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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

HENRI BÉDIRIAN

Grievor

and

TREASURY BOARD
(Justice Canada)

Employer

Before: Anne E. Bertrand, Board Member

For the Grievor: Maryse Lepage, Counsel

For the Employer: Michel Beaudry and John Power, Counsel

Heard at Montreal, Quebec,
on March 26-30, June 26-29,
August 15-17, 20-22 and 27-28
and October 25-26, 2001.

DECISION

INTRODUCTION

[1] This adjudication involves a grievance presented by Henri Bédirian, the former Director, Tax Litigation, of the Quebec Regional Office of the Department of Justice ("QRO"). The parties have made admissions, including that the grievance was properly presented and that it complies with the requirements of the *Act*, and there is no objection to my appointment as an adjudicator to hear this dispute. The complainant, Mr. Bédirian, is asking me to retain jurisdiction on the issue of a monetary remedy that is part of his grievance.

[2] The following exhibits were filed in evidence on consent: P-1, the Deputy Minister's decision dated July 28, 2000; P-2, the grievance; and P-3, the employer's reply. By the end of the hearing, some 47 documents had been introduced in evidence and 25 witnesses, in addition to the complainant, had been heard: the Deputy Minister of Justice, Morris Rosenberg, Catherine Letellier de St-Just, Pascale O'Bomsawin, Mario Dion, Mathilde Gravelle-Bazinet, Monique Bond, Anne-Marie Lévesque, Aziz Saheb-Ettaba, France Dufresne, David Merner, Jacques Loïacono, Louise Martin, Chantal Comtois, Ron Wilhelm, Francine Marcotte, Christiane Martin, Nathalie Goyette, Johanne Proteau, Martine d'Août, Chantal Jacquier, Diane Martineau, Nicole Lavoie, Pierre Cossette, Annie Côté and Michel Lamarre.

[3] The hearing lasted 19 days over the course of several months. At the joint request of the parties, I ordered the exclusion of the witnesses, with the exception of the complainant and Ms. Gravelle-Bazinet.

[4] I received testimony in evidence that filled some 500 large pages of transcripts. I have weighed all the evidence, and the facts set out below are the ones I consider the most important to state for the purposes of my decision. At the centre of this case is a first official complaint by a female lawyer from the QRO pursuant to the federal sexual harassment policy.

[5] The various witnesses often referred to the same events, which occurred at various points in time. In assessing the evidence, and to provide a clearer account of everything that occurred, I have set out the evidence in chronological order.

[6] Only two of the allegations made in the formal complaint were upheld by the investigators and also by the Deputy Minister, who determined the final outcome of

the complaint. The purpose of this adjudication is therefore to assess the Deputy Minister's decision solely with respect to those two allegations. The person alleging sexual harassment, Catherine Letellier de St-Just, claimed that a series of sexual comments had been made and insisted on giving her entire story. Since this was important to her, I allowed her to do so. However, I told the parties from the outset that I would not consider the other allegations not upheld by the employer at the time the disciplinary action was imposed.

EVIDENCE

[7] The complainant is challenging (through the grievance procedure: see P-2) the Deputy Minister's decision of July 28, 2000, which imposed the following disciplinary action on him (see P-1):

[Translation]

In light of this conclusion, I must tell you that sexual harassment by a Department of Justice manager toward a subordinate is a serious violation of our policy entitled "Towards a Conflict- and Harassment-Free Workplace". Moreover, this type of behaviour, which is defined on page 3 of the policy, is totally contrary to the professional conduct required from managers in our Department. As described under the heading "If You Are a Manager", "Department of Justice managers have a special responsibility for creating a workplace where harassment is not likely to occur..." Managers are also warned to "[n]ever take part in, or approve of, behaviour that could be interpreted as disrespectful or as harassment".

Accordingly, I am informing you of the following corrective action:

- (a) I am immediately relieving you of your managerial position. However, your Regional Director, Donald Lemaire, will assign you to a position with no managerial responsibilities at your current level, LA-3A.*
- (b) Given the nature of the harassment, I am suspending you without pay for three (3) days.*
- (c) This letter should be a warning to you that any repetition by you of action constituting sexual harassment against one of the Department's female employees will result in immediate dismissal.*
- (d) I ask that you begin harassment and gender equality training.*

- (e) *In view of the impact these incidents have had on Catherine Letellier de St-Just, I ask that you write her a letter of apology.*
- (f) *This letter of reprimand will remain in your file for two (2) years as of today.*

[8] Mathilde Gravelle-Bazinet had a first career as a nurse in the 1980s, then earned a Master of Education, became a lawyer and was called to the bar in 1992. She has held the position of Senior Advisor at the Office of Conflict Resolution since January 1996. The policy of the Department of Justice Canada, *Towards a Conflict- and Harassment-Free Workplace* ("Policy") (E-4), was issued in the fall of 1995. According to Ms. Gravelle-Bazinet, its emphasis is on preventing formal complaints. Ms. Gravelle-Bazinet is responsible for implementing the Policy.

[9] The Office of Conflict Resolution was set up in January 1996. It provides advice to employees in conflict or harassment situations. Ms. Gravelle-Bazinet said that the first approach is to resolve the conflict informally, but where the employee cannot communicate with the other employee about the conflict, the Office intervenes by consent to resolve the matter. This may involve the appointment of a mediator or, if the parties do not agree to this, the use of the investigation process.

[10] Ms. Gravelle-Bazinet testified twice that her Office's main goal is to prevent formal complaints, since such complaints disrupt the workplace. To this end, the Office conducts workplace assessments during which all employees are asked to participate in surveys and meetings to identify the source of conflict. For example, Ms. Gravelle-Bazinet said that she and experts from Watson Wyatt have conducted a variety of such assessments in the Department of Justice, that is, 24 assessments at various offices. The final assessment reports are sent to the managers of each sector and to the management teams to provide general information about what their employees think.

[11] Ms. Gravelle-Bazinet testified that the investigation process found in the Policy (page 19, Annex A, of E-4) had never been used until this case, and she realized during the first investigation that many details were missing. She therefore developed an investigation protocol with the counsel and the access to information advisors to better ensure that the principles of natural justice were adhered to during the investigation process. Now, a memorandum of understanding is signed by the investigators at the start of their investigation, but there is no investigation protocol in

the Policy (E-4). Ms. Gravelle-Bazinet admitted that she had not been part of investigations in the past and was not involved in designing the Policy.

[12] The Policy has apparently been changed since the case involving Mr. Bédirian, but the policy in effect at that time was the one filed as Exhibit E-4. It derives from the Treasury Board's policy, which is the master policy, especially as regards the definitions of "harassment" and "sexual harassment". I should add that the Policy was changed following consultations and work by a committee whose report was tabled in December 2000.

[13] According to Ms. Gravelle-Bazinet, the following procedure is used when her Office receives a formal complaint:

1. a memorandum of understanding is signed with an investigator;
2. it is the investigator who is in charge of the investigation;
3. the Office stays on the sidelines;
4. an interim report is written by the investigator;
5. the interim report sets out the testimony of the witnesses interviewed by the investigator as well as the investigator's comments;
6. the interim report is forwarded to Access to Information;
7. Access to Information removes any references to personal information about third parties and any private information from the testimony - the report is "sanitized";
8. the sanitized interim report is sent to both parties so they can review and make comments on it;
9. the comments of both parties on the sanitized interim report are sent to the investigator, who at that point can examine other witnesses and/or make changes to the report;
10. the investigator writes a final report;
11. the final report is forwarded to Access to Information;

12. the final report is sent to both parties, who are invited to file final submissions with the Deputy Minister;
13. the final report is sent to counsel so that a legal opinion can be written for the Deputy Minister.

[14] Ms. Gravelle-Bazinet added that the Office must ensure that the Deputy Minister receives everything needed to make a decision to resolve the conflict, including: an opinion from Human Resources; the legal opinion on the final report; the final report; both parties' submissions; the Office's opinion on the conflict and its recommendation; and an executive summary prepared by her to "guide" the Deputy Minister.

[15] Before making a decision on the conflict, the Deputy Minister is also entitled to meet with counsel to discuss the legal opinion on the case and with both parties' managers. Once a decision is made by the Deputy Minister, Ms. Gravelle-Bazinet's Office does follow-up.

Assessment conducted at the QRO in 1998 by the Office of Conflict Resolution and Watson Wyatt

[16] In 1998, at the request of Mr. Dion from the QRO, who had been told that there were problems at that office, Ms. Gravelle-Bazinet initiated a workplace assessment to be conducted by the experts at Watson Wyatt. According to Ms. Gravelle-Bazinet, the assessment report noted that the QRO employees had a perception that there were sexual harassment problems involving senior management (see the assessment report, E-1, at page 37). The experts recommended that the QRO make a firm decision on sexual harassment practices in its workplace (pp. 41-42). The following are the passages from pages 37 and 42 of the assessment (E-1):

[Translation]

A few women testified that sexual advances had been made toward them. The testimony refers to harassment and unacceptable (sexual) behaviour toward some women by a few men at the QRO or by senior management.

...

That the QRO and its managers take a firm position on sexual harassment practices by making the employees, among others, aware of what action they can take in response.

[17] Ms. Gravelle-Bazinet testified that the Deputy Minister at the time, George Thompson, said that he was very concerned about the situation, as did the Assistant Deputy Minister, Mario Dion. Mr. Dion told Ms. Gravelle-Bazinet to follow up on the matter with the QRO's Regional Director, Jacques Letellier.

[18] In July 1998, Ms. Gravelle-Bazinet reminded Jacques Letellier of his responsibility as a manager. She referred in particular to the statement of managers' obligations in Policy E-4 (p. 28). She told him to meet with his managers and remind them of their responsibility in this regard.

[19] In August or September 1998, Ms. Gravelle-Bazinet met with the QRO management team to discuss the assessment conducted a few months earlier, and she then met with the employees of the QRO three times; she said that the meetings generated a great deal of discussion. The main complaint was that there was a lack of respect. A committee was created to establish an action plan, and a joint advisory subcommittee was also created.

[20] A new Deputy Minister, Morris Rosenberg, was appointed at that time, in August 1998. Ms. Gravelle-Bazinet briefed him on Policy E-4 and the report on the assessment conducted at the QRO. He shared the others' concerns, and he asked Ms. Gravelle-Bazinet to be [translation] "extremely attentive to the problems at the QRO" and "to tell him" if there were any.

[21] Ms. Gravelle-Bazinet admitted that the assessment conducted at the QRO did not uncover any allegations against Mr. Bédirian. There are 70 employees in the QRO's tax sector and, according to Ms. Gravelle-Bazinet, "senior management" includes the Director General (of the QRO) and all the managers under the Director General.

[22] The federal Deputy Minister of Justice, Morris Rosenberg, testified in this case. He was appointed to the position on July 1, 1998. He was called to the bar in 1977, and his studies include a Master of Laws from Harvard University. Mr. Rosenberg has been working in the Public Service of Canada since 1979.

[23] Mr. Rosenberg too stressed that the main work of the Office of Conflict Resolution is to resolve conflicts in the workplace, including conflicts involving harassment. When he began in his new position, he reviewed the assessment conducted at the QRO in 1998 with the help of the advisor, Ms. Gravelle-Bazinet. He

recalls that there was a problem with "respect" from management at the QRO and, in the Tax Litigation Section, concerns about "equitable treatment". There was also a reference to a sexual harassment problem involving "senior management" (see page 37 of E-1).

[24] A national forum was held in Montreal on October 22-23, 1998, and Deputy Minister Rosenberg chose that opportunity to convey the general message that respect and equality for everyone had to be achieved. During the forum, a woman employed by the Department of Justice even asked him what he was going to do about sexual harassment in the workplace. He openly affirmed his commitment to creating a conflict-free workplace (see E-2 and E-3).

Testimony of Catherine Letellier de St-Just alleging the Chéribourg incident

[25] Catherine Letellier de St-Just has been a lawyer since December 1996, having articulated at the QRO during the preceding months. At the relevant time, she worked as an LA-1 in the Tax Litigation Section. She appeared at hearings and travelled regularly. Her immediate supervisor was Mr. Loïacono, from whom she received most of her work. Mr. Bédirian, as the Section's Director, also gave her some cases (30-40 percent of her work), and she prepared bimonthly and quarterly reports for him containing summaries of all the judgments in their section to stay abreast of what was happening and keep him up-to-date. Jacques Letellier (no relation) was the Director General of the QRO.

[26] Ms. Letellier de St-Just said that her complaint against Mr. Bédirian (E-7) was filed when she was no longer at the QRO. She had taken a position in Ottawa on February 14, 2000.

[27] She said that an incident in Magog (apparently known as the alleged *Chéribourg* incident) had involved a proposition by Mr. Bédirian and that she had felt a moral obligation to complain because she thought he would do the same thing to others. It was not until she was in Ottawa that she felt prepared to help. A seminar had been held in Magog for hundreds of employees. She had arrived on Monday, and the conference ended on Wednesday. The incident allegedly occurred on Tuesday evening, the last evening. She was with a good friend and colleague, Pascale O'Bomsawin. Ms. Letellier de St-Just is a permanent LA-1, while Ms. O'Bomsawin is a contract LA-1.

[28] Before they heard the comments in question, Ms. Letellier de St-Just and Ms. O'Bomsawin attended a dinner organized in a common room. Then, at about 7:30 p.m., they took their empty glasses and were heading toward Mr. MacGregor's suite when they saw Mr. Bédirian near that suite. He greeted them at the door to the suite. According to Ms. Letellier de St-Just, Mr. Bédirian invited them to spend the night with him, and she thinks that he said the word "*baiser*" ["kiss" or a slang term for having sex]. Ms. Letellier de St-Just was dumbstruck, but Ms. O'Bomsawin allegedly said: [translation] "*you're my boss and harassment has already been mentioned to you*". Mr. Bédirian allegedly replied: [translation] "*I'm going to resign from my position in the middle of the night*." According to Ms. Letellier de St-Just, Mr. Bédirian was looking at them with a smile, but the message was serious. She was convinced of his intentions: he clearly intended to have a *ménage à trois*. She knew that he had [translation] "fantasies involving two women" based on an *Ally McBeal* episode in which two female lawyers had kissed. She said that everything happened within a few minutes, very quickly.

[29] Ms. Letellier de St-Just felt very uncomfortable. She clinked her glass and said [translation] "*to your resignation!*" so that someone would realize she was flabbergasted. Michel Lamarre turned and asked her what she had said.

[30] Ms. Letellier de St-Just saw Ron Wilhelm, an employee from the Vancouver office. According to her, he had seen that she and Ms. O'Bomsawin were [translation] "downcast", but she could not talk to him about it because Mr. Bédirian was still in the suite and she felt as if she were being [translation] "tracked" by him.

[31] Ms. Letellier de St-Just was with Mr. Levasseur, Mr. Gentilly, Jane Meagher, Mr. Wilhelm and Mr. Loïacono when Mr. Bédirian came into the chalet very late. She froze, and she was asked what was going on. She decided to tell them that Mr. Bédirian had [translation] "propositioned" them.

[32] Ms. Letellier de St-Just decided to dance with Ms. Meagher, thinking that, since Ms. Meagher was in charge of harassment, the complainant would not try anything if she were near her.

[33] On cross-examination, Ms. Letellier de St-Just testified that, when Mr. Bédirian saw them arriving with their empty glasses, he said: "*Hey guys, two for one*" and asked them: [translation] "*What would you like to drink?*" They said red wine. He added:

[translation] "*when you come back, come in my suite*", and he described his room. Ms. Letellier de St-Just talked about the big, roomy bed and the three of them spending the night together, although she could not reproduce the complainant's exact words. She is only 99.9 percent sure he used the term "*baiser*". She said that she did not mention that word to the investigators because she was not 100 percent sure and because she was under her oath of office.

[34] On cross-examination, she added that there were people walking in the hallway. After Mr. Bédirian spoke to them, and once they were in the suite, Ms. Letellier de St-Just reminded Ms. O'Bomsawin about the *Ally McBeal* incident, but she did not talk to her about any other incidents. Mr. Bédirian arrived and served them wine.

[35] After the cocktail reception, Ms. Letellier de St-Just went to the chalet of the organizers, Mr. Levasseur and Mr. Taylor. Nathalie Lessard, who had been a colleague for four years, took her by car, but Ms. Letellier de St-Just did not talk to her about the incident with the complainant. At the chalet, she talked only to Ron Wilhelm about it. She danced with Mr. Loiacono and Ms. Meagher and, she said, [translation] "spent a pleasant evening" at the chalet. According to Ms. Letellier de St-Just, the music was very loud at the chalet and she did not talk to Ms. Meagher about the incident even though she knew Ms. Meagher was responsible for that kind of problem.

[36] The next day, Ms. Letellier de St-Just and Ms. O'Bomsawin ate lunch with Mr. Cossette and Pierre Verdon. Ms. O'Bomsawin allegedly talked to Mr. Lamarre to tell him what had happened the previous evening.

Testimony of Catherine Letellier de St-Just alleging the Ally McBeal incident

[37] Ms. Letellier de St-Just described an incident that she said had occurred previously at work. It was in October or November 1999. She was in the QRO kitchen with Ms. O'Bomsawin, and Christine Calvé (Michel Lamarre's spouse) was there. Mr. Bédirian and Pierre Cossette came into the kitchen and, according to Ms. Letellier de St-Just, Mr. Bédirian said: "*Hey guys, last night was the night*", referring to the *Ally McBeal* episode in which two female lawyers had kissed. They talked about two of his female lawyers doing that for him. Ms. Letellier de St-Just left after that.

[38] She said that she was worn out by the whole business. Her transfer to Ottawa came at a good time, since she was ready to leave her job. In her final submission to the Deputy Minister, she told him that she wanted to leave the Public Service and that she had been in physical pain. She had to see a psychologist to be able to come and testify before this tribunal. Ms. Letellier de St-Just testified above all about the impact of all of this on Ms. O'Bomsawin, and she thought it appropriate to mention Ms. O'Bomsawin's physical and psychological problems in her letter to the Deputy Minister.

[39] Although she had read Policy E-1, Ms. Letellier de St-Just testified that she did not use it and did not ask for assistance from the Office of Conflict Resolution. She participated in the assessment conducted at the QRO but not in the forum in October 1998 or the information sessions on the subject.

[40] On cross-examination, Ms. Letellier de St-Just said that she was 100 percent sure Pierre Cossette was there but that she was not certain Christine Calvé was the third person. The complainant was standing in the doorway. The only exact words she remembers Mr. Bédirian saying were [translation] "*which of my female lawyers would do that for me*". It is the content of the words that she remembers well.

[41] When Ms. Letellier de St-Just contacted Ms. Lévesque in June 1999 for a position in Ottawa, she admitted that she wanted to leave because her work in Montreal was over, her family lived in Hull and her boyfriend lived in Ottawa.

[42] Ms. Letellier de St-Just decided to make an appointment with Ms. Meagher on December 2, 1999 to tell her what had happened. She was accompanied by Ms. O'Bomsawin. According to Ms. Letellier de St-Just, her only goal was to inform Ms. Meagher, not to ask her what steps to take, although she said that she trusted Ms. Meagher. Ms. Letellier de St-Just and Ms. O'Bomsawin cried. They told Ms. Meagher what had happened. They did so as a preventive measure, since the Christmas party was coming up and it was very likely that the same thing would occur again. Ms. Letellier de St-Just did not say anything about *Ally McBeal*.

[43] Ms. Letellier de St-Just said that she also talked about what had happened with three lawyers (Lemari, Morin and Houle) and one secretary (Jacques) so that people would know what was going on. She was afraid to talk to the people from the QRO about it, and she did not know anyone in the Ottawa office. Those persons did not testify.

Testimony of Pascale O'Bomsawin

[44] Ms. O'Bomsawin has been a lawyer with Tax Litigation at the QRO since September 1996. She was hired after articling there, and she is an LA-1. She works there on contract, and she was seconded to Customs and Taxation from July 1999 until January 2000. Mr. Bédirian renewed her contract for two years on February 17, 2000. Her immediate supervisor was Mr. Loïacono, from whom she received her work, although Mr. Bédirian also asked her to prepare reports on the judgments in their section. She worked with Ms. Letellier de St-Just. Mr. Bédirian had also asked her to sit on a training committee and handle a big, important case worth several thousands of dollars, which gave her the necessary experience to advance to the next level for a lawyer, LA-2A.

Testimony of Pascale O'Bomsawin - Alleged Chéribourg incident

[45] Ms. O'Bomsawin gave the investigators a statement after being asked some questions, and her meeting with them lasted more than three hours. She explained that she had arrived at the conference on Friday, at the very beginning. The senior lawyers arrived on Sunday evening. The participants were Tax Litigation and Revenue Canada lawyers. On November 30, 1999, all the participants were invited for a drink in Ian MacGregor's suite. Mr. MacGregor was the head of the Tax Litigation lawyers in Ottawa. The cocktail reception started after dinner at about 7:30 or 8:00 p.m. She and

Ms. Letellier de St-Just went there together and saw a waiter going around with glasses. They took a glass. Ms. O'Bomsawin said that she was not especially interested in seeing Mr. Bédirian that evening. When he saw them, he said "*deux pour un*" or "two for one" to them. He invited them. He referred to a big bed. According to Ms. O'Bomsawin, it was a sexual invitation, and she was very upset by that explicit invitation. She retorted: [translation] "*Aren't you embarrassed to say that? You were on the committee. You're my boss.*" Mr. Bédirian allegedly said with a little smile: [translation] "*it doesn't matter anyway, I'm going to resign*". Ms. Letellier de St-Just was dumbstruck.

[46] They went into the suite, and Ms. Letellier de St-Just asked her whether she remembered what Henri had said in the kitchen about *Ally McBeal*. Ms. O'Bomsawin testified that they did not have a chance to talk about it because Mr. Bédirian was behind them. He took a bottle and served each of them a drink. Ms. O'Bomsawin was not interested and wanted to leave the suite. Ms. Letellier de St-Just clinked her glass and said: [translation] "*to your resignation*".

[47] Michel Lamarre heard Ms. Letellier de St-Just and asked Mr. Bédirian: [translation] "What, you're resigning?" Ms. O'Bomsawin then said: [translation] "Henri wants to see two female lawyers kiss like on *Ally McBeal*, but he can explain it to you further." Ron Wilhelm asked her what was going on and, since she could not speak English very well, she told him it was "too heavy".

[48] Later, people were invited to go to the organizers' chalet, which was a five- to ten-minute walk away. It was cold outside. Ms. O'Bomsawin ran into Ms. Meagher. Mr. Wilhelm told her that he had spoken with Ms. Letellier de St-Just and that he would not tolerate such a thing in his office. Inside the chalet, people were dancing. The lighting was more subdued, and the music was loud. She saw Michel Carbonneau from Revenue Canada talking with Mr. Bédirian. She wanted to say hello to him, and she said to them: [translation] "*Hey, are you talking about work?*" Mr. Bédirian said no, that they were talking about women.

[49] Michel Lamarre was drunk. He was saying all sorts of things, and he told Ms. O'Bomsawin that he would like to see her and his wife (Christine Calvé) together. Ms. Calvé was not there. Ms. O'Bomsawin wanted to smash his face in. She asked Bruno Lévasseur to take care of him. The next day, Mr. Lamarre apologized for his behaviour.

[50] Ms. O'Bomsawin talked with her boyfriend and Ms. Letellier de St-Just about Mr. Bédirian's comments, and everyone said that they were inappropriate and improper, that he was their boss. Ms. Letellier de St-Just therefore made an appointment with Ms. Meagher, but she did not tell her about *Ally McBeal*, only about *Chéribourg*. That meeting lasted nearly an hour. Ms. Meagher apparently prepared notes on the meeting. Ms. O'Bomsawin testified that she knew Ms. Letellier de St-Just was trying to go to Ottawa but that she herself had to stay.

[51] On cross-examination, Ms. O'Bomsawin said that she specifically remembers the words [translation] "*big bed*" and "*we'll have some peace and quiet*" and that there were other words around those words by which a clear message was sent that she and Ms. Letellier de St-Just were to be with Mr. Bédirian in his bed. She admitted that she does not specifically remember the words he used. She said that she told Ms. Meagher the contents of her testimony today. She also testified that she does not remember the word "*baiser*" at the door to the suite.

[52] Ms. O'Bomsawin did not file a complaint against Mr. Lamarre, since he apologized and was not her boss. She therefore [translation] "sent him packing".

Testimony of Pascale O'Bomsawin - Alleged Ally McBeal incident

[53] Ms. O'Bomsawin testified that she was present when Mr. Bédirian said something in the QRO kitchen. It was at about 2:00 p.m., after lunch, in a kitchenette. It was either in mid-September or in early October 1999, since Christine Calvé was on secondment at the time and was not seen very often. Ms. O'Bomsawin was sitting across from Ms. Letellier de St-Just and beside Ms. Calvé. Mr. Bédirian and Mr. Cossette arrived in the doorway and: "*Hey guys, yesterday was the night.* [translation] *Did you see Ally McBeal last night?*" The episode, which Ms. O'Bomsawin had seen, was about two female lawyers who kissed when one of them realized she loved the other. According to Ms. O'Bomsawin, Mr. Bédirian said: [translation] "*my dream of seeing my female lawyers kissing*". She said that it was obvious he was addressing her and Ms. Letellier de St-Just because he was very close to them. She has no doubt that he said "*my female lawyers*", since she thought that he had some nerve thinking they belonged to him.

[54] She said that Ms. Calvé stayed in the kitchen and that her husband, Mr. Lamarre, was not there. Ms. O'Bomsawin and Ms. Calvé are friends outside the office.

Ms. O'Bomsawin talked to two lawyers (Labbé and Gareau) about it. Those persons did not testify.

[55] On cross-examination, Ms. O'Bomsawin said that she heard Mr. Bédirian say: "*Hi guy, last night was the night*" or "*Hi guy, yesterday was the night*. [translation] *Did you see Ally McBeal?*" She, Ms. Letellier de St-Just, Ms. Calvé and Mr. Cossette then had a discussion, but she does not remember what they talked about. Everyone talked a little. Mr. Bédirian does not always look directly at people, and she said that she is sure of this. She came back to the following words: [translation] "*My dream [or] I dream of seeing my female lawyers kissing*", and she said that he was looking at her and Ms. Letellier de St-Just. These are the words she came back to, although they are not the same words found in her statement (E-14). She said that she is not sure she talked about the incident with Ms. Letellier de St-Just before the *Chéribourg* incident. She did not mention the incident to anyone before the *Chéribourg* incident.

[56] Ms. O'Bomsawin said that she was unable to talk about Mr. Bédirian's *Chéribourg* comments in front of him when Mr. Lamarre appeared, yet she did not have any problem talking to Mr. Lamarre in front of Mr. Bédirian about the *Ally McBeal* comments, Mr. Bédirian being, according to her, the one who had made them. Ms. O'Bomsawin admitted that she did not talk to Ms. Meagher about the *Ally McBeal* comments, and she no longer remembers whether she talked to Nathalie Goyette about them.

Chronology: Fall of 1999

[57] In April or May 1999, Anne-Marie Lévesque, Mr. Bédirian's counterpart who works with Ian MacGregor, received a call from Ms. Letellier de St-Just about a position in Ottawa, but Ms. Lévesque told her that there was nothing and that she should call back later. Six months later, in October 1999, Ms. Letellier de St-Just contacted her again, but no positions were available. During the conference at Chéribourg, Ms. Lévesque bumped into Ms. Letellier de St-Just and decided to [translation] "put some feelers out" by telling her that there was finally a position that might interest her, but Ms. Letellier de St-Just did not want to talk about it.

[58] In December 1999, when Jacques Letellier was going to leave his job as Regional Director, Mr. Dion invited Mr. Bédirian to apply for that position if he was interested. According to Mr. Bédirian, Mr. Dion told him that he had all the personal qualities,

abilities and skills needed for the position. Mr. Dion even repeated the invitation to him, and Mr. Bédirian therefore decided to apply. However, when the complaint was made in February 2000, Mr. Dion clearly informed him that it was better for him to pass on the opportunity, and since Mr. Dion and the Deputy Minister were on the selection committee, he knew that he had no chance.

Chronology: January 17, 2000 and disclosure by Ms. Letellier de St-Just to Anne-Marie Lévesque on January 18, 2000

[59] Ms. Letellier de St-Just applied for a position in Ottawa during a competition in mid-January 2000, and Ms. Lévesque offered her the job on January 17, 2000. However, it was only a one-year contract position. At that time, Ms. Letellier de St-Just told her that she was expecting problems with Mr. Bédirian and explained the *Chéribourg* incident to her. Ms. Lévesque was afraid for Ms. Letellier de St-Just and therefore told her that she had to notify the Office of Conflict Resolution. Ms. Letellier de St-Just had never heard of it.

[60] Ms. Letellier de St-Just wanted the position but did not want to lose her permanent status. Ms. Lévesque offered to contact Mr. Bédirian to request a secondment, but Ms. Letellier de St-Just refused, saying that she would take care of it herself.

[61] According to Ms. Lévesque's testimony, she said she was surprised to hear that Mr. Bédirian was not prepared to give Ms. Letellier de St-Just a secondment. It was at that point that Ms. Letellier de St-Just told her about the *Ally McBeal* incident, claiming that Mr. Bédirian had said he would like to see two female lawyers kiss and adding that he had invited her and Ms. O'Bomsawin to have a *ménage à trois*. Ms. Lévesque told her that this was inappropriate and that she had an obligation to notify the Office of Conflict Resolution and Harassment in the Workplace. According to Ms. Lévesque, she had to disclose that information to protect herself, but she was not obliged to disclose Ms. Letellier de St-Just's name. However, she contacted Ms. Bond at the Office of Conflict Resolution and explained the two incidents, revealing the names of Mr. Bédirian and Ms. Letellier de St-Just.

[62] Ms. Letellier de St-Just met with Mr. Bédirian on January 17, 2000 concerning the new position. According to Ms. Letellier de St-Just, he told her that she would not lose her permanent status in Montreal and that he could no longer give her a secondment. Mr. Bédirian testified that he told her he already had three lawyers on

secondment and that he tried to convince her not to leave the QRO because he did not want to lose her. She was professional and very painstaking in her work. His goal was to find her a transfer instead.

[63] When Ms. Lévesque later talked to Mr. Bédirian about seconding Ms. Letellier de St-Just, he told her that his office already had two or three lawyers on secondment so it was not possible to let her go. He also said that a transfer for Ms. Letellier de St-Just would be a good way to ensure her permanent status in Ottawa. Ms. Lévesque understood and was not surprised, but the position to be filled had to be filled during an employee's maternity leave, and a transfer was not possible. Mr. Bédirian changed his mind when Ms. Lévesque convinced him to encourage secondments for career advancement purposes. Ms. Letellier de St-Just began working in Ottawa on February 14, 2000. Mr. Bédirian signed the greeting card given to her when she left.

[64] When Ms. Lévesque was questioned by the two investigators, she told them that Ms. Letellier de St-Just had used the word "*baiser*", but the investigators did not refer to this, and she did not think fit to correct her statement to rectify the omission. Ms. Lévesque was not a witness to the two incidents.

Disclosure by Ms. Letellier de St-Just to Monique Bond on January 20, 2000

[65] Ms. Lévesque gave Ms. Letellier de St-Just the name of Monique Bond from the Office of Conflict Resolution, and Ms. Letellier de St-Just called her. Ms. Letellier de St-Just said that it was a relief and told her everything. Ms. Bond took notes, and everything went quickly, so quickly that Ms. Bond had to slow Ms. Letellier de St-Just down to take notes.

[66] Monique Bond testified before this tribunal. She is the Assistant Executive Director of the Federal Centre for Workplace Management, and she started working for that office in November 1999. She described the telephone conversations she had had with Ms. Lévesque and Ms. Letellier de St-Just. What she remembers is that Mr. Bédirian asked or invited two female lawyers to have a *ménage à trois* with him that night at Chéribourg and that there had been a conversation about a television program called *Ally McBeal*. Although the conversations were in French, Ms. Bond took notes in English, since she works mainly in that language. According to this witness, her notes were taken quickly and do not precisely reflect the words used by

Ms. Letellier de St-Just, that is, her exact words. Ms. Letellier de St-Just told her about those two incidents only.

[67] According to Ms. Letellier de St-Just, she certainly gave Ms. Bond an overview of the *Ally McBeal* incident, including who was present. Ms. Letellier de St-Just said that she mentioned Michel Lamarre's name in connection with the *Chéribourg* incident rather than the *Ally McBeal* incident and that Ms. O'Bomsawin had reminded Mr. Lamarre about the *Ally McBeal* incident. Ms. Letellier de St-Just testified that she had discussed Ms. Bond's notes with her as recently as March 2001, before testifying. Ms. Letellier de St-Just does not know whether Ms. Bond's notes are inconsistent.

[68] Using her notes, Ms. Bond prepared a document (E-19) for her meeting with Ms. Gravelle-Bazinet on January 19, 2000. Together, Ms. Bond and Ms. Gravelle-Bazinet made corrections to E-19, and Ms. Bond threw out her notes after that meeting. Ms. Bond also made some corrections relating to Michel Lamarre's name following a conversation with Ms. Gravelle-Bazinet in June 2000 when Ms. Gravelle-Bazinet asked her whether she was sure Mr. Lamarre had been in the kitchen. Later, before coming to testify before this tribunal, Ms. Bond checked her notes on Mr. Lamarre after Ms. Letellier de St-Just told her that she had put Mr. Lamarre in the wrong place. However, based on the conversation in January 2000, Ms. Bond is of the view that Mr. Lamarre [translation] "was there somewhere!" No one asked her to submit E-19, and no one told her that it was important to keep her notes from the conversations in January.

[69] Ms. Bond's notes state the following, in part:

I asked Catherine if this was the first time, if Henri Bédirian had ever made a sexual proposal similar to this one or any other derogatory/sexual remarks in the office.

Catherine said no and related the following incident: Henri Bédirian and Michel Lamarre were coming back from lunch and they came to the lunch room (i.e., small kitchenette located on the floor) where she, Catherine and Pascale were having a late lunch. Henri Bédirian asked if they had watched the Aly [sic] McBeal episode last night because it was apparently quite exciting when Aly [sic] McBeal kissed another female lawyer in the office. Henri Bédirian then said:

[Translation]

I wonder which of our female lawyers would give us that pleasure.

(See E-19)

[70] Ms. Bond did not receive any training on sexual harassment procedure when she started working at the Office of Conflict Resolution on November 18, 1999. She said that she simply consulted the Policy (E-4).

[71] According to Ms. Gravelle-Bazinet's testimony, she met with Ms. Bond on January 21, 2000 following Ms. Bond's telephone call with Ms. Letellier de St-Just on January 18, 2000. She went over with Ms. Bond the notes (E-19) that Ms. Bond had taken during her telephone conversations. According to Ms. Gravelle-Bazinet, Ms. Bond could not decipher her own notes and made corrections while reading them. It was the first time that Ms. Gravelle-Bazinet had heard about the matter. The meeting lasted two hours, and Ms. Bond's notes were an integral part of Ms. Gravelle-Bazinet's file. However, those notes were never given to the investigators and were not in the file, even though they represented the first statement by Ms. Letellier de St-Just criticizing the complainant's behaviour.

[72] Ms. Gravelle-Bazinet admitted that she had never before heard of any inappropriate behaviour by Mr. Bédirian involving sexual harassment. For her, it was the first sexual harassment complaint made under the federal policy. This was therefore an important fact in Mr. Bédirian's case, and she told the Deputy Minister so. During her testimony, Ms. Gravelle-Bazinet also admitted that, since this was the first such complaint and since the whole thing came from the QRO, any decision by the Deputy Minister would be scrutinized.

[73] Ms. Bond told Ms. Gravelle-Bazinet that Ms. Letellier de St-Just considered the matter serious. Without talking about it with Ms. Letellier de St-Just, Ms. Gravelle-Bazinet contacted Mr. Dion. She also contacted the Deputy Minister to tell him what she had learned, and the Deputy Minister's view was that the allegations were serious. He told her that she and Mr. Dion should meet with the two female lawyers.

[74] On January 24, 2000, Ms. Gravelle-Bazinet called Jane Meagher about the matter, and Ms. Meagher sent her the notes she had taken about the *Chéribourg* incident. According to Ms. Gravelle-Bazinet, Ms. Meagher's notes were an integral part of the

complaint file. However, those notes were never given to the investigators, and Ms. Gravelle-Bazinet did not tell them that Ms. Meagher had been involved in the disclosures in this case.

[75] According to Deputy Minister Rosenberg, Ms. Gravelle-Bazinet notified him in January 2000 that two young female lawyers, Ms. Letellier de St-Just and Ms. O'Bomsawin, were alleging that Mr. Bédirian had sexually harassed them. The two lawyers were "reticent to come forward". He asked Ms. Gravelle-Bazinet to get involved in the matter and said that, since a manager was at stake, Mr. Dion should assist her. Ms. Gravelle-Bazinet would have to meet with the two lawyers and Mr. Bédirian and give him an update two weeks later.

[76] Ms. Gravelle-Bazinet then contacted Ms. Letellier de St-Just to tell her that the Deputy Minister had been notified and that he considered the whole matter serious. She also told her that it was important to proceed in view of the assessment conducted at the QRO. Mr. Dion would also be involved in the case. Ms. Letellier de St-Just told her that a lawyer friend of hers was also involved, namely Ms. O'Bomsawin.

[77] Ms. Gravelle-Bazinet asked Ms. Letellier de St-Just to come to a meeting. She later contacted Ms. O'Bomsawin to ask her to come to the same meeting. She never took notes during her discussions with Ms. Letellier de St-Just and Ms. O'Bomsawin since, as she saw it, it was not an investigation. However, she notified them that they needed to give her more information in case a formal complaint was laid. An oral complaint was merely informal, whereas a written complaint would be formal. According to Ms. Gravelle-Bazinet, the Deputy Minister could not have asked for an investigation without a written complaint.

[78] Ms. O'Bomsawin said that she had had a conversation with Mr. Bédirian around December 15, 1999 concerning the end of her secondment. She did not say that anything out of the ordinary occurred during that conversation.

Meetings between Mr. Dion, Ms. Gravelle-Bazinet, Ms. Meagher, Ms. Letellier de St-Just and Ms. O'Bomsawin on January 31, 2000 at the Holiday Inn

[79] According to Ms. Gravelle-Bazinet's testimony, the first meeting was held on January 31, 2000 at the Holiday Inn, a secluded place chosen by Mr. Dion. She, Mr. Dion and Ms. Meagher were present. Only Mr. Dion took notes. Ms. Gravelle-Bazinet did not take any so that she could focus on faces and body language to [translation] "determine the sincerity of the person speaking". They questioned Ms. Meagher about whether similar situations had occurred at the QRO in the past, and she told them no, only dumb jokes, including some played by the complainant. Mr. Dion and Ms. Gravelle-Bazinet asked her questions about the notes she had taken during her discussion with the two female lawyers concerning the *Ally McBeal* and *Chéribourg* incidents. Ms. Meagher confirmed to them that there had been no other allegations against Mr. Bédirian. She added that she had not given the information to Ms. Gravelle-Bazinet's Office at the request of Ms. Letellier de St-Just and Ms. O'Bomsawin. The meeting lasted nearly an hour.

[80] Ms. Gravelle-Bazinet testified that she started the meeting by telling them what could happen in the case and that she also told them about the results of the assessment conducted at the QRO in 1998 (E-1), which had sent the message that careful attention should be paid to sexual harassment complaints and that the Deputy Minister himself was committed to ensuring that such things did not occur. The meeting with the two female lawyers lasted about two and a half hours. The discussion often had to be stopped because of crying, especially by Ms. O'Bomsawin. At one point, Mr. Dion and Ms. Gravelle-Bazinet had to leave the room so that Ms. O'Bomsawin could pull herself together. According to Ms. Gravelle-Bazinet, Ms. Letellier de St-Just and Ms. O'Bomsawin felt better after sharing their story. The only incidents they referred to were the *Ally McBeal* and *Chéribourg* incidents, the latter of which they considered more serious. In Ms. Gravelle-Bazinet's opinion, the *Chéribourg* incident was the culminating incident. After explaining the *Chéribourg* incident and then the *Ally McBeal* incident, Ms. Letellier de St-Just and Ms. O'Bomsawin said that they had talked to Michel Lamarre about them.

[81] Ms. Gravelle-Bazinet gave Ms. Letellier de St-Just her options, namely meeting with Mr. Bédirian to discuss the allegations and resolve the matter informally, going to mediation or making a written complaint. Ms. Letellier de St-Just felt uncomfortable,

and Ms. Gravelle-Bazinet does not recall whether she chose one of the options offered to her. Ms. Gravelle-Bazinet denied having pushed Ms. Letellier de St-Just to file a written complaint.

[82] According to Ms. Letellier de St-Just's testimony, she and Ms. O'Bomsawin described what had happened, and Mr. Dion and Ms. Gravelle-Bazinet gave them time to decide whether they ought to file a complaint. Ms. Letellier de St-Just decided that she should, since she was leaving the QRO, whereas Ms. O'Bomsawin refused, saying she was afraid for her job. Mr. Dion and Ms. Gravelle-Bazinet explained the remedy to them, without pressuring them, but it had to be a formal complaint.

[83] On cross-examination, Ms. Letellier de St-Just said that she does not remember talking about the *Ally McBeal* incident and that she did not talk about it at the time. She does not remember what words she used when speaking to Ms. Meagher on December 2, 1999. She said that she spoke to Ms. Meagher about it much later, in January 2000, and she does not recall speaking to Ms. Lévesque about it. She took the same approach when she talked to Ms. Bond, her goal being to outline what had happened rather than giving the words used; the gist of the words was enough. Ms. Letellier de St-Just also does not remember telling Ms. Gravelle-Bazinet and Mr. Dion the words used by Mr. Bédirian during their meeting in January.

[84] The word "*baiser*" does not appear in Ms. Letellier de St-Just's statement, but she testified that she thinks the word was used and that, in her view, it referred to the three of them spending the night together; that is how she interprets what Mr. Bédirian meant. Although Ms. Letellier de St-Just said that she told five people what Mr. Bédirian had said, she does not remember telling them the exact words. The word "*baiser*" is also not in her detailed description (E-7) or her statement to the investigators (E-9). She testified that, as she saw it, the purpose of the investigation was not to identify the exact words and that she did not think she needed to do so since she was describing what had happened.

[85] Ms. O'Bomsawin testified that Ms. Gravelle-Bazinet told them that the incidents reported to her Office were very serious. On cross-examination, she added that Ms. Gravelle-Bazinet said that those incidents were serious before she and Ms. Letellier de St-Just stated the facts. Moreover, given the competition for the position of QRO Director General, which was open because Jacques Letellier was

leaving, Ms. O'Bomsawin added that one reason Mr. Dion was at the meeting was because of that competition, since Mr. Bédirian was one of the three directors applying.

[86] According to Ms. O'Bomsawin, who has known Mr. Dion since doing an internship in Ottawa, Mr. Dion claimed to be very surprised by the seriousness of the allegations and by the acts attributed to the complainant. Ms. O'Bomsawin testified that she could not talk to them any more because she was crying so much. The meeting lasted about three hours. As she saw it, there would be many reprisals against her if she filed a complaint, since she did not have permanent status and since the complainant, as the Director, was the person who would have given her future mandate to her.

[87] Ms. O'Bomsawin said that she got sick and lost weight after *Chéribourg* and that Ms. Letellier de St-Just left. She found that she could not give 150 percent as usual.

[88] Mario Dion also testified in this case. He has been a lawyer since 1980 and has been working for the Department of Justice since that time. As the Associate Deputy Minister, Civil Law and Corporate Management, he is in charge of the QRO and is therefore responsible for its effective management. His office is in Ottawa. Mr. Dion has participated in the implementation of the harassment policy with Ms. Gravelle-Bazinet, but he said that she is really the one who is in charge of the Office of Conflict Resolution, first and last.

[89] During his testimony, Mr. Dion submitted notes he had taken during the meeting on January 31, 2000 with Ms. Meagher and the meeting with Ms. Letellier de St-Just and Ms. O'Bomsawin (see E-16). I point out that not all of Mr. Dion's notes are in that exhibit, but that is what was filed (in other words, there are pages missing).

[90] A day or two before January 31, 2000, he received a call from Ms. Gravelle-Bazinet further to her discussion with Ms. Lévesque, who had told her that two female lawyers had complained. It was Ms. Gravelle-Bazinet who organized the meeting and told him to participate as an observer, given his dual role of creating an atmosphere of trust and recognizing the importance attached by the two female lawyers to senior management's interest in the harassment policy, and also given the seriousness of the matter. Mr. Dion did not know the details of the alleged incidents prior to January 31, 2000.

[91] He said that he knew Ms. O'Bomsawin a little, since he had seen her in the hallways in Ottawa.

[92] Mr. Dion said that, during the meeting with Ms. Meagher (an LA-3A who is part of senior management just like 65 other lawyers in 13 regional offices in the country), Ms. Meagher described the conversation she had had with the two female lawyers a few weeks earlier. He testified that he noted down what was said in broad terms. The two female lawyers had told Ms. Meagher that they did not want to go any further. Ms. Meagher told Ms. Gravelle-Bazinet and Mr. Dion that there had been no previous situations, only dumb jokes that she had not found offensive. She told them that Mr. Bédirian was not the only person who played such jokes but that he was the only manager. She did not stay for the meeting with Ms. Letellier de St-Just and Ms. O'Bomsawin, although she wanted to.

[93] According to Mr. Dion, the meeting with Ms. Letellier de St-Just and Ms. O'Bomsawin lasted about two hours. Ms. Gravelle-Bazinet explained her role in the Department and told the two female lawyers that six QRO employees had raised sexual harassment issues. Mr. Dion testified that Ms. Gravelle-Bazinet had told them this to bring it to their attention, put them at ease and confirm that sexual harassment would not be tolerated.

[94] Mr. Dion testified that he noted down the words given to him by Ms. Letellier de St-Just and Ms. O'Bomsawin: [translation] "two for the price of one; lovely night together; bed", and a firm answer: [translation] "I'm going to resign tonight." Mr. Dion testified that he was surprised to hear such words attributed to Mr. Bédirian. Ms. Letellier de St-Just and Ms. O'Bomsawin then talked about "last night was the night" and said that there had been a third person in the kitchenette. Ms. Letellier de St-Just told him that she could not believe what Mr. Bédirian had said. Mr. Dion said that Ms. Letellier de St-Just came back to the Magog incident and told him that she had said to Mr. Bédirian: [translation] "to your resignation - aren't you ashamed?" because she had wanted to check whether he was going to resign.

[95] Mr. Dion noted that the female lawyers did not leave the reception and stayed in the hallway. His notes then state: [translation] "Ron Wilhelm - there were offers from our office", but he does not remember what this means. The notes then state: [translation] "Michel Lamarre said the same thing - go hang yourself". "They went to a chalet." "Michel Lamarre - inappropriate comments - very curious." The notes also

indicate that Mr. Bédirian and Ron Wilhelm arrived at the chalet and that Ms. Letellier de St-Just and Ms. O'Bomsawin told Mr. Wilhelm what their boss had said to them: [translation] "Henri didn't have any problems", that is, going to the same place where the incident had occurred.

[96] Based on his notes and what Ms. Letellier de St-Just and Ms. O'Bomsawin said, Mr. Dion stated that it was more difficult for them at the chalet because Michel Lamarre and Mr. Loiacono were present. Mr. Bédirian and Mr. Carbonneau were there: [translation] "I hope you're not talking about work. We're talking about women." His notes also state: [translation] "Lamarre harassed Pascale, saying to her: I can picture it, my girlfriend plus you plus me - that would be pleasurable." Ms. O'Bomsawin said that [translation] "we've been pushing him away" for a year but that they had talked to two other "girls" who had described him as charming and said that they had not had any problems with him. Mr. Dion added that the two female lawyers talked during the meeting and that he listened to them while taking notes. Ms. Letellier de St-Just claimed to have a good relationship with Mr. Bédirian, but Ms. O'Bomsawin said that her relationship with him was not very good.

[97] Mr. Dion described Ms. Letellier de St-Just as nervous, restrained and rational. The fact that she was rational surprised him. Ms. O'Bomsawin was nervous and more emotional, and some tears were shed. He and Ms. Gravelle-Bazinet gave them time to pull themselves together and decide what they should do about the whole matter. According to Mr. Dion, the Policy requires that the individual decide what to do. At the end of the meeting, there were no final conclusions or decisions about what to do, but Ms. Letellier de St-Just and Ms. O'Bomsawin were seriously considering filing an official complaint even though they were very hesitant to do so.

Meeting between Mr. Dion, Ms. Gravelle-Bazinet and Jacques Letellier on February 1, 2000

[98] According to Ms. Gravelle-Bazinet, Mr. Dion decided to meet with Jacques Letellier, the complainant's boss, before confronting the complainant about the matter. On February 1, 2000, Ms. Gravelle-Bazinet and Mr. Dion met with Mr. Letellier to inform him of the complaint against the complainant and ensure that he had advised the complainant of his responsibilities with respect to sexual harassment. Mr. Letellier's immediate reaction was that it was impossible for Mr. Bédirian to have done such a thing and that another lawyer must have had it in for

him to come up with such a story. Mr. Letellier told Mr. Dion and Ms. Gravelle-Bazinet that he had gone over the workplace assessment conducted at the QRO and the reference to sexual harassment with Mr. Bédirian.

[99] Mr. Dion testified that Ms. Gravelle-Bazinet asked him to meet with Jacques Letellier to tell him that allegations had been made against one of his employees and to check whether Mr. Bédirian had been informed in general of the unacceptability of harassment at work. Mr. Letellier confirmed that he had had such a discussion with the complainant, and his reaction to the matter was that he could not believe Mr. Bédirian would say such things. He added that Mr. Bédirian must have just been joking. Mr. Dion does not have any notes from that meeting, which lasted 30-45 minutes. According to him, Ms. Gravelle-Bazinet wanted to tell Mr. Bédirian's immediate manager that allegations had been made and to determine whether Mr. Bédirian had been informed.

[100] Mr. Bédirian received a message to call Ms. Gravelle-Bazinet back, which he did the next day. She was shocked that he did not call her back right away. According to Mr. Bédirian, she told him that two lawyers, Ms. Letellier de St-Just and Ms. O'Bomsawin, were complaining about him in connection with the cocktail reception at *Chéribourg*. He asked her for more details, and she said that they had to meet and that Mr. Dion would be there. To Mr. Bédirian, it was as if the sky had fallen. He had no idea what it was about. He was beside himself, and he was shaken. Ms. Gravelle-Bazinet did not talk about any incident other than the *Chéribourg* one. He was not given any other details.

Meeting between Mr. Dion, Ms. Gravelle-Bazinet and Mr. Bédirian on February 3, 2000 in Ottawa

[101] A meeting was held on February 2, 2000 (according to Ms. Gravelle-Bazinet) or on February 3 (according to Mr. Dion and Mr. Bédirian) in a secluded place at Ms. Gravelle-Bazinet's office in Ottawa.

[102] At this point in Ms. Gravelle-Bazinet's testimony during this hearing, the employer wanted to take control of the evidence to [translation] "prepare this witness" to continue her evidence. The complainant objected, and I had to make a decision on this issue. That decision is attached.

[103] According to Ms. Gravelle-Bazinet, she gave the complainant the details of the case and the names of the two female lawyers. Immediately, Mr. Bédirian told them that [translation] "it was impossible for such allegations to be made" about him, since his tax sector had been given the gold award. He added that Sylvie Charleboix from the Office of Conflict Resolution had called him a "gentleman".

[104] Ms. Gravelle-Bazinet reminded him about the history of the QRO, that is, the fact that an assessment conducted there in 1998 had found six people who claimed to have been sexually harassed, one of whom had implicated "senior management", that the then Deputy Minister had been very upset by this, that Ms. Gravelle-Bazinet had met with Jacques Letellier, the complainant's supervisor, that Mr. Letellier had conveyed a clear message about the problem to his employees, including Mr. Bédirian, that a forum had been held at the QRO in 1998 during which a female lawyer had told Deputy Minister Rosenberg that, in spite of all this, she was still being sexually harassed at the QRO and that the Deputy Minister had been upset by this. Ms. Gravelle-Bazinet then told the complainant that all of this [translation] "brings us to the allegations against you".

[105] Ms. Gravelle-Bazinet told the complainant how she had been contacted by Ms. Lévesque on January 18, 2000 concerning Mr. Bédirian's sexual harassment of a young female lawyer, that the lawyer in question had contacted the Office of Conflict Resolution, that she was Catherine Letellier de St-Just and that another young female lawyer, Pascale O'Bomsawin, was also claiming to have been sexually harassed. She told the complainant that she had met with those two lawyers, and she summarized the alleged incidents for him.

[106] First, at Chéribourg, Ms. Letellier de St-Just and Ms. O'Bomsawin had been holding empty glasses at the entrance to a suite (Mr. MacGregor's suite) and Mr. Bédirian had offered them some wine and then shown them the open door to the next suite, saying: [translation] "*as you can see, it's my room, there's a big bed and the three of us can spend the night together*". In any event, that was the message that Ms. Gravelle-Bazinet had understood from the two female lawyers.

[107] According to Ms. Gravelle-Bazinet's testimony, Mr. Bédirian then told them that he had spoken in a festive spirit and said [translation] "what a slip of the tongue", attributing that slip to himself. He told them that he had invited everyone to his suite, which was next to Mr. MacGregor's, since there were too many people in

Mr. MacGregor's suite. He and Mr. MacGregor had opened their suites and paid for the drinks for the evening. Mr. Bédirian told them that he had not been intoxicated.

[108] The second incident related to the *Ally McBeal* television program. Ms. Gravelle-Bazinet told the complainant that, the day after the episode of that program in which two female lawyers had kissed, a discussion had been under way in the kitchen at the end of lunch and he had arrived at the door to the kitchen and said: "*Hey guys, last night was the night.* [translation] *I wonder which woman would give us that pleasure.*" Mr. Bédirian told Ms. Gravelle-Bazinet that he had never gone that far in his comments.

[109] Ms. Gravelle-Bazinet testified that she continued the discussion on the three other allegations of improper behaviour against Mr. Bédirian and that he told them his version. She told him that his version was contrary to that of the two female lawyers but that there was still no formal complaint. However, she informed him that, if a formal complaint was made, a formal investigation would ensue.

[110] According to Ms. Gravelle-Bazinet, Mr. Bédirian told them that he was prepared to apologize if the two female lawyers had misinterpreted his words. He asked Mr. Dion to speak to three people (whom he named), telling him: [translation] "you'll see that it's impossible for me to do such things".

[111] According to Mr. Dion's testimony, Mr. Bédirian was upset and stunned. He said: [translation] "come on!". He told them that the tax directorate had been the winner and that Sylvie Charleboix had described him as a gentleman in front of a group of employees.

[112] Ms. Gravelle-Bazinet provided some context by referring to the assessment conducted at the QRO in 1998 and the forum held the same year during which [translation] "the smoke cleared", that is, it came out that senior management was doing improper things, that there was professional harassment with sexual overtones. Ms. Gravelle-Bazinet told him that the Deputy Minister had been very upset by the questions during the forum.

[113] Mr. Dion also testified that Ms. Gravelle-Bazinet then talked about Ms. Letellier de St-Just's secondment further to a conversation that Ms. Gravelle-Bazinet had had with Ms. Lévesque and suggested that a repetition of the

same thing be avoided. Ms. Gravelle-Bazinet then explained to Mr. Bédirian that she and Mr. Dion had met with the two female lawyers. According to Mr. Dion's notes, Mr. Bédirian spoke to them about an [translation] "invitation by all the managers, two suites, MacGregor and Bédirian, open house". Mr. Bédirian categorically denied having made the comments in question, and he talked about a [translation] "slip of the tongue", "Henri's going to pour for a kiss". The words "slip of the tongue" referred to the word "kiss" [*baiser*], and Mr. Bédirian seemed to believe that he had said that word but been misunderstood. Mr. Dion told him that that word had never been mentioned. It was not a question of intoxication or malicious intention; [translation] "we were at home, in a party mood". Mr. Bédirian told them that one would never say anything like that to a person invited to one's home. However, on cross-examination, Mr. Dion was not sure that Mr. Bédirian was the one who had said "Henri's going to pour for a kiss". This may have been said to explain what had happened.

[114] With regard to the other alleged incident, Ms. Gravelle-Bazinet told Mr. Bédirian that he was alleged to have stated the following to Ms. Letellier de St-Just and Ms. O'Bomsawin: [translation] "I wonder which of my female lawyers would give us that pleasure." Mr. Bédirian told them: [translation] "I never went that far in my comments."

[115] According to Mr. Dion, Mr. Bédirian said that he was ready to submit to an investigation and that (if given permission) he would personally apologize for his words. The complainant told them that he had not wanted to intimidate and that he had meant no harm. During his testimony, Mr. Dion admitted that he was upset as well because he was not detached from what he was hearing. He had chosen Mr. Bédirian as Director, and Mr. Bédirian was very upset. Mr. Dion did not describe his reaction to Mr. Bédirian's offer to apologize and could not say any more about Ms. Gravelle-Bazinet's reaction. He said that Mr. Bédirian had earned an outstanding rating on his appraisal for the work period ending on March 31, 1999.

[116] Mr. Dion stated several times throughout his testimony that his role during all of the meetings was solely to be an observer, that he was there only to listen.

[117] According to Mr. Bédirian's testimony, Ms. Gravelle-Bazinet opened the meeting by giving him an introduction to the assessment of the QRO in 1998 (E-1) and telling him: [translation] "As you know, Mr. Bédirian, there are many people at the QRO who have complained about sexual harassment and senior management." In reply, he told her that her assistant, Sylvie Charlebois, had told him that, according to employee

feedback, he was the best of all the managers and that he was a gentleman. Mr. Bédirian was surprised that Mr. Dion did not react to Ms. Gravelle-Bazinet's comments given that Mr. Dion had told him he had been criticized only for his assignment of cases and had previously told him that the comments about senior management in the final report did not apply to him.

[118] According to Mr. Bédirian, Mr. Dion and Ms. Gravelle-Bazinet did not give him any documents during the meeting. Mr. Dion said to him: [translation] "what's this, the three of you spending the night together?" and "what's this, a big bed?" From a black binder, Ms. Gravelle-Bazinet read questions that indicated to him that he was being accused of doing such things. Mr. Bédirian felt accused, alone and helpless. Mr. Dion did not seem to be aware that Mr. Bédirian's suite, like Mr. MacGregor's, was open to everyone, so Mr. Bédirian explained all the *Chéribourg* details to them. During the meeting, he denied all the allegations outright and never admitted anything he was being accused of.

[119] He also remembered a slip of the tongue with Ms. O'Bomsawin involving the word "*baiser*" [kiss], and he told them: [translation] "I don't think Ms. O'Bomsawin is a person who meant to say 'kiss', so it was probably a slip of the tongue for her." He told them that she never does such a thing and that he never thought it, but Ms. O'Bomsawin had said: [translation] "a kiss". According to Mr. Bédirian, Mr. Dion said what is that, a slip of the tongue, and then did not talk about it. Mr. Bédirian denied that Mr. Dion's notes show that he was the one who said "slip of the tongue", since he never attributed that word to himself.

[120] He was not allowed to talk to Ms. Letellier de St-Just and Ms. O'Bomsawin, and Mr. Dion told him that they were no longer under his authority. Mr. Bédirian asked them if he could apologize to the two women, saying: [translation] "no matter what happens, I'll apologize, you can be there, I want to apologize". He added that he was sincere.

[121] The meeting lasted an hour, and Mr. Bédirian felt so despondent that Mr. Dion noticed and told him to be careful when driving. Mr. Bédirian had taken the train. He walked around for three hours before getting on the train. Mr. Bédirian said that mediation was never suggested to him and that, since the investigation was already under way, he did not think to request it. He made an offer to Ms. Gravelle-Bazinet to apologize, but he wanted to do it himself, to explain. His apology was not conditional,

but he wanted to apologize if Ms. Letellier de St-Just and Ms. O'Bomsawin had misinterpreted his words. Mr. Bédirian testified that, as he saw it, he had worked with those two lawyers for five years and was therefore prepared to go and talk to them, to explain, to apologize if he had to. However, he had never harassed them, nor was he going to admit that he had. But Ms. Gravelle-Bazinet and Mr. Dion denied him an opportunity to go and talk to them. That is why he did not attend the meal organized for Ms. Letellier de St-Just's departure. Today, he blames himself for not talking to them to explain, but he had been prohibited from doing so.

[122] During her testimony, Ms. Gravelle-Bazinet went over the notes that Mr. Dion had taken during the meeting with the complainant and added that they reflect what she remembers and that she does not remember certain details. She acknowledged that Mr. Bédirian told them that he would submit to an investigation and that he had never wanted to intimidate and had meant no harm.

Meeting between the Deputy Minister, Ms. Gravelle-Bazinet and Mr. Dion on February 3, 2000

[123] Ms. Gravelle-Bazinet testified that she met with the Deputy Minister at his request for quite a long time at the end of the day on February 3, 2000. Mr. Dion was also there, and the purpose of the meeting was to notify the Deputy Minister of the results of the conversations they had had with the three interested parties. According to Ms. Gravelle-Bazinet, the Deputy Minister expressed his concern and was informed that no formal complaint had been made. Ms. Gravelle-Bazinet told him that there was no formal complaint yet but reminded him of the responsibility of managers under the Policy: "*Managers are responsible for putting an end to any harassment . . . whether or not a complaint has been made.*" She told the Deputy Minister that it was difficult to conduct an investigation without anything in writing, that is, without specific allegations, and the Deputy Minister then asked whether the two female lawyers would be prepared to file a complaint. Ms. Gravelle-Bazinet told him that Ms. Letellier de St-Just was afraid for her career in Ottawa and that Ms. O'Bomsawin, who was still at the QRO, was also afraid. The three of them then discussed the question of whether Mr. Bédirian should be left in his position as a manager, and the Deputy Minister wanted to be fair to Mr. Bédirian and remove him because an investigation could have the effect of condemning him.

[124] At that point, Ms. Gravelle-Bazinet asked the Deputy Minister what to do to ensure that neither Ms. Letellier de St-Just nor Ms. O'Bomsawin worked under Mr. Bédirian, and Mr. Dion suggested that Ms. O'Bomsawin work under Mr. Loïacono. Ms. Gravelle-Bazinet did not tell the Deputy Minister that Mr. Bédirian was prepared to apologize if Ms. Letellier de St-Just and Ms. O'Bomsawin had misinterpreted his words.

[125] According to Mr. Dion, the meeting was short and its only purpose was to inform the Deputy Minister of what had happened. Ms. Gravelle-Bazinet's recommendation to the Deputy Minister was a "full inquiry" (an investigation) if the complaint was laid, as there were only allegations at that point, and the Deputy Minister asked them whether the two female lawyers were prepared to file a written complaint. They took the view that the Department could not be seen to be endorsing harassment.

Discussion between Ms. Gravelle-Bazinet and Ms. Letellier de St-Just on February 4, 2000

[126] The day after the meeting with the complainant, Ms. Gravelle-Bazinet contacted Ms. Letellier de St-Just to provide a summary of that meeting and told her that the complainant was prepared to apologize if she and Ms. O'Bomsawin had misinterpreted his words. Ms. Letellier de St-Just answered that several months had already passed since the incident, that he had never apologized and that she therefore thought he wanted to apologize only because he was facing an investigation. Consequently, her opinion was that his apology would not be sincere.

[127] Ms. Gravelle-Bazinet said that she consulted France Dufresne to go over the notes on the assessment conducted by Watson Wyatt to find the references to [translation] "gold award" and "gentleman" that Mr. Bédirian had talked about. Sylvie Charleboix was on sick leave and apparently could not be reached. Ms. Gravelle-Bazinet found no reference to those two expressions. Later, relying on notes, she admitted that she had not been able to reach Ms. Dufresne before the conversation with Mr. Dion. She had gone over the final assessment report and had not found any reference to those words.

Discussion between Mr. Dion and Mr. Bédirian on February 4, 2000

[128] Mr. Dion testified that Mr. Bédirian had called him about the competition for Jacques Letellier's position to give him the name of a contact person with whom he

worked. Mr. Dion told him that the situation was delicate now. All the same, Mr. Dion wanted to be fair to Mr. Bédirian and allowed him to explain himself further in relation to the allegations. Mr. Bédirian told him that the evening at Chérilbourg had been a social evening and [translation] "in fun". Mr. Bédirian tried to make him understand that he had said the words as a joke. He told him that he had said: [translation] "*Come to my suite, big bed, there's going to be a show, the fun's going to start at 10 o'clock.*" The room was open, and he was talking about the drinks.

[129] Mr. Bédirian also told him that they could conduct their investigation, that it did not bother him and that he would not want the Deputy Minister to wake up and a blunder be made in relation to him (Mr. Bédirian). Mr. Bédirian told him that it was true he had said: [translation] "I've resigned as manager." He talked again about a [translation] "slip of the tongue" and "for a kiss", words attributed to Ms. O'Bomsawin, and this struck Mr. Dion because Ms. O'Bomsawin had not talked about it. Moreover, with regard to the *Ally McBeal* incident, he had not said the words in question; someone else had said them. Mr. Bédirian also pointed out to him that Ms. Letellier de St Just and Ms. O'Bomsawin also played jokes by walking around with votive candles at work.

[130] Mr. Bédirian also asked him to check the file on the assessment conducted at the QRO because his section had been seen as the best and had been given the gold award. According to Mr. Dion, Mr. Bédirian was obviously upset, and he therefore told him not to say anything more. It was better for Ms. Gravelle-Bazinet to do her work and for the Deputy Minister to decide. They did not speak to each other after that.

[131] According to Ms. Gravelle-Bazinet's testimony, she conveyed the information relating to Ms. Dufresne's call to Mr. Dion on February 4, 2000. Mr. Dion had received a telephone call from Mr. Bédirian, who was worried that an investigation could disqualify him from a competition at the office. Mr. Dion had taken notes during that conversation and transmitted the following words to Ms. Gravelle-Bazinet: [translation] "slip of the tongue" and "Deputy Minister is going to make a blunder"; Mr. Bédirian was apparently denying the words. Mr. Dion told Ms. Gravelle-Bazinet that he found this strange because Mr. Bédirian had not denied [translation] "that" during the previous day's meeting. Mr. Dion had told Mr. Bédirian not to contact him again because senior management would probably be involved in such an investigation.

[132] Ms. Gravelle-Bazinet reached Ms. Dufresne during the week of February 7, 2000 and asked her to check all the comments from the employees in the tax sector.

[133] Ms. Gravelle-Bazinet later contacted Mr. Dion to go over some passages from the assessment conducted at the QRO (E-1) with him. Some of the passages referred to the tax sector and indicated that there was the highest level of conflict in the Tax Litigation Sector as regards equitable treatment. She reminded Mr. Dion that the QRO employees had reacted very strongly when she had presented transparencies on sexual harassment (E-21) to them and that the women had finally had the courage to talk about it. Ms. Gravelle-Bazinet and Mr. Dion explained that a secretary from the tax sector, whose name Ms. Gravelle-Bazinet does not know, had told them that the "guys" sometimes went to lunch on Fridays at a club with topless waitresses, and Mr. Dion was aware that, when the guys went out for a drink, it affected their behaviour. According to the secretary in question, the women in the office were afraid of being [translation] "hit on" afterwards, and it would seem that Mr. Bédirian got people together to go.

[134] However, Ms. Gravelle-Bazinet testified that she had never taken any action after receiving that information from the secretary, saying that investigations are conducted only in response to written complaints. Moreover, she did not inform the Deputy Minister.

[135] Louise Martin, the QRO's Director, Human Resources, was on secondment at the time of this case. She testified that she remembers very clearly that the word "gentleman" was used to describe Mr. Bédirian during the meetings that followed the assessment conducted at the QRO in 1998. Ms. Martin added that she has had to work a great deal with Mr. Bédirian, that the term describes him very well and that he is extremely polite. She especially remembers the term "gentleman" because there were a lot of discussions in the sessions led by Sylvie Charleboix, especially on the managers' assignment of cases, and Ms. Charleboix said that Mr. Bédirian was a gentleman. The investigators never came to talk to her, and she was not involved in the complaint in any way. She knew nothing about the content of the complaint or of the grievance that followed. Ms. Martin said that she wanted to testify for Mr. Bédirian because she respects him very much.

Discussion between Mr. Dion and Ms. Gravelle-Bazinet on February 7, 2000

[136] Mr. Dion testified that he asked Ms. Gravelle-Bazinet whether she had checked the references to [translation] "gold award" and "gentleman", but she had not yet checked with Sylvie Charleboix and there was nothing about this in the report on the 1998 assessment. She said that she would contact the people in question. She told Mr. Dion that it was true that there were two adjacent rooms, two suites available, in the *Chéribourg* incident, and she said that the notes concerning the *Ally McBeal* incident stated: [translation] "I wasn't the one who said that." This was a reference to the fact that Mr. Bédirian had been asked whether he had said the words in question and he had said it was not him.

Discussion between Mr. Dion and Ms. Gravelle-Bazinet on February 8, 2000

[137] According to Mr. Dion, another conversation with Ms. Gravelle-Bazinet the next day revealed that she was trying to situate the allegations in the context of the report on the assessment conducted at the QRO in 1998. She added that, based on her experience as a nurse, alcohol has an effect on behaviour.

[138] Mr. Dion testified that, according to the Policy (E-4), it was important to allow Ms. Gravelle-Bazinet's Office to do its work and not to interfere.

[139] On cross-examination, Mr. Dion said that he did not know whether his notes (E-16) were given to the investigators and that he did not speak to the investigators at all. Nor was a copy of his notes sent to Ms. Gravelle-Bazinet.

[140] He said that Mr. Bédirian had all the qualities needed to become the Director and that he was the most qualified of all the candidates. He had never received any complaints about Mr. Bédirian. Mr. Dion said that, even if there was some [translation] "smoke" following the assessment of the QRO, the assessment did not concern Mr. Bédirian directly because he was not part of senior management, just like the other five or six directors and the ten management assistants.

Discussion between Ms. Gravelle-Bazinet and Ms. Letellier de St-Just during the week of February 11, 2000

[141] During the week of February 11, 2000, Ms. Gravelle-Bazinet contacted Ms. O'Bomsawin to give her a summary of the meeting with Mr. Bédirian. According to

Ms. Gravelle-Bazinet, Ms. O'Bomsawin reacted more strongly and added that, if Mr. Bédirian wanted to apologize, he should have done so earlier. Ms. O'Bomsawin was fearful of joining in a formal complaint; she felt very vulnerable at the QRO.

Formal complaint by Ms. Letellier de St-Just on February 17, 2000

[142] On February 17, 2000, Ms. Gravelle-Bazinet received the results of Ms. Dufresne's research (see E-41). Ms. Dufresne had gone over the documents in support of the assessment conducted at the QRO in 1998. She said that, in the tax sector, there were problems as regards the managers listening to their employees and that the female lawyers felt disadvantaged compared with their male colleagues. One respondent had stated in the questionnaire that a number of women had claimed that sexual advances had been made to them by senior management. Ms. Dufresne stated that the assessment had targeted six persons who were identified as sources of conflict. Ms. Gravelle-Bazinet met with five of them to do follow-up.

[143] During her testimony, Ms. Dufresne provided the preliminary report dated April 1998 that was written following the interviews conducted at the time of the assessment. All of the information was available at that time, and the preliminary report set out the findings. The groups and persons identified as sources of conflict were grouped together by sector. For the tax sector, the criticism was that the female lawyers were more like "assistants". Among the six people named as sources of conflict, it was not Mr. Bédirian but rather Jacques Letellier who was named as the head of senior management. In Ms. Dufresne's opinion, when the respondents in the preliminary or even the final assessment report referred to "senior management", they meant the sector directors. The tax sector was not identified in the references to senior management in the negative comments in the report. Ms. Dufresne testified that, during the on-site sessions held after the preliminary report (E-41) was tabled, it became increasingly obvious that Jacques Letellier was the sixth person identified as a source of conflict. Ms. Gravelle-Bazinet and Sylvie Charleboix were involved with her in those sessions.

[144] On February 17, 2000, Ms. Gravelle-Bazinet received a formal complaint from Ms. Letellier de St-Just (however, it was only the first page of the complaint, which would later be two pages long: see Exhibit E-7).

[145] Ms. Gravelle-Bazinet contacted Ms. Letellier de St-Just to tell her that there were not enough details in her complaint and ask her to provide some details. She had to be more precise and more specific, said Ms. Gravelle-Bazinet. Ms. Letellier de St-Just denied having been told that her complaint was vague and imprecise.

[146] Ms. Gravelle-Bazinet nevertheless considered the letter of February 17, 2000 a formal complaint. She thinks that she discussed the mediation option once more with Ms. Letellier de St-Just, but Ms. Letellier de St-Just told her that Mr. Bédirian did not think he had done anything wrong. Ms. Letellier de St-Just testified that she does not remember meeting with Ms. Gravelle-Bazinet between their meeting on January 31, 2000 and her meeting with the investigators on February 23, but she did speak to her because she sent her the letter of February 17, 2000. As for the description (E-8, a document attached to the complaint) that was sent by fax only on February 22, 2000, Ms. Letellier de St-Just does not remember sending it to her.

[147] Ms. Gravelle-Bazinet contacted Mr. Bédirian to notify him of the formal complaint and fax him a copy. She told him that two investigating counsel would be appointed and that they would be a man and a woman because of the delicacy of the situation. It was Mr. Bédirian who raised the possibility with Ms. Gravelle-Bazinet of going to mediation with Ms. Letellier de St-Just, but Ms. Gravelle-Bazinet told him that Ms. Letellier de St-Just had already discussed it and that it appeared to be impossible.

Details submitted by Ms. Letellier de St-Just on February 22, 2000

[148] According to Ms. Gravelle-Bazinet, Ms. Letellier de St-Just sent her the details that she had requested on February 22, 2000 (E-8). Ms. Gravelle-Bazinet forwarded the information to the investigators and Mr. Bédirian.

[149] Ms. Gravelle-Bazinet said that she did not play any role during the investigation. Moreover, she was not required to disclose the documents she had received at the start of this case unless they were requested through the Access to Information Office.

Appointment of investigators

[150] Ms. Gravelle-Bazinet settled on Jean-Maurice Cantin and Carole Piette. This information was communicated to Ms. Letellier de St-Just and Mr. Bédirian, who accepted those two individuals.

[151] During a meeting with the investigators that lasted about 30 minutes, Ms. Gravelle-Bazinet told them that two young female lawyers had complained. She gave them a copy of Ms. Letellier de St-Just's complaint, adding that they would be given further details later.

Investigation protocol

[152] Since the federal policy did not provide for any investigation procedure, Ms. Gravelle-Bazinet drew up an investigation protocol on February 18, 2000. The protocol would ensure that the Policy's requirements, the *Access to Information Act* and the parties' rights were respected (see E-24). Ms. Gravelle-Bazinet added that her role in the investigation was to be purely administrative from that point on.

Investigation

[153] Mr. Cantin started his work with Ms. Piette on the basis of Ms. Letellier de St-Just's two letters making up the formal complaint. He knew the federal policy and had a great deal of experience in the field of harassment.

Interview with Ms. Letellier de St-Just on February 23, 2000

[154] The investigators first met with Ms. Letellier de St-Just and discussed her complaint. She chose to be alone. After hearing her comments, the investigators had her sign a handwritten document setting out what she had told them, and that document was signed by her as a statement (see E-9). Ms. Letellier de St-Just does not remember how long the meeting lasted. She said that she read the statement before testifying before this tribunal.

[155] Ms. Letellier de St-Just testified that what had happened in four years with the managers, including Mr. Bédirian, could not be explained in three pages. She said that she had had problems with him since 1998, although she had not talked to him about them because it was not for her to tell him how to behave. Ms. Letellier de St-Just had to admit that she also joked with her colleagues, that sometimes, as a joke, she gave Mr. Bédirian reports with bows on them as if they were gifts and that she made requests concerning her job with votive candles. However, she said that she joked with a dark smile.

[156] Ms. Letellier de St-Just said that she was not able to talk about it with her supervisor, Mr. Loïacono, because he was not a person to whom she would have confided personal matters.

[157] Her statement is actually a repetition of the formal complaint, which sets out seven allegations, the first two of which are the ones we are concerned with here. Ms. Letellier de St-Just added that she reported to Mr. Loïacono but occasionally received work from Mr. Bédirian. She said that Mr. Bédirian could count on her and that he seemed satisfied with her work, since he had told her so. He also trusted her. According to Ms. Letellier de St-Just, the statement that Mr. Cantin prepared and that she signed (E-9) for the investigators repeats the complaint in full.

Interview with Mr. Bédirian on February 28, 2000

[158] The investigators met with Mr. Bédirian, and together they read over the formal complaint and Ms. Letellier de St-Just's statement. Mr. Bédirian chose to be alone. After hearing his comments, the investigators had him sign a handwritten document setting out what he had told them (see E-10). According to Mr. Bédirian, the meeting lasted about three hours and he did most of the talking. The investigators asked him very specific questions that were out of context. He said that statement E-10 represents only part of what was said to the investigators and that it was not taken until after closed-ended questions were put to him at the end of the three-hour meeting. He repeated that the questions for the statement were closed-ended: [translation] "do you remember saying this? do you remember saying that?", etc.

[159] According to Mr. Cantin, Mr. Bédirian began his statement by saying that he had always had an excellent relationship with Ms. Letellier de St-Just and that he was facing such a complaint for the first time. He said that no one had ever complained to him about how he acted, spoke or managed. Ms. Letellier de St-Just had never complained to him either. The complainant gave them many details about the *Chéribourg* incident and what he remembered about the *Ally McBeal* incident. He told them that he remembered who had said the words in the *Ally McBeal* incident but that, when asked, that person did not remember. Mr. Bédirian told the investigators that it was preferable not to name that person. At the end of his statement, he added that, in the past, he had apologized when he made a mistake.

[160] According to Mr. Bédirian, the investigators gave him a sheet that broke the complaint down into seven allegations. He had never seen this before. He asked them whether this was all he was being accused of, since there were now seven allegations. Mr. Bédirian asked the investigators whether they had talked to Mr. Dion and Ms. Gravelle-Bazinet, since there seemed to be something wrong: it seemed that the words mentioned during the meeting with Mr. Dion and Ms. Gravelle-Bazinet were different from what the investigators were showing him. Mr. Cantin turned to Ms. Piette, who said: [translation] "Ms. Gravelle-Bazinet did not give us everything."

[161] Following their meeting with Mr. Bédirian, the investigators submitted the statement he had signed in their presence. Ms. Letellier de St-Just read it and prepared written comments in reply on March 21, 2000 (E-11), and she gave them to the investigators. She took Mr. Bédirian's statement and made her own comments on it paragraph by paragraph. She said that she was outraged and did not agree with Mr. Bédirian's explanations. I should add that the complainant was never given E-11 and was unaware of its existence before seeing it at this hearing.

[162] The investigators questioned Marie Bélanger, Jacques Letellier and Jane Meagher and talked on the telephone with Pierre Cossette, Ron Wilhelm, Anne-Marie Legault, Christine Calvé (twice), Michel Carbonneau, Mr. Marecki, Louis Tassé and David Merner. They met with Ms. Letellier de St-Just, Ms. O'Bomsawin and Mr. Bédirian.

[163] The interview with Ms. O'Bomsawin took place on March 7, 2000, and she gave the investigators numerous details (see statement E-14).

[164] Mr. Bédirian's statement was forwarded to Ms. Letellier de St-Just, who made written comments; she submitted them to the investigators on March 21, 2000 (see E-11). Mr. Bédirian testified that he was expecting to meet with Ms. Letellier de St-Just and Ms. O'Bomsawin to discuss the case but that this never happened.

Interview with Ms. O'Bomsawin on March 7, 2000

[165] The investigators met with Ms. O'Bomsawin on March 7, 2000 in Cornwall and had her sign a statement (E-14) after talking with her and asking her questions. Ms. O'Bomsawin reread the statement before testifying before this tribunal. The word "*baiser*" does not appear in it.

Chronology: April 2000

[166] In April 2000, the employer changed Ms. Gravelle-Bazinet's position and broadened her mandate. The Office of Conflict Resolution became the Federal Centre for Workplace Management.

Investigators' interim report of April 3, 2000

[167] On April 3, 2000, Ms. Gravelle-Bazinet received the investigators' interim report and filed it with the Access to Information Office so that it could go over the confidentiality aspect. She received it on April 10 and submitted it to the two parties (see E-38). The investigators upheld only two allegations out of the seven made by Ms. Letellier de St-Just, namely the *Ally McBeal* and *Chéribourg* allegations. Mr. Cantin testified that he had considered the fact that Ms. Letellier de St-Just and Ms. O'Bomsawin had told Mr. Wilhelm what Mr. Bédirian had said the same evening at the conference and had told Ms. Meagher on December 2, 1999. It should be noted that the report was not submitted to the Deputy Minister.

[168] Referring to the *Chéribourg* allegation, Mr. Cantin said that Mr. Bédirian had mentioned his room and the bed and admitted that he had talked about resigning. Moreover, Mr. Bédirian did not deny saying that they would have some peace and quiet, and those words corresponded to the words that Ms. Letellier de St-Just and Ms. O'Bomsawin had mentioned. The allegation was therefore well-founded on a balance of evidence, and it met the criteria for sexual harassment.

[169] As regards the *Ally McBeal* allegation, Mr. Cantin said that the words had been admitted by everyone, although Mr. Bédirian claimed that he was not the one who had said them. However, he did not want to give the name of the person who had. On a balance of evidence, the investigators decided that Mr. Bédirian was the one who had said them.

[170] Mr. Cantin stated that Mr. Bédirian was not remorseful and that this fact was considered in deciding what penalties to recommend. He said that he received the complainant's submission on the interim report and did not discuss it with Ms. Gravelle-Bazinet. This witness had to be excused for a moment during the hearing so that he could refresh his memory. He then testified that he had in fact discussed the submission with Ms. Gravelle-Bazinet and that he had noticed Michel Lamarre's name in connection with the *Ally McBeal* incident. In any event, Mr. Cantin told

Ms. Gravelle-Bazinet that this did not change anything because Mr. Lamarre's spouse, Ms. Calvé, had told him Mr. Lamarre was not in the kitchen and because the investigation had already been over for three months. Mr. Cantin therefore refused to reopen the investigation.

[171] Mr. Cantin gave the impression that he did not appreciate being cross-examined about his report, and he became very offended. Although he agreed that it is important to receive the statements made by the victim immediately after the event and that, as an investigator, he has to get all of the victim's statements, he said that he did not receive the statements made prior to the formal complaint of February 17 and 22, 2000. As the investigators saw it, the important thing was that, during her meeting with them on February 23, 2000, Ms. Letellier de St-Just stated the same facts set out in her statement of February 22.

[172] In his report, Mr. Cantin apparently stated that Mr. Bédirian had said the words [translation] "the three of us can spend the night together", claiming that this was what Ms. Letellier de St-Just had told him. In any event, the reference to a big bed and the words [translation] "we'll have some peace and quiet" meant the same thing, and those words had been mentioned by Ms. O'Bomsawin.

[173] When Mr. Cantin was asked whether it was important that the suite was open to everyone, he answered that an attempt was being made to shift the focus. The fact that the *Ally McBeal* incident in October or November was not disclosed until February was not important, since Mr. Cantin considered the *Chérilbourg* incident the culminating incident in Mr. Bédirian's harassment, and it was disclosed immediately.

[174] Mr. Cantin admitted that Ms. Calvé, who was in the kitchen with Ms. Letellier de St-Just and Ms. O'Bomsawin, had said that her memory could have failed her. However, she told them that it was not her husband, Mr. Lamarre, who had spoken the words. Moreover, Ms. Legault did not remember who had said the words or who was with Mr. Bédirian. However, as the investigators saw it, this was the initial proof, so they could infer the rest. They did not think fit to ask Mr. Lamarre directly because they were satisfied that Mr. Bédirian had said the words.

[175] He claims to have 50 years of legal experience! He claims to have taken account of all the facts gathered during his investigation. Following an extremely difficult cross-examination, he did not want to answer questions any more, saying that we did

not want to waste time. I had the distinct impression that this witness did not really like his methods, his conclusions or his assessment of the evidence to be questioned and that his presence before this tribunal was a waste of time.

[176] According to Mr. Cantin's testimony, the fact that Mr. Bédirian had opened his suite to everyone did not excuse him for having talked about a big bed to two young female lawyers. He said that it was not proper. During his cross-examination, Mr. Cantin even questioned the morality of counsel for the complainant after he asked her if it would bother her if he invited her to his room at the Delta, since counsel had answered that it would not bother her if everyone were invited.

[177] Mr. Bédirian submitted comments on the interim report to Ms. Gravelle-Bazinet (E-26), who gave them to Mr. Cantin. Ms. Letellier de St-Just sent her comments to the investigators on April 20 (E-12).

[178] The investigators contacted Ms. O'Bomsawin by telephone on April 28, 2000 following all of their work, according to Ms. O'Bomsawin, to ask her whether she had said to Mr. Bédirian: [translation] "*Henri's going to serve us a drink for a kiss*" (E-17). She said that she was flabbergasted because she realized that her boss was insinuating that she was the one who had invited him. She told the investigators that it was a pure fabrication. There was no question of a slip of the tongue. She became ill right away, she said. On cross-examination, Ms. O'Bomsawin stated that the investigators did not tell her Mr. Bédirian had said she had made advances toward him. She admitted that this was a conclusion she had drawn.

[179] Ms. O'Bomsawin said that she did not contact the investigators after that but did speak on the telephone with Ms. Gravelle-Bazinet seven or eight times between January 31 and July 28, 2000, the date of the Deputy Minister's decision. She did so to tell her that she did not trust Mr. Loïacono enough to ask him for holidays, since things were not going well at work, that is, she felt pressured by the other lawyers at the office. She did not receive any work from the complainant as of January 31, 2000, so she did not refer to any pressure by him.

Chronology: May 2000

[180] In May 2000, the complainant received the documentation relevant to the investigation process from Access to Information after requesting that documentation. It included documents E-19 and E-22, which contain Michel Lamarre's name.

Investigators' final report of May 5, 2000

[181] Ms. Gravelle-Bazinet received the investigators' final report, which she filed with the Access to Information Office. She received the sanitized final report on May 8, 2000. That report was sent to Mr. Bédirian and Ms. Letellier de St-Just on May 9, 2000 (see E-39).

[182] On May 15, Mr. Bédirian requested the testimony obtained by the investigators, and the affidavits were given to him (E-29). He asked Ms. Gravelle-Bazinet about the possibility of reopening the investigation, and she told him that it was up to the Deputy Minister to make such a decision once the investigation was over and that this was subject to new evidence. It would seem that Mr. Bédirian had 10 days to submit comments on the testimony. He sent an e-mail to Ms. Gravelle-Bazinet to find out the procedure to follow with respect to new evidence.

[183] On May 17, 2000, Ms. Gravelle-Bazinet received the investigators' recommendations with supporting case law (E-40). The same day, she received a letter from Mr. Bédirian's lawyer requesting a complete copy of the file and stating that there was a possibility the investigation would be reopened. The entire file, except for the investigators' recommendations, was copied and sent to the Access Office.

[184] On May 31, 2000, Ms. Gravelle-Bazinet was notified by the Access Office that a copy of the file had been sent to Mr. Bédirian's lawyer. The parties made their final submissions in mid-June 2000 (E-5).

[185] Attached to the complainant's submission were some 17 affidavits, including one by Louise Martin mentioning that Mr. Bédirian had been referred to as a gentleman. Ms. Gravelle-Bazinet did not give the investigators that information because, in her view, it was not new evidence. Moreover, she did not consider what Louise Martin said important, even though she was the Director of Human Resources, because Ms. Martin had not reacted well to the assessment conducted at the QRO.

[186] Ms. Gravelle-Bazinet reviewed the submissions, including the one by Mr. Bédirian's lawyer, and noticed Mr. Lamarre's name for the first time. She compared that submission (E-5) with E-19 (Bond), since this was the first time that she had seen Michel Lamarre's name in connection with the *Ally McBeal* incident. Ms. Gravelle-Bazinet called Christine Calvé to ask her whether Mr. Lamarre had been in the kitchen during that incident, and Ms. Calvé told her no, since he was her husband

and he was not there. Ms. Gravelle-Bazinet said that she also questioned Ms. Bond on the subject.

[187] Although Mr. Lamarre was of no importance to the investigators as a witness to the *Ally McBeal* incident, the employer called him as an important witness, since he came to say that he was not the one who had said the words in question in the kitchen. He said that Mr. Bédirian had asked him to tell him who had said them, if he remembered. Mr. Bédirian had come to see him three times to ask him and to tell him that he thought he (Mr. Lamarre) had said them. Mr. Bédirian had also asked him to contact the investigators, and he had refused. Mr. Lamarre had been shocked and had talked to his supervisor about it.

[188] Ms. Gravelle-Bazinet met with Mr. Cantin on June 19, 2000 to talk about the evidence Mr. Bédirian had submitted and to discuss whether the investigation had to be reopened. Mr. Cantin told her that it did not, since Mr. Bédirian had refused to give the name of the other person present in the *Ally McBeal* incident throughout the investigation.

Ms. Gravelle-Bazinet's Executive Summary

[189] After reviewing the documentation received, Ms. Gravelle-Bazinet prepared an "Executive Summary" during the following days for the Deputy Minister to review. The Executive Summary was prepared in English, the Deputy Minister's first language, and the document was not disclosed to the parties. The Deputy Minister asked her to prepare it, and she gave him all the information she considered necessary to "guide" him.

[190] Ms. Gravelle-Bazinet never informed the investigators that Mr. Bédirian was ready to apologize, and this fact does not appear in her Executive Summary. She maintains that Mr. Bédirian's apology was not sincere and that she was able to decide this after meeting with him for an hour because she is capable of judging the sincerity of apologies based on her assessment of how allegations are reacted to.

[191] Ms. Gravelle-Bazinet also met with Barry Deeprise, the Director, Human Resources, about the draft of her letter recommending disciplinary action. She and Mr. Deeprise discussed the final report and the final submissions. She does not recall telling him that Mr. Bédirian had offered to apologize during his first meeting with her

and Mr. Dion, even though she acknowledges how important an apology from a person accused of harassment can be in disciplinary cases.

[192] On cross-examination, Ms. Gravelle-Bazinet admitted that the assessment conducted at the QRO in 1998 was relevant in Mr. Bédirian's case because a new Deputy Minister had just arrived, because a female lawyer had spoken to him at the forum on harassment, because the Deputy Minister had told her to let him know if anything happened, because Mr. Bédirian had referred to it, saying that he had been described as a gentleman, and because two female lawyers were claiming to be deeply affected by Mr. Bédirian's sexual harassment, which brought up the assessment pointing to harassment. Ms. Gravelle-Bazinet admitted that the problem therefore had to be resolved.

[193] In her Executive Summary, Ms. Gravelle-Bazinet mentioned all seven allegations even though only the *Ally McBeal* and *Chéribourg* allegations had been upheld by the investigators. She also added her own comments. She said that the Deputy Minister had asked her to write her own recommendations, since she had all the information. The previous deputy minister, George Thompson, always asked her to make recommendations and provide him with a legal opinion before he made a decision, and she did the same thing in this case.

[194] The Executive Summary was the first document submitted to the Deputy Minister on June 27, 2000 in a bundle of documents to be reviewed by him so that he could make a decision on the allegations against Mr. Bédirian:

1. Executive Summary (E-34)
2. Recommendations by Human Resources
3. Ms. Gravelle-Bazinet's recommendations (E-35)
4. Investigators' final report
5. Investigator's recommendations
6. Ms. Letellier de St-Just's final submission
7. Mr. Bédirian's final submission
8. Memorandum from France Dufresne to Ms. Gravelle-Bazinet dated February 11, 2000 (E-41)

[195] The content of Ms. Gravelle-Bazinet's Executive Summary was put to the test during her cross-examination. For example, she referred to a written statement by

Ms. Calvé, but there is no such statement. Moreover, the facts are apparently that Ms. Calvé spoke to the investigators twice and told them the first time that it was not Mr. Bédirian who had said the words in the *Ally McBeal* incident.

[196] Ms. Gravelle-Bazinet had also prepared recommendations for the Deputy Minister. They were based on key factors, including the following, according to her:

This sexual harassment formal investigation is the first in the Department of Justice since the establishment of the OCM [Office of Conflict Management]. Your decision will be closely scrutinized by all female employees and will have a major impact on the credibility of the Policy, of the OCM, but more so on the commitment of Senior Management to ensure a harassment-free workplace.

[197] Ms. Gravelle-Bazinet denied that her Office wanted to find a guilty party but said that it was important for her Office and the Policy to be credible.

[198] Although the investigation protocol did not provide for this, the investigators prepared and submitted their recommendations, but they were not sent to the parties. According to Mr. Cantin, it was Ms. Gravelle-Bazinet who asked them to make recommendations.

[199] The Deputy Minister, Mr. Dion, Ms. Gravelle-Bazinet and Mr. Lemaire met on July 17, 2000 to discuss the decision the Deputy Minister was to make. They then called in the complainant and his lawyer to tell them the decision. Mr. Bédirian lost his manager's position and was transferred to a new LA-3A position created for him. Further disciplinary action was also referred to in the Deputy Minister's letter of July 28, 2002.

[200] Ms. Gravelle-Bazinet gave all her testimony using notes prepared on a computer. Counsel for the employer was unaware of their existence until she began testifying before this tribunal. Ms. Gravelle-Bazinet had not taken notes during the meeting between her, Mr. Dion and Mr. Bédirian on February 3, 2000, but she testified before this tribunal using notes she had prepared a month after the meeting with Mr. Bédirian and the notes she had written the previous week on a computer, using the other documents from the case, in preparation for her testimony. This means, I would add, that Ms. Gravelle-Bazinet prepared her notes after listening to testimony at this

hearing over the previous few weeks. She admitted that she read over the transcript of Mr. Dion's testimony and her own testimony given before this tribunal.

[201] Her notes were not disclosed to the complainant before the hearing, and I ordered that they be disclosed even though the direct testimony had already been given. However, Ms. Gravelle-Bazinet was asked not to refer to her notes during cross-examination.

Deputy Minister Rosenberg's decision of July 28, 2000

[202] Deputy Minister Rosenberg testified that he read all the documents given to him by Ms. Gravelle-Bazinet and obtained legal advice from within his Department. He agreed with the investigators' conclusion that two of the seven allegations had been proved. He met with Ms. Gravelle-Bazinet and John Power to determine the next steps to take, and he made his decision on July 28, 2000 (see P-1).

[203] According to the Deputy Minister, his decision was based on the fact that Mr. Bédirian was a manager, that the Policy in his Department went further than those in other departments in the sexual harassment context and that the complainant knew the Policy and had sat on a sexual harassment committee in the past, not to mention the fact that he had received training in this regard. Moreover, since Mr. Bédirian had chaired the harassment committee following the assessment conducted at the QRO in 1998, he had a greater responsibility in relation to this sort of conduct. Taking away his manager's position was appropriate, said the Deputy Minister, because he should no longer supervise young female lawyers. Notwithstanding these facts, the Deputy Minister said that Mr. Bédirian was highly regarded in his Department and was well respected as a lawyer. Keeping him at the same level was therefore fair.

[204] The Deputy Minister was not aware of any complaint against Mr. Bédirian prior to this one. According to him, he relied on the fact that the 1998 assessment pointed indirectly at Mr. Bédirian given the passages on pages 37 and 42 (E-1).

Testimony of the complainant, Henri Bédirian

[205] Henri Bédirian has been working in the Public Service for a number of years, and he became a lawyer in the 1980s. He obtained a position in the Tax Litigation Sector of the QRO in 1984 and was promoted to Director, Tax Litigation, in 1996. At that time, there were about 25 lawyers in the tax sector, 12 of whom had joined it when another field was added to its responsibilities; 10 lawyers also joined it in 1997. Thus, if one counts the support staff, his responsibilities had increased considerably since he had applied for the position. At the QRO, there was a Regional Director (Jacques Letellier), to whom the following directors reported: Human Resources (Louise Martin), Tax Litigation, Civil Litigation (Annie Côté), Criminal (Mr. Loïselle) and three other directors in the Finance and other sectors. In the tax sector, Mr. Bédirian's assistant, Mr. Loïacono, was in charge of supervising all the junior (LA-1) lawyers, to whom the vast majority of informal procedure cases were assigned. The appraisals of the LA-1 lawyers were therefore done by Mr. Loïacono, while Mr. Bédirian did those of the senior lawyers. He always worked closely with Mr. Loïacono in assigning cases, and when the lawyers for whom he was responsible complained that they were doing the same kind of work too often, he did his best to assign them different work.

[206] Mr. Bédirian said that he has known Ms. Letellier de St-Just since 1995 as a student, articling student and lawyer. He described her as an excellent lawyer and said that she sometimes took on too much work. He went by her office one day and found her tired, so they agreed that a case would be taken away from her, and she went along with this.

[207] Mr. Bédirian has known Ms. O'Bomsawin since 1996 or 1997, and he described her as a person who always has a smile on her face. The e-mails she sent him were always accompanied by a smiley face. Her work was always performed well, and he and Mr. Loïacono were both very satisfied with it. He never had any problems with her. To further illustrate the fact that they had a good relationship, he said that, while Ms. O'Bomsawin was on secondment to Revenue Canada from July 1999 to December 2000, she asked him to go for a coffee with her to discuss rumours at Revenue Canada, but he did not have time to respond to her invitation. He was therefore very surprised to learn during her testimony before this tribunal that she had not wanted to see him at the Chérilbourg conference.

[208] He had contact with Ms. Letellier de St-Just and Ms. O'Bomsawin when he received the quarterly reports they prepared on the other lawyers' appeal cases. They sometimes gave him those reports with ribbons and angels on them.

[209] After consulting with Mr. Loïacono, he agreed to recommend an outstanding rating for Ms. Letellier de St-Just, and there was nothing to indicate to him that his working relationship with her was not good. Just two weeks before the Chéribourg conference, she came to see him to ask him to grant management leave to the young lawyers, who often travelled on the weekends. He talked about it with Mr. Loïacono, and the leave was approved for all the lawyers the following April. This was thus an example of an initiative by Ms. Letellier de St-Just that was positive for the whole team. Even then, Mr. Bédirian had no indication that there was a problem with Ms. Letellier de St-Just or that she had changed her attitude toward him. During the time she was at the QRO until her departure on February 7 or 8, 2000, he never noticed a change in her or a problem with their relationship. Her attitude was always the same, and she was cheerful.

Testimony of Mr. Bédirian – Assessment conducted at the QRO in 1998

[210] Mr. Bédirian was part of the assessment conducted at the QRO in 1998, and he was briefed on the information gathered, for example through surveys about what was working well and what was not working. Sylvie Charleboix from the Office of Conflict Resolution did follow-up for the things that were not working at the QRO. The only finding made as regards the Tax Litigation Directorate was that there was a perception of unfairness in the way cases were assigned.

[211] Moreover, the assessment never found any sexual harassment in Mr. Bédirian's sector, and he was never identified directly or indirectly by Ms. Gravelle-Bazinet or Mr. Dion as being involved in sexual harassment. In this connection, he had received a telephone call from Mr. Dion concerning the final assessment report (E-1), which stated that "senior management" was engaging in harassment and unacceptable (sexual) behaviour (see page 37 of E-1). Mr. Dion told Mr. Bédirian that he was not part of senior management. He never said that the comments applied to Mr. Bédirian, and he added that Mr. Bédirian had an outstanding rating.

[212] Mr. Bédirian said that it is well known that "senior management" does not include section heads but rather means the Deputy Minister, the Assistant Deputy

Minister and so on. As an example, he noted that France Dufresne does not know what "senior management" means, since she includes therein all the sector directors and the Regional Director, Jacques Letellier, whereas people working in the Department know that the QRO directors are never referred to as part of senior management; they are part of the management committee.

[213] Mr. Bédirian testified that all of the QRO managers as well as the Deputy Minister and Mr. Dion were with the participants at the forum held at the QRO in October 1998 (E-3). Management had decided to make a commitment to addressing the concerns that had come out of the employee surveys conducted during the assessment at the QRO (E-1). It was Mr. Bédirian who took the floor and suggested the theme of "respect", adding that respect was the foundation on which everything had to rest to create an atmosphere of trust and teamwork. He promised them that he would apologize if he made a blunder, and the Deputy Minister thanked him for the theme of "respect" and shook his hand. Mr. Bédirian even remembers that, since it was the Deputy Minister's birthday, he wished him a happy birthday, although he did not know him very well.

[214] In 1993, Mr. Bédirian sat on a harassment committee and received training so that he could act as an investigator (see P-5, in which Deputy Minister John Tait expressed his gratitude to Mr. Bédirian for being kind enough to agree to act as a harassment complaints officer, since [translation] "that work requires tact and judgment, which you display in your career at the Department").

[215] Mr. Bédirian thinks that he received sexual harassment training and can talk about it as a manager; he is knowledgeable about the Department's Policy on sexual harassment. He agrees that managers must ensure compliance with the Policy, but he does not agree with reporting a complaint the way Ms. Lévesque did, because it is necessary to meet with the employees and talk about it first. If that does not settle the matter, the manager can take other steps.

[216] He never tolerated harassment of any kind at his office. Moreover, following the 1998 assessment, there was a perception that there was sexual harassment at the QRO, but not in the Tax Litigation Section. The Director of the QRO warned everyone to be careful about sexual harassment since it had become a constant concern for the Department of Justice. It had to be dealt with.

Testimony of Mr. Bédirian – Alleged Ally McBeal incident

[217] According to Mr. Bédirian, there are many people at the QRO who watch *Ally McBeal*, and everyone talks about it. He follows the show and finds it interesting, but he sees it only once a month, since he has been spending his Mondays with his mother since his father's death. He remembers the famous episode involving two women kissing. It was a Monday evening. The next day, he was walking down the hallway in front of the kitchen near the washrooms, and there was a group talking about the show and the two women who had kissed. He said: "*anyway, last night was the night*". It was a racier episode than usual, and it was something that does not occur in a law firm.

[218] He does not remember everyone who was in the hallway, but he does remember that Michel Lamarre was there and said: [translation] "*it's too bad there are no people like that here*". He said that the people in the group did not react, and he does not recall seeing either Ms. Letellier de St-Just or Ms. O'Bomsawin, as everything happened in the hallway and not in the kitchen. He did not respond to the comment and continued on his way. He did not react, and he did not think about it. No one came to talk to him about it afterwards. Although Michel Lamarre testified that he was not the one who had said the words, Mr. Bédirian maintains that it was him. At the third meeting between Mr. Bédirian and Mr. Lamarre, Mr. Lamarre allegedly told him that he did not want to get mixed up in the matter, so Mr. Bédirian could not do anything more about it.

[219] Mr. Bédirian is sure that the words spoken were not [translation] "female lawyers" but rather: [translation] "*there are no people or no women like that. . . .*" He is of the view that the words referred to women who kiss, but the people talking about it did not react. Everyone laughed and talked in a good-humoured way. Mr. Bédirian admitted today that that type of discussion is certainly not appropriate given what he has been through, but he said that no one reacted at the time. He said that he would have reacted if the words had been vulgar.

[220] According to Mr. Bédirian, he told Ms. Gravelle-Bazinet and Mr. Dion at his first meeting with them that he would tell them who had said the words after talking to the person about it and that the person could tell them more about it later. He asked Mr. Lamarre three times, especially after the investigators asked him to reveal his name. He could not reveal Mr. Lamarre's name because Mr. Lamarre did not remember,

and Mr. Bédirian put himself in his position; moreover, he did not want to defend himself simply by saying that it was Mr. Lamarre, because Mr. Lamarre did not remember. Right or wrong, that is the position he took, even going against legal advice. When Ms. Calvé reported Mr. Lamarre's name to the investigators, he gave in and revealed his name to Ms. Gravelle-Bazinet.

[221] I must add that Mr. Lamarre was not cross-examined on his testimony by counsel for the complainant. However, his name was in the notes that Ms. Bond took during her telephone conversation with Ms. Letellier de St-Just on January 17, 2000 (see E-19), although Ms. Bond's notes were not given to the investigators and Mr. Bédirian did not receive them until after his request to the Access Office. The investigators insisted that Mr. Bédirian give them his name, and Mr. Bédirian did not want to exonerate himself simply by saying that it was Mr. Lamarre. He therefore wanted Mr. Lamarre to identify himself to the investigators, but he refused to do so.

[222] According to Mr. Bédirian, this case could have been resolved in a day, but for a year and a half this was never allowed. It has affected his health, his career and his dreams of becoming a judge one day. He admitted that he has put some effort into his work since the beginning of his career; however, he has never done anything to insult anyone and has always been honest and respectful. He is still prepared to apologize if he made a blunder.

Testimony of Mr. Bédirian – Alleged Chéribourg incident

[223] Mr. Bédirian participated in the Chéribourg conference at the end of November 1999 along with some 150 of the country's lawyers (see P-6, the schedule for the conference activities). There was a training component and an activities component. The junior lawyers took part on the weekend as well (November 27, 1999), while the senior lawyers arrived on Monday. Mr. Bédirian had jokingly told the organizers, Bruno Levasseur and Mr. Gentilly, that he hoped he would have a nice suite.

[224] Mr. Merner had asked Mr. Bédirian to have the QRO managers sponsor a cocktail reception, but Mr. Bédirian had said no, not just the QRO, even though the QRO was considered the host of the conference. It was therefore not on the agenda, but once they were at Chéribourg, the request was repeated and the two suites were offered for the reception. Mr. Bédirian paid \$100 to \$150 out of his own pocket for the drinks, since a government policy prevented that type of purchase for employees. The

reception was held on November 30 after dinner and was supposed to last from 7:00 to 10:00 p.m. He was there at 7:00 p.m. All of the drinks were already in Mr. MacGregor's suite, and he served beer and wine to people. Gradually, people served themselves and went in the suite or the hallway. At one point, Mr. Merner asked him to encourage people to go into his suite, but there were no drinks there. He therefore stood in front of his suite and shouted: [translation] "*two for one, big bed, jacuzzi and the show's going to start later*". He said that he made that invitation at least three or four times during the evening, and he recalls that, the first time he made it, Ms. Letellier de St-Just and Ms. O'Bomsawin were walking past among a group of people. They would have heard the same invitation. He was imitating the people who shouted that way on Ste-Catherine Street to invite people to come to his suite, to [translation] "see the show".

[225] He asked them what they wanted to drink and invited them to go to his suite. Some people had gone into his suite. He went to Mr. MacGregor's suite to get some wine, and he remembers Ms. O'Bomsawin saying: [translation] "*You're on the harassment committee.*" He jokingly replied: [translation] "*I've resigned*", without knowing why he said it, without thinking, except that it was said as a joke because his suite was open.

[226] When he came back to serve them wine, Ms. O'Bomsawin said: [translation] "*Henri's going to serve us some wine for a kiss.*" Ms. Letellier de St-Just said to her: [translation] "*Come on, what's the matter with you?*" That is when Mr. Bédirian said: [translation] "*Come on, it's a slip of the tongue*", and everyone started laughing. He did not notice anything out of the ordinary, nor did he notice that they were angry with him or did not want to see him. Mr. Bédirian testified that he did not want Ms. O'Bomsawin to think he was putting words in her mouth, since he had never thought that she was sending him any message.

[227] After taking the bottles of alcohol out of the suites at about 11:00 p.m., Mr. Bédirian was invited to go to two chalets, Mr. Lamotte's and Mr. Levasseur's. There was dancing at Mr. Levasseur's chalet. A large group headed toward Mr. Lamotte's chalet, including the complainant (Ms. Lefebvre, Ms. Meagher, Ms. Bittichesu). They stayed there until midnight and left for Mr. Levasseur's chalet. It was dark in the chalet except for a little light in the kitchen, and there was music. He recognized Michel Carbonneau, a senior Revenue Canada official and an important client of his. He

spent 20 minutes chatting with him. He did not dance. Mr. Carbonneau talked to him about his recent separation, which they had in common, and they chatted about it. Ms. O'Bomsawin came to say hello to them and said: [translation] "*I hope you're not talking about work.*" Mr. Bédirian was surprised but did not notice anything inappropriate.

[228] No one ever talked to him about *Chéribourg* between November 1999 and the complaint in February 2000.

[229] He admits that his words were misinterpreted. In any event, they did not work, since people did not really go into his suite. Mr. Bédirian did not say anything else to Ms. Letellier de St-Just and Ms. O'Bomsawin. At one point, he had no wine left, and Sophie-Lyne Lefebvre gave him her half bottle and he continued serving wine and talking to a number of people. He found the cocktail reception very enjoyable and relaxed, and he and Mr. MacGregor agreed that it had gone well and that they should have such receptions more often.

[230] Mr. Bédirian stood by everything he told them despite what Ms. O'Bomsawin had said to them and what she told the investigators. He remembers his words, and he never meant her any harm. The expression "two for one" referred to the drinks as a joke, since he had paid for them. It did not mean spending the night with two female lawyers. He did not have any ulterior motives. He simply described his suite to invite people to go in. He denies that he wanted to invite Ms. Letellier de St-Just and Ms. O'Bomsawin so that he could be alone with them, since they could not be alone: there were people inside, and the suite was open to everyone.

[231] As for the reference to [translation] "resigning as manager", Mr. Bédirian meant that he was resigning as a member of the harassment committee. He said this to Ms. Letellier de St-Just and Ms. O'Bomsawin as a joke. He did not see the notes that Mr. Dion took during their telephone conversation or whether Mr. Dion wrote "resigning as manager".

[232] His opinion is that responsibility for what happened does not lie either with Ms. Letellier de St-Just and Ms. O'Bomsawin or with himself, since they were prevented from communicating. Why was conflict resolution not used if the Deputy Minister was promoting it, he wonders. The Department's Policy provides that the parties should talk to each other, but in this case a decision was made to separate the parties this

whole time. Mr. Bédirian said that Ms. Letellier de St-Just and Ms. O'Bomsawin have been put through hell, and he noticed during this hearing that facts had been hidden from him during the investigation. He feels like a third victim alongside Ms. Letellier de St-Just and Ms. O'Bomsawin. During his testimony before this tribunal, he still maintained that he had never harassed the women. He was not raised that way, and his children are growing up to be respectful too. He testified about this because his career is over due to the stigma and, whatever the outcome, he wanted to say it because such things must not happen again.

[233] Mr. Bédirian obviously had to accept a so-called transfer. He had no choice, since it was part of the Deputy Minister's decision on the complaint; he had to accept it, although he did present a grievance against the Deputy Minister's entire decision.

[234] After all of this, Mr. Bédirian really has the impression that an attempt was made to foist off on him all the problems and sources of conflict that existed at the QRO and that this was done from the time of the first meeting, when Ms. Gravelle-Bazinet applied the assessment's comments on "senior management" directly to him; yet, he said, she knows who senior management is.

Testimony of disinterested persons – Ally McBeal incident

[235] As regards the comments made about the *Ally McBeal* show, Ms. Lefebvre's recollection is that it was Ms. Letellier de St-Just who talked about it. Ms. Lefebvre likes that show, and the episode in question involving two female lawyers kissing had been advertised, but she had not seen it. She was disappointed that *Ally McBeal* was becoming a lesbian. It was a new dynamic for the show. Ms. Bittichesu had asked her whether she had seen *Ally McBeal*, and she had said no. It was Ms. Letellier de St-Just who explained to her what had happened, who explained the content of the episode. Ms. Lefebvre eats her lunch in the cafeteria regularly, while Mr. Bédirian never brings his lunch. She therefore does not remember seeing him, Ms. Letellier de St-Just or Ms. O'Bomsawin the day after the show. She did not hear the words attributed to Mr. Bédirian in this case. What she remembers is the discussion among the lawyers, including Ms. Bittichesu, Ms. Letellier de St-Just and Mr. Gentilly. She remembers Mr. Gentilly because they talked and, during a brief discussion with him, he had said: [translation] "lesbian, legal setting".

[236] Ms. Lefebvre found that something was disturbing her about the *Ally McBeal* show and, after the complaint was filed, she considered the question with her therapist. It was then that she remembered that Mr. Gentilly's words had disturbed her, since he had questioned her sexual orientation as if she were a lesbian. She is not a lesbian, so those words hurt her. She admits that it was only during her therapy process that she remembered that episode outside the washrooms.

[237] Pierre Cossette has been a lawyer in the tax sector of the QRO for a number of years. He testified that he did not see the *Ally McBeal* episode during which two women kissed, nor does he remember being or not being in the kitchen to talk about it. On Tuesdays, the lawyers talked about the previous evening's show.

Testimony of disinterested persons - Alleged Chéribourg incident

[238] Ron Wilhelm testified that he attended the Chéribourg conference, where he met Ms. Letellier de St-Just and Ms. O'Bomsawin for the first time. After a dinner organized for the lawyers, there was a reception in Mr. MacGregor's suite. He saw them in the hallway outside the suite and spoke to them. He left them and saw them later that evening, and they were in the same place as before. According to Mr. Wilhelm, "they looked distressed", and Ms. O'Bomsawin told him they did not want to talk about it.

[239] Mr. Wilhelm later learned, and he is not sure who told him, that they had had a conversation with a senior lawyer from the Montreal office who wanted to have sex with them. He had not witnessed the comments made.

[240] Mr. Wilhelm went to the impromptu party at one of the chalets. There, he talked for about half an hour with Ms. Letellier de St-Just, who told him that she was uncomfortable when male lawyers talked to her and put their hands on her hips. She told him that she had a boyfriend. Mr. Wilhelm saw Michel Lamarre having a fairly serious discussion on the patio of the chalet, and he asked Ms. O'Bomsawin what was going on. According to Mr. Wilhelm, Ms. O'Bomsawin said: "Oh! it is nothing, he gets like that when he is drinking!" He said that Ms. O'Bomsawin downplayed Mr. Lamarre's conduct, since he behaved that way everywhere.

[241] About two months after the conference at Chéribourg, Mr. Wilhelm got a call from Ms. O'Bomsawin, who asked him whether he recalled "anything unusual occurring" at Chéribourg. He said yes, that she and Ms. Letellier de St-Just "seemed

upset". Ms. O'Bomsawin told him that he would be getting a call from someone about the matter.

[242] Mr. Merner testified that he attended the Chéribourg conference. He organizes the national lawyers' conferences, and he is a senior counsel for the Assistant Deputy Attorney General, Ian MacGregor. He said that part of his organizational work involves ensuring that the conferences have a social aspect, which is just as important as the training sessions. He therefore put a lot of emphasis on this aspect, and he tried to create some team spirit and enable everyone to get to know one another personally and socially. The purpose was therefore to invite the participants to have a drink together and form social bonds.

[243] A cocktail reception was organized for the second last evening of the conference. At the last minute, it was suggested that the managers of all the offices in the country (Vancouver, Toronto, Montreal, etc.) sponsor and organize the reception. Everything was therefore organized very quickly. Mr. Merner said that they had the idea of opening up the two big suites of Mr. MacGregor and Mr. Bédirian and having the management heads pay for the wine, beer and so on. The two suites were near each other on the second floor. They were the biggest suites at the inn, and they were outside the hotel, so the cocktail reception would be less noisy for other people.

[244] It was Mr. Merner who asked Mr. MacGregor and Mr. Bédirian to offer their suites, since neither of them had volunteered to do so. The reception was going to start at about 7:00 p.m. or 8:00 p.m., and the organizers informed the participants by word of mouth, telling them that the managers would welcome them after dinner. The reception was a great success, as a lot of people came. There were people in the hallways, and Mr. MacGregor's suite was full, with about 50 people in it. People came and went and poured themselves drinks. It was like a party, and people were laughing and having fun. Mr. MacGregor's suite, which was the first one visible on arriving, was full, so people were encouraged to go into Mr. Bédirian's suite. Mr. Merner added that the organizers may have put wine and beer in Mr. Bédirian's suite to encourage the participants to go into it and get them out of the hallway. According to Mr. Merner, there was no room to move in the hallway.

[245] Mr. Merner walked around and told people: [translation] "there are two suites, go to the other one", to get the people in the hallway to move. He told Mr. Bédirian several times that people had to be encouraged to go into his adjacent suite.

Mr. Merner saw Mr. Bédirian encouraging people by telling them in a friendly, cheerful way: [translation] "*There's room at my place!*" People teased Mr. Bédirian about his suite, saying: [translation] "*Nice suite, lucky Henri.*" According to Mr. Merner, the cocktail reception ended at about 11:00 p.m. because Mr. MacGregor wanted to go to bed. Mr. Merner knew Mr. Bédirian as a colleague, and he talked to him during the evening; he said that he was not drunk. Although he did not see this, he is sure that Mr. Bédirian would have served people drinks, since the managers were the hosts. Mr. Merner himself served drinks.

[246] Jacques Loïacono is Mr. Bédirian's assistant, and the two of them have been working together for a few years. Since Mr. Loïacono is the immediate supervisor of the lawyers responsible for informal procedure cases in the tax sector, he knows Ms. Letellier de St-Just and Ms. O'Bomsawin well, and he testified that he has a good relationship with both of them.

[247] Mr. Loïacono testified that he has never received a complaint about harassment by Mr. Bédirian and has never heard anything about him harassing anyone. Nor has he directly or indirectly heard anything about inappropriate behaviour.

[248] Mr. Loïacono was present during the assessment conducted at the QRO in 1998, and he remembers complaints being made about the female lawyers not receiving the important cases. He therefore checked with Mr. Bédirian about the assignment of cases. It was Mr. Loïacono who assigned the cases, and he had to do so for the more senior lawyers and those with more experience. He testified that the same complaint has come up again during the past 12 months and that, following a check, the assignments were found to be fair. Mr. Bédirian has not assigned any cases during the past 12 months.

[249] Mr. Loïacono said that he has worked closely with Mr. Bédirian for the past five years, and Mr. Bédirian is never drunk at the office and does not go to disreputable places for lunch. There is a group of lawyers who leave together, he added, but not Mr. Bédirian. Mr. Loïacono has never gone to restaurants with topless waitresses on Fridays. He admitted going to a tavern with some people from Revenue Canada, but the waitresses were clothed. He has not seen either the managers or the members of the QRO going to such places on Fridays, and this includes Mr. Bédirian. This has been the case ever since he joined the QRO in 1984.

[250] Mr. Loïacono was at the Chéribourg conference, and Mr. Merner invited him to attend the cocktail reception. He stayed in Mr. MacGregor's suite for about two hours drinking beer. The suite filled up very quickly, and there were not even enough glasses. He did not go to Mr. Bédirian's suite. However, he twice heard Mr. Bédirian talking to people to encourage them to go into his suite. He heard Mr. Bédirian say: [translation] "*show at 10:00, show at 11:00*", just like in Old Montreal, where the doormen on streets like Ste-Catherine invite people to come up and see [translation] "the show at 10:00". Those were the tone and intonation used by Mr. Bédirian, and the atmosphere was very jovial.

[251] Maria Bittichesu was there as well. She is a lawyer with the QRO's tax section. She said that she was one of the first people in Mr. MacGregor's suite. Mr. Bédirian was there. The suite filled up fairly quickly, and she took a drink and went out into the hallway. She recalls Mr. Bédirian opening his suite and inviting people to go in because there were so many people in the hallway. She went in to have a look around, and the suite was on two floors, but there was no ambiance there compared to Mr. MacGregor's suite. Ms. Bittichesu did not notice any inappropriate behaviour by Mr. Bédirian that evening. Everyone was in a party mood and everyone was funny, but there was nothing excessive. It was a nice evening, both in the suite and later at the chalet.

[252] Sophie-Lyne Lefebvre has been working at the QRO since 1988. She has worked with Mr. Bédirian as a young lawyer and as a member of various committees. She described a discussion that took place among some lawyers on the ninth floor of the QRO, not far from the fax machine and the printer. She was coming out of the washroom. Ms. Letellier de St-Just was there and was talking about the previous evening's *Ally McBeal* episode, in which two female lawyers had kissed. Ms. Lefebvre had heard about that episode, which had been advertised often, but she had missed it. The discussion took place at about 10:00 or 10:30 a.m., since that is when she normally goes to the washroom. Ms. Letellier de St-Just was with Ms. Bittichesu and Martin Gentilly. She does not recall seeing either Ms. O'Bomsawin or Mr. Bédirian.

[253] Ms. Lefebvre attended the Chéribourg cocktail reception. She said that there were a lot of people packed in the hallways and Mr. MacGregor's suite. The atmosphere was friendly. She noticed Mr. Bédirian walking around with wine and acting as a good host. Ms. Lefebvre did not hear the words allegedly stated by Mr. Bédirian at

Chéribourg. She went with some colleagues to take a walk outside rather than going to Mr. Bédirian's suite.

[254] Mr. Loïacono said that he probably saw Ms. Letellier de St-Just and Ms. O'Bomsawin at the cocktail reception but did not notice anything unusual. He saw them at Pierre Lamotte's chalet, which was full. The music was loud, and everyone was dancing. People had to talk loudly. He danced with Ms. Meagher, Ms. Letellier de St-Just and Ms. O'Bomsawin. It was very packed. He did not notice anything unusual with Ms. Letellier de St-Just or Ms. O'Bomsawin at the chalet.

[255] Neither Ms. Letellier de St-Just nor Ms. O'Bomsawin came to talk to him about the incident involving the complainant after the conference. When the complaint was made, Ms. Letellier de St-Just had already left the QRO, and he saw Mr. O'Bomsawin crying in her office. He offered her his shoulder and took her in his arms. He said that he would not have hesitated to do so two years ago but that he is careful now and that he did so only in the presence of Ms. Labrie, a female lawyer.

[256] Mr. Loïacono testified that he did not notice any change in Ms. O'Bomsawin's behaviour after the Chéribourg conference (in November 1999), except when she started crying in February 2000.

[257] Nathalie Goyette, a lawyer who has been working in the tax sector for 11 years, attended the conference at Chéribourg and the cocktail reception. She arrived there around 8:00 p.m., and there were many people. She headed for Mr. Bédirian's suite, which was the closest to hers, and stayed there until 10:00 p.m. There were only 15 to 20 people at first, but later there were people everywhere. Since she was pregnant at the time, she did not drink alcohol.

[258] Ms. Goyette remembers talking to Mr. Bédirian and other colleagues. The atmosphere was relaxed and festive. People were talking about law and all sorts of things. She spoke to Ms. O'Bomsawin early in the evening in Mr. Bédirian's presence; they talked about her master's degree. She did not notice anything unusual with Mr. Bédirian or Ms. O'Bomsawin, and she did not testify that Mr. Bédirian did or said anything inappropriate.

[259] Pierre Cossette was at the cocktail reception and saw Mr. Bédirian between 10:00 and 11:00 p.m. inviting people to go to his suite by saying: [translation] "*The party's*

going to start." Mr. Cossette went in to compare the two suites; they were identical. However, people stayed in groups. Mr. Cossette left the reception and took a walk before coming back to prepare for a presentation he had to make at the conference the next day.

[260] Mr. Cossette's presentation was at 10:00 a.m. and there was a lunch. During the lunch (a buffet), he sat at the same table as Ms. Letellier de St-Just and Ms. O'Bomsawin. Mr. Verdon was there also. Ms. Letellier de St-Just seemed angry and offended, as did Ms. O'Bomsawin. Ms. Letellier de St-Just was asked why she was feeling that way and she said that it was because of an incident the night before in Mr. Levasseur's chalet. She referred to some unseemly behaviour on the part of a lawyer who had been very "clingy" and who had made some offensive comments. That lawyer was Michel Lamarre. Ms. Letellier de St-Just said that Mr. Lamarre's behaviour had been highly inappropriate and that she would rather not to talk about it. The investigators contacted him by telephone only. Mr. Cossette had not gone to Mr. Levasseur's chalet.

Testimony regarding Mr. Bédirian's character

[261] Mr. Loiacono described Mr. Bédirian as a relatively private and more reserved type of person who, although jovial, does not open up very easily. He is an honest man who is very focused on what he does, such as the budget, and is very interested in tax matters. Mr. Loiacono had never had any problems with him. The two men did not associate outside the office and Mr. Loiacono said that he had often seen him at office social occasions and that Mr. Bédirian always seemed to be in a good mood and enjoyed conversation.

[262] Ms. Lefebvre described Mr. Bédirian as an extremely good person who had shown a great deal of understanding and compassion toward her when she fell ill in 1996. She said that he is someone who puts a great deal of effort into his work. There had been an incident between them at a committee meeting. He had been instructing the committee members on how things were to be done and he would look at her every time he said something. She felt like she was being singled out and burst out in front of everyone: [translation] "There are other people on the committee. Stop looking at me all the time!" He came to Ms. Lefebvre's office afterward and apologized. She was sobbing and apologized in turn for reprimanding him in front of the others. Mr. Bédirian said he had been looking at her because he knew he could count on her to

make sure things would get done. However, she said he had admitted his mistake and had apologized. She had never witnessed any acts whatsoever on the complainant's part.

[263] Ms. Bittichesu said she had been very surprised to learn that Mr. Bédirian was facing complaints for the *Ally McBeal* and *Chéribourg* incidents. She had given him her support and continued to do so. She was the one who had put him in contact with her lawyer to assist him in this matter. The complainant's lawyer had asked her to collect affidavits attesting to Mr. Bédirian's character, which she did. She had never seen any harassing behaviour on Mr. Bédirian's part, and she had known him since 1986. She described him as a pleasant, respectful and charming person.

[264] Ms. Bittichesu had been the victim of sexual harassment herself in 1986 and had a very good understanding of this type of case. That was why she repeated how surprised she was that a complaint had been made against Mr. Bédirian. She had also indicated on the assessment surveys that had been carried out at the QRO that she was a woman in the tax section and had answered "yes" to the question of whether she had been the victim of sexual harassment in the workplace, adding that a senior official had been involved.

[265] She asked her colleagues if they wanted to prepare an affidavit and left it up to them to decide, and this took approximately a day and a half at the beginning of June. She had not received any instructions from Mr. Bédirian and had not spoken to Ms. Letellier de St-Just or Ms. O'Bomsawin.

[266] Ms. Goyette described Mr. Bédirian as a pleasant person who was very dedicated to his work and a good manager. She had never heard of any complaints against him other than in this case.

[267] Three other work colleagues also testified, namely Chantal Comtois, Francine Marcotte, a legal secretary at the tax sector, and Christiane Martin. They described the complainant as a respectful person. Ms. Marcotte had never witnessed any inappropriate behaviour on Mr. Bédirian's part and no one had filed any complaints about him. Ms. Martin, who had been a lawyer at the QRO for a number of years, had served on the management committee further to the assessment of the QRO in 1998, and the committee members had discussed problems at the QRO. Ms. Martin said that the names of the persons associated with sexual harassment at the QRO had

been mentioned and that Mr. Bédirian had not been among them. She said that this type of thing had been going on for years and that management (the former management) had done nothing. Jacques Letellier had been named for sexual harassment and another person had been named for abusive language. She had never seen lawyers coming back from lunch drunk but the criminal section had the habit of leaving at 2:00 p.m. to have a beer at a tavern close to the office and of staying there for supper.

[268] Johanne Proteau, Diane Martineau, Martine D'Août and Nicole Lavoie, who had worked as legal secretaries at the QRO tax section for a number of years, also testified in this case. According to these women, who worked closely with the complainant, there had been complaints about Mr. Bédirian, not for inappropriate comments or behaviour, but because he is demanding in his work and even once because he had forgotten to say hello to a secretary one morning. He had apologized to the entire staff, saying he was preoccupied sometimes. Ms. Proteau described him as a friendly and polite man who is understanding with the staff, and Ms. D'Août as a very humane and reserved man who is very proper with the staff. Ms. Martineau had had to work with the complainant on cases that had required a lot of overtime outside regular office hours and had never seen any inappropriate behaviour on Mr. Bédirian's part. Ms. Martineau had had a bad work experience in the past and greatly appreciated the way Mr. Bédirian related to the staff. In her view, Mr. Bédirian is a dedicated, humane and respectful lawyer. For her part, Ms. Lavoie had never seen any inappropriate behaviour on the complainant's part either and had never heard him make any comments that were out of place. Ms. Lavoie described him as an honest man who is capable of making decisions.

[269] Chantal Jacquier testified that she had been working with Mr. Bédirian at Tax Litigation since 1988. She had never observed any inappropriate behaviour or offensive comments on his part. Ms. Jacquier described him as a very professional person who was mindful of others and readily said that she had a good working relationship with him.

[270] Pierre Cossette had known Mr. Bédirian for a long time and described him as a very professional, very reserved and honest man.

EMPLOYER'S REBUTTAL EVIDENCE

[271] The employer called Annie Côté and Ms. Letellier de St-Just to provide rebuttal evidence. Ms. Côté has been a lawyer since 1971. She related that during the sessions that followed the 1998 assessment, she had never heard any reference to the "gold award" in relation to the complainant, although she admitted there may have been comments about him. For her, during the sessions they had had to talk about sexual harassment, since the Department's senior management, and she mentioned Mr. Dion by name, lacked leadership and did nothing. She testified that over the years she had had a number of meetings with women who had spoken to her of inappropriate comments, but she had not informed Ms. Gravelle-Bazinet's Office or followed up in such cases.

[272] Ms. Letellier de St-Just testified at the end of the testimony for this hearing to say that she had not talked about the *Ally McBeal* episode in the hallway and had never seen the show. I emphasize that Ms. Letellier de St-Just was present for all of the testimony that followed her own which had been given at the beginning of this hearing.

EMPLOYER'S POSITION

[273] The issue in this case is the decision by Deputy Minister Rosenberg, and the employer has presented the evidence the Deputy Minister used to arrive at the suspension and transfer of the complainant Mr. Bédirian.

[274] Deputy Minister Rosenberg's decision was based on the outcome of the investigation as presented in a final report (E39). The investigation had been conducted in a professional manner, with no irregularities, and in compliance with the principles of natural justice and procedural fairness as well as the requirements of the law. All of the proceedings had been conducted by investigator Jean-Maurice Cantin, who is experienced in this field.

[275] The decision was based on the outcome of the investigation, the investigation procedure, that is, the complaint (E-7 and E-8), the investigation protocol (E-24), the interim report (E-28), the principal witnesses Ms. Letellier de St-Just, Ms. O'Bomsawin, Ron Wilhelm and the investigator Mr. Cantin, as well as the balance of evidence.

[276] The Deputy Minister consulted and considered Ms. Gravelle-Bazinet's executive summary (E-34), the legal opinion of Harvey Newman and John Power, which were not

filed because of their confidential nature, Ms. Gravelle-Bazinet's recommendations (E-35), the final investigation report (E-39), the investigators' recommendations (E-40), Ms. Letellier de St-Just's submission (E-13), Mr. Bédirian's submission (E-5), and the subsequent representations of the complainant and his lawyer in the presence of the employer's representatives.

[277] The employer is of the view that it must meet a standard of proof that is clear, cogent and compelling in both of the allegations against the complainant, in accordance with the decision in **Teeluck**. The employer is of the view that it met this standard.

[278] The employer started with the *Chéribourg* incident. According to Ms. Letellier de St-Just's testimony, the testimony she gave the investigators and Ms. Gravelle-Bazinet, the complainant said the following words to the two female lawyers: [translation] "*Hey guys, two for one, go get your red wine and come to my suite, you'll be comfortable, big bed, the three of us can spend the night together.*" Ms. Letellier de St-Just said she was 99.9 percent sure that Mr. Bédirian had added [translation] "*ménage à trois*" and had been smiling while looking at them insistently. According to Ms. Letellier de St-Just, there had been no ambiguity in his proposal. She had stood there, dumbstruck. Ms. O'Bomsawin talked about the sexual harassment committee and about Mr. Bédirian's serious behaviour, which had been unambiguous, and indicated that she had interpreted Mr. Bédirian's words "*Hey guys, two for one*" as referring to a proposal for a *ménage à trois*.

[279] According to Ms. Letellier de St-Just, she felt like Mr. Bédirian was after her that evening because he was watching her. The comments had an impact on Ms. Letellier de St-Just, who questioned the way she was dressed, and who cried a great deal. She decided that if she could not leave the QRO she would leave the Public Service. She received counselling from a psychologist.

[280] According to Ms. O'Bomsawin, the complainant had said "*deux pour un*" or "*two for one*". The employer said she had been very frank in her testimony. Mr. Bédirian had invited them for a glass of wine and had talked about a big bed and about having some peace and quiet, comments which in Ms. O'Bomsawin's view were clearly leading up to a sexual invitation to spend the night together.

[281] It was Ms. O'Bomsawin who reprimanded Mr. Bédirian by saying: [translation] "Aren't you embarrassed to speak to us that way? And you're my boss." Mr. Bédirian allegedly then said: [translation] "It doesn't matter anyway, I'm going to resign." Ms. O'Bomsawin described the complainant as very condescending in the way in which he spoke to them. Ms. Letellier de St-Just raised a toast to his resignation and confided in Ms. O'Bomsawin that [translation] "Henri dreams of two women kissing like on *Ally McBeal*".

[282] That incident greatly disturbed Ms. O'Bomsawin, who thought about lodging a complaint, but she was afraid of Mr. Bédirian's friends who were senior lawyers at the QRO. She became sick and lost weight.

[283] The employer added that Mr. Dion's testimony was also important. Although Mr. Dion experienced some difficulty in reading his notes from the meeting with the two female lawyers, he was able to identify the following words: [translation] "Two for the price of one", "night together" "bed", "resign tonight", "to your resignation". Mr. Dion indicated that the two lawyers had cried a great deal.

[284] During his meeting with Mr. Bédirian to advise him of the allegations against him, Mr. Dion indicated that Mr. Bédirian had spoken of the *Chéribourg* incident of the previous November as follows: [translation] "I simply said I would pour it for them for a kiss [*baiser*]. It was a joke." That was the first time Mr. Dion had heard the word "*baiser*". He said that Mr. Bédirian added that he had had a slip of the tongue and admitted having spoken of resigning as a gesture.

[285] Ms. Gravelle-Bazinet also testified and she confirmed Mr. Dion's facts. She had confronted Mr. Bédirian about the first encounter, in which Mr. Bédirian had allegedly spoken to the two female lawyers about the three of them spending the night together. According to Ms. Gravelle-Bazinet, the complainant said that they had been in a party mood and that he was the one who had used the word "*baiser*". In his statement of February 28, 2000 (E-10) he admitted he had said "*two for one*" and had greeted the two young lawyers. He admitted having described his suite but had not been certain he had talked about having some peace and quiet or about his resignation. He denied having talked about the three of them spending the night together. He could not remember looking at Ms. Letellier de St-Just or Ms. O'Bomsawin in any particular way.

[286] According to the employer, during his testimony on this matter in August 2001 he denied all of that. After speaking with Ms. Gravelle-Bazinet, Mr. Bédirian said that the only things he could remember were [translation] "slip of the tongue" and "kiss for a drink". He told this to Mr. Dion and Ms. Gravelle-Bazinet and Mr. Dion then asked: [translation] "What slip of the tongue? She never talked about that." As well, Mr. Bédirian allegedly said that he had in fact told the lawyers he would be resigning but not as manager, although Mr. Dion's notes indicated [translation] "resigning as manager", which contradicts this. According to the investigator Mr. Cantin, the testimony of the two lawyers had not been copied and the account of the proposal for the three of them to spend the night together was clear.

[287] According to the employer, Mr. Bédirian's explanation that "two for one" referred to drinks was not logical since the drinks were free, which meant that the context was not appropriate. Mr. Bédirian had nonetheless admitted having described his suite and, as for the expression "slip of the tongue", Ms. O'Bomsawin categorically denies he said this.

[288] Ron Wilhelm's testimony was also important since, according to the employer, he had seen the two lawyers "upset" and could say that something serious had taken place after speaking with Ms. O'Bomsawin. Later, she allegedly said that a senior lawyer at the QRO wanted to have sex with them.

[289] Mr. Bédirian's words thus constituted an insulting, inappropriate and offensive proposal that the reasonable person standard, either a reasonable man or woman, would find as such (see **Stadnyk**). The test in **Teeluck** has been met.

[290] In the case of the alleged *Ally McBeal* incident, the employer said that the fact that Mr. Bédirian had said "Hey guys, last night was the night" was not contested. According to the employer, at that point Mr. Bédirian explained what had happened on the show and said that he would have liked to have seen that. Ms. Letellier de St-Just then left because she had just eaten. In Ms. O'Bomsawin's statement (E-14), she indicated that she had seen the show in question in mid-October and that the following day there had been a discussion in the kitchen on the ninth floor of the QRO. She had been there with Ms. Letellier de St-Just. Mr. Bédirian and Mr. Cossette allegedly said: [translation] "*Hey guys, last night was the night, last night's episode of Ally McBeal*" and "*my dream*" or "*I dream*" "*of seeing my female lawyers kissing*". Ms. O'Bomsawin said she was certain that Mr. Bédirian had used the words [translation] "*his lawyers*". She

added that she could see Mr. Bédirian's face. She found this disgusting and she left. According to Ms. O'Bomsawin, Mr. Lamarre was not there.

[291] According to Mr. Dion's handwritten notes and Mr. Bédirian's testimony, the employer is of the view that when Mr. Bédirian said to Mr. Dion: [translation] "*That can't be, because I never went that far in my comments,*" it was the beginning of an admission on Mr. Bédirian's part. Although Mr. Bédirian claimed that it was Mr. Lamarre who had said those words, Mr. Lamarre testified that it was not and the employer thus proposed that it was in fact Mr. Bédirian who had said them. The employer deemed Mr. Lamarre to be more credible and stated that his testimony, although difficult with regard to his boss Mr. Bédirian, was upheld and was not submitted to cross-examination. Moreover, the employer notes that the complainant maintained that he made the initial comments but denied having said more and could not remember having spoken to the two lawyers in the kitchen or having looked at them. It is inconceivable that Mr. Bédirian's testimony or his behaviour in questioning his subordinate, Mr. Lamarre, on three occasions could be accepted.

[292] The conclusion: this evidence is clear and concise and the allegation has been proven in accordance with the test in **Teeluck**. There was no evidence to the contrary on the complainant's part and Sophie-Lyne Lefebvre's entire testimony should be disregarded, in the employer's opinion, because she testified after consulting with a psychologist.

[293] The employer also felt it appropriate to comment on the accusations Mr. Bédirian had made with regard to this entire matter. The employer stated that the complainant denied outright all of the comments and that he blamed everyone but himself for his problems. He did not accept any responsibility and such a defence is similar to that used in **Morissette and Treasury Board (Agriculture and Agri-Food Canada)**, [1998] P.S.S.R.B. No. 166-2-27463.

[294] The complainant's accusations notwithstanding, the employer maintained that no information on this case was hidden and that everyone had had a chance to say everything during the investigation. The memorandum of understanding was followed to the letter and the process was in keeping with the requirements of the legislation. Moreover, if the complainant wanted to apologize, he should have indicated this to the investigators or have done so at Chéribourg.

[295] Given that two of seven allegations were upheld by the investigators, the employer maintains that the corrective action is justified. The administrative measure imposed on the complainant attests to the fact that the sexual harassment policy imposes a greater responsibility on managers not only to comply with it but also to serve as an example through highly respectful behaviour. Mr. Bédirian was aware of this policy and had served on the harassment committee. All of these facts were noted by Deputy Minister Rosenberg, who emphasized that the comments had been made after the workplace assessment at the QRO. Therefore, according to the Deputy Minister, this type of harassment had to be stopped and he did not consider it appropriate to keep the complainant in his position as manager. However, the Deputy Minister recognized Mr. Bédirian's situation and wanted to preserve his seniority, his compensation and his salary. The employer thus created an LA-3A position that recognized the complainant's legal expertise but took away his managerial status.

[296] The Deputy Minister also imposed disciplinary action on him in the form of a three-day suspension, a warning regarding further incidents and a requirement for training and directed him to write a letter of apology to Ms. Letellier de St-Just. According to the employer, the disciplinary measures are reasonable in light of all the circumstances. By following the tests in **Robichaud**, the employer indicated that it had met its objective to eliminate harassment, rather than punish it, and to create a healthy atmosphere.

[297] The employer's rebuttal evidence prevails and rules out the complainant's story, according to the employer.

[298] The employer cited with approval paragraph 65(1)(b) of the *Human Rights Act*, which was created because of the **Robichaud** case, for the proposition that harassment can include a single act if that act constitutes harassment within the meaning of the *Act*. Moreover, **Robichaud** emphasizes the responsibility of managers to put an end to sexual harassment and to set an example in the workplace as well as in the context of work outside the workplace, although the object of that case was simply to determine the employer's civil liability for its employee's discriminatory acts. The fact that the sexual harassment had taken place was not contested but only the issue of whether the employer could be held responsible for the acts.

[299] Harassment is referred to as sexual if it is reasonable to think that the act could have offended or humiliated an employee; see **Stadnyk**. In **Janzen**, the Supreme Court

indicated that sexual harassment may include proposals to get together or sexual favours that could impair the alleged victim's work performance or personal dignity. That point was raised by the employer in this case since neither Ms. Letellier de St-Just nor Ms. O'Bomsawin had to stop working because of the incidents; it was rather a question of their personal dignity.

[300] The employer also cited passages in the decision in **Bannister** concerning an employee who held a supervisory position and who tolerated an unhealthy atmosphere and even participated in the conversations with as much enthusiasm as the others. After assessing the evidence of the five female complainants and the testimony of the supervisor and his witnesses, the court found that sexual harassment had been proven. Since he did not admit to his actions and did not apologize, his dismissal was justified. As in **Janzen**, the employer noted that there was to be zero tolerance for sexual harassment at the QRO. The employer added that, as a lawyer, Mr. Bédirian should have been much more sensitive to the words he used.

[301] The employer also referred to the decision in **McMorrow**, which held that a senior employee should have realized, without having to be told, that repeated incidents of touching and kissing the women in his office were unacceptable, since the women were afraid of confronting him. In Mr. Bédirian's case, his comments and looks adversely affected the dignity of the two lawyers and that was why they had been unable to confront him at Chéribourg.

[302] The employer also cited the cases of **Mourant** and **Gonsalves** to justify its conclusion that it was right to find the complainant guilty of sexual harassment and to impose discipline on him. The intimidation of the two female lawyers had to be stopped. The employer asked that the grievance be dismissed.

COMPLAINANT'S POSITION

[303] The points at issue are, therefore, whether the employer met the burden of proof in the circumstances of this dispute and, if so, whether the allegations against Mr. Bédirian constituted sexual harassment.

[304] The complainant is of the view that the burden of proof in a case such as the one that concerns us requires that the employer prove the alleged facts through clear, cogent and compelling evidence. In support of that position, the complainant cited the

following cases: **Continental Insurance Co. v. Dalton Cartage Co. Ltd.**, [1982] 1 S.C.R. 164, **Vernon Johnson v. Treasury Board** (file 166-2-22252), **Samra Satwinder v. Treasury Board** (file 166-2-26543), **Deeraj Teeluck v. Treasury Board** (file 166-2-27956), and **Grant Gale v. Treasury Board** (case 166-2-303347).

[305] In particular, the complainant cited a passage from the decision in **Samra Satwinder** in which adjudicator Tenace indicates what he understands by burden of proof:

Respectfully, I find it unacceptable as proof of guilt that serious incident is determined to have taken place on the basis that it was "likely" or "not unlikely"..... it requires more than a mere preponderance of proof.

[306] The burden of proof required in sexual harassment cases set out in **Samra Satwinder** was applied in **Teeluck** and in **Grant Gale**.

[307] By comparison, the complainant raised the fact that in this case investigators Cantin and Piette used a mere preponderance to indicate in their report that the allegations had been proven.

[308] When there is conflicting testimony, it appears that the credibility of the witnesses needs to be assessed, and the complainant referred to some six decisions on that issue, of which I note in particular the important decision in **Faryna v. Chorny**, [1952] 2 D.L.R. 354. O'Halloran J. of the British Columbia Court of Appeal provides us with appropriate guidance in this discussion:

If a trial Judge's finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box.

...

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[309] In fact, the complainant alleged that all of the tests for assessing the credibility of witnesses, such as the consistency of the statements, were very important in this

case. In his view, such was not the case with the statements and testimony of Ms. Letellier de St-Just and Ms. O'Bomsawin, not to mention the ambiguity that a number of witnesses had displayed in their testimony. The witnesses were simply asked what words had been spoken and in response they indicated, for example, that that was how they had interpreted them.

[310] The complainant also suggested that attention be paid to the testimony of Ms. Letellier de St-Just, who was unable to swear with 100 percent certainty at the hearing what Mr. Bédirian's exact words had been at Chéribourg, although she had given two versions to investigators Cantin and Piette: that he had allegedly referred to a *ménage à trois* or to the three of them spending the night together.

[311] The evidence filed by the employer is neither clear nor compelling, according to the complainant, and the employer therefore did not meet the burden necessary to prove his allegations. For example, in the alleged *Ally McBeal* incident, the only sentence the complainant admitted to having spoken was "*Hey guys, last night was the night*". However, the facts surrounding the conversation are not clear. Ms. Letellier de St-Just is the only one to have said that Mr. Bédirian added words about his female lawyers being able to do this, but Ms. O'Bomsawin testified that Mr. Bédirian had been standing in the doorway to the kitchen and had not participated in the conversation. Ms. Calvé, who had been present in the kitchen, was not called to testify. Moreover, Ms. Letellier de St-Just never spoke of this incident to Jane Meagher when she confided in her concerning the alleged *Chéribourg* incident two months later.

[312] In comparison, the complainant has always denied having said that he would like to see his female lawyers participate in such acts. He stated that he had said "*Hey guys, last night was the night*" and explained the context in which this exclamation had been made but maintained he had not spoken the words alleged by Ms. Letellier de St-Just and Ms. O'Bomsawin. According to the complainant, Mr. Lamarre had been present in the kitchen and he was the one who had made the comment that [translation] "*It's too bad there are no people like that here today*". After everything that had happened to the complainant, the employer has no reason to wonder why Mr. Lamarre would not want to admit his participation in such a conversation in this case, added the complainant.

[313] It should be recalled that Ms. Goyette and Mr. Cossette testified that it was common practice at the QRO's Tax Litigation section to have discussions about episodes of *Ally McBeal* and that therefore this was nothing new.

[314] The employer would like to emphasize the importance of the testimony of Assistant Deputy Minister Dion and Ms. Gravelle-Bazinet with respect to their meeting with Mr. Bédirian to inform him of the allegations against him. However, according to the complainant, Mr. Dion did not attempt to decipher any notes during his testimony and Ms. Gravelle-Bazinet had not taken any notes since she wanted to assess what Mr. Bédirian was saying. It therefore cannot be maintained that their testimony is consistent with respect to what Mr. Bédirian said.

[315] Regarding the alleged *Chéribourg* incident, the complainant stressed that the employer had not indicated the context in which everything had taken place, which is essential in evaluating the acts in question. The context was a conference attended by some 150 lawyers from across Canada, which had been joined at the end by senior lawyers from the various offices. During an evening cocktail reception the complainant had been asked to open up his suite to the lawyers since Mr. MacGregor's adjacent suite was full. All of those facts have been clearly established in the complainant's case by Mr. Merner and were not contradicted by the employer.

[316] The context was clearly established: that of a social evening during which the lawyers, including Ms. Letellier de St-Just and Ms. O'Bomsawin, were drinking and enjoying themselves with their colleagues in the suites of an inn. Mr. Bédirian invited them to come into his suite as he had been asked to do. What words did Mr. Bédirian say at that important moment? According to the complainant, he invited the lawyers to have "two for one", to come to his suite, saying that he had a big bed and a jacuzzi and that the show would be starting at 10:00 p.m., according to the complainant in imitation of the bouncers on Ste. Catherine Street who encourage people to come into their clubs. Mr. Merner and Mr. Loïacono corroborated those facts and the fact that the complainant had made this invitation a number of times that evening.

[317] On the other hand, the complainant said, Ms. Letellier de St-Just never confirmed to the investigators that the complainant had referred to a *ménage à trois* and in her testimony in this case she was unable to indicate exactly what Mr. Bédirian had said. She had put forward the word "*baiser*" in her testimony before the tribunal because she said she was under her oath of office, although she never put forward that

word to the investigators because she wanted to be certain of what she told them. Given such a contradiction, Ms. Letellier de St-Just said that it was her interpretation of what had happened.

[318] It has not even been proven that the alleged words were spoken by the complainant. The complainant is thus of the view that the alleged incident was not proven by the employer since the evidence was neither clear, cogent nor compelling.

[319] In the alternative, if it were to be established that the words had been said, do they constitute sexual harassment? The complainant is of the view that they do not, since words can be inappropriate and even juvenile but that does not mean it has been successfully demonstrated that the sexual harassment complaint is *founded* on the basis of what is understood by sexual harassment, citing the decisions in **Janzen, Habachi, Rivet, Seager, Challenger Motors, and Canadian Human Rights Commission and Canadian Armed Forces and Kimberley Franke**, [1999] F.C.J. No. 757. Although the comments were admitted to in this incident, the complainant stated that they were simply inappropriate comments but not sexual harassment. The comments do not have the harassing character said to be essential in order to prove sexual harassment or meet the objective test of a reasonable person in similar circumstances, again taking into account the context in which the words were spoken and the standards of the time.

[320] Although investigator Cantin testified that he was aware of the importance of the context in which the comments had been made, he disputed the importance of the *Chéribourg* context, a social evening during a conference. The complainant had answered no to the question [translation] "Were the comments inappropriate at the time and in the context in which they were made?"

[321] Mr. Bédirian's comments could not have created a negative working environment from a psychological and emotional perspective, as described in **Azerad v. National Film Board (file 166-8-21610)** and in the authorities *Sexual Harassment in the Workplace* (Aggarwal, Gupta) and the work of the same name by Maurice Drapeau. It must be recalled that Ms. Letellier de St-Just said that she had a good working relationship with the complainant and that the reason she had gone to see the psychologist was simply to prepare to give her testimony before the hearing. Mr. Bédirian's comments were not picked up on or repeated.

[322] While the employer is of the view that the alleged incidents show sexual harassment because the context in itself could be sexual, the complainant reiterated the principle established by Vice-Chairperson Tenace in **Samra** when he stated that the employer cannot dictate the standards of social contact in the workplace.

[323] The complainant again addressed the two incidents alleged against him. In the *Ally McBeal* incident, Mr. Bédirian notes that there was a conversation at the office following a television program that was often discussed by the employees. Five people were discussing the show in the office's kitchen. Mr. Bédirian admits having said "*Hey guys, last night was the night*" and that a conversation followed among the five persons present. The conversation had been about what had happened on the show. A sentence was then uttered, if we agree that this happened, although the person who said it is not identified. Mr. Bédirian continued on his way and left the group's conversation. The two female lawyers also left the kitchen after they had finished eating.

[324] Would a reasonable person feel that the comments that were made were unwanted or feel harassed because of such comments in such a context? The complainant said no. The test is not what Ms. Letellier de St. Just or Ms. O'Bomsawin would have felt but rather what a reasonable person in similar circumstances would have felt.

[325] In the *Chéribourg* incident, a social evening took place in the context of a conference attended by many lawyers. At the organizers' request, Mr. Bédirian opened his room at the inn and made it available to guests for a cocktail reception organized by the senior lawyers, of which he was one. Mr. Merner noted that the lawyers had been in a neighbouring room instead and had explicitly asked Mr. Bédirian to invite people to come to his suite. Mr. Bédirian loudly announced the invitation to everyone. He was serving wine and invited everyone to come to his suite. Ms. Letellier de St-Just confirmed that there had been people around her and Ms. O'Bomsawin when Mr. Bédirian had invited them. The two lawyers could not say exactly what words Mr. Bédirian had used. They drank to his resignation and continued their social evening.

[326] Would a reasonable person feel that the comments were unwelcome or feel harassed because of such comments in such a context? The complainant said no.

[327] Finally, the complainant referred to decisions that had involved comments that were out of place, excessive or inappropriate but did not reach the level of sexual harassment: **Smith** and **McCaskill**.

[328] Response to the employer's submission. Only the evidence heard at the hearing should be considered, and the complainant suggests that I should disregard all of investigator Cantin's evidence and his report since that evidence does not indicate that the investigation was conducted and that conclusions were drawn. The employer maintains that Mr. Cantin is an expert and that his testimony is therefore important, while the complainant recalls that the attitude he demonstrated in his testimony cannot be ignored and that he had demonstrated a very fixed notion of what constituted harassment in addition to having applied the wrong standard of proof to reach the conclusions in his report.

[329] It should also be recalled that Ms. Gravelle-Bazinet provided the Deputy Minister with an executive summary in which she failed to advise him that Mr. Bédirian had wanted to apologize to the two lawyers. When she was asked why she had not done so, she testified that Mr. Bédirian's apologies did not seem sincere to her. The complainant also suggested that I did not have to consider everything the Deputy Minister considered but rather the evidence I heard.

[330] The employer criticized the complainant for failing to admit he had harassed the two lawyers but that was impossible since it was the complainant's view that he had not harassed them.

[331] The employer described the complainant's transfer as an administrative measure, while in **McLean** the transfer was shown to be a disciplinary measure.

[332] The complainant asks why this matter is considered so important. He suggested that the matter itself was not that important but rather the work environment at the QRO presented a problem for the employer and for the Office of Conflict Resolution and Harassment in the Workplace and that a guilty party was needed. The complainant argues that the employer targeted him and decided to use him as an example. In support of that suggestion was the employer's approach to the matter, which involved bringing the findings of the assessment conducted at the QRO in 1998 to bear on Mr. Bédirian. The testimony of two young lawyers was used to drive the point home.

[333] An example of this was Ms. Gravelle-Bazinet's insinuations in her testimony and her executive summary (E-34), which had been submitted to Deputy Minister Rosenberg and which addressed things that were not present in any way at the QRO. France Dufresne, who conducted the 1998 assessment at the QRO, never mentioned Mr. Bédirian's name in her report or even referred to the Director, Tax Litigation, the position held by Mr. Bédirian. In asking why the employer was targeting the complainant in such a manner, there was a suggestion that the Office of Conflict Resolution was weak and that Deputy Minister Rosenberg wanted to send a message.

[334] The complainant, Mr. Bédirian, had all of the qualities of a good manager, according to Mr. Dion, and this affair had suddenly deprived him of any kind of managerial career and stripped him of his honour and reputation. Nor can the employer's behaviour in this matter be overlooked, as it had allegedly caused unnecessary harm by creating a huge case (see **Floyd Ross**).

[335] In closing, the complainant asked this tribunal to allow the grievance, set aside the Deputy Minister's decision, reinstate Mr. Bédirian in his managerial position, withdraw the suspension, set aside all of the other measures imposed in the Deputy Minister's letter and retain jurisdiction over the other claims in the grievance.

EMPLOYER'S RESPONSE

[336] In contrast with the complainant's position, the employer stated that the investigators used their own assessment to arrive at the conclusions on the allegations. This hearing was a *de novo* proceeding and the employer is certain that it presented clear and compelling evidence.

[337] The employer said it had used the best evidence and that was why some of the witnesses, such as Ms. Meagher and Ms. Calvé, had not been called to testify. Mr. Lamarre had not even been present at the time of the *Ally McBeal* incident.

[338] The employer maintained its position that the words "would like to see two lawyers doing that" were humiliating for the two lawyers and met the test for sexual harassment. The same held true for the references to "*two for one*", the big bed and having some peace and quiet, which are tantamount to sexual harassment when the comments are taken as whole.

DECISION

[339] My task is to determine whether the decision by the Deputy Minister of the Department of Justice dated July 28, 2000 with regard to the complainant is correct. The Deputy Minister's decision is based on the federal Department of Justice's policy *Towards a Conflict- and Harassment-Free Workplace* (E-4) and on his acceptance of the conclusions of the investigators Cantin and Piette that the allegations with respect to the *Ally McBeal* and *Chéribourg* incidents were founded.

[340] However, before arriving at a decision, I must discuss an important part of the evidence.

Assessment conducted at QRO in 1998

[341] An appreciable amount of evidence was filed on the assessment that had been conducted at the QRO in 1998 (E-1) in order to show the problems that had existed there, including the perception of a sexual harassment problem, which had reached even the men of the QRO or senior management. With reference to the complainant, the employer attempted to show that this perception could stem from his behaviour as a man at the QRO or again as a member of senior management. It is my view after having heard the whole of the evidence and having read the documentation filed in this dispute that the references to behaviour problems related to sexual harassment at the QRO and in particular the passages noted on pages 37 to 42 of the assessment (E-1), which are repeated in the executive summary, do not apply to Mr. Bédirian and therefore should not have been used as evidence against him.

[342] I would add that "senior management" refers to the Department's executives rather than the directors of the various sections at the regional offices, who as a group comprise the management committee. In support I am relying on Exhibit E-3, the agenda for the forum held in Montreal in October 1998, which clearly indicates the composition of senior management, namely the Deputy Minister, Associate Deputy Minister Mr. Dion, Director General Jacques Letellier, Ms. Gravelle-Bazinet and other Department executives. The Directors, such as the complainant Mr. Bédirian, do not appear on that list. Accordingly, the passage found on page 37 of the assessment (E-1), which talks about harassment and unacceptable behaviour on the part of some men at the QRO or of senior management simply cannot be applied to apply to Mr. Bédirian, since he was Director at that time and was not yet part of senior management.

The Policy: *Towards a Conflict- and Harassment-Free Workplace*

[343] The aim of the policy entitled *Towards a Conflict- and Harassment-Free Workplace* (E-4) is to provide employees with a workplace in which employees are committed to working together in an atmosphere of mutual trust that fosters respect. The Policy applies to all Department employees, including management. It acknowledges that working together can give rise to conflicts and the Policy is intended to assist employees in dealing with such conflicts and resolving them quickly in order to ensure that problems do not degenerate into more serious conflicts. The Policy indicates for example that conflicts can arise from simple personality differences or misunderstandings or from rudeness, abuse and harassment (see pages 1-2).

[344] The question of what constitutes harassment is explored on page 3, which indicates that a complete definition that applies to all cases cannot be established. It is thus necessary to verify the specific circumstances of each case. The Policy notes as a general rule that certain types of behaviours can constitute harassment:

- *behaviour that is both unwelcome and offensive;*
- *threats;*
- *discrimination prohibited by the Canadian Human Rights Act.*

[345] Page 3 provides definitions of **unwelcome conduct**, which is recognized to be behaviour that is not wanted by the person in question. The person responsible for the behaviour should reasonably know that the person who is the subject of it does not welcome it. This type of behaviour can be offensive and can take the form of humiliating comments, insulting gestures and so forth. In the category of unwelcome conduct the Policy also defines what sexual harassment is:

One kind of unwelcome behaviour and includes any sexual conduct, comment, gesture or contact, whether it has happened once or on a continuing basis, that causes offence or humiliation to an employee or causes an employee to reasonably believe that a condition of a sexual nature has been placed on employment, training or promotion.

[346] Part One of the Policy deals with *Preventing Conflict and Harassment* and how employees and managers can prevent such situations. It addresses the importance of attending to conflicts promptly, of keeping a record of dates and times relating to

alleged incidents, not to document the other person's conduct but rather to have a legitimate way to preserve one's recollection of events and how they were dealt with.

[347] Part Two discusses *Resolving Conflicts* through informal or formal procedures. The informal procedure calls on parties to meet to give both of them an opportunity to explain themselves and to hold a frank discussion together - without casting judgment - to allow the subject of the behaviour to reveal its effects and to allow the person responsible for the behaviour to become aware of the impact. The purpose is to lead to the resolution of the matter (see pages 7-8). Even in cases in which the reprehensible behaviour persists or if the harassment was very serious, the first recommendation is to turn to the Office of Conflict Resolution and Harassment in the Workplace for help in resolving the matter, sometimes with the assistance of a third party or through mediation. According to the testimony of Ms. Gravelle-Bazinet, the Senior Advisor for the Office, the aim is to prevent formal complaints, since they disrupt the workplace.

[348] If the person who claims to have been harassed is unsuccessful with the informal resolution procedures, or if the person does not consider it appropriate to initiate such a process, he or she can file a formal harassment complaint with the Office of Conflict Resolution. The Office is currently responsible for initiating formal inquiries with the appointment of a neutral investigator. However, the Policy indicates that at any time during a formal investigation the parties can have recourse to mediation if mutually agreed upon. A person would be designated for that purpose by the Deputy Minister in order to ensure that the workplace remains free of harassment and to re-establish a harmonious atmosphere. If the conflict is resolved through mediation, the Office of Conflict Resolution subsequently follows up for two years so that neither party need fear reprisal (see pages 13-14).

[349] If the conflict cannot be resolved through mediation, the investigation continues its course and is overseen by the Office of Conflict Resolution. The Policy provides that the investigators (or investigator) in charge of the case gather evidence, question witnesses and generally assess whether the harassment complaint is *founded*. In the case against the complainant, the investigators used a burden of proof based on probabilities and a balance of evidence.

[350] In my view, it must be ensured from the outset that the definition of sexual harassment in the Policy and the burden of proof indicated as necessary to prove an allegation of sexual harassment are both consistent with Canadian law on this subject.

State of the law

[351] So that I can determine whether the allegations against the complainant have been proven on the basis of the evidence filed in this case, I must review the state of the law in Canada on sexual harassment in the workplace and identify the formula claimed to be necessary to make such a determination.

[352] The parties in this case referred me to **Janzen v. Platy Enterprises Ltd., [1989] 1 S.C.R. 1252**, in which the waitresses at a restaurant complained that an employee who was a cook and said he was a manager would touch them openly and repeatedly. When the cook stopped touching the waitresses, he made life difficult for them at work and threatened them. The waitresses filed a complaint with the Manitoba Human Rights Commission. It was alleged that sexual harassment in the workplace constituted gender-based discrimination. The Supreme Court of Canada stated that it had an obligation to examine the definitions of "sex discrimination" and "sexual harassment" before being able to rule on the question at issue (see page 1278). In addition, the Court confined its analysis of those two expressions to their presence in a workplace context.

[353] The Supreme Court cited a number of definitions of what is meant by sexual harassment and those definitions all refer to the use of a situation of power to impose sexual requirements that adversely affect the working conditions of employees who must struggle against such sexual demands (see page 1281). The Court subsequently addressed the legislative definitions of sexual harassment in both Canada and the United States, and it was determined that sexual harassment includes situations in which sexual demands are imposed on employees who object to them or employees who must endure them, as well as inappropriate sexual proposals and comments, where no economic rewards are attached to involvement in the behaviour (see page 1282), the main point in allegations of sexual harassment being that "unwelcome conduct has invaded the workplace" (see page 1283). Finally, the Court arrived at the following definition of sexual harassment in the workplace:

. . . sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment. It is . . . an abuse of power . . . Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to

endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.

(Underlining added, p. 1284).

[354] I have underlined certain words in the above passages to illustrate the key elements that consistently emerge in the authorities and in **Janzen** when sexual harassment is referred to, namely conduct or practice, which denote a series of gestures and not merely one episode; actions, once again cited in the plural, meaning more than one action; and sexual demands, referring to the act of demanding or soliciting. As with all of the other key elements, the plural is always used, meaning that there are a number of sexual demands and not only one. This need to speak of actions in the plural comes from the definition of the word "harass": "To imitate or torment persistently", "involving repeated annoyances, threats, or demands". (American Heritage Dictionary of the English Language, underlining added). Harassment consists of a series of acts or words, and it follows that sexual harassment must include a series of actions or words of a sexual nature and not a single incident.

[355] The definition of sexual harassment in **Janzen** has been used by the Canadian courts numerous times over the past 13 years and there have been additions such as an interesting Federal Court decision that explores the various types of acts of sexual harassment in the workplace, namely verbal, physical and psychological harassment (see **Canadian Human Rights Commission and Canadian Armed Forces and Kimberley Franke**, [1999] F.C.J. No. 757). The test in **Janzen** has remained the same for each of the three categories of sexual harassment.

[356] In another decision that is highly interesting because of its in-depth analysis of the subject that concerns us, Judge Rivet indicated the essential elements for recognizing a situation of sexual harassment in **Commission des droits de la personne et des droits de la jeunesse c. Québec**, [1998] R.J.Q. 3397. Judge Rivet indicated that the two essential elements on which the court must rely are, first, the unwelcome nature of the actions or behaviour of a sexual nature or with sexual overtones and, second, the harassing effect, that is, the repetitive or serious nature of the conduct. I share the opinion of Judge Rivet that a harassing effect must exist to prove an allegation of sexual harassment, meaning that there was a series of acts,

except in cases in which the conduct with sexual overtones is so serious that it would never have to be repeated for there to be a harassing effect.

[357] In **Canadian Human Rights Commission and Canadian Armed Forces and Kimberley Franke** (supra), Judge Tremblay-Lamer also suggests that the person who is the subject of the harassment must show through his or her body language or by failing to respond to suggestive comments on numerous occasions that he or she has in some way signalled to the harasser that the conduct was unwelcome. The Court even cited types of conduct that constitute sexual harassment:

Verbally, sexual harassment may include:

- *unwelcome remarks*
- *jokes that cause awkwardness or embarrassment*
- *innuendoes or taunting*
- *gender-based insults or sexist remarks*
- *displaying of pornographic or other offensive or derogatory pictures*
- *telephone calls with sexual overtones.*

Physically, the recipient female employee may be the victim of:

- *pinching*
- *grabbing*
- *hugging*
- *patting*
- *leering*
- *brushing against*
- *touching*
- *kissing*

Psychological harassment can involve:

- *a relentless proposal of physical intimacy,*
- *beginning with subtle hints which may lead to overt requests for dates,*
- *sexual favours, and*
- *propositioning*

(at page 9)

[358] I note once again that the Court referred to series of acts or remarks in the above-mentioned examples.

[359] In ruling on an allegation of sexual harassment, the Court in **Franke** reminds us of the need to examine all of the facts surrounding the conduct in question to determine whether it was sexual in nature and harassing according to the reasonable person standard or, in other words, how a reasonable person would have acted in

similar circumstances (see also **Habachi c. La Commission des droits de la personne (C.A.)**, [1999] R.J.Q. 2522). It thus appears that a court that must rule on a sexual harassment case examines, weighs and evaluates all of the facts surrounding the actions in question, as the Federal Court also held in **Ribeca v. Canada**, [1995] F.C.J. No. 141.

[360] Finally, given that most sexual harassment cases result in the alleged victim's testifying against the person who is the subject of the allegations, which in itself entails a question of credibility, the court in **Faryna v. Chorny**, [1952] 2 D.L.R. 354 deemed it appropriate to establish a test on the question of credibility in determinations of sexual harassment. O'Halloran J. of the British Columbia Court of Appeal set out the test of the truth of the witnesses' evidence as follows:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[361] See also **Leach v. Canadian Blood Services**, [2001] A.J. No. 119.

[362] With respect to the burden of proof, there are many cases that indicate that in a sexual harassment case the employer is required to establish that the allegations are true through clear, cogent and compelling evidence, that is, that the acts of which the person has been accused were in fact committed. See the following decisions: **Continental Insurance Co. v. Dalton Cartage Co. Ltd.**, [1982] 1 S.C.R. 164, **Vernon Johnson v. Treasury Board (file 166-2-22252)**, **Samra Satwinder v. Treasury Board (file 166-2-26543)**, **Deeraj Teeluck v. Treasury Board (file 166-2-27956)**, **Grant Gale v. Treasury Board (file 166-2-303347)**.

[363] In the decision in **Samra Satwinder**, adjudicator Tenace indicates what he understands by the necessary threshold:

Respectfully, I find it unacceptable as proof of guilt that serious incident is determined to have taken place on the

basis that it was "likely" or "not unlikely"..... it requires more than a mere preponderance of proof.

[364] I note that the burden of proof required in sexual harassment cases established in **Samra Satwinder** was applied in **Teeluck and Grant Gale** (see also **Dutton v. British Columbia Human Rights Tribunal, [2001] B.C.J. No. 1794**). I support the notion of a high and rigorous burden in sexual harassment cases, since often there is too much at stake, such as loss of reputation, disciplinary measures and all of the stigma associated with this type of allegation, to interpret the evidence lightly.

[365] Thus, to recapitulate, sexual harassment in the workplace is generally referred to as conduct that is blameworthy and that can take the form of verbal, physical or psychological harassment. The conduct must be sexual in nature and produce an adverse effect on the work environment or have harmful consequences on the harassment victim's employment. The conduct can include embarrassing sexual comments, sexual insinuations, sexist remarks, suggestions of sexual intimacy and propositions for sexual favours, caresses on parts of the body that indicate sexual desire or sex discrimination. The person who is the subject of the sexual behaviour must demonstrate that he or she indicated through words and actions to the person whose behaviour is suggested as being unwelcome that the latter's conduct is to be condemned. The behaviour must be persistent and repetitive except in cases in which a single act appears to be serious.

[366] Accordingly, and in my view, in ruling on a case involving sexual harassment in the workplace, the court must analyze the evidence in light of the following six-part formula:

- a) Has the whole of the evidence surrounding the conduct in question been obtained, considered and evaluated?
- b) Has the evidence shown in a clear, cogent and compelling manner that the acts in question were in fact committed?
- c) Did the behaviour consist of persistent and repeated acts or words or is a serious act referred to?

- d) Are the respective versions of the alleged victim and the person who is the subject of the complaint credible in themselves in light of all the facts and, if so, which version is the more credible on a balance of probabilities?
- e) Is the version consistent with what a practical and informed person in the same place and circumstances would immediately recognize?
- f) In light of all of the facts surrounding the behaviour, would a reasonable person feel that the behaviour was blameworthy, unwelcome and sexual in nature?

[367] Finally, for an alleged victim to be able to prove his or her case of sexual harassment in the workplace, the court must have responded in the affirmative to all six of the above questions. I will make my analysis of the evidence in this case on the basis of this formula.

Analysis

[368] In my view, the Department of Justice's Policy does not provide for a high enough burden of proof to establish allegations of sexual harassment. The case law indicates that such allegations attract a stigma that will likely persist for the so-called *harasser* for years, in some cases forever. It is for that reason that these cases require such great sensitivity in their handling, procedures and outcome. A decision must never be made in the case of a person "accused" of sexual harassment without evidence that is clear, cogent and compelling and definitely more than probable. It is my view that the burden of proof indicated in the Policy, which entails a general assessment, as well as the burden of proof used by the investigators in this case, were not in accordance with the law that exists in Canada.

[369] I would also like to add that the investigators did not receive all of the information that had been disclosed by the two lawyers Ms. Letellier de St-Just and Ms. O'Bomsawin further to their conversations and meetings in December 1999 and January 2000, namely the notes of Ms. Meagher, Ms. Lévesque, Monique Bond of the Office of Conflict Resolution and Mr. Dion, which included the information gathered

from Mr. Bédirian. As I noted earlier, The Policy emphasizes the importance of keeping a record that includes dates and times of the alleged incidents in order to document the accuracy of the events and the response.

[370] I must therefore conclude that the Deputy Minister received an interim report and a final report from the investigators who submitted conclusions on the allegations about Mr. Bédirian without conducting a rigorous examination of the evidence or an examination of the evidence on the important initial disclosures of the two lawyers. I am thus proceeding to an in-depth analysis of the allegations in the formal complaint.

[371] I have heard an abundance of testimony about what the complainant allegedly said or might have said during the 19 days of the hearing. What struck me throughout this hearing are the interpretations given to the alleged incidents and even to the words that were allegedly said or not said not only by the complainant but also by Ms. Letellier de St-Just and Ms. O'Bomsawin. On a number of occasions the witnesses involved in this case said they had repeated to other persons (who also testified) what they had understood or even interpreted from the conversations they had had with Ms. Letellier de St-Just and Ms. O'Bomsawin. Accordingly, the evidence did not always consist of the exact words or sentences they had spoken. All of this sometimes gave me the impression that I was hearing a story that was becoming ever more drawn out and increasingly serious each time it was told by another person. I have taken this danger into account and have instead carefully examined what actually took place and what was said in the two alleged incidents.

Alleged Ally McBeal incident

[372] From my understanding of the evidence, I believe that the alleged *Ally McBeal* incident took place as follows or, at least, this version is closest to reality in light of the facts related by everyone. The lawyers who were colleagues at the QRO had the habit of discussing *Ally McBeal* the day after the show. This makes sense since the program was about the lives of lawyers. In October 1999 it had been announced that there was to be a particular episode during which two female lawyers kissed. Some had seen it while others had not and a discussion followed in the hallway very close to the kitchen (or in the kitchen or coming out of the kitchen) in which a group of lawyers had gathered to talk about it. The people there were Ms. Lefebvre, Ms. O'Bomsawin, Ms. Letellier de St-Just, Ms. Bittichesu and Mr. Gentilly. Mr. Bédirian and another person (Mr. Lamarre, according to the complainant) then joined them. Mr. Cossette was not

there but it would appear that Ms. Calvé was, although it was Ms. Letellier de St-Just's opinion that Mr. Cossette was there and she was uncertain whether Ms. Calvé was present. Ms. Calvé allegedly told the investigators that her husband, Mr. Lamarre, was not there according to what is reported in the evidence.

[373] Mr. Bédirian said: [translation] "*Hey guys, last night was the night, did you see Ally McBeal last night?*" That episode was different from what they were used to watching and there was therefore a discussion about it. Mr. Gentilly allegedly said to Ms. Lefebvre: [translation] "*lesbian, legal setting*". The person with Mr. Bédirian allegedly said: "*It's too bad there are no people like that here*" or "*I dream of seeing*" or "*I would like to see*" "*my [or] some lawyers doing that.*"

[374] Although she did not testify, Ms. Calvé apparently spoke to the investigators on two occasions, telling them the second time that she could not say if it was Mr. Bédirian who had made the comments and that her memory might have failed her. In addition, Ms. O'Bomsawin indicated in her statement to the investigators that she thought that the person with Mr. Bédirian was Mr. Cossette and this person had also spoken but she could not relate what he had said. Ms. Letellier de St-Just had to remind Ms. O'Bomsawin of what had been said during the Chérilbourg incident, which meant that Mr. O'Bomsawin could not remember this easily even in November 1999.

[375] There was no response from the lawyers in this group regarding the comments. In private, Ms. Lefebvre found that Mr. Gentilly's comments were difficult toward her. No one reacted and Mr. Bédirian did not respond to the comments. He continued on his way. No one came to talk to him afterward except when he was informed of the *Chérilbourg* and *Ally McBeal* allegations in February 2000. As well, there was no discussion between Ms. Letellier de St-Just and Ms. O'Bomsawin concerning the comments that had allegedly been made during this meeting at which everyone was present, except at Chérilbourg, and I repeat that, at Chérilbourg, Ms. Letellier de St-Just had to remind Ms. O'Bomsawin of what had been said. I add that neither Ms. Letellier de St-Just nor Ms. O'Bomsawin related the alleged incident to Jane Meagher when they spoke of the alleged *Chérilbourg* incident. Jane Meagher did not testify.

[376] No change in the attitude or behaviour of the two lawyers Letellier de St-Just and O'Bomsawin was noted by anyone following the conversation about the show.

[377] When Ms. Letellier de St-Just reported the alleged incident to Ms. Bond, Michel Lamarre was definitely there somewhere, although Ms. Letellier de St-Just asked her to correct her notes to that effect. The investigators never questioned Mr. Lamarre. I share the view of the complainant's lawyer that after everything that has taken place in this matter the employer has no cause to wonder why Mr. Lamarre would not want to admit his participation in such a conversation. Having said this, I am not attributing any comments to Mr. Lamarre in the *Ally McBeal* affair.

[378] The employer is asking me to disregard Sophie-Lyne Lefebvre's testimony since she testified after sessions with a psychologist. If we are to accept this proposal, I would have to disregard the testimony of Ms. Letellier de St-Just and Ms. O'Bomsawin, who also received assistance so they could testify in this case. I have observed and studied each of the witnesses who appeared before me along with their testimony. I do not doubt Ms. Lefebvre's testimony.

[379] I would like to address Mr. Bédirian's "*Hey guys*" comment. To start, I found that the use of the word *guys* indicated that a discussion was being initiated more between friends than between boss and employees. In addition, when the word *guys* is used, it does not refer only to women but to women and men (if anything, more to men). I had the impression that "*Hey guys*" showed the existence of a camaraderie between the complainant and the male and female lawyers at the Tax Litigation section and that all of them were *guys*, or friends. Therefore, there had to be male lawyers present; otherwise, this would have meant that Mr. Bédirian had initiated a conversation about a special program to talk about women kissing with the female lawyers and work friends Ms. Letellier de St-Just, Ms. O'Bomsawin and Ms. Calvé. The fact he used the word *guys* indicates to me that Mr. Bédirian was speaking to those present as work friends. If he had said "*Hey girls*", this would certainly have been perceived as addressing the women by relegating them to the inferior level of girls, especially in the sexual context of talking about women kissing. It is certain that Mr. Bédirian discussed the show but the others did as well. And it is for that reason that he has maintained since the beginning, when he was notified by Mr. Dion and Ms. Gravelle-Bazinet, that he never went that far in his comments. In my view, this logically meant that Mr. Bédirian never went that far in what he discussed with the group.

[380] I am satisfied that Mr. Bédirian did not make the comments of which he has been accused. I cannot imagine this after having heard, weighed and evaluated the

whole of the evidence. Therefore, I do not find it necessary to analyze whether the comments [translation] "*It's too bad there are no people like that here*" or "*I dream of seeing*" or "*I would like to see*" "*my female lawyers doing that*" meet the definition of sexual harassment.

[381] The *Ally McBeal* allegation is unfounded.

Alleged Chéribourg incident

[382] On the basis of my examination of the whole of the evidence, I believe that the alleged *Chéribourg* incident involved a series of events referred to earlier that, in my view, are more reflective of what took place, although the testimony was not always exactly identical. A conference attended by colleagues and lawyers from across the country was held at Chéribourg in Magog in November 1999. The conference lasted several days and to round out the social component of the conference, the organizers, such as Mr. Merner, were able to convince the managers, Mr. MacGregor and Mr. Bédirian, to buy some alcohol and open up their suites to the participants. The cocktail reception was organized at the last minute and was announced by word of mouth and through an announcement during the dinner that preceded the evening. The party started at 7:00 p.m.

[383] When the participants arrived, Mr. MacGregor's suite was the first door and that was where the bar had been set up. All of the witnesses confirmed that it had been a good and relaxed evening, that people had enjoyed themselves, that they were laughing and having fun. Mr. Bédirian and Mr. MacGregor were co-hosts for the evening and greeted people and served them wine. They all testified how Mr. MacGregor's suite filled up with people fairly quickly and was very packed. Mr. Merner pushed Mr. Bédirian to encourage the participants to go to his suite, since there were too many people in the other one as well as noise in the hallway, and the alcohol was put there to encourage people to go in. And that was exactly what the complainant did.

[384] Mr. Bédirian loudly invited all those who were arriving to encourage them to go to his suite. To get the people in the hallway to move, Mr. Merner walked around and told them that there were two suites and that they should go to the other one. After telling Mr. Bédirian several times to encourage people to go into the adjacent suite, Mr. Merner saw Mr. Bédirian encouraging people by telling them in a friendly, cheerful way: [translation] "*There's room at my place!*" People teased Mr. Bédirian about his

suite, saying: [translation] "*Nice suite, lucky Henri.*" According to Mr. Merner, the cocktail reception ended at about 11:00 p.m. because Mr. MacGregor wanted to go to bed. He said that Mr. Bédirian was not drunk.

[385] Mr. Bédirian invited people by standing in front of the door to his suite and shouting: [translation] "*two for one, big bed, jacuzzi and the show's going to start later*". He said that he made that invitation at least three or four times during the evening, and he recalls that, the first time he made it, Ms. Letellier de St-Just and Ms. O'Bomsawin were walking past among a group of people. They would have heard the same invitation. He was imitating the people who shouted that way on Ste-Catherine Street to invite people to come to his suite, to [translation] "see the show". That was the impression that Mr. Loïacono had. He had stayed in Mr. MacGregor's suite for about two hours drinking beer, and he said that there were not enough glasses. He did not go to Mr. Bédirian's suite. However, he twice heard Mr. Bédirian talking to people to encourage them to go into his suite. He heard Mr. Bédirian say: [translation] "*show at 10:00, show at 11:00*", just like the doormen on Ste-Catherine Street in Old Montreal would have done to invite people to come up and see [translation] "*the show at 10:00*". Mr. Loïacono added that this was the tone and intonation used by Mr. Bédirian in making the invitation.

[386] Maria Bittichesu was there as well. She was one of the first people in Mr. MacGregor's suite. The suite filled up, and she went out into the hallway with a drink. She recalls that Mr. Bédirian was inviting people to go into his suite because there were so many people in the hallway. She went in to have a look around, and the suite was on two floors, but there was no ambiance there compared to Mr. MacGregor's suite. Ms. Bittichesu did not notice any inappropriate behaviour by Mr. Bédirian that evening. Sophie-Lyne Lefebvre attended the cocktail reception and saw people packed in the hallways and Mr. MacGregor's suite. She said that the atmosphere was friendly. She saw Mr. Bédirian walking around with wine.

[387] Nathalie Goyette arrived at the cocktail reception around 8:00 p.m., and there were many people. She headed for Mr. Bédirian's suite, which was the closest to hers, and stayed there until 10:00 p.m. There were only 15 to 20 people at first, but later there were people everywhere. Since she was pregnant at the time, she did not drink alcohol. She remembers talking to Mr. Bédirian and other colleagues. The atmosphere was relaxed and festive. People were talking about law and all sorts of things. She

spoke to Ms. O'Bomsawin early in the evening in Mr. Bédirian's presence; they talked about her master's degree. She did not notice anything unusual with Mr. Bédirian or Ms. O'Bomsawin, and she did not testify that Mr. Bédirian did or said anything inappropriate. Mr. Cossette saw Mr. Bédirian between 10:00 and 11:00 p.m. inviting people to go to his suite by saying: [translation] "*the party's going to start.*" Mr. Cossette went in to compare the two suites, which were identical.

[388] The facts show that neither Ms. Letellier de St-Just nor Ms. O'Bomsawin knew that Mr. Bédirian's suite, like Mr. MacGregor's, was open to the participants that evening, and Ms. O'Bomsawin testified that people had been invited to the cocktail reception in Mr. MacGregor's suite; she did not say in the two suites.

[389] When Ms. Letellier de St-Just and Ms. O'Bomsawin ran into Mr. Bédirian in the hallway, he asked them what they wanted to drink and invited them to go to his suite. There were already people in the suite but Ms. Letellier de St-Just and Ms. O'Bomsawin were apparently unaware of this. When he saw them he said to them "*two for one*" or "*deux pour un*" and asked them what they wanted to drink. He invited them to go to his suite. He referred to a big bed and to having some peace and quiet. Ms. O'Bomsawin could not remember whether Mr. Bédirian had used the word "*baiser*" and neither could Ms. Letellier de St-Just.

[390] Ms. O'Bomsawin replied: [translation] "*Aren't you embarrassed to say that? You were on the committee. You're my boss.*" Mr. Bédirian allegedly said: "*It's not serious. I'm going to resign anyway*", laughing and saying this without thinking, as a joke, because his suite was open. Mr. Bédirian went to Mr. MacGregor's suite to get some wine. Ms. Letellier de St-Just stood there, dumbstruck. She believed that Mr. Bédirian had made a sexual proposal to herself and Ms. O'Bomsawin. Ms. Letellier de St-Just and Ms. O'Bomsawin talked about this and about the conversation they had had with Mr. Bédirian the previous month about the *Ally McBeal* episode when two lawyers had kissed. They thought they had remembered that it was Mr. Bédirian who had talked about dreaming of seeing two lawyers kissing and therefore Mr. Bédirian's invitation to come into his suite where there was a big bed strengthened their impression that Mr. Bédirian wanted to have a *ménage à trois*.

[391] The two of them were angry about Mr. Bédirian's proposal. At that point Mr. Bédirian came back into the hallway with a bottle of wine and served each of them a glass. Ms. Letellier de St-Just raised her glass and said [translation] "*to your*

resignation", referring to what he had just said before going in to get the bottle of wine. Everything happened very quickly according to Ms. O'Bomsawin. Mr. Bédirian was looking at them with a smile that confirmed that for him the conversation was still in the spirit of joking around, of partying, but for the two lawyers the message was serious, an intention of a *ménage à trois*. It was thus logical that neither Ms. O'Bomsawin nor Ms. Letellier de St-Just wanted to remain in his presence in light of what they thought had just happened and I fully believe they felt very bad. Mr. Wilhelm had noticed that there was something wrong.

[392] Mr. Bédirian continued serving the wine and talking to people. He found the reception very pleasant and relaxed. He and Mr. MacGregor agreed that it had gone well and that the event should be repeated in the future.

[393] Ms. O'Bomsawin is a friend of Ms. Calvé, Michel Lamarre's wife. She saw Mr. Lamarre and told him that Mr. Bédirian wanted to see two lawyers kissing as on *Ally McBeal*.

[394] After the alcohol bottles had been picked up, Mr. Bédirian went to Mr. Lamotte's chalet at around 11:00 p.m. People went to Mr. Levasseur's and Mr. Lamotte's chalets but there was music and dancing in Mr. Levasseur's. The chalet was a five- to ten-minute walk away. Ms. O'Bomsawin walked there and Ms. Letellier de St-Just went by car. At the chalet Ms. Letellier de St-Just spoke to Mr. Wilhelm and told him why she seemed so "distressed": because the complainant had invited the two lawyers to spend the night together. Mr. Wilhelm found this unacceptable and said he would not tolerate this in his office. However, Ms. Letellier de St-Just danced with Mr. Loïacono and Mr. Meagher and spent a pleasant evening at the chalet.

[395] Michel Lamarre was at the chalet and was drunk. He was saying all sorts of things, and he told Ms. O'Bomsawin that he would like to see her and his wife together. His wife, Ms. Calvé, was not at the conference. Ms. O'Bomsawin wanted to smash his face in and asked Mr. Levasseur to take care of him.

[396] Mr. Bédirian then went to Mr. Levasseur's chalet, where he saw people dancing. He spoke with Mr. Carbonneau for 20 minutes, during which time Mr. Carbonneau confided in him that he was recently separated, a fact which they had in common. Ms. O'Bomsawin came to say hello to them, saying that she hoped they were not talking about work. Mr. Bédirian told her that they were not and that they were talking

about women, which was true. However, for Ms. O'Bomsawin, these words added to the cumulative effect of what she already thought about the complainant's amorous intentions and they stayed with her. For Mr. Bédirian, he did not think there was anything abnormal and that is entirely logical since he had not invited the two lawyers for a *ménage à trois*.

[397] Mr. Loïacono said he had probably seen Ms. Letellier de St-Just and Ms. O'Bomsawin at the cocktail reception at the chalet and had not noticed anything abnormal with Ms. Letellier de St-Just or Ms. O'Bomsawin at the chalet. He had even danced with each of them during the evening.

[398] The next day, after Mr. Cossette had finished giving his 10:00 a.m. presentation, he had lunch at the same table as Ms. Letellier de St-Just and Ms. O'Bomsawin. Mr. Verdon was there as well. Ms. Letellier de St-Just and Ms. O'Bomsawin seemed angry and offended and Ms. Letellier de St-Just told them about the incident of the night before in Mr. Levasseur's chalet. Mr. Cossette had not gone to Mr. Levasseur's chalet, and Ms. Letellier de St-Just therefore described the unseemly behaviour of Mr. Lamarre who was very [translation] "clingy" and had made some offensive comments. Ms. Letellier de St-Just told them that Mr. Lamarre's behaviour was highly inappropriate and that she would rather not talk about it. Ms. O'Bomsawin did not file a complaint against Mr. Lamarre, since he apologized and she could send him packing.

[399] Mr. Loïacono did not notice any changes in Ms. O'Bomsawin's behaviour after the Chéribourg conference (in November 1999). Neither Ms. Letellier de St-Just nor Ms. O'Bomsawin came to talk to him about the incident involving the complainant after the conference. After Ms. Letellier de St-Just had left the QRO, he saw Mr. O'Bomsawin crying in her office in February 2000, and thus only after Ms. Letellier de St-Just had made allegations against Mr. Bédirian to Ms. Gravelle-Bazinet and Mr. Dion. Mr. Loïacono offered her his shoulder and took her in his arms in the presence of Ms. Labrie, a female lawyer.

[400] For his part, the complainant said that no one had ever spoken to him about the *Chéribourg* incident before the February 2000 complaint. After this whole matter, he recognized that his words had been misinterpreted and indicated that the expression "*two for one*" meant two drinks. As for his talk about resigning, he said that he had meant resigning as a member of the harassment committee, as a joke, since Ms. O'Bomsawin had just mentioned this committee as a joke.

[401] Having described the alleged *Chéribourg* incident in this way, I must now analyze whether Mr. Bédirian's comments demonstrate sexual harassment. I will use the formula developed earlier to arrive at my decision, as follows:

- a) Has the whole of the evidence surrounding the conduct in question been obtained, considered and evaluated? Yes.
- b) Has the evidence shown in a clear, cogent and compelling manner that the acts in question were in fact committed? The evidence clearly showed that the comments of which the complainant has been accused, namely "*two for one*" and his remarks about a big bed and about having some peace and quiet, were in fact said. However, I would add that the complainant said more than this, including [translation] "*The show is starting*" and so forth when he made the invitation to come to his suite.

As well, the evidence is far from compelling that the word "*baiser*" was used by the complainant. This word does not appear anywhere in the lawyers' statements and the two lawyers testified they had not been sure of having heard it. What they testified about was their impression of the invitation he had made to them, as they related to Ms. Gravelle-Bazinet and Mr. Dion; in other words, that this was what they had understood from Mr. Bédirian's comments. Nor do I think that it was Ms. O'Bomsawin who used the word "*baiser*" and I do not attribute that term to her. It is possible that Mr. Bédirian, who had served wine to so many people that evening, might have heard someone else saying [translation] "*Henri will serve wine for a kiss*" during the cocktail reception.

The evidence is clear that Mr. Bédirian talked about resigning but the evidence is not compelling that he

was referring to resigning as a manager; in my opinion, this was in reference to resigning from the harassment committee following Ms. O'Bomsawin's reference to it.

- c) Did the behaviour consist of persistent and repeated acts or words or is a serious act referred to? I would like to say right away that this case did not indicate a serious act on the complainant's part. Thus, did the behaviour of which he has been accused consist of persistent and repeated acts or words? He has been accused of inappropriate sexual comments. The evidence showed that Mr. Bédirian made dumb jokes at the office as the others did but, that having been said, the evidence did not show that Mr. Bédirian had the habit of making offensive or inappropriate sexual comments toward Ms. Letellier de St-Just or Ms. O'Bomsawin that made them uncomfortable or embarrassed or that disturbed them day after day, week after week. I would add that the complainant did not demonstrate such conduct toward other people at the QRO. I thus answer no to this question.
- d) Are the respective versions of the alleged victim and the person who is the subject of the complaint credible in themselves in light of all the facts and, if so, which version is the more credible on a balance of probabilities? It is my view that the version of the alleged victim Ms. Letellier de St-Just was credible, as were those of Ms. O'Bomsawin and Mr. Bédirian. Those three individuals testified honestly and had the courage to indicate what they could or could not remember. Ms. Letellier de St-Just, Ms. O'Bomsawin and Mr. Bédirian are lawyers and thus officers of the court and I have no doubt about their word. Which version is the most credible? In my opinion, based on

the whole of the evidence, no one version is more credible than the other two, since my summary of the evidence and the consecutive events of the cocktail reception came from the three versions.

- e) Is the version (or are the versions) consistent with what a practical and informed person in the same place and circumstances would immediately recognize? A reasonable person in the same circumstances, observing Ms. Letellier de St-Just, Ms. O'Bomsawin and Mr. Bédirian, would recognize that their respective versions appear to be consistent with the facts as reported.

- f) In light of all of the facts surrounding the behaviour, would a reasonable person feel that the behaviour was blameworthy, unwelcome and sexual in nature? This question can be answered as follows: a reasonable person who was well informed of all of the facts could not feel that Mr. Bédirian's comments were blameworthy, were unwelcome and were sexual in nature, since the words "*two for one*" followed immediately by [translation] "*What would you like to drink?*" referred to drinks and the fact that he wanted to pour a glass of wine for them. The facts are uncontested that Mr. Bédirian was serving wine to everyone and that he served wine to the two lawyers. Comments are always made in a specific context and it is important to pay attention to that context. A reasonable person who was well informed of the context of the matter would take into account the important fact that Mr. Bédirian had spoken this way to encourage people to go to his suite, in a "happy hour" style in the sense that, if people went into his suite they could have two drinks for the price of one. It was true that the drinks were offered free of

charge but Mr. Bédirian was only joking when he said this.

A reasonable person would not consider that the comments indicated conduct of a sexual nature. The invitation made to everyone, not only the two lawyers, that there was a big bed and a jacuzzi and that the show was going to start had been made as a joke, in a party spirit, once again to encourage people to come into his large suite. Mr. Bédirian's suite was just as large as Mr. MacGregor's but how would people know this if they did not bother to come in? As well, the door to the suite was open and there were people inside. In addition, the word "*baiser*" was not spoken by Mr. Bédirian, so a reasonable person could not associate such words with an offer to have a *ménage à trois*. In no way could a reasonable person believe that the complainant wanted to hint at spending the night with the two lawyers by having said the words that the evidence showed he said that evening. Mr. Bédirian had no improper intentions and was doing his best to invite people to come into his suite.

With regard to the talk about resigning, a reasonable person could accept the fact that Mr. Bédirian spoke that way as a joke following Ms. O'Bomsawin's reference to the harassment committee, even taking into account the fact that for Ms. O'Bomsawin it was serious. A reasonable person would know that the complainant did not know that the two lawyers, who did not know that his suite was open to everyone, had taken his comments about "*two for one*" as an intention to have a *ménage à trois*. A reasonable person would also notice that the two lawyers had not told the complainant that they found his

behaviour unacceptable other than by drinking to his resignation and that the facts did not demonstrate a subsequent change of attitude or behaviour between them and the complainant, except after the complaint was filed. However, that having been said, a reasonable person would consider talking about resigning from a harassment committee inappropriate given that the complainant was a manager who was well aware of the need to maintain a certain level of appropriate conduct even in the context of a social gathering and party. A reasonable person would not consider this to be a reference with sexual overtones but would consider that talking about resigning from a harassment committee could create an impression that the complainant no longer wanted to adhere to the standards required to maintain a workplace free of inappropriate behaviour. Although the complainant said this without thinking and as a joke, he should have known better. This comment was inappropriate but did not constitute harassment or sexual harassment.

[402] As I indicated earlier, to prove the existence of sexual harassment in the workplace, I must have answered in the affirmative all of the six questions indicated above. To summarize, I answered yes to question (a). In reference to question (b), I found that Mr. Bédirian had in fact said the words "*two for one*" and "*big bed*" and had referred to having some peace and quiet but he never said the word "*baiser*". He also referred to resigning in reference to the harassment committee. I answered no to question (c). To question (d) I answered yes, as I did to question (e). However, I answered no to question (f), except for the fact that his reference to resigning from a harassment committee was inappropriate but did not have sexual overtones and was therefore not sexual harassment.

[403] Accordingly, the allegation brought against Mr. Bédirian with regard to the *Chéribourg* incident is unfounded.

[404] Having thus concluded, I find that the employer's decision dated July 28, 2000 is not correct, the Deputy Minister not having had the benefit of receiving conclusions on the allegations that were based on the whole of the evidence and had been thoroughly reviewed.

[405] With respect to the inappropriate comments, it is my view that such behaviour was not repeated and was an isolated incident according to the facts in this case. Given the importance of the complainant's managerial position at the time and the importance for all Department executives to ensure they conducted themselves appropriately, one form of reprimand would have been sufficient. However, the complainant was found guilty of two allegations of sexual harassment in his department, and the loss of reputation and the stigma he suffered were in my view equivalent to a greater disciplinary action than he should have had to suffer if the outcome of the investigation had been correct.

The Policy and the Office of Conflict Resolution

[406] It is my view that the Departmental Policy adequately provides for the procedure that should be followed in such cases of workplace conflict and situations in which an employee alleges harassment or sexual harassment by another employee. I recognize that Mr. Bédirian's case involving allegations of sexual harassment was the first in which the provisions of the Policy were applied.

[407] This case was also the Office of Conflict Resolution's first experience with sexual harassment. The Policy confers a great deal of responsibility and power on the Office and on the Senior Advisor, Ms. Gravelle-Bazinet. Ms. Gravelle-Bazinet's position was the constant element in all complaints brought to the Office's attention. It thus appears that in the process of resolving a formal or informal complaint the Senior Advisor acts at all times in an independent, impartial and objective manner in order to maintain the integrity of her position in the process and in the eyes of the parties to whom she intends to provide assistance.

[408] Although I understand the difficulty an employee would have felt in trying to initiate informal conflict resolution procedures in a case such as this between herself and her boss, and especially in connection with allegations of sexual harassment, I think that mediation could have been used once the formal investigation had been initiated. The procedure for this is set out in the Policy and would have included the

appointment of a mediator by the Deputy Minister to ensure that the interests of the Department and, in my view, the two parties in the workplace would have been protected. Moreover, if an informal settlement could have been reached between Ms. Letellier de St-Just, Ms. O'Bomsawin and Mr. Bédirian after such mediation, Ms. Gravelle-Bazinet's Office would have followed this up for a two-year period to ensure there were no reprisals or repercussions against anyone in the parties' workplace.

[409] In closing, I would like to say a few words about Ms. Letellier de St-Just and Ms. O'Bomsawin who experienced some difficult moments in this case, and especially Ms. O'Bomsawin, the lawyer who remained with the QRO during this entire episode. For Ms. Letellier de St-Just, I hope that the explanations given in this case and the fact of being able to clarify what took place will erase in the future the suffering she experienced.

[410] In Ms. O'Bomsawin's case, when the investigators contacted her by telephone on April 28, 2000 to ask her whether she had said to Mr. Bédirian: [translation] "*Henri's going to serve us a drink for a kiss*", she said that she was flabbergasted. According to her, she thought this meant that her boss was insinuating that she was the one who had invited him, and she became ill. Ms. O'Bomsawin attributed to Mr. Bédirian intentions he did not have and I can certainly understand her confusion and dismay when she had that impression, and in thinking that Mr. Bédirian was going to put everything back on her and say she was lying, and so forth. In my view, that is probably the main reason why she became ill. At that point, she must have felt she was alone in a case that was taking a bad turn and that her boss was going to blame her for the complaint. I congratulate her for the integrity and honesty she displayed during her testimony.

[411] I hope that this decision and the passing of time will help rectify the multitude of misunderstandings that intruded on the lives of the persons associated with this case and that an atmosphere of camaraderie and of working together harmoniously will once again prevail at the Tax Litigation sector of the QRO.

CONCLUSION

[412] In conclusion, it is my view that the sexual harassment allegations brought against Henri Bédirian are unfounded, aside from the minor and isolated incident in

which the complainant made inappropriate comments during the social get-together. For such comments, a disciplinary measure in the form of a reprimand would have been appropriate at the time when the incident took place. However, in light of all the circumstances of this case, the complainant should not be subject to any penalties since, in my view, the discipline to which he has been subjected has been more severe than he deserved.

[413] Having so decided, I allow the complainant's grievance, I set aside the employer's decision dated July 28, 2000 and I order as follows:

- (a) that the employer reinstate Mr. Bédirian in the managerial position that he had held before the employer's decision of July 28, 2000 as if he had never lost that designation, and that the employer reimburse him for all of his losses in connection with the associated benefits;
- (b) that the employer remove the three-day suspension imposed on the complainant and that the employer reimburse him for all of his losses with respect to pay and benefits associated with this suspension;
- (c) that the employer remove the Deputy Minister's letter dated July 28, 2000 from the complainant's file. The withdrawal of the employer's letter will remove all reference to the discipline imposed on the complainant in this matter, including the warning of dismissal in the event of a repetition of harassing behaviour, the obligation to undertake training on harassment and gender equality, the obligation to send a letter of apology to Catherine Letellier de St-Just and the description of the letter as the expression of a reprimand against the complainant.

[414] I do not believe it is appropriate for me to retain jurisdiction in respect of the additional claims in the complainant's grievance.

**Anne E. Bertrand,
Board Member**

FREDERICTON, New Brunswick, October 31, 2002

P.S.S.R.B. Translation