use of e-mail) with still new technology. Later on, a policy dealing with e-mail use was developed and implemented. As employees were warned what kinds of e-mail were inappropriate, the disciplinary measures increased. Mr. Beaulac explained that, as a result, there was an incident in 1999 involving a team leader who was given a one-day suspension for sending improper e-mail.

[29] Mr. Scott's reaction after reading the article was to phone the office of the Minister. Mr. Scott explained to Philippe Dinis, a Departmental Assistant, what he felt was a double standard by the employer. On July 30, (Exhibit E-10) Mr. Scott sent some of the offensive e-mails that he had received back in 1997-98 to Mr. Dinis. Two weeks later, Mr. Scott phoned Mr. Dinis who told him that he had not had the opportunity to

look at the package sent by Mr. Scott. Not having received a response from the Minister, Mr. Scott wrote (Exhibit G-29) to Jason Kenney, Reform Critic for Revenue Canada, on August 12, 1999. Mr. Kenney's secretary later phoned Mr. Scott and told him that Mr. Kenney would look into it. On August 13, 1999, Mr. Dinis wrote to Mr. Scott to tell him that the issue that he had raised would be reviewed by Revenue Canada officials (Exhibit G-26). Mr. Scott did not receive this letter until September 21, 1999, as the August 13, 1999 letter was sent to his former address. On September 24, 1999, Mr. Kenney wrote to the Minister regarding Mr. Scott's allegation of a double standard and sent a copy of this letter to Mr. Scott.

[30] Meanwhile, not receiving a response to his letters to Mr. Beaulac, Mr. Kenney and the Minister, Mr. Scott reflected on the situation. In his testimony, Mr. Scott explained that he had tried getting in contact with Revenue Canada, the Reform Critic and the Minister, but nothing happened. He therefore felt that in his situation, there was no other alternative than to go to the media.

[31] Mr. Scott gave an interview, which was published on September 21, 1999, on the front page of the *Ottawa Citizen* and entitled: "Dirty jokes at Revenue Canada". In the article, there were some of the offensive jokes sent out by e-mail and quotes from his letter, "Staff unrelations". There was also reference to Mrs. Harenclak's letter of reprimand to Mr. Scott of July 9, 1998. Finally there were quotes from the letter of September 25, 1998 by Mrs. Beauchemin on her findings on Mr. Scott's harassment complaint.

[32] On the same morning, Mr. Scott was interviewed by Steve Madley of the CFRA radio station (Exhibit E-12). The interview began with Mr. Madley recalling that three years ago, Mr. Scott had been on his show to discuss the poppy incident. After answering some questions on the poppy incident, Mr. Scott discussed the harassment training session. Mr. Scott referred to the situation of his managers sending him offensive e-mails without being reprimanded, while six Revenue employees had recently been suspended for doing the same thing. Mr. Scott concluded by saying that in general employees were doing a good job but the managers were mistreating them.

[33] Mr. Beaulac testified that when he read the *Ottawa Citizen* article, he was shocked that two unrelated incidents had been woven together. Mr. Beaulac stated that there were a lot of inaccuracies in the article and confidential information had been revealed. For example, the article started by saying that Mr. Scott had been out of

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work since last summer after blowing the whistle on his supervisor's use of e-mails to pass around obscene jokes. Mr. Beaulac explained that in fact Mr. Scott chose to go out on sick leave and therefore the grievor was not out of work. Mr. Beaulac also indicated that the article quoted a letter from Mrs. Beauchemin of September 25, 1998, naming Mr. Brunet and Mr. McFall. This information dealt with Mr. Scott's harassment complaint and had been provided to him on a confidential basis.

[34] Mr. Beaulac also commented on the interview on CFRA, saying that there were several inaccurate statements and confidential information had been revealed. For example, on page 4 of the transcript (Exhibit E-12), Mr. Scott said that the e-mails his managers sent were ten times worse than those sent by the six employees, but Mr. Scott has never seen those e-mails. In cross-examination, Mr. Scott conceded that in fact, he never saw these e-mails sent by the six employees.

[35] On page 7 of the transcript, Mr. Madley asked if Mr. Scott was able to go to his supervisor and say that he did not want to receive those e-mails. Mr. Scott replied: "Yes I did, and this is why I am not at the office any more. I've been off now for over a year because of it". Mr. Beaulac stated this was inaccurate, as Mr. Scott asked to be put on sick leave.

[36] On page 10 of the transcript, Mr. Scott said:

...

*And I went to my supervisor and stated I had a taxpayer on the other end of the phone that told me that he had a gun to his head, and he was going to kill himself over the taxes that he had to pay. And I didn't know how to handle the situation; you almost have to be a psychiatrist. So I went to my supervisor, and my supervisor basically told me let him go ahead and blow his effing head off.*

...

[37] Mr. Beaulac said that he found it unsettling to hear of those suicide threats and would have appreciated if Mr. Scott had brought it to his attention as it was never done previously.

[38] Mr. Beaulac testified that the *Ottawa Citizen* article and the radio interview had quite an impact on employees' morale and having the Department depicted as a

heartless collector had certainly an impact on collection. After Mr. Trottier requested them, the employer produced statistics (Exhibit E-49) that showed a level of production for September 1999 of 1,479 accounts; for October 1999, 1,711 accounts and November 1999, 1,375 accounts.

[39] Mrs. Harenclak testified that, on September 21, 1999, employees were standing in the doorway of their work station, in a state of shock and disbelief after they had listened in to the radio broadcast of the interview with Mr. Scott. Mrs. Harenclak explained that she was angry that the *Ottawa Citizen* article was one-sided and that no journalist had called her to hear her point of view. She was saddened for Mr. Brunet and Mr. McFall, as it was an invasion of their privacy. For several days, she had to answer questions from colleagues, friends and relatives about this article. Mr. Scott's interview also put a damper on a recognition ceremony scheduled on the same day which was attended by employees of the division. Mrs. Harenclak testified that for the rest of the day and for a few days after, no work was done by employees because of the impact of the interview on their morale. An editorial was published in the *Ottawa Citizen* on September 22, 1999, following the interview. As well an article on this topic was published in the *Ottawa Sun* and *Toronto Sun* on November 23, 1999 (Exhibits E-14, E-15). Mrs. Harenclak testified that from September 21 until October 15 of 1999, she spent 100% of her time preparing briefing notes and managing the media.

[40] On September 28, 1999, Mr. Scott wrote to the Minister indicating:

...

*If my concerns are not dealt with no later than Friday October 8<sup>th</sup>, 1999, I will exercise my democratic right to protest commencing Monday October 11, 1999 at the following locations Revenue Canada 333 Laurier Avenue, West and Parliament Hill, permission has been granted by the Ottawa Carleton Police, and you may expect to see the following placards in Bold Lettering:*

*Revenue Canada Disrespects Taxpayers Visible Minorities and Employees*

*Shame on you Revenue Minister MARTIN CAUCHON and the LIBERAL GOVERNMENT*

*Revenue Canada's Naughty E-Mail Get your copy here*

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*Revenue Canada Promotes Poisoned Work Environment  
Racism Discrimination*

...

[41] On October 4, 1999, Robin D. Glass, Assistant Deputy Minister, Human Resources Branch, wrote to Mr. Scott. He explained that at the request of the Minister's office, he was responding to his letter to Mr. Dinis dated July 30, 1999 and apologized for the delay. Mr. Glass wrote that he was satisfied that Mrs. Beauchemin had dealt with his complaint, as corrective measures had been taken back in 1998, regarding inappropriate e-mails that he had received. As for the similar incident in 1999 at the Ottawa Tax Centre reported in the *Ottawa Citizen*, each case was assessed on its own merit and dealt with appropriately. A copy of the Departmental Guidelines on Public Criticism was annexed to this letter and Mr. Glass warned Mr. Scott that failure to comply with these guidelines would result in serious disciplinary action.

[42] On October 5, 1999, Mrs. Beauchemin wrote to Mr. Scott (Exhibit E-19) to respond to his letter of September 28, 1999, where he advised the Minister of his planned public protest. Mrs. Beauchemin expressed concern for the tone and tactics of Mr. Scott's letter. She also asked Mr. Scott to respect the confidentiality of sensitive information, reminding him of his obligations regarding release of confidential and protected information to the public and the media. As for his allegations pertaining to discrimination and racism, she asked him to provide any evidence, other than the material already provided, to Lucille Charron, Director of Human Resources for the Northern Ontario Region.

[43] On October 12, Mr. Scott was in front of Revenue Canada office and on Parliament Hill with placards, as he had advised the Minister by letter dated September 28, 1999 (Exhibit E-17). This story was covered by CJOH TV (Exhibit E-22) and CHRO TV (Exhibit E-23), the latter quoting:

...

*CALLUM SCOTT (former Revenue Canada employee): We're the ones paying the bills, of course! And there's a lot... Because I worked for Revenue Canada. I see the suffering that goes on day in and day out by the middle class people. They can't afford to pay the taxes that the government is asking them to pay! But nobody seems to be listening! Nobody.*

...

[44] Mr. Beaulac testified that this last statement was inconsistent with Mr. Scott's employment as a Tax Collector. Mr. Beaulac explained that Mr. Scott's protest created concern for their safety among the employees and he had to hire an additional security guard. On October 12, 1999, he requested that pictures be taken of Mr. Scott protesting (Exhibits E-20 and E-21). Mr. Beaulac wrote to Mr. Scott on October 12, 1999 (Exhibit E-24) to advise him to attend a disciplinary meeting, on October 15, 1999, at which he was entitled to have a union representative.

[45] Mr. Scott wrote back on October 12, 1999 (Exhibit E-25) that he would be unable to attend the meeting of October 15, 1999. He explained in his letter that Mrs. Harenclak had lunged at him on July 9, 1998, at a disciplinary meeting and Mr. Scott would not submit himself to this type of ruthless treatment again. Also he explained that he was busy protesting and exposing wrongdoing by the Department towards taxpayers.

[46] In view of Mr. Scott's refusal to attend the disciplinary meeting, Mr. Beaulac wrote to Mr. Scott on October 15, 1999 to inform him that he was discharged for cause on that date. The reasons for his dismissal are:

...

*On September 21, 1999, a local Ottawa newspaper published confidential information related to your July 9, 1998 harassment complaint. This information was released by you to one of their reporters. On the same day, a local Ottawa radio station broadcast an interview with you wherein you again released confidential information to the interviewer as confirmed by him during the broadcast. On October 12, 1999, on Parliament Hill and, on October 12-14, 1999, in front of your place of work, you publicly displayed signs which deliberately contained untruthful and dishonest allegations against the Department. On October 12, 1999, you further made untruthful and dishonest statements about the Department during an interview with a local Ottawa television reporter who later broadcast your comments. Your conduct was inappropriate, unprofessional and unacceptable.*

*In determining the appropriate disciplinary action, your work history and service with the organization was considered, as well as the existence of any extenuating factors that could mitigate your responsibility for your actions. You have broken your Oath of Office and Secrecy to*

*protect confidential information, which you swore to uphold on June 10, 1988. You have contravened the Department's Standards of Conduct, and the Department's policy on Harassment in the Work Environment regarding confidentiality of information. You have violated the Department's Security Policy by failing to protect information. You have contravened the Department's Guidelines on Public Criticism by making untruthful statements in order to undermine the Department's credibility. You have previously been disciplined for your inappropriate actions (written reprimand of July 9, 1998, suspension August 17-18, 1998) and have not corrected your behaviour. You have blatantly disregarded six (6) separate notifications to you to protect confidential information; You have ignored the principles of public criticism which were outlined to you in a letter dated October 4, 1999 from the Assistant Deputy Minister, Human Resources Branch to respond to your July 30, 1999 memorandum to the Minister's office. In that letter with attachment, you were advised that failure to comply with these guidelines would result in serious disciplinary action up to and including termination.*

*You received a letter dated October 5, 1999 from the RADM to respond to your September 28, 1999 letter to the Minister wherein you threatened to protest publicly. At that time, the RADM invited you to contact her office in order to provide details to substantiate your allegations. Our meeting today, had you attended, would also have provided you with the opportunity to substantiate your allegations and you actions. You chose not to pursue either of these two (2) opportunities.*

*Your actions cannot be exonerated. You were not respectful of the rights of other individuals, you failed to protect the confidentiality of information, and you negligently misstated significant facts. Your conduct has severed the bond of trust essential between an Employer and its employees and contradicts Revenue Canada's enduring values of professionalism, integrity, respect and co-operation.*

...

[47] Mr. Beaulac testified that he reminds employees of the Guidelines on Public Criticism (Exhibit E-4) before an election year. Therefore, Mr. Scott would have been reminded of the guidelines in 1998, before the federal election. Mr. Beaulac testified that in his view, the actions of Mr. Scott went against these guidelines. Mr. Scott's public statements to the media created a conflict with his duties and the programs of Revenue Canada contrary to the first principle of the guidelines. His statements also went against the second principle, as they undermined the credibility of the Department, its programs, policies, services and officers. Mr. Scott's statements went



against the third principle as employees must ensure that any statements they make are truthful and honest, do not deliberately or negligently misstate significant facts, cannot be misconstrued and do not impair their employment relationship. The guidelines advise employees to use internal avenues to resolve difficulties and make attempts to bring their criticisms to the attention of the responsible level of management. If employees are still not satisfied, they should go through internal recourse mechanisms. Finally, employees must not disclose information that breaches their Oath of Office and Secrecy and must respect the confidentiality of the information. Mr. Scott had sworn on the 10<sup>th</sup> of June 1988 not to disclose any matter that came to his knowledge by reason of his employment unless duly authorized (Exhibit E-6).

[48] Mr. Beaulac testified that under the “Policy Against Harassment in the Work Environment” (Exhibit E-5), employees are reminded to respect the confidentiality of written complaints. This is communicated to all employees at the harassment awareness session and was communicated to Mr. Scott when he complained of being harassed.

[49] As stated in the “Standard of Conduct” (Exhibit E-3), the corner stone of the Department is the confidentiality of its clients information. This is legislated and can be found in section 241 of the *Income Tax Act*.

[50] Mr. Beaulac testified that he found no mitigating factor, as there was no remorse from the grievor and no rehabilitative potential as after the two disciplinary measures in 1998, he noted no changes in Mr. Scott’s behaviour.

[51] Mrs. Harenclak testified that she did not think it was feasible for Mr. Scott to be reinstated because employees and team leaders do not want to work with Mr. Scott. Mr. Scott has stated publicly that he does not believe in the tax system thereby affecting his credibility as a tax officer. Mr. Scott does not abide by the values of the Department and he has breached the confidentiality of information on several occasions. He has shown a lack of respect for employees and, especially, managers.

[52] In cross-examination, Mr. Scott explained that from his perspective, it is the employer who breached the bond of trust in the past with the poppy incident and now with the events surrounding the instant case. He feels that he has done nothing wrong and what he was saying publicly was the truth. He testified that if he had to face

similar circumstances, he would do it again but he would write more letters to Mr. Beaulac.

### Arguments for the Employer

[53] Mr. Fader submitted that this was not a whistle blowing case but rather one of an employee who chose, despite numerous warnings, to engage in a highly visible, sustained and groundless attack on his employer. Mr. Fader reviewed the evidence and suggested that when Mr. Scott was told he could not be redeployed in his former position of customs officer, Mr. Scott started to save the offensive e-mails that he had been receiving for several months. The e-mails were inappropriate and management dealt with them by giving oral reprimands to the two employees and by demanding that Mr. Brunet apologize to his team. Mr. Fader emphasized that after this reprimand and apologies, the offensive e-mails never recurred.

[54] Instead of grieving the written reprimand of July 9, 1998, for his conduct at the harassment training session, Mr. Scott chose to make a harassment complaint against Mrs. Harenclak, and added the names of McFall and Brunet by mentioning the offensive e-mails. Mr. Fader argued that now these e-mails could be used by Mr. Scott. On August 14, 1998, he was given a two-day suspension for posting on his cubicle walls documentation related to his harassment complaint and again Mr. Scott chose not to grieve. Mr. Fader submitted that the employer should not be forced to litigate these two disciplinary measures, as they were not grieved by Mr. Scott. What is to be kept in mind is that, for both disciplinary measures, Mr. Scott was told about the confidential nature of the documentation. Mr. Scott was also reminded of the lines of authority and he refused the offer of mediation to deal with his harassment complaint.

[55] On July 29, 1999, after reading the article about six suspended Revenue Canada employees, Mr. Scott phoned and wrote to the Minister's office alleging a double standard. Mr. Fader submitted that Mr. Scott came to that conclusion without knowing the details, the employees involved, the content of the e-mails and without contacting or informing anybody at his workplace. Mr. Scott then gave an interview to the *Ottawa Citizen*, published on September 21, 1999, and he went to a CFRA radio show. He discussed the poppy incident with the radio host, which is contrary to the memorandum of agreement that settled his previous dispute with Customs. As in his interview with the *Ottawa Citizen* he alleged a double standard by the employer. As Mr. Beaulac testified in 1997 and early 1998, the employer had little experience with

employees' misuse of the e-mail system and, at that time, an oral reprimand was given. Later on, a policy was developed, distributed and implemented and as a result the severity of disciplinary measures given increased.

[56] On September 28, 1999, Mr. Scott wrote to the Minister (Exhibit E-17) threatening to picket in front of his workplace at 333 Laurier and on Parliament Hill if his concerns were not dealt with. In a letter of October 4, 1999, Mr. Glass answered Mr. Scott's concerns about double standards and reminded him of the guidelines for public criticism. On October 5, 1999, Mrs. Beauchemin reminded Mr. Scott of his obligations regarding the release of confidential and protected information to the public and the media and asked him to provide evidence relating to his allegations to Mrs. Charron, but he failed to do so. Mr. Fader submitted that, by that time, Mr. Scott knew very well that the kind of public criticism he had done in the past was not acceptable and he had been warned accordingly by the Department. Nevertheless, he chose to picket on October 11, 1999 and the following days. Mr. Scott testified that all he wanted was an opportunity to be heard but he chose not to attend the disciplinary meetings; he refused mediation; he did not provide any new evidence as requested by Mrs. Beauchemin and did not take advantage of other redress mechanisms in the harassment policy.

[57] In support of his arguments, Mr. Fader analyzed the following decisions: *John W. Kroeker* (1965) - INS-A-20 (P.S.C.); *Steward and Canada (Treasury Board)*, (1976) C.P.S.S.R.B. No. 17 (Q.L.) (Board file 166-2-108); *Arthur J. Steward v. PSSRB*, [1978] 1 F.C. 133 (F.C.A.); *Jacques Vachon v. Treasury Board* (1977) (Board file 166-2-3106); *Jacques Vachon v. The Queen in Right of Canada, as represented by the Deputy Minister of the Department of National Health and Welfare*, [1982] 2 F.C. 455 (F.C.A.); *Vachon v. Canada (Department of National Health and Welfare)*, [1982] 2 S.C.R. 604 (S.C.C.); *Boris Domazet v. Treasury Board (Department of Manpower and Immigration)*, (Board files 166-2-3172 & 3173); *Re Ministry of Attorney-General, Corrections Branch and British Columbia Government Employees' Union* (1981), 3 L.A.C. (3d) p. 140; *Fraser and Treasury Board (Department of National Revenue, Taxation)*, (1982) C.P.S.S.R.B. No. 91 (Q.L.) (Board files 166-2-12712 to 12713); *Fraser v. PSSRB*, [1985] 2 S.C.R. 455; *Grahn and Treasury Board*, (1985) C.P.S.S.R.B. No. 213 (Q.L.) (Board file 166-215093); *Grahn and Canada (Treasury Board)* (1987), 91 N.R. 394 (F.C.A.); *Forgie and Treasury Board*, (1986) C.P.S.S.R.B. No. 310 (Q.L.) (Board file 166-2-15843); *Forgie v. Canada*, [1987] F.C.J. No. 541 (C.A.); *Trevena and Treasury Board (Revenue Canada - Taxation)*,

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(1998) C.P.S.S.R.B. No. 102 (Q.L.) (Board file 166-2-28562); *Bank of Montreal v. Ng*, [1989] 2 S.C.R. 429; *Haydon v. Canada*, [2001] 2 F.C. 82.

[58] Mr. Fader submitted that the employer has established that the grievor engaged in the actions alleged by the employer; that such conduct warranted discipline and that termination was the appropriate disciplinary measure.

[59] According to Mr. Fader, the grievor has tried to establish that this is a whistle blower case, but failed to establish the following as required by the jurisprudence:

- That the public criticism was made in good faith and was in fact true or at a minimum reasonably sustainable.
- That the content of the criticism is in the public interest to be disclosed. In essence it has to fall within the exceptions described in *Fraser (supra)* – public safety or illegal acts.
- That the grievor made every effort to exhaust all internal redress procedures.

[60] Mr. Fader submitted that the recent decision of the Federal Court in *Haydon (supra)* has not changed the law, as the Supreme Court decision in *Fraser (supra)* still stands. Also the facts in *Haydon (supra)* can be distinguished from the facts in the present hearing. In *Haydon (supra)*, the public servants had their concerns addressed internally, but without success. Justice Tremblay-Lamer found that the public criticism fell within the first qualification of the *Fraser* test, namely disclosure of policies that jeopardize life, health or safety of the public.

[61] When Mr. Beaulac decided to dismiss Mr. Scott, he looked if they were any mitigating factors and what was the appropriate discipline in view of the severity of the offence. These were serious acts and were not isolated, as Mr. Scott had been disciplined previously. Mr. Beaulac found that Mr. Scott made malicious attempts to cause harm, breached the Department's policy and ignored numerous warnings. His behaviour had a major impact on the reputation and operation of the Agency. Moreover, he attacked his own colleagues in the media. Mr. Scott showed no remorse and has no rehabilitative potential. The bond of trust is broken and reinstatement is therefore impossible. The employee admits he engaged in the activities, his conduct warrants discipline and termination is the appropriate disciplinary measure.

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Arguments for the Grievor

[62] Mr. Trottier submitted that the employer did not meet the burden of proof. The grievor admits the incidents that form the basis for his dismissal but Mr. Scott's concern is having a harassment-free workplace. This concern was legitimate and recognized partially by the employer when in the aftermath, the Department did indeed reaffirm and put in place policies dealing with e-mails. Mr. Trottier argued that the grievor met the test set out by the Supreme Court of Canada in *Fraser (supra)* as:

- Mr. Scott's public criticism did not have an impact on his ability to perform his job. He never divulged client information that could be traced back to an individual.
- The duty of fidelity of a public servant must be balanced with his right to freedom of expression and this is the case for Mr. Scott.

[63] Mr. Trottier submitted that the exceptions found in *Fraser (supra)* were somewhat expanded in *Haydon (supra)* with the notion of public concern. There is public concern in the way the e-mail system at Revenue Canada is being used, as it is meant to convey sensitive taxpayer information. Mr. Trottier submitted that it may not be of the same magnitude as the health concerns referred to in the *Haydon (supra)* decision but it was still public concern and the public has the right to know what is happening at Revenue Canada.

[64] Mr. Trottier argued that the evidence points to a very different picture than what was submitted by the employer's counsel. Mr. Scott started in August 1996, and contrary to Mr. Fader's suggestion, it was not the denial of Mr. Scott's request for deployment as a Customs Officer that started this chain of event. The start of all this matter was the e-mails circulated by team leaders. Later at the harassment awareness session, Mr. Scott's former team leader was commenting on harassment which upset Mr. Scott greatly, since his team leader had harassed him by sending offensive e-mails. Mr. Scott wrote the letter "Staff unrelations" (Exhibit E-8) to complain about the harassment awareness session. Mrs. Harenclak met with Mr. Scott and told him that nobody would respond to his letter and that the case was closed. Mr. Trottier submitted therefore that this concern of Mr. Scott was not dealt with to his satisfaction.

[65] Mr. Trottier stated that Mr. Scott wrote on July 9, 1998 to Mrs. Beauchemin that he was formally filing grievances for harassment in the workplace. Then, on July 31, 1998, Mr. Scott wrote to Mrs. Beauchemin, (Exhibit E-43) indicating that he had chosen the full grievance process. On August 7, 1998, Mrs. Beauchemin wrote back to Mr. Scott (Exhibit E-45) to tell him that under departmental policy his grievance would be held in abeyance until his harassment complaint was dealt with under the policy itself. Then finally, on September 25, 1998, Mrs. Beauchemin wrote (Exhibit E-47) to Mr. Scott, indicating that after reviewing the responses to Mr. Scott's allegations, she had decided that an investigation was not necessary, as she had sufficient information. Mr. Trottier submitted that one would expect, in terms of harassment policy, that after a response was obtained, a discussion with the complainant would follow and it would be up to the respondent to supply further information. This did not happen; in fact Mrs. Beauchemin closed the door on the harassment complaint process and on the grievance process by failing to revive Mr. Scott's grievance which was being held in abeyance.

[66] Mr. Trottier stated that the posted documents in Mr. Scott's cubicle were not confidential at all, as there was nothing in the written reprimand suggesting that it was confidential. Those documents were removed by management but if Mr. Scott had been asked to do so by Mr. Therrien he would have removed them.

[67] While on leave without pay, Mr. Scott wrote to Mr. Beaulac on March 1, 1999 (Exhibit G-23) and on July 19, 1999 (Exhibit G-25) but never got any response from Mr. Beaulac. Mr. Scott was shocked, after reading the July 29, 1999 article about the six Revenue Canada employees suspended for sending e-mails, because his team leaders had not received a similar two-day suspension. Mr. Trottier argued that while Mr. Scott did not know the content of these e-mails, it would have been hard to imagine worse than what was sent to him by his managers.

[68] Mr. Trottier argued that Mr. Scott's public criticism of the Department on this was not reckless but a calculated response. Mr. Scott's view was that he was working in an atmosphere of fear as he and other employees had been subjected to this type of e-mails. Mr. Trottier submitted that when Mr. Scott had exhausted all other recourses he went to the media in September 1999, as he wasn't receiving responses to his letter to the Department, the Minister and Mr. Kenney. Mr. Trottier argued that Mr. Scott did not breach the memorandum of agreement in his comments about the poppy incident

on the CFRA radio show. His response to Mr. Madley was on the situation, as he perceived it. He did not know if he was suspended or terminated; that is how he understood the facts; there was no lie in these statements. Mr. Trottier submitted that Mr. Scott did not release any information that could be tracked to a specific taxpayer; therefore he did not release confidential information. There was no intention to inflict harm on the Department. Mr. Scott indicated that what he wanted was a harassment-free workplace and he wanted to identify those who had the power to change the situation.

[69] Mr. Trottier submitted that in terms of evidence there was no drop in productivity in the workplace as the statistics of the employer (Exhibit E-49) showed that any action on Mr. Scott's part had very little impact on the collection of taxes from Revenue Canada. Mr. Trottier added that the documents sent by the employer to Mr. Scott in September and October 1999 were simply to solidify the employer's position that Mr. Scott had breached the Department's policy and that his actions justified termination.

[70] In support of his arguments, Mr. Trottier relied on the following: *Canadian and Labour Arbitration 3<sup>rd</sup> Edition Brown and Beatty, Canada Law Book 7:3330 and 7:4300, Re Government of Alberta and A.U.P.E., Loc. 6 (Smith) (1997), 57 L.A.C. (4<sup>th</sup>) page 400, Larry Dow and Treasury Board (Fisheries and Oceans), (Board file 166-2-22952) and an unreported decision *Public Service Alliance of Canada and SERCO Facilities Management Inc. by James C. Oakley*, arbitration dated September 29, 2000.*

[71] Mr. Trottier argued that, in the alternative, if it is found that Mr. Scott has breached his duty of fidelity, the employer has not proven that Mr. Scott acted maliciously. In these circumstances the appropriate penalty should not be termination, but suspension. Mr. Scott has rehabilitative potential, as there certainly could be an opportunity elsewhere in other offices of Revenue Canada to find a suitable position for Mr. Scott to be reinstated. Mr. Scott has indicated in his testimony that he would consider other options and would ask somebody to help him if he faced a similar situation.

### Reasons for Decision

[72] Mr. Scott acknowledged that he gave an interview that was published in the *Ottawa Citizen* on September 21, 1999 followed by a radio interview on the same day.

He did not dispute that he publicly protested with placards critical of the Department on October 12, 1999 on Parliament Hill and in front of his workplace between October 12 and 14, 1999. As well he acknowledged that on October 12, 1999 he made some statements to television reporters. These are the events that led to his dismissal as stated by the letter of the employer of October 15, 1999. There is no debate in the instant case that the criticism by Mr. Scott was job related. Since it is established that Mr. Scott has engaged in the conduct alleged by the employer, the question that I first have to decide is whether his public criticism deserved disciplinary action by the employer. \*

[73] In *Fraser (supra)*, Chief Justice Dickson wrote that, as a general rule, federal public servants should be loyal to their employer, the Government of Canada, but there were circumstances where a public servant may actively and publicly express opposition to the policies of the government. He gave examples of these circumstances, at page 470 of the *Fraser (supra)* decision:

...

*In some circumstances a public servant may actively and publicly express opposition to the policies of a government. This would be appropriate if, for example, the Government were engaged in illegal acts, or if its policies jeopardized the life, health or safety of the public servant or others, or if the public servant's criticism had no impact on his or her ability to perform effectively the duties of a public servant or on the public perception of that ability. But, having stated these qualifications (and there may be others), it is my view that a public servant must not engage, as the appellant did in the present case, in sustained and highly visible attacks on major Government policies. In conducting himself in this way the appellant, in my view, displayed a lack of loyalty to the Government that was inconsistent with his duties as an employee of the Government.*

[74] In *Grahn (supra)*, Justice Hugessen of the Federal Court of Appeal determined that even if allegations were by their nature within the first exception of *Fraser (supra)*, they would have to be substantiated; otherwise the public servant would be found to have violated his duty of loyalty. He writes at paragraph 3:

\* *Maynard P. Heustis and The New Brunswick Electric Power Commission*, [1979] 2 S.C.R. 768 at page 772.



...

*Having chosen the drastic course of publicly accusing his superiors of illegalities, it was up to the applicant to prove his allegations if he wished to avoid the otherwise natural consequences of his actions.*

[75] The exceptions to the duty of loyalty in *Fraser (supra)* are not exhaustive. In *Haydon (supra)*, Justice Tremblay-Lamer found that the exceptions in *Fraser (supra)* embraced matters of public concern. She determined that a public servant could publicly express his opposition on an important public issue, at paragraph 83:

...

*Where a matter is of legitimate public concern requiring a public debate, the duty of loyalty cannot be absolute to the extent of preventing public disclosure by a government official. (...)*

Justice Tremblay-Lamer also stated at paragraph 112:

*... As a general rule, public criticism will be justified where reasonable attempts to resolve the matter internally are unsuccessful.*

[76] Mr. Trottier did not argue that Mr. Scott's public criticism was within the first exceptions of *Fraser (supra)* (illegal acts or policies that jeopardized life, health or safety). Instead Mr. Trottier argued that there was public concern in the way the e-mail system at Revenue Canada was being used even if it was not of the same magnitude as the health concern raised in the *Haydon (supra)* decision.

[77] The evidence was that there was media interest in the allegations of a double standard by Mr. Scott as several newstories and editorials covered this topic. Did this media interest mean that Mr. Scott's allegation raised a legitimate public concern requiring a public debate as stated in *Haydon (supra)*? When Mr. Scott complained in February, 1998 to his team leader about receiving offensive e-mails, they stopped. The team leader was given an oral reprimand; he apologized to his team and afterwards the employer adopted a policy on the use of the e-mail system prohibiting the transmission of inappropriate material (Exhibits G-13 and G-22). In the application of this new policy, disciplinary measures are more severe and six Revenue employees were suspended in the summer of 1999 for two days. This evidence does not support the allegations of a double standard and therefore does not raise a legitimate public

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concern requiring a public debate. I reviewed the whole evidence presented at the hearing and found no important public issue as in *Haydon (supra)*.

[78] I reviewed also the evidence to see if Mr. Scott's allegations were sustained. Mr. Scott alleged that the employer had a double standard but he had no knowledge of the disciplinary measure taken against his team leader or the content of the obscene jokes sent by the six Revenue employees suspended in 1999. Mr. Scott publicly protested with placards accusing the employer of promoting a poisoned work environment, racism, discrimination and of disrespecting taxpayers, visible minorities and employees. These allegations stem mostly from the content of the offensive e-mails. However the evidence before me is that when the employer heard of their existence, it ensured that they stopped being sent and measures were taken so that employees would know in the future not to send these type of e-mails. After reviewing the whole evidence before me, I find the allegations to be unsubstantiated as in *Grahn (supra)*.

[79] Contrary to the findings in *Haydon (supra)*, Mr. Scott's efforts to have his concerns addressed through the different internal redress mechanisms were limited. Mr. Scott did not grieve the 1998 disciplinary measure given to him by Mrs. Harenclak but instead complained that she was harassing him. He also complained that Mr. Brunet and Mr. McFadden had harassed him when they sent him offensive e-mails. After receiving Mrs. Beauchemin's letter of September 25<sup>th</sup>, 1998 informing him of her conclusions concerning his harassment complaint, Mr. Scott did not pursue any other internal redress mechanism. I do not agree with Mr. Trottier that it was up to Mrs. Beauchemin to revive Mr. Scott's grievance on the harassment. In fact, Mrs. Beauchemin left it, in her conclusion, to Mr. Scott to choose this course if he did not agree with her decision as other redresses were available to him. Mr. Scott testified that he did not receive Mr. Brunet's apology for sending offensive e-mails but Mrs. Beauchemin indicated in her letter to Mr. Scott of September 25, 1998 (Exhibit E-47) that that apology had been extended to him and to the team by Mr. Brunet. If he hadn't received the apology, that would have been a proper time to raise this with Mrs. Beauchemin. I believe that a reasonable attempt to resolve the matter through internal redress mechanisms would have given several opportunities to the grievor, even if he was unsuccessful, to ensure that his allegations were founded before making them public.

[80] In one instance public criticism was the grievor's first step in having the issue addressed. On the Steeve Madley radio show on September 21<sup>st</sup>, 1999, Mr. Scott explained that he went to a supervisor and told him that he had a taxpayer on the phone threatening to kill himself and his supervisor answered that he should tell the taxpayer that he could go ahead and shoot himself. Mr. Scott should have pursued this issue with the employer but never did.

[81] Mr. Trottier submitted that the last exception found in *Fraser (supra)* applied to Mr. Scott's case:

...

*if the public servant's criticism had no impact on his or her ability to perform effectively the duties of a public servant or on the public perception of that ability.*

...

[82] I reviewed the statements made by Mr. Scott in the interviews with the media and the text of the signs he displayed on Parliament Hill and in front of his workplace. In particular, I considered his statement with CHRO-TV on October 12, 1999 where he said that in working for Revenue Canada, he sees the suffering that goes on day in and day out by the middle class who can not afford to pay the taxes that the Government is asking them to pay. I also considered the text of his placards that he displayed outside of his workplace and on Parliament Hill to the effect that Revenue Canada disrespects taxpayers, visible minorities and employees. I find that these statements are highly incompatible with his duties as a tax collector. These statements, as well as the highly visible manner in which they were made public, had an adverse impact on his ability to continue performing these duties and the public perception of his ability to perform these duties.

[83] Mr. Trottier argued that the duty of fidelity of a public servant must be balanced with his right to freedom of expression. As indicated in *Fraser (supra)*, free speech or expression is not an absolute, unqualified value. Public servants have some freedom to criticize their employer but this must be balanced with their duties toward their employer. Mr. Scott's public criticism did not meet the test set out in *Fraser* and was not within the broader notion of public concern in *Haydon*. Mr. Scott engaged in a highly visible attack and displayed a lack of loyalty to his employer that was inconsistent with his duties.

[84] In the letter of dismissal, the employer used the words “untruthful and dishonest” in referring to the allegations made public by Mr. Scott. Mr. Scott’s statement to the media that he was out of work after blowing the whistle on his team leader’s use of e-mails, was misleading. Mr. Scott did not disclose all the facts to the media (being on sick leave, e-mails had stopped when he complained, etc.). Mr. Scott’s statements were misleading and therefore not truthful and honest.

[85] I do not feel it necessary to review further the grounds for termination found in the dismissal letter as I have found the exceptions of *Fraser (supra)* not to be applicable in the instant case. I will add that Mr. Scott was warned by his employer several times not to disclose confidential information and chose to ignore these warnings. When Mr. Scott discussed the content of Mrs. Beauchemin’s letter of September 25, 1998, he was clearly revealing confidential information contrary to the Department’s policy on Harassment in the Work Environment. He also ignored the employer’s guidelines on public criticism for the reasons mentioned by Mr. Beaulac in his testimony (paragraph 47).

[86] Mr. Trottier has argued that even if the grievor was found to have breached his duty of loyalty and fidelity, malicious intent should be proven. Mr. Trottier also submitted that discharge was too harsh a disciplinary measure and that Mr. Scott had rehabilitative potential and could be reinstated in another position, in another office. Mr. Fader on the other hand submitted that Mr. Scott had no rehabilitative potential; the bond of trust was broken and reinstatement was impossible.

[87] I have considered the mitigating factors, such as the fact that the grievor was considered a valued employee, and that his record of service showed his initiative and motivation. I also considered that the grievor had been warned numerous times to follow the lines of authority, not to release confidential information and to respect the Department’s Guidelines on Public Criticism. He was given a written reprimand and later a two-day suspension but the situation escalated from that point and he never returned to work afterwards. He refused to attend several meetings with the employer and did not pursue internal redress mechanisms that were available to him. Malicious or not, Mr. Scott’s unsubstantiated and misleading allegations against his employer were so serious and done in such a highly visible manner, that they have impaired his ability and the perception of his ability to perform his duties. I find that the bond of

trust between him and his employer is broken and therefore reinstatement is not possible.

[88] For all these reasons, I find that discharge was the appropriate disciplinary measure in these circumstances and, therefore, the grievance of Mr. Scott is dismissed.

**Guy Giguère,  
Deputy Chairperson**

Ottawa, July 31, 2001